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THE LEGAL CHARACTERIZATION OF MOSES IN THE RHETORIC OF THE PENTATEUCH

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The force of law depends on the authority of its promulgator. Self-characterizations by lawgivers play a vital role in persuading hearers and readers to accept law and in motivating them to obey it.¹ Pentateuchal laws therefore join narratives in characterizing law-speakers as part of a rhetoric of persuasion.² They present, however, two speakers of law, one divine (YHWH) and the other human (Moses). I will show that this dual voicing of pentateuchal law has two effects: it restricts Deuteronomy's prophetic characterization of Moses to the narrower definition of prophecy presented in the previous books, while it uses Moses' scribal role to present a unifying rhetoric of divine law.

¹ Classical theorists of rhetoric recognized self-characterization, the speaker's *ethos*, as crucial to persuasion. Aristotle argued that "persuasion is achieved by the speaker's personal character when the speech is so spoken as to make us think him credible. . . . This kind of persuasion, like the others, should be achieved by what the speaker says, not by what people think of his character before he begins to speak" (*Rhetoric* I.2.1356a; trans. W. R. Roberts in R. McKeon, ed., *The Basic Works of Aristotle* [New York: Random House, 1941]); for an application of classical theory to Deuteronomy, see Timothy A. Lenchak, "Choose Life!" *A Rhetorical-Critical Investigation of Deuteronomy* 28,69-30,20 [AnBib 129; Rome: Biblical Institute Press, 1993] 58 and passim.

² On the persuasive effects of a law-speaker's characterization, see Dale Patrick, "Is the Truth of the First Commandment Known by Reason?" *CBQ* 56 (1994) 426-27; on the legal effects of such narrative "enunciation," see Bernard S. Jackson, "The Ceremonial and the Judicial: Biblical Law as Sign and Symbol," in *The Pentateuch: A Sheffield Reader* (ed. J. W. Rogerson; Sheffield: Sheffield Academic Press, 1996; first published 1984) 120. On the uniqueness of divine voicing of law in ancient literature, see Shalom M. Paul, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Leiden: Brill, 1970) 37, and Frank Crusemann, *Die Tora: Theologie und Sozialgeschichte des alttestamentlichen Gesetzes* (Munich: Kaiser, 1992) 24; Eng. trans. by A. W. Mahnke (Edinburgh: Clark, 1996) 10; Bernard M. Levinson explored the hermeneutical implications of this innovation in "The Human Voice in Divine Revelation: The Problem of Authority in Biblical Law," in *Innovations in Religious Traditions* (ed. M. A. Williams, C. Cox, and M. S. Jaffee; Religion and Society 31; Berlin: de Gruyter, 1992) 35-71.

I. The Voice of a King³

Despite the different speakers of pentateuchal law, the contents of their speeches sound quite similar. Like God, Moses speaks law, most fully and explicitly in Deuteronomy. Like the divine instructions in Exodus, Leviticus, and Numbers, Moses' speeches in Deuteronomy combine genre elements from treaties, law codes, and commemorative inscriptions into a persuasive appeal for obedience to God's Torah.³ In the preceding books, the royal provenance of these genres in the ancient Near East characterizes YHWH as an ideal ruler.⁴ They therefore lead us to expect that Deuteronomy characterizes Moses as a king also.

The book certainly presents a forceful characterization. The speeches repeatedly call attention to their speaker, from Moses' autobiographical review of his service to God and Israel and his suffering as a result ("YHWH was angry with me because of you"),⁵ through his urgent appeals for fidelity and obedience to *his* words ("... that I am commanding you today"),⁶ to his threats of legal sanctions for noncompliance ("I call heaven and earth to witness against you today...").⁷ Moses recalls the narrative setting of the speech at the end of his own life (Num 27:12–23; Deut 31:14–16; 32:48–52; 34:1–12) within the speech itself (3:27–28; 4:22), evoking sympathy to reinforce the persuasive force of his authority.⁸ Deuteronomy presents the most powerful self-characterization of any human speaker in the Hebrew Bible.

Does Moses depict himself in royal terms? Royal motifs shape parts of his biography, most obviously at his birth, and evoke comparisons with heroic sagas that usually include kingship.⁹ Mosaic law implicitly (and Deuteronomy 17

³ For details, see James W. Watts, "Rhetorical Strategy in the Composition of the Pentateuch," *JSOT* 68 (1995) 3–22.

