

***Deuteronomy and de Wette:  
A Fresh Look at a Fallacious Premise***

EUGENE H. MERRILL

Dallas Theological Seminary  
*emerrill@dts.edu*

ABSTRACT

*The premise to be re-evaluated here is that Deuteronomy, in part or in its entirety, was the product of pious scribes of the Divided Monarchy period, who, recipients of certain oral and perhaps fragmentary written traditions, were intent on delivering Israel from political, social, and religious disintegration. They therefore integrated their sources and composed the book, attributing it to Moses and thus investing it with authority necessary to address in most specific terms the circumstances that threatened the existence of the covenant community.*

KEYWORDS: *Deuteronomy, W. M. L. de Wette, Divided Monarchy, Moses, Authorship*

IDEOLOGICAL AND INTELLECTUAL SETTING

*The Origin and Rise of the Critical Method*

The matter of the authorship, setting, date, and purpose of the book of Deuteronomy has preoccupied critical scholarship for more than 300 years.<sup>1</sup> Originating with Spinoza and his peers in the Enlightenment of the seventeenth century, the theory was advanced that the book was not the work of Moses but of an unknown composer—perhaps a priest, or more likely a prophet—of the seventh century B.C.E. Concurrently, in 1753 Jean Astruc, a physician layman with inordinate learning and interest in the Scriptures, produced a pamphlet which, though methodologically naïve, laid the foundation for what would become

1. See Rudolf Smend, *From Astruc to Zimmerli: Old Testament Scholarship in Three Centuries* (trans. Margaret Kohl; Tübingen: Mohr Siebeck, 2007).

known in the next century under Wellhausen as the Documentary Hypothesis.

By the late eighteenth century, alleged documents designated E (Elohistic) and J (Jahwistic) had been assigned to a post-Mosaic era but with an unclear *terminus ad quem*. As for P (Priestly), this putative source was only dimly recognized at the beginning as a separate source, and it was furthermore of uncertain provenance, though most scholars considered it late. The cutting of the Gordian knot is generally conceded to be the 18 page essay of a young German scholar, W. M. L. de Wette (1780–1849).<sup>2</sup> Among other matters, de Wette proposed that the scroll found in the Temple early in the reign of King Josiah of Judah was nothing else than the book of Deuteronomy, a long-lost treatise self-ascribed to Moses that in a most timely manner abetted the spiritual reformation that Josiah had just begun.<sup>3</sup> Though this notion long preceded de Wette's essay, his contribution solidified the hypothesis and made it common currency. Succinctly, the proposition argued that Deuteronomy must actually have been written by a scribe or scribes of a priestly or (alternatively) prophetic community, perhaps from the Northern Kingdom, whose intent was to foment a reactionary return to the ancient Mosaic faith. It thus must be dated to the early or mid-seventh century, likely in the reign of the apostate king Manasseh (696–642). With this chronological datum,

2. This was presented as a thesis to the University of Jena in 1805 with the full title "Dissertatio critico-exegetica qua Deuteronomium a prioribus Pentateuchi Libris diversum, alius cuiusdam recentioris auctoris opus esse monstratur." ["A critical-exegetical discussion which shows that Deuteronomy is a work that differs from the first books of the Pentateuch, and is the work of another, later author."] The most convenient access to the work is de Wette's *Opuscula Theologica* (Berlin: G. Reimerum, 1830, pp. 149–168). For recent essays on de Wette's thoughts on other aspects of biblical study, see Hans-Peter Mathys and Klaus Seybold (*Wilhelm Martin Leberecht de Wette. Ein Universaltheologe des 19. Jahrhunderts*; Basel: Schwabe, 2001). De Wette's singular contribution to the stream of critical scholarship is outlined well by Paul B. Harvey and Baruch Halpern ("W. M. L. de Wette's 'Dissertatio Critica...': Context and Translation," *ZABR* 14 [2008]: 47–85).

3. De Wette argued that since worship was permitted at local shrines despite the prohibition of Deuteronomy to the contrary (*Opuscula Theologica*, 163), Deuteronomy and its notion of a central sanctuary must reflect a later, Josianic era (*ibid.*, 164–165, n. 5: "Hic in collibus sacra faciendi mos posteriori tempore nefas est habitus, sed adeo inveteraverat, ut Iosias demum, Deuteronomio, tunc in templo inveno, admonitus (illium enim codicem legum ab Hilkia sacerdote inventum [2 Reg. XXII] Deuteronomium nostrum fuisse haud improbabili coniectura assequi licet) penitus eum tollere posset (2 Reg. XXIII).") However, with John Rogerson it is only fair to note that de Wette's central thesis in this respect was that Deuteronomy, because it embodied "later" theological ideas than the rest of the Pentateuch, must be a later composition and thus might be the temple scroll (*W. M. L. de Wette. Founder of Modern Biblical Criticism: An Intellectual Biography* [Sheffield: JSOT, 1992], 40–41).

Deuteronomy thus became the “Archimedian point” around which the other alleged documents could be oriented.<sup>4</sup> Deuteronomy (D) presupposed E and J, which thus must be earlier (likely ninth–eighth centuries B.C.E.) whereas P, with its priestly and temple foci, presupposed D, making P the latest of all, probably post-exilic fifth century B.C.E. The upshot was that D was asserted to be the keystone to the arch of the documentary hypothesis without which it would either collapse or become something entirely different.

