

**BIBLICAL LAND AND PROPERTY LAWS
WITH SOME ACCOUNT OF THEIR
AMPLIFICATION IN THE MISHNAH.**

BY

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PREFACE.

The primary sources which I have used in this work are mainly the Old Testament in Hebrew, including English and German translations, as well as the Mishnah. I have also consulted standard translations of the principal early oriental laws, viz. the Babylonian, Assyrian and Hittite codes. I have read and criticised in parts certain works dealing with Hebrew and other ancient laws. Furthermore, I have availed myself of commentaries on books of the Old Testament, of Bible Dictionaries and general Encyclopedias.

The original part of this thesis is claimed to be in its general method of examining the various land and property laws in the Pentateuch, with the view of discovering whether these are necessarily of late origin, whether they belong to different authors, or whether they are incompatible with one another.

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LIST OF ABBREVIATIONS.

(Bible, ancient codes, Mishnah; for abbreviations of titles of journals see next page).

A.C.	-	Assyrian Code.	K.	-	Kings.
Ant.	-	Antiquities.	Kel.	-	Kelim.
Ar.	-	Arakhin.	Kerit.	-	Kerithoth.
A.Z.	-	Abodah Zarah.	Ket.	-	Kethuboth.
B.B.	-	Baba Bathra.	Kid.	-	Kidushin.
Bek.	-	Bekhorot.	Kil.	-	Kilaim.
Bet.	-	Metza.	L.X.X.	-	Septuagint.
Bik.	-	Bikurim.	Lev.	-	Leviticus.
B.K.	-	Baba Kama.	Maas.	-	Maaseroth.
B.M.	-	Baba Metzia.	Macc.	-	Maccabbees.
C.B.	-	Cambridge Bible.	Maim.	-	Maimonides.
C.H.	-	Code of Hamurabi.	Mak.	-	Makkoth.
Dt.	-	Deuteronomy.	Mal.	-	Malachi.
Edclaus.	-	Ecclusiasticus.	Math.	-	Mathews.
Ed.	-	Eduyoth.	Men.	-	Menachoth.
Er.	-	Erubin.	Mik.	-	Mikwaoth.
Ex.	-	Exodus.	M.Kat.	-	Moed Katan.
Ez.	-	Ezekiel.	M.Sh.	-	Maaser Shen.
Gem.	-	Gemarrah.	Ned.	-	Nedarim.
Gen.	-	Genesis.	Neh.	-	Nehemiah.
Git.	-	Gittin.	Nu.	-	Numbers.
Hagg.	-	Haggai.	Oh.	-	Ohaloth.
Hag.	-	Hagigah.	Or.	-	Orlah.
Hal.	-	Halak.	O.T.	-	Old Testament.
Hul.	-	Hulin.	Prov.	-	Proverbs.
H.C.	-	Hittite Code.	Ps.	-	Psalms.
Ib.	-	Ibid.	R.H.	-	Rosh Hashanah.
I.C.C.	-	International Critical	Sam.	-	Samuel.
Is.	-	Isaiah. Commentary.	Sanh.	-	Sanhedrin.
Jeb.	-	Jebamoth.	Shab.	-	Shabbath.
Jer.	-	Jeremiah.	Shebi.	-	Shebiith.
Jer.T.	-	Jerusalem Talmud.	Shebu.	-	Shebuoth.
Jon.	-	Jonah.	Shek.	-	Shekalim.
Josh.	-	Joshua.	Sot.	-	Sotah.
Jud.	-	Judges.			

Suk.	-	Sukkoth.
Taan.	-	Taanith.
Tam..	-	Tamid.
Ter.	-	Terumah.
Toh.	-	Tohoroth.
Yad.	-	Yad Nhazakah.
Zech.	-	Zechariah.
Zeph.	-	Zephaniah.

Abbreviated titles of journals,
and dictionaries.

B.V.S.G.W.	-	Berichte uber die Verhandlungen der Sachsischen Akademie der Wissenschaften, Leipzig.
B.S.O.S.	-	Bulletin of the School of Oriental Studies, London.
B.Z.A.W.	-	Beihfte zur Zeitschrift fur die Alttestamentliche Wissenschaft, Giessen.
C.R.	-	Contemporary Review, London.
E.R.E.	-	Encyclopedia of Religion and Ethics, J.Hastings, London.
H.U.C.A.	-	Hebrew Union College Annual, Cincinnati.
I.S.B.E.	-	International Standard Bible Encyclopedia, Chicago.
J.B.L.	-	Journal of Biblical Literature, New Haven, Conn.
J.E.	-	Jewish Encyclopedia, New York.
J.E.A.	-	Journal of Egyptian Archeology, London.
J.Q.R.	-	Jewish Quarterly Review, Philadelphia.
J.T.V.I.	-	Journal of the Transactions of the Victoria Institute, Manchester.
M.G.W.J.	-	Monatschrift fur Geschichte und Wissenschaft des Judentums, Breslau.
N.S.H.E.R.K.	-	New Shaef Hertzog Encyclopedia of Religious Knowledge, New York.
P.E.F.Q.St.	-	Palestine Exploration Fund Quarterly Statements, London.
P.T.R.	-	Princeton Theological Review, Philadelphia.
T.S.K.	-	Theologische Studien und Kritiken, Gotha.
Z.A.T.W.	-	Zeitschrift fur die Alttestamentliche Wissenschaft, Giessen.

INTRODUCTION.

In this thesis which concerns itself with Biblical land and property laws, I have endeavoured to state and rearrange all the laws of the Pentateuch on this subject, as well as to collect from the Old Testament such other references of legal practice as, I thought, may have a bearing on the treatment of our subject. Furthermore, I have stated the corresponding laws in the Mishnah with a view of showing where a possible development, amplification, or limitation of and addition to the Pentateuchal laws has been effected by the architects of the Mishnah, the Rabbis. In addition, I have quoted, for comparison, the various similar laws in the Babylonian, Assyrian and Hittite codes. The question of the origin of the Mosaic laws in relation to the ancient oriental codes has not been gone into here, but our view is, as Grant (The Haverford Symposium on Archeology and Bible, p.52) quoting Jirku puts it, "The Hebrew laws are in origin independent of the other oriental laws".

When dealing with the land laws, it is important to remember that the general and supreme principle governing the land laws is that the land belongs to God. All have equal rights to the earth (Num. 26, 52-54) and thus equal access to the land which was to belong to Israel. H. Spencer (Social Statics) says in chapter 9 of his book that "equity does not permit private property in the land (par. 2)", that "it is impossible to discover any mode in which land can become private property (par. 4)" and that "the verdict given by pure equity dictates the assertion, that the right of mankind at large to the earth's surface is still valid; all deeds, customs and laws notwithstanding (par. 4)". As far as Israel was concerned, the land was given by God in usufruct to the nation, and was to be divided among the tribes and families - the principle being to allot to each tribe and family land in proportion to its numbers.

The account of the division in the book of Numbers 36 and Joshua 13-19 is obviously fraught with difficulties and defects. It is found in the fact that no mention is made of the fertility of the various parts of the country, and unless the geographical position of every district was considered when parcelling out the land, obvious injustices must have arisen. That Palestine was once a fertile country is maintained by the greatest American expert on soil conservation, Dr. C. Lowdermilk, Palestine, Land of Promise. Recourse was taken to the lot (Nu. 26, 55:33, 54) when dividing the land, obviously to prevent jealousy. This lot was a reference of the matter to God to whom the land belonged. Dr. Cassin in her book L'Adoption a Nuzi, holds that the reason why in Harite law they were only allowed to sell land when the person to whom it belongs was at the same time adopted, is the same as in Hebrew law, viz. that the land belongs to God. Prof. M. Weir in his review of her book in the Bulletin of the School of Oriental Studies, London 1939 disagreed with her explanation of the fictitious adoption in Nuzi. Of course, as will be seen, in Hebrew law the sale of land for more than 49 years was prohibited. Josephus states that the land was not divided according to its size but in accordance with its fertility and worth. He says, (Ant. 5.1. 21) "So he (Joshua) sent men to measure their country, and sent with them some geometers who could not easily fail of knowing the truth, on account of their skill in that art. He also gave them a charge to estimate the measure of that

part of the land that was most fruitful, and what was not so good... And although it so fall out, and that it is for the main mountainous also, yet does it not come behind other parts on account of exceeding goodness and beauty; for which reason Joshua thought the land for the tribes should be divided by estimation of its goodness, rather than the largeness of its measure. It should perhaps be stated here that it is immaterial nor of any consequence to our subject whether the division actually took place or not after the settlement. What we must bear in mind is that this was the Ideal State which Moses wished to establish. Even if we were to assume that this division never took place, proving impossible or impracticable in the new conditions, the fact of its embodiment in the body of the law may be strong enough evidence for a very early legislation which could have only come from the mind of a man like Moses concerned with suggesting to his people the ideal conditions under which they could permanently exist.

As already stated before, the land was not the undisputed possession of the owner, but it belonged to God who has leased it in perpetuity to whomsoever the particular plot has fallen at the outset. Unlike in Babylonian and Assyrian law, the land was no private property alienable for ever. If the Israelite sold his land he could give no better title than he had. The lease was, as it were, renewed to him by God every 50 years. This principle is well illustrated in Lev. 27, 22-24 where we are told that the purchased piece of land could only be devoted till the Jubile as on it it reverted to the seller. The produce of the land, as we shall see, was to be the property of all, at certain times and in certain proportion, by command of God. "This natural and inalienable right to the equal use of enjoyment of land is so apparent, that it has been recognised by men wherever force of habit has not blunted first perceptions. To give but one instance: the white settlers of New Zealand found themselves unable to get ~~from~~ the Maoris what the latter considered a complete title of land, because, although a whole tribe might have consented to a sale, they would still claim with every new child born among them an additional payment on the ground that they had parted with only their own rights, and could not sell those of the unborn. The government was obliged to step in and settle the matter by buying land for a tribal annuity, in which every child that is born acquires a share" (H. George, Progress and Poverty, book 7, ch. 1, n. 1). Pedersen (Israel its Life and Culture, p. 474) speaking of the place land occupied in the life of the Israelites says, "Land... has its centre where Israelites live... The landed property of the family belonged to the psychic totality of the family and cannot be divided from it. Just as it determines the life of the family, so it is imbued with its blessing. It is not the individual alone who is to create the blessing upholding the property. He is a link in the family as extending through the generations". If we bear the above statement in mind, we shall easily understand the concern of the family and the clan in matters of land, and shall better appreciate the land legislation.

It was impossible, according to the provisions of the Hebrew law, for the king, the priestly cast or nobles to rob the people of their land - a common feature in Egypt and many ancient communities, and a practice up to fairly recent times. The priests in Israel, however, had no possessions (except their dwelling houses) whatsoever, and depended entirely on the goodwill of the people (Nu. 18, 20. 21). With one stroke of the pen Moses swept away the source of evil and oppression so widespread in ancient society. The law recognised no class distinctions, as in Babylonian law, between aggrieved parties

and consequently the punishment meted out for an offence was the same in all cases.

Now, the idea behind all the Hebrew laws, and the land laws in particular, was to create a right and just situation, an order of society, that would know of no class distinctions nor allow a privileged section to come into existence; to guard everywhere the rights of the poor, miserable and bereft of protection while at the same time stressing the duties of those with means. These ideal conditions Moses pictured to himself as the only durable basis for the happiness of society, as he felt that property and family, economic and social conditions, were the primary factors of human society, and in their proper treatment lay the weal and happiness of a State. That many of the Mosaic laws were not actually implemented nor followed when the Israelites settled in Palestine, and thus brought upon themselves the rebukes of the prophets, is much proof of the adverse conditions and personal attitudes with which Moses may not have reckoned. Most essential in the general picture is the ideal which Moses tries to hold before the people, the ideal of a State where its citizens would have equal opportunities. And although "the poor will never cease from thy land" was a statement which Moses, knowing man and his nature, considered would always be true, he yet believed that the social world order ought not to suffer because of this natural fact.

Our general approach to the subject of Pentateuchal legislation should be such as viewed from the angle of a leader, well tried by the difficulties, and diversities of character of human nature, who believed in an earthly political society a law must be laid down which would have to be strictly enforced, if society was to thrive. His intensely democratic sense, the sense of justice which this lawgiver shows in every detail of his legislation, is quite unparalleled and has certainly not yet been attained by any society. He strove, so far as possible, towards social equality for all the members of his State, so that none should be able to amass excessive wealth.

Possession of great tracts of land in the hands of few, has at all times proved to be the source of power and implicit authority for tyranny and exploitation by the possessing classes. This, Moses may have well learnt during his sojourn in Egypt, observing the corrupt practices of the ruling classes and seeing the value of the Egyptian in the eyes of his wealthy brothers, priestly cast and the royal rulers. This fountain of wickedness Moses sought to eliminate by his legislation. Neither any possible upper class nor the priests were to have this opportunity in Israel. His legislation aimed to make sure that all possessed land, and that nobody was to be deprived of it for ever, whatever situation some temporary conditions may create. This problem of land ownership which has been the curse of society and the source of many evils for the last 4,000 years Moses sought to solve by the laws of the Jubile and the Sabbatical year, "Moses saw that the real cause of the enslavement of the masses of Egypt was, what has everywhere produced enslavement, the possession by a class of the land upon which and from which the people must live. He saw that to permit in land the same unqualified private ownership that by natural right attaches to the things produced by labour, would be inevitably to separate the people into the very rich and the very poor, inevitably to enslave labour, to make the few the masters of the many, no matter what the political reforms; to bring vice and degeneration, no matter what the religion" (George, Moses, p.11, an address delivered at Glasgow in 1884, published in London, 1938).

All the Mosaic laws and directions aim at reminding the Israelites that they are brothers and that as such they must treat their fellow citizen (Lev. 25, 35-43). Thus, they speak of the rights and protection of the debtor and oppressed, while the creditor hardly finds anywhere any words of comfort. All the laws mirror clearly the ethical and religious nature of the legislation, laying its stress rather on the duties than on the privileges. What a contrast e.g. to Roman conceptions where the pervading relationship is that between master and servant, privileged and oppressed, creditor and debtor. There the idea that the fellow man is to be looked upon as a brother, is totally unknown.

Moses, generally, appears to have made in his legislation a vital distinction between what can be acquired through work and labour, and what cannot. He must have considered, that seems to be the correct conclusion, that earth and land can be as little produced by man's labour as the sun or the moon. Therefore, he found that the only means of enabling all sections of the population to obtain it, and, what is more, to keep it, was by limiting, or better by eliminating, the possibility of perpetual alienation of land. Moveable property, on the other hand, could seemingly be bought and sold without any restrictions whatsoever. They were, of course, subject to the laws of honesty and fair dealing. Moses was basing his State on agriculture and, as will be seen, he has little to say about commerce. He visualised his country as a land leading its life on peaceful agriculture which, he believed, would bring stability in life and certainty of subsistence, with commercial relations reduced to a minimum, an idea which found such clear expression in the prohibition of taking interest. He may well have thought of the evils that commerce may bring, and of the effect it may have on the life, customs and religion of the people, if they were to indulge in an extended trade intercourse with the neighbouring nations - a fact so clearly proved in later centuries with such fatal consequences to Israel's integrity. "The historical student of English legislation in the 19th century is compelled to take into account the great intellectual forces that moulded its history, such as utilitarianism, laissez faire, collectivism.... In the case of Pentateuchal legislation - unlike the Babylonian where the political, economic and social considerations were the dominant influence - the internal and spiritual compel our fascinated gaze, and the external is of interest mainly in so far as it maintains the influence of the former..." (J.T.V.I., volume 141, p.157). The real interest of the Israelitish law lies not in trades, industry, navigation etc., but in land laws, slave laws and the like.

At this stage it must be said that the assumption derived from the Pentateuch that it is the work of one man, Moses, who received the ten commandments from God and wrote the rest by divine inspiration and with the concern of a leader desiring to give his people a scheme of life which he thought would fit for them in Palestine, is not supported by what are usually called the higher critical scholars, i.e. many modern scholars of the Bible.

They have dissected the Pentateuch, and since they believed to have found some linguistic, literary, historical and legal discrepancies and contradictions, they have come to the conclusion that the Pentateuch cannot possibly have been written by one man, that it has had a number of redactors who wrote and edited the various documents, who had various origins, at different dates and times, ranging, according to Kent, Israel's Laws and Legal Precedents, p.14,

from about 621 B.C. to 300 B.C. These documents are known as Codes, and in the order of history they are suggested almost by all to be a) The Book of the Covenant, mostly J. and E. documents, which includes the greater part of Exodus, b) The Book of Deuteronomy or D., c) The Holiness Code or H., Leviticus chapters 17-26 and d) The Priestly Code or P., consisting of approximately the balance of the Pentateuchal legislation.

The task I have set myself in this thesis is not to inquire into the whole field, merits and methods of higher criticism, nor to discuss the text, style and language of the Bible, although, as Robertson (Temple and Torah, p.13) puts it "The fact that there are differences in style and diction does not require by way of explanation differences of period; but, when dealing with and examining the property and land laws, also to investigate whether these laws in the various so called Codes are compatible with one another, to find some defence for the orthodox view, and try to picture the outlook and attitude of mind which has prompted the laws to be written in the form they stand. I shall attempt to show that within the legislation of the Pentateuch no laws relating to land and property are inconsistent with one another and, therefore, it need not be assumed, on that account at least, that there was more than one code, and consequently may well have been written by one man. I shall, further, try to show that these laws could not possibly have been drawn up by a lawgiver after having had the experience of life in Palestine, and that it is, therefore, reasonable to suppose that they were legislated before the entrance of the Israelites into the country. In trying to assign precise reasons for the various laws, it is, of course, not possible now to dive into the mind of the legislator, but I have tried to draw attention to what, I believe, must have been the considerations present in the lawgiver's mind, and to view the laws through the spectacles of a leader who contemplates the future State and the life of his people in it. "The tradition which associates the name of Moses with Israelitish legislation as a whole, appears to rest upon very substantial basis of fact...; as the inspired leader who evolved a nation out of the horde of serfs and the antagonistic desert tribes, Moses was in a very real sense the father of Israel's institutions and laws" (Kent, The Messages of Israel's Lawgivers, p.13f).

The object of quoting the various Mishnaic laws, in connection with the laws under discussion, is to point out any possible or probable differences from, or amplifications of, the Pentateuchal laws. As is well known, the Rabbis aimed at preserving, cultivating and applying to life the Pentateuchal legislation, and strove to provide in the Mishnah the casus omissi of the Five Books of Moses or The Torah, the Law. The Pentateuch is the basis upon which was built a superstructure of case law and juristic responsa. The Mishnah, then, includes what is called a) the Written Law or The Pentateuch, b) the Oral Law, consisting of beliefs and usage which in time have become attached to the Written Law, and which was, according to tradition, given at Sinai (Aboth 1,1f) at the same time as the Written Law. Throughout, the Mishnah seeks to derive Pentateuchal sanction for its legislation, and continuously attempts to harmonise its laws with any possible difference in the Scriptural text. It maintains that its laws have been handed down in the present form from time of antiquity, and, therefore, claims for itself authority, since it bases itself on the Written Law, equal to those of the Five Books of Moses.

Now, as a general observation, it should be said that the existence of an Oral Law, cf. for a similar conception, the Agraphos Nomos in Greek life, is certainly assumed in the Pentateuch itself. Thus, according to Gen. 18, 22:27, 5, Abraham and his seed distinguished themselves in observing laws based on righteousness, equity and justice. Furthermore, the language of the Bible in many cases presupposes the knowledge of certain laws by the people. So e.g. the phrase "If he (the servant) be married, then his wife shall go out with him" (Ex. 21, 3) presupposes the accepted rule that a married servant must bring his wife with him, otherwise, the quoted verse would not make sense. Thus, such a law - an existing Oral Law - need not have been stated again in the Lawbook. Also verse 4 implies a known precondition that the master had the right to give him a wife; verse 7 confirms that the father had the right to sell his daughter to be a secondary wife. That her new master was allowed to assign her to his son, can also be concluded from verse 9. Now, from these examples we may draw a reasonable conclusion that from the earliest times, as laws were written down, unwritten or oral laws became accepted standards in human affairs. (see J. Heinemann, Die Lehre vom Ungeschriebenen Gesetz im Jüdischen Schrifttum, Hebrew College Annual, 1927). It is by such an assumption that we could partly explain the great authority which the Mishnah wielded even in those days when it was first compiled. In the following chapters it will be noticed that, besides elaborating and adding to the laws in the Pentateuch, there are no contradictions between the Biblical and the Mishnaic laws, except that in a number of cases the Mishnah has surrounded the original law with conditions which make practically impossible to follow it in its letter, as e.g. in the case of the Probul and the conditions surrounding the infliction of the death penalty.

INTRODUCTION.

The fundamental principle pervading Pentateuchal legislation regarding land laws is that the land belongs primarily to God (Lev. 25, 23), and in virtue of the fact that the Israelites are His servants, they have been appointed to be His tenants.

It will be found throughout, that all the laws concerning land contain, without exception, the underlying principle of restricted ownership of the land and its produce. Thus, as will be seen in later chapters, land cannot be sold in perpetuity beyond the Jubile, and its produce is subject to certain dues and claims of certain classes of the citizens of the State.

The land laws are of an outstanding Hebrew character and ~~are~~ without parallel in any other legislation, ancient or modern. While the land belongs to God and in relation to Him the possessor is tenant, in regard to his fellow men, subject to the legal provisions, He is undisputed owner. No one has the right to expropriate him, vide case of Naboth (1K. 21, 1ff). He has inalienable rights to his land given to him by God and is protected in times of adversity by legislation which ensures that he would not be deprived of his land beyond a maximum period of 49 years. It secures, at least for his children, the opportunity of a fresh start.

The land laws, based on what seems a system of peasant proprietorship, are quite clearly the product of a most democratic mind, aiming at the creation of, as nearly as possible, a society where all citizens would get equal opportunities. The rules regulating the land laws are completely untarnished by the conditions of a society such as has been found after the Settlement in Canaan.

"The land laws are the product of many independent ideas and circumstances... Such a system as that expounded in the 25th chapter of Leviticus could only be put forward by one who had to work in what is so rare in history - a clean slate. In other words, the system of land tenure here laid down could only be introduced in this way by men who had no preexisting system to reckon with. Secondly, there is, mutatis mutandis, a marked resemblance between the provisions of Leviticus and the system introduced in Egypt by Joseph (Gen. 47). The land is the Lord's as it is Pharaoh's; but the towns which are built are not subject to the same theory or the same rules. Perhaps the explanation is that Joseph's measures had affected only those who gained their living by agriculture i.e. the dwellers in the country. Thirdly, the system shows the enormous power that the conception of family solidarity possessed in the Mosaic age...

And fourthly, the enactment is inspired and illuminated by humanitarian and religious conviction". (Journal of Transactions of the Victoria Institute 41, p.160).

If Gen. 47 does convey the state of mind in Egypt, how different are the Biblical laws. Contrast the Biblical conception of the inalienability of land with the state of servitude to which the peasant is reduced by becoming a slave to Pharaoh and the ruling clique. If Moses had some pattern in Egypt, he has well recast it raising it to the highest level of humanitarianism precluding any human from utilising his position to his own ends.

In view of the above contention which will be treated in detail in the following chapters, I can hardly agree with Kent (Messages of Israel's Lawgivers p.154) that the whole conception of the land belonging to God "reflects the religious theorising of a much later

period", meaning that Lev.25 is postexilic. When we consider the economic and social situation of the time to which Kent and others assign the landlaws, which require a "clean slate" and certainly ancient authority to make the people - as in the times of the Maccabees - accept such laws with great hardship, it is, in my opinion, absolutely unthinkable to fit them into that "later period".

As will be seen in the following chapters, the theory that the land is the Lord's and therefore the Israelite is but its holder obliged to fulfil all conditions, governs all the laws mentioned in the Pentateuch, and it is in this spirit that we shall discuss them.

Part I. The Law of the Lord.

Chapter I. The Law of the Lord.

Chapter 1.

Acquisition of Land and Statutory Obligations.

Section 1. Modes of acquisition and alienation of land.

Section 2. Obligations and rights of the occupier of land.

par. 1. Tithes, Landmarks etc.

par. 2. Sabbatical Year.

Section 1.

MODES OF ACQUISITION AND ALIENATION OF LAND.

References in the Pentateuch to modes of acquisition and alienation of land are as good as completely absent. The lawgiver, it must be remembered, assumed that Palestine would be easily conquered and the land divided by lot among the tribes, and with the additional limitations and prohibitions of the sale of land, it seemed redundant to him, to prescribe ways of acquisition and alienation of land. Since the Israelitish State would consist of an agricultural community where the great majority of citizens would be dependent on their piece of land, any laws regarding sale of land were seemingly unnecessary. These reasons, in my opinion, explain the complete absence of provisions for the buying and selling of rural property. Note:- G.Dalman Arbeit und Sitte in Palestina Band 2 at p.40 states, that "distribution by lot is an ancient custom in the orient and is to-day still used by Arabs for allotting land to the various farmers." The account of the division of the land in the Bible is full of discrepancies and rather difficult. Yet, it does not preclude a theoretical division of the land by Joshua when he was getting old, in spite of the fact that the Israelites who were entering the country west of the Jordan were fighting for every inch of ground. They must have, at the outset, only occupied the hill country. This explains why the governors of the natives who were living in the valleys appealed fairly late for help to their Egyptian masters. Fighting for the lowlands will have continued well after the fall of Jerico in 1407 B.C. (Bohl, Kananaer und Hebraer, for fuller discussion on the subject).

The earliest and single reference to acquisition of land in the Pentateuch is found in Gen.23, 7-20. We are told there of a verbal contract which Abraham concluded with a Hittite chief in front of witnesses, the assembly and judges (V.7). They were all, probably, sitting, as was the custom in eastern countries, in front of the gate (V.10), when Abraham bought of the Hittite a piece of land in Palestine the cave of Machpelah, paying the price in the presence of the witnesses. A similar procedure is found in C.H.9ff., a fact clearly pointing to the ancestral home of Abraham and to contemporary usage.

That the practice of handing over of a shoe, symbolising alienation, was a very early custom, is referred to in the book of Ruth (4,7). A similar ceremony, says Benzinger (Hebraische Archologie p.293), is only known in ancient Babylonia. But a clue, confirming such usage, is found in the Pentateuch itself. In connection with the levirate marriage (Dt.25,9) we are told that if the deceased husband's brother refused to marry the childless widow, the latter would loosen the levir's shoe from off his foot and thus free himself from marrying her. As it stands, the procedure is rather a strange one, but becomes quite comprehensible when we know the meaning of the stripping of the shoe. For, if we consider the handing of a shoe as an emblematic transfer of rights of property, we understand by plucking off forcibly the shoe from the levir's foot he was also deprived of the right to inherit his late brother's property, which he thus transferred to the widow.

G.C.Lee (Historical Jurisprudence at p.111) says "The origin of this custom is not clear. It was possibly connected with the right of possession or occupancy. The shoe may have been regarded as symbolic of standing upon the land". This latter view is confirmed by Dt.11,24. where Israel is told that "Every place whereon the sole of your feet shall tread shall be yours". Similarly, Jos.1,3, while the psalmist (60,10;108,9) speaks of throwing the shoe on to the land of Edom, thereby expressing, in other words, the intention of taking possession.

The pri

The principle of conveyance by the shoe is clearly demonstrated in the book of Ruth 4,7ff. There the near kinsman, who was charged with the duty of redeeming the land of the deceased owner, renounces his right in the land, which possession has passed to a third party, by plucking off the shoe and handing it to Boaz, ~~and~~, thus symbolically transferred his legal rights to him. Amos (2,6;8,6) has been interpreted by some as connected with the practice of selling land by transfer of the shoe. L.X.X. reads 1 Samuel 12,3, "of whose land have I received a bribe, or a pair of shoes", and Horton (Century Bible), commenting on this verse, says "The shoe may, therefore, be regarded the title deed of the needy man's inheritance which the rich man has appropriated". Abraham cited in evidence that his men dug certain wells, the seven sheep which he gifted to Abimelech (Gen.21,28,30).

Barter. How far barter affected land is difficult to gather, but it is quite possible that it was used within the clan for the sake of better and more profitable arrangement of land possession. To seal the exchange and formally make it binding, something more would be required. Possibly a striking of hands was the form. It is referred to in Prov.6,1;11,5;17,18;22,26 and Job 17,3, though it carries more the nature of being assurity. But in Rabbinic law and modern Jewish practice the handshake constitutes the expression of agreement to the deal by both parties. (Maimonides "Yad" Mekira 3.; Caro, Shulchan Aruch, Hoshen Mishpat 198,11.) An attempt to barter one piece of land for another is shown in 1K 21,1ff., where Ahab tried to persuade Naboth to exchange his land, which the latter refused in accordance with the general conception of clan inheritance.

The Mishnah has clear provisions for barter. (Kid.1,6).

Donation. That land could be donated in one's lifetime is quite possible, but, of course, it would be governed by the Jubile limitation. An interesting case is recorded in 2 Samuel 24,18-25 where David was offered as a gift a piece of land for the building of an altar, but which he refused; he accepted it, however, on paying money.

The Mishnah (Bek.8,10.) states as a majority opinion that gifts are subject to the Jubile law. Deeds of gift are referred to in M.Kat.3,3.

Inheritance. Inheritance as a means of acquisition is discussed in chapter 3.

Through the Levirate Marriage, too, property could be acquired. (see chapter 3).

Prescription. There is no direct mention of prescription in the Bible. Perhaps the laws of redemption regarding sanctified property are prescription of a kind. For (see chap. 2 sec. 2), land consecrated to the temple, if it was not redeemed by the time the Jubile arrived (Lev.25,15ff), became its property on that date. Thus, the Jubile operates as a sort of prescription on which date it confers a good and perpetual title to the land. upon the sanctuary.

The Mishnah has detailed provisions on this subject, the usual period of prescription being three years (B.B.3,1.2.4,9. 9,7.cf. Peah.3,6. Kid.1,3.5.). Thus, if one has occupied a piece of ground for consecutive three years he can claim its ownership, since it is assumed that, as nobody has claimed it earlier, he must have legally acquired it. But, of course, this claim must have an alleged right of possession (B.B.3,3) e.g. asserting to have bought it from the claimant but to have lost the document of sale.

Hire of Land.

From the laws of debt and Jubile we shall learn that in cases of insolvency one could be forced to lease his lands for certain periods, the length of which would probably be determined by the amount of the debt. That the voluntary lease of gardens or fields for short periods is not precluded in above mentioned legislation, is my belief. For, if someone felt, at any time, that he could not manage to cultivate all the fields he possessed, there is nothing, I think, in the spirit and the letter of the land laws which should prevent him from doing so. The code of Hammurabi deals in detail with the various aspects of lease (par. 42,44,52,60,63,64).

The Mishnah permits the lease of fields and regulates the conditions and the price for the period of lease. (B.M.5,8.9,1-10; Shebu. 7,8; Peah 5,5; Dem.6,8; B.B.3,3:10,4.).

Written Contracts.