⁴ James W. Watts, "The Legal Characterization of God in the Pentateuch," *HUCA* 67 (1997) 1–14.

⁵ Deut 1:37; 3:26; 4:21; cf. 1:9; 9:9, 18, 25.

⁶ Deut 4:1–2, 5, 40; 6:2, 6; 8:1, 11; 10:13; 11:8, 13, 22; 12:11, 14, 21, 28, 32; 13:19 [Eng. 13:18]; 15:5, 11, 15; 17:3; 19:7, 9; 24:8, 18, 22; 27:1, 4, 10; 28:1, 13–15; 29:13 [Eng. 29:14]; 30:11; 32:1–3, 46. But the book also unmistakably equates Moses' and YHWH's commands: "This very day YHWH your God is commanding you..." (26:16; also 29:11 [Eng. 29:12]) and even merges Moses and YHWH in the ambiguous first person references of 29:1–8 [Eng. 29:2–9].

⁷ Deut 4:26; cf. 8:19–20; 11:26–28; 30:1–2, 15–16, 18–19.

⁸ Dennis T. Olson traced the theme of Moses' death throughout Deuteronomy in *Deuteronomy and the Death of Moses: A Theological Reading* (OBT; Minneapolis: Fortress, 1994) 17–22 and *passim*.

⁹ Hugo Gressmann pioneered the comparative study of Moses in light of other ancient stories in *Mose und seine Zeit: Ein Kommentar zu den Mose Sagen* (FRLANT 18; Göttingen: Vandenhoeck & Ruprecht, 1918). For a survey of the scholarship, see Brevard S. Childs, *The Book of Exodus* (OTL; Philadelphia: Westminster, 1974) 8–11. The approach has more recently been revived by George W. Coats, *Moses: Heroic Man, Man of God* (JSOTSup 57; Sheffield: JSOT Press, 1988).

explicitly) sets standards for Israel's rulers. Moses fulfills the otherwise royal roles of national leader and highest court of appeal.¹⁰ Moses can therefore be interpreted as a type or example of Israel's ideal king.¹¹

The biblical tradition, however, tends to contrast kings with Moses, as Joel Rosenberg noted:

If Moses and David are in some respects parallel figures, they are, in other respects, polar opposites: Moses was a reluctant leader, David an ambitious one; Moses was humble, David self-promoting; Moses clumsy of tongue, David a maker of songs and a genius of public relations; Moses a prophet who challenged a king, David a king who subverted the institutions of the prophets. Moses' grave-site is unknown, David's is Mt. Zion; Moses yielded to a successor from another tribe, David sired a dynasty; Moses wished for collective leadership (Num 11:29), David centralized it; Moses administered before a traveling sanctuary, David planned a permanent one.¹²

Most notably, Israel's kings never give law.¹³ The law comes from YHWH through Moses, a tradition that emphasizes Moses' uniqueness precisely in comparison with Israel's kings. Stories about Moses' humility (Exod 3:11–4:17; Num 12:3) show his lack of royal pretensions and, together with references to his mistakes (Num 20:12; Deut 32:51), also contrast him with that other pentateuchal lawgiver, YHWH. Though Moses' self-characterization in Deuteronomy is neither humble nor apologetic, it stops short of royal self-aggrandizement. By invoking his impending death, the speeches set a dominant tone of final admonition and self-justification.¹⁴ Deuteronomy's testamentary view backward and forward in time suggests comparison not so much with the royal inscriptional genres of laws, treaties, etc. as with the ancient genres of religious autobiogra-

¹⁰ Though in Exod 18:15, 19 Moses justifies this role on the basis of his oracular consultation with YHWH, in Deut 1:17 he omits any reference to divine instructions. Michael Fishbane cited this as an example of Deuteronomy's "many new tendencies in the increasing rationalization of the juridical process" (*Biblical Interpretation in Ancient Israel* [Oxford: Clarendon, 1985] 244–45).

¹¹ So Coats, *Moses*, 198.

¹² Joel Rosenberg, *King and Kin: Political Allegory in the Hebrew Bible* (Bloomington: Indiana University Press, 1986) x–xi.