This is not to say that had the hypothesis proven to be wrong, older and even contemporary critical scholarship would and will abandon its denial of Mosaic authorship of Deuteronomy and, indeed, of Torah as a whole. In fact, a great number of modern scholars have themselves reexamined the hypothesis and found it to be an inadequate way of addressing the complexities endemic to Pentateuchal studies.<sup>5</sup> Nevertheless, de Wette’s contribution continues to be acknowledged and appreciated with little fundamental alteration of its basic tenets.<sup>6</sup> The purpose of this essay is once more to raise objections to these tenets on historical, geographical, cultural/sociological, and theological grounds and to place back into the hands of Moses the text which itself testifies to his authorship.<sup>7</sup>

4. This picturesque metaphor seems to be original (with regard to Deuteronomy) to Otto Eissfeldt (*The Old Testament: An Introduction* [trans. Peter R. Ackroyd; New York: Harper & Row, 1965], 171). Thus M. J. Paul, *Het Archimedisches Punt van de Pentateuchkritiek*. Gravenhage: Uitgeverij Boekencentrum, 1988, 8.

5. Duane L. Christensen, “Deuteronomy in Modern Research: Approaches and Issues,” in *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy* (ed. Duane L. Christensen; SBTS 3; Winona Lake, IN: Eisenbrauns, 1993), 3–17. See also Moshe Weinfeld, “Deuteronomy: The Present State of Inquiry,” in *ibid.*, 21–35; Norbert Lohfink, “Recent Discussion on 2 Kings 22–23: The State of the Question,” in *ibid.*, 36–61.

6. Thus Rudolph Smend, “Ein Theologe zwischen den Fronten,” in Hans-Peter Mathys and Klaus Seybold, *Wilhelm Martin Leberecht de Wette. Ein Universaltheologe des 19. Hundert* (Basel: Schwabe, 2001), 25: “Wie sieht die Bilanz auf seiten de Wette aus? In vieler Hinsicht, wie sich fast von selbst versteht, sehr positiv.”

7. Passages such as Moses’ account of his own death (Deut 34:5–12; cf. 33:1) have since Talmudic times been denied to Moses but examples like this are exceptional and usually self-evident (cf. Sifre Deuteronomy 357, 427). For a proponent of “essential” Mosaic authorship of the Pentateuch who concedes that it evidences anachronistic adjustments and other types of minor redaction, see John H. Sailhamer, *The Meaning of the Pentateuch* (Downers Grove, IL: IVP Academic, 2009), 48–54.

*De Wette: His Times, Circumstances, and Motivations*<sup>8</sup>

By 1780, the year of de Wette's birth near Weimar, Germany, Jean Astruc had published his brief work on the sources of Genesis, and A. Geddes, J. S. Vater, J. G. Eichhorn, and other scholars had begun to pursue the logical extension of the so-called documentary hypothesis that followed in its wake. Their influence is obvious in de Wette's *Dissertatio* submitted to the University of Jena in 1805 and in his subsequent publications.<sup>9</sup> De Wette's methods and conclusions were in line with prevailing hypotheses regarding the identification and isolation of Pentateuchal sources except for his almost incidental linking of Deuteronomy to the temple scroll found in the course of the aforementioned reformation of King Josiah, a view held, as we have noted, by a minority of other scholars as well.<sup>10</sup>

8. The most authoritative biographical study of de Wette is Rogerson, *W. M. L. de Wette. Founder of Modern Biblical Criticism*. See note 3 for full documentation.

9. See Wilhelm Martin, *Leberecht de Wette, A Critical and Historical Introduction to the Canonical Scriptures of the Old Testament* (trans. Theodore Parker; Boston: Charles C. Little and James Brown, 1850), especially the notes on 161–64.

10. The identification of the scroll as Deuteronomy was in a footnote incidental to de Wette's main point in the *Dissertatio*, which was to demonstrate that the book was much later than E and J and thus not Mosaic. He argued that since worship was permitted at local shrines despite the prohibition of Deuteronomy to the contrary (*Diss.*, p. 12; *Opuscula Theologica*, p.163), Deuteronomy and its notion of a central sanctuary must reflect a later, Josianic era (*Diss.*, 14-15; *Opuscula*, pp. 164-165, n. 5: "Hic in collibus sacra faciendi mos posteriori tempore nefas est habitus, sed adeo inveteraverat, ut Iosias demum, Deuteronomio, tunc in templo invento, admonitus (illium enim codicem legum ab Hilikia sacerdote inventum [2 Reg. XXII] Deuteronomium nostrum fuisse haud improbabili coniectura assequi licet) penitus eum tollere posset (2 Reg. XXIII) ["This custom of making sacrifices on the high places was considered sacrilegious at a later time, but the practice had become so ingrained that Josiah was able (*sic*) to thoroughly eliminate it, as admonished by Deuteronomy—this having been discovered in the temple at the time that the code of laws found by the priest Hilikia (2 Kgs 22) was our Deuteronomy one may conclude by a far from improbable conjecture."]) For the translation see Harvey and Halperin, "W. M. L. de Wette's *Dissertatio*," 82. As noted above, however, with Rogerson one should reiterate that de Wette's central thesis was that Deuteronomy was likely to be the temple scroll precisely because it embodied 'later' theological ideas than the rest of the Pentateuch (Rogerson, *W. M. L. de Wette*, 40-41). However, in his later *Beiträger zur Einleitung in das Alte Testament* (1806–1807) de Wette revised his opinion, concluding that the scroll was not the genuine Deuteronomy after all but was likely a "forgery" designed to bring about national reformation. As he put it, "der Priester Hilikia untergeschoben hat" and, a few lines later, "sieht einem angelegten handel nicht unähnlich, woran, außer Hilikia, besonders Shaphan und die Prophetin Hulda gehabt haben konnten"; Vol. I: 179).

