

## Deuteronomy and the Invention of the Torah

The people of Israel and Judah had a distinct ethnic identity long before the Law of Moses was formulated, at least as we have it in the Bible. There is general consensus that that identity took shape in the last centuries of the second millennium B.C.E., but opinions differ widely as to whether anything can be said about it with confidence.<sup>1</sup> The stele of Merneptah is usually accepted as confirming the existence of an entity called “Israel” in the late thirteenth century B.C.E., but it tells us no more than the name, and even the reading of the name is disputed.<sup>2</sup> A certain amount can be said, on the basis of archaeology, about the cultural “stuff” that characterized the central highlands in this period—housing structures, pottery, diet, and so on.<sup>3</sup> Some features of this culture were distinctive, and may have been ethnic markers (e.g., the apparent absence of pig bones suggests an avoidance of pork). The fact that the Philistines were uncircumcised may go some way to explaining the importance of circumcision in later Jewish tradition. But as Ann Killebrew acknowledges, “Attempts to locate Israel’s ethnogenesis in the small Iron I villages in the hill-country and marginal regions ultimately go back to the biblical narrative as recounted in the books of Joshua and Judges.”<sup>4</sup> These books, however, date from many centuries later.

In the first half of the first millennium B.C.E., Israel and Judah were kingdoms. Their inhabitants were largely defined by their allegiance to these kingdoms and by their distinctive, though by no means exclusive, devotion to the god YHWH. They had their distinctive customs and practices, largely centering on the cult, but these were not codified in the form of a law until late in the monarchic period. If we may judge by the biblical record, Israelite and Judean identity was largely shaped by traditional stories, which we now have in the Pentateuch and in the case of Judah also in the books of Samuel and Kings. Here again we are dependent on sources that attained their final form after the demise of the monarchies. The manner in which these stories took shape is arguably the most complicated and contested topic in all of biblical scholarship.<sup>5</sup> Our present concern, however, is not with the narratives, important though these undoubtedly were, but with the attempt to formulate the Israelite/Judahite way of life as law.

#### THE SINAI REVELATION

On the canonical biblical account, the Law was first revealed to Moses on Mount Sinai, as recorded in Exodus 19–24.<sup>6</sup> This account includes the theophany in chapter 19, the Decalogue in chapter 20, the Book of the Covenant in 20:22 to 23:33, and an account of the sealing of the covenant in chapter 24. This picture is complicated, however, by several factors.

All scholars agree that the account is composite. (Witness the number of times Moses ascends the mountain.) The older documentary hypothesis, which dominated scholarship from the late nineteenth to the mid-twentieth century, recognized brief framing elements as Priestly (Exod 19:2; 24:15b, 17–18). The account of the theophany was assigned to J or to JE, the Decalogue to E, and Exodus 24 to some combination of J and E. The Book of the Covenant was viewed as an older legal collection.<sup>7</sup> Exodus 34 was thought to contain the Yahwist Decalogue. In the words of S. R. Driver, “In its original form 34<sup>1–4, 10–28</sup> was J’s account of the original establishment of the covenant at Sinai ... and

parallel to the narrative of E in 20<sup>22-23</sup> 24<sup>3-8</sup>.<sup>8</sup> According to the neo-documentary hypothesis of the early twenty-first century, however, no law is given at Sinai in the J source. The theophany is “simply a display of Yahweh’s presence before the Israelite people.”<sup>9</sup> The covenantal laws in Exod 34:11–26, which have often been attributed to J, are now widely regarded as “a late revision and redactional adaptation of earlier texts.”<sup>10</sup> In this regard it should be noted that in some old poetic texts, such as Deut 33:1–2 or Judges 5:4–5, Sinai appears as a mountain to the south of Israel from which Yahweh marches forth as a divine warrior to aid his people. Sinai appears to have been a place of theophany before it was associated with the giving of the law.<sup>11</sup>

On all versions of the documentary hypothesis, the laws of Exodus 20–23 are firmly entrenched in E, where the mountain is called Horeb, as also in Deuteronomy.<sup>12</sup> Scholars who do not subscribe to the documentary hypothesis also recognize that this material, or most of it, is older than D and P. Erhard Blum concludes that “the synoptic evidence gives preference to some form of Exod 20 as the Vorlage of Deut 5,” although he finds indications of later transformations in Exodus 20 as well.<sup>13</sup> Likewise Reinhard Achenbach writes: “If we compare Dtn 5,23–30 with the parallel story in Ex 20,18–21 it is obvious that in the Exodus-Version we have the older tradition of the narrative.”<sup>14</sup>

#### THE BOOK OF THE COVENANT

Regardless of whether the laws in Exodus 20–23 were part of the E source or were independent traditions until they were edited into the Pentateuch or Hexateuch, we do not know the context in which they were originally formulated, or what kind of authority they enjoyed. A wide range of settings has been proposed for the Book of the Covenant. Most scholars agree that these laws were reworked in Deuteronomy, and so can hardly be later than the middle of the seventh century B.C.E.<sup>15</sup>

A terminus a quo is more difficult to establish. The laws presuppose a settled society, and obviously do not reflect the life of tribes wandering

in the wilderness. David Wright has demonstrated in detail that the Book of the Covenant, which on his view includes the Decalogue, is heavily influenced by the Laws of Hammurabi.<sup>16</sup> Wright argues that such borrowing was most likely to have occurred in the Neo-Assyrian period, “some time between 740 and 640 B.C.E. and perhaps close to 700,” a time at which Israel, in extremis, and Judah had of necessity extensive contact with Assyria.<sup>17</sup> David Carr, who accepts the dependence on Hammurabi, argues that since there is little reflection of the monarchy, the laws better fit “the still peripheral character of the monarchy in the tenth and ninth centuries than the more developed monarchy and urban situation of the late eighth to seventh centuries.”<sup>18</sup>

