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Pakkala, Juha

2009

Pakkala, J 2009, ' The Date of the Oldest Edition of Deuteronomy ', Zeitschrift für die
p̄y Alttestamentliche Wissenschaft , vol. 121 , no. 3 , pp. 388 401 . <https://doi.org/10.1515/ZAW.2009.026>

<http://hdl.handle.net/10138/328053>

<https://doi.org/10.1515/ZAW.2009.026>

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The Date of the Oldest Edition of Deuteronomy

By Juha Pakkala

(Department of Biblical Studies, University of Helsinki, P.O. Box 33, FIN-00014 Helsinki)

Introduction

There are several reasons to assume that the oldest edition of Deuteronomy is essentially of post-586 BCE in origin. Especially the oldest text of Deut 12, generally assumed to be the core of the *Urdeuteronomium*, can only have been written in a context where there was no temple, state or monarch, but other parts of the *Urdeuteronomium*, as far as it can be reconstructed, also reveal features that imply a late origin.¹

Timo Veijola's analysis will be used as a literary critical basis; according to this the basic text of Deuteronomy can be found in Deut 4,45*; 5,1aα*; 6,4.6*-9; 12,13-14.17-18.21aαb etc.² One can always debate the details of argumentation as well as the origin of individual verses or sentences in the reconstructed text, but many other scholars have reached similar theories on the extent and scope of the oldest edition of Deuteronomy. At least to some extent, one can already talk about a consensus on the main lines,³ especially when it comes to Deut 12, which is usually regarded as the core of the book. Although the entire *Urdeuteronomium* will be considered in this study, Deut 12 may give the best indication of the time when the *Urdeuteronomium* was written as a composition and unit. Scholarship has shown that many of the other laws in Deut 14-26 were formed from older prototypes, some of which have been preserved in the Book of the Covenant, whereas it is often assumed that Deut 12 introduced a new idea. Although one should not exclude the possibility that Deut 12 also had an earlier, but

¹ I am grateful to Reinhard Müller and Christoph Levin for their constructive comments concerning this thesis.

² See T. Veijola, *Das 5. Buch Moses/Deuteronomium*, ATD 8,1, 2004.

³ See, G. Hölscher, *Komposition und Ursprung des Deuteronomiums*, ZAW 40, 1922, 161-255; A. F. Puukko, *Das Deuteronomium. Eine literarkritische Untersuchung*, 1910; R. Kratz, *Die Komposition der erzählenden Bücher des Alten Testaments*, UTB 2157, 2000, 138; T. Römer, *The So-Called Deuteronomistic History. A Sociological, Historical and Literary Introduction*, 2007, 56-65. Some scholars assume that the oldest Deuteronomy was more extensive, e.g., O. Kaiser, *Einleitung in das Alte Testament*, 1984, 5th ed., 134.

unknown and lost form,⁴ here I will deal with the date of the text that is preserved to us. Some considerations on a possible earlier prototype of Deut 12 will be given in the concluding discussion. It should be emphasized that the later additions to Deut 12 or to other parts of the *Urdeuteronomium* will not be considered in this study, but only the reconstructed oldest text in its preserved form.

In view of its importance, it is surprising how little scholarly discussion there has been on the dating of the oldest version of Deuteronomy and how widely the traditional dating has been accepted. There has been considerable discussion about the parallels of Deuteronomy in Neo-Assyrian vassal treaties, despite the probability that most of the parallels are found in sections of Deuteronomy that should be regarded as later additions. Although most scholars would not go so far as to name a specific vassal treaty that functioned as the model and source of Deuteronomy,⁵ it is often assumed that the Neo-Assyrian parallels indicate the general period from which one should seek the original context and background of Deuteronomy.⁶

It is probable that vassal treaties of the Near East preserved a fairly regular form, irrespective of empires and times. For example Deuteronomy and the Hittite vassal treaties contain various striking parallels, but no scholar would (nowadays) suggest that Deuteronomy should be dated on account of these parallels to the Late Bronze Age. It is probable that Deuteronomy and many of its additions were influenced by an unknown vassal treaty or treaties that may be Assyrian, Babylonian, Persian or something else. That mainly Assyrian vassal treaties have been preserved distorts the picture and the discussion. Even if an Assyrian vassal treaty had been used as a source for Deuteronomy, it does not necessarily mean that the treaty derives from the period when Deuteronomy was written. It is evident that documents were preserved in the archives for a very long time and could have been used to shape other texts much later. For example, I–II Reg was used centuries after it was written by the author of Chronicles.