¹³ The biblical tradition is nevertheless aware of royal lawgivers in other countries: see Esth 1:19; 8:8, and compare the matter-of-fact narrative of Solomon's temple building (1 Kings 5–6) with the decrees of the Persian kings to rebuild the Temple and enforce the law (Ezra 6:1–12; 7:12–26), complete with divine and human sanctions (6:11–12; 7:23).

¹⁴ "The text's self-echoing style reconstitutes Moses in the very hour of his falling silent" (James Nohrberg, *Like Unto Moses: The Constituting of an Interruption* [Bloomington: Indiana University Press, 1995] 38–39). Olson suggested that Deuteronomy's genre is best depicted as "catechesis" in light of its presentation of law in a testamentary context (*Deuteronomy and the Death of Moses*, 10–11). Rolf P. Knierim raised the possibility that pentateuchal editing modified Deuteronomy's genre: he argued that P's redaction of Deut 1:3 transformed "the genre of the deuteronomic farewell speech to the genre of the last will and testament of a dying person" (*The Task of Old Testament Theology: Method and Cases* [Grand Rapids: Eerdmans, 1995] 359).

phy and wise instruction.¹⁵ As a result, Deuteronomy characterizes Moses less in royal terms than as prophet and teacher/scribe, characterizations that the book's position in the larger Pentateuch both amplifies and restricts.

II. The Voice of a Prophet

Moses in Deuteronomy agrees with the narrative of Exodus-Numbers in claiming to possess a *delegated* authority to give the law to Israel. Like the narrator, Moses notes two sources for that delegated authority, YHWH and Israel itself. On the one hand, YHWH commissioned Moses to hear and report the law (Deut 4:14; 5:28–31; 18:15–18; cf. Exod 19:9); on the other hand, the people asked Moses to mediate between themselves and God (Deut 5:23–27; cf. Exod 20:18–20).¹⁶ Moses therefore claims double authorization to speak for God to Israel in lawgiving. Perhaps this also grounds his authority to speak for Israel to God in intercession. Deuteronomy 27 may illustrate the mediator's double role with cospeakers to distinguish the functions: Moses and the elders (v. 1) pro-

¹⁵ The distinction is not clear-cut between royal and nonroyal characterizations in these genres because of the prevailing autobiographical tone in most royal inscriptions (see Sigmund Mowinckel, "Die vorderasiatischen Königs- und Fürsteninschriften, eine stilistische Studie," in *EYXAPIETHPION: Studien zur Religion und Literatur des Alten und Neuen Testaments* [H. Gunkel Festschrift; ed. H. Schmidt; FRLANT 36.1; Göttingen: Vandenhoeck & Ruprecht, 1923] 278–322). Nevertheless, the testamentary autobiography that reviews a life at the point of death developed in Egyptian funerary literature as a purely private genre: "Kings had no autobiographies. Their lives were wholly stylized, and at once more public and more remote than those of their subjects" (Miriam Lichtheim, *Ancient Egyptian Literature* [Berkeley: University of California Press, 1973] 1.7). Persian-period autobiographies from Egypt and Israel (in Nehemiah) retain this private character (for comparisons, see Gerhard von Rad, "Die Nehemia-Denkschrift," *ZAW* 76 [1964] 176–87; Joseph Blenkinsopp, "The Mission of Udhahorresnet and Those of Ezra and Nehemiah," *JBL* 106 [1987] 409–21; and John W. Wright, "The Legacy of David in Chronicles: The Narrative Function of 1 Chronicles 23–27," *JBL* 110 [1991] 237–41, who draws comparisons with David's temple building in 1 Chronicles 23–27, though the latter account is not autobiographical). Later Hebrew literature, however, merges autobiography into the genre of royal psalms (e.g., the Septuagint's Psalm 151, etc.; see D. Flusser, "Psalms, Hymns, and Prayers," in *Jewish Writings of the Second Temple Period* [CRINT 2.2; ed. M. E. Stone; Assen: Van Gorcum; Philadelphia: Fortress, 1984] 561–63). The genre of wise instruction is sometimes credited to royalty in ancient Near Eastern literature, but often not. The Hebrew Bible associates it mostly with King Solomon (Prov 1:1; 25:1; Eccl 1:1; cf. Prov 24:23; 30:1; 31:1). Moshe Weinfeld called attention to the ancient genre of wise instruction to the king as comparable to Deuteronomy, which expands its intended audience to the people as well (*Deuteronomy 1–11* [AB 5; New York: Doubleday, 1991] 55–57).