Carr is more optimistic than Wright “about the possibility of oral-written transmission of Mesopotamian traditions such as Hammurabi from the Levantine Bronze Age city-states where they are attested in an Iron II context.”<sup>19</sup> Yet as Wright remarks, “It is hard to imagine why and how a premonarchic or even incipient monarchic society would produce a collection resembling LH [the Laws of Hammurabi] and other cuneiform collections.”<sup>20</sup> Similarly, Jean-Louis Ska remarks that “the first redaction of the code could hardly have occurred before the 7<sup>th</sup> or 8<sup>th</sup> century B.C.E. because it requires a sufficiently developed legal and literary culture, which according to recent research could not have existed earlier.”<sup>21</sup> Ska also notes that the attention to slaves and foreigners presumes a society with great social disparities, such as is presupposed in the eighth-century prophets.<sup>22</sup>

The most remarkable feature of the laws in Exodus, however, when viewed against the background of ancient Near Eastern law, is that they are not promulgated by the order of a king, but by God. Despite occasional suggestions that the code should be associated with the founding of the Northern Kingdom by Jeroboam or the reform of Hezekiah,<sup>23</sup> it is not in fact attributed to any king. Some scholars, such as Carr, have inferred that these laws must date from a time before the monarchy was firmly established. Yet, as Douglas Knight has argued,

there is not much in the Book of the Covenant that can be traced unequivocally to the villages of ancient Israel. As a whole, this text is a literary artifact and does not necessarily bear resemblance to any actual legal formulations or practices of the period.<sup>24</sup>

A more plausible time might be found after the collapse of the Northern Kingdom. Alternatively, the laws might have been formulated by scribes or priests who were critical of the kingship in the manner of the prophets.<sup>25</sup>

The consensus of contemporary scholarship is that neither the great Mesopotamian law “codes,” such as that of Hammurabi, nor the laws of Exodus functioned as statutory law, or were binding on judges.<sup>26</sup> The king, rather than a law code, was the source of legal authority. As Martha Roth has noted, “Whether or not the king was always himself an active participant in the administration of the legal system, he was always its guardian, for the application of justice was the highest trust given by the gods to a legitimate king.”<sup>27</sup> Judges relied on their sense of the mores of a community rather than on written law. Written laws are never cited as decisive in trial scenes, and sometimes cases are decided in contradiction of what is written.<sup>28</sup> Law collections were descriptive rather than prescriptive. They may have been “an aid for applying the law, but not a rule.”<sup>29</sup> Bernard Jackson has suggested four kinds of use for written laws in the ancient Near East, including Israel: monumental, archival, didactic, and ritual.<sup>30</sup> They might serve as royal propaganda, or serve various uses for scribes or priests. But they did not function as the law of the land in a prescriptive sense. Jackson refers to the laws of Exodus as “wisdom-laws,” with the implication that they functioned in a way similar to Proverbs: they helped inform the wise person, but did not determine right conduct automatically.<sup>31</sup>

The earliest forms of judicial dispute resolution rely upon intuitions of justice against a background of custom, rather than analysis of linguistically formulated rules.<sup>32</sup>

Michael Satlow argues that the function of these laws was largely educational: “Whether or not these laws were ever enforced in Israel, they served a role in the education of Israelite scribes—the code was another text to know, copy, and learn to rework.”<sup>33</sup>

Konrad Schmid argues that this situation changed when the Book of the Covenant took on the character of divine law. “The theologizing of the law,” he writes, “was accompanied by a completely altered conception of law.”<sup>34</sup> The nonprescriptive character, he claims,

changes the moment the Book of the Covenant, especially through the introduction in *Exod* 20:22—21:1 and the insertion of the second person, becomes “divine law” and thus simultaneously the standard for the rest of the further history of law in the Old Testament, which as a consequence necessarily becomes an interpretation of the more ancient divine law.<sup>35</sup>

It remains possible, however, that the Book of the Covenant was originally conceived as divine law. It must have been proposed on some authority, and no other authoritative source of law is known in the biblical tradition. But in any case it is not apparent that these laws suddenly became prescriptive (rather than “wisdom-laws”) when they were promulgated as divine law, or that this led to a new concept of law. Rather, the character of these laws remains the same, whether they are thought to have been promulgated at Sinai or not.

The claim of divine revelation with respect to the Book of the Covenant can be seen as directly analogous to the claims of the prophets: an attempt to trump the prevailing social order by appeal to a higher authority.<sup>36</sup> But it is not apparent that the claim that these laws were divinely revealed was universally accepted, any more than the claims of the prophets that their words were “the word of the Lord.” Eventually, when these laws are embedded in the Torah they attain official status as part of the Law of Moses, but official recognition of these laws is not clearly attested before the time of Ezra. (Whether the use of the Covenant Code in Deuteronomy constitutes an acknowledgment of its authority, or rather subverts whatever authority it had, is a disputed

issue.<sup>37</sup>) We simply do not know what status either the “Book of the Covenant” in isolation or the Elohist document enjoyed (assuming that there was such a document). The mere claim that certain laws were divinely revealed was never enough to establish their authority in Israelite or Judean society, unless that claim was endorsed by an authority with the power of enforcement.