In addition to the seventh century Neo-Assyrian parallels, the traditional dating of Deuteronomy is fundamentally based on its con-

⁴ This possibility is suggested by some scholars, for example N. Lohfink, *Fortschreibung?*, in: T. Veijola (ed.), *Das Deuteronomium und seine Querbeziehungen*, PFES 62, 1996, 127–171 (esp. 142–148).

⁵ Some scholars, such as E. Otto, *Das Deuteronomium. Politische Theologie und Rechtsreform in Juda und Assyrien*, BZAW 284, 1999, 14–90, have suggested that the vassal treaty of Esarhaddon was the immediate source of Deuteronomy. For criticism, see J. Pakkala, *Der literar- und religionsgeschichtliche Ort von Dtn 13*, in: J. C. Gertz et al. (eds.), *Die deuteronomistischen Geschichtswerke*, BZAW 365, 2006.

⁶ See, e.g., Römer, *So-Called Deuteronomistic History*, 2005, 73–78.

nection with Josiah's reform. Some scholars assume that the book found in the temple by Hilkiah in ca. 622–620 BCE (II Reg 22,8) was Deuteronomy or an early edition of the book. Identifying the book with the *Urdeuteronomium*, it is then assumed that the text was written in the years before its discovery. On the other hand, many scholars assume that the idea of finding the book is late and connect Josiah's reform with the *Urdeuteronomium* on other grounds: The measures undertaken by Josiah are in accordance with the earliest editions of Deuteronomy.

For example, according to Veijola, any attempt to find a context for the original version of Deuteronomy later (or earlier) than Josiah's reign is bound to run into difficulties.⁷ Veijola's position is representative of many common assumptions in scholarship,⁸ although there are also scholars who assume an even earlier origin,⁹ and some have even sought its origin in the Northern Kingdom.¹⁰ However, it is fair to say that the majority of scholars have dated the original editing of Deuteronomy as a composition to the time of Josiah and have connected it – in one way or another – with his reform as described in II Reg 22–23. This position has already been the starting point for most scholars since de Wette in the early 19th century CE.¹¹ Accordingly, the core of II Reg 22–23 is usually believed to be the centralization of the cult, and therefore the literary-critical reconstruction of II Reg 22–23 has played a major role in the discussion.

The main problem is that II Reg 22–23, and especially chapter 23, is one of the most edited texts in the entire Hebrew Bible and should not be used as a basis for any broader theory.¹² All of the details and events described in the passage are heavily debated, with very little evidence of any consensus in sight. Moreover, the link between Josiah's reform and the

⁷ Veijola, *Deuteronomium*, 2: »Die Erklärung seiner Entstehung entweder aus späteren oder auch aus früheren Zeiten stößt auf erheblich größere Schwierigkeiten.« On p. 270 he states: »Es ist kaum zu bezweifeln, dass das in 12,13 f. 17 f. 21 aufgestellte Reformprogramm in Zusammenhang mit der von König Joschija durchgeführten Kultzentralisation steht ...«

⁸ Thus among many others, Puukko, *Deuteronomium*, 63–64; M. Weinfeld, *Deuteronomy and the Deuteronomistic School*, 1972; C. Levin, *The Old Testament. A Brief Introduction*, 2005, 91 and Römer, *So-Called Deuteronomistic History*, 56–65, 73–78.

⁹ For example S. R. Driver, *A Critical and Exegetical Commentary on Deuteronomy*, 3rd ed., 1902; R. D. Nelson, *Deuteronomy: A Commentary*, 2002, 6–7.

¹⁰ For example, A. C. Welch, *The Code of Deuteronomy. New Theory of Its Origin*, 1924; A. Alt, *Die Heimat des Deuteronomiums*, *Kleine Schriften zur Geschichte Israels* II, 3. ed., 1964, 250–275; G. von Rad, *Das fünfte Buch Mose*, *ATD* 8; 1964, 66–68.

¹¹ W. de Wette, *Beiträge zur Einleitung in das Alte Testament*. Bd. 1, 1806, 168 ff., 265 ff.

¹² The origin of basically every verse in this chapter is debated. See, e.g., H. Spieckermann, *Juda unter Assur in der Sargonidenzeit*, *FRLANT* 129, 195–199 and C. Levin, *Joschija im deuteronomistischen Geschichtswerk*, *ZAW* 96, 1984, 351–371.