Although the first reference to written contracts in the Bible is found in Jeremiah (32,6ff), according to Benzinger (Hebraische Archeologie p.292f.) written documents must have been used in Israel much earlier. He says that excavations in Gezer have brought to light two contracts dated 649 and 651 B.E. They are clay tablets written in cuniform in Assyrian language, and their form is exactly the one used in ancient Babylon. But, says Benzinger, they must have been in use even much earlier, since Manasseh would have introduced the Assyrian and not the Babylonian form of contract. Stade (ZATW 1885p.176) says that Isa. 29,11 gives us some information on the concluding stage of a written contract.

As already mentioned before, our first acquaintance with a complete written contract in the Bible is made in Jeremiah 32,6-14 where we are told that a cousin of his called upon him to use his right of redemption and buy the field from him. In this connection we are given, what seems to have been the usage in the country at that time, the procedure of a written contract (Jer.32,44). As in Babylonian documents of that nature - Israel was vassal of Babylon at that period - all the details regarding the purchased field were written on a clay tablet and enclosed in a clay envelope which was sealed up. In addition to it, there was an open copy of the deed, some believe that this open copy was inscribed on the envelope, which contained the same conditions and terms as the sealed original, for any interested party to look into. Only in the case of the writing of the copy becoming obscured or deliberately tampered with, was the sealed envelope opened and the original deed examined. This contract was probably deposited with a third party (ib.v.12). See also Stade ZATW 1885 p.176/7. The money, in payment for the land, was weighed and delivered in the presence of witnesses, who also signed the document confirming the contents of the deed and its proper execution. Nehemiah 10,1 implies a written contract of above style.

The Mishnah has three recognised modes by which land can be acquired. They are a) by paying money, obviously in front of witnesses, b) by writ i.e. contract, and c) by usucaption or prescription, (Kid.1,5; B.B.9,7). Generally, the Mishnah has elaborate and detailed regulations for the acquisition of land and other immovable property. The following are some references to the manner in which the documents have to be a) prepared and written, Moed Kat. 3,3.4. Git.2,3; dated Git.8,5; b) witnessed, Ket.2,3.4; B.B.10,1.2.7: cf. Git.8,10; Ed.2,3; d) executed and preserved, B.B.10,3.4; Git. 3,20 B.M. 1,8; B.B.10,5. Slight traces only are found in the Mishnah concerning the requirement to deposit documents with a third party. Perhaps Kid.4,5, where it refers to archives of the court, implies this obligation. Disposition of ground for building purposes, and the way fields are measured, are treated in B.B.6,4.7.8. and 7,1ff respectively. Obligations of lessees are stated in B.M. 7,11; B.B.8,5: cf. Ket.9,1. References to various types of documents will be found in M.Kat.3,3.4; B.B.10,3.4; Git.3,2. No sealing of the document is required by the Mishnah, nor are the principles of defrauding applied to land, (B.M.4,9). Regulations affecting neighbours are laid down in

B.B.1,4.6:2,1.3-5.10.12.13:6,5.6:10,3.4.7; B.M.10,2-4.6;
Ket. 13,7.

Finally, it ought to be mentioned that under the monarchy a new rule seems to have been introduced by the kings, whereby derelict lands were appropriated by the crown. So we learn, that when a woman, who had left the country because of famine, returned and demanded back her land from the king, he ordered it to be restored to her (2 K.8,3.5.6.). David, we are also told, gave to Mefivosheth, grandson of Saul, all the property belonging to Saul, which the latter must have acquired through above mentioned channels. (2 S.9,6-9.) After Naboth was killed on Jezebel's orders, Ahab went to take possession of his fields and vineyards. (1 K. 21,16). Samuel warned Israel that such a possibility may arise. (1 S.8,11.14).

Section 2.

OBLIGATIONS AND RIGHTS OF THE OCCUPIER OF LAND.

par.1). Tithes, Landmarks etc.

The conceptions regarding the obligations and rights of the land owner as evidenced from the Pentateuchal legislation seemed very primitive indeed. For nobody with the fuller experience and knowledge of settled society (Moses left Egypt quite a youth) could consider the scanty references as in any way nearly sufficient to meet the contingencies and demands that arise in the life of a State. Since, then, the lawgiver lacked the above prerequisites, and working, continuously as he did, on the premise that the land is the Lord's (Lev.27,30) and the people on it His tenants, the laws governing the payment of dues are in the nature of an obligation imposed by God for the benefit of certain classes of citizens who possessed no land. Thus, Priests and Levites received their share by way of compensation from the portion of land denied to them. The idea of paying dues or taxes to the State for its own management is completely absent from the Pentateuch. It is, therefore, in above spirit that we have to consider the tithe laws, for only so can we understand their meaning.

Tithes. Among the few laws affecting the land owner, tithes occupy an important place. These tithes were a kind of tax that bore a corresponding relation to the income, since it depended upon the produce the land yielded.

At the outset it must be stated that the institution of tithes, i.e. one tenth of the produce, is a very ancient one and is known among many early peoples. It used to be either a religious tithe, in the form of first fruits to the temples, or a secular tithe, as a tribute or as taxes to the State. Thus, we are told that the people of Tyre and the Carthaginians paid tithes to the king at Tyre (Diod. Sic. 20,14). It is known among the Babylonians (E.R.E. article on tithes). In South Arabia, tithes were used for the erection of sacred monuments (W.R.Smith, The Religion of the Semites, p.247). Even down to modern times the name has been retained in our legislature, e.g. Tithe Act of 1918, and in Scotland the corresponding law is known as Teinds Act. We can therefore, safely assume that the practice of tithing was known to the Hebrews. So we find in Gen. 14,26 (I do not propose here to enter into the question of date) that Abraham gave Melchizedek a tenth of all, and Jacob vowed to devote a

tenth of his wealth in gratitude for God's protection (Gen.28,22).

All the above references, contrary to the views of many critical scholars who wish to see tithes as a late practice and these passages as a late insertion, lead, in my opinion, to the very much simpler and more plausible belief that among Israelites the practice of tithes existed even before Moses.

The Pentateuch refers in 3 books to the tithe laws. The book of Leviticus (27,30) enjoins the occupier of the land, among the various laws of redemption and devoted things, that one tenth is to be given to the Lord. Numbers (18,21-24) explains that this tithe is to belong to the Levites, as they were to receive no share in the land when its division between the tribes takes place. Deuteronomy (12,17.18 and 14,22-27), speaks of a tithe to be consumed at the Sanctuary, while ibid 14,28.29 cf. 26, 12 institutes a poor tithe every third year of the Sabbatical cycle, i.e. that the tithe mentioned in Dt. 14,22-27 or its money equivalent, which was to be taken by the owner to the Sanctuary to be consumed there by himself and his family, was in the third and sixth year of the Sabbatical cycle to be distributed among the poor and all the dependent classes of the district.

Now, it must be admitted that these various accounts constitute some difficulty in apportioning their importance and exact meaning. The Rabbis (Mishnah Demai, Maaser Sheni, Maasereth Terumoth, Peah, Rosh Hashanah), according to tradition, have distinguished three categories of tithes and have harmonised them in the following manner.

The First Tithe - Lev.27,30; Nu.18,21-24 was to be given to the Levites in view of their peculiar position.

The Second Tithe - Dt.12,17.18;14,22-27, was to be taken to the Sanctuary. Should he, however, live too far away, he need not take it in kind but redeems it for money and spends it there. This second tithe would be used at the pilgrim festivals (Ex.23,14-17) and we see in it a good fund to cover at least some of the expense of the pilgrimage.

The Poor Tithe - Dt.14,28.29.cf.26,12, to be distributed among all the local dependent people every third year in substitution of the second tithe.

Various scholars, however, are not satisfied with this traditional arrangement. Some concluded that in the Sabbatical year alone the tithes (i.e. the second tithe) of the first, second, fourth and fifth year of every cycle of seven years were to be brought to the central Sanctuary to be consumed there by the land owner and his family. This explanation is quite untenable since Dt.14,22-27 does not in any way convey such a supposition and is, I think, confused with Dt.31,10. The majority of higher critical scholars, see Driver's commentary on Dt. (I.C.C. on Dt.12,17 and 14,22-29) for the treatment of this subject, explain that the discrepancies between Leviticus, Numbers and Deuteronomy are due to the fact that these are different legislations and that Leviticus is postexilic. There are, however, the following objections to be offered against this theory. The statement in Dt.18,1.2. that the Levites were to possess no land but were to receive of God's portion is a clear allusion to Lev.27,30 where we are informed that the tithe is to belong to the Lord. There is no relation between the law of Nu.18,21-24, which is considered by higher critics as very late, and postexilic conditions when Priests were numerous and Levites few. The division between Levites and Priests could not have been of the recent origin alleged. Furthermore, a community so poor as that of Ezra's time, whose conditions were rather difficult, would certainly have refused to submit to a new law such as tithes which would even more reduce their meagre sustenance. They would not have accepted it unless it had some ancient authority behind it. Josephus (Ant.50,4) and Tobit (1,7.8.) mention the second tithe as a known institution. W.R.Smith and others suggest

that the tithe is simply a later form of the first fruits, but this is difficult to accept, since the first fruits were given to the Priests, while the tithes were not (see I.S.B.E. article on tithes).

What I have endeavoured to show so far is that the tithe laws could not possibly be postexilic. Yet, some difficulty remains as to why the law in Deuteronomy is somewhat differently presented than in Leviticus.

It seems to me appropriate at this stage briefly to discuss the seeming differences regarding Priests and Levites in Deuteronomy and Leviticus. Driver in his commentary on Deuteronomy (I.C.C. ibid) and others, draw the conclusion that in Deuteronomy the Priests and Levites are the same, while in Leviticus and Numbers they constitute two different classes of people.

Now, since almost all admit that the tribe of Levi was chosen to perform the sacred duties of God, we can assume that in Deuteronomy and Leviticus and Numbers the Priests and Levites belong to the same tribe.

Having stated that, let us examine Dt.18,1-10, for on these passages mainly rest the structure of the higher critical theory in this respect. Driver (I.C.C.p.219) states that it is implied in 18,1., where the possessions of the tribe of Levi are discussed, that all the members of the tribe are qualified to exercise Priestly functions. But is it? If we were to read, a statement that "all lawyers, doctors, teachers, accountants, all Scotsmen of the ten pound a week category are not to receive land but shall each eat of the payment made for their services", would that imply that the function of every one of them is the same? Why, then, should we say (18,1) that "The Priests, the Levites, all the tribe of Levi shall have no portion nor inheritance in Israel" implies that the Levites and Priests have the same function. Driver then goes on to say that 18,1.2. assigns to the whole tribe the altar dues reserved in Nu.18,20 for the Priests alone. But does it? Does not Dt.18,1 speak of the offerings of the Lord made by fire and of his inheritance - the former, as in the order of the first half of v.1., referring to the offerings eaten by the Priests, and the latter to such as were partaken of by Levites, e.g. tithes? And does not 18,3 speak explicitly of Priests? Nor do v.6-8 mean to convey, as Driver wishes it, that by "the Levites" here are actually meant the Priests. If that is so, why does the same writer in eight verses use each time different terms viz. Levite, Priest? Would anybody do it normally? And if the writer meant it to be the same, what should, at all, have prompted him to use in each verse Priest or Levite, while meaning the same? Surely this is an extremely strange procedure.

Alternately, even accepting the theory that the Priests the Levites are one, it must be remembered that the references to the Levites in Leviticus are largely different from those in Ezekiel. While in the former their duties largely consist of service in transporting the tent and of other minor services, and forbid them under death penalty to enter the inner Holy chambers, Ezekiel (44,9-14) demands of them services as gate keepers, who also participate in offerings at the entrance of such places as would meet with death in so called P. (Nu.18,3). It is impossible to contemplate that any legislator would invent a scheme of a desert nature centuries after the epoch to which it relates. But when we view Leviticus with all its desert provisions, such as the treatment of the leprous and others of a desert nature, as concerning itself partly with conditions in the wilderness, we understand that some different provisions would have to be made by the same legislator, at the end of the desert wandering, who has a whole body of Levites on his hands. In the case of a fixed Sanctuary or Temple, transport duties are out of place. That Levites should, then, be given, later, additional Priestly duties to perform, in contemplation of a settled society where the people are scattered all

over the country, is only natural - a fact born out by later experience and records. They would need to carry out certain administrative and judicial duties, and take the place of Priests in many respects. Deuteronomy, therefore, seems to me a natural consequence to Leviticus and need not be of the lateness and order assigned to it by higher critical scholars.

That in the history of Israel in Palestine matters were not observed, in some cases, as laid down in Leviticus and Numbers, and Levites performed Priestly functions, is due to circumstances and influences of a social and political nature, and are extremely poor evidence for a theory such as Driver and others advance. Furthermore, to believe that all the laws distinguishing between Priest and Levite are postexilic, that the Levites received such careful and close attention, and that the Priest, in addition, was to depend on the Levite from whose tenth he got his share, is to me quite unthinkable at a time when Priests abounded and Levites were the very few. Ezra (2,36.40) and Nehemiah (7,39.43) record that with Zerubabel there went up 973 Priests and 74 Levites. When Ezra went up he gathered 38 Levites (8,18.19).

The references to tithes in the rest of the Bible are quite few in number, and its complete inadequacy and early date of its occurrence becomes obvious under the settled conditions of the Monarchy when officials of the State had to be paid. This warning was first voiced by Samuel (1S.8,1ff) who knew that the primitive state of matters, which hardly knew of the burden and authority of a properly established state organism, would soon disappear. He refers to the tithes that the king would take. This and the reference in Amos 4,4 point to tithes as an early institution in Israel. Solomon seems to have been the first to introduce taxes (see chap.4,sec.2.) and to divide the people into districts for the purpose of collecting the dues. (1K.4,7ff). How burdensome the taxes became we learn from 1K.13,4. The king also seemed to have the right to acquire derelict land of criminals and enemies of the State, but how easily this power was misused we see from the case of Naboth (1K.21,15). How much David possessed we can gather from 1 Chr.27,26ff. King Hezekiah imposed tithes which the people brought in such quantities that special chambers had to be prepared in the Temple to receive them (2 Chr.31,5-12). Similar arrangements were made later by Nehemiah (10,38f.13,5.12ff.) who also appointed special officers to see that the tithe due to the Levites was promptly paid (13,10.11). During the time of the Maccabees, we are told (1 Macc.10,31:11,35), that the Syrian general Dometrius remitted, among other things, dues which he had received as payment of the Levitical tithe.

Obligations Concerning Landmarks. Boundary lines and landmarks have frequently constituted a subject for dispute among individuals and nations - ancient and modern. And before the introduction of land measurement the removal of a landmark was more difficult to combat.

Stones with or without inscriptions, fences (Nu.22,24; Eccles.10,8; Ps.80,13; Prov.24,31), open walls (Nu.22,25) and other signs mark the border line. An early dispute is recorded already in Gen.13,5ff between Abraham and Lot, and Jacob and Laban set up stones delimiting the spheres of movement. (Gen.31,45ff)

Removing the neighbour's landmark is forbidden by law (Dt.19,14) and the curse is pronounced upon him who breaks it (Dt.27,17). It is repeatedly denounced as a crime (Isa.5,5ff; Prov.22,28:23,10; Job24,2), and the Princes too meet with the prophet's wrath (Hos.5,10).

The penalty for moving the landmark is nowhere mentioned. The Talmud considers it equivalent to theft (B.M.61b,107b; B.B. 62aff). The penalties in Assyrian law (Tablet A par.8,9) are very harsh and depended upon the distance of the removal. If

it was great, the finger was cut off and 100 beasts and one month service had to be given to the King. If less, the penalty was restitution of three times as much land as the removed distance, plus 50 beasts and one month service to the King. H. Gressman (Israel's Spruchweisheit in Zusammenhang der Weltliteratur p.42) shows how also in ancient Egypt the people were warned, through strong admonitions and exhortations, of the abominable practice of removing the neighbour's landmark. In the collection of Babylonian boundary stones by L.W.King, some contain curses against those who remove the stones.

Miscellaneous Obligations and Rights. A number of landlaws, framed in the interest of neighbours, the poor, the hungry, animals, and laws of a religious nature, are found in the Bible, which the occupier was obliged to observe and in which he found protection.

1. He was forbidden, under the penalty of a fine, to leave open a pit into which animals may fall. (Ex.22,33.34; Mishnah B.K.5,5-7).

2. If cattle have strayed, through the negligence of his neighbour, into his field and grazed there, he must get restitution (Ex.22,4; see chap.5 sec. 3 for Mishnaic laws).

3. If one kindles a fire in one's own field and it spreads to another man's field (the wind may have carried some sparks there), he must make restitution (Ex.22,5; the Mishnah has directions laying down when the spreading of such fire is negligence or an act of God B.K.6,4.5). Similar, but more elaborate, laws are found in the Hittite Code, 101-113; also compare C.H.par.53.58 and A.C. 10,12-15.

We can safely assume, I believe, that the above Biblical laws are merely instances which illustrate the general principles, and bases on which breaches of a kindred nature would be treated in a similar manner. The elders would probably deal with every case separately, and extend these principles to all cases of this type.

4. The fruit of newly planted trees should be considered as defective and forbidden in the first three years; in the fourth year it should be made holy and brought as an offering, while, in the fifth year it could be eaten (Lev.19,23-25). This law must have, probably, been drafted in the interest of good cultivation. Also, as the first fruits generally had to be given "to the Lord", and since the fruit of the trees are stunted in their growth in the first three years, they were not considered good enough for such a gift until the fourth year of the tree's life.

5. To sow the field or vineyard with two kind of seed, or gender two diverse kind of cattle was also prescribed (Lev.19, 19;Dt.22,9). There are four types of diverse kinds. Sowing a vineyard with diverse kinds, sowing a field or garden with different seeds, the gendering of diverse kind of cattle and wearing of garments of diverse material, such as woolen and linen mixed together. It is interesting to note that where the passage deals with the vineyard it speaks only of one seed - a correct statement when we remember that the vineyard is planted. The reasons for the law regarding mixed kinds of seed and cattle are indeed difficult to assign. Their purpose probably, lies in the desire not to deviate from "the appointed order of things, nor go against the eternal laws of nature as established by Divine Wisdom. What God has ordained to be kept apart, man must not seek to mix together. Josephus suggests as the reason for the prohibition for mixed breeding, the fear that such unnatural union in the animal world might lead to moral perversion among human beings" (Hertz, Pentateuch on Lev.19,19).

The Hebrew term Kilayim, usually translated as two kinds, really means mutually exclusive kinds. Thus, some kinds of seed ripen earlier while others later, and consequently, by growing faster they are bound to throw a shadow upon the fruit that has not yet grown as high, thus keeping the sun away from it. This law, therefore, may have been drafted in the interest of agriculture.

As to the prohibition of animal hybrids, we have this injunction clearly contravened by the existence of mules frequently mentioned in the Bible e.g. 2S. 13,29; 1Ks.10,25;

The Mishnah has detailed provisions on this subject in Kil.1,1ff; Orl.2,3; B.K.5,1, Betz.1,10; Kid.2,9 etc.

6. With all the legislation, part of which consists of moral injunctions not enforceable by punishment except divine, and under the best possible safeguards, not all citizens may succeed to keep their property. Therefore, we find that special consideration for the poor distinguishes the Mosaic law from all other ancient legislations, such as the Roman Law. The object of the latter seems to be primarily to safeguard the rights of the possessing classes. In the Pentateuch the poor man is a brother and when in need is to be relieved ungrudgingly not only with an open hand but with an open heart" (Hertz, on Lev.19,9).

Special circumstances of family and of economic conditions may bring poverty. It is in view of the latter that the law-giver provided a Poor Law, based on the produce of the land, which must be observed by the occupier. Thus, he had to leave the corners of the field unreaped and was not allowed to gather the gleanings of the harvest, nor the gleanings of the vineyard, or collect any fallen fruit. (Lev.19,9.10). Nor should one go back to his field to fetch a sheaf he has forgotten, or go over the boughs when he beats the olive tree (Dt.24,19-21). All these had to be left to the poor, the resident alien, the widow and the orphan. Furthermore, to still their hunger, the poor could eat of the ripe grapes of anybody's vineyard but may not take anything away; they were also allowed to help themselves to as much corn as they could take away in their bare hands (Dt.23,25.26). The Rabbis ruled that it also applied to workers (Gem.B.M.89b); Ruth (2,2ff), we learn, made use of this provision. That this law is able to enhance the moral outlook of the citizen is quite obvious, while at the same time the danger of theft becomes very much more diminished.

7. In the seventh year all produce growing by itself in the fields, vineyards and orchards was to be left for the benefit of all who wished to eat of it. (Ex.23,10.11; Lev.25,4-7).

In conclusion it may be stated that all the above landlaws are truly mirroring the general principles pervading Hebrew land legislation. The land belongs to God, the individual is tenant of this land and has, therefore, to fulfill all the obligations which are framed in the interest of all the needy of the community.

Par. 2.

SABBATICAL YEAR.

To make the Israelite continuously aware, and to impress upon him, that the land is not his absolute possession, the Sabbatical year, i.e. a year of rest after every six years, was proclaimed. It was a statutory year to be observed by all Israelites.

The Biblical injunctions in Exodus (23,10.11) and Leviticus (25,2-7) direct the land to be rested on the seventh year. No field may be sown nor the vineyard pruned; all that grows spontaneously in the seventh year shall be for all, including the beast, to eat, but may not be gathered for storage purposes. (I

have been told when I visited Palestine that at some places grain was growing even in years when there was no sowing or ploughing). It is interesting to note that the resident alien is also to reap the benefits accruing to all in the Sabbatical year. The Ger or resident alien, (see ch.6 sec.3), who, as will have been the case with the vast majority, possessed no land, depended upon handicraft to earn his livelihood.

In the Sabbatical year, it seems, his position will, probably, have been the best, as not only would he continue to follow his occupation as in normal years, but he would also benefit, in addition, from the opportunities offered him by the provisions of the Sabbatical year. The concern for the stranger in the Pentateuch has been here once more clearly demonstrated. And because of his position he even receives, as is shown here but is not obvious on the face of it, additional means for his existence.

When did the Sabbatical year begin?

From Leviticus 25,9, where we are told that the Jubile was to be announced on the tenth day of the seventh month - the Day of Atonement -, we can safely conclude that the Sabbatical year was to begin likewise on this date. Some support that the Sabbatical year in fact began in that season is gained from Dt.31,10, where it refers to the beginning of the Sabbatical year in the time of the Feast of Tabernacles. (see*for translation of the idiom in verse 10 ~~at end of Jubile~~). Also Mishnah R.H.11.

** the last paragraph of the chapter on Jubile*

There are, further, among the Jubile laws, a few passages which, from the context, seem to refer to the Sabbatical year. Thus, Lev.25,21 informs us that the sixth year would bring forth fruits for three years. Now, on the face of it this passage seems to be referring to the Jubile. For, otherwise, it should have spoken of fruit for two years only, the fruits of the sixth year would be consumed in the seventh, as would normally be expected. In the eighth year the stored up fruit would be eaten, while in the ninth - the third from the sixth year - the fruit of the eighth year crop would be available. Thus, in terms of Jubile years, Lev.25,21 should be interpreted that in the sixth year i.e. 48th food would be required to last for the 49th, 50th and 51st year - the latter being the year on which sowing would take place again. Yet, this verse could hardly refer to the Jubile, since, if it were so, they would only be able to sow in the ninth year i.e. 51st and not, as we are told in verse 22, in the eighth i.e. 50th which is the year of Jubile. A further difficulty remains in verse 20 where, strangely enough, it is stated "and if ye shall say, what shall we eat in the seventh year"? For is it not natural to expect that they will eat in the seventh of the fruit of the sixth year? It must then have referred to the eighth year.

To understand all this, the season on which the Sabbatical year began must be taken into account, for it must be remembered that there existed in Israel two ways of calculating the year. The one calendar year began in Spring with the first month, Abib, which has, seemingly, been introduced by Moses as the beginning of the National historic year, from which date were also later calculated the years of the reign of Israelitish Kings as well as the feasts (Nu.28,16). While the other way of counting the year opened with the economic and agricultural season in the autumn i.e. the seventh month, Tishri, which has remained to this day the method of counting the Jewish year. Ex.34,22 speaks of this season as the turn of the year.

Since, then, the Sabbatical and the Jubile years began in the seventh month, i.e. the second half of the current year, we find that each seventh year of the Jubile period began not with the first month but with the seventh month of the year, and continued to the end of the first half of the eighth year, (see diagram below). Now, in this second half of the seventh i.e. Sabbatical year - actually the first half of the eighth year* - the absence of the crop of the Summer fruit was felt. In the second

** by national counting*

half of the 8th year they had to draw on their stored up food and similarly in the 9th (1st half of the 9th, national, year).

Diagram.

A		B	
National and Historic year.		Agricultural and Economic year.	
2 years	Spring	2 years	Sowing
	1st half of 7th		2nd half of 6th
	Autumn		Harvest
	2nd half of 7th		1st half of Sabb. year
	Spring		Sowing
	1st half of 8th		2nd half of Sabb. year
	Autumn		Harvest
	2nd half of 8th		1st half of 8th
	Spring		Sowing
	1st half of 9th		2nd half of 8th

From this approach it will be seen that when the people asked "what shall we eat in the seventh year" they were quite right, for they had primarily the second half of the seventh i.e. the Sabbatical year in mind - actually the first half of the eighth by national counting.

From the diagram, then, it will be seen that the question was quite legitimate and that verse 21 which speaks of fruit for the three years, clearly refers to the period over which the Sabbatical year and the year after would be spread out (see part A. of Diagram). That the Israelites did not enquire about the 50th year may be explained from the fact that it was quite remote. Meanwhile, they only thought of the problem that would arise before long. (The Geonic opinion was that the Jubile coincided with the 49th year; see below).

The reasons for the injunction to observe the Sabbatical year are those which follow the general pattern of the Mosaic conception of the ownership of the land, viz. to draw man's attention to the fact that he holds the land merely in trust, as a perpetual lease from God. Of course, at the same time, through lying fallow, the soil would receive the rest which it needs in order to prevent a reduction in its fertility. In those days when the science of agriculture was still in its infancy, the institution of the Sabbatical year should have been a great blessing. The Mosaic lawgiver may have well had this latter point in mind, and though this reason is nowhere explicitly given, we are told in 2 Chr. 36, 21 that the desolation of the land was due to the non-observance of the Sabbatical year. As will be mentioned later (concluding chapter) the Sabbatical year also served as a year during which special instruction was given in the laws and customs of their nation, to all men, women and children.

The institution of the Sabbatical year is, furthermore, designed to have an effect upon the frame of mind of every Israelite. By the fact that all were to share in the produce of his field, the ideals of the brotherhood of all the members of the community would be furthered. It is to emphasise and also to limit the rights of ownership over the field. In addition, it gave the poor an opportunity to improve even more their economic position.

Regarding its practical observance in Palestine, little is said in the Bible. In Neh. 10, 32 we are told that among other promises made in the covenant on the return from Babylon, the promise to observe the laws in connection with the Sabbatical year and the Year of Release is also included. Neh 36, 20, 21. and 2 Chr. 36, 21 which speak condemningly of the lack of

observance of the Sabbatical Year, remind us immediately of Lev.26, 43.

Josephus records (Ant.13,8; J.War1,2) that the siege by Hyrcanos against Ptolemy was prolonged because the "year on which the Jews used to rest came on; for the Jew observed this rest every seventh year, as they did every seventh day". Later, the Hasmoneans decreed that the offensive was ~~was~~ permitted even on Sabbath or the Sabbatical Year. (1 Mac.2,32) Josephus also states (Ant.15,1) that during Herod's occupation, misery was brought upon the people by the covetousness of the Prince Regent and was aggravated "by the Sabbatical Year.... since (we) are forbidden to sow our land in that year". He also tells us that Alexander the Great and Julius Caesar remitted to the Jews the tribute in the seventh year "that they might enjoy the laws of their forefathers as they (Hebrews) did not sow thereon (their fields)". (Ant.11,8; 14,10). In approximately 163 B.C., we are told in the book of Maccabees, the garrison of Beth Zur surrendered to Antiochus "because they had no victuals there to endure the siege, with being a year of rest to the land". (1 Mac.6,49.53). It seems that Judah blinded by success failed to store up adequately for a siege, while the influx of Jews from the surrounding districts added to the difficulty. A similar fate met Jerusalem for reasons of lack of food, it being the Sabbatical year.

In an article by Caspari in the Theologische Studien und Kritiken 1877 p.181 the writer fixes the following as Sabbatical Years, on detailed evidence. 1. October 164/163 B.C. the year after Antiochus became King (1 Mac.6,16). 2. the Year following the murder of the High Priest Simon by his son-in-law Ptolemy, in the year 135/134 B.C. 3. The year of the conquest of Jerusalem by Herod, 37/36 B.C. 4. The conquest of Jerusalem by Titus, 67/70 A.D., or 3829 according to the Jewish way of reckoning. Hence 1944/45 or 5705 is the Shemithah or Sabbatical Year that is observed in Palestine (see below).

From above statements and references we may conclude that the Sabbatical laws were well known to the Jews as an ancient institution, which has become defunct during the exile (so at any rate it was believed) and revived after the Return from Babylon.

The institution of the Sabbatical Year has often been misunderstood. "Heathens did not trouble to understand the meaning of this unique law, which, among other things, saved the soil from the danger of exhaustion. Thus, the Roman historian Tacitus attributes the Jews' observance of it to indolence. (Hertz on Lev.25).

When one considers the reasons for the necessity of the Sabbatical Year in the life of the Hebrew State, and its effect on the life of the whole population, rural or urban (in the case of release of debts), we find it difficult to understand why these laws must necessarily belong to a late date. If it is true as Kent Israel's Laws and Legal Precedents p.42) states "that the majority of the laws are much older than the date of the collection in which they are at present found" and that "the later Jewish traditions which aim to emphasise the antiquity of Israel's laws are not without a large and substantial basis in fact", why, then, do the Higher Critics exclude the possibility of such laws to have been promulgated by Moses, who, as a leader, must have been concerned with giving the people a legislation for the life in the Hebrew State. It is just unthinkable that Nehemiah would speak of the Sabbatical Year as an ancient law if it was just a mad invention of Ezekiel or a contemporary - for it could only be such in his times. That Critics in general confuse the laws regarding the release of slaves with the Sabbatical Year (see article Sabbatical Year, E.R.E.) and thus deduce evidence that, since Exodus does not mention the Sabbatical Year concerning land, it must, therefore, be late, is most distressing and unscholarly. Thus we find that the whole meaning and purpose of these laws are being misunderstood, with the result that hopeless entanglement follows.

An exposition on how the Sabbatical Year could work in practice will be found in the concluding chapter.

The Mishnah (Shebi~~ith~~^{it}) gives detailed directions on the observance of the Sabbatical Year. In Ther.2,3 it is stated that anything planted in the Sabbatical Year must be uprooted. It ought, perhaps, to be mentioned here, that, among other laws, it prohibits the craftsman to sell implements, e.g. a plough, whose sole use would be in performing an act which would break the Seventh Year laws (Ther. 5,6-8). A Gentile was permitted to labour in his field (5,9).