The Book of the Covenant can never have been viewed as a comprehensive statement of the requirements of the covenant in any case. Neither the Decalogue nor the Covenant Code is designed to distinguish Israel from its neighbors, although the Decalogue includes some distinctive provisions, such as aniconism and Sabbath observance. Both documents are too elliptic and random in the topics they discuss to constitute a statement of Israelite identity. They may be viewed as the earliest step toward formulating the ancestral laws of Israel or Judah, but we do not know what status they enjoyed before the compilation of the Pentateuchal Torah.

#### JOSIAH'S REFORM

A much more substantial formulation of the law of Moses is found in Deuteronomy. This is the first book of the Pentateuch to use the word *torah* in the sense of “law code” (Deut 17:19–20; 28:58; 29:19; 21:11–12).<sup>38</sup> Elsewhere in the Pentateuch the word refers to specific instructions, especially priestly instructions, such as “the *torah* of the guilt offering.”<sup>39</sup> We shall also encounter *torah* as a term for wisdom instruction in Proverbs.<sup>40</sup> In the book of Joshua we read of “the book of the law of Moses” (*sēper torāt Moshe*, Josh 8:21; 23:6), in 1 Kgs 2:3 of “the law of Moses, and “the book of the law” (*sēper ha-tōrah*) occurs in the account of the reform of Josiah in 2 Kings 22–23. Deuteronomy is the only book of the Pentateuch that is ascribed to Moses (not as author but as the record of the words that he spoke). The word “Torah” is only applied to the whole Pentateuch by extension from Deuteronomy.<sup>41</sup>

For the last two centuries, since the dissertation of W.M.L. de Wette, the nucleus of Deuteronomy has been associated with the cultic

reform of King Josiah in 621 B.C.E.<sup>42</sup> The reform is reported in 2 Kings 22–23 and 2 Chronicles 34–35. The account in Chronicles, however, cannot be regarded as a source of independent historical information.<sup>43</sup>

In 2 Kings 22–23, two distinct accounts may be distinguished: one tells of the discovery of “the book of the law,” and the other describes the cultic reforms of Josiah in 23:4–20.<sup>44</sup> There is no mention of the book of the law in 23:4–20. 2 Kgs 23:17 notes that what Josiah does at Bethel had been predicted by a “man of God,” implying that it was thereby authorized, but without referring to an authoritative book.

The content of the book is only indicated indirectly. Josiah is gravely concerned because his ancestors have not obeyed its words. The prophetess Huldah is more explicit about the cause of divine wrath:

Because they have abandoned me and have made offerings to other gods, so that they have provoked me to anger with the works of their hands, therefore my wrath will be kindled against this place. (2 Kgs 22:17)

In response to this book, however, Josiah

made a covenant before the Lord, to follow the Lord, keeping his commandments, his decrees, and his statutes, with all his heart and all his soul, to perform the words of this covenant that were written in this book. (23:3)

There can be little doubt that the “book” referred to in this passage is supposed to be Deuteronomy, in some form.<sup>45</sup> Also, when the king commands the people to observe the Passover “as prescribed in this book of the covenant” (23:21), it is clear that some form of Deuteronomy is implied, from the perspective of the author of Kings.

Whether Josiah himself was actually inspired by a law book, however, is more controversial. Norbert Lohfink claimed to identify a “short story (Kurzgeschichte) concerning the discovery of the Torah and the sealing of the covenant.”<sup>46</sup> He supposed that it was “composed shortly after the events that it relates, perhaps as a memorandum, perhaps as propaganda.”<sup>47</sup> In favor of an early date for the finding narrative is the assurance given to Josiah by Huldah that “I will gather you to

your ancestors, and you shall be gathered to your grave in peace” (2 Kgs 22:20). Lohfink comments that “it is hardly conceivable that the text would have been composed in this form after the sudden death of Josiah at Megiddo.”<sup>48</sup> Conversely, he questioned whether the “reform report” was a preexisting source. He noted that “the schematic presentation of the destruction of cult objects gives indication of relationship to Deut 9:21” (the destruction of the golden calf), and that “many, though not all, cultic matters that are mentioned hearken back to details already provided in the Books of Kings.”<sup>49</sup>

Other scholars, however, have been disposed rather to see the reform report as older and the account of the finding of the law as a later, Deuteronomistic elaboration.<sup>50</sup> Lauren Monroe suggests that the reassurance given to Josiah by Huldah relates not to the manner of his death but to his burial.<sup>51</sup> One might argue that the point of the reassurance is that Josiah would not live to see the destruction of Jerusalem, and indeed that the passage presupposes both the destruction and Josiah’s premature death.<sup>52</sup> The motif of book-finding is widely attested in ancient Near Eastern literature as a way to legitimate religious and political changes.<sup>53</sup>

#### EXCURSUS

##### *A Cultic Reform?*

Some scholars hold that the material in 2 Kgs 23:4–20 provides the oldest account of the reform.<sup>54</sup> This is largely a matter of purifying the Jerusalem temple, by expunging the cults of Baal, Asherah, and the host of heaven. Josiah is also said to depose the “pagan priests” (*kēmarîn*) who had been appointed by the kings of Judah, and to defile the high places (*bāmôtb*). The words *kēmarîn* and *bāmôtb* do not occur in Deuteronomy, but Deuteronomy 12 urges the Israelites to demolish completely all the places where the nations served their gods, “on the mountain heights, on the hills and under every leafy tree.”<sup>55</sup> They are urged to “break down their altars, smash their pillars, burn their sacred

poles with fire, and hew down the idols of their gods” (Deut 12:3; cf. 7:5). Polemic against the high places is widespread in the books of Kings, beginning with the “sin of Jeroboam” in 1 Kgs 12:31. (These high places could be devoted to Yahweh as well as to foreign gods.<sup>56</sup>) According to 2 Kgs 23:14, when Josiah defiled the high places east of Jerusalem he “broke their pillars in pieces, cut down their sacred poles, and covered the sites with human bones.” While the correspondence is not exact,<sup>57</sup> it is difficult to deny some measure of Deuteronomistic influence on the account of the reform.