Urdeuteronomium is also a very complicated issue, with many moving parts and with very little agreement among scholars. Regardless of the problems, the fixation with discussing the dating of Deuteronomy on the basis of Josiah's reform has blinded many scholars to features in the text itself, and in Deut 12 in particular. In fact, when one looks at the traditional dating, it is difficult to find any concrete arguments in favor of Josiah's reign as the original background. Veijola's main argument that other periods are more difficult shows how hard it has been to defend the traditional dating. His argument implies that Josiah's reign is the starting point. However, it is problematic to reject all other periods as more difficult, considering how little we in fact know about the circumstances in Palestine and the Judean communities in the first millennium BCE. Considering the problems with the sources, it is very difficult to say much that is historically reliable about Judah during the reign of King Josiah.

Although most scholars assume that Deuteronomy was written during the monarchy, in early 20th century scholarship some scholars – Robert Kennett, Gustav Hölscher and George Berry in particular¹³ – did argue that the original context of the *Urdeuteronomium* should be sought in the time after the destruction of the temple and the monarchy. However, these voices did not have a major impact on scholarship, although one finds references to them in later scholarship¹⁴ and even some supporters.¹⁵ Some of their arguments are still valid, although many have become outdated with the advance of scholarship, especially in the study of the books of the prophets. Many of their arguments are based on the relationships of texts within the Hebrew Bible and especially between Deuteronomy and the books of the prophets – Jeremiah¹⁶ and Ezekiel in particular. The development of these books has been shown to be much more complex than what was assumed at the beginning of the 20th century CE, and therefore it is partly understandable that their arguments were later ignored.

Moreover, especially Kennett and Berry discussed the date of the entire Deuteronomy and assumed that the additions would not be significant in the discussion. It has later become evident that the role of the additions is so great that one has to distinguish between the oldest version and the later additions. Contrary to Berry's assumptions, many of

¹³ R. H. Kennett, *The Date of Deuteronomy*, JThS, 1906, 481–500; Hölscher, *Komposition*, 161–255; G. R. Berry, *The Code Found in the Temple*, JBL 39, 1920, 44–51; *The Date of Deuteronomy*, JBL 59, 1940, 133–139.

¹⁴ E.g. Kaiser, *Einleitung*, 132.

¹⁵ One recent exception is Kratz, *Komposition*, 137–138, who assumes that an early exilic dating is more probable than monarchic.

¹⁶ For example in Kennett's article, *The Date of Deuteronomy*, *passim*, the relationship between Deuteronomy and Jeremiah forms the backbone of the argumentation.

the additions may have been written much later than the original version.¹⁷ Despite the problems with their arguments, I will integrate the most convincing ones into my list of arguments, but I will also show that there are several much more compelling considerations and arguments to assume that the *Urdeuteronomium* must have been written in a context where the state, the temple and the monarchy no longer existed.

Arguments:

1) The monarch plays no role in the *Urdeuteronomium*, which would be exceptional considering the importance of the monarch in religion and society in the Ancient Near East. It would be difficult to understand the birth of such a central document regulating the society's cultic activity, with considerable impact on other activities in the state of Judah as well, without the king commissioning it, or at least being taken into consideration. Even if one were to speculate that the document could have emerged in a movement that the king could not influence, it would be very peculiar that they did not take the king into consideration at all or even make a slight reference to him. In the entire Deuteronomy, the king is mentioned only in 17,14–20, but this is a later addition and only restricts the activities of the king. Most scholars acknowledge that this law cannot derive from the monarchic period.¹⁸

Comparison with other laws of the Ancient Near East highlights the problem. For example, the Codex Hammurabi begins with a lengthy introduction that makes it clear that the king was legitimized and authorized by the gods to introduce and establish the law code. That the king has established the laws is further emphasized in the epilogue, and the prologue also mentions many of the king's accomplishments. In other words, the king's importance in this law code is evident, and the same can be found in other law codes of the Ancient Near East as well (see also, for example, the prologues to the laws of Lipit-Ishtar, Ur-Nammu and Eshnunna).¹⁹ As noted by Martha T. Roth, the king was al-

¹⁷ Berry's comment, *Date of Deuteronomy*, 139, is illustrative: »Doubtless the original code D has been enlarged by several supplements ... however, there is no reason why these supplements may not have been added soon after the completion of the original work.«

¹⁸ Many scholars have shown that Deut 17,14–20 was heavily edited and that even its earliest layer is dependent on texts in I–II Reg. See H. D. Preuss, *Deuteronomium*, *Erträge der Forschung* 164, 1982. Even if one were to assume that Deut 17,14–20 belongs to the oldest version, the problem would not be smaller: It would be difficult to explain a king commissioning a document where his powers and wealth are restricted.