In the period of the Second Temple when the area of the Babylonian emigrants headed by Ezra was restricted to the territory west of the Jordan and northward as far as Acre, the Sabbatical landlaw was confined within that area of occupation (J.E. article, Sabbatical Year). The laws of the seventh year seem also to have been applied to Syria (Ther.6,2), the reason being, some say, not to tempt settlers of the Holy Land to emigrate there. We are also told that Rabbi Johanan Hyrcanos, the High Priest introduced in Syria, during the time of his Hasmonean conquest, such laws as concern Sabbatical Year, tithes and others. The Talmud (Jer. Demai 3 and Git.8b) records that Rabbi Judah the Prince exempted from tithes the townlets of Beth Sean and Semag (Kefar Zemach) which Johanan conquered in Syria and subjected to Hebrew law. Many more references on this subject will be found in the Mishnah in Git.8,9; Maas.5,5; Hal.4,7; Or.3,9; A.Z.18,1ff: Oh.18, 7 etc.; also the Tosefta and Mimonedes "Yad" on the Sabbatical Year and Jubile bring information on this subject.

Jews in Palestine until the end of the last century - the advent of the Jewish National Movement, Zionism - observed the laws of the Sabbatical Year to the letter, and ate in that year only of the produce grown in the districts of Transjordan (Shwartz, Tebuath Haaretz p.20). Since then, however, with the increased migration of Jews to Palestine, the question of the observance of the Sabbatical Year has become very acute and pressing. The whole matter was dealt with by the greatest Rabbinical authorities, who decided in 1888, and which was subsequently and repeatedly endorsed, that a legal fiction was to be applied in order not to hamper the full development of rejuvenated Palestine nor jeopardise the existence of the colonists and the community. With the land, in the early days, being in a desolate state, and with the present day conditions, the Rabbinic arrangements resemble Hillel's Prosbul, with that difference, that in the former case it has been declared, that once a Jewish State has been established and proper arrangements can be made, the law will operate fully again.

For ~~the~~ various opinions concerning the time when the Israelites began counting the Sabbatical Year see Jewish Encyclopedia (article Sabbatical Year).

Chapter 2.

LEASE OF LAND.

Section 1. Jubile.

Section 2. Redemption of land.

...and seven hundred and thirty five by 1900. It has to be proclaimed (Rev. 25:1). On it, the Lord has made the world a liberty throughout the land and to all the inhabitants thereof. It is a jubilee unto you, and ye shall also enjoy it: for ye have been in the land of the enemy (Lev. 25:10). It is a jubilee, and ye shall be observed other than the year of the Lord.

Dr. John D. Lee, however, was not only operating in the
 world a year itself, but was experienced in the every day life
 of the agricultural community. And its effects were felt in the
 public economic structure of the State. It affected the backbone
 of the Agricultural State; namely, the land. It laid down
 fundamental principles in the law regulating the land.

It is also alleged to sell his land, he could only do so for a certain number of years. It thus amounted to a lease depending on the number of years after the Jubile then would be for his neighbor. And depending upon the number of years of his neighbor shall sell into them (viii). This law then acted as a barrier against alienation and excluded the possibility of selling a piece of land permanently. For the land is mine. What it did allow was a sale of use only. The Jubile, then, became the basis for fixing the price of real property. According to the multitude of the years (in the Jubile) thou shalt increase the price thereof, and according to the number of years thou shalt diminish the price of it, for the number of years hath been (viii).

...the following manner. If a father was to meet his son in his field, or part of it, until the end of the year, the distance is calculated and divided by the number of days in the year to get the number of days per year. Then, by multiplying the number of days per year by the number of years, the father would know the number of days he would have to travel to his son's field.

Section 1.

JUBILE.

Far-reaching in its nature is the institution of the Jubile, which was to play a dominant part in the economic and personal life of the Hebrew State and citizen. For, it aimed not only at emancipating all those whose complete freedom was temporarily fettered (see ch.7), but, mainly, at safeguarding against accumulation of property in the hands of the few and thus prevent expropriation of large numbers of people in the agricultural State. It strove also to keep intact the original allotment of ground among the tribes in the Holy Land, "it represented such a rare and striking introduction of morals into economics, that many have been inclined to question whether this wonderful institution was ever in actual force" (Hertz on Lev.25).

Before discussing the Jubile any further, let us acquaint ourselves first with its laws.

After counting seven Sabbatical Years, i.e. 49 years, a Jubile Year was to be proclaimed (Lev.25,8). On it, i.e. in the 50th year, "proclaim liberty throughout the land and to all the inhabitants thereof; it shall be a Jubile unto you, and ye shall return every man to his possessions and unto his family" (verse 10). The land was to lie fallow and was to be observed after the manner of the Sabbatical Year.

The Jubile law, however, was not only ^{to} operating in the appointed year itself, but was experienced in the every day life of the Israelitish community. For, its effects were felt in the whole economic structure of the State. It affected the backbone of the Agricultural State, namely, the land. It laid down fundamental principles in the law regulating the land *question*.

If a farmer wished to sell his land, he could only do so for a certain maximum number of years. It thus amounted to a lease, "according to the number of years after the Jubile thou shalt buy of thy neighbour, and according unto the numbers of years of the crops he shall sell unto thee" (v.15). This law, then, acted as a barrier against alienation and excluded the possibility of selling a piece of land permanently, "for the land is mine". What it did allow was a sale of the crop only. The Jubile, then, became the means of fixing the price of real property. "According to the multitude of the years (to the Jubile) thou shalt increase the price thereof, and according to the fewness of the years thou shalt diminish the price of it; for the number of crops doth he sell unto thee" (v.16).

It would operate in the following manner. If a farmer was in need of money he could lease his field, or part of it, until the year of Jubile. The price of the lease is regulated and prescribed, and would be arrived at a) by counting the number of years left to the Jubile and b) by estimating the approximate value of each year's crop and multiplying it by the numbers of years of the lease; the lessee would then take possession of the land until the arrival of the Jubile, when he would have to vacate it (v.13). The money for the whole period, so it seems, had to be paid at the time of the deal, as can be concluded from v.27. There we learn - the case seems to be of one who sold his field because of great need, or, where, kinsmen protested against the sale - that if a redeemer or the owner himself wished to redeem the field before the Jubile they would need to repay to the lessee a sum of money corresponding to the unreaped number of crops left to the Jubile.

year of the Jubile. While there is a concession regarding houses, Levitical lands, in or about their cities, may not be leased at all (v.34), since this land is considered indispensable to the Levite as a source of subsistence for agricultural and pastoral purposes. Similarly, Ar.7,3.

Houses could be sanctified and redeemed but are likewise subject to the law of the Jubile (Lev.27,14-24). Since no details are given with regard to houses in urban or rural districts, it must be assumed that the law regarding houses in cities and villages (Lev.25,29-31) would be applied.

In the case of land (Lev.27,16-21) the position is, however, different. If one sanctifies his inherited field, or part thereof, and does not redeem it by the year of Jubile, the field becomes devoted, i.e. it becomes the inalienable property of the Sanctuary. Should he lease a sanctified field, a fact that would obviously have to be stated at the time of sale, it likewise becomes devoted on the Jubile - because it reverts to the owner on the Jubile and automatically becomes, according to v.22, legally devoted. If, however, one sanctifies a field that he has bought - which would revert on the Jubile to the original owner - it looks from the text "and he shall give thy Holy estimation in that day as holy to the Lord" that he was seemingly allowed to keep the field by paying "in that day" the estimation, i.e. the price, until the Jubile, instead (v.22-24). That this procedure should be the correct one becomes obvious from the fact, that the original owner could redeem the field that he has leased, at any time. Arakhin 7 gives some interesting details on the subject.

The Jubile Year was announced by the blast of trumpets on the tenth day of the seventh month (Lev.25,9), (for more detailed treatment of this see above ch.1, sec.2, par. 2). Not only was all land to revert to their original owners, but also general liberty was to be proclaimed for all the inhabitants (v.10); in other words, a universal redemption and release for all whose freedom was fettered. "The Jubile had as its aim the emancipation of the individual from the shackles of poverty, and the readjustment of the various strata in the commonwealth in accordance with social justice" (Hertz Pentateuch on Lev.25,10). "It was intended to meet the economic evils which befell peasants of ancient society" (I.S.B.E. article on agriculture). It aimed also at ensuring that in case of insolvency or debt the peasant should not irretrievably lose his means of subsistence, viz. his land.

The law of the Jubile can only be understood, if we associate it with the outlook of a man like the Israelitish lawgiver, and if we always bear in mind that the spirit pervading Hebrew legislation is that the land belongs to God and the Israelites, in common ownership, are the tenants. This idea is not strange to the eastern people. Arab tribes held land in common. The Dalmatians, C.F.Kent (Messages of Israel's Lawgivers p.232) tells us, distributed land every eight years. Lotz (article Year and Jubile N.S.H.E.R.K.) states "there is no reason to doubt that the law of the year of Jubile is preexilic, and it is evidently a remodelling of an older enactment of uncertain nature."

Benzinger, in his Hebraische Archeologie p.293, makes a similar and even more ascertaining observation. All seem to admit that there is something old in it. But they can obviously not go the whole length because the spirit of this legislation is either not understood or deliberately overlooked, because, as I shall discuss in my concluding chapter, too often the purpose of this legislation is completely ignored, with the consequence that the unity of the reduction is excluded, and thus a new theory is formed. Driver, Literature of Old Testament p.57, states that Jubile must date from ancient times in Israel.

The Jubile has obviously been instituted to prevent the accumulation of land in the hands of the few and the wealthy which, as already mentioned, was commonplace in early society, and a source of great trouble in later times. Moses must have had first

hand experience of it in Egypt, and the fact that the Priests were to get no land at all, according to Hebrew law, brings to our memory the strong position of the Priesthood in Egypt in regard to land.

Just as to-day, in the case of inheritance, the law prohibits to ignore children, by allowing others to succeed, the Jubile aimed at taking a long term view. As the father may be in need of money and the price for a permanent sale would, of necessity, be enticingly higher, the law, considering the heirs and caring for their future, stepped in by permitting only a temporarily lease of the whole or part of the field until the year of the Jubile. The Jubile law aimed at preventing a rich man exploiting the adverse situation of an impoverished or indebted person, by tempting the distressed with a high sum to sell the land for good - the first step towards becoming a big landowner. With this ban in operation, the land could only be leased until the statutory Jubile year. The money thus received would enable the original owner to get out of his difficulties. He may, in addition, sell his labour and earn enough to sustain himself and his family. But in the year of the Jubile, he would be given a new start and a fresh opportunity to begin life anew, and make also sure that his children be given an equal chance. The law of redemption, in addition, enables him, should he come into means again or be helped by a relation, to redeem his land even before the advent of the Jubile.

Whether the law of the Jubile has ever been observed is difficult to say, particularly in view of the absence in the Bible of any direct information on the subject. Ezekiel 7,12.12:46,16.17 is written in such terms as to lead us to believe that he knew of the Jubile. The story of Naboth who refused to sell his vineyard to the King because it was his ancestral property, points very strongly to the generally accepted rule against alienating an inheritance, and the King's report, on the incident, to his wife was not such as would come from a man who was convinced of his case; 2K.8,3-6 points to a similar right. Isaiah 5,8-10 condemns equally all those who drive out the old owners from their ancestral homesteads, and warns them of dire punishment. The Jubile, unlike the Sabbatical Year, has certainly not been observed after the captivity. That the Jubile was only to be observed when all the tribes are in the possession of Palestine, is a Talmudic statement (Ar.32b.33a).

Finally, it must be observed that some of the authorities are of the opinion that the Jubile was the last year of the seven cycles of Sabbatical Years, while the 50th year began the new period. Thus, Rabbi Judah Hanassi (the traditionally accepted compiler of the Mishnah) contends (R.H.119a; Git. 36a) that the ^{*Gem.} Jubile is identical with the 49th year. And, if we accept that the years 163 B.C. (1 Mac.6,20.49.53) and the year of the conquest of Jerusalem by Herod, 37 B.C. (Jos. Ant.14,28) were Sabbatical Years: it follows that there were from the former to the latter eighteen Sabbatical Years, consequently the Jubile could have only been the 49th year. Geonic opinion is, that during the time of the second Temple, when the Jubile was only observed nominally, it was simultaneous with the 49th year, and that the 50th year began the new cycle. (Maimonides Hilchoth Shemittah chap.10, par.56 Ar.12a, ^{*Gem.} 33a). Ewald (Ant. 374-5) says the Jubile concluded the last half of the 49th and the first half of the 50th year. Hertz (Pentateuch on Lev. 25,10) states that though it is not the traditional view, the opinion that it may have been the 49th year finds some support in Hebrew idiom. Thus, commenting on Jer. 34,14, where "by the seventh year", as is seen from the second clause of the verse, means at the end of six years, Hertz says "a similar Hebrew idiom calls the Jubile the 50th year, though in strictness it is the 49th; and similarly, "And on the seventh day God finished His work" (Gen.2,2 also Dt.31,10); cf. the French quinze jours for the English fourteen days; or the German nach acht Tagen for the English in a week. Josephus and others hold it was the 50th year.

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must not go down entirely; it is the duty of the family to re-establish him and this obligation rests with the nearest of kin. It is the right and duty of the restorer to intercede, because he maintains himself while maintaining his family. If the family does not put forth claims, because it has not the strength to do so, then the clan drops, and the family is doomed. The basis of the law of restoration (redemption) is throughout realistic, because it is, the very instinct of preservation of the family that is its driving power" (Pedersen, Israel, Life and Culture p.392). It is, in this connection, worth noting that since there was to be such close association of family and clan affairs, Hebrew law did not see the necessity for the institution of guardian or trustee.

The Mishnah with a change of circumstances has laid down very detailed rules on this subject (B.M.3,1:4,9:7,6-10; Shebu 6,5.6 and others).

The right of redemption in the case of land and other property lasted, of course, until the year of Jubile, whilst houses in cities could only be redeemed within one year of the sale. (Lev.25,29-31). Since, in the case of houses in cities, the various consideration that are attached to the field fall away, the fact that one year was allowed in which they can be redeemed, is a concession and a singular opportunity given to those who have had to sell their houses for economic reasons, and are now afforded a period of one year in which they may be able to find the means to recover their property. For, it must be remembered that property in the city can be sold in perpetuity, to them the law of the Jubile does not apply.

Houses in Levitical cities have perpetual redemption. (Lev.25,32; Ar.9,2).

Nothing is said of the duty of redemption by the next of kin, the Goel, in the case of consecrated houses or land, where the owner possesses the right to redeem (Lev.27,14-25). The reason is self evident. The redemption is only meant for cases where the owner gets into financial difficulties and has to resort to sale, or where he is made to serve in order to regain his original position. But in the case of sanctified property, it was a voluntary dedication of land or houses to the Temple. It was a religious act completely divorced from economic motives. And it must be observed here that the laws in this connection are framed in such a way as to favour the original owner and to discourage such gifts. The penalty which he had to pay for regretting his step was indeed mild, compared with the value of the property he regains. That the next of kin, who thought his action to be to the detriment of the family, may have influenced the owner in favour of redeeming, is a feasible possibility.

The Goel has a right to receive the damages for an injured kinsman who was dead. Thus, if a person wished to make good a wrong he has committed in regard to property, but whose owner has died in the meantime, he makes the restitution to the next of kin. (Nu.5,8) In passing it may be mentioned that the next of kin considered it his duty to avenge the blood of a killed relation. This, however, was regulated by Hebrew law, and a distinction was made between intentional homicide or murder and accidental homicide or manslaughter, a regulation, except in the Hittite code which comes nearest to the Hebrew conception, unknown to early society. So, in the case of manslaughter - "nothing happens except by God's will; so if the murderer had no intention of killing his victim, the death must be due to His decree. English law retains the same idea, and uses the term an act of God" (Hertz Pentateuch on Ex.21,13) - an opportunity was given to the guilty to take refuge in one of the Cities of Refuge where he was immune and had to stay until the death of the High Priest (Ex.21,13,14; Nu.35,25-34). This latter point is so strikingly similar to Moses' return to Egypt

which took place only after the King had died (Ex.2,23), when he was assured that those who seek his life were dead (Ex.4,19). G.C.Lee (Historical Jurisprudence p.112,113, quoting Peiser Babylonische Verträge des Berliner Museums, Berlin 1890, p.183, No.4), points out that a similar institution of redemption existed among the ancient Babylonians. There, one could reclaim the property, by returning the price paid, even if it passed into the hand of a third person, unless, and it did not seem to bind the heirs, a special clause renouncing this right was inserted into the agreement of sale. Benzinger, Hebräische Archeologie, commenting on the right of redemption in Babylon, says (p.293) that it "must be presumed to be an old law among the Israelites". Naturally, we must remember that the spirit and motives of the Hebrew laws of redemption are very much different from the Babylonian where the commercial approach alone decided the operation of the law. Assyrian and Hittite codes know nothing of such an institution.

How the law of redemption was to operate in Israel, and of its form, we are not told in detail. We can deduce from Lev. 25,48,49 that the order in which the obligation of redemption devolved upon the next of kin was that of the line of succession. As in the case of Boaz and Hanameel, the next of kin who were seemingly interested watched whether the nearest kinsman was discharging his duty. The right of preemption becomes very evident.

An actual case of redemption is strikingly illustrated in Jeremiah 32 where it is related how Jeremiah's cousin Hanameel came to the prison where Jeremiah was held, to plead with him to redeem his land. Jeremiah had the right of preemption as we see from the statement "for the right of inheritance is thine, and the redemption is thine" (Jer.32,8).

The book of Ruth, also, records the duty of redemption and the right of preemption. And a number of scholars believe to have found the accounts and the procedure of redemption as related in Ruth to be full of difficulties, and contradictory to the Biblical injunctions on this and other kindred subjects. Pedersen (Israel, Its Life And Culture p.93) has detected a number of difficulties which, in my opinion, need not at all exist, if only a little imagination is employed, since, it must be remembered that these accounts do not give every detail and all circumstances that usually accompany every case. Pedersen e.g. objects to the procedure as recorded in Ruth 4, and asks how it is possible that the redeemer who is an agnate and thus, according to the most natural conceptions, heir, should be made to buy the property of his near kinsman from a widow who does not belong to the family (of the husband)? And a number of other scholars jump to the unwarranted conclusion that it shows a clear modification of the law of inheritance by allowing widows to inherit (I.S.B.E., Agrarian Laws). I envisage here a straightforward case that might have taken place. When Elimelech decided to leave Judea, because of the prevailing famine, he may have sold his field to his wife's family. The obligation to redeem the field - beside the fact that it would revert to the family with the Jubile - has from this moment fallen to his own, i.e. the husband's family. Now, we are told that altogether Elimelech's family sojourned in Moab ten years, and the field had not been redeemed during this period. When, then, Naomi returned, she may have become the ^{in her family} rightful heiress of the property, of her late husband. Boaz, we are told (4,3), declared to the nearest agnate that Naomi - of whose return he got to know from Ruth - sold (Heb. Makhera) the field and that it was his duty to redeem it, technically again from Naomi, because she seems to have inherited the land for the time being, though paying the redemption price to the person to whom she has now sold it. The purported difficulty is thus most simply solved, and the possibility of above, as the case in point, is a very feasible one, considering the particular economic situation, the famine of that period.

In view of what has been said so far, all the other questions, in my opinion based on the earlier contentions, which the various scholars put, regarding Boaz, become quite out of order. It should be pointed out in this connection that the Hebrew term Qanah does not necessarily mean to buy but can also be translated "to acquire": thus 4,10 should be translated not that he bought Ruth but acquired her, (through marriage, by agreeing to establish a name to her late father-in-law's house whose son was her husband but who died childless).

Finally, it must be stressed that the procedure in Ruth is a case for redemption with a condition of marriage attached to the acquisition of the field, see Cooke.C.B. on Ruth 4,5. Whether or not it is an extension of the Levirate marriage law is a matter for speculation; what, however, seems to be beyond doubt, is, that it is not an example of the working of the Levirate marriage law, as some would like to have it.

Concluding, it may be said that, as many others, this law of redemption with its distinct obligations on the family is, in its spirit, unique among ancient laws. It is one more law framed in the spirit of Israelitish legislation with the aim of preventing the deterioration of the social conditions of those with little means, and which is divorced from commercial considerations.

[illegible]

CHAPTER 3.

INHERITANCE.

While the sanctity of property in the Hebrew law is stressed repeatedly on every occasion, and since, particularly in the case of land, it is considered right through the Bible as a gift from God, we find few references and regulations regarding the inheritance of property. As E. Ring (Israels Rechtsleben im Lichte der Neuentdeckten Assyrischen und Hettitischen Gesetzbücher, p.50) puts it, that it is "clear that the laws of inheritance and their importance of place in the life of a people can be gauged from the value which the people attach to their property. An outstanding example is Babylon. Property had there very great value, and therefore, as could be expected, the laws of inheritance were clearly and in great detail laid down".

The fact that the lawgiver envisaged an agricultural community, as distinct from a commercial, obviated in his eyes the need for detailed legislation on property, and thus inheritance laws. Moreover, the absence of experience in settled society, which the lawgiver naturally lacked, is obvious in his presentation of these laws by broad principles, and their primitivity should, in my opinion, be enough evidence for a very early date of these enactments. The enormous strength of family sentiment is evident here as in other laws, and the laws of succession were framed in the spirit of the individual family. It is this tribal separateness which makes the inheritance laws so defective, and which, in general, had such a bad and decentralising effect on the life of Israel in Palestine. Later Mishnaic law has presented a very detailed legislation on inheritance, providing for all the possible contingencies that may arise.

Wills and testaments are entirely unknown in Hebrew Law. As far as landed property is concerned, they seemed unnecessary because of the strict order of inheritance laid down by law, but the absence of provisions in respect of moveable property is difficult to explain, a matter that would be unthinkable in a commercial society. In the Apocrypha, the book of Tobit (8,24) speaks of a written testament; ~~this~~ was the general usage in those days among the Greeks and Romans, says Josephus. (Ant.13,15,1.17,3,2, Jew War 2,2,3). Saalschutz says, that directions with regard to certain moveable property may have been given orally to children by the father before his death, either in the form of blessings, as Jacob did, (Gen.49,lff) or by way of instructions as issued by David to Solomon (1K.2,lff). We also find that Ahitophel has "given orders to his household" before his death (2S.17,23). Hezekiah, likewise, when on the verge of death, was advised by Isaiah to "command his household" (2K.20,1,11,38,1). According to Hebrew Law, unlike the Babylonian, C.H. par.150,165,179, a man could not dispose of his landed property or divert it in his own lifetime by deed or gift to any other member of the family in a different order than the prescribed line of succession (Dt.21,15-17). Job (42,15) seems to have acted contrary to this rule, unless he has done so with his sons' consent. The Mishnah (B.B.8,4-8) records the existence of written wills, and accords certain rights to testate.

Primogeniture is in Hebrew Law the governing principle in matters of inheritance. Thus, the first born, whether he be the son of the favourite or the less loved wife, received the double portion due to him in his father's estate, (Dt.21,15-17). The son must of course be the first child of the father, as distinct from the case of redemption where the first born must

be the first child of the mother (Ex.13,2). This distinction between paternal and maternal primogeniture was necessary in a society where polygamous marriage was permitted; cf. Mishnah Bek. 8. It should be said here that the custom of primogeniture and the succession by the next of kin, is found among many nations of antiquity. The position of the first born was a particularly privileged one. No greater calamity, we are told in Ex.11,5.6: 12,29.30, could have happened to Egypt than that of the killing of its first born. Erman (Life in Ancient Egypt p. 156/7) tells us that the eldest son usually administered the real estate. The first born was to receive a double portion to be able to preside over affairs with greater dignity and authority, and assume also additional responsibilities, e.g. the upkeep of his mother, unmarried sisters etc. He was to continue the name and traditions established by his father. This striving for the continuation of the father's name through his "first strength" was always inherent in the outlook of the Hebrews. Speaking of the great influence and power, the craving for a continuation of the family has had in the life of the Israelites, Pedersen (Israel, its Life and Culture p.259) says "If we know the soul of the Israelite, then we also know his view on life; this firm and strong power (towards continuation)... craves to be able to carry on its activity infinitely and without ever running out"; or as W.R. Smith (Religion of the Semites p.464) puts it, "all the prerogatives of the firstborn among Semitic peoples are prerogatives of Sanctity; the sacred blood of the kin flows purest and strongest in him". The first part of this latter quotation is clearly seen from the statement in Nu.3,12.13 where we are told that the firstborn, until they were substituted by the tribe of Levi, held Priestly office, while the latter part is born out by Gen.49,3 and Dt. 21,17 where it speaks of the firstborn as "the first fruit of his strength".

The firstborn was looked upon as the representative of his father's home. It must have been for these reasons that, at times, this privilege of primogeniture has been conferred upon a worthier son, - Moses prohibited it in Deuteronomy (21,15-17), no doubt, because he saw in it a source of discord and strife in the family. So, in the case of Reuben (Gen.49,3 and 1 Chr.5,1), Jacob transferred the right and influence of the firstborn to Joseph and his children. In fact, Jacob more or less repeated in above case what he did himself by buying the birthright from Esau, who at any rate did not put much value on it (Gen.25,32). Joseph protested because Jacob preferred Ephraim to Menassah (Gen.49,18.19). The case of Solomon, is another example. Here the Prophet Nathan advised so because of the unworthiness of Adoniah to become King (1K.1,11-13) Elisha prayed for the double portion of Elijah's spirit, and for the privilege to be considered as firstborn successor to Elijah. Thus, when Elijah disappeared he cried "Father, Father" (2K.2,9-12). The principle of primogeniture has been retained in our legal make up concerning ~~immovable~~ ^{moveable} property, and by the constitution of this country in connection with the succession to the throne, with the exception that it equally applies if the firstborn is a daughter. The Assyrian law gives the firstborn a double share (Driver and Miles, The Assyrian Laws p.296).

Nothing is said regarding the position and the portion of the other sons. In all probability, they got each an equal share amounting, for each, to one half of that of the firstborn. We may assume, although we have no means to decide it, that when the original division of land took place, each family received so much, that it would, for a very many centuries, have enough land to parcel out among the heirs after the death of the head of the family, and as time went on more and more land would come under cultivation. Furthermore, not all sons would probably take to agriculture, artisans and craftsmen would also be required. We know that even to-day individual Arabs possess so much land that they can only cultivate a small portion of what they own. Compare modern experience in Palestine.

Perhaps, in some cases, as F.Buhl (Die Socialen Verhältnisse der Israeliten p.55, note 2) suggests, the sons retained their interest in the estate of their father without dividing it, while the oldest act as Manager. This arrangement, would still be true to the character and objects of Hebrew legislation, which aimed at providing the unity of the family and its property. A similar arrangement is found in the Assyrian law (A.C. Tablet B. par. 2-5). Since Dt.21,17 gives the firstborn "a double portion of all that he (the father) has" we must conclude that it referred to landed as well as moveable property.

The Mishnah (B.B.8) and others make clear provisions for landed and moveable property and their way of division among the children. The Talmud also deduces from the above Deuteronomic (21,17) injunction that the firstborn is only to receive a double portion of what the father possessed at his death. All that accrued later was to be shared alike. The Mishnah has also directions concerning succession to mother's property. (B.B.8; Gem.Bek. 46a, 47b, 51; B.B.122,123a.142b).

As already stated, the son must be, of course, the firstborn of the father and not that of the mother. An interesting case in regard to twins we find in Gen.38,28, where we are told that when Tamar was about to give birth to twins "the midwife took and bound upon his hand (of the first) a scarlet thread saying: this came out first - obviously to make sure who was to have the right of the firstborn. In Babylon (C.H.par.165), among Mohamedans (Maine, Ancient Law p.242) and other ancient people, sons share alike. In Babylon, also, children shared equally in the mother's property (C.H.par.168). The position of children of concubines is not very clear, although all incidents recorded in the Bible lead us rather to the conclusion that they did not inherit. Sarah drove Hagar and Ismael out of her home, basing her justification in the claim "for this bondswoman shall not be heir with my son, even with Isaac" (Gen. 21,10) - a claim which Abraham could not resist, nor Hagar counter legally. The case in Gen.30,3 is one of adoption, where, though a concubine bears to Jacob a child, Rachel, by adopting the son of her maid, obtained for him the right to inherit. Cf. Gen.15,3; Prov.17,2:30,23; 1Chr.2,34.35. In Babylonian law the institution of adoption was well known. Thus, if a master called a slavewoman's son "my son" he implied by it to have adopted him (C.H. par.170, also 185-193). Moses seems to have been adopted into Pharaoh's house. There is, however, no legislation of adoption in the Hebrew Law. A very clear record concerning children of concubines is found in Judges (11,2). There, Jephthah, being the son of his father's concubine, was driven out by the sons of his father's rightful wife, who told him "you shall not inherit in the house of our father for you are the son of another woman". The last case could only have arisen from a clear knowledge that the issue of concubines do not inherit; in fact, the Hebrew Law does not know of the institution of a concubine as it always speaks of a fully fledged wife. The Mishnah does nowhere mention the existence of concubines.

Should a man die without leaving sons, then his daughters are the next legal heirs. They all divide equally their father's possessions among themselves. In the Nuzi Laws, too, daughters inherited only failing a male issue. (Speiser, Kirkuk Documents 2,31.32). Before the claim which the daughters of Zelophad put forward, their position was not quite clear. There was no provision, until then, for the succession of daughters, obviously because such a case had not arisen, so that failing sons probably the brothers of the deceased inherited. (Nu.27,4). From the language used by Laban's daughters, it seems daughters did not inherit (Gen.31,14). Now, when the case of Zelophad's daughters was brought up, new legislation had to be introduced. It was of a twofold nature a) that daughters could inherit in default of sons (Nu.27,7), and b) that if they wished to

take advantage of the first clause and desired to get married, they would have to do so to a man belonging to a family of her father's tribe. (Nu.36,1-10). The reason for the latter legislation is obvious. The position of a daughter in general was such that after her marriage she entered the family of her husband. But should an heiress wish to marry out of her father's tribe, her property also would have to be transferred. Moreover, while purchased, i.e. leased, land returns with the Jubile to its original owners, inherited land, such as would belong to an heiress, would go with her for ever. To guard, then, against this upsetting contingency, which in the Hebrew legal make up would be impossible, it was decreed, on the representation of the elders of the affected clan who considered the consequences that may arise from a permission for daughters to inherit, that daughters, if they wished to get married, could only do so within their father's tribe. There is no similar enactment in the Assyrian or the Babylonian Codes. The Rabbis, because of change of circumstances, later repealed the law which prescribed the marriage of a daughter to a member of her father's clan only. (Gem. B.B.120a. Taan.30b).

There were one or two cases recorded, where daughters were given an inheritance along with their brothers, though, so it seems, there existed very special circumstances and reasons for it. Thus, Caleb, (Jos.15,16-20) who has also a son, allowed his daughter, during his lifetime - a point too often forgotten -, to inherit, after he had offered her hand to the warrior who had taken Kiryath Sepher. The ease with which he granted his married daughter's request for a "blessing" of more land, has been due, in my opinion, to the fact that Othniel was a nephew of Caleb. This circumstance would leave the possession within the same clan to which both belonged, a fact overlooked by almost all scholars, see Michaelis, Saalschutz and others. It is wrong, I think, to cite Job 42,15 as an example where daughters inherited, since it does not at all deal with succession but with a gift during his lifetime after he became so exceedingly wealthy.