This seemingly peripheral observation became in fact the key to the critical formation of the Documentary (in his case initially the Fragmentary) Hypothesis that continues to underlie (even if unstated) contemporary understanding of how the Pentateuch achieved its final form. As late as 2009 Michael Coogan can say, “A majority of scholars, if by no means all, continue to follow some version of the classic formulation of the Documentary Hypothesis [including de Wette’s contribution] summarized here.”<sup>11</sup> In fact, Rogerson goes so far as to call de Wette the “founder of modern biblical criticism.”<sup>12</sup> One may quibble over the weight of this honorific, but as to the profound significance of de Wette’s work there can be little debate.<sup>13</sup>

The necessary brevity of this paper requires at this point consideration of de Wette’s singular contribution to the issues of Deuteronomy’s conception, composition, and dating, as well as reasons for rejecting the bases for the hypothesis he erected and which had (and continues to have) persuasive power.

#### *De Wette: His Premises and Arguments*

Caught up as he was in the mainstream of Enlightenment thought regarding the Old Testament, and especially the Pentateuch, de Wette had come to embrace its major tenets as outlined by Astruc, Eichhorn, and other late eighteenth-century scholars. However, as noted already, he advanced critical thinking on Deuteronomy by proposing initially in the *Dissertatio* that the hitherto unidentified scroll found in the temple in Josiah’s time was none other than the book of Deuteronomy, an idea he later abandoned.<sup>14</sup> He thus introduced a new current that turned the mainstream in a slightly different direction.

11. Michael D. Coogan, *A Brief Introduction to the Old Testament* (New York: Oxford University Press, 2009), 46.

12. Thus, the title of his biography: *W. M. L. de Wette: Founder of Modern Biblical Criticism*.

13. See, for example, Joseph Blenkinsopp, *The Pentateuch* (New York: Doubleday, 1992), 214–15; Brevard S. Childs, *Introduction to the Old Testament as Scripture* (Philadelphia: Fortress, 1979), 205; Eissfeldt, *The Old Testament*, 173; Tremper Longman III and Raymond B. Dillard, *An Introduction to the Old Testament* (2nd ed.; Grand Rapids, MI: Zondervan, 2006), 105; Eugene H. Merrill, Mark F. Rooker, and Michael A. Grisanti, *The Word and the World: An Introduction to the Old Testament* (Nashville: B&H, 2011), 252–53; and Robert H. Pfeiffer, *Introduction to the Old Testament* (London: Adam and Charles Black, 1952), 52.

14 This he did in his *Beiträger*, Vol. I:179. See n. 10 above.

Josiah's accession to the throne in 640 B.C.E., 18 years before the finding of the scroll, had already engendered renewed hope among the faithful that a new day was dawning, one that would see the end of national apostasy and a return to YHWH and Torah (2 Kgs 22:2).<sup>15</sup> Though only an eight year old when he was enthroned, by the time he was 16 he had begun to "seek the God of David" and in his 12th year (628 B.C.E.) undertook the purging of the cultic installations devoted to the Baalim and Asherim (2 Chr 34:1–7). Six years later the young king commissioned Shaphan the scribe and Hilkiah the priest to undertake a thorough refurbishment and repair of Solomon's paganized temple (2 Chr 34:8–13//2 Kgs 22:3–13). In the course of doing so they came across a scroll described as ספר התורה ("scroll of the Torah"), a term used outside the Kings and Chronicles Josiah narratives only in Deut 28:61; 29:20; 30:10; 31:36; Josh 1:8; and 8:34. The references in Joshua, in their canonical and historical context, are exclusive to Deuteronomy.

Further evidence of the linkage is seen in Josiah's reaction to the reading of the scroll. He tore his clothing in deep conviction (2 Kgs 22:11) and then consulted Huldah the prophetess as to the genuineness of the document (2 Kgs 22:14–20). Her response clearly affirmed that it was Torah, and thus Mosaic, and that it warned of judgment to come but yet deliverance for the young king.<sup>16</sup> Josiah next read the scroll to all the people (23:2; cf. Deut 17:18–20), and renewed with them the Deuteronomic covenant. That this is the case is clear from the use of the technical terms מצוה, עדה, and חק, all of which in combination are found most pervasively in Deuteronomy. Moreover, Josiah ordered the demolition of the idols and their shrines and the high places and their altars, and commanded that the wicked cultic personnel be put to death (2 Kgs 23:4–14; cf. 2 Chr 34:3–7).<sup>17</sup> And these measures were not

15. For the sequence of events in the late seventh century B.C.E., see Eugene H. Merrill, *Kingdom of Priests: A History of Old Testament Israel* (2nd ed.; Grand Rapids, MI: Baker, 2008), 449–66.

16. Her assurance seems clearly misguided for Josiah died in an ill-advised battle when only 31 years old (2 Kgs 23:29). However, the text (2 Kgs 22:20) reads לכן הנני אספך על-אבתך ונאספת אלי-קברתיך בשלום ולא-תראינה עיניך בכל הרעה אשר אני מביא על המקום הזה. The idea is that even though Josiah may suffer a violent death, his ultimate end will be peaceful as he is buried with his ancestors. Thus C. F. Keil, *The Books of the Kings* (Grand Rapids, MI: Eerdmans, 1950 [1883], 481).

17. The Chronicler's rendition seems at odds with the account in Kings in that the latter suggests that Josiah's reform movement began before the scroll was found whereas the Chronicler places it afterward. The resolution most likely lies in the convention in the ancient Near Eastern world of placing the great deeds of kings early in the records of their reigns thereby laying emphasis on them. See Eugene H. Merrill, "The 'Accession Year' and Davidic Chronology," *JANES* 19 (1989): 106 – 07.

limited to Jerusalem and its vicinity. The king also directed that the pagan paraphernalia of the north be removed, including the altar of Jeroboam against which a prophetic curse had been uttered at the very beginning of the Divided Monarchy (2 Kgs 23:15–20; cf. 1 Kgs 13:1–3).

Finally, Josiah authorized that a Passover be held according to the prescriptions of ספר הברית (“scroll of the covenant”) (2 Kgs 23:21–23//2 Chr 35:1–19).<sup>18</sup> The observation is made that such a Passover had not been seen since “the days of the judges” (Kings) or “the days of the prophet Samuel” (Chronicles). Clearly both traditions were aware of some kind of Torah teaching mandating Passover and providing instruction as to how it should be carried out.