¹⁹ The king seems to play a central role in the prologues of the preserved law collections. See different laws in M. T. Roth, *Law Collections from Mesopotamia and Asia Minor*, *SBL Writings from the Ancient World* 6, 2nd ed., 1997.

ways involved in the justice system and »he was always its guardian, for the application of justice was the highest trust given by the gods to a legitimate king.«²⁰ Against this background, it would be peculiar that in Judah one could completely ignore the king.

One would certainly expect that the king's authority is needed to legitimize such a document. Without his support, the credibility of the entire law would be questionable in Judah. One of the main ideas of the law is to prohibit local sacrifice around Judah, and for the success of such a new idea it would have been crucial to show that the law is legitimate and that the central political authority stands behind it. Like in other areas of the Ancient Near East, the king must have had a central function in the Judean judicial system.

The problem with the lack of reference to the king is even more severe if one connects the *Urdeuteronomium* with Josiah's reform, a religious reform said to have been initiated and executed by the king. Consequently, in view of the other known law codes and the role of the monarch one would expect the Judean king to have, the lack of any reference to the king in the *Urdeuteronomium* indicates that the document was born and developed in a context when there was no king in Judah.

2) Connected to the previous point, the *Urdeuteronomium* does not imply any state infrastructure and organization. If Deuteronomy had been written during a time when Judah was an independent state with a long history, one would expect it, as a document containing many issues that regulate the behavior of the society, to contain at least some references to the state, its administration, organization and other structures. These are all missing and instead the document contains only laws that are irrespective of any state structures. How would it be possible to execute and retain the credibility of such laws if the state is completely ignored? Would it even be likely that an author writing during the monarchic period could ignore all state structures? The laws in the *Urdeuteronomium* are written as if the author were implying a stateless religious community.²¹

3) All references to Judah are missing in the *Urdeuteronomium*, which is peculiar if the document was born in a kingdom with that name and was intended as a document regulating the cultic activity in this state. Instead, the concept Israel is found at least in the introduction of the

²⁰ Roth, *Law Collections*, 5–6.

²¹ Kennett, *Date of Deuteronomy*, 488, already noted that there is a problem with the king and Deuteronomy, but his argumentation was based on Deut 17,14–20. He argued that it would not be possible for Josiah to have accepted a law that restricted his powers.

Urdeuteronomium as reconstructed by Veijola and many others (in Deut 6,4). It is evident that Israel here refers to a religious community rather than to the inhabitants of a state. This fits poorly with a document meant to regulate the sacrificial activity of the kingdom of Judah, and again this is also a question of legitimacy and credibility. At least one would have to provide good reasons why the document refers to Israel instead of making a reference to Judah. The word Israel, in the sense used in Deut 6,4, implies the development of a religious community that in practice had replaced Judah as the primary structure of the society.²² It is questionable whether this would be possible before the destruction of the state of Judah. The document in fact challenges Judah as the defining structure of the society. The lack of reference to Judah implies a situation where the state of Judah had already ceased to exist and where the community was upheld by religious considerations and defined as Israel.²³

4) The temple itself is never mentioned in Deut 12 – or in any other core law of the assumed *Urdeuteronomium*²⁴ – although the sole intention of the chapter and the main idea of the whole document is the centralization of the sacrificial cult, supposedly to the temple in Jerusalem. If there had been a temple during the time of writing, it would be very peculiar that the text never mentions it. The text only refers to a place of sacrifice, without actually specifying that a temple is meant. If the temple had been standing for centuries, it would be difficult to comprehend the reason for avoiding any reference to it and instead cryptically referring to a place that Yahweh will choose. It is not clear at all that a temple is meant here, and one should further note that all other details concerning a temple are missing. The main interest seems to be the sacrificial cult and especially its location. One receives the impression that the author of the oldest version of Deut 12 wrote in a context where there was no temple and where he was not sure if there ever would be one. This would perfectly explain the hesitancy in referring to a temple.