Monroe acknowledges that 2 Kgs 23:4–20 “clearly conjures Deuteronomy’s destructive imagery,”<sup>58</sup> but she points out that “many of the modes of defilement that Josiah employs in his reform have no precedent in the laws of Deuteronomy.”<sup>59</sup> She notes especially “references to burning, beating, scattering, casting of dust, and defiling,” which she takes to reflect “apotropaic rites of riddance intended to contain contagion and eliminate dangerous forces,” and to be typical of Priestly traditions rather than Deuteronomy.<sup>60</sup> Moreover, the attention to the host of heaven in 2 Kings 23 is not anticipated in Deuteronomy. Monroe then proposes that an older account of the purification of the cult was redacted by a Deuteronomistic editor.<sup>61</sup> On her reconstruction, the older account dealt with the purification of the temple by the elimination of astral worship and the defilement of *bāmôth*, including those on the Mount of Olives, and the *bāmāh* in Bethel. The Deuteronomistic editors

rework the pre-existent themes of purification of the Jerusalem cult and consolidation of priestly authority into a scathing critique of Judah’s civic and religious leadership, and they re-present Josiah as the only king in Israel’s history to abide in the law of Moses “with all of his heart and all of his being.”<sup>62</sup>

#### *Archaeological Evidence*

There is unfortunately little archaeological evidence for Josiah’s reform. William Dever’s archaeological commentary on 2 Kings 23 is an attempt

to document the various practices that Josiah is said to have attacked, not to document the attack itself.<sup>63</sup> Finds that at one time seemed to provide confirmatory evidence have now been discredited. A great horned altar at Beersheba seems to have been disassembled at some time in the eighth century.<sup>64</sup> The shrine at Arad, whose destruction had been dated to the time of Josiah, is now said to have been dismantled and buried under a layer of earth some time toward the end of the eighth century, possibly during the reign of Hezekiah.<sup>65</sup> The fact that it was not restored may reflect a gradual tendency toward centralization, but not to a sudden action on the part of Josiah.<sup>66</sup> In view of the lack of primary archaeological evidence, some scholars dismiss the whole reform story as improbable.<sup>67</sup>

Christoph Uehlinger, however, finds some evidence of cultic reform in seals and bullae. Seals from the eighth and early seventh centuries often use astral symbolism. "Through this striking astral imagery, deities of the night with the moon god of Harran at their pinnacle, entered the foreground in a way scarcely known before."<sup>68</sup> By the end of the seventh century, however, astral symbolism, and also anthropomorphic and theriomorphic representation, had gone out of vogue in Judah.

The seals are at best very indirect evidence for Josiah's reform. Ultimately we can only assess the historical plausibility of the account in 2 Kgs 23:4–20, even if it was edited later. Uehlinger notes that

at least two measures appear to be directed against cult practices or institutions whose introduction in Judah must have been originally connected with the Assyrian expansion and the accompanying reception of Assyro-Aramean traditions of astral cults: the removal of the horses and chariots of the sun-god (v. 11) and the suppression of the k<sup>e</sup>marim priests (v. 5).<sup>69</sup>

These practices and institutions had lost their plausibility with the waning of Assyrian influence, and mainly concerned the Jerusalem temple. Uehlinger also allows that the importance of Asherah seems to have declined at the end of the First Temple period, although specific evidence to link the decline to the actions of Josiah is lacking.<sup>70</sup> It is

apparent from Jeremiah that goddess worship in some form (“the queen of heaven”) persisted into the sixth century, although in Jeremiah 44 women complain that they have fared less well since they ceased to venerate her.<sup>71</sup> Whether this disruption of goddess worship was due to the actions of Josiah we can only guess.

### *Centralization?*

The meager archaeological evidence adduced by Uehlinger concerns the purification rather than the centralization of the cult, and much of 2 Kgs 23:4–20 is also concerned with purificatory measures. Even Monroe, however, allows that some high places were also destroyed. The destruction of the high places in effect prohibits sacrifice outside of Jerusalem, and this has been taken, since de Wette, as the implementation of Deuteronomy 12: “Take care that you do not offer your burnt offerings at any place you happen to see. But only at the place that the Lord will choose in one of your tribes—there you shall offer your burnt offerings and there you shall do everything I command you” (Deut 12:13–14). The celebration of the Passover in 2 Kgs 23:21–23 also presupposes the centralization of the cult in Jerusalem. In the “reform report” of 23:4–20, centralization is hardly the primary concern, but it does seem to have been one of Josiah’s objectives.<sup>72</sup>