Another institution has an important bearing on property, arising, as it does, out of the death of the husband who has died childless. (The Hebrew term Ben in the Deuteronomic injunction regarding levirate marriage, (25,2) is to be taken in the sense of "child". Similarly, the Septuagint on this verse). In its continued interest to preserve property within the closest relationship degree of each family, Hebrew Law has introduced the Levirate marriage, an institution partly known among other ancient peoples, viz. A.C.30,31,43 and Hit.C.par.190 which are though based on different motives; see Ring Israels Rechtsleben im Lichte der Neuentdeckten Assyrischen und Hettitischen Gesetzkunden p.40-50. In order to preserve the name of the husband* from falling into extinction, the levir, ^{and present's for falling} i.e. the deceased husband's brother, was required to marry the widow in order that "the firstborn which she beareth shall succeed in the name of the brother that is dead, that his name be not blotted out of Israel (Dt.25,6)". The object of the levirate law was also to retain the property within the family and keep up the integrity of the family possession. By the levirate procedure the name of the deceased would be kept in the title deeds, thus perpetuating the name of the departed by linking it up with his property, through raising an heir to his name. The heir, of course, need not necessarily be a son, even a daughter, according to the laws of inheritance in Nu.36,1-6, would fulfil the aims and ends of this institution.

The intention, then, of the levirate marriage is to continue the name of the deceased by establishing a family and preserving the genealogical tree. Such a case we find mentioned in Neh. 7,63, where the man is not referred to by his own name but by the name of his father-in-law, Barsilai.

Should, however, the levir refuse to marry her, for reasons he probably will have given to the elders (Dt.25,7) before whom the case would be discussed, - the fact that the law provides that he can refuse on certain grounds is interesting - a certain procedure had to be gone through at which the brother was absolved from marrying her (Dt.25,8-10). We are not told that, should one refuse to perform the levirate marriage, he loses also his right as one of the heirs. Whether, moreover, if he refuses to marry her, without sufficient reason in the eyes of the elders, they would take steps that may affect his rights as heir, is quite unknown. Yet, it may reasonably be assumed, that, in the small communities such as the Israelites lived in those days, to go through in public a procedure of refusal such as prescribed in Deuteronomy, would act as a powerful deterrent, unless backed by the elders, against refusing to fulfil a sacred and moral duty. The standing of such a person would obviously suffer immensely in the eyes of his relations and neighbours. In fact he shall be branded by a special name "the house of him that has his shoe loosed" (Dt. 25,10).

Whether, in default of brothers, the duty of such a marriage would revolve upon any agnate we are not told, nor need it necessarily be assumed. From Tamar's conduct (Gen.38, 14) it seems, that in her Canaanite outlook the duty of levirate marriage fell on every member of her husband's family. We have also, incidentally, on record (Ruth 4,2-7) that Boaz, a kinsman of Ruth's late father-in-law, told the redeemer, with the first preference, that not only was it his duty to redeem the property, but also to marry Ruth. Since he refused the latter, the right of redemption seems to have gone to Boaz, who married her. Polygamy has never been encouraged in Israel, and, commenting on the refusal of the kinsman to marry Ruth (Ruth 4,6), the Targum translates this passage in a paraphrase, "I cannot marry her because I am already married; I have no right to take an additional wife lest it lead to strife in my home". For this latter reason the Rabbis have prohibited levirate marriages altogether, especially after the formal excommunication of all polygamous marriages by Rabbeu Gershon in the year 1,000 A.D., while leaving in force the ceremony of refusal of such a marriage, as recorded in Deuteronomy. A discussion on the seeming difficulties, which in my opinion do not arise, between the account in the Book of Ruth and the levirate marriage legislation in Deuteronomy, will be found in the concluding chapter of this book.

The widow, it seems, cannot inherit, except, in all probability, as the Mishnah provides (Keth.10,2), what the husband promised her in the marriage contract. The Code of Hammurabi par. 72 contrary to Assyrian law which is similar to the Hebrew, provides the widow, unless she received special settlement from her husband, with the usufruct of an amount equal to the share of that of a son. But taking the account as given in the book of Ruth, where Elimelech and his sons were dead, and were, in all probability, the other near agnates, it seems, that Naomi and Ruth, failing a redeemer who would have to marry the latter (Ruth 4,5), would have the right of the usufruct in the property. The Mishnah burdens the possessions of the deceased husband with the security for her upkeep (Ket.H.11,2ff). Should she marry out of the tribe, her position would become analogous to that of a daughter, who, by such an act, forfeits all the rights in her father's property. The widow, of course, had the right to return to her father's house, as is evidenced from Lev.22,13 in connection with the permission given to such a returning daughter of a Priest to partake from the Priestly bread and heave offerings of the holy things - something prohibited to a daughter who has married a man who does not belong to the Priestly family; cf. Gen.38,11 for a similar case. It must have always been the duty of the sons to care for and provide the maintenance of their mother and

unmarried sisters. The Mishnah has detailed provision on this point (Keth.4,6.11; 11,1; B.B.9,1).

There is no provision in the Pentateuch for the appointment of guardians or trustees for minors. We have, however, a case in 1K.17,9ff. where a woman took care of her young son in the capacity of a guardian. The Mishnah has given clear directions on this matter (Keth.9,4; Git.5,4; and Shebi.10,6).

The fact that there is constant admonition in the Pentateuch to treat the widow, among others, generously and kindly, is very remarkable indeed. But on second thoughts it is not so very strange. For, when we consider the system of Hebrew jurisprudence with its unceasing care for the defenceless and impoverished members of the community, it is no wonder at all that the widow is included in that category. Thus, she may be in the unfortunate position of her husband having leased his land, leaving her quite destitute. She may have no parents alive, and her relations may be unable or unwilling to take her back and provide for her. She may have undutiful sons who would not care for her. All these possible contingencies have made it imperative, and were in the mind of the lawgiver, to give her an opportunity to obtain her sustenance from the prescribed share for the poor, while at the same time prohibiting any exacting conduct towards her.

All this, it must be understood, arises out of the Hebrew conception that property descended in the male line, coming, as it did, from the desire to continue and perpetuate the name of the husband, his family and clan. It was always that the nearest kinsman succeeded.

The following is the order of succession.

1. Sons. 2. Daughters. 3. Brothers 4. Father's brother.
5. Nearest kinsman of his family (Nu.27,8-11).

The Mishnah B.B.8,1.2 and the Gemarah on it, give the order of succession as follows:-

1. Sons and all their offspring. 2. Daughters and their offspring.
3. Father. 4. Brothers and their offspring. 5. Sisters and their offspring.
6. Father's father. 7. Father's brothers and offspring, and so on in the above order.

A husband becomes heir to his wife's possessions (such only as she possessed before her death and not as may accrue to her after, Gemarah B.B.113a.). Unlike Gen.31,16, which is like ancient Babylonian laws (C.H.par.162,163) where children succeed to their mother's property, the Mishnah does not give them power to inherit. (B.B.8,1). The daughters had to be provided for by the sons, who had even to go begging should the property only provide enough to maintain the daughters. (B.B.19,1; Keth.13,3).

PART 2.

GENERAL PROPERTY LAWS.

...therefore, ...
...with life's servant as one pleased, and the
...to give refuge to a runaway slave.

The danger of a commercialized society was foremost in the lawgiver's mind when he framed the laws for the future Israelitish State. And it is in this spirit only that we can understand properly the peculiarity of laws regarding all property and the various rights, are all framed from the point of view of a general approach, laying down general principles of law.

...shall not that, on the land, property can be mortgaged and encumbered without any restrictions whatsoever. The only exception being in the case of houses, to which one requires full security for twelve months from the date of sale. The remainder are all sales.

A clear difference is made in the Pentateuch between property within the walled city and without. The houses in the walled city are given to understand, are subject to the same rules of sale as the land itself, while in the walled city - the houses could be sold in perpetuity, unless they are redeemed within one year of the sale thereof.

This difference is much emphasized, and as we are placed in view of the general outlook of the lawgiver. It must be remembered that "the houses of the villages which he has round about them" must be reckoned with the "land of the country". The houses in these cases are part of the property they belong via. the land, and are so such in perpetuity.

INTRODUCTION.

The constitution of the Hebrew State, as we have seen, contemplated as an agrarian community, was based upon the private ownership of land and property. On the other hand, however, in its provisions for the protection and benefits of all the subjects of the State, such as the tithe laws, the Sabbatical Year, the Jubile etc., it assumes again the character of a limited ownership of certain commodities by State and Public. We find, thus, in this constitution, a rare combination and close relationship between private and public ownership of land and its produce.

Now, very similar is the attitude towards such property as can be acquired and produced by man's labour, efforts and energy, as well as towards Servants.

In its treatment of the debtor, the injunction to aid the impoverished, the release of debts, the command to treat kindly the servant and provide him liberally on his release, the prohibition to take certain pledges, the Hebrew Law demonstrates the principles of mercy, kindness and consideration which pervade it throughout.

Its main aim is to combat selfishness which is so often the greatest curse of society, as experience has shown. The Roman principle of Qui Suo Iure Utitur, Neminem Laedit was thus absolutely strange and repulsive to the outlook and conceptions of the Mosaic Lawgiver. There was, therefore, no question of dealing with one's servant as one pleased, and that is why one had to give refuge to a runaway slave.

The dangers of a commercialised society were uppermost in the lawgiver's mind when he framed the laws for the future Israelitish State. And it is in this spirit only that we can understand properly the paucity of laws concerning all property, and the reasons why they are all framed from the point of view of a humane approach, laying down general principles only.

We shall see that, unlike land, property can be acquired and alienated without any restrictions whatsoever. The only exception exists in the case of houses, to which one acquires full ownership only after twelve months from the date of sale. The reasons are as follows.

A clear difference is made in the Pentateuch between property without the walled city and within. The houses in the country, we are given to understand, are subject to the restrictions of sale as the land itself, while in the walled city - the town - the houses could be sold in perpetuity, unless they are redeemed within one year of the sale (Lev. 25, 30).

This difference shows much sound reason, and is to be expected in view of the general outlook of the lawgiver. For, it must be remembered that "the houses of the villages which have no walls round about them" must "be reckoned with the fields of the country". The houses in these cases are part of the property to which they belong, viz. the land, and are as such indispensable to the farmer. The houses are part of the inheritance which, if sold, is restored at the Jubile. They are part of that property, which as already said, cannot be produced by man's labour. The houses have no "personality" of their own, they are auxiliaries of the main property, the land.

In the city, the position is quite different. The roles are reversed. Here the land is only the plane upon which the main property, the dwelling house, stands. This house, however, can only be produced through man's labour, and

the land upon which the house stands is of no value in itself, for it is the house which is the object wanted, viz. to dwell in. Here, then, the fundamental difference of the property conceptions in the Mosaic mind become obvious.

Method of acquisition and of disposal

Gift, sale, inheritance, etc.

Section 3. Trade in Israel.
 Chap. 1. Commerce.
 Chap. 2. Rights and measures.
 Chap. 3. Taxes.

POSSESSION OF PROPERTY.

- Section. 1. Modes of acquisition and alienation.
- Section. 2. Obligations on property owners.
- Section. 3. Trade in Israel.
 - par.1. Commerce.
 - " 2. Weights and measures.
 - " 3. Money.

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SECTION I.

MODES OF ACQUISITION AND ALIENATION.

Very little, indeed, is said in the Bible about the modes of acquisition of moveable property. Unlike land, all other property can be bought and sold without any restrictions. Houses and cities form the exception. The purchaser in this case received a good title only after twelve months, until which time the seller has still the option of redeeming it back (Lev.29,3). Similarly the Mishnah (Ar.9,3-7). Houses in Levitical cities have perpetual redemption (Lev.25,32).

Generally, it is safe to assume that, as in other ancient communities known to us from archeological sources, certain forms of acquiring goods were used.

BARTER is sure to have constituted a generally accepted means for purchasing goods. On the other hand, that gold must have been used very early we can deduce from the early Biblical narratives. Thus, Abraham paid money for land he bought from the Hittites, and Jacob's sons purchased with it victuals in Egypt.

The Mishnah states clearly that "moveables acquire moveables" and it fixes the principle of barter. Thus, not only money but any other commodity may become the purchasing medium (B.M.4,1.2; B.B.1,6:4,1). There need be no witnesses, but the recognised forms of acquisition or act of taking possession must be observed. Thus, in the case of light objects it must be "lifted up". Heavy objects are acquired by "drawing" or moving ~~from~~ from their place, e.g. pulling a sheep from its place. Very heavy objects, e.g. a ship, are acquired by a formal or symbolical act of delivery, which is done through the buyer taking an object, of any value (except money or fruit), from the seller (Kid.1,4.5; Shebi.10,9; B.M.4,2; B.B.5,7:9,7). The Mishnah has also detailed provisions regarding conditions of sale (B.M.4,2-7; B.B.5,6), how much it may weigh above or under the arranged measure (to prevent any party from retracting) B.B.5,10.11; the percentage of bad in perishable articles (B.B.6,2.3; B.M.4,11.12); what objects are included in the sale of certain articles, e.g. whether the backyard belongs to the house, if they are not expressly so stated (B.B.4;5,1-5).

HIRE of animals is regulated in the Pentateuch (see ch.5. sec. 4. for fuller treatment of subject), and it is interesting to note that of all other modes of acquisition this alone is mentioned. The reason, I believe, is this. Since the lawgiver knew, and may have even experienced, that an accident in the case of hire may constitute a serious bone of contention, he laid down a general principle (Ex.22,4), something which he did not deem necessary in the case of barter and others. This principle may have well been extended to all hired commodities that have been damaged or broken, and it is worthy of notice that the Hebrew text does not contain the word animal but "ought", though it can imply, from the preceeding verse, the word animal. The Mishnah has clear provisions regarding the conditions and the period of rent and hire (B.M.2,2:5,4.5:6,4:8,6.7:9,11; Ter.11,9; B.K.4,9:7,6; Shebu.8,1; A.Z.5,1).

GIFTS will have been used, and were possibly accepted by a handshake, a symbol of thanks to this very day, mentioned in

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connection with Cautioners (Prov.6,1:11,15:22,26; Job.17,3). The Mishnah has rules on this matter (B.B.8,5:9,6.7; Git.1,6).

Inheritance and transfer by shoe have already been dealt with in chapters 3 and 1 respectively.

It is also quite probable, that the husband may have acquired some articles the wife brought after marriage, or may have inherited from her father. The Mishnah deals with the matter in great detail and divides the wife's property into various categories. (Keth. 6,1-7:13,5; Kid.3,5; Jeb. 7,1.2).

Written contracts have been discussed in ch.1 sec.2. Various types of contract in the Mishnah will be found in M.Kat. 3,3.4.

Section 2.

OBLIGATIONS ON PROPERTY OWNERS.

Taxes, as they affect landowners, have been dealt with in ch.1 sec. 2. In this section, therefore, I propose to treat the question of taxes in general, as it affected the citizen in the Israelitish State.

As already mentioned before, the taxes were of a twofold nature. Sacred and political. The dues, as stated in the Pentateuch, seem all to bear the character of contributions to the upkeep of the Sanctuary. Thus, free gifts for its upbuilding are referred to in Ex.25,1ff, while Ex.30,12-16 speaks of a tax of half a shekel that was used as a means of counting the adult male population over the age of twenty. These contributions went to the Sanctuary. But, of course, they were not a regular yearly half shekel as is evident from Ex. 38,25-28. This income was forthcoming only when the mustering took place, cf. Dt.20,9. The regular income of the Sanctuary depended on the various sacrifices, firstlings, redeeming of firstborn, and first fruits (Ex.18,15-18). This was, it seems, the Temple tax imposed in an indirect way on the ordinary citizen. The Mishnah speaks of a yearly tribute of half a shekel that was to be paid to the Sanctuary by the first of Nisan, to which effect warnings were issued on the first of Adar (Shek.1,1; also Josephus Ant.18,9 and Math.17,24). 2K.12,5-7 and 2 Chr.24,6-11 tell us of free gifts to the Temple which Joash instituted. He, in fact, reproached the Priests for not collecting the tributes Moses had commanded in Exodus (30,12-16). Josiah, ordered the collection of certain dues from the people for the strengthening and the repair of the Temple (2K.22,4ff; Mishnak Shek.4). Nehemiah (10,33) enjoins the people to give a third of the shekel, seemingly yearly, to the House of God.

Nowhere in the Pentateuch were we told of a regular or civilian tax. Though, in Dt.17,7, Moses, with the experience he must have gained in Egypt, declared that should Israel desire a King, the latter should not amass wealth and luxury, which could only be acquired through exacting taxes from the people.

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That taxes must have been levied on the people during the times of the Monarchy, becomes quite obvious from the various references in the Bible, some of which have already been mentioned (ch.1.sec.2). Samuel warns the people that a King would make them pay taxes for his own and the servants' upkeep. (1 Sam. 8,11-18; cf.22,7). In 1 Sam. 17,25 we learn of Saul's promise that the person who will smite Goliath will have his father's house "freed", from the burden of taxes in all probability. David collected big treasures for the building of the Temple (1 Chr. 22,14-16). Solomon must have burdened the people quite extensively with taxes (see ch.1.sec.2). Tribute was often received by Israelitish Kings from neighbouring peoples, ^{which} they had subjugated (1.K.5,1; 2K.3,4). He, further, levied caravans, merchants, tourists, pedlars and others utilising Palestine as a trade route (1 K.10,15).

That presents for the King were a generally accepted practice, we can gauge from the refusal of a number of rebels to send presents to King Saul on the occasion of his coronation (1 Sam.10,27). We are told (1K.10,14) of presents Solomon has received, and (1K.10,21) of his forest palace in the Lebanon. Hezekiah mentions treasures of the King's house (2K.18,5; 2 Chr. 16,2). Jeshoshaphat, too, received presents from the people (2 Chr.17,5).

Israel had frequently to pay tribute to foreign Kings. King Menahem paid it to Assyria, (2K.15,20), and Jehoiakim had to levy the people exactingly, in order to be able to meet the demands of the King of Egypt. He did it through a kind of property tax (2K.23,35). What we learn from the latter references is, that some kind of means test was applied in taxing the individual. Under the Persian and Roman rules, taxes must have been heavy; (cf. Ezra 4,13-20; Neh.5,15).

The Mishnah has laid down certain rules regarding the obligations of citizens to contribute rates for the conduct of affairs in their locality, e.g. building of the city wall and others (B.B.1,5). That taxes were levied in Mishnaic times is clear from the repeated references to tax collectors (Ned.3,4; B.K.10,1.2; Shab.8,2; Hag.3,6 and Toh. 7,6). In Sotah 8,2 we find an allusion to taxes, to be paid by certain people in the case of war.

Section 3.

TRADE IN ISRAEL.

par. 1. Commerce.

In accordance with the lawgiver's conception of the Israelitish State as an agricultural community, obviating elaborate legislation on commerce, we find that the references, in the Pentateuch, to trade are very few indeed. Any mention made on this subject is of a general nature, laying down a general principle for the commercial needs of the community. In ancient Babylon, for instance, commerce was much developed, and in the Hammurabi Code we find detailed provisions regarding trading, building, shipping etc. (par.98-107, 162-184). Now, the wealth of the populace would lie, the lawgiver assumed, in the land and the herds, hence the rain is a product of "the treasury of heaven" enabling the land to bring forth its riches

in the form of its produce (Dt.28,12). Moses believed that, living by agriculture, they would be largely independent of their neighbours and thus avoid much intercourse with them. He saw in political and commercial alliances a source of trouble for Israel, a fact born out by experience. The laws, concerning commerce, therefore, were amply sufficient for an agricultural and grazing community.

That Palestine was lying on an important trade route may have well been known to Moses. Being in Egypt, and having been brought up in the Royal Palace, he may have heard of caravans arriving there from Palestine. He, therefore, must have assumed that the rich produce of Palestine's soil would bring foreigners to the country (Dt.28,12). So we find, that he believed that Israel would not be dependent for their living on other peoples, and thus come into danger of becoming debtors, (cf. Dt.15,16). Israel would "lend many nations" but "shall not borrow". Credit would certainly have to be given, and since risk was involved, interest could be taken from a Nokhri, a foreigner (Dt.23,23), and it was also permissible to collect from him a debt in the Sabbatical Year (Dt.15,3); see ch.6. par.3.

As trading within the community would be on a fairly small scale, the general principle against overreaching is laid down in Lev.25,14,17. The same treatment is to be meted out to the Ger, the resident alien (Ex.22,20). Honesty must be the basis for commercial relationship in the community, is Moses' constant admonition. "Thou shalt not covet anything that is thy neighbours" is the underlying principle. Therefore, general references only are given to weights and measures. Since, in the view of the lawgiver, the property of the neighbour is the fruit of his labour and efforts, any acquisition of such by cheating, overreaching or false statements is equal to theft.

References to trade in early times we find in Gen.37,25,28. 36:39,1 which tell us of Ishmaelite and Midianite caravans that were coming from Palestine.

Now, while the Israelites were wandering in the wilderness, some small trading within the community, and for certain products with the neighbouring tribes, must have taken place. When, then, they entered Palestine they must have, for quite a long time, inhabited the mountain ranges and the valleys of the Jordan before they were able to occupy the coastal belts populated by the Canaanites. They will have, thus, settled down to agriculture and raising cattle, without coming into the temptation of increased commercial activity. But as they occupied the coast more and more, and, consequently, the trade route between Phoenicia and Egypt, they, of course, came into contact with the caravans and the merchants who passed through the country.

So long, then, as the Kings encouraged agricultural pursuits, Saul and David loved agriculture and herds, the people lived very peacefully amongst themselves. But as the Kings' political ambitions grew and their relationship with foreign states was intensified, there developed within the community class distinctions and widespread dissatisfaction, which is mirrored in the scathing references of the Prophets Isaiah, Hosea, Amos, Micah, Zephaniah and Zechariah to the Israelites, who have become commercialised (1K.22,39; Is.1,23:2,1-7.16:3,5.15:5,8.23:9,9.15:23,8; Hosea 12,1.7.8; Amos 2,6:3,9.11:4,1:5,11:6,3-6:8,4-6; Micah 2:3; Zeph. 1,11; Zech.14,21.

An early reference to wheat dealers in the time of Saul will be found in 2 Sam.4,6, while trade with foreign nations began to develop at the end of the rule of David, and flourished during Solomon's reign. Phoenicia was the first country with whom, so we are told, commercial relations were conducted. Thus, Hiram King of Tyre supplied David and Solomon with timber,

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masons, builders etc. (2 Sam.5,11; 1K.5,16-33), while the latter gave Hiram, in return, corn, wheat, oil etc. (1K.5,25). Other products received from Tyre, were all sorts of material for clothing and art productions, while Israel contributed also honey, spices and similar articles (Ezek.27,11.17).

The tribes of Zebulun and Issachar who dwelt on the coastal plane and thus were on the trade route, must have been those most to benefit from it. Zebulun participated in sea-faring (Gen.49,12; Dt.33,18) and must have constituted the link, in commercial pursuits, between the rest of the country and the surrounding neighbours. The shipping trade developed extensively during Solomon's time, and shipbuilding and gold imports took place under his direction (1K.9,26-28; 2 Chr.8,17). Also silver, ivory precious stones etc. were brought into the country (1K.10,10-25; 2Chr.9-14). Salt from the dead sea, is sure to have been an article of export, but, it is nowhere mentioned. The visit of the Queen of Sheba to Solomon (1K.10,1-13), must have had a commercial purpose as we learn from v.13, where we are informed that she obtained all she required. It indicates the existence of trade with Arabia and the Midianites which, as Benzinger points out, are the Minaeans known to have lived in South Arabia.

Commercial as well as political relations also existed between Solomon and Egypt. Horses (1K.10,28ff) and linen (Ezek.27,7) came from Egypt, while Palestine must have supplied spicery, balm, myrrh (Gen.27,25) honey, nuts, wine, and almonds (Gen.43,11). That Solomon entrusted this foreign trade to certain people can be seen from 1K.10,28 where it refers to some sort of traders guild.

Jehoshaphat seems to have attempted the resumption and revival of trade (1K.22,48; 2 Chr.20,36.37).

We are also informed (1K.20,34) that extensive trade relations existed between Israel and Syria. Hamri must have been forced by Ben Hadad's father, King of Syria, to allow Syrian merchants to have bazaars in Samaria, and Israelites, during the time of Ahab, at any rate, were allowed to open stalls in the markets of Damascus.

During the reign of Jeroboam 2. and Uzziah, Jotham and Ahaz, the great wealth could have only been acquired by the much increased trade, through having recovered their lost territories (2K.14,1.10 22.25.28; 2Chr. 26,6). Isaiah 2,7, Hosea 12,4, and Amos 6,3-6 testify to this effect.

Israel, however, never became a mercantile people as e.g. the Phoenicians. And the prophets' admonitions were directed against the corrupt practices which many copied from their commercialised neighbours. When, therefore, we summarise all the references to trade in the preexilic period, we come to the conclusion that Israel was not a commercial people. Industry, except for occasional weaving (Prov.31,24) and perhaps pottery to a small extent, was almost nonexistent. The articles of export were exclusively products of the soil which either did not grow at all or in sufficient quantities in the neighbouring lands. Tribute, e.g. to Moab, was paid with wool and sheep (2K.3,4). Israel must have, then, remained essentially an agricultural people throughout the Bible period. The Jewish community under the Persian rule was small and poor (Hag.1,1-11; Mal.3,14; Zech.7,7;8,4.5.). G.A.Smith (Historical Geography of The Holy Land, p.129) says, that during this period the trade was well in the hands of the Phoenicians who had done it through Joppa (Jon.1,3). Jonah, it will be noted, escaped on a boat of non Jews.

During the Maccabean days it became customary to take the merchandise once a week to the market (1,58). Later it became extended to twice a week, and Jerusalem became the commercial centre of the country.

It was only later, under changed circumstances in Babylonia, and particularly forced by Greek rule, that trading amongst Jews was widely practised (1 Macc. 14,5). It was such and other reasons of unsettled and unkindly conditions that made Jews, since exiled from Palestine, turn to commerce as the means by which to earn a livelihood.

The Mishnah, which took note of the changed circumstances and has legislated in detail on trade, mentions that markets were held in Jerusalem for wool and poulterers, (Er.10,9), and for fruit (Jer.Bezah 5,8). Markets were also held in a number of other towns. Many references are also found to the import of goods to Palestine from certain places, such as Arabia, Sidon and Egypt (see article on commerce in J.E.).

It may perhaps be fitting to conclude with the mention that the aim of modern Jewry, as proclaimed by the Zionist Movement, has to-day become "back to the land in Palestine".

Par. 2.

WEIGHTS AND MEASURES.

Conforming to this general practice, the lawgiver was not so much concerned with stating the exact relationship between the various units of weight and measures and their exact value, as with the general principle of honesty and justice in the trading of the community. There is, by the way, nowhere a prohibition to trade in the foreigners' weights, measures or money. "One type of weight" is his admonition, and whether it be of a great value or not he left to the community to fix, so long, as it is the same for all (Dt.25,13-15; cf.Lev.19, 11-13; Prov.11,1:16,11).

The connection of righteous judgement with just meteyards, weights and measures in Lev.19,35.36, is possibly a pointer to the local courts, who possessed some sort of supervision over weights and measures and who settled claims.

Michaelis (Commentaries on The Laws of Moses vol.3.p.385f) suggests, that perhaps the various weights and measures, indicated in connection with the building of the Sanctuary, will have formed the standard sample for the people's guidance in their trading needs, and constituted a ready specimen for comparison. Personally, I can hardly support this theory, as far as the people were concerned, since it would be impossible for all of them and in every case to run to the Sanctuary. It is possible, though, that the judges will have made use of it. Michaelis also thinks that the Priests will have acted as supervisors. Support for it we find in 1. Chr. 23,29, where we are told that David had appointed Levites as overseers over weights and measures.

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One thing should, however, be pointed out that, whatever

standard was used, it was well known to the people and was no secret. It should, therefore, not surprise Bible scholars to find, in the Pentateuch, many repetitions regarding weights and measures. It was in keeping with Moses' outlook to have an informed laity. While, e.g. in Egypt, (see Erman, Life in Ancient Egypt, chapter on religion) the knowledge of the sciences and religion was the secret of the Priestly cast, in Israel, extensive publicity was to be given to all matters affecting the subjects of the State. Though the tribe of Levi were appointed guardians of the law and had to possess a thorough knowledge of e.g. weights and measures, the art was not a secret of the Levites nor dependent upon their arbitrary judgement and interpretation, but was a matter of which the people were informed in detail (vide, education in the Sabbatical Year, concluding chapter).

The various references in the Old Testament to weights and measures, will give us some information on the types that were used. But of their standard and value in relation to one another very little is said. I must remark here, that if Deuteronomy and Leviticus are as late as the leading Bible critics want us to believe, it is so utterly unthinkable and strange that here, as in other cases, the details regarding weights and measures are completely absent.

Of the ancient weights and measures, those of Babylon and Egypt are known to us. And since the various excavations that have been made in Palestine bear witness to usage in Israel of the Babylonian system of weights and measures, it may be reasonably assumed that it was the generally accepted standard in Israel. Even in the later Rabbinic literature, such as the Mishnah and Gemarrah, we find a combination of early Hebrew system with foreign elements, but which also, sometimes, lack detailed description of their standards and subdivisions. The Talmudic sources deduce the value of the Biblical weights and measures by comparing them with those that were current in the period of the Talmud, and the units of the system may often be determined by a comparison with their Greek and Roman equivalent.

Measures of Distance.

The cubit (Amah) as a standard measure is referred to in Dt.3,11. Ezekiel (40,5:43,13 etc), however, speaks of a cubit and a handbreadth as the standard measurement, and he knows of a "Reed" (Kaneh) (40,3:42,16.17) as the equivalent of six cubits, six handbreadths. That Ezekiel must have measured by special cubit stick is born out by the statement in 2 Chr. 3,3 that Solomon built the Temple after "the first measure".

The Egyptians knew of two types of cubits. The ordinary and the Royal cubit, measuring seven handbreadths, the latter corresponding to Ezekiel's measurement (Benzinger p. 192/3). The next measure is the span (Zeret) referred to in Ex.28,16:39,9; 1.Sam.17,4; Is.40,12. From Ez.43,3 it appears that the span was half the cubit.

The Handbreadth (Tephah) of the size of four fingers in breadth, we meet first in Ex.25,27,37,12; also 1 K. 7,26; 2 Chr. 4,5; Ez.40,5.43,43:13. The fingerbreadth (Etzba), as one quarter of the handbreadth, is indicated in Jer.52,21. We also read of a measuring line in 1K.7,15 and Jer.31,39:52,21.

Table.

1 Reed - 6 cubits	-	approx. 106"
1 Cubit- 2 spans	-	" 17.6"
1 Span - 3 handbreadths	-	" 8.8"
1 Handbreadth- 4 fingerbreadths	-	" 2.93"
1 fingerbreadth	-	" .73"

Benzinger suggests that the term Kibrath Haaretz in Gen. 35, 16: 48, 7; 2K. 5, 19 is a space measure. A measure of surface or area was the Zemed or Yoke (1Sam. 14, 4; Is. 5, 10). The standard of this measurment is the amount of ground a yoke of oxen can plough in a certain time. Post (Landtenure and Agriculture etc. in Palestine, P.E.F.Q.St. 1891, p. 110ff) says, that even today they use in Syria the Feddan, i.e. the ground a yoke of oxen can plough in a day, as the unit of land measure. From Lev. 27, 16, cf. Oh. 17, 1, we can deduce, that land was also measured by the amount of seed required to sow on it.