5) Connected to the previous point, Jerusalem is also not mentioned in Deut 12 – or in the whole of Deuteronomy – and instead there is only the vague reference to the place (מקום). If Jerusalem was the eternal

²² As noted by G. Gerleman, Israel, *Theological Lexicon of the Old Testament* II, 581–584, the word Israel is primarily a religious term and refers to a religious entity. Kratz, *Komposition*, 138, notes: »Die Anrede Israels in Dtn 6,4f setzt jedenfalls ein Gemeinbewußtsein von Israeliten und Judäern voraus.«

²³ Kennett, *Date of Deuteronomy*, 489–90, already noted that there is a problem in referring to Israel and not to Judah.

²⁴ The Temple of Yahweh is mentioned only in Deut 23,19 in the entire book.

capital and the location of Yahweh's temple since centuries, why would one have to avoid all reference to the city and instead refer to an unnamed place? Even if one were to assume that the entire giving of the law was artificially placed in the pre-monarchic history in the Sinai to gain Mosaic authority, it would not explain why Jerusalem (or the temple) is not mentioned. By contrast, in a post 586 BCE setting, when the temple had been destroyed and when the future of Jerusalem as a center of the cult would have been uncertain, one would have wanted to use a more vague formulation and leave many options open. As the Samaritan interpretation of Deut 12 shows, it is not self-evident that Jerusalem is the only possible interpretation. Because Jerusalem is not mentioned, some scholars have even suggested that another cult site was originally meant (such as Bethel or Shechem).²⁵ A further possibility is that the location of sacrifice was unspecified so that both Judeans and Samaritans could accept the same law code.²⁶

6) Deut 12,14 refers to a place in ›one of your tribes‹ (בְּאַחַד שְׁבֵטֶיךָ). This phrase contains two problems. Firstly, why would such a vague formulation be necessary, if the setting was the kingdom of Judah during monarchic times? Here we are dealing with the same problem, the vagueness, as in the previous two arguments. Secondly, the reference to one of the tribes is evidently dependent on the general idea that Israel consists of 12 (or some other number of) tribes. It is debatable whether this would have been an established or even a generally accepted idea in monarchic Judah. Many scholars have pointed out that the development of the idea of 12 tribes is late, and accordingly, already Hölscher regarded the reference to the tribe as an indication that the *Urdeuteronomium* must have been written after 586 BCE.²⁷

7) The *Urdeuteronomium* is set in the future. Using the imperfect, the text refers to the place that Yahweh will choose (יִבְחַר). The implementation of the law is put into a situation when the Israelites will settle in the land. The text is set in a context where the place of sacrifice did not exist at the moment but would in the future. As an isolated document from the time of Josiah, stripped of the wider historical context as provided in the Pentateuch, the imperfect remains a puzzle. In other words, the use of the imperfect is unsuitable as a basis for an independent document from the time of Josiah, which is commonly assumed. The imper-

²⁵ For example, von Rad, *Das fünfte Buch Mose*, 66–68.

²⁶ See C. Nihan, *The Torah between Samaria and Judah*, in: G. N. Knoppers/B. M. Levinson (eds.), *The Pentateuch as Torah*, 2007, 187–223. Nihan refers to the larger composition of the Torah and not specifically to the earlier versions of any of its parts.

²⁷ See Hölscher, *Komposition*, 182–183.

fect in fact implies that the author of Deut 12 formulated the law in view of its present context in the Pentateuch (or less probably, in another lost context where the imperfect makes more sense), where the giving of the law was placed in the desert.²⁸

Taking a wider perspective, one should also ask why the author would place everything in the desert in the first place if there had been a temple during the time of writing and it had been so for centuries. Why would the main commandment to sacrifice in the temple be set in a past where the temple did not even exist? Instead of a setting in the desert, one would expect a foundation myth of the temple that explains the background of the command to sacrifice there. In the reconstructed *Urdeuteronomium* the entire setting and future speech hangs in the air. As an independent document, or even as the earliest document of the Deuteronomic and Deuteronomistic movement and literature, from the time of the monarchy as assumed by Veijola and many others, the *Urdeuteronomium* is incomprehensible.²⁹ Although there may not be any evidence of the Exodus-tradition in the earliest edition of the law code,³⁰ the use of the imperfect may indicate a dependence on the Sinai-tradition, and this opens the question of whether an independent Deuteronomy without a longer introduction, as is reconstructed by Veijola and many others, would be possible at all. This further undermines the monarchic origin of the document.

8) According to Deut 12,21, Yahweh will set his name to live in the place he will choose. Veijola assumes that this reference to Yahweh's name belongs to the original *Urdeuteronomium*, although many scholars would like to see this sentence or even the whole verse as a later addition.³¹ Veijola is probably right in not taking out the sentence or verse as a later addition, for its omission would be a thematic decision not based on literary-critical considerations. The problem with the reference is that the so-called shem-theology, the idea that only the divinity's name lives in the temple, points towards a situation where the temple had ceased to be the actual dwelling place of Yahweh, his cult image or his Presence.