The question is whether the destruction of the high places necessarily presupposes a law of centralization such as we find in Deuteronomy 12. Reinhard Kratz has argued that

the programme of cultic centralization in Deuteronomy and the reports of putting such a centralization into practice that are found in the books of Kings are related to each other—despite all terminological and subject related differences. The programme of cultic centralization can stand for itself; the reports of its implementation, however, cannot: it is impossible to change the order of events. Deuteronomy has to come first and the verdict on kings in the annalistic frame of the book of Kings is derived from it.<sup>73</sup>

This argument, in itself, does not determine what role Deuteronomy might have played in Josiah’s reform. Kratz considers two possible

explanations for the centralization of the cult: either it is “a reaction to the downfall of Samaria and is meant to bind the northern Israelites, who have lost a political and religious home, to Judah and Jerusalem,” or it is a reaction to the downfall of Jerusalem and “has the purpose of warning against the decentralization threatened as a result.”<sup>74</sup> He favors the latter, opting for “an early exilic dating of Ur-Deuteronomy as a response to the threatening downfall.”<sup>75</sup> This reconstruction would seem to relegate Josiah’s reform to the realm of fiction, at least as it relates to the centralization of the cult. But it shows that much depends on the dating of the core of Deuteronomy. If it is an exilic composition, obviously it could not have served as the basis for a reform in 621 B.C.E. If it dates from the waning years of the Assyrian empire, then it is at least possible that it could have inspired Josiah’s reform, although that conclusion would not follow necessarily.

#### THE EARLIEST STRATUM OF DEUTERONOMY

Neither de Wette nor any of his followers supposed that all of Deuteronomy as we know it was available to Josiah. The original book of the law (Urdeuteronomium) would have consisted of laws now found in Deuteronomy 12–26. Scholars differ in their precise reconstruction, but there is a good measure of consensus on the main lines.<sup>76</sup> Two sets of literary relationships are especially important for this body of material. On the one hand, it “was a revision and supplement of the Covenant Code.”<sup>77</sup> The key to this revision was largely supplied by the centralization of the cult in Deuteronomy 12, as can be seen most clearly in the law for the Passover in Deut 16:1–8.<sup>78</sup> On the other hand, there is clear influence of Neo-Assyrian treaty texts, specifically of the so-called Vassal Treaty of Esarhaddon (VTE).<sup>79</sup> This treaty is known from at least ten copies, and was evidently widely published. The most recently discovered copy is from Tell Tayinat, in present-day Turkey.<sup>80</sup> The dependence of Deuteronomy on the Assyrian treaties was demonstrated by Moshe Weinfeld in 1972,<sup>81</sup> and has been documented repeatedly by Eckart Otto.<sup>82</sup>

The influence of the Assyrian treaties has been challenged, most forcefully by Carly Crouch.<sup>83</sup> The objections are partly that there were many treaties current, and that the allusions are not necessarily to the VTE,<sup>84</sup> and partly that the correspondences are not so explicit that the readers of Deuteronomy would recognize them. The latter point calls for some caution in speaking of the “subversive” role of Deuteronomy. The essential point, however, is that the drafters of Deuteronomy conceived of the kind of loyalty demanded by YHWH by analogy with the loyalty demanded by the Assyrian king, whether their readers recognized the allusions or not.

The Esarhaddon “treaty” is essentially an oath of loyalty imposed on Assyria’s vassals to ensure that they will recognize Esarhaddon’s son Ashurbanipal.<sup>85</sup> They are commanded to “love Ashurbanipal” as themselves: “You shall hearken to whatever he says and do whatever he commands, and you shall not seek any other king or other lord against him” (VTE 195–97). They are to teach these provisions to their sons and grandsons. Compare Deuteronomy 6:

Hear O Israel: Yahweh is our God, Yahweh alone.<sup>86</sup> You shall love Yahweh your God with all your heart, with all your life and with all your might . . . . Keep these words that I am commanding you today on your heart and teach them to your sons. (Deut 6:4–7)<sup>87</sup>

Further striking parallels are found between the warnings against prophets in Deuteronomy 13 and the injunctions against seditious talk in VTE 108, and between the curses in Deuteronomy 28 and VTE 419–30.<sup>88</sup> Crouch has shown that correspondences are not exact, and do not suggest simple translation, but most scholars have found them persuasive nonetheless.<sup>89</sup> If the Assyrian parallels are accepted, the relevant form of Deuteronomy would have included the Shema in Deut 6:5–6, and the curses in Deuteronomy 28, as well as some form of the laws in Deuteronomy 12–26.

Otto has argued that this adaptation of Assyrian propaganda served a subversive purpose. It accepted the concept of loyalty due to a sover-

eign, but applied it to Yahweh rather than to Ashurbanipal. Otto sees even the idea of cultic centralization as a reflection of Assyrian influence. As the god Ashur was worshipped in only one place, so now would Yahweh be.<sup>90</sup> Whether the Assyrian parallel is directly relevant to the program of centralization may be questioned; the Assyrians did not forbid all sacrificial worship elsewhere.<sup>91</sup> To speak of “subversion” is also an overstatement. Deuteronomy is not anti-Assyrian propaganda, but it adapts the Assyrian understanding of kingship, in good postcolonial mimicry,<sup>92</sup> and applies it to Yahweh’s relation to Israel. As Otto has noted, “The specific Judean feature with respect to the idea of covenant was . . . the creation of an alliance between the deity and the people while disregarding the king, who functioned in the Assyrian context as sole covenantal partner.”<sup>93</sup> But Deuteronomy not only disregarded the Assyrian king; it also and more immediately disregarded the king of Judah.