In the Mishnah, too, we find a field measured by the amount of seed that can be sown on it. This is expressed in the terms Bet Kor, Bet Seah, Bet Kab. (Ar. 3, 2; Peah 1, 6; B.B. 2, 5; 7, 11). The largest distance measure known in the Mishnah is the mile, approx. 978 yards (Yoma 6, 8), which is also known as a Sabbath journey, defined in Er. 4, 3 as consisting of 2,000 cubits. The mile also has $7\frac{1}{2}$ Ris (Yoma 6, 4). The next in length is the cubit, approx. defined in B.B. 6, 8. We are told of a 50 cubit long measure in Er. 5, 4. In Kel. 17, 9, 10 two types of cubits are mentioned. One ~~being~~ ^{being} $\frac{1}{2}$ a fingerbreadth, and the other 1 fingerbreadth longer than the Biblical cubit, i.e. 6 handbreadths. The span is described in Tosefta B.M. 6, 12 as half the cubit or three handbreadths. The Sit is mentioned in Or. 3, 2, 4; Shab. 13, 4. Its measure is given by Maimonides as two handbreadths. The handbreadth is said to contain four fingerbreadths (Gem. Bek. 39b; cf. Er. 1, 3). The fingerbreadth, without describing its size, is mentioned in Kil. 7, 1; Men. 11, 4; Yoma 5, 2; Mik. 7, 7 etc. The Talmud makes a distinction between the breadth of the thumb and the middle finger.

Table. (Mishnaic)

Sabbath journey	-	1 Mile	-	$7\frac{1}{2}$ Ris.	-	2,000 cubits	-	app. 977.7yds.
				1 $\frac{1}{2}$ Ris.	-	266.7 "	-	" 130.3yds.
				1 Cubit	-	2 spans	-	" 17.6ins.
				1 Span	-	3 handbreadths	-	$\frac{1}{2}$ sit 8.8ins.
				1 Sit.	-	2 "	-	app. 5.86ins.
		1 Handbreadth	-	4 fingerbreadths				
							-	app. 2.93ins.
						1 fingerbreadth)	"	.73ins.

Liquid and Dry Measure.

The names and relative values of the various liquid and dry measures, are presented to us in greater detail, in the Bible and the Mishnah, than the measures of distance. Their equivalent in modern terms is, however, more uncertain.

The Chomer or Kor was the largest measure and is referred to in 1K. 4, 22: 5, 2. 11. 25; Is. 5, 10; Ezek. 45, 11. 14; Hosea 3, 2 etc., where we are informed that it was used for dry and liquid measurement and was ten times the Ephah or the Bat.

A Lethek equalling half a Chomer is mentioned in Hosea 3, 2 and seems to be a dry measure. Information regarding it is very scanty indeed.

The Ephah (Ex.16,36; Lev.19,36; Nu.28,5; Dt.25,14; 1K.7,26. 38; Is.5,10; Ezek.45,11; Amos 8,5; Zech. 5,6-8; Micah 6,10; Prov.26,16; Ruth 2,13 etc.), is a dry measure and of the same capacity as the liquid measure Bat (Is.5,10; Ezek.45,11.14). The latter had ten subdivisions (Ezek.45,14) and the Ephah six (Ezek.45,13), but we are not given the names by which they were known. As already said, the Ephah and Bat are one tenth of a Chomer (Ezek.45,11.14).

The Seah, an exclusively dry measure, (Gen.18,6; 1 Sam. 25,18; 1K.18,32; 2K.7,1.16.18 etc.) is believed to be one third of an Ephah (cf. Men.6,6; 7,1) and must have been the measure par excellence for flour. It contained six Kab (cf. Men.7,1; and Parah 1,1).

The Hin (Ex.30,24; Lev.19,36) was the most widely used measure for liquids, just as the Ephah for dry substances "a just Ephah and a just Hin". The Hin occurs very often in the O.T. in the form of fractions $\frac{1}{2}$, $\frac{1}{6}$ th. etc. (cf. Ex.29,40; Lev. 23,13; Nu.15,4.6.9; 28,14; Ezek.4,11 etc.). The Hin, about ten pints, is one sixth of an Ephah and one half of a Seah.

The Omer (Ex.16,16.36; Lev.6,20) is a dry measure and is one tenth of an Ephah. It is also called Issaron i.e. one tenth of an Ephah (Ex.29,40; Lev.14,10; 24,5; Nu.15,4). The Omer is also one tenth of a Bat (Ezek.45,14).

The Kab (2K.6,25) was used both as a dry and a liquid measure. It was one sixth of a Seah and one third of a Hin.

The Log (Lev.14,10.24) was the lowest denominator in both the fluid and dry measures and is the equivalent of the twelfth of a Hin and a twenty-fourth part of a Seah.

Table of Dry Measures.

1 Lethek	-	5 Ephahs	-	approx.	32 stones	2 lbs.
1 Ephah	-	3 Seahs	-	"	6 "	6 "
1 Seah	-	3.3 Omer	-	"	2 "	2 "
1 Omer	-	1.8 Kabs	-	"	9 "	9 "
1 Seah.	-	6 Kabs	-	"	2 "	2 "
1 Kab.	-	4 Logs	-	"		5 "
		1 Log	-	"		1 " 4 ozs.

Table of Liquid Measures

1 Kor or Chomer	-	10 Bats	-	approx.	80 gallons
1 Bat	-	6 Hins	-	"	8 "
1 Hin	-	3 Kabs	-	"	1 " 4 pints.
1 Kab	-	4 Logs	-	"	4 "
		1 Log	-	"	1 "

In the Mishnah, among the dry measures, the Kor is found in Shebu. 6,3 and it contains 2 Leteks and 30 Seahs cf. Men.6,6.

The Ephah, we are told (Men.7,1), contains 3 Seahs. The Mishnah also mentions a Garab (Ter.10,8) containing 2 Seahs.

The Seah (Parah 1,1; Ter.4,7; Men.7,1) is equivalent to 6 Kabs. The Kab. (Kil.2,1; Ket.5,8 etc) contains four Logs.

The Bezah (eggs) is mentioned in Kel.17,6, and the Talmud (Gem. Er.83a) defines it as one sixth of a Log.

The liquid measures are, to the greater extent, the same as the dry. The Mishnah has also a measure Kuza (oil jar, Tam.3,6) which has, according to the Gemarah (Hul.107a), a capacity of $\frac{1}{2}$ Log.

The Kortab is a very small measure (Men.12,4; Mik.3,1) and its capacity is given as a sixty-fourth of a Log or of a Sit.

Table (Mishnaic)
same as Biblical above, but add

1 Garab	-	2	Seahs	-	approx.	4 stone 4lbs
1 Log	-	6	Bezahs	-	"	1 pint
		1	Bezah	-	"	1/6th pint.

Weights.

As in the case of measures, few details are found in the Bible regarding the weights and their composition. And, since almost the same names for weights are found among the other ancient peoples, it is safe to assume that their standard has been followed in general. On comparison, it seems to be nearest to the Babylonian system.

The Kikar or Talent (Ex.38,25.27; cf.25,39 etc.) is the chief denominator and equates 3,000 shekels. This is arrived at through Ex. 38,25 where it is stated that 603,500 men contributed a half shekel each, which amounted to hundred talents 1,775 shekels. Thus, one talent equates 3,000 shekels. It must be remarked that the ancient Babylonian Talent equated 3,600 shekels, thus being different from the Hebrew; and since one Talent had sixty Minas, one Mina contained 60 shekels. Benzinger points out, however, that in the course of time the Babylonian system underwent changes dividing it into two sets. The trading shekel becoming 50 shekels a Mina, and the other, for weighing purposes, remaining at 60 in the Mina. Ezekiel (45,12) also speaks of 60 shekels to the Mina. And if, as is maintained by many scholars, Ex.38,26.27 is *pâstexilic*, it is rather difficult to understand how the clear discrepancy between it and Ezekiel could take place.

The Mina is first mentioned in 1K.10,17; also in Ezek. 2,69; Neh.7,71.72.

The shekel was the weight generally used, and a Bekah was equal a half shekel (Ex.38,26 cf. Gen.24,22). Benzinger suggests that this weight may have belonged to the Phoenician system. There is, however, very little evidence for that.

The Garah, of which there were twenty in the shekel, is mentioned in Ex.30,13; Lev.27,25; Nu.3,47:18,16; Ezek.45,12 etc.

During recent years, various kinds of weights were discovered in Palestine, which must have been used during the different periods of influence and occupation ~~by~~ the neighbouring states. The Phoenicians must have left a considerable imprint on Israel's trading life during the reigns of David and Solomon. Thus, in 1890 a Dr. Chaplain purchased a small stone which proved to be a weight with a number of early Hebrew characters engraved on it. It is now believed to be an early Hebrew $\frac{1}{4}$ shekel weight. (P.E.F.Q.St. 1890 p.267).

The Allusions in Ezra, Nehemiah and Chronicles to Darkemons may well indicate the usage in their times of the Greek weight Drachms (Ezr.2,69;8,27; Neh.7,71-73; 1Chr.29,7).

Table.

1 Kikar (Talent)	-	60	Minahs	-	approx.	87 $\frac{1}{2}$ lbs.			
1 Minah	-	50	Shekels	-	"	1 "	7ozs.	160	grains.
1 Sh kel	-	2	Bekahs	-	"			224	"
1 Shekel	-	20	Gerahs	-	"			224	"
		1	Gerah	-	"			11	"

The Mishnaic system is a combination of the ancient Hebrew and the Greek and the Roman metrology. The Kikar or Talent is stated in the Talmud to contain 60 Italian Minahs or 37 $\frac{1}{2}$ Hebrew Minahs (Gem. Bek.58.Suk 51b. A.Z.44a). The Minah is mentioned in the Mishnah (Peah 8,5; Ket.5,8; Sanh.8,2; Ed.3,3; Hul.9,2) as a unit of weight for wool, spices, figs, meat etc. It is sometimes also referred to as the Italian Minah. It seems, however, that the Italian Minah was valued only at hundred Zuz while the ordinary one at 160 Zuz.

It is not altogether clear whether the shekel was equal to the selah or just half of it (see Mishnah Shekalim 1,6.7 etc.). Nedarim 3,1, perhaps, points to the existence of a "Shekel of the Sanctuary" which was valued at half a Selah.

The Galilean Selah was said to be worth half the Selah of Judea (Ter.10,8; Ket.5,9). The shekel, accordingly, contained either 4 or 2 Zuz.

A Tartimar is said to have weighed half a Minah or 50 Zuz (Gem. Sanh.70a.).

Table.(Mishnaic)

1 Talent	-	37 $\frac{1}{2}$	Hebrew Minahs	-	approx.	3 stones	5 $\frac{1}{2}$ lbs.		
1 "	-	60	Italian Minahs	-	"	3 "	5 $\frac{1}{2}$ "		
1 Hebrew Minah	-	3.2	Tartimars	-	"	1 "	4 oza.		
			(160) Auz						
1 Ital. Minah.	-	2	Tartimars(100 Zuz)	-	"			12.6	oza.
1 Tartimar-	25	Common shekels	-	"				6.3	ozs.
1 Tartimar-	12 $\frac{1}{2}$	Shekels of the Sanctuary.	-	"				6.3	ozs.
1 Tartimar-	50	Zuz	-	"				6.3	ozs.

Par. 3.

MONEY.

While Barter was, in early times, the general means of purchasing goods, Benzinger(Hebraische Archeologie p. 197 ff.) says, that copper, silver, and, very rarely, gold were used to pay for acquired articles.

In the O.T., the Hebrew term money means also silver (Ex.21, 11; 1K.21,6 etc.). The Shekel is the unit, and we find that the medium of exchange, the metal, was silver (Gen.23,15; 1K.20, 39; 2K.5,22:7,1:12,10:15,19; Jer.32,9).

The shekel was also known in fractions. Thus, Saul's servant possesses a $\frac{1}{2}$ shekel (1 Sam.9,8). This reference may indicate the existence of some sort of coined state-controlled money. But it is most doubtful, and we can assume that no standard monnaie existed then, and payment was made through the weighing of the silver.

In fact, quite often we meet with the phrase "so many pieces of silver" without the qualification of e.g. shekel (Gen.20,16;37,8; 2 S. 18,11; 1K.10,29). The purchasing power, then, of the metal was determined by their weight. The Tel El Amarna letters show that silver and gold were used as media for acquiring merchandise. (H.Winckler Tel El Amarna tablets p.37 and 175f). The Hebrew word Shēkel is synonymous with to pay (Ex.22,16;1K.10,39; Is.55,2; also 2K.12,11; Jer.32,9.10; Is.46,6; Ezra 8,25.26).

When payment took place, the money was weighed (Gen.23,16 Ex.22,16; s Sam.18,12; 1K.20,39; 2K.12,11; Is.55,2; Jer. 32,10). Scales and weights were carried about in a bag attached to the girdle (Dt.25,13ff; Is.46,6; Amos 8,5; Micah 6,10; Prov.16,11).

A unit larger than the shekel, the Minah, we first meet in the book of Ezra (2,69:5,14; also Neh.7,71.72). It probably had, like the Babylonian system, 50 shekels. The Kikar or Talent was a multiple of shekels (1K.10,14; 2K.15,19:18,14) and may have also indicated the form in which the metal was cast. It probably signifies something round. Wedge shaped pieces were also in use (Jos.7,24). Rings, too, were used. Thus, we learn, that, Eliezer gave Rebecca a golden ring of half a shekel weight and bracelets of ten shekels weight. (Gen.24,22)

The Kesitah (Gen.33,19) may have been a certain piece of metal used as money (Josh.24,32; Job 42,11). LXX. renders it as being in the form of a lamb.

The Agorah must have also been in monetary use (1 Sam.2,36).

Gold was rarely used. The King of Syria sends gold to the King of Israel (2K.5,5) and Hezekiah and Jehoachaz pay tribute in gold (2K.18,14:23,33).

The Persian coins Darics must have been used in Palestine after the return (Ezra 8,27; Neh.7,70-72; 1Chr.29,7). The shekel was equivalent to half a Drachm during the reign of the Persian King Darius, 141 B.C., says Benzinger Hebraische Archeologie (p.202).

The first information of the striking of an independent coin in Israel, the Denar, is given in 1 Mac. 15,6, and we possess, to-day, replica of the shekel and $\frac{1}{2}$ shekel which was of silver and copper. During the time of the High Priest Johanan Hyrcanos and Bar Kochba coins were struck. There are coins extant from the times of Symon 135 B.C. (B.Romanoff, the Symbols on Ancient Jewish Coins p.161 J.Q.R. volume 34,2,1943).

Occasionally we are given the purchasing power of money. Of land we are told in Gen.23,19; 2 Sam.24,24; 1K.16,24; Jer.22,7ff. From Is.7,23 we learn that a good vineyard of a 1,000 vines could be acquired at the price of 1,000 shekels. 600 shekels were paid for an Egyptian chariot, and 150 for a horse (1K.10,29). Micah's servant received 10 shekels per annum (Jud.17,10). Joseph was sold for 20 shekels (Gen.37,28). A Seah of fine flour and 2 Seahs of barley for a shekel (2K.7,1). During the time of ^{the} famine prices were very much higher.

Table

1 Kikar	-	60 Minah	-	£412- 10s. Od. (silver)	£5,775- 0s.- Od. gold
1 Minah	-	50 shekels-		£412- 10s. Od. (silver)	£5,775- 0s.- Od. gold
		1 shekel -		6- 17s. 6d.	96- 5s.- Od.
				2s. 9d.	1-18s.- 6d.

Various references are found in the Mishnan to the value and the type of the money used. The metal was silver. But we learn of a golden Denar which was equivalent to 25 ordinary Denars (B.M.5,1). The Minah is said (Ket.5,8) to hold 100

Denars, while 4 Denars are equivalent to 1 Selah (B.M.5,1;B.B.10,2). References will be found to the standard of the Maah in B.M.4,3; M.Sh.2,9; the shekel and aspers Ed.1,10); the Perutah (Meilah 5,1). The Pondion was the smallest silver coin while the Perutah the smallest copper coin.

Gold and copper coins could be exchanged for silver coin (B.M.4,1). While in M.Sh.2,7, references are made to a battle, in those days, between the gold and silver standards. It is believed that a Denar or Zuz had the approximate value of one shilling.

Some information of the purchasing power of money is also given. Thus, a yoke, including the oxen, must have cost about 200 Zuz or £10. (B.B.5,1); a young bullock 5 Selahs (£1.); a ram 2 Selahs (8s.); a lamb 1 Selah (4s.) (Men.13,8); an ass between 100 and 200 Zuz (B.K.10,4); rent of a courtyard 10 to 12 Selahs per annum (B.M.5,2). One Kor (64 stones) of wheat 25 Zuz (B.M.5,1); 4 Seahs (8stones 8lbs) of flour one Selah (4s.), a loaf of bread 1 Pondion (1d.) (Er.8,2; Peah 8,7); 5 to 10 figs, a cluster of grapes, a pomegranate, a watermelon 1 Issar ($\frac{1}{2}$ d.) (Maas.2,5); a citron, 1 Perutah ($\frac{1}{2}$ d.); a shirt 3 Selahs (12s.), a cloak 3 Selahs (Meilah 6,4); a husband should give his wife clothes to the value of 50 Zuz every year (this excludes shoes and a hat) and must provide her with food and lodging (Ket.5,8).

Table. (Mishnaic).

1 Minah	-	25	Selahs	-	approx.	£5- 0- Od.
1 Selah	-	4	Denars or Zuz	"		4- Od.
1 "	-	24	Maahs	-	"	4- Od.
1 "	-	2	Shekels	-	"	4- Od.
1 Shekel	-	2	Denars or Zuz	"		2- Od.
1 Denar	-	5	Aspers	-	"	1- Od.
1 "	-	6	Maahs	-	"	1- Od.
1 Maah	-	2	Pondions-	"		2d.
1 Pondion	-	2	Issars	-	"	1d.
1 Teresith-	-	3	Issars	-	"	1 $\frac{1}{2}$ d.
1 Issar	-	8	Peruthas-	"		2d.
		1	Perutha	-	"	1 $\frac{1}{2}$ d.

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CHAPTER 5.

INFRINGEMENT OF PROPERTY RIGHTS.

Introductory Note.

Section 1. Lost Property.

Section 2. Theft.

Section 3. Damage and Reparation.

Section 4. Deposit.

INTRODUCTORY NOTE.

The commandment not to covet his neighbours' possessions, has been laid down in the decalogue as the guiding principle in dealing with property belonging to others (Ex.20,13.14; Lev. 15,11; Dt.5,17.18). One may not keep in his possession anything which he has not acquired legally and honestly. The property which our neighbour has acquired by the sweat of his brows and his efforts, constituting the fruits of his labour, are sacrosanct and may not be touched nor taken away by any unauthorised person. "Any aggression on the property of our neighbour, is, therefore, an assault on his human personality" (Hertz Pentateuch on Ex.20,14). The injunction that "thy brother may live with thee" (Lev.25,36) expresses adequately this statement. A person who does not respect the property of his fellow men is dangerous to society. For, the desire to obtain his neighbours' possessions by illicit means, through embezzlement or misappropriation, may lead him to acts of aggression and even murder.

LOST PROPERTY.

Leviticus 5,21-23 contains a general warning in regard to honesty, and brings, as an example of such a breach, a person who has found lost property or has taken a pledge and denies any knowledge of it. If it can be proved, before the court, that a person has not restored the found article, it is treated as theft (Ex.22,8). In fact, even "If thou meet thine enemy's ox or his ass going astray, thou shalt surely bring it back to him again. If thou see the ass of him that hateth thee lying under his burden and wouldest forbear to release it for him, thou shalt release it with him" (Ex.23,4,5). Just as the Hebrew was prohibited, for humanitarian reasons, to restore the runaway slave to his master, so was he commanded to take the ^{straying} wandering animal back to its owner and sustain it, though it be his enemy's, when it lied under its burden. Justice must be done even to the enemy's property.

The Babylonian law has no provisions regarding respect for the property of a person one hates, and the penalty of death (C.H. par. 9) inflicted for appropriating lost property is, out of proportions, high, and smacks more of barbarity than of a justly inflicted penalty.. The Hittite law has quite heavy money fines, and deals with the subject in par.35,45,60-62,66,71.

Hebrew law (Lev.5,24) punishes with one fifth over and above the value of the article. This Levitical law is a development of the laws in Exodus, and is clearly designed to encourage repentance by making the fine so small. In Deuteronomy (22,1-4) this obligation of restoring lost property is further elaborated. The finder is enjoined there "not to hide himself" but to go out of his way to seek and find the owners. Failing it, the animal or article "shall be with thee until thy brother seek after it, and thou shalt restore it to him". This rule applies likewise to the garment and to "every lost thing of thy brother's which he hath lost and thou hast found".

While the Bible lacks detailed provisions with regard to the treatment of the various articles found, and presents the whole matter in a moral cloaking, the Mishnah (B.M.1;2; Git.5,3) lays down elaborate rules as to what articles are to be restored, what articles may be moved or taken away from the place they are seen or found, what are the modes and the length of time of advertising the found object, as well as how to look after, and

the use that can be made of, certain found articles. The general principle is, that if an article is identifiable and is apt to be looked for by the owner, it must be advertised.

SECTION 2.

THEFT.

Theft in Israel was placed under the private law and was not considered as an offence a priori against the State. The Babylonian law (C.H. par. 6-8) e.g. inflicted capital punishment for theft, which, if commuted for by payment, was very high and varied in its amounts according to the social status of the injured party. Thus, if a man has stolen an ox or a sheep, an ass, a pig or a ship, whether from the Temple or the Palace, he shall pay thirtyfold. If it be a commoner's (B.Meissner's rendering, Assyrian and Babylonian p.155) he shall pay tenfold. If the thief has naught to pay, he shall be put to death (C.H.par.8). The laws of Draco at Athens punished likewise theft by death (W.Blackstone, Commentaries on the Laws of England, vol.4. p.272). While the Assyrian law (tablet A. par. 1-5) with death and horrible mutilations as the punishment, gives expression to the Assyrian state of mind, the Hebrew law knows only of reparation and compensation for the property stolen. The Hittite law has extraordinary high fines (par.57-59,63-65,67-70,81-85,92-96,100-103,108,109, 122-129).

There is no question of capital punishment for theft in Hebrew law. But we find one exception in the Bible where capital punishment was inflicted. It occurred in the case of Achan (Jos.7,1) who, in spite of Joshua's prohibition, took of the "devoted things" and was killed and burned together with his family and possessions. The reason for this harsh penalty may be found in the fact that Achan's conduct, which brought a curse upon the community (Jos.6,18), was a challenge to the authority of Joshua and the word of God, and had to be dealt with in the severest manner to prevent such a recurrence.

For stealing a sheep or an ox the fine, imposed by Hebrew law was four or five fold respectively (Ex.21,37) and twofold in other cases (see sec.4 and ch.6. sec. 4). If the thief was unable to pay for the stolen property, he may be sold into slavery to work off his penalty (Ex.22,2.2.6). To him, it may be assumed, all the rules, regarding release, apply in the same way as to all other slaves. (see ch.7). In the case of embezzled property a special enquiry was to be made before the judges (Ex.22,7).

In most European countries, offenders against property were punished with death until the nineteenth century. In England, Commentaries on the Laws of England death for pocket picking was abolished under statute as late as the reign of George IV (7 and 8 Geo.IV.c.27) (Stephens Commentary on the Law of England vol.4. p.127), and for stealing sheep some years later under the reign of William IV (Will.IV.c.62) (Blackstone, Commentaries on the Laws of England vol.4. p.276). In ancient Sparta, on the other hand, the thief who could evade being caught was looked upon as a person of ability.

There is an interesting provision that "If the thief be

found breaking in, and be smitten that he die, there should be no bloodguiltiness for him; if the sun be risen upon him there shall be bloodguiltiness for him" (Ex.22,1.3). Now, the Mosaic legislator in his anxiety to protect human life, understood well that a thief breaking in in the course of the night may be killed by the surprised owner, "the thief would do this (steal) in the dead of night, and it could not be considered murder if the owner killed the intruder who, it is assumed in both ancient and modern law, would not hesitate to take life" (Hertz Pentateuch on Ex.22,1). "To kill a man upon a sudden and violent resentment is less penal than upon cool, deliberate malice" (Blackstone Commentaries on the Laws of England vol.4. p.14).

If, however, the thief is surprised in daylight and is intentionally killed, we may safely assume, unless he attacks and is killed in self defence, that it constitutes murder and brings upon the slayer all the consequences of this crime.

In this connection, an enlightening exposition of Ex.21,37, where it is stated that the penalty for stealing a sheep is fourfold while in ch.22,3.4 it is only twofold, is given by H. Wiener in an article in the Churchman of May 1906 p.286ff. Speaking there of the evidence that comparative and historical jurisprudence can supply, he says, "everybody knows Nathan's parable; but not everybody realises that David's answer 'he shall restore the lamb fourfold' (2 Sam.12,6), is good evidence of the existence in the early days of the Monarchy of some rule which gave fourfold compensation in certain cases of theft. Still less do most readers of the Bible understand the reason for the rule, which points clearly to a certain state of civilisation, and that a very early state. Yet there are parallels in many countries, the most noteworthy being provided by Roman law, according to which at one period the fur manifestus, or thief caught in the act, had to pay a fourfold penalty; while the fur nec manifestus, or thief who was not caught in the act, only made double restitution. Now, the reason and meaning of such rules are well ascertained. They point to a state of society in which law and the power of the courts is still weak and the desire for vengeance is strong. It is to prevent the injured party from revenging himself, to avoid the possibility of a blood feud, to save the society the loss of one or more fighting men, that the bribe of a fourfold restitution is held out. There is clearly no moral distinction between a thief who is caught in the act and one who is not. The guilt is the same in both cases; but the hot and sudden danger, the danger of bloodshed are not. And so the ancient lawgiver, who is compelled to take into consideration the circumstances and feelings of the society with which he has to deal, adjusts his rules accordingly. Indeed, it is only by comparison that we can discover in what respects the laws of Moses are unique, and the lack of knowledge which would enable them to make such comparisons, has led some recent writers into astonishing theory".

Wiener thus points out that Ex.21,37 is a case for a thief caught in the act and, therefore, he pays a five or fourfold fine, while 22,2.3 is not. The context certainly supports this view. Similarly v.6. and v.8 where the depositary pays twofold. Sir Henry Maine (Ancient Law p.379), too, takes Wiener's view and says that the Anglo Saxon and Germanic codes followed this general principle.

To encourage the thief to restore the property and show regret at the act he has committed, the law lays down that if a person has stolen or misappropriated an object and restores it himself, he shall only pay one fifth of the value of the article as a fine (Lev.25,23.24; Nu.5,7). Should, however, the wronged person be dead and have no living kinsman, the restitution was

made to the Priest (Nu.5,8). A person misappropriating anything belonging to the Sanctuary had to pay for the article plus one fifth of its value (Lev.5,15,16). The removal of his neighbour's landmark is obviously stealing of land and as such is strictly prohibited (Dt.27,17). Although no penalty is stated the twofold rule probably applied, basing itself on the principle of Exodus 22,6 (see ch.2.sec.2).

The labourer is presumably meant by the statement "when thou comest into thy neighbour's vineyard, then thou mayest eat grape thy fill at thine own pleasure; but thou shalt not put any in thy vessel" (Dt.23,25). Thus, taking away of fruit is theft; the cornfield is placed in the same category.

The stealing of a human being, kidnapping, was a capital crime and was punished by death (Ex.21,16). Deuteronomy (24,7) points out that such a theft meant the forfeiture of the man's freedom, which is the worst thing that could happen to a person.

The Babylonian law, in the spirit of the C.H. par.16,17, punishes the theft of a slave with death (par.14), not because of the spirituality in the human being, but because he is the property of somebody else. Similarly, the Hittite Code (par. 19-21).

It must be observed that the Hebrew law is particularly concerned with reparation to the aggrieved party. The State does not punish nor does he seem to have a direct interest in it. Of course, this disinterestedness is in reality only on the surface since it fixes the penalty and helps to enforce it. The philosophy of the Hebrew State, aimed at basing itself upon the individual, and saw its ideal in safeguarding the interest of the individual and the family. Therefore, it is quite understandable why stealing was not considered a crime punishable by the State and why it did not seem to derive benefit from a fine imposed on the culprit. For, the individual who is wronged, would, unless the property was found, and restored to him, remain robbed.

It may well have been worth while to experiment in modern society with this provision in Hebrew legislation. A thief caught and made to work under State control until he is able to repay to the wronged party the value of the stolen property, together with an additional fine, would, I believe, think twice before committing a further burglary. It would certainly be of greatest assistance to a large number of people whose business and lives have been often ruined by audacious thefts, and whose only compensation may be in wasting hours in the courtroom. In modern society the thief, who is given a prison sentence, is not only having a good rest there, but is even able to earn for himself some money in addition to it. This Hebrew legislation applied in present times, would, perhaps, since the thief is exposed to the public, by its provision a) restrain him from stealing again in the future and b) deter others from committing the first offence.

The Mishnah has quite elaborate laws concerning theft. Their modes of restitution and the amount of fines are dealt with in B.K.7,1-6;9,2,5; Shebu.8,4 etc. It, however, recognises an act of misappropriation only then as theft, when it has been stolen in the recognised ways of acquisition. Thus, in order to be theft, he must have e.g. pulled the ox out of the owner's domain (B.K.7,6;cf.Kid.1,5). The ordinary laws of theft do not apply to immoveables, slaves (who are treated in Rabbinic law like land), documents (since they have no value of themselves except for proving something else) and holy objects (since the laws of theft in the Scriptures speak only of stealing from his neighbour) (B.M.4,9; Shebu.6,5; cf. Ter.6,4).

If one regrets his act and restores the article or its value, he pays only one fifth as a fine (B.K.9,6.7). Craftsmen or tradesmen are prohibited from taking anything of the material which is in their charge (B.K.10,10). Similar rules are applied to utensils or books (B.K.10,3). One may not buy woolen, milk, or young sheep from a shepherd, in case they are not his, nor fruit from those in charge to watch the garden (B.K.10,9). If a wronged person has died and has left no near relative to whom the property can be restored, the restitution is made to the Priest (B.K.9,11). The thief may be sold in order to make restitution for a stolen thing, but not a female thief (Sotah 3,8). If one steals any Sanctified article he would need to pay its value plus two fifths of it (Ter.6,4). For stealing a sacred vessel he may, in certain circumstances, endanger his life (Sanh.9,6). Robbery, since it is overt, is not punished, if the article is restored by the robber's own free will (B.K.9,5; B.M.4,8). The stealing of a human being is punished by strangulation (Sanh.11,1).

SECTION 3.

DAMAGES AND REPARATION.