²⁸ The perfect בָּהָר of the Samaritan Pentateuch is also dependent on the present context in the Pentateuch.

²⁹ Clearly, many scholars assume that the law is artificially placed in a speech of Yahweh to Moses in the desert, but it is questionable that Deut 4,45 would be an adequate introduction. It is evident that the *Urdeuteronomium* needs a wider introduction and eventually a whole narrative where the background is explained.

³⁰ S. Kreuzer, Die Exodustradition im Deuteronomium, in *Das Deuteronomium und seine Querbeziehungen*, PFES 62, 1996, 81–106, has shown that there is no evidence that the earliest version of Deuteronomy was aware of the Exodus-tradition.

³¹ For example, Kratz, *Komposition*, 124–125.

As shown by Mettinger, the shem-theology is a later development, which rose after the temple was plundered in 597 BCE and destroyed in 586 BCE.³² After the destruction of Yahweh's cult image (or other physical representation) as well as the destruction of his temple, it became necessary to detach Yahweh from the temple. After the destruction, it would have been difficult to maintain a direct connection between the temple and Yahweh, because it would have called into question whether Yahweh himself was dead or non-existent. According to Mettinger, the shem-theology may have its roots already in the last decade of Judah, and he therefore suggests that already the plundering of the temple could have set in motion the development from the older conception of Yahweh's Presence being in the temple to shem-theology, where only his name lived there. Accordingly, Mettinger does not exclude the possibility that the oldest references to Yahweh's name living in the temple derive from the last decade of the Judean monarchy, but it is perhaps more probable that only the destruction of the temple and especially the destruction of his physical representation could have set in motion such a fundamental change in Israel's religion. If one accepts the increasingly probable theory that Yahweh had a cult image in the temple,³³ destroyed with the destruction of the temple in 586 BCE, the formulations of Deuteronomy have to be seen as fundamentally later. In any case, the reference to Yahweh's name living in the temple in Deut 12,21 is probably of post 586 BCE origin.³⁴

9) The Elephantine papyri imply that the principles of Deuteronomy were not commonly acknowledged even in the late fifth century BCE. The correspondence of the Elephantine community seems to be completely unaware of any cult centralization.³⁵ Had the cult centralization, like that of Deut 12, been established already in monarchic times or had there at least been a prominent group to demand it, one would not ex-

³² See T. N. D. Mettinger, *The Dethronement of Sabaoth*. *Studies in the Shem and Kabod Theologies*. CB OT 18, 1982, 60–61, 78–79. It should be added that Mettinger does not assume that there was a statue or any other physical representation in the temple.

³³ For discussion on Yahweh's possible cult image, see K. van der Toorn (ed.), *The Image and the Book. Iconic Cults, Aniconism, and the Rise of Book Religion in Israel and the Ancient Near East*, CBET 21, 1997. See the contributions by C. Uehlinger, *Anthropomorphic Cult Statuary*; H. Niehr, *In Search of YHWH's Cult Statue in the First Temple*; and B. Becking, *Assyrian Evidence for iconic Polytheism in Ancient Israel*. Note that Mettinger is against the idea of a cult statue in the temple. M. Köckert, *Die Entstehung des Bilderverbots*, in: B. Groneberg/H. Spieckermann (eds.), *Die Welt der Götterbilder*, BZAW 376, 272–290, has also argued that there was a cult image in the temple.

³⁴ Thus also H. Niehr, *Search of YHWH's Cult Statue*, 92.

³⁵ See A. E. Cowley, *Aramaic Papyri of the Fifth Century B.C.*, 1923 (henceforth: AP), no 30/31, dated to 407 BCE.

pect the leader of the Elephantine community to innocently ask the high priest of Jerusalem and the governors of Jerusalem and Samaria for permission to build a temple at Elephantine. Even if one could argue that the Elephantine community was a very isolated one and therefore could have been unaware of the situation in Palestine, the positive replies from the governors to build the temple leave little space for speculation. The replies have not been preserved, but a memorandum of the replies has, and according to it, both governors gave a permission to build the temple. It is explicitly written that the sacrifices should be offered on the altar, which unequivocally contradicts Deut 12.³⁶ This suggests that even as late as the late fifth century BCE the political elite in Jerusalem and Samaria was not influenced, restricted or even aware of a prohibition to sacrifice outside Jerusalem (or Mt. Gerizim).