¹⁶ Two different traditions of the Mosaic office may be conflated in these texts, as Childs has argued (*Exodus*, 353–59). In the present text, however, they serve rhetorically to reinforce the impression of Moses' authority: "There is a development within the deuteronomistic redaction from a public revelation of the Decalogue to a private revelation of the Book of the Covenant, which Moses must now promulgate for God. The result of this development is that Moses acquires authority in the deuteronomistic redaction, which mirrors his role in Deuteronomy" (Thomas B. Dozeman, *God on the Mountain: A Study of Redaction, Theology and Canon in Exodus 19–24* [SBLMS 37; Atlanta: Scholars Press, 1989] 54).

nounce the performative speech for Israel in the covenant ceremony, while Moses and the levitical priests (v. 9) speak for YHWH.¹⁷ This double delegation of authority to Moses maximizes his rhetorical power in Deuteronomy. When both God and Israel have appointed him to speak for them, who is left to challenge his words?¹⁸

Mediation comprises the essence of the prophetic role for Deuteronomy.¹⁹ In Deut 18:15–22, Moses presents himself as the first of a line of prophets who, by virtue of the authority delegated by the people ("you") as well as YHWH (vv. 16–17), will speak for God to Israel. Deuteronomy thus defines prophets by comparison with Moses, and so turns the statement "Moses was a prophet" into a tautology.²⁰

The larger Pentateuch, however, provides a different depiction of prophecy, which situates the speeches of Moses in Deuteronomy relative to the preceding words of God. The Pentateuch does not use prophetic vocabulary and rhetorical forms very often.²¹ Except for two places in Deuteronomy (18:15, 18; 34:10), it never calls Moses a prophet. Num 12:6 contrasts God's direct revelation of law to Moses with the visionary experiences of prophets.²² Nor does Moses use the messenger formulas typical of prophets when he delivers laws to Israel, either in Exodus-Numbers or in Deuteronomy. Moses sounds most like other Israelite prophets when his divine message consists of warnings and threats. In the plague stories, the messenger formula regularly introduces YHWH's threats against Egypt (Exod 7:17; 7:26 [Eng. 8:1]; etc.), which Aaron

¹⁷ So Norbert Lohfink, "Bund als Vertrag im Deuteronomium," *ZAW* 107 (1995) 225, though he noted that the contents of the speech in vv. 2–8 do not support this distinction very well (225 n. 38).

¹⁸ So George W. Savran: "Deuteronomy is essentially self-referential, and the authenticity of its quotations depends *not* upon comparison with prior speech but upon the authoritative voice who quotes them, that is, Moses. . . . Moses' narrative voice has such overwhelming authority in Deuteronomy that it is capable of authenticating all its quotations, regardless of the presence or absence of an earlier 'verifying' speech" (*Telling and Retelling: Quotation in Biblical Narrative* [Bloomington: Indiana University Press, 1988] 116).

¹⁹ Gerhard von Rad, *Old Testament Theology* (New York: Harper & Row, 1962) 1.294–95; Lothar Peritt, *Bundestheologie im Alten Testament* (WMANT 36; Neukirchen-Vluyn: Neukirchener Verlag, 1969) 99; Childs, *Exodus*, 355, 359; Robert R. Wilson, *Prophecy and Society in Ancient Israel* (Philadelphia: Fortress, 1980) 157–66; Eckart Otto, "Gesetzesfortschreibung und Pentateuchredaktion," *ZAW* 107 (1995) 381.

²⁰ Joseph Blenkinsopp, *The Pentateuch: An Introduction to the First Five Books of the Bible* (New York: Doubleday, 1992) 235.

²¹ The restraint of Genesis-Numbers regarding prophecy contrasts sharply with the emphasis in the second part of the Hebrew canon.

²² When the word "prophet" does appear, it applies to a variety of phenomena: Abraham's intercession (Gen 20:7), Aaron's role vis-à-vis Moses (Exod 7:1), Miriam's singing the victory song at the sea (Exod 15:20), and the ecstatic behavior of the elders (Num 11:25–29). Balaam, the most obviously "prophetic" character in the Pentateuch after Moses, like Moses receives no title but describes himself as a visionary (Num 24:3–4, 15–16).