### *Reaction to the Hypothesis*

De Wette’s arguments for the non-Mosaic authorship and lateness of Deuteronomy were, as we have noted and as he freely admitted,<sup>19</sup> founded on the works of numerous scholars; ancient (the Gnostic Ptolemy and Ibn Ezra), Enlightenment (Isaac ben Jasos, Carlstadt, Masius, Hobbes, Peyrerius, Spinoza, and Simon), and early contemporaries (Fulda, Corrodi, Eckermann, Bauer, and Paulus). With Wellhausen later on, de Wette conceded that it was to his own student Vatke that he owed most in constructing his own position: “The investigation [of Mosaic authorship] was, for the first time, thoroughly made by Vatke.”<sup>20</sup> Other later contemporaries with similar views were Gesenius, Augusti, Rosenmüller, and Berthold. Now, of course, virtually all critical scholars embrace what has come to be a settled conviction no longer in need of argument.<sup>21</sup>

At the same time, de Wette acknowledged that in his own time weighty arguments against the critical position were levied by such conservatives as Michaelis, the early Eichhorn, Jahn, Hasse, Ranke,

18. For this term see Exod 24:7, the only place outside Kings and Chronicles it occurs. Both Dtr (the so-called Deuteronomist historian) and the Chronicler were obviously aware of at least this part of Torah.

19. DeWette, *Introduction*, 161-64.

20. DeWette, *Introduction*, 163. Cf. the famous tribute by Julius Wellhausen to Vatke: “from whom indeed I gratefully acknowledge myself to have learnt best and most” (*Prolegomena to the History of Ancient Israel* [Cleveland: World, 1957 (1878)], 13).

21. For a leading representative, see Eissfeldt, *Introduction*, 241: “This understanding of the material [of Pentateuchal analysis] will maintain itself no matter how manifold are the variations which come in the future, just as in previous centuries it has been expressed in very varied ways.”

Hengstenberg, Hävernik, and Thomas Horne.<sup>22</sup> Modern scholars who contend for the (essential or full) Mosaic tradition are not lacking,<sup>23</sup> and in doing so implicitly at least make the case for an early Deuteronomy. This is in line with our own contention that Deuteronomy was not a text fabricated in the seventh century B.C.E. to serve the agenda of putative reformers but one created by Moses to provide both covenant guidance to his own community and a blueprint for the nation as it lived out its covenant responsibility among the nations. Evidence for this proposition must now be elicited from the book's own testimony.

#### THE HYPOTHESIS VIS-À-VIS RELIGIOUS AND POLITICAL INSTITUTIONS<sup>24</sup>

The two most important elements of ancient Israel's national life were its religious and political institutions. Related questions have to do with the origination, shape, and development of each and their coherence to either the early traditional or late putative settings ascribed to them.

#### *Religious Institutions*

The concept of a central sanctuary is at the heart of this debate. Did Moses prescribe such a thing (Deut 12:5–14) or was it the outcome of Josiah's reformation that, among other things, called for an exclusive central sanctuary (2 Kgs 23:4–20)? The answer is quite clear. Though the historian appears to date the onset of the reformation to Josiah's 18th year, coincident with the discovery of the Torah scroll (2 Kgs 22:3), the Chronicler makes clear that it had begun at least ten years earlier, with no knowledge of such a scroll (2 Chr 34:3–7).<sup>25</sup> The same is said of

22. De Wette, *Introduction*, 163–64, n. c.

23. See, for example, O. T. Allis, *The Five Books of Moses* (Philadelphia: Presbyterian & Reformed, 1949), 288; Gleason L. Archer, Jr., *A Survey of Old Testament Introduction* (Chicago: Moody, 1964), 113–23; Umberto Cassuto, *The Documentary Hypothesis and the Composition of the Pentateuch* (Jerusalem: Magnes, 1961); Longman and Dillard, *Introduction*, 50–51; Merrill, Rooker, and Grisanti, *The World and the Word*, 169; E. J. Young, *An Introduction to the Old Testament* (Grand Rapids: Eerdmans, 1949), 161–64.

24. Much of the following is derived from my previous publication "Deuteronomy and History: Anticipation of Reflection?" *Faith & Mission* 18/1 (2000): 57–76. Space limitations preclude exhaustive listings of the discordances that a late Deuteronomy exhibits with reference to a late (seventh century?) date. See Excursus 1 below.

25. The apparent disparity here is easily resolved. Dtr is virtually silent about Josiah's first 12 years (640–628 B.C.E.), noting only that "he walked in the ways of David his father" (2 Kgs 22:2). The Chronicler, on the other hand, emphasizes that in Josiah's 12th

Hezekiah nearly a century earlier and in virtually the same words (2 Kgs 18:3–8, 22; cf. 2 Chr 29:2–19). One must assume that both Hezekiah and Josiah were aware of the Mosaic teaching of a central sanctuary, legislation for which comes only from Deuteronomy. Thus, Deuteronomy, even if not identical to the Josiah scroll *per se*, must have been known and, indeed, was attributed to Mosaic influence long before Josiah's time (Josh 1:7–9; Judg 1:20; 1 Kgs 2:3; 8:9, 56–61; 2 Kgs 14:6; 18:4, 6, 12; 21:8; 23:25).<sup>26</sup>

### *Political Institutions*

Contrary to the consensus, the references to monarchy in Deuteronomy need not by any means presuppose a monarchy existent at the time the book was written anymore than the multiple references to an impending exile proves that all prophets were post-exilic.<sup>27</sup> From Abraham's time onward kingship was promised in his line of descent (Gen 17:6, 16; cf. 35:11; 49:10; Num 24:17) and regulations were established for that institution (Deut 17:14–20).