That an earlier letter, referred to in the preserved letter (lines 18–19), was left unanswered by the high priest and the other priests in Jerusalem leaves some room for speculation. However, it is unlikely that this should be interpreted as a negative reaction on the part of the Jerusalemite priesthood, because then one would expect them to have strictly prohibited the building of the temple in Elephantine, or at least to have given some instruction on what to do. It is more likely that the original letter from Elephantine or the reply from Jerusalem was lost on the way.

Moreover, the so-called Passover letter, dated to ca. 419 BCE, may also contradict Deuteronomy. In this poorly preserved letter, Hananyah, a high Jewish official presumably in charge of Jewish affairs in Egypt, gives instructions on how to celebrate the Passover in Elephantine.³⁷ According to Deut 16, the Passover ceremonies can only be celebrated in Jerusalem. The relationship between the Passover letter and Deut 16 is hotly debated, but it is clear that there are differences, which suggest that the community at Elephantine was not following the Passover as instructed in Deut 16.³⁸ The Elephantine correspondence implies that the *Urdeuteronomium*, and especially Deut 12, became an authoritative document much later than the reign of Josiah.³⁹

³⁶ See Cowley, AP 32, dated shortly after 407 BCE.

³⁷ See Cowley, AP 21.

³⁸ See discussion in J. M. Lindenberger, *Ancient Aramaic and Hebrew Letters*, Second edition. SBL Writings from the Ancient World 4, 1994, 53–55.

³⁹ Hölscher, *Komposition*, 253–255, already put this argument forward, but the conclusion is rarely drawn. An exception is R. Kratz, *The Legal Status of the Pentateuch between Elephantine and Qumran*, in: ed. G. N. Knoppers/B. M. Levinson (eds.), *The Pentateuch as Torah*, 2007, 77–103.

10) Already, Hölscher showed that many of the laws in the *Urdeuteronomium* contain practical problems that suggest the law to be an idealistic program rather than a law that was born in a situation where it could be put into practice. For example, he regards the idea that the people would have to go to Jerusalem to sacrifice (Deut 12,13–14) and consume the tenth of the agricultural products and the first born of the livestock in Jerusalem (Deut 14,22–26) as completely unrealistic. In addition, the commandment that the whole nation, which he estimates to have been about 120000 people, should go to the temple for each feast would be logistically impossible.⁴⁰ Consequently, Hölscher suggested that the laws, and especially those concerning the cult centralization, cannot have been applied in practice during the monarchic time but must derive from an idealistic vision or plan for a future society. The problems with legitimating the document, as noted above, also point towards a background where the authors were not fully contemplating or aware of the practical aspect of how to gain credibility and authority for the document. This would fit poorly with Josiah's time, when the document would have been put into practice immediately, as traditionally assumed and as implied in II Reg 22–23. However, the unrealistic nature of the laws would be understandable in the post-586 BCE situation when one was visioning a new society should the state be reestablished.

Summary and Discussion

In many ways Deut 12 does not fit into a monarchic context. The same can be said of other parts of the *Urdeuteronomium* as well, although many of the laws in Deut 14–23 may have a prototype predating the events of 586 BCE and may thus contain some traces of a monarchic setting. Even if objections can be brought against many of the arguments presented above, the cumulative evidence from all of them shows that the traditional monarchic dating of the *Urdeuteronomium* runs into significant difficulties. It would be necessary to assume some very special circumstances to explain why the monarch, the state, its structures, Judah, Jerusalem and the temple are completely missing in the document when they should all be present during the time of writing, and how one still could impose and legitimate such a law in a monarchic setting. Rather than trying to avoid these problems by inventing circumstances where the lack of references to these institutions could still be possible, a far more probable explanation is that they did not exist during the time of writing (*»entia non sunt multiplicanda praeter necessitatem«* – Occam's razor).

⁴⁰ Hölscher, *Komposition*, 183–187.

The author intentionally avoided referring to the main institutions of the monarchy because he did not know whether these institutions would ever exist again in the form they once did. That the author was forced to use vague formulations and abstract language gives the document an open character that could be used in many contexts. This may also be one of the reasons why the same text could have been adopted even by the Samaritan community.