“your prophet” (7:1) delivers and implements. And in the Song of Moses (Deut 32:1–43), Moses deploys a full complement of prophetic vocabulary and rhetorical forms to predict Israel’s faithlessness and YHWH’s punishment. Like the prophetic books, the Song presents a stronger characterization of YHWH (who emerges as quoted speaker in 32:20–27, 34–35, 37–42) than of Moses.²³ Nevertheless, it does place Moses *literarily* among prophets such as Isaiah and Hosea.

I have argued elsewhere that the rhetorical structuring of the whole Pentateuch casts Deuteronomy as the concluding sanctions to the preceding stories (Genesis–Exodus 19) and lists (Exodus 20–Numbers).²⁴ A separate voice dominates each element in this very general schema: the anonymous narrator tells the stories, YHWH gives most of the lists, and Moses pronounces the sanctions. The numerous exceptions in detail²⁵ should not be allowed to obscure the overall rhetorical dominance of each voice within its own sphere.²⁶

This pentateuchal distribution of voices and roles categorizes Moses’ speech in Deuteronomy as prophetic threat and promise, and characterizes Moses as a more typical prophet than the book read alone suggests. The Pentateuch’s rhetoric appropriates elements within Deuteronomy, such as its self-description as “blessing and curse” (11:26; 30:19) and its poetic climax in the threats of chap. 32 followed by the blessings of “Moses’ Last Words” in chap. 33, for use in a larger pattern, which emphasizes a narrow understanding of Moses’ prophetic role. Deuteronomy 32–33 reminds readers of the Pentateuch of other large poems of sanction. Jacob’s Blessing (Genesis 49) brings Genesis

²³ James W. Watts, *Psalm and Story: Inset Hymns in Hebrew Narrative* (JSOTSup 139; Sheffield: JSOT Press, 1992) 72–73.

²⁴ Watts, “Rhetorical Strategy,” 3–22. I do not claim that Deuteronomy’s *genre* should be defined as “sanctions”; the book also contains large amounts of narrative and law and reproduces in its own structure the pattern of stories (chaps. 1–11), lists (chaps. 12–26), and sanctions (chaps. 27–33), all voiced by Moses (for discussion of the genre of Deuteronomy, see the above comments on autobiography and wise instruction and nn. 14 and 15). My point is rather that within the Pentateuch’s reproduction of this same pattern, Deuteronomy takes the position of the sanctions, a role for which its self-description in terms of “blessing and curse” (Deut 11:26; 30:19; thus both before and after its laws) suits it well.

²⁵ These are most obvious in Numbers, where the narrator voices lists (the genealogies) and stories, while some laws take the form of direct quotations of Moses (e.g., Num 30:1–15; 36:5–9) and even Eleazar (31:21–24). Yet the increasing dominance of the divine voice in the latter part of the book supports linking it with Leviticus and the latter half of Exodus.

²⁶ As Levinson noted: “If the convention of anonymity characterizes the narrative texts of the Bible, as Sternberg rightly stresses, what characterizes the legal texts is the convention of voice, the divine or prophetic attribution of law. Each convention—voice and anonymity—equally constitutes a claim for textual authority, strikingly in each case by disclaiming explicit human authorship” (“The Right Chorale: From the Poetics to the Hermeneutics of the Hebrew Bible,” in “Not in Heaven”: *Coherence and Complexity in Biblical Narrative* [ed. J. P. Rosenblatt, J. C. Sitterson, Jr.; Bloomington: Indiana University Press, 1991] 146–47). But the human voice of Moses emerges strongly in Deuteronomy.

to a climax with an oracular combination of promise and threat.²⁷ Balaam, the only professional visionary in the Pentateuch, delivers two chapters of poetic blessings though hired to pronounce curses (Numbers 22–24).²⁸ All these poems appear before major transitions in the Pentateuch’s plot: the death of Jacob and the end of the ancestral stories in Genesis 50, the death of the Exodus generation in Numbers 25–26, the death of Moses in Deuteronomy 34.²⁹ Together with the stories of Moses and Aaron delivering God’s threats against Egypt, these pentateuchal parallels to Deuteronomy categorize Moses’ words as prophetic sanctions.³⁰ As a result, the larger pentateuchal context takes Moses the lawgiver found in Deuteronomy read apart from what precedes it (and also in Exodus 24 read alone) and makes him *just* a prophet—uniquely great, the exemplar of the prophetic office to be sure, but not a rhetorical competitor with the divine lawgiver of Exodus, Leviticus, and Numbers.³¹ Moses instead completes the Pentateuch’s rhetorical strategy by prophetically announcing the consequences of obeying and disobeying God’s previously stated laws.³²