Throughout Israel's monarchic history the prophets and historians invoked Mosaic (specifically Deuteronomic) law to remind the kings of their covenant responsibilities and of the punishment that would ensue in the event of their disobedience.<sup>28</sup> The rejoinder that the historical accounts are, in fact, largely fabricated reconstructions of the

year (628 B.C.E.) he began to purge Judah of its heathenism. This was six years before the discovery of the scroll (622 B.C.E.), the event that set in motion special attention to the need for not only a central sanctuary, but a solitary one. Thus J. G. McConville, *Deuteronomy* (AOTC 5; Leicester, UK: InterVarsity, 2002), 219–22.

26. Mordechai Cogan and Hayim Tadmor, *II Kings* (AB 11; Doubleday, 1988), 221.

27. See E. W. Nicholson, *Deuteronomy and Tradition* (Philadelphia: Fortress, 1967), 80–81. Speaking of Deuteronomy's author, Nicholson states: "he was dealing with an existing institution which, whatever his own wishes, had to be reckoned with as part of the life of the people among whom he lived and for whom, presumably, he was legislating."

28. The following texts are but samples of the many that show the dependence of the Deuteronomistic History (DtrH) upon not only the sentiment but the technical terminology of Deuteronomy. Such pre-Josianic (or even pre-Hezekian) connections presuppose the existence of a document written prior to the recorded warnings and reprimands. Otherwise, these narratives forfeit all right to historical credibility. See 2 Sam 14:11; cf. Deut 19:4–10; 1 Kgs 2:1–3; cf. Deut 17:18–20; 1 Kgs 3:2; cf. Deut 12:13–14; 1 Kgs 8:37; cf. Deut 28:21–23, 38–42; 2 Kgs 14:6; cf. Deut 24:16; 2 Kgs 17:17; cf. Deut 18:10–12; 2 Kgs 22:8; cf. Deut 31:24–36; 2 Kgs 23:3; cf. Deut 13:4; 2 Kgs 23:21; cf. Deut 16:2–8.

past designed to create a Mosaic and thus authoritative basis for anti-monarchic political and religious movements not only smacks of *petitio princeps* but runs contrary to common sense and lacks any objective textual or historical foundation. The reverse—that the “temple scroll” was created as a paradigmatic model to which kings of pre-eighth century B.C.E. times were expected to adhere—has even less to commend it. Why and how could pre-Dtr rulers be expected to conform to a non-existent protocol and how could so much time have elapsed before the community did, in fact, produce a document whose intent was to rein in the wickedness of the monarchy of its own time? The notion that restraint of royal excesses such as the multiplication of horses and wives (Deut 17:16–17) first came to mind in the seventh century B.C.E. is absurd on its face. Moreover, virtually all ancient Near Eastern societies had sanctions against evil and oppressive regimes long before the beginning of Israelite monarchy, a point insinuated even in the biblical text (1 Sam 8:5, 10–18).<sup>29</sup>

David himself was guilty of breaching the “Deuteronomic” limitations (2 Sam 3:2–5; 8:4; 1Chr 3:1–9) to say nothing of Solomon who famously accrued vast numbers of both horses and wives (1 Kgs 4:26; 10:26–29; 11:3–4). In each case there followed implicit or explicit prophetic indictments and threats of judgment for violating the word of Yahweh, a reference primarily to Deut 17 (2 Sam 12:9–10; 1 Kgs 11:9–13). This is crystal clear in David’s injunctions to young Solomon to keep the מצוות (“commandments”), הקים (“statutes”), and משפטים (“judgments”), all of which are *termini technici* drawn straight from Deuteronomy.<sup>30</sup> The narrators, at least, are making the point that Deuteronomy preceded the monarchy, an outright falsehood or, at best, display of ignorance if in fact their claims were not based on genuine historical traditions. And to assume, further, that these traditions were only oral is to fly in the face of overwhelming ancient Near Eastern evidence to the contrary from the Late Bronze (Mosaic) age and even earlier.<sup>31</sup>

29. E.g., Herman Hunger and Stephen A. Kaufman, “A New Akkadian Prophecy Text,” *JAOS* 95 (1975): 371–75. Reverse, line 3, reads in part: “a new king will arise, but he will not provide justice in the land.” The result is his removal and replacement.

30. The collocation of these three terms together occurs 7x in Deuteronomy (5:28; 6:1; 7:11; 8:11; 11:1; 26:17; 30:16; הקים and משפטים 10x (4:1, 5, 8, 14, 45; 5:1; 6:20; 11:32; 12:1; 26:16); and הקים and מצוות 8x (4:40; 6:2, 17; 10:13; 27:10; 28:15, 45; 30:10). Interestingly, משפטים and מצוות as a pair never occur together in the book. Moreover, no other OT books display such a concentration of these terms.

31. John H. Walton, *Ancient Near Eastern Thought and the Old Testament* (Grand Rapids, MI: Baker, 2006), 281–83. An interesting example is that of the 18th Dynasty

THE HYPOTHESIS VIS-À-VIS CRITICAL MOMENTS AND MOVEMENTS IN  
ISRAEL'S HISTORY

Two options immediately surface when evaluating standard critical approaches to Deuteronomy and the temple scroll: (1) From the critical point of view, if Deuteronomy was an early work, in the nature of the case it could hardly have addressed the various historical circumstances and practices of much later times that make up its subject matter. (2) However, if it was a late work whose compilers exploited oral or written traditions about persons, places, and events of six or eight centuries earlier—much of which had little or no relevance to the community of the alleged eighth–seventh century date of the book's composition—its purpose would have to be understood as a historical exercise rather than paraenetic or theological. Moreover, those alleged “traditions,” if known to the writer of the scroll, would almost certainly have been known to the community at large from the days of their origins to the present, thus obviating the need for the scroll in the first place.<sup>32</sup> Only a few of the more important examples must suffice.