The use and adaptation of the Assyrian loyalty oath is highly compatible with a date around the time of Josiah.<sup>94</sup> Esarhaddon’s treaty dates to 672 B.C.E. Jeffrey Stackert infers a date ca. 670 for the earliest stratum of Deuteronomy.<sup>95</sup> This would require extraordinary alacrity on the part of the Judahite scribes. The date of the treaty provides at most a terminus a quo, and only if the dependence is on this specific treaty. But the material would have lost much of its relevance after the collapse of the Assyrian Empire. The years of Assyria’s decline, between the death of Ashurbanipal in 627 and the fall of Nineveh in 612 B.C.E., provide the most plausible setting for an expression of Judahite defiance. Philip Davies objects that “to be valid, this argument has to show that knowledge of such literary forms vanished at a certain point,”<sup>96</sup> but as Otto counters, “The decisive texts of the neo-Assyrian royal ideology had no late-Babylonian or Persian afterlife, and even if Judaeans would have had access to texts of Assyrian royal ideology in post-Assyrian times, there was no reason for them to return to this Assyrian ideology, when it was already politically overcome, outdated, and no longer of any relevance.”<sup>97</sup>

Several scholars, nonetheless, have opted for an exilic or postexilic date for the earliest stratum of Deuteronomy.<sup>98</sup> Juha Pakkala argues that “the monarch plays no role in Urdeuteronomium.”<sup>99</sup> Neither is there any indication of state organization. There is no mention of Judah, Jerusalem, or the temple itself. The entity that is addressed is Israel rather than Judah. All of this could also be said of the Book of the Covenant, and indeed king and the temple are missing from the entire Pentateuch. In Deuteronomy as we have it, all this is required by the fictive setting in the land of Moab,<sup>100</sup> and the analogy with the Book of the Covenant should caution against hasty assumptions of an exilic or postexilic date. Pakkala also points to the positive replies of the authorities in Jerusalem and Samaria to the Judeans in Elephantine in support of their request to rebuild their temple, but he misses the crucial detail that no animal sacrifice was to be practiced there. The fact that Deuteronomy speaks of “Israel” rather than Judah is not problematic in the time of Josiah. It may be an affirmation of pan-Israelite identity after the collapse of the Northern Kingdom.<sup>101</sup> Neither is it difficult to find a rationale for the centralization of the cult in the late preexilic period. In fact, the way to centralization had arguably been paved by Sennacherib’s destruction of the Judean countryside eighty years earlier.<sup>102</sup> It is true that there are few references to a reform in the literature of the Babylonian period, but Jer 8:8 (“How can you say we are wise, and we have the law of the Lord?”) seems to imply that “the law of the Lord” had recently acquired a new status, or at least was being promoted by some of Jeremiah’s contemporaries.

Of the objections raised against a Josianic date for Urdeuteronomium, the most intriguing concerns the curtailment of the powers of the king. It is generally recognized that “the king as presented here differs enormously from that of the usual ancient Near Eastern concept of the king as the chief executive in all aspects of the nation’s life.”<sup>103</sup> He must not acquire many horses, which is to say he must not equip an army, nor many wives, which is to say that he must not form alliances, nor gold and silver. Moreover, Deuteronomy undercuts the king’s judicial function.

In the words of Bernard Levinson, “The suppression of any mention of the conventional royal mandate to hear cases and to defend the rights of the marginalized is so systematic as to constitute an intentional rejection of that norm.”<sup>104</sup> This rejection is not just found in the law of the king, in Deut 17:14–20, but is entailed in the whole judicial system of Deuteronomy.<sup>105</sup> Neither is the king given any role in the cult. Rather he must have a copy of the law written for him, and he must subordinate himself to it. He becomes, in effect, a constitutional monarch, and the law becomes the definition of what it means to be an Israelite.<sup>106</sup>

Should we suppose that such a law was accepted by Josiah? Patricia Dutcher-Walls has argued that the ideology of kingship reflected in Deut 17:16–17 (the restrictions on horses, wives, and wealth) “appears to have adapted its own concept of kingship to the necessary requirements of survival for a monarch on the periphery of the major world empire of its time.” The restrictions “support a strategy of acquiescence to the domination of Assyria and an ideology that strictly defines the external relationships of the kingdom.”<sup>107</sup> This interpretation runs counter to Otto’s view of the subversive use of Assyrian ideology, but even if Otto overstates the subversive potential, there is little else in Deuteronomy to suggest acquiescence to foreign powers—in contrast to Jeremiah, where it is quite explicit.

Davies’s argument that “there are no plausible explanations why a king should accept a reform that deprives him of the essential powers of monarchy, justice and warfare”<sup>108</sup> retains its force.<sup>109</sup> Rainer Albertz suggests that “the most probable period for dating the Deuteronomic law of the kings [is] the reigns of Jehoiakim and Zedekiah, when Shaphanide scribes, who are the best candidates for having written the Deuteronomic law, resisted the ruling kings.”<sup>110</sup> In that case, we need not suppose that the king endorsed the law, or that it carried any authority. It was rather a utopian vision of an ideal Israel, proposed in stark contrast to the royal ideology of Judah.