It is, as already said before, a sacred obligation to look after the neighbour's property in his own possession, and take good care not to cause, through negligence, any damage to it or to that in his immediate vicinity. The difference between the Hebrew and e.g. the Babylonian law lies in the fact, that while the Babylonian law only interested itself in the commercial consequence of the damage, the Hebrew law preaches the sanctity of the neighbour's possessions and lifts the whole subject to the moral plane. Thus, if a man e.g. considers a certain tree worth to him half a Minah of silver he will fell it and pay according to Babylonian law the fine of half a Minah (C.H.par.59), while in Hebrew law it is morally wrong to touch anything belonging to the neighbour (Ex.20,14).

This law operates not only if the owner himself commits the wrong, but it holds him likewise responsible to see that e.g. his oxen, and we may safely assume, any other beasts, slaves, maids and other members of his family, inflict no injury or damage. The severity of the penalty is measured by the value of the object damaged. If an ox has gored a man or a woman, he shall be stoned as a sign of horror and warning, but the owner shall be free of any penalty (Ex.21,28). The owner, however, may be subject to a death penalty if he did not watch his "ox who was wont to gore in time past, and it has been testified to the owner, and he hath not kept him in". (Ex.21,29). But, as is provided immediately in the following verse, the death penalty was computable by paying a ransom to the next of kin, who then forgave the bloodshed. The amount of money to be paid would, in all probability, be fixed by judges in consultation with the family of the deceased.

Comparing the provisions of Babylonian law with the Mosaic code on this subject, a most interesting comment is made by Dr.Hertz on verse 31 of the same chapter, which reads "whether he (the ox) has gored a son or a daughter, according to this judgement (i.e. death penalty or ransom) shall it be done unto him". Hertz (Pentateuch note F.) says, this verse is rather puzzling and out of place - as, why should there be any difference whether the ox has gored the master, his wife, a son or a daughter - but can

can be understood when considering the great moral difference between the civil legislation of the Torah and the code of Hammurabi. "For example, if the jerrybuilder, by his faulty construction of a house, causes the death of the owner, the jerrybuilder is killed; but if he caused the death of the son or daughter of the owner, the not the jerrybuilder but his son or daughter is killed. This illumines a passage (Ex.21,31) in the Mosaic civil code which no one could ever explain until the discovery of the Hammurabi code Prof. B. Mueller (Die Gesetze Hammurabis und ihr Verhaeltniss zur mosaischen Gesetzgebung, Vienna 1903) reminds us that in the premosaic age if a goring ox killed a man, the owner of the ox was killed; if, however, he killed a son or a daughter then not the owner of the ox, but his son or his daughter was killed. By this one unobtrusive clause "whether he have gored a son or have gored a daughter, according to this judgement shall it be done unto him" - the Torah sweeps away an infamous character of human justice".

It is perhaps appropriate to refer here to the Cambridge Bibles' commentary on Dt.24,16 where it is recorded that King Amaziah (2K.14,6) when he put to death the assassins of his father "did not touch their children in accordance with the Mosaic injunction that children should not die for the sins of their fathers".

The penalty in the case of the goring of a slave or maid is 30 Shekels (Ex.21,32). Saalschutz (Das Mosaische Recht p.546) suggests that this verse deals with a non Israelite servant. He has no Geel with whom the owner could have come to terms. Therefore, this law is different from the one stated in verse 30. Where an ox gores another, the goring ox is sold and the money as well as the dead animal are divided (v.35). If the ox was wont to gore, the owner of the dead ox must be paid in full, in return for the dead beast (v.36). If a man kills an animal he must replace it (Lev.24,18,21). Similarly the Hittite Code (par.86,98,100-107.cf.70-86).

If a pit was left open without replacing the covering and a passing ox or ass fell therein, the owner of the pit must make good the damage. He replaces the animal by paying its price (Ex.21,34). The owner is, likewise, exhorted not to send designedly his cattle to graze in a strange field, for it obviously amounts to the stealing of the goods of his neighbour. Damage caused to the neighbour's property through fire must also be made good. In the last mentioned cases restitution must be made from the best of his field and vineyard (Ex.22,4).

A very important direction against causing wanton damage is that which is given for the contingency of war. It prohibits, in the case of a siege, the destruction of any tree that may bear fruit, since it constitutes a food for man (Dt.20,19). The cutting of any tree, at all, is only then justified if it is absolutely required that "thou shalt build bulwarks against the city that maketh war with thee until it falls" (v.20). The fruit is an essential food for the people of the besieged city as it may also become for the victors. Generally, when we consider the ancient practice of waging total war, in the sense of completely destroying and devastating all that belonged to the enemy (W.P. Patterson, article War sec.7. E.R.E.), this Biblical injunction is of the highest moral significance. The importance of trees, or woods, to protect the cities in order to prevent the expansion of the desert must have been well known in Egypt. The Zionist movement has adopted in Palestine a special afforestation policy, and millions of trees have been planted there to aid the irrigation of the country which has been so neglected by the natives.

The roof of a house was required to have a parapet to avoid

anyone falling from it (Dt.22,8). This injunction, however, can only be properly understood if it is remembered that in Eastern countries the houses have flat roofs, which also served such purposes as domestic use, sleeping and resting in the evening after the hot day. It will be noticed that the penalty for failing to build the fence is not given, and if we compare this verse with the injunction not to leave open a pit (Ex.21, 33.34), we find that on the question of penalty for injuring a human being it is silent. Perhaps the reason for it is, that the lawgiver expects special care from a human being. As this cannot be expected from an animal, the law provides the amount and time of restitution for the damage inflicted. Similarly, the Mishnah (B.K.5,6). This comparison is also of great importance to our critical examination as it shows that both Exodus and Deuteronomy have the same principle and point to one legislating authority.

Reparation generally was made in two modes; a) by the payment of money, as in the case of the slave who is killed by a beast, of fire etc., or by b) by replacing in kind, as in the case of theft, damage^{* caused} by an ox etc.

The Mishnah (B.K.1,1-6) classifies four primary causes of injury or damage which include many kindred types. They are the ox, the pit, the crop destroying beast, i.e. by treading on the crops, and the fire. It contains special regulations for damages through natural causes (Taan.3,4-8). It has also detailed rules concerning the prevention of injury to the public and its property. Thus, it regulates how to look after public ways, prescribes the size of buildings, fences, and anything projecting from them, the laws of cleanliness etc. (Shek.1,1; B.K.1,3:2,8:3,1-8; B.M.10,4.5; B.B.2,5-9.14: 3,8.18:6,7). The goring of a freeman, slave or maid is treated in Ar.3,3; B.K.2,4: 4,5. Although the ox is mostly mentioned, the same law applies equally to all beasts who cause injury or damage. The reason why the ox is mostly referred to can be explained by the fact that in early times the beast of burden was mostly the ox, who, thus, had many opportunities of causing damage and injury. For instances referring to other animals see Edu.6,1; B.K.5,1; Sanh.1,4. The sale of bears, lions or the like to the public was prohibited, because of the possible damage they may do (A.Z.1,7). Dogs must be kept on the chain (B.K.7,7). Injury caused to a beast through an open pit is discussed in B.K.5,5.7. For injury sustained by a person through falling into an open pit, no damages can be claimed since he is expected to be always on the lookout (B.K.5,6). The obligations of the owner to look after his animals and prevent them from doing damage is dealt with in B.K.1,1:3,8:4,9:6,2; Git.5,1. The degrees of damage and reparation and various cases are given in B.K.1,4:2,1-4:4,2.5.9:6,1.2:8,4; Git.5,2. Damages caused through fire are treated in B.K.2,2:3:6,4-6; B.B.2,2. It is permitted to cut the trees in front of a city for the purposes of siege (Erub.1,10).

SECTION 2.

DEPOSIT.

The subject of deposit is treated in Ex.22,6-12 and Lev.5,21-25. Generally, the deposit must be returned as due and demanded. Various categories of deposit are mentioned, and the circumstances given, in which the depositor is made liable for any property left with him.

If a person looks after money or goods belonging to his

neighbour and it is stolen from his house, he is brought before the judges to see whether he has not himself embezzled any article. If the thief is found he pays double (Ex.22,6-8). If a person takes charge of an animal and a mishap occurs to it, he shall swear that he has not put the animal to improper use, in the course of which it may have been hurt, and is then relieved from paying any damages to the owner (Ex.22,9,10). If it is stolen from him, he makes restitution (v.11), but if it died, has been torn to pieces, has hurt itself with fatal consequences, or has been driven away by marauders, he need not pay (v.12).

A strange differentiation is made here in two similar cases. We are told first in v.6 that if any article has been stolen from his house, he need not make restitution, but (v.11) if an animal be stolen the loss must be made good. Yet, if it is torn, no restitution is made (v.12). These seem indeed contradictory and most unexpected rulings. Now, while a number of suggestions, by which the difficulties can be reconciled, have been made, the arguments put forward by Saalschutz (p.868ff) are very convincing, and perfectly harmonise and justify the text. We have here a clear distinction between the stealing of inanimate and animate things, and the differences in the case of the various ways of damage to the animal are quite obvious. When the beast has died or hurt itself, was hurt by another animal or was carried away by robbers, the keeper swears that he has not contributed anything to the damage and is free from payment. It is similar when he can prove, by bringing evidence, such as any bones that have been left or a polluted skin, that the animal was torn by a wild beast, and which he was unable to prevent (v.12; cf. Gen.37,31-33 where Joseph's brothers brought his bloodstained shirt as evidence that he was torn by wild beasts; also Amos 3,12; cf. 1 Sam.17,34.35; Ezek.34,3-6). But if it was stolen from him, by day or night, it is contributed to his negligence ~~in~~ failing to look after the animal who would always be in the open field, and, therefore, he must make restitution (cf. Gen.31,39). In addition to it he will have, probably, received payment for feeding of the animal. But, when one keeps goods "and they are stolen ^{the} from his house", (v.6) the proposition is entirely different. Unlike the shepherd, who is continuously with the sheep, the guardian may not be always in the house to watch over the goods. And, since a theft here is an audacious proposition, as it meant breaking into the house, the keeper is free on giving an oath. All the cases, however, are punishable should it be proved that the keeper has either stolen the goods, it being theft, or has by his negligence helped in the death, injury or disappearance of the animal (v.8). The identity of the cases regarding the responsibility of the shepherd in Exodus 22,11 and Genesis 31,39 shed rather interesting light on the higher critical theory (Skinner, Genesis, I.C.C. p.398) that the former belongs to E. and the latter to J.

The case of a person, such as a deposit, who regrets later his misappropriation of any goods, is dealt with in Lev.5, 21-25. To encourage the free confession of a crime, a lower fine is fixed if he restores himself the article or its equivalent; it is one fifth of the value of the article. References to deposit will also be found in Jer.40,7:41,10; 2 Mac. 3,10,15:9,25; cf. Ps.31,5.

The Code of Hammurabi deals with deposit in par.112, 120-126, 263,266 and pays much attention to the commercial side of the matter. The Assyrian Code says very little on the subject (par.1,6). While the Hittite Code (par.45,75,78) treats deposit in a manner similar to that in the Pentateuch.

The Mishnah deals with the subject of deposit in greater detail. It enumerates certain commodities, and, in cases of damage, has laid down the amount and way of restitution. They

are found regarding fruit in B.M.3,7; vessels, ibid 3,9; money, ibid 3,10; the person who deals with money exchange, ibid 3,11; the condition of replaced articles, ibid, 3,12; the craftsman's care of repairs, B.K.9,3.4. The Mishnah also makes a difference in the degree of the care of the paid and the unpaid guardian (B.M.7,8). It interprets Ex.22,6.7 as referring to an unpaid guardian and v.9-12 to the paid.

CHAPTER 6.

LOANS OF PROPERTY.

- Section. 1. Debt and Interest.
- Section. 2. Release of Debts.
- Section. 3. Loans to Foreigners.
- Section. 4. Pledge, Hire and Borrowing.

SECTION I.

DEBT AND INTEREST.

The laws of debt and interest concerning the Israelite are stated in Ex. 22,24; Lev. 25,35-37, and Dt.23,20.21. Briefly, they enjoin the Israelite to lend money to his impoverished fellow Israelite without taking any interest or increase on anything lent in kind, and prohibits him from treating the debtor otherwise than a brother.

To understand the inadequate nature of the legislation and the simplicity of these laws, we must remember that they are laws of an agricultural State with no necessity for an elaborate credit system, in which, normally, debts would be reduced to a minimum. It is, therefore, not surprising that, except for the general principles, nothing else is said in regard to details, nor, so it seemed to the lawgiver, was more required by a people who would each live under his vine and fig tree. But some laws would be required, for there would be some people living in towns, and life brings all sorts of times; therefore, provisions for loans had to be made, and directions given, regarding the creditor's treatment of the debtor. The landowner, may, again, be affected by adverse circumstances, such as a bad crop (cf. Neh.5,3), disease that may hit a field, mismanagement, laziness, negligence and other factors may bring poverty. To get, then, the farmer on his feet again, he would need to borrow money, and at this stage regulations regarding debt, loans and interest would be required.

The loans generally would be small, and as such were to be considered more of the nature of aid in time of distress, than commercial transactions. The Pentateuchal laws, therefore, should more aptly be termed Poor Laws or Laws of Humanity rather than laws of debt and interest, for "thou lend money to any of my people with thee that is poor" (E.22,24).

"The present law dates from a time when... the system of commercial loans, as practiced in modern times, had not yet sprung up, and all loans were virtually charitable ones (Driver, Deuteronomy, I.C.C.p.178). In modern times money is commonly lent for commercial purposes, to enable the borrower to increase his capital and develop his business; and it is as natural and proper that a reasonable payment should be made for the loan (i.e. the hire) of a house, or any other commodity. But this use of loans is a modern development. In ancient times money was commonly lent for the relief of poverty brought about by misfortune or debt; it partook thus of the nature of charity; to take interest on money thus lent was felt to be making gain out of a neighbour's need. The loans on which interest was prohibited, were thus originally not advances of money needed for the development of a commercial industry, but advances intended for the relief of destitution" (ibid p.267).

It is the Israelite's duty to see to it that his fellow man does not die of starvation. "It was centuries, millenia, before the world outside Israel learned this elementary duty. Constantine in 315 is the first European ruler to have effected poor relief legislation, only to be repealed by Justinian two centuries later. It was not till the days of Queen Elizabeth that poor relief came to be recognised as a duty of the State.

Other states followed England's example in the nineteenth century" (Hertz Pentateuch on Lev. 25, 35). It must be pointed out at this stage, that the Mosaic conception of poor relief is entirely different from and must not be associated with the idea of alms. Although the giving of alms is nowhere mentioned in the Pentateuch, nor is it restricted and will have probably been encouraged, the loan to the poor was to be proportionate to his needs. It was intended not as an act which would only prolong the agony, the poverty of the poor, but as an institution designed to change radically the situation and help the impoverished or the person landed into debts to earn his livelihood and regain his equilibrium and self respect. There is no question, as in the Roman Law, that "if the debtor was unable to repay the sum advanced to him, the Roman creditor could imprison him in a private dungeon, chain him to a block, sell him into slavery, or kill him. With such a deification of property, it is small wonder that poverty was in itself considered dishonouring; and that pity for the poor was looked upon as a sickly sentimentality, unworthy of the free man. Seneca thinks it natural to recoil in horror from a poor man; and Plautus declares feeding the hungry to be cruelty, because it merely prolongs a life of misery". (Hertz note D. 3, 3 on Dt.).

Israel's lawgiver, considers, then, debts a result of the incidence of bad times and looks upon the debtor as a person who got into debts owing to external circumstances beyond his control, and is, therefore, entitled to special consideration from his fellow men.

The law of debt and interest is viewed as an obligation on the more prosperous to assist the poor by a free loan, according to and in relation to his needs, without treating the act as a matter of business. "As in modern times it was constantly the interest that ruined the debtor where he might have repaid the capital, so that the social evils which crushed the poor were largely associated with interest; the simplest and most effective remedy seemed to be to prohibit interest altogether. In other words, the principle involved is that wealthy men should see in the misfortunes of their fellows a claim for generous assistance and not an opportunity for adding to their wealth by exploiting the need of the unfortunate". (E. R. E., article on usury).

If we consider the subject in the light of the above presentation, we shall understand why it is enjoined that if one lends money to any of his people who is poor, he should not be to him as a creditor, neither should he take interest. The loan was to be an act of kindness. In the State as envisaged by the lawgiver, the loan would only be required by such persons as have been struck by misfortune. "If thy brother be waxen poor, and his hand fail with thee (i.e. his means fail), then thou shalt uphold him (i.e. relieve his distress); thou shalt take no usury of him or increase" (Lev. 25, 35, 36). Whether he lent him money or victuals he was to take no increase on them. The poor or debtor was to be treated as a brother. In spite of his poverty he still remains his brother and is to be treated as such in a considerate manner. The Israelite is exhorted "if there be a poor man, one of thy brethren, within thy gates... thou shalt not harden thine heart, nor shut thine hand from thy poor brother; but thou shalt surely open thine hand unto him and shalt surely lend him sufficient for his need in that which he wanteth (Dt. 15, 7, 8).

Generally, it must be remembered, that Israel was to be, as it indeed remained while in Palestine (see sec. on commerce), an agricultural community. As such, therefore, the laws of debt were, in the opinion of the legislator, considered to be quite adequate. When, however, in the first century C.E.,

the situation of the Jewish people underwent a change, when they engaged, because of new circumstances, more and more in commerce and became a trading community, the laws of debt had to be altered by the institution of a new instrument called Prosbul (see sec.2).

That in later Biblical times the taking of interest may have been practised in Israel is quite possible. Isaiah (24,2) refers bitterly to those who take usury, and Jeremiah (15,10) speaks of it in similar terms. Ezekiel, likewise, condemns the taking of interest as a great sin, and considers righteous those who take none (Ezek.18,8.13.18:22,12f.; Ps.15,5:37,26 109,11; Pr.28,8). Also, Nehemiah (5,11) calls upon the rich not to take any interest, and it has been suggested that this passage refers to a rate of interest amounting either to 1 or 12 per cent per annum. This interpretation of the text is, however, most dubious. In Egypt the institution of interest was known very early. Bocchoris introduced the loaning for interest in 718-712 B.C. at the rate of 30% per annum for loans of money, and 33+1/3% for grain. A rate of 11, 13 and 30% was taken in ancient Babylon (N.S.H.R.K., article on usury). The duty of repaying a debt is clear (see commandment not to covet other's possessions), but if the debtor cannot repay and his poverty is legitimate, he must not be treated cruelly, nor has he the right or can he be forced to sell his child into slavery.

In this connection it has been suggested that Ex.21,7, which refers to a man who has sold his daughter to be a maidservant, refers to the right of the father to discharge a debt, which he could not pay, by selling his children. This assumption, however, is quite unwarranted. Firstly, this passage is one of a group dealing with the master's conduct towards the bondwoman whom he must treat as a concubine, or, if he gives her to his son, as a daughter. Maidservants in those days were sold as concubines - a practice known among Babylonians and Assyrians and others (Driver C.B. on Ex.21,7) - "to be the secondary wife of the master or his son. In an age of polygamy the position of a concubine or second wife, was not a degrading one. Her offspring had equal rights in matters of inheritance with the children of the first wife (Dt.21,10-17)" (Hertz on Ex.21,7). Of course, she may have been sold by a father who was in financial difficulties or was unable to keep her. But there is no question, as was permitted in Assyrian (par.28,32,39,44,49) and Babylonian law (par.118), of her working off, as it were, the debt as a slave, and then^{to} let her go. Secondly, there is no reference anywhere in the Pentateuch to sons, or to a permission to seize a debtor or his family for debts or as a pledge, or that the creditor was allowed to sell the seized debtor as a slave, as in the Babylonian law (C.H.par.118), in order to realize money.

The case of the woman (2K.4,1-8) who complained to Elisha that creditors wished to seize her two children for debts of her late husband (Saalschutz suggests that the sons themselves may have contracted the debts), cannot be taken as proof for such a Hebrew provision. But it must be considered in the context of the general state of affairs in that generation, when the people's conduct throughout was wicked, and who were ruled by a blasphemous and sinning monarch. The prophet knew that, under such conditions, it was no use protesting, and resorted to a means which would help pay her debts. Nehemiah(5,1) was outraged when he heard his people complain that their children were taken away by the king and creditors. That debtors who deliberately refused to pay their debts were outlawed, is perhaps alluded to in 1.Sam.22,4, where we are told that some gathered around David in the cave of Adullam.

The question of giving security for debts has often been raised. Some maintain that land may have been offered as a security for the debt, and have raised, at the same time, the question of any possible clash between the law of the Release Year of Debts and the Jubile. On this I should like to observe that the only securities we know of are those of moveables (see sec. 4. pledges). That the lawgiver did not contemplate any land becoming security can be gauged from the fact that it is nowhere mentioned, nor, is it expected to be if we view the laws of debt from the angle from which we have discussed them earlier. And even if we believe that land was given in security, the law of the Year of Release need not at all contravene the Jubile, because the loans would, of necessity, be small ones and could easily be covered by one or two years crops. A person who has come into such a state that his loan would necessarily be very large, would, obviously, do best by selling his land, if need be, until the Jubile, and hire out his services (see ch.7.sec.3). The existence of sureties or cautioners may have been known, though the only references are in Genesis 42,37:43,9. These are, however, made in connection with the return of Benjamin. That the position of sureties must have often been very precarious can be deduced from Prov.8,1ff:11,15:20,26 etc., where a warning is issued not to become cautioner.

In the Assyrian and Babylonian Codes, as already said, the seizure of the debtor, his wife, or property are sanctioned, and since the State does not take any interest in such cases, the creditor is left to execute his own judgement. This outlook is entirely strange to Hebrew legislation. These codes, it must be remembered, do not discuss loans, debt and interest, as does the Hebrew law, from the point of view of poverty and distress, but treat it as a commercial subject. Therefore, the question of the debtor's treatment is not in the category of mercy but in that of business (A.C.tablet A. par.28-32; C.H. pars.49,50,52,100, land as security par.48).

The Mishnah deals with the whole subject in greater detail. It, of course, strictly upholds the Biblical demand not to take usury. The Rabbis also discussed at great length what is usury and increase, and what is not (B.M.5,1-11). The borrower must restore the money in the place lent to him (B.K.10,5). Bonds of indebtedness and their modes of discharge are treated in B.B.10,5-7. Creditors rank before heirs in the claim to the deceased father's property (Ket.9,2.3:10,1); but the wife ranks equally with the creditors (Ket.8,8;9,2.7.8). Cautioners are mentioned in B.B.10,7.

SECTION 2.

RELEASE OF DEBTS.

As we have seen, the attitude of the Hebrew law is that the poor must be aided; it is a moral obligation with divine sanction and threatened punishment. Alms, Moses considered, offered no solution to the state of poverty, as it only gives those who are wealthy an opportunity to evade their real obligations in helping the destitute. It only prolongs the misery of the poor, since alms do not help him to regain a self respecting economic independence, and only hastens demoralisation making him fall to the grade of a beggar. Moses believed, that the means through which alone the poor could be helped, lay in the institution of interest free loans, which, too, would not be subject to enforced repayment, should the poor not be in a

position to do so by the time the Year of Release had arrived. The possibility that the people may not want to lend, should the Release Year be approaching, has been foreseen by the lawgiver. It evoked from him an exhortation and a warning, coached in the most severe terms, not to harbour "any base thought" of refusing to assist the poor in the assumption that he would not repay (Dt.15,9.10).

I should like to observe that it is not altogether correct to say that as the law to lend was not enforceable by the State police, it would be of little value. We know, of our own days, that public opinion is an important deterrent from and stimulant to many activities and deeds. A law embodied in the code of the State, thus guiding public opinion, would have great moral force and would influence people's decisions. On the other hand, as the philosophy of the Mosaic legislator was to give every citizen personal freedom, he would not contemplate or, at any rate, favour checking, as it were, the individual bank book and judge him accordingly.

The law of release of debts was occasioned by the realisation that it may happen that the debtor will not be in a position to repay the loan; therefore, it can be termed a law of bankruptcy. It was to act "as a statute of limitation or a bankruptcy law for the poor debtor, in discharging his liability for debts contracted, and in enabling him to start life anew on an equal footing with his neighbours, without the fear that his future earnings will be seized by his former creditors" (J.E. on Sabbatical Year).

Hebrew law laid down that on the arrival of the statutory Sabbatical Year, i.e. the seventh year, a release with regard to debts shall be declared in the following manner; "every creditor shall release that which he hath lent unto his neighbour; ...and his brother; because the Lord's release hath been proclaimed". (Dt.15,2). Intended, as this law is, for an agricultural community in which every family has its homestead, the loan was an act of kindness rather than a business transaction. "The chivalry to the poor will appear more striking when we recall the barbarous treatment of the debtor in ancient Rome. If the debtor was unable to make repayment within thirty days after the expiration of the term agreed upon, the law of the Twelve Tables permitted the creditor to keep him in chains for sixty days, publicly exposing the debtor and proclaiming his debt. If no person came forward to pay the debt, the creditor might sell him into slavery or put him to death. If there were several creditors they might cut him to pieces, and take their share of the body in proportion to their debt" (Hertz on Ex.22,26).

In my opinion the Law of Release of Debts is fair and justified. For, it must never be forgotten that the person who lent was in a position to do so, ~~with~~ the obligation on the debtor to repay was equally strong; and any debtor wishing later to repay the debt, a wise step that would well pay in a small community, was certainly allowed and encouraged to do so. Keil (Biblische Archeologie 2,10) suggests that the law operated as an arrest on the collection of debts; "there is enjoined on the creditor, for this year, during which no crops could be gathered, a leaving over (i.e. respite) not remission or acquittal" (Verinder, My Neighbour's Landmark p.75 note 2). Michaelis, (Mosaisches Recht 3, par.158) too, thinks that the Year of Release granted only a postponement of payment and not a complete remission of the debt. He says that the Hebrew "Shammath" means to leave over, to rest, as in Exodus 23,11 "Tishmenah" to let it rest, not for ever, but for that year alone. He, therefore, concluded that it was prohibited to demand the payment from the debtor in the

Sabbatical year only. He maintains that since this Year of Release coincided with the Sabbatical Year on which the land lay fallow, agriculture was at a stand still, there was, then, no income in consequence thereof. All sources of income are in such a year at a low ebb, and repayment of debt could not then be expected.

These views, however, cannot be supported, simply because the exhortations in Dt. 15, 9.10 to lend to and assist the impoverished brother, in spite of the nearness of the Year of Release, and thus not to assume that the loan would not be repayed, speak plainly against it. In these admonitions the legislator shows clearly his knowledge of human weakness and, therefore, deems it necessary to issue a warning, a matter which would be uncalled for if the Release Year acted only as a postponement of payment for twelve months (cf. Neh. 10, 31). It is, further, not born out by the great efforts in the Mishnah to circumvent this law by instituting the Prosbul (see below). This would not be thinkable if traditions in any way supported the assumption of postponement only; the Rabbis would have certainly seized this evidence in order not to break a Pentateuchal commandment. Obviously, the law of the Year of Release is a very ideal institution, and if it seems to us so very impracticable, is not this proof of its earliness? Does not the necessity of the Prosbul point to the Release Year as a known ancient institution which has also at times been observed? And could anyone, who lived as late as the so called D. writer, have produced a law as that concerning debt in the Year of Release?

Hardly any evidence exists in the Bible of the observance of the Release Year law. Jeremiah (34, 8ff) rather points to a negative attitude. Alexander the Great, upon an approach made to him by the High Priest, granted to the Jews "that they might enjoy the laws of their forefathers, and might pay no tribute on the seventh year... as they did not sow thereon" (Jos. Ant. 11.8). Similarly Caius Cassar decreed in his address to Hyrcanus the Priest that all Jews "pay a tribute yearly excepting the seventh which they call the Sabbatical Year, because thereon they neither receive the fruits of the trees, nor do they sow their land", (Jos. 14, 10). It may well be taken for granted that this benevolence on the part of the Romans would not have been forthcoming had the Jews in fact not observed the laws regarding the Sabbatical Year.

No other ancient law knows of such an institution.

The Mishnah shows a clear development of this law. It became evident, as Jews were, by force of circumstances, compelled largely to abandon agricultural pursuits, that the law governing the release of debt that was intended for an agricultural state, was impossible of observance in the changed and difficult economic conditions. Furthermore, it would check all business enterprise - almost the only possible way left to the Jew of earning a livelihood. Hillel, who was the head of the highest Rabbinical Court in those days of Herod 1. found a remedy. He said, that as there already existed a law that when a person enters a monetary claim before the court it was considered, since the court would not press for repayment, that the amount due to him is now assured, so this same rule could be extended to apply to the Shemittah laws. He decreed that every Jew, having monetary claims against fellow Jews, should write a Prosbul, which is a notification to the court, on the eve of the Year of Release, that he hands the claim over to the court. (Shebi. 10; Git. 4, 3). By handing the bond of indebtedness to the court, who would collect debts at any time, the creditor secured himself against the loss of the loan. This new institution is, of course, tantamount to, at best,

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a suspension of the Release Law. The word Prosbul means "adding" a declaration; cf. Shebi 10,5. G.F. Moore (Judaism vol.3.p.80) says, that the Prosbul is thought to be a Greek legal instrument. For a full treatment of the subject see L. Blau (Prosbol im Lichte der Griechischen Papyri und der Rechtsgeschichte (Budapest 1927)).

A person who pays voluntarily his debt in the Year of Release is to be lauded (Shebi.10,8.9). In times of emergency and danger the debt may be exacted without a Prosbul, i.e. though it has not been presented to the court. (Ket.9,9).

SECTION 3.

LOANS TO FOREIGNERS.

Much prejudice has been shown and incredible ignorance betrayed by many who should have known better, about the Pentateuchal Law permitting the Israelite to take interest from the foreigner in contrast to the prohibition of doing so from the Israelite, stranger and sojourner (Lev.25,35-37; Dt.23,20.21). The Mosaic lawgiver has often been and is even to-day abused for his bias against the foreigner and his injustice towards him. The accusations, however, flow from an unintelligent reading of the Hebrew text and a complete forgetfulness and oversight of the laws and conditions envisaged to govern the country.

The Hebrew text (Dt.23,21) referring to this matter reads as follows: "unto a foreigner, NOKHRI, thou mayest lend upon usury", and in connection with the Year of Release it is said (Dt.15,3) "of a foreigner, NOKHRI, thou mayest exact it in that year". It must be remembered that there are two Hebrew words for strangers. The one, NOKHRI, means a foreigner who has come to the country for commercial reasons, and whose stay is intended to be a short one. And the other, the GER, being a resident alien, who has made Palestine his home. The NOKHRI, who came to the country for trading purposes, who, for instance, is not affected by the general land laws in the Sabbatical Year, by which, however, the Israelitish farmer is well under a disadvantage, is similarly not subject to the release of his debts in that year, nor is he expected to release others.