*Jerusalem and the Central Sanctuary*

Deuteronomy is striking by not only what it says, but also by what it omits or covers over. A notable example is the lack of any reference at all to Jerusalem, to say nothing of its being the location of the central sanctuary. However, to appeal to the subterfuge of presenting Moses as ignorant of such a place and its importance is to fly in the face of Jerusalem's significance in early biblical tradition, to say nothing of

(ca. 1570–1220 B.C.E.) Egyptian text “The Instruction Addressed to King Merikare” [by his father]: “Lo, I have told you the best of my thoughts, act by what is set before you.” Miriam Lichtheim, *Ancient Egyptian Literature. Vol. I: The Old and Middle Kingdoms* (Berkeley, CA: University of California Press, 1973), 99.

32. In fairness, many scholars have recognized the problem here and thus conclude, with Nicholson, “that we are dealing in Deuteronomy not with an *ad hoc* literary and theological creation of the seventh century B.C. Rather, we must see the book as the final product and expression of a long history involving the transmission and constant adaptation of the old traditions of early Israel upon which it based” (*Deuteronomy and Tradition*, 121). But even this is unsatisfactory since it is the overall hypothesis itself that is in question, the very hypothesis that permits Deuteronomy and the scroll to be considered in this manner. For a clear analysis of this “co-dependency” see R. K. Harrison, *Introduction to the Old Testament* (Grand Rapids, MI: Eerdmans, 1969), 640.

ancient Near Eastern texts.<sup>33</sup> A scribe writing in the seventh century B.C.E. could hardly resist the temptation to mention Jerusalem as the Mosaic cult center if he was trying to fabricate a “Mosaic” document.

Second, both the DtrH and Chronicles are replete with references to multiple worship centers, most of which, of course, were either pagan or paganized Israelite sites.<sup>34</sup> Such information is not surprising and has little relevance to the question of a central sanctuary. More troubling are those shrines that appear to be not only attended by the covenant people, but to be sanctioned by their leaders. How can these exist alongside the strict Mosaic injunctions against them, particularly in Deuteronomy?

The answer lies in the historian’s observation that “the people of Israel sacrificed their offerings at local altars, for a temple honoring the name of the LORD had not yet been built” (1 Kgs 3:2). Solomon’s task was to build such a temple and thereby bring into existence the central sanctuary of which Moses had spoken centuries before (Deut 12). However, Moses in fact had authorized the erection of local altars until the “place where he caused his name to dwell” (Jerusalem, as it turned out) would become operative. Exodus 20:24–26 provides explicit permission and instruction concerning the erection of “earthen altars” (מזבה אדמה) “in every place (בכל המקום) I record my name.”<sup>35</sup>

### *Major Historical Events: A Few Examples*

Beyond question, the two most significant events in ancient Israel’s post-exodus history were the conquest and the exile. The two share much in

33. Cf. Salem, generally understood to be an alternative form of Jerusalem (Gen 14:18; Ps 76:2; Heb 7:1, 2). See also Josh 10:1, 3, 5, 23; 12:10; 15:8, 63; 18:28; Judg 1:7, 8, 21; 19:10. For the Egyptian “Execration Texts” (ca. 1850 B.C.E.) and references to “the Ruler of Jerusalem (ʿws̄ mm),” see William W. Hallo and K. Lawson Younger, ed. *The Context of Scripture* (vol. 1; Leiden: Brill, 1997), 50–51; for *Úrusalim* in the Amarna texts (ca. 1350 B.C.E.) see *ibid.*, (vol. 3, 2002), 237–38. EA 289 renders the name <sup>al</sup>Ú-ru-sa-lim<sup>ki</sup> (“city of Jerusalem”) whereas EA 290 refers to it as <sup>al</sup>mât Ú-ru-sa-lim<sup>ki</sup> (“Jerusalem district”). Thus, W. A. Albright in *The Hap/biru* (Moshe Greenberg; New Haven, CT: American Oriental Society, 1955), 48–49. This suggests that by as early as 1350 B.C.E. Jerusalem was not only a city but the “capital” of a region, thus well-known internationally.

34. E.g., 1 Kgs 12:31, 32; 13:32; 14:23; 2 Chr 15:17; 17:6; 28:25; etc.

35. An alternative translation for כל here is “any,” that is, “in any place.” The meaning is not fundamentally changed. In the first case, “all the place” likely refers to the entire land of Israel, whereas the second applies to each and every place in the land. See my discussion in *Deuteronomy* (NAC 4; Nashville, TN: B&H, 1994), 223–24.

common vis-à-vis Deuteronomy, but there also exist major differences. We shall address these *seriatim*.

(1) Whereas mainstream criticism supposes that the narrative of the conquest was composed long after the event, Deuteronomy clearly anticipates the event (Deut 6:10–15; 7:1–5; 8:1–10; 11:8–12; 12:1–14; 26:1–11; 31:1–8) and Joshua reads as though it were an eye-witness account (*passim*). Of the consensus view, several questions must be posed: (a) Of what relevance to the exilic or post-exilic community of Jews would be the detailed account of Canaanite conquest with the subsequent allocations of territories to the respective tribes? By the seventh century B.C.E. the Northern Kingdom had fallen to Assyria and the Babylonians were virtually knocking at the door. Survival of Judah was at stake, not the reconstructed or imaginary account of long ago victories over now non-existent peoples. (b) Who could care about Sihon, Og, and the Amorites, all shadowy figures of a misty past? (c) How could the seven “Canaanite” nations of Deut 7 and the pre-histories of folk like the Rephaim, Zamzummim, Avvim, and Caphtorim (Deut 2:20–23) be relevant to Yehud when it was preoccupied with Assyrians, Babylonians, Medes, and Persians, none of whom are mentioned in Deuteronomy?