In view of the adaptation of Assyrian ideology, the original core of Deuteronomy must be dated to the seventh century, but it is unlikely

that it was promulgated by Josiah. It seems undeniable that Josiah made some attempt to purify the Jerusalem temple and to destroy other places of worship in the vicinity of Jerusalem. Whether he derived authority for these actions from a law book is difficult to say. If he did, it need hardly have been more extensive than Deuteronomy 12. It may be that the king's cultic reforms were sufficient to win him credit with the authors of 2 Kings, who then co-opted him as the only king who observed the law. The actions attributed to Josiah in 2 Kings 22–23 do not conform perfectly to Deuteronomy. Notably, Deuteronomy accords the king no role in the cult, whereas Josiah took it upon himself to control it.<sup>111</sup> As Gordon McConville remarked, “Deuteronomy’s king is nothing like King Josiah.”<sup>112</sup> The king’s deference to the law was probably augmented in later editions of the story of the reform.

On this reconstruction, the original core of Deuteronomy was a document analogous to the older Covenant Code, which it revised and supplemented. It was a programmatic, utopian document, which proposed a view of Israelite society that was very different from the kingdom of Judah. Most importantly, however, it shifted the locus of loyalty for Israel/Judah. Hitherto, Judahites had been defined as subjects of the Davidic king. Deuteronomy professed allegiance only to God.<sup>113</sup>

#### IDENTITY FORMATION IN DEUTERONOMY

Crouch has written of Deuteronomy as an “identity formation project.”<sup>114</sup> It pursues its goal by homogenizing Israelite cult as exclusive Yahwism, centralizing that cult around a single approved place of worship, a common mythology of origins (the exodus), and the regulation of a wide array of practices. It is characterized by the language of brotherhood, conceiving Israel as a large extended family, and differentiates throughout between Israelites and foreigners. Some scholars have seen in Deuteronomy an early form of nationalist identity.<sup>115</sup> Crouch objects that

the “Israel” with which Deuteronomy is concerned is not a collection of ardent Israelites, battling for political autonomy, but a community which is in contention with itself, over itself. The focus, in other words, is not the protection of an Israelite state against one or more foreign states, but the preservation of an Israelite cultural identity threatened by exposure to and the temptation to adopt practices considered non-Israelite. This is ethnic identity, not nationalist identity.<sup>116</sup>

Nonetheless, Deuteronomy is predicated on the imminent possession of the land. In the original core of Deuteronomy the land is taken for granted. Concern for possession of the land comes to the fore more in the Deuteronomistic History, both in references to the promise to the fathers in the Deuteronomistic frame of Deuteronomy,<sup>117</sup> and, most explicitly, in the book of Joshua. If this is not nationalism, it is something akin to it, despite the prevailing view that nationalism is a modern phenomenon.<sup>118</sup>

Crouch is right, however, to insist that “the Deuteronomic entity called ‘Israel’ is not coterminous with Judah or its population.”<sup>119</sup> It is not the case that Deuteronomy is concerned with religion rather than with ethnic identity.<sup>120</sup> Rather, religion, specifically the monolatrous cult of Yahweh, is a key element in the ethnic identity that is being proposed. This proposal is instrumentalist, insofar as it advocates one view of Israelite identity rather than others. It does not represent the status quo in preexilic or exilic Judah.<sup>121</sup> But it should not be viewed in reductionist terms. Inevitably, Deuteronomy entails a redistribution of power in Judahite society, diminishing the power of both the king and the paterfamilias, but it is a comprehensive attempt to define an ethnic culture in terms of a law that is claimed to be ancestral.

#### THE EXPANSION OF DEUTERONOMY

On Otto’s reconstruction,

the real career of the book of Deuteronomy started in the exilic period with the end of the royal dynasty and its state, and the end of the temple, which was supposed to be the centre of an Israel assembled around it.<sup>122</sup>

Now it was framed as a revelation to Moses on Mount Horeb, promulgated to Israel in Moab, outside the land of Israel. It is also possible that the original laws of Deuteronomy were already assumed to be Mosaic, especially if the Book of the Covenant was already integrated into the Elohist source. Deuteronomy draws heavily on the Elohist. In the words of Joel Baden, “Virtually every aspect of E’s Horeb narrative is present in D.”<sup>123</sup> At no point are the laws in either the Book of the Covenant or Deuteronomy attributed to anyone other than Moses.

In any case, it is clear that the book of Deuteronomy was expanded and edited after the destruction of Jerusalem. The strongest evidence for an exilic redaction is found in the reformulation of the covenant in the land of Moab, in Deuteronomy 29–30, introduced in 28:69 (Heb. = 29:1 Eng.) as “the words of the covenant that the Lord commanded Moses to make with the Israelites in the land of Moab, in addition to the covenant that he had made with them at Horeb.” As Dominik Markl has argued, the rhetorical dynamics of this covenant can be viewed on two levels, as addressed to the Moab generation in the literary context of the book and also to the actual addressees in the exile:

Moses’ digression to the future in the centre of the speech (Deut 29:2–31:6—30:10) relates to the experience of the addressees—exile (esp. Deut 29:27) and restoration. (Deut 20:1–10)<sup>124</sup>

Deut 29:21–32 (22–23 Eng.) warns:

The next generation, your children who rise up after you, as well as the stranger who comes from a distant country, will see the devastation of that land and the afflictions with which the Lord has afflicted it—all its soil burned out by sulfur and salt, nothing planted, nothing sprouting, unable to support any vegetation, like the destruction of Sodom and Gomorrah.