The GER, the resident stranger, on the other hand, is subject to, and enjoys all the privileges of, the laws of the State. The general characteristics of a NOKHRI were, that he kept continuous contact and close relations with the country of his origin, and clung, while on his commercial or other missions in Palestine, to his earlier social and political associations. The GER, however, sought to identify himself with the life of the community in which he lived, breaking with his native outlook. Thus, the former, e.g. would not be a domiciled subject with all that it conveys to our modern mind, while the latter, would (cf. 2 Sam.15,19.20; 1K.8,41-43). That the NOKHRI, foreigner, and not GER, the resident alien, was meant by the permission to take interest, is clearly born out by the statement "and if thy brother be waxen poor, and his means fail with thee; and thou shalt uphold him, though he be a stranger and a settler he shall live with thee. Take thou no interest of him or increase; but fear thy God; that thy brother may live with thee". (Lev25,35.36). "The

duty of loving the stranger is stressed 36 times in Scripture and is placed on the same level of kindness to, and protection of, the widow and orphan" (Hertz on Lev. 19, 33). "And if a GER sojourn with thee in your land, ye shall ~~not~~ do him wrong; the stranger that sojourneth with thee shall be unto you as the home born among you and thou shalt love him as thyself; for ye were strangers in the land of Egypt" (Lev. 19, 33, 34). Repeatedly the Israelite is reminded that he was a stranger in Egypt and that he is expected, knowing the feeling of a stranger, to show him the same love and consideration as to the widow, orphan and the poor. The stranger, the law provides, is to share in all the privileges granted to the poor and needy of the community. What a contrast to the treatment of the stranger by the ancient Romans and heathen peoples. Bertholet (Die Stellung der Israeliten und der Juden zu den Fremden, p. 14) says that "one of the greatest authorities on Law considers the Israelitish legislation concerning strangers an exception, in so far as they show a more considerate attitude than all others".

That was the position of the resident alien - the GER.

The NOKHRI, however, was usually the merchant in transit through Palestine. "The caravan trade was very extensive. Palestine is a most important trade route. Ezekiel (26, 2) speaks of it as the gate of the people. The foreign trader enjoyed ample protection in the laws and customs of the land. The life and possessions of the stranger were quite secure. The uninterrupted course of trade and the absence of complaints relative to acts of violence against caravans, speak plainly in favour of this fact" (Guttmann, Das Judentum und Seine Umwelt, p. 24f). Kindness and hospitality to the stranger has always been accepted in the orient, a fact so clearly recorded in the account of Abraham's reception to the three strangers (Gen. 18, 2-8). The respect for the fellow's person and property is fundamentally laid down in the ten commandments "The Mosaic Law sees in the human being the image of God and looks on murder as a sin against God, the Creator and Master of all man (Gen. 9, 5, 6)" (Realenzyklopadie fur Protestantische Theologie und Kirche vol. 1 art. on Bluttrache).

Some differentiation between the Israelite and the foreigner was inevitable. "The foreigner could not be very well expected, in a year which the Israelites celebrated as a Release Year, to remit the debt of his Israelitish debtor. Nor could he be expected to lend money to his Israelitish customer without taking interest. An equal basis for trading between Israelites and foreigners could only be obtained in such a way: that the restrictions of the Year of Release and the law of interest that were not binding on the foreigner should likewise be rescinded for the Israelites, in so far as trade with foreigners is concerned" (Guttmann p. 65).

The NOKHRI who came to Palestine from Syria - as is born out by later records regarding the commercial relationship between Tyre and Israel - would bring some of his merchandise, expecting a great number of agricultural products, of which they were in much need, in return. The lawgiver envisaged that the Israelites would sell surplus products of the land to foreigners, who would come (see sec. on commerce) for the goods, in the promise that the Israelite would be the creditor and not debtor (Dt. 15, 6: 28, 12). Thus, Deuteronomy 29, 21-23 speaks of the NOKHRI who will come from far away lands and ask in astonishment why Israel was being punished by plagues (cf. 2 Sam. 15, 19, 20; 1 K. 8, 41-43; Ps. 15, 5; 2 Chr. 6, 32, 33). Therefore, in order to secure himself, the Israelite was

allowed a) to accept a pledge from the foreigner (Dt.15,6)(the Hebrew verb Avat means to give a pledge cf.Dt.24,10-13), b) to take from him interest (Dt.23,21), and c) he was not affected by the Year of Release.

In view of what has been said above, a wise legislator could easily foresee, taking into account all the circumstances, that credit would have to be given. To take no interest under such conditions would be absolutely unthinkable, since the interest would have to compensate for the obvious risk in this type of trading. Caravans often were surprised and plundered, and security for possible losses had to be sought. In taking interest, therefore, they would find such compensation which risk involved. Generally, it must be born in mind that loans made to foreigners for commercial purposes would, of necessity, be very much bigger than those given to the poor brother. Therefore, again, the risk involved in lending large sums, had to be covered, and security sought in interest. A further point may well be mentioned. A Priori every Israelite possessed land, houses or other property which at all times were some sort of security reassuring the lender of the borrower's ability to repay. The itinerant stranger, however, was in no such position and the risk attached to his loans were great. Therefore, interest.

The Mishnah permits the Israelite to take interest from gentiles (B.M.5,6) though Gemarrah (B.M.70b; cf. Mak.24a), basing itself on Ps.28,8, cf.15,5, urges the Jew very strongly to abstain even from that. The only difficulty, however, lies in the fact that it would be impossible to carry out the latter on a mutual basis, since the non Jew could not be expected to lend the Jew money without interest.

SECTION 4.

PLEDGE, HIRE, and BORROWING.

The spirit which animated the lawgiver in the prohibitions of taking interest, manifested itself when legislating the rules concerning pledges. Consideration for the poor is again the primary concern of the legislator. In taking pledges the creditor had to spare the debtor's feelings. One may not uninvited enter the debtor's house, and, or, seize any article at will. "When thou dost lend thy neighbour any manner of loan, thou shalt not go into his house to fetch his pledge (Dt.24,10)". He should stand outside until the debtor brings out the pledge. "If thou at all take thy neighbour's garment to pledge, thou shalt restore it unto him by that the sun goeth down (Ex.22,25). No man shall take the mill or the upper millstone to pledge; for he taketh a man's life to pledge (Dt.24,6)". The pledge, in general, is a security for future payment, and must have been given for very short term loans only. Thus, Tamar secures Judah's signet, cord and staff as pledge (Gen.38,18 cf.2K.18,23;).

It is clear that only a very poor debtor will give as a pledge his "Simlah", which is believed to have been a special garment worn for protection against wind and rain and was also used by night as a blanket. The creditor was forbidden to deprive the debtor of the warmth which

this garment gave him by night (Ex.22,26; Dt.24,13; cf. Jud. 8,25; 1 Sam.21,10). The creditor was likewise forbidden to take the millstones of the hand mill which was used for making bread cf. Jer.25,10; and we may safely presume all other articles which were indispensable for earning one's livelihood, to maintain one's life "for he taketh a man's life to pledge". The millstone is thus an example of the type of tools which the creditor was not allowed to touch. Amos (2,8; cf. Prov.20,10) cries out against the wicked creditors declaring "that they lay themselves down upon clothes taken in pledge; while Job (22,6;24,9) condemns those that took the garment the borrower was wearing. Ezekiel (18,7:33,15) speaks of the justness of a person who has restored to the debtor his pledge, and promises life to the wicked who restored the pledge. Warnings against suretyship are repeatedly given (Prov.6,1:11,15:17,18:20,16:22,26f; Job 17,3; Eccus.18,12f:29,14f).

There is no question, as in Assyrian law, of human pledges; it is completely unknown to Mosaic law. I do not agree with Driver and Miles* (p.277) that "it seems legitimate to imply that the sale of the Hebrew as a bondman or bondsmaid or as a concubine was made by a father who was in debt to his creditor". It is nowhere implied in the legislation and can certainly not be derived from Exodus 21,7. For, it has always been the custom in the East to sell a daughter to be the secondary wife, whose children would have equal rights in matters of inheritance with the children of the first wife (Dt.21,15-17). At any rate, it certainly has nothing to do with pledges. Even less is Driver (p.272) entitled to admit "the possibility that children could be seized as pledges by a creditor" from the story of the poor widow whom Elisha supplied miraculously with oil (2K.4,1-7) (see sec.1). This idea is completely strange to the letter and the spirit of the Mosaic law. No extrajudicial rights, as in Babylonian law, are granted to the creditor to seize the person of the debtor or any of his family. In more modern times "among the Romans, the idea of property took precedence over the idea of humanity. Thus, if the debtor was unable to repay the sum advanced to him, the Roman creditor could imprison him in a private dungeon, chain him to a block, sell him into slavery or slay him. With such a deification of property, it is small wonder that poverty was in itself considered dishonouring; and that pity for the poor was looked upon as a sickly sentimentality, unworthy of the free man. Virgil praises one of his heroes because he never felt any sympathy with sufferers through want; Seneca thinks it natural to recoil in horror from a poor man; and Plautus declares feeding the hungry to be cruelty, because it merely prolongs a life of misery. In Israel property was never a noli me tangere; neither was the possession of the individual over it deemed to be absolute, as is shown by the Sabbatical and Tithe laws (Herta Dt.note 1.3.3).

As mentioned before, for the Assyrians and Babylonians the question of loans is that of business and, therefore, it treats the subject of pledges likewise. Human pledges were commonplace, and the seizure of children of the debtor by the creditor receive official sanction (C.H.par.49,52,113-117; A.C. tabl. A. par.39,44,48; tabl. C. par.1-4). The Babylonian law further permits the sale of a pledged person as a slave (C.H. par.118). The Hittite law has no references to the subject of pledges.

The Mishnah regulates the whole matter and allows to exact a pledge solely with the consent of the court. Certain articles only may be taken as pledge (B.M.9,13; Ar.6,3). The question of the loss of a pledge and its forceful removal are discussed in Shebu.6,7: 7,2. Immoveable property is only then considered a mortgage or security on loans, if it has been documented and correctly executed and signed by witnesses (Ed.2,3; B.B.10.8)

CHAPTER 7.

LAW OF PROPERTY CONCERNING SERVANTS.

The Hebrew conception and laws of slavery - the subject is rather complicated since the Hebrew slave was really a servant classified into categories, reference to the heathen servant will be made separately, - are very different from that of any other people who have known of that institution. There were, for instance, no special laws for freemen and slaves in society, except, if they were heathens, in matters of religion. And we can safely assume that in view of the everrecurring admonition to the Israelite "that he was a slave in Egypt", it was his bounden duty to treat the foreign slave with no less consideration than the Israelite servant.

In ancient Babylon the value of the slave lay in his being a commercial object, and, being such, consideration of humanity had no place. That is why the fugitive slave had to be restored under the threat of death. When we look at the pyramids and sphynxes in Egypt, a picture of hordes of slaves working in uncivilised conditions presents itself to our mind; the Hebrews in Egypt erected storecities (Ex.1,11.14). In Greece and Rome the bondservant's lot was even worse, and the power of the master unlimited. Aristotle, thus, regards a slave as a mere possession or chattel, and Plato records that as a result of maltreatment slaves often mutinied. The Homeric slave has no rights and is powerless against the caprice of the owner. In Rome, slaves used to have heavy weights chained to their feet to prevent their escape; while the insurrections in Rome and Sicily in 135 and 102 B.C. nearly devastated the shore of Italy. Many Romans possessed 20.000 or 30.000 slaves or more. Tacitus describes how slaves were immolated in order to ensure the secrecy of the worship of certain private gods. (For above references see Smith, Dictionary of Greek and Roman Antiquities, article slavery). Until the 13th century, slavery in England with its consequent evils and oppression was in full swing. (Vinogradoff, Villeinage in England). The brutal history of the scenes in uncle Tom's cabin are only too well known.

The Hebrew law looked upon the Slave as a person and not a thing; the slave was a human being endowed with the feelings of man, and not a chattel with whom the master could deal at will. Where other Codes, in legislating for servants, aimed at safeguarding the rights of property, the Hebrew law sought to secure the rights of humanity. There was no question, as in the Roman law, of vitae necisque, of the master's absolute powers over the life and death of the slave. If a man smite the eye, or tooth of his servant or maid he must let them go free (Ex.21,26.27). The slave was protected by law. Indeed, the State was interested that he became, as soon as possible, a free man and even provided for almost probably, degrading outward impression on his ear (Ex.21,4-6), should he refuse to take advantage of gaining his liberty. There was, in this provision, a clear manifestation of the lawgiver's aim to prevent the creation of any slave caste or classes. It was introduced to avoid the formation of a category of dependent subjects in the community and the creation of a ruling and servile class. Not only was it no breach of law, contrary

to Babylonian, Roman and other laws where it was considered a capital offence, to harbour a fugitive slave, but a categorical injunction to give him every protection and refuse to restore him to his original master (Dt.23,16). My view is, that the fugitive slave would be handed to the judges who would ascertain the reason for his escape. I do not agree with G.A. Smith or Driver *ad loc.* that it refers to foreign slaves, and is addressed to Israel. The Hebrew text does not at all warrant such a view. The language is exactly the same as used in the previous verses 13-15, which clearly refer to the individual. The injunction, to bore the servant's ear would hardly ever come into conflict with the ^{one} dealing with a runaway slave, since it must be remembered that the former ~~one~~ stayed with his master owing to his affections to the household.

The records regarding the treatment of slaves in Israel are, almost all, most favourable. The slaves were usually treated as members of the household. Abraham put all his trust in Eliezer and was, at a time, even considering to appoint him heir. (Gen.24,1ff). The opinion and advice of their servant was seriously taken by Saul, Abigail and David (1 Sam.9,6ff 25,14ff; 2 Sam.9,1ff:16,1ff). The good treatment of the slave is always recommended (Job 13,30; Prov. 30,10). There is a reference in 1 Sam.25,10 to runaway slaves, and there is no, even implied, suggestion that they are to be handed back; in fact, the passage seems to take this as a foregone conclusion.

There was no slavery in Israel in the general meaning of the word. The Hebrew language, indeed, does not possess a special word for slave. The word "Eved" means worker, hireling servant, and it expresses adequately the whole Hebrew outlook on this subject. The slave is actually a servant for a maximum number of years, who is to be treated in a clearly prescribed manner. He is, it is true, the property of his master in so far as his services are concerned, but the latter's powers over him are very limited, and he cannot deal with him as he could treat his furniture.

Every Israelite was to be an "Eved" in his estate. There was, then, nothing degrading in being called an Eved, for no Israelite could acquire a more honourable title than to be called an Eved of the Lord, "For they are my avodim whom I brought forth out of the land of Egypt" (Lev.25,42,55). The slave received his immediate freedom should he be maltreated (Ex.21,26f), and when he is freed he is to be liberally supplied by the master from his flock and products, so that he may start life afresh (Dt.15,14). "The system of slavery which is tolerated by the Torah was fundamentally different from the cruel systems of the ancient world, and even of the Western countries down to the last century. The Code of Hammurabi has penalties only for the master who destroys the tooth or eye of another man's slave. It orders that a slave's ear be cut off, if he desires freedom. As to Greece, a slave was deemed an animated tool and he could claim no more rights than a beast of burden. Agricultural labourers were chained. If at any time it was thought that there were too many slaves, they were exterminated, as wild beasts would be. Athens was an important slavemarket and the State profited from it by a tax on the sales. In Rome the slave was denied all human rights, and sentenced to horrible mutilation and even crucifixion at the whim of the master. Sick slaves were exposed to die of starvation, and there was corporate responsibility for slaves... Worlds asunder from these inhumanities and barbarities was the treatment accorded to the Hebrew slave". (Hertz on Lev.25,46). Indeed, slavery to the spirit of Moses is abominable, as is seen from the provision dealing with the slave who refused to go into freedom.. As a concession, however, to the

nature and impulses of man in those days and to the customs of ancient society, and since he dealt particularly with people who would see this institution practised by their neighbours, he permitted slavery in a very limited and mild form; "Thou shalt not rule over him with rigour" is a repeated injunction. Master and slave are kinsmen, they are both servants of God (Lev.25,55).

Dealing here with the subject from a study of property laws, I shall confine myself to discussing in this chapter the various categories of servants and their acquisition, their period of service, i.e. the period in which the slave is under the care of the master, and their manumission.

As the modern term slave brings to our mind conceptions of repression and complete subservience, and conveys an idea alien to Hebrew law, I shall in future refer to them as servants of different categories of which there were two types, Hebrews and heathens.

There are various circumstances in which one can become a servant, and the periods of service vary with their category. On the latter point much insight is gained when we deal with the provisions of the six years service, and the general release in the Year of Jubile.

Taking the various provisions in Exodus, Leviticus and Deuteronomy, we meet, on the face of it, with contradictions which are seemingly hardly reconcilable. For clearness of exposition I am stating them in full. In Exodus (21,2) we are told "If thou buy a Hebrew Servant, six years he shall serve, and in the seventh he shall go out free for nothing". Leviticus 25 has two statements; verses 9-41, dealing with a brother who has waxen poor and has sold himself, declare "as an hired servant, and as a sojourner he shall be with thee, he shall serve with thee unto the year of Jubile. Then shall he go out from thee, he and his children with him, and shall return unto his own family, and unto the possession of his fathers shall he return". Verses 47-54, however, deal with a Hebrew who has waxen poor but who sells himself to a stranger or sojourner. After calling upon the Hebrew's relations to redeem him it says (v.50) "And he (the redeemer) shall reckon with him that bought from the year that he sold himself to him unto the Year of Jubile; and the price of the sale shall be according unto the number of years; according to the time of an hired servant shall he be with him". After saying that the price of the redemption money shall depend upon the number of years yet left to the Jubile, it is continued v.53,54 "As a servant hired year by year shall he be with him: he shall not rule with rigour over him in thy sight. And if he be not redeemed by these means, then he shall go out in the year of Jubile, he, and his children with him". It will be noted that the injunction to redeem his relation is only given if he sells himself to a stranger. Some have suggested that here the lawgiver considered human nature. An impoverished Israelite would prefer to serve another Israelite rather than his own relative. While in the case of service with a non-Israelite - where it is assumed that he would be treated according to heathen custom - it was, on comparison, more beneficial for him serving his own. I think, that there was a natural concern on the part of the lawgiver to prevent a Hebrew, on religious grounds, from serving a non-Israelite, fearing the adverse influence that their homelife and observances would have on him.

Deuteronomy (15,12-15) supplements Exodus 21,2 by making it quite clear that the laws of servitude apply equally to a woman, and further exhorts to furnish the servant liberally from his flock, threshing floor and winepress when he is emancipated, thus helping him to start off on his own, should he so desire.

Generally, then, we can divide servants into the following categories.

1) Hebrew servants for a period of six years, 2) Thieves 3) Such as offer their services until the Jubile, owing to their impoverishment and the sale of their land, 4) Heathen servants, 5) Hirelings.

By the above arrangement I wish to show that the various laws referred to are not contradictory, written by different redactors, but complimentary, and that they are dealing with servants of various classes.

At the outset it must be said that, true to the general philosophy of the economic readjustments in the Hebrew State, all types of Hebrew servants are to go out free in the Year of Jubile, whether it coincided with the termination of their six years service or whether it interrupts it, in accordance with the injunction (Lev.25,10) "And ye shall hallow the fiftieth year, and proclaim liberty throughout the land unto all the inhabitants thereof; it shall be a Jubile unto you, and ye shall return every man unto his possession, and ye shall return every man unto his family". The differences in the period of service, however, arise when they remain more than six years to go to the Year of Jubile.

In such a case Exodus and Deuteronomy deal, in my opinion, with a different category of servant from that in Leviticus.

In Exodus and Deuteronomy we deal with the types of servants who are acquired for a maximum of six years, namely 1. The Hebrew servant and 2. the Thief.

1. The question has often been raised as to how such a category of servants could have arisen, since, it is argued, a priori all Israelites were to be free men. At this stage, I should like to dispose of the suggestion that it referred to a Hebrew sold for debt. Now, while I am aware of this widespread practice in olden times, and while the prophets, too, occasionally cry out against the creditors' oppressive practices in later Israelitish days, according to the Mosaic conception it is out of question. That this is so, is evident from the law of the Year of Release of Debts. Since the injunction is that the creditor must release his debtor in the Year of Release, how could the debtor be seized for his debts? Furthermore, do not all Biblical scholars agree that Dt.1-18 belong to one writer, and if so, could it have been possible that the same person would frame the law of the Year of Release of Debt, without being mindful of the fact that it has no meaning in view of the right of the creditor to seize his debtor? Let it not be forgotten that for smaller loans pledges were given. My conclusion, then, is that the servant of Exodus and Deuteronomy has nothing to do with debt.

When the Israelites left Egypt, a number of adventurers, slaves and prisoners of war, in short "a mixed multitude" (Ex.12,38) took advantage of the general panic and went up with them. These strangers, who would not have the right to claim in Palestine the same status as the Israelite, but who, having joined the Jewish camp, and becoming subject to the covenant, would in course of time become attached to the people and its social and religious life, constituted the first potential class of Hebrew servants (cf. Dt.16,11. 17,14). The hewers of wood and drawers of water point to above (Dt.29,10). Generally, this type of Hebrew servant would arise out of the home born servants of heathen descent (cf. Gen.17,23; Jer.2,14), who would be circumcised (cf. Ex.12,44), would grow up in a Hebrew atmosphere, would be educated in the Hebrew religion and customs, and would participate in its ritual. They will then be considered to all intents and purposes as Hebrews. The same would apply to the children of prisoners of war. If the master, ^{there,} for some reasons, such as possessing a large number of servants or other causes, sells the servant, he will have then to be considered, on acquisition, as a Hebrew servant. To him the law of six years service with the subsequent release will apply. Since this type of servant will have no possessions, he must be liberally supplied so that he may, if he so wishes, have means to start off on his own. So arose the Hebrew servant, he is rightly termed brother - of one religion. I am inclined to agree with Saalschutz that the accent on "Hebrew" in Ex.21,2 and Dt.15,12 - in Lev. (25,46) it is your brethren the children of Israel, also generally referred to as such - is very remarkable indeed, and it supports the theory that it refers to those who became Hebrews by faith and not by race or ancient stock. Furthermore, Dt.15,15, which reminds the Israelite that he was a servant in Egypt, lends additional strength to above point of view (cf. Ex.20,10; Dt.5,14.15).

2. Thieves. If a thief was unable to make restitution of the article he has stolen, he is to be sold to "work off", as it were, the incurred loss (Ex.22,2; see ch.5 sec.1). But if he were to steal e.g. three months before the Jubile, would the privilege of the general release apply equally to him? I should think that in the interest of justice, which was always aimed at in Hebrew law, this would not be the case. Furthermore, if the Jubile affected the thief, it would have disastrous consequences, as it would only encourage theft when the year of Jubile was approaching. Although the above fact is nowhere mentioned, it may safely be assumed that an adequate provision in the "unwritten law" existed and that it was common knowledge. A parallel to this type of servant, who was to work off debt, is found in the Assyrian code (par. 44). There it enjoins, with a fixed penalty in default, not to treat the person (who is pledged, an institution unknown to Hebrew law) as a slave.

3. While Exodus and Deuteronomy imply the servant who has no heritage, Leviticus (25,39ff) deals with a different sort of servant, namely, an impoverished Israelite who has sold his land and hires out his services along with it. Here, as I see it, we meet with the impoverished landowner who was obliged to sell his land owing to misfortune. This law could quite definitely not refer to a Hebrew servant, for it only speaks of "a man who has waxen poor". It is the case of a person who has become insolvent and must have a remedy other than becoming a slave. If he was already slave, how could he at all "have waxen poor?" This law, then, limits its operation to the free Israelite and is a measure of relief for the Israelite who has got to sell his land. This law is not a slave law, but a law giving refuge to and

protecting the impoverished man. The position of such a landless person, should the new possessor wish to eject him from the cottage he now occupies, would be a most pitiable one. His problem would be where to find shelter for himself, his wife, children and household; for, the money he will have received for the sale will have been small enough in the circumstances. Let us see what the Hebrew text (Lev. 25, 40) says, "as an hired servant and as a sojourner, he shall be with thee; he shall serve with thee unto the Year of Jubile". Now, the translation, given in most versions, for the Hebrew "Ya'abod", that he shall be "compelled" to work, has, in my opinion, no justification, for the literal meaning of Ya'abod is "he shall serve". If, then, we translate it literally, and not as is so commonly done by adding the verb "to compel", we soon find perfect justification for this verse. It contradicts nothing said in Exodus (21, 2) or Deuteronomy (15, 12-15) which speak of a different type of servant.

As I have already mentioned above, the impoverished owner who sells his land will find himself in a difficult position should he require to vacate the estate. To prevent, therefore, the new possessor from forcing the seller to leave, for whatever reason, the law in the interest of the dispossessed and not of the new owner, provides that he may serve until the Year of Jubile. However, he must not, because of his plight be treated as a slave, but "as a hired servant shall he be with thee". The new owner will, in all probability, be too glad in most cases to accept his services, for he will find in this servant a person interested, for selfish reasons, in the proper attention of the piece of ground, since at the Jubile it would be his again. The servant will thus be able to remain with his family in at least part of the house which he has previously occupied. By the time the Jubile, or any shorter date of lease, has arrived, he will find that not only has he regained his land, but he will, in addition, perhaps be able to lay aside some earned money for the day when he can start his independent life anew.

This servant, then, as we see, and as is stated in the Scriptures, is to be treated as a hireling. Let us imagine what his position would be, should he have, every six years, to move about. If the Jubile were thirty years from the year of the sale of his land, he would be compelled to move with his family every six years, a most inconvenient and onerous procedure. By staying, however, all the time at the one place his life would be more or less a settled one, and with the blast of the trumpet announcing the Jubile, the signal for his, or at least his children's, new opportunity would be given to them. He would regain his possessions and his complete independence. "Once it is recognised that the Leviticus enactment is in fact a measure of the relief of free insolvent Israelites, and belongs to a different department of law, from that which deals with slaves, all minor difficulties disappear. We see how it is that the freeman is never contemplated as desiring to stay with his purchaser, though the slave is regarded as possibly unwilling to leave his master, why the former on his release has property, while the latter has none, why the position of the respective families is so different, why we find this law placed with land laws and measures that would benefit poor peasants" (Wiener, Studies in Biblical Law p. 11).

If, then, we view the provision in Leviticus 25 in the light I have presented it, we shall better understand why it speaks of the Jubile only and not of the six years period.

Comparing now the treatment of the subject in Exodus and Deuteronomy, there is, in my opinion, no contradiction between them, but an extension in Deuteronomy of the law in Exodus. It includes the maids, not mentioned in Exodus, and enjoins

to provide all servants liberally on their release. I do not agree with Driver (Dt. I.C.C.) that in Deuteronomy 15,12-17 the maid sold for concubinage is included. This view is not warranted. And if he assumes (p.182) that "the law of Deuteronomy springs from a more advanced stage than the law of Exodus", is it not most strange that in Deuteronomy the treatment of the maid is harsher - there is no mention of her marriage right, but orders the boring of her ears - than in Exodus? As I have already mentioned before, the case of the concubine occurs in Ex.21,7-11. There she is meant to be a secondary wife, a fact so clearly stressed in v.10 where it is stated that "her food, her raiment and her duty of marriage shall he not diminish".

Another discrepancy between Exodus and Deuteronomy has been suggested, that in Exodus the slave, on refusing to go free, is led to the judges or the Sanctuary to have his ear bored, while in Deuteronomy it is done privately at home. Now, I do not agree with this suggestion. I am inclined to believe with Keil (Handbuch der biblischen Archeologie par.2.p.80) that the same thing is meant in Deuteronomy, except that the whole statement is not repeated again. Although Driver's argument, that the boring at the home of the master would show the slave's adherence to him, is a good one in general, it does not apply here, since the reasons for the boring in our case are entirely different than among other people who knew of this institution. In Israel it could not be done privately for the simple reason that coercion against the slave by the master could be suspected. The fact of the completely voluntary choice of the servant to stay with his master would have to be publicly established, in the latter's interest, for otherwise, the servant could at all times go to the judges and plead force. The boring of the ear was a device to stimulate and protect personal freedom, and to bring home to the servant how contemptible it is to wish to remain in servitude.

As already stated before, Lev.25,39ff deals with the impoverished landowner. Benzinger (p.132), however, maintains that Leviticus, being postexilic, deals with a changed position in the law of slavery, which prohibited slavery altogether for the Israelite and allowed only hirelings, whose freedom was fettered until the Jubile. But is not this contention most strange? If, as Benzinger believes, the law was changed, why should the position of the hireling have become worse than that of servants, since the former would have to serve till the Jubile, or a possible maximum of forty nine years, while the latter would serve six years at the utmost? The Mishnah speaks of servants, and if Benzinger was correct would it not have pointed out the changed attitude? Exodus and Deuteronomy speak of six years service while Leviticus provides for service until the Jubile. And the differences are quite obvious, since in the latter case the service depends upon the length of the lease of his land. It must be noted that the text in Leviticus does not express itself that he sell himself as an "Eved" (servant). It only states "he sell himself" (25,39).

Having then presented my views on the interpretation of the laws in Exodus, Deuteronomy and Leviticus, and their meaning, I do not see how they, in any way, contradict one another, nor, why Leviticus 25,39-54 must be of a late date. They are all complimentary to one another, and each add to and explain the various categories of servants.

As mentioned before, the Hebrew servant goes free after six years of service, while the service of the impoverished depends upon the period for which he has sold his land, the Jubile being the maximum. Therefore, Kent (The Message

of Israel's Lawgivers p.230) is quite wrong in concluding that "each of the two codes ignores the enactments of the other". In the Jubile, servants of all categories went free in accordance with Lev.25,10. To those who fear the economic consequences of such a step, it may be said that the manumission of ~~the~~ the Hebrew servants in the Jubile would not create such a formidable economic problem, if we remember that in that year a complete readjustment of land and the whole economic structure was to take place.

In connection with the release of servants in the seventh year it must be reiterated that it is not to be confused with the statutory Sabbatical Year - an institution dealing with the remission of debts and the lying fallow of the land. Thus, on the Sabbatical Year all the inhabitants, debtors and creditors are affected simultaneously; while the seventh year on which a servant goes free depends entirely upon the time he began his service and varies in each individual case. The circumstance that the Jubile grants universal freedom irrespective of the length of service, may perhaps be compared with a somewhat similar institution, viz. the power of amnesty in this country for prisoners, conferred on the King on the occasion of his coronation.

4. Heathen servants were acquired either through being bought from other people - the slave trade was conducted by the Phoenicians (Amos 1,9; Ezek.27,13), - or through having become prisoners of war (Jud.5,30; 1 Sam.30,3; ~~Ex.~~ 2K.5,2). These were acquired for ever (cf. Ex.21,4-6) and could be inherited (Lev.25,44-46). (The Toshav, in my opinion, will have been the foreign settler who has not in any way associated himself with the Hebrew religion, (Ex.12,45), while the Ger will have been a proselyte partaking in the ritual (Ex.12,47-49; Lev.16,29:17,8.10:18,26; Nu.9,14;15,14.26; Dt.26,11-13). The Toshav, then, was in the category of "foreigners sojourning in the land, (who if sold) were to be bondservants in the strictest sense of the word". (Chapman and Stréane, C.B. on Leviticus 25,44 -46).

5. Hirelings were either day workers (Lev.19,13; Dt.24,14.15) whose wages had to be paid at the end of the day's work, or yearly workaers Lev.25,53) who may have stayed in the master's house and got there payment after the year was round. The hirelings need not necessarily have been Israelites (Ex.12,45).