(2) Does explicit reference in Deuteronomy to an exile not favor the lateness of the book, particularly if the book underwent major redaction in the exilic period?<sup>36</sup> The “if” about redaction should evoke caution first of all, since the matter is disputed by many critical scholars.<sup>37</sup> One response could be—and it is legitimate—that Moses as a prophet could foresee the latter day exiles. On the other hand, Deuteronomy is a covenant document, as nearly all scholars contend, and invariably such documents in the surrounding world contained lists of curses that would devolve upon the vassal party should the terms of the covenant be violated. Not to be overlooked, though it cannot be expanded here, is the literary form of the book. Though debate continues on the matter, the form and structure of Deuteronomy fits best in comparison to texts of the same genre from the Late Bronze age as opposed to the seventh-century Neo-Assyrian models.<sup>38</sup> Significant

36. Cf. Deut 4:25–28; 28:36–37; 29:25–26; 30:1; 32:26.

37. Thus S. R. Driver, *An Introduction to the Literature of the Old Testament* (Cleveland: Meridian, 1956), 81–82.

38. K. A. Kitchen, *On the Reliability of the Old Testament* (Grand Rapids, MI: Eerdmans, 2003), 283–307.

omissions in the latter include a historical prelude and a list of blessings, both of which are found in Deuteronomy (1:6–3:29; 28:1–14).<sup>39</sup>

### *Historical Irrelevancies and Anachronisms*

By this is meant items in Deuteronomy that had little or no practical value to seventh-century Judah but great significance to Late Bronze Israel. How could these disparities have been recorded by late scribes as major themes or notations in the book? Only a few can be cited.

(1) Why is Deuteronomy so preoccupied with the issue of *חֶרֶם* (“holy war”) when the latest clear example of it in the historical record is Jehoshaphat’s campaign against Moab and Ammon ca. 850 B.C.E., nearly 200 years after the discovery of the temple scroll (2 Chr 20:5–30)? Did seventh-century Yehud anticipate the waging of holy war against the Assyrians or Babylonians?

(2) How could a writer of Deuteronomy in the seventh century make the laughable claim that “Yahweh your God has multiplied you and today you are as numerous as the stars of heaven” (Deut 1:10)? Add to this the command by Yahweh to annihilate Amalek at some future time (25:17–19). As far as can be determined, Amalek no longer existed in the seventh century B.C.E.<sup>40</sup> How about the name Nisan for the first month in late Israelite history but Abib in Deuteronomy (Deut 16:1; see Neh 2:1; Esth 3:7)? The commentaries are strangely silent on the matter, suggesting only that the later name Nisan was modeled after the Babylonian term Nisannu.<sup>41</sup>

(3) What pertinence does Deuteronomy’s expansive warnings about Canaanite idolatry and its punishment have for a community that was already in process of dealing with the issues and by the post-exilic period had done away with them forever? What value have prohibitions about cutting oneself in mourning (Deut 14:1–2),<sup>42</sup> boiling a young goat

39. D. J. Wiseman, *The Vassal-Treaties of Esarhaddon* (London: British School of Archaeology in Iraq, 1958), 30–32, 60ff.

40. The latest reference to the Amalekites is in the list of peoples whom David conquered (2 Sam 8:12). Otherwise, they remain an unknown people, not only to modern times but certainly to the seventh century B.C.E. as well.

41. See, for example, S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy* (3rd ed.; ICC; Edinburgh: T & T Clark, 1902), 191: “it [Abib] corresponds to the post-exilic Nisan.” He says nothing of the implications for a late Deuteronomy.

42. For an attempt to argue that all these illicit practices survived into the late monarchy, see Rainer Albertz, *A History of Israelite Religion in the Old Testament Period* (vol. 1; Louisville, KY: Westminster John Knox, 1994), 210–16. However, he offers no textual

in its mother's milk (14:21), and sacred prostitution (23:17–18)? There is no record of these surviving among the Jews in the Southern Kingdom in the late Divided Monarchy.

(4) “Unto this day.” This phrase (עד הים הזה), used copiously in Deuteronomy, sounds strangely foreign in a late age, given the things that are thus described. Almost always the narrator describes things anterior to his time of writing and indicates that the after-effects are still in play.<sup>43</sup> For example, he speaks of the Esauites (Deut 2:22), the recent defeat of King Sihon of Heshbon (2:30), the place name Havvoth-jair (3:14), the recent expulsion of the Trans-Jordan Amorites, and the destruction of the Shappened in the generation of the writer makes the author either an eye-witness (like Moses) or a forger (like the anonymous creator of the temple scroll) who may or may not have gotten his facts correct.

## CONCLUSIONS

In search of the keystone to the construction of the edifice of the source critical method, scholars as early as the seventeenth century proffered various hypotheses, none universally satisfying until W. M. L. de Wette burst upon the scene in 1805. His *dissertatio*, brief as it was, encapsulated and simplified the hunches of previous scholars, so much so that he became known in some quarters as “the father of higher criticism.” Remarkably enough, the dissertation was not directed explicitly to the question of whether or not the scroll found in Josiah's temple was Deuteronomy or a recension thereof. In fact, he made the assertion in just one footnote, almost in passing as it were. From that innocuous beginning, however, the notion took root and remains to this day the key tenet of the so-called Documentary Hypothesis, expressed in its classic form by Julius Wellhausen seventy years after de Wette's seminal work. Though greatly altered here and there by modern scholars, its essential ideology and framework remain intact and remain standard fare in university and seminary classrooms.

Close examination of the actual biblical data themselves reveals quite a different alternative and that is a return to the ancient Jewish, New Testament, and Christian traditions of Mosaic provenance and

or archaeological evidence for this supposition, citing primarily texts from Deuteronomy itself, which is the matter in dispute to begin with.