Many of the features in the *Urdeuteronomium* imply that the author was aware of many ideas in the Pentateuch. Israel is regarded as a religious community consisting of tribes that came from outside the country. The Sinai-tradition is assumed to be the original context where the laws were given. It is probable that the *Urdeuteronomium* is dependent on some of the stories of the Pentateuch (or of their early forms), but a closer analysis lies beyond the scope of this paper. Nevertheless, an independent origin from the time of Josiah is very difficult to defend.

It is evident that the conclusion that even the oldest version of Deuteronomy derives from a post 586 BCE context causes considerable difficulties for many traditional dates that scholarship has given for various books, redactions, literary layers and additions in many parts of the Hebrew Bible. For example, many of the later additions or editorial layers of Deuteronomy have to be dated much later than often assumed. One should also reconsider the relationship between Deuteronomy and I–II Reg. The possibility that the first edition of I–II Reg is older than the first edition of Deuteronomy should not be excluded. The domino effect in many areas of the Hebrew Bible may be considerable, but considering that it has been very difficult to date any of the documents of the Hebrew Bible, we may still be far away from understanding the original context of many parts of this collection of books. Since Deuteronomy is often regarded as a crystallization of religious conceptions in the late monarchic period, its late origin would mean that our general understanding of the religion practiced in Judah during the monarchy would also have to be reevaluated.

This paper does not go so far as to offer a precise context for the *Urdeuteronomium*, but it merely argues that the time of Josiah or any other time during the monarchy is improbable and that a context after the events of 586 BCE when there was no king, state or temple should be preferred. The original context of the oldest version of Deuteronomy is certainly still poorly known, but when we open our eyes to the post-monarchic period, the quest for the real context may begin.

In this paper I have dealt with the text available to us and the results are therefore applicable for this text only. In theory one could speculate that there was an earlier version of Deuteronomy that was rewritten after the destruction of the monarchy and the temple, and that

we now only possess a rewritten version.⁴¹ Of course, this possibility cannot be completely excluded, but it would mean a comprehensive re-writing where references to the king, temple, Jerusalem, Judah and state structures were replaced by ones that were more fitting to the post-monarchic setting. Here we would be moving on thin ice because assuming a version that was not preserved and for which there is no historical evidence is in the end non-scientific speculation. Something more substantial would be needed to assume a seventh century Deuteronomy, but with the currently available text of the *Urdeuteronomium* all indications point towards a post-monarchic dating.

There are several reasons to assume that the oldest edition of Deuteronomy is essentially post-586 BCE in origin. Especially the oldest text of Deut 12, generally assumed to be the core of the *Urdeuteronomium*, can only have been written in a context where there was no temple, state or monarch, but other parts of the *Urdeuteronomium*, as far as it can be reconstructed, also reveal features that imply a late origin. This paper does not go so far as to offer a precise context for the *Urdeuteronomium*, but it merely argues that the time of Josiah or any other time during the monarchy is improbable.

Il existe plusieurs raisons de dater la plus ancienne version du Deutéronome après 586 av. J.-C. quant à son origine. Spécialement le texte le plus ancien de Deut 12, considéré comme le noyau du *Urdeuteronomium*, ne peut avoir été rédigé que dans un contexte marqué par l'absence de temple, d'état ou de roi. Mais d'autres parties du *Urdeuteronomium*, dans la mesure où il peut être reconstitué, présentent des indices d'une origine tardive. Cette étude ne propose pas de contexte précis pour le *Urdeuteronomium*, mais présente des arguments s'opposant à une datation au temps du roi Josias ou de l'époque monarchique en général.

Es gibt verschiedene Gründe anzunehmen, dass die älteste Fassung des Deuteronomiums im Wesentlichen nach 586 entstanden ist. Vor allem der älteste Textbereich von Dtn 12, allgemein als der Kern des *Urdeuteronomiums* angenommen, kann erst zu einer Zeit geschrieben worden sein, in der es weder Tempel, Staat noch König gab. Aber auch andere Teile des *Urdeuteronomiums*, soweit sie zu rekonstruieren sind, zeigen Merkmale, die auf eine späte Entstehung schließen lassen. Der Aufsatz geht nicht so weit, eine genaue Entstehungssituation des *Urdeuteronomiums* zu benennen, sondern argumentiert vielmehr dahin gehend, dass die Ansetzung in die Zeit Josias oder in eine andere Epoche der Königszeit unwahrscheinlich erscheint.

⁴¹ For example, Lohfink, *Fortschreibung?*, 139–145, 165–166, rightly asks whether it is possible to assume only expansions or whether we also have to consider the possibility of rewriting.