Generally, as mentioned before, the treatment of all servants must have been generous and humane. The fugitive slave was not to be handed back Dt.23,16; cf. 1K.2,39f). Unlike among other people, where any contact with slaves was taboo and where they were completely separated from society, the servant in the Israelitic State was given opportunity to participate in the festivals and other religious practices of the people (Dt.12,15:16,11). No rebellions of slaves are known to have occurred among the Hebrews, nor are slave markets known to have existed. That the laws regarding the release of servants must have been at times contravened, is evident e.g. from Jeremiah's (34,8-17) attempt to reenforce this law; cf. Neh.5,1-19. Injury to servants secured their release (Ex.21,26.27). Servants who owned property, which was possible through the injunction to provide them liberally on their release, could keep it; cf. 2Sam.9,2ff where Saul's servant even employed himself a servant.

Records concerning servants are found in a number of places in the Bible. Solomon employed 153,600 bondmen (2Chr.2,17). After the return from the exile there were 7,337 servants (Neh. 8,67). We are told (Amos 1,6) that Philistines passed on Hebrew captives to Edomites, and 1Mac.3,41; 2Mac.8,11 inform us that Jews were carried off as slaves by Ptolemy and Seleucid -

it refers, of course, to those who have been freemen, hence the eagerness of the Jews in those days to redeem them (cf. Lev. 25, 48).

The ordinary price of servants is 30 Shekels (Ex. 21, 32). Joseph's brothers got 20 Shekels, probably because he was a young lad (Gen. 37, 28). For redeeming servants between the ages of five and twenty, twenty Shekels were paid (Lev. 27, 2-8). Josephus (Ant. 12, 2.3) says that the price paid by Ptolemy for every captive Jew in Egypt was 130 Drachmas - about 30 Shekels. Nicanor tried to raise the tribute for the Romans by selling 90 Jews per talent, amounting to 30 Shekels each (2Mac. 8, 9.10).

Of the ancient laws, the Assyrian code says very little indeed on slave matters (only par. 44, see above). The Hittite law (par. 19-24) does not say how slaves were acquired. The crime of stealing a person is punished very mildly indeed (par. 18). For restoring a runaway slave reward is given, and although the punishment for harbouring him is milder than in the Babylonian law, this Hittite law here is far from the spirit of the Hebrew legislation which does not allow the restoration of a runaway slave. The mishandling of a slave is punished, but it does not give him his release (par. 2, 4, 8, 12, 14). Further laws are found in par. 93, 95, 97, 99, 101, 105, 121. The Babylonian law (C.H. 15-20) punishes the harbouring of a fugitive slave with death. It knows (par. 117) of the release of slaves for debt after three years, which, incidentally, has no similarity to the Hebrew law of Release of the Slave. This Babylonian law, however, seems only to apply to the wife and children of the debtor who could not be made to serve longer than three years.

The Mishnah has elaborate provisions on the subject of servants. In accordance with the general conceptions of acquiring property, the Hebrew servant is acquired through money or document. He goes free after six years of service, or through the intervention of the Jubile. A maid, if sold by a father, goes free on reaching puberty (since then the rights of the father over her cease). (Ket. 4, 4). A Hebrew servant with a bored ear goes free on the Jubile or at the death of his master. If, however, the master dies within the six years period, the servant is required to finish serving the heir (Kid. 1, 2). The heathen bondman is acquired through money, document or possession i.e. through serving the master. He gains his freedom by redeeming himself or through a document of manumission (Kid. 1, 3). According to the Gemarrah (Sanh. 58b), circumcision and the ritual bath do not yet make the heathen servant an Israelite. More proof was required for his complete severance with the heathen religion and customs. According to the Mishnah, a master who causes injury to a servant, must, in addition to releasing him, pay damages in the five counts, excepting loss of time, i.e. for injury, for pain, for healing and for indignity inflicted (B.K. 8, 3.5; Gem. Kid. 24). Servants could own property (B.M. 1, 5). Should one leave his property to his servant, he becomes automatically a free man (Peah 3, 8). Daughters of freed proselytised servants are also free (Bik. 1, 5). Special writs of emancipation were issued to servants (Git. 1, 4.6:9, 3). If a servant was owned by two or more people, and one emancipated him, the others can be forced to do likewise against compensation (Git. 4, 5; Ed. 1, 13; Kerit. 2, 5). A servant was held responsible for his actions (B.K. 8, 4; Yad. 4, 7). Servants must be treated like brothers (Gem. Ber. 18b; Ket. 61. Jer. B.K.). Freed servants may not, when offering first fruits, recite the special prayer which refers to Hebrew ancestry (M. Sh. 5, 14). A reference to a case of a freed woman is found in Ed. 5, 14.

CHAPTER 8.

THE FAMILY.

The matter of the power and authority of the father in Hebrew law has repeatedly been raised, and is of interest here because the question arises to what extent the members of his family were to be considered as his property with whom he could deal at will. His power over his servants was discussed in the previous chapter, so it remains to examine what is the position of his wife and children.

Generally, it must be remembered that the Hebrew lived in a strictly patriarchal society where the families consisted of "fathers' houses", thus stressing the prominent and dominant position of the head of the household. The families in such systems were very closely knit together, they were political unit~~ies~~^{ies}, and sometimes, although sons may have had even their own households, the inner connection and partial dependence on the head of the family continued to exist. The word father or Baal (master or husband) implies and characterises the man as the master of the house and the person in authority (Ex. 21, 22; Jud. 18, 29; 19, 21; 2K. 2, 12; 5, 13). Round the man groups itself a community such as wives, children, servants and property. Now, although this tribal system of life remained almost throughout Israel's sojourn in Palestine, the degree of the paternal power was strictly limited and defined by law. In Rome e.g. the father had absolute powers and could punish any members of his family with death. Even under Justinian, newly born could be killed or sold by their father. He could substitute another person to be heir. In Greece, infirm children could be exposed to die in the hills (Smith, A Dictionary of Greek and Roman Antiquities, article Patria Potestas).

There is no question in Hebrew law, as was permitted in Rome and as was practised among many ancient peoples, of ius vitae necisque, of the father's power of life and death over his children. And the fact that one or two such cases are recorded in the Bible, allows us as little to draw the conclusion that it was the general practice, as ~~we~~ would be entitled to assume a widespread practice of gangsterism in New York because of the records of some daring cases of kidnapping (vide famous case of Col. Lindenberg etc.).

Let us now see what evidence on the subject we can deduce from Biblical references a) the wife and b) the children in the family.

a) Contrary to the general belief, the position of the woman in Israel was a respected one. There is no account of her treatment as a chattel or slave, as we find it frequently among many ancient peoples. Among the Greeks, as did Socrates, and the Romans, husbands had the right to lend their wives to others. The law of Persia prescribed that the wife had to revere the husband as a God, offer to him a prayer and kiss his body every morning; the same was expected from a dependent unmarried sister of daughter (Klenker, Zend Avesta, vol. 3, p. 231). The wife's position in Hebrew law was sacred, and she was to be the helpmeet of the husband in her home. Thus, Sarah, Rebecca, Rachel, Abigail, the Shunamite woman, all point to their highly respected status in their homes (Gen.

16,5ff; 27,13f; Jud.4,4ff; 16,6ff; 1 Sam.25,14). The eulogy of the woman of virtue in the Proverbs (5,13f; 12,4; 18,22; 19,14; 31,10) point to the esteem in which the wife was to be held. The newly wed was freed from military duty in order "to cheer his wife" (Dt.24,5). The woman could also take a leading part in public life and qualify for highest office in the community as judges, prophets, and regent, such as was obtained by Miriam (Ex. 15,20), Deborah (Jud. 4,4), Huldah (2K. 22,14) and Maachah (1K. 15,13). Women did not need to live in a secluded manner but could take part in the life of the community such as is recorded of the part they played at the Red Sea (Ex. 15,20f) and in David's victory (1 Sam. 18,6f).

The wife was, in practice, acquired by the husband, ~~by~~ by paying the brideprice he legally acquired over her the rights which previously belonged to her father. He had certain rights over her; she had to look after his home and rear children, but she could not be sold into slavery, in fact he could not do this even with his secondary wife (Ex. 21,8; Dt. 21,14). Furthermore, since she was to a certain degree under his tutelage, he had the rights to annul any vow she has made (Nu. 30,4-9). The position with regard to divorce must have been such, that although the wife had little remedy should the husband wish to ~~part from her~~, he did not have, it seems, altogether a free hand in the matter. In fact, from Dt.22, 13-21; 24,1-4 it appears that he had somehow to justify his actions ~~either~~ before her family or before the judges. Generally, the wife could own property (Gen. 31,16; Jud. 4,17). Her bondwomen belong to her, and the husband has no rights over them (Gen. 16,26; 30,3.10), nor, it has been suggested by Benzinger, Archäologie, p.119, even when they have become his concubines, cf. C.H. 146; this, however, is not so clear from the passage quoted, which may be interpreted that she did require the permission of her husband to deal with the maid as she pleased.

Of the ancient codes, we find that in the Babylonian law (C.H. par. 160) the paying of the brideprice to the father, signified her acquisition by the husband. In the Assyrian law, however, (A.C. par. 30,38) the brideprice remained the property of the daughter. The case was similar in the Hittite law (C.Hit. par.29.34). In Babylon the wife owned maids (C.H. par. 146) who remained her property even if they became the husband's concubines, and she probably may have owned other property too (C.H. par.162.167.171-174). In Assyrian law, the husband has complete rights over his wife who has no protection or remedy whatsoever and who can be divorced at will (C.A. par. 37). It is not so in Babylonian law, which has legislation in favour of the wife. She has a legal claim for compensation (C.H. par. 137-140), and may even divorce her husband (C.H. par.142); for a different view on the latter see Driver and Miles, (The Assyrian Laws, p.268/9) who thinks she did not have this right. The husband has also the right to sell her as a debt slave (C.H. par. 117).

b) In virtue of his position, the father's authority over his children was great indeed. He is responsible for their upbringing and education (Ex.12,26f; 13,8f; Dt.6,4-7.20f; cf. Gen. 18,19; Dt. 4,10). He was allowed to chastise his children (Prov. 19,18; 29,17), he could annul any vow his daughter may have taken upon herself (Nu. 30,4-6). He had the right to sell her as a secondary wife (Ex. 21,7), but was prohibited from selling her for immoral purposes as was usual among slavewomen, (Lev. 19,29), nor could he depose his son from his rights as heir (Dt. 21,6; see chapter 3). It was customary for the father to find his son a wife, particularly so, because he was much interested in the type of girl who would now join his family (Gen. 21,21; 24,3ff; 28,1f; Ex.21,9; Jud. 12,9). But the son also can choose a wife for himself,

as in the case of Esau and Samson (Gen. 26,34.35; Jud. 14,2). In fact, sons seemed to have greater freedom; so we find that Jonathan challenges Saul's right to kill David (1 Sam. 20,30f, cf. Ezek. 18,14-20), Laban seems quite independent of Bethuel (Gen.24,50.55), Esau goes his own way (Gen.26,34.35) and Jacob's sons are quite confident of themselves (Gen. 34,1f). The father must have received the brideprice as equivalent for his relinquishment of right in her, as is seen from Gen. 34,12; Ex. 22,15.16; Dt. 22,29 where the father of the violated girl gets the compensation for the action of assault (cf. Dt. 22,19 for the father's personal interest). Generally, the daughter does not seem to have had a right to choose a husband (Jud.1,12; 1 Sam. 17,25), although this may not have always been the case as is recorded of Saul's daughter (1 Sam. 18,19).

The father did not have the right to put his children to death. But when a child proved rebellious, stubborn or a riotous liver, beyond the father's ability to cope with him in the ordinary way, the son was brought before the elders who, if the case was strong enough, could condemn him to death, and the penalty, which consisted of stoning, had to be executed by members of the community (Dt. 21,18-21; cf. Prov. 23,20). But, of course, the judges would examine whether the parents themselves have contributed to the son's state of mind and conduct (Ex. 20,5, 6; Dt. 5,26: 30,19). The same applied to human sacrifices. That the Israelites may learn to do this from their neighbours was in the lawgiver's mind.

The sacrificing of children is prohibited in Lev. 18,21: 20,2-5; Dt. 12,30.31: 18,10, and the prophets cry out repeatedly against some who were copying this practice from the Canaanites (2 K. 17,31: 23,10; Jer. 7,31: 19,5; Ezek. 16,20.21; Ps.106,37.38). The practice of sacrificing children "was widespread among the ancient Semites, especially in times of national danger or disaster. Recent excavations in Palestine, at Gezer, Taanach and Megiddo, have revealed regular cemeteries round the heathen altars, in which skeletons of scores of infants have been found, showing traces of slaughter and partial consumption by sacrificial fire" (Hertz, Pentateuch, on Dt. 12,31). In 2 K. 3,27 we find on record that the king of Moab sacrificed the crown prince in the presence of engaged Israelites. In later times, in Greece and Rome, human sacrifices were commonplace. Thus, in Athens, Rhodes and Lencas, human beings were sacrificed as expiation offerings for such reasons as pestilence, death etc. Young boys were sacrificed in Rome, Sparta and also in Mexico. In Greece, Rome and other parts of Italy, firstborn of tribes were devoted and often sacrificed (Smith, Dictionary of Greek and Roman Antiquities, article Sacrificium).

Now, I do not agree with Benninger (Hebraische Archeologie, p.129) that the father had life and death rights over his children. His reference to Judah's attitude towards Tamar is no basis for inferring that it was allowed by law. The practice as recorded in Gen. 38,24 is clearly prohibited in Dt. 21,18-21. The father's authority "was not despotic: he had not, as at Rome, power of life and death over his son, where vice and insubordination became intolerable; he could not take the law into his own hands, he must appeal to the decision of an impartial tribunal" (Driver, I.C.C., Deuteronomy, p.248). I certainly do not agree with Neufeld (Ancient Hebrew Marriage Laws, London 1944, p.252f) that the idea of patria potestas and the ius vitae necisque was very widespread in Israel. He does cite some references from Genesis which, perhaps, do point to some traces of life and death rights among the ancient Hebrews, but it cannot be accepted as applying to the later Israelites. In Jephthah's case (Jud. 11,34-40) Neufeld seems to ignore the following circumstances: a) that Jephthah did not at the outset pledge his daughter as a sacrifice, b) that he lamented and deeply regretted his rashness, and c) that but for the encouragement which he received from his daughter

to fulfil his vow he perhaps would not have offered her up at all. Furthermore, in view of the Deuteronomic law (21,18-21), even if we were to take it as late, he could hardly quote Zechariah 13,3 as evidence that the use of unlimited authority of the father has been "a very widespread practice". This view is, incidentally shared by such scholars as Driver (quoted above), Cook (The Laws of Moses and The Code of Hammurabi, p. 93, and Smith (Kinship and Marriage in Early Arabia, p. 66). That occasional breaches of the law may have occurred is quite possible but that the Hebrew law prohibited the practice of human sacrifices should always be stressed.

Obedience to parents is repeatedly reiterated in the Bible. Thus, for smiting or cursing parents, the death penalty may be inflicted (Ex. 21,15.17; cf. Lev. 20,9; Prov. 20,20). A mother shares in the upbringing of the young children, and it is known that in certain cases she took part in choosing the bride for her son (Gen. 24,55; Jud. 14,2). Both, father and mother are mentioned in the commandment to honour them (Ex. 20,12; 21,15.17; Lev. 19,3; 20,9; Dt. 5,16). Little is said of the position of children in the ancient codes. But we know that daughters could be pledged and were sold as slaves in Assyria (A.C. par. 39.48), and in Babylon children could be sold as debt slaves (C.H. par. 117).

The Mishnah regulates the rights of the father and the husband. The father is responsible for the education of his children (Kid. 1,7), he must care for their future (Ket. 4,14) and can be forced to provide for their upkeep (Ket. 4,6.11). He has the right to arrange the betrothal of his daughter (who is still a minor) (Kid. 2,1), but she may not be given away into service if she has reached the age of twelve and one day, the age of puberty (Ket. 3,8; 4,4; Kid. 1,2). The mother has not got the rights of the father (Sotah 3,8), nor can she sell her daughter as a secondary wife (Sotah 3,3) - a right which has also been taken away from the father by the Gemarrah (Git. 65a). The father can also take the money his daughter or son, who are minors, have earned; he can annul her vow, but when she reaches puberty, or, if she returns to her father's home as a widow or divorced, all that is hers belongs to her (B.M. 1,5; Ket. 3,8; 4,4; Niddah 5,7). He must support the daughter until her marriage (Ket. 4,11) and must provide her with a dowry (Ket. 6,6). The father can impose on his son the Nazirite observance (Sotah 3,8). The sacrificing of children is prohibited (Sanh. 7,7). Rebellious sons can be punished by the court with stoning (Sanh. 8,1; cf. 8,2-4). For smiting a parent one could be hanged, and for cursing them, stoned (Sanh. 7,8; 11,1; cf. B.K. 8,3.5), but the elaborate conditions surrounding the infliction of these punishments could hardly ever bring about the death penalty. The mother must be respected no less than the father (Kerit. 6,9). Children who are acting against the law can plead bad example by parents.

The husband must give the wife a written marriage contract (Met. 1,1f) and on divorce, which can only be given on certain grounds, such as unchastity (Git. 9,10), fruitlessness (Git. 4,8), breach of certain conditions (Kid. 2,5) idleness (Ket. 5,5) and for other defects, he must pay her what he has promised in the contract (Ket. 4,2; Git. 4,8; 5,1). Besides her dowry, which she brings and what she may later inherit, both of which belong to her husband, she may own two types of property, a) such property from which he has the usufruct and benefit without being answerable at her death or on divorce for any loss, damage or deterioration, and b) property which the husband, in the case of her death or divorce, must restore in full (Yeb. 7,1ff). In general, the rights of the wife are well safeguarded in the Mishnah (Ket. 4,7-12).

CONCLUSION.

At what conclusions have we arrived?

Having examined the various property and land laws in the Pentateuch, I am led to believe a) that from the point of view of selfconsistence they need not have been the work of more than one legislator, b) that they could well have been written by a person like Moses who was concerned with the future of his people, c) that many of these laws could not possibly have been written after the Settlement in Canaan and d) that all the laws are framed in strictest accord with the general spirit and philosophy of the Mosaic law.

Let us briefly summarise a number of the laws in support of the above statements.

Of the land laws, the Jubile and Sabbatical Year have come under the particular fire of Bible Critics. They maintain that not only do these laws to the later monarchical period or the postexilic period, but that such a policy could not be translated into practice in actual life.

Now, having the Agricultural State in mind, we find that beside the assurance "I shall command my blessing upon you in the sixth year, and it shall bring forth fruit for the three years"(Lev.25,21), or as Saalschutz puts it, I will command my blessing by the sixth year, i.e. that by the end of the sixth year the soil shall have produced enough to enable to store up for the fallow years, as Joseph did in different circumstances, a practical statesmanlike and businesslike arrangement should be taken into consideration. Palestine, as we have seen, was a fertile country yielding its fruit and corn in abundance and even providing sufficient for export, it was envisaged to be "a land of wheat and barley, and wines and figs and pomegranates, a land of oil olives and honey"(Dt.8,8). The land could clearly produce a great surplus of food well above the needs of the population, a fact we could reasonably conclude from the very great supply of corn and oil which Solomon exchanged for the wood of Tyre. Ezekiel, indeed, brings out the above even more forcefully when, describing Tyre's wealth, commerce and magnificence as it was about to fall into the hands of Nebuchadnezzar, he says "Judah and the land of Israel, they were thy traffickers: they traded for thy Merchandise, wheat and honey, oil and balm"(Ezek.27,17). Hosea(12,2) tells us of oil, one of the principal products of Palestine, having been sent as a present to Egypt. Palestine, then, was a country with an abundance of food products. And this fact should play the decisive role in enabling the Sabbatical Year and the Jubile to operate without much difficulty.

In practice it may work in the following way. The people, knowing of this institution, would be advised to store up during the six years enough corn and other products to last them for 2 years or, with the forthcoming Jubile, for 3 years. It need not involve any special exertions during the six years of work, as the land would produce sufficient for an "inner export" into the private storehouses. The passage "And ye shall eat old store long kept, and ye shall bring forth the old because of the new"(Lev.26,10) is a clear indication of the expected fertility of the holy land and the abundance of food which would enable it to be stored up for the years in which no new produce would be available. Furthermore, Israel's big cattle herds would have in the fallow years unlimited grazing opportunities, a fact which would contribute much to increased meat supply.

Looking, then, at the whole question from this angle, no great difficulties present themselves in the execution of this land policy. It could have been carried out.

Let us now turn to the benefits that may accrue from this institution. Firstly, it is a pure agricultural necessity of letting the land lie fallow and enhance its fertility. Furthermore, it would give the farmer an opportunity to attend to his building repairs, tools, irrigation, terracing the hillside etc. For, let us not forget that there was not, as in our countries, a quiet winter spell at which he could attend to all the odds and ends. Particularly in the fertile regions, various crops would be grown irrespective of seasons. But this is not all. Moses who never let the people's education and instruction out of his mind, aimed through this institution to exploit this period of relaxation for important objects. So we are told that "Moses commanded them (the Israelites), saying, at the end of every seven years, in the set time of the Year of Release... when all Israel shall appear before the Lord thy God in the place which He shall choose, thou shalt read this law, before all Israel in their hearing.... the men, the women and the little ones and thy stranger within thy gates" (Dt. 31, 10-12). The people were not to be kept in the dark, the law was to be an open book for them as for the Priests - what a contrast to the practices of Egypt, Rome and others. The Sabbatical Year was to be perhaps the "Schooling system" of those days. "Special measures were to be taken to acquaint the men, women and children, as well as the resident aliens, with the teachings and duties of the Torah" (Hertz on Lev. 25, 2). On these occasions they were to be taught the common rules of society as set out by the legislation, as well as their obligations and duties to God. They were to be instructed in the laws which govern the life of the State in which they lived. They were to know the regulations which guided their leaders, and the penalties to be inflicted for the respective breaches of the law. "Josephus rightly claims that while the best knowledge of olden times was usually treated as a secret doctrine, and confined to the few, it was the glory of Moses that he made it current coin" (Hertz on Lev. 25, 2). F. Verinder, who has written a great deal on land problems, in his book My Neighbour's Landmark remarks so poignantly when he says (p. 44) that "To place within the reach of the English worker, once in every seven years, a Year's course at a University in science and law and literature and theology, would be something like the modern equivalent for one of the advantages which the Sabbath-Year offers to the ancient Hebrew."

"In the fiftieth year, the Hebrew servant with their families are emancipated; and property, except house property in a walled city, reverts to its original owner. The Jubile institution was a marvellous safeguard against deadening poverty. By it, houses and lands were kept from accumulating in the hands of the few, pauperism was prevented, and a race of independent freeholders assured. It represented such a rare and striking introduction of morals into economics, that many have been inclined to question whether this wonderful institution was ever in actual force" (Hertz on Lev. 25, 8-55). Ewald (Antiquities of Israel, p. 378) says, "However on a close inspection nothing is more certain than that the idea of the Jubile is the last ring of a chain which only attains in it the necessary conclusion, and that the history of the Jubile, in spite of its at first seemingly strange aspects, was once for centuries a reality in the national life of Israel." "It is impossible to think that (as has sometimes been supposed) the institution of the Jubile law is a mere paper law - a theoretical completion of the system of seven; at least as far as concerns the land (for the periodical redistribution of which there are analogies in other nations), it must date

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from ancient times in Israel (Driver, An Introduction to the Literature of the Old Testament, p.57). Ezekiel speaks of its nonobservance as one of the signs that "the end is come" upon the nations; he mentions (46,16-18) the year of liberty when a gift of land must return to the original owner, and he speaks of the time when righteous princes shall not take of the people's inheritance, to thrust them out of their possession - having Naboth's case in mind. One thing emerges clearly from the institution and provisions of the Jubile and Sabbatical Year regarding property and servants. That is, that all these laws aim at creating better social conditions for those with small means. These laws are characteristic for Israel and find no parallel in Babylonian or Assyrian life and law. Generally, it should be remembered that "it is quite possible that the Mosaic land laws were absolutely right in principle, and also right in method for their own time, without holding it either necessary or desirable to graft the details of early Hebrew legislation on a later and alien western civilisation". (Verinder, My Neighbour's Landmark, p.45).

Now as to the question of the date of the Jubile law which at the same time involves the book of Leviticus. If, as, Kent (Messages of Israel's lawgivers p.233) maintains that "emerging originally from desert life, the Israelites were familiar from the first with the idea of common ownership of property", why should it be impossible that their leader would legislate for their future life a law basing itself on this very idea of an equal and equitable distribution of land? And if, as Benzinger (Hebräische Archeologie p.293) admits, that the idea of the laws of Leviticus concerning the redemption of land are also known to be similar to those in other ancient lands - except that the motive viz. that the land belongs to God, is new - why must they be late in view of the fact that the idea of the land having been given by God to the Israelites is found in virtually every book of the Bible? Now, it is certainly possible to argue that the laws in Leviticus regarding land legislation fitted a bold revolutionery at a late stage, who saw in these radical methods a means of relief from some adverse economic situation in Palestine caused by the fact that the land there had become concentrated in the hands of the few. But it is admitted by all, that originally Israel was intended to, and for a time did, conduct its life on the lines of agriculture and cattle breeding, according to the terrain to which their portion of land belonged, - a fact clearly born out by the various references found in the Bible. Saul comes straight from the furrow to take charge of and relieve the beleaguered Jabešh (1 Sam. 2,5); David and Joab occupied themselves with agriculture (2 Sam. 14,30); Elisha was taken from the herd to become successor to Elijah (1K. 19,19). The social conflict, indeed, only started later.

That the Levitical laws were intended for an agricultural society is clear, and that they could, therefore, have been framed early is most likely when we consider the preoccupation of a leader like Moses wishing to give his people, before entering their land, a set of laws which he thought would help to create the ideal State. One thing seems clear to me. If Leviticus was almost as recent as Ezekiel, how is it that when the canon of the Old Testament came to be written there was quite extensive argument whether the book of Ezekiel should at all be included. The reasons for the latter were the utter improbability and impracticability of its laws, the recency of which was uncertain and its divinity in question. It was eventually included and left as such, without it ever having become an authoritative book. The apocalyptic writings were rejected completely from the Canon, though its contents claimed to have been written by

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by Adam, Eve or Moses, because they altogether lacked ancient or traditional authority. About Leviticus, however, no such arguments and doubts existed. Not because the laws were less strict or difficult, but, because, in my opinion, they had ancient authority. If the law of the Sabbatical Year, for instance, had lacked ancient authority it would certainly not have been observed during the time of the Maccabees under great trials and hardship. The Mishnah would certainly not have instituted the Proshul in place of the law of Release of Debts, if the circumstances had been similar to those during the time of Ezekiel. While the Proshul clearly replaced the Release Law, they did not dare to doubt its authority, although it became impracticable.

Somewhat similar and equally puzzling are the various theories about the inheritance laws and the laws governing the Levirate marriage. Scholars have discovered contradictions which I fail to see. Kent (Messages of Israel's Lawgivers p.162), in one breath admits that the institution of primogeniture was well known in ancient times, and in the other he maintains that the law in Deuteronomy (21,15ff) concerning primogeniture must be late, because, quoting the case of Solomon, this law does not seem to have been observed earlier. Is it not very poor evidence indeed? Do not exceptions continuously occur, and is not a law often broken, even nowadays, by people who certainly should have known better? Is it not more reasonable to assume that Moses introduced this law as a warning, knowing that human beings often follow their feelings rather than the law? It may be noted here that the case of the rebellious son is introduced immediately after the law of primogeniture, as if to point to possible exceptions.

Pedersen (Israel, its Life and Culture p.94) assigns the reason for the legislation dealing with the inheritance of daughters in Numbers (27,1-11) to the fact "that the Levirate law has not preserved its strength as the regular solution of the problem of the inheritance of those without sons". Frankly, I entirely fail to understand such a statement. It can only come from a complete misunderstanding of the objects of these two laws. Both, true to say, arise out of the case where a man died without leaving sons behind, and aim, in accordance with the character of Hebrew law, at preserving the property within the clan. But are not the circumstances worlds asunder from one another? In the case of the Levirate law he has left no children at all, thus being put into a different category from the one who left daughters behind. Obviously, the Levirate law could not cater for such a case. But to say, when it never intended to that it has failed to offer "a regular solution of the problem of inheritance of those without sons" and, therefore, necessitated a later Priestly code to improve upon what it has not succeeded to achieve, is to betray utter misunderstanding of this law and the meaning of this institution. The further statement in Numbers 36 which only allows daughters, who inherit, to marry within the clan, is naturally a development which is not concealed. For had there been an intention to hide this development, as it may constitute a possible loophole in the unity of the Pentateuch, the story of the protest of the heads of the tribe of Manasseh would certainly have been omitted to suit the so called anonymous redactor of the Pentateuch, as he would wish to avoid later queries and doubts. The Pentateuch in general never attempts to present Israel or its leader in an ideal perspective, and even Moses' own mistake is clearly stated and his punishment mentioned.

It has also been suggested that "the Levirate was in force so long as it was thought necessary for a man to have a male heir. When the right of daughters to inherit was recognised, the law forbade the marriage of a woman to her brother-in-law" (E.R.E., article on inheritance p.307). Here once more matters have been completely mixed up. Not only has the levirate marriage law been misinterpreted, but in the above quotations two mutually contradictory statements have been made. Surely, even taking the view of the higher critical scholars, the law forbidding the marriage of a woman with her brother-in-law (Lev.18,6) was earlier than "the right of daughters to inherit" (Nu.27,1-11). And, if they were contemporary, an impossible contradiction coming from the same pen is quite unthinkable. My view is, that the Levirate law deals with a case where the widow is childless, the law in Leviticus with a case where there is issue, and Numbers with the question of inheritance of daughters. I have quoted the various opinions of higher critical scholars only to show where theorising can lead.

In the case of damages we have seen (chap.5 sec. 3) that the same principle in the law of reparation where human beings are injured, is also found in Exodus (21,33) and Deuteronomy (22,8), and Genesis (31,39) and Exodus (22,11) show an identity of practice where the responsibility of the shepherd, in the case of deposit, is concerned (chap. 5 sec. 4).

My conclusion in the case of theft, with the different treatments where the thief is caught in the act or later, led me to see no difficulty why in two laws dealing with the same subject at different places, the punishment should yet be different.

In the discussion of the laws concerning servants, a subject which does present many problems, I believe to have shown that the laws in the various books are not contradictory but complementary, consequently they could not be brought as evidence to prove the theory of different codes. In this connection I wish to mention that the laws of the Release of slaves, the statutory year of the Release of Debts and the Jubile are certainly not contradictory. For, when we consider that the lawgiver aimed at preventing the creation of perpetual creditors and debtors, it was absolutely important that the year of Jubile, at which land reverts to its original owner, should be a year on which all citizens whose freedom was fettered should regain their liberty. It was a year in which a chance was given to all to begin afresh, to make a new attempt to live a free and independent life. The Jubile would, therefore, need to follow or at least coincide (according to some opinions) with the statutory Sabbatical Year or the year of Release from Debts.

The object of this thesis is to help to clarify some of the problems which are relevant to the question of the date and origin of the Pentateuchal legislation, and in this task I hope I have been successful.

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