43. M. Sæbø, “םי” in *Theological Dictionary of the Old Testament* (vol. VI.; ed. G. Johannes Botterweck and Helmer Ringgren; Grand Rapids, MI: Eerdmans, 1990), 15–16.

authorship. Only a mindset willing to bend to critical consensus or oblivious to the issues involved and their damaging implications for young Christian scholars and the Church can, it seems, continue to ignore the tradition in favor of unproven and unprovable hypotheses to the contrary.

EXCURSUS 1: TEXTUAL DISCORDANCES WITH THE LATE DATE  
HYPOTHESIS

<b>The Cultus</b>	<b>The Monarchy</b>	<b>Geo-Political Realities</b>	<b>Biblical Attestation to Mosaic Tradition</b>
<i>Central sanctuary (12:5-14)</i>	<i>Early promises and prescriptions (Gen 17:6, 16; 35:11; 49:10)</i>	<i>Tent dwelling (5:30; 33:18) in forested land (19:5)</i>	<i>OT (Josh 1:7, 13; 1 Kgs 8:9, 53; 2 Kgs 18:4; 21:8; 1 Chr 22:13; 2 Chr 33:7; 34:14; Ezra 3:2; Neh 8:1; 13:1)</i>
<i>Early local shrines and altars (Exod 20:24–26; Dt 27:5–6; Josh 8:30–31; Judg 6:24; 13:20; 1 Sam 7:17; 9:11–14; 1 Kgs 3:2, 4; 18:30–32; 19:10)</i>	<i>Torah attestations and prescriptions (Num 24:17; Deut 17:14–20)</i>	<i>Trans-Jordan setting (1:3; 3:25) with Gerizim to the west (11:30)</i>	<i>Gospels (Matt 19:7–8; 22:24; Luke 24:44)</i>
<i>Late Local shrines and altars (Asa: 1 Kgs 15:11–15); Hezekiah: 2 Kgs 18:1–8; Josiah: 2 Kgs 23:4–20)</i>		<i>Dealings with peoples no longer extant (2:24–37; 3:1–11; 4:44–49; 7:1–2)</i>	<i>Apostles (Acts 3:22; Rom 10:19; 1 Cor 9:9; Heb 10:28)</i>
		<i>Unrealistic population figures (10:1)</i>	
		<i>Obsolescence of herem by 850 BC (2 Chr 20:5–30)</i>	
		<i>Irrelevant religious practices (4:15–19; 6:14; 14:21; 18:9–14; 23:17–18)</i>	

EXCURSUS 2: PERSONS, PLACES, AND THINGS DISCORDANT WITH A  
LATE DEUTERONOMY*In the Cultus*

- Central Sanctuary not named but in view (Deut 12:5–14); cf. earlier local shrines (Exod 20:24–26; cf 18:12)
- Josiah’s destruction of local shrines before the discovery of the scroll suggests they were in violation of a well-known prohibition (2 Chr 34:8)
- Previous kings had also removed paganism: Asa (1 Kgs 15:11–15; cf. 2 Chr 14:1–2 [H]; Hezekiah (2 Kgs 18:1-8; 2 Chr 29:3; 31:1); Josiah (2 Kgs 23:4–20; 2 Chr 34:3–7)
- Technical terms of Deuteronomy (2 Chr 14:3; 17:4; 31:21; 34:31; 1 Kgs 2:3; 3:14; 6:12; 8:58, 61; 9:6; 11:11, 33, 34, 38; 2 Kgs 18:6; 23:3; 2 Chr 19:10; 29:8; 30:9)—especially “book of the covenant” (2 Kgs 23:2, 21; 2 Chr 33:8; 34:14, 15, 30); “book of the law” / “book of Moses” (2 Kgs 14:6; 22:8, 11; 2 Chr 17:9; 35:12)
- Lack of concern about multiple altars/high places (Exod 20:22–26; Deut 27:5–6; Josh 8:30–31; Judg 6:24; 13:20; 1 Sam 7:17; 9:11–14, 35; 21:1–6; 2 Sam 24:18, 21, 25; 1 Kgs 3:4; 2; 18:30–32; 19:10; 2 Chr 1:1–6)

*In the Monarchy*

- Promised and prescribed in pre-Mosaic Times (Gen 17:6, 16; 35:11; 36:31; 49:10 [cf. Ps 60:7]; Num 24:17; 2 Sam 14:11 [Deut 19:4–10]; 1 Kgs 2:1–3 [Deut 17:18–20]; 3:2 [Deut 12:13–14]; 8:16 [12:5, 11; 8:37 [28:21–23, 38–42]; 9:8 [29:24–26]; 11:1 [17:17]; 12:27 [12:5–7]; 15:12 [23:17]; 2 Kgs 14:6 [24:16]; 17:17 [18:10–12]; 22:8 [31:24–36], 13 [29:23–28]; 23:3 [13:4], 21 [16:2–8], 24 [18:10–12]

*In Historical Events*

- The Conquest—viewed as future
- The Exile—viewed as future (Deut 4:25–28 [cf. 28:36–37, 49–50; 29:25–26; 30:1; 32:26])

*Allegedly Late Legal Practices*

- Prohibition against foreign marriage (Ezra 9:1–10:44; Neh 13:23–31; Deut 7:3–4; cf. Exod 34:15–16); clearly, both Ezra and Nehemiah based their actions on ancient pre-existing law (Ezra 10:2–3; Neh 13:26)

*Geo-Political Realities*

- Living in tents (Deut 5:30; 33:18) in a heavily forested land (Deut 19:5)
- Setting is the Transjordan (Deut 1:3; 3:25) with Gerizim and Ebal being in the west (Deut 11:30)
- Dealing with no longer extant peoples (Deut 2:24–37; 3:1–11; 4:44–49; 7:1–2; contra Neh 3:19; 4:1, 3, 7)