They will then conclude: “It is because they abandoned the covenant of the Lord, the God of their ancestors, which he made with them when he brought them out of the land of Egypt” (29:24; 23 Eng.). But there is still hope:

When all these things have happened to you, the blessings and curses that I have set before you, if you call them to mind among all the nations where the Lord your God has driven you, and return to the Lord your God, and you and your children obey him with all your heart and with all your soul, just as I am commanding you today, then the Lord your God will restore your fortunes and have compassion on you, gathering you again from all the peoples among whom the Lord your God has scattered you. (Deut 30:1–3)

Markl concludes:

Deuteronomy 29–30 constructs its implicit audience as a community that is supposed to identify with experiencing a situation of exile at the turning point to restoration (29:24–30:10). These chapters encourage the people to commit themselves to the Moab covenant and the torah of Deuteronomy.

In the exilic context, without king or temple, the Law provided a new identity for the remnant of Judah.<sup>125</sup> “Israel” was still a people bound by blood ties, and closely identified with the land. Most fundamentally, however, Israel was the people bound exclusively to the God Yahweh by covenant.<sup>126</sup>

#### THE COMPOSITE TORAH

Deuteronomy was the original book of the Torah of Moses. But the Torah as it eventually took shape contained much more than the Deuteronomic law. It also included the foundational narratives of Genesis and Exodus. In the Torah as it took shape in Babylon, the Deuteronomic law was balanced by the Priestly document, which extended from creation to Sinai.<sup>127</sup> Otto regards P as “a counter-programme to the deuteronomistic book of Deuteronomy.”<sup>128</sup> It certainly had different emphases, giving far more weight to ritual and purity, which were the primary concern of priests. P agreed with D, however, that the exile was punishment for failure to keep the commandments that God gave to Moses on Mount Sinai.<sup>129</sup>

Both D and P were concerned with boundary markers that would distinguish Israel from the nations, and prevent the exiles from disappearing

through assimilation, as had happened with the exiles from the Northern Kingdom in the Assyrian period. The primary boundary marker in Deuteronomy is the exclusive allegiance to one God, Yahweh, and this is also basic to the Priestly tradition. Deuteronomy strikes a belligerent pose toward the nations inhabiting the land, although the belligerence may have been primarily directed against Israelites or Judeans who did not subscribe to the Deuteronomistic restriction of worship to Yahweh alone at his single sanctuary, “insiders who pose a threat to the hierarchy that is being asserted.”<sup>130</sup> Fatefully, however, it enjoined the Israelites: “Do not intermarry with them, giving your daughters to their sons or taking their daughters for your sons” (Deut 7:3). It also imposed ethnic restrictions on admission to “the assembly of the Lord” (23:3–8): Ammonites and Moabites were excluded, although, remarkably enough, Edomites and Egyptians were acceptable. These restrictions would be fundamental for Ezra, who would extend them to all foreigners.

The Priestly tradition contributed distinctive boundary markers that would become definitive for Judaism in the succeeding centuries. As Thomas Römer has noted, P “insists that all major ‘identity markers’ for the nascent Judaism are given during the origins stage, before entering the land and before the creation of an Israelite or Judean state.”<sup>131</sup> The Sabbath is grounded in the account of creation. Circumcision is prescribed for Abraham and his descendants (Gen 17). Neither Sabbath nor circumcision was invented as late as the Babylonian exile, but they acquired new significance as boundary markers in the exile.<sup>132</sup> The Passover is integrated into the story of the exodus. Dietary restrictions are prescribed already for Noah after the flood. The list of forbidden foods, including pork, that had most influence on later tradition is found in Leviticus 11, but the other foundation stone of later kosher laws, the prohibition of boiling a kid in its mother’s milk, is found in Exod 23:19 (in the book of the covenant) and in Deut 14:21.

Perhaps the greatest riddle of the Torah is how the diverse theologies, especially those of D and P, came to be combined in a single book. The Persians, like the Greeks after them, were content to let subject

peoples live by their ancestral laws. Whether one subscribes to the theory of Persian authorization of the Pentateuch or not,<sup>133</sup> the stamp of Persian approval was necessary if one formulation of the ancestral laws of Judah was to attain official recognition. In the late sixth and early fifth centuries there were several different models of Jewish identity on offer—not only the contrasting views of the Deuteronomists and the Priestly tradition but also a restoration movement in Judah in which the Torah does not seem to have played any important part. The party that gained Persian approval had the opportunity to impose its view as the official “ancestral law” of Judah.

It would seem that various parties, including the Deuteronomists and the Priestly tradents, joined forces in order to elevate the Torah of Moses as the official statement of Judahite ancestral law. They did not, however, attempt to iron out their differences. Rather, they created a composite document, in which their differing theologies, including the older Yahwist and Elohist ones, stood in tension. Albertz has suggested, somewhat facetiously, that the composite Torah was compiled by a commission:

With a touch of imagination one could suppose that these majority parties in the council of elders and the priestly college each appointed a commission of professional theologians and entrusted it with working out a foundation document for Israel on the basis of existing traditions which could command an internal majority and at the same time was a suitable model for the central Persian authorities.<sup>134</sup>

One might, perhaps, compare the commission appointed by Darius to collect the laws of Egypt.<sup>135</sup> But whatever the process by which the Torah was compiled, it is clear that it included diverse, unreconciled perspectives. In the words of Ska, “The Pentateuch was a ‘compromise’ between various tendencies and just like all compromises, it had to take into account different perspectives.”<sup>136</sup> There was, then, a measure of religious pluralism built into the Torah.<sup>137</sup> One might not suspect this from reading Ezra, but the potential for pluralism would be exploited in time in the ways in which the Torah was construed and interpreted.