²⁷ Calum M. Carmichael provided a comparison between Genesis 49 and Deuteronomy and argued that the latter is modeled on the former (*The Laws of Deuteronomy* [Ithaca, NY: Cornell University Press, 1974] 23–25).

²⁸ Discussion of Balaam’s role has focused either on what kind of Mesopotamian diviner he is (for summaries, see M. S. Moore, *The Balaam Traditions: Their Character and Development* [Atlanta: Scholars Press, 1990] 98, 104–9; Jacob Milgrom, *Numbers* [Philadelphia: Jewish Publication Society, 1990] 471–73) or how Israel’s traditions, especially E and the Deuteronomists, shaped an increasingly negative characterization of him (Wilson, *Prophecy and Society*, 147–50). The poems’ role in the wider context of Numbers was analyzed by Dennis T. Olson (*Death of the Old and Birth of the New: The Framework of the Book of Numbers and the Pentateuch* [BJS 71; Chico, CA: Scholars, 1985] 153–64).

²⁹ I am grateful to my student Kenneth Garmen for elucidating the significance of this pattern.

³⁰ Blenkinsopp noted that Deuteronomy defines prophecy institutionally, so that “the principal function of the prophet is now to proclaim the law and warn against the consequences of non-observance, and the same function is amply illustrated in Dtr (e.g., 2 Kings 17:13)” (*Pentateuch*, 233). The Pentateuch as a whole emphasizes the second element (warnings of consequences) in its shaping of Mosaic prophecy, while subordinating the first (lawgiving) to the dominant divine voice of Exodus–Numbers.

³¹ Note that the celebration of Moses’ uniqueness which concludes the Pentateuch (Deut 34:10–12) emphasizes his miracles. The laws are not mentioned!

³² These observations suggest, of course, looking for explanations in the historical situation and redactional steps by which Deuteronomy was combined with the rest of the Pentateuch. Rhetorical theory in fact requires that attention be given to the real speakers and audience, writers, editors, and readers, as well as their depictions within a speech or text. Synchronic description should precede diachronic analysis, however, to guard against confusing literary techniques with editorial revisions (for recent arguments for the necessity of starting with the text as we have it, see Blenkinsopp, *Pentateuch*, 184, 194; Knierim, *Task*, 368–69). Therefore for reasons of space, this essay is restricted to the first, synchronic step; diachronic studies are nevertheless necessary to complete an analysis of the Pentateuch’s rhetoric.

The Pentateuch then does not present itself on the whole as "the law of Moses," but rather as "the law of YHWH." God speaks the law and God alone. Moses announces its consequences, as did Israel's lesser prophets.

III. The Voice of a Scribe

Deuteronomy's rhetoric calls attention to the Pentateuch's other dominant characterization of Moses as teacher and scribe. The language of sanctions aims at motivation, a key concern of the wisdom literature, with which Deuteronomy has much in common.³³ The book also emphasizes learning and interpretation (1:5; 4:1, 10; 5:1; 6:6–9, 20) as necessary to obedience. Thus, Deuteronomy displays law as instruction and Moses as the paradigmatic instructor. Toward the end the emphasis shifts from speaking ("that I am commanding you today") to texts ("the words of this law that are written in this book" [28:58; 30:10]; "the curses in this book" [28:61; 29:19–20 (Eng. 29:20–21), 27]). Moses appears as transcriber (31:9, 19, 22, 24; a role he also plays in Exod 24:4; 34:27–28) and urges Israel to follow his example (Deut 17:18; 27:3, 8).

Moses thus exemplifies the ancient scribe who records, teaches, and interprets. In writing as in speaking, he repeats what he has heard, but he also interprets and composes outright.³⁴ Deuteronomy 31–32 provides a concise example of this lack of distinction between the scribal roles of author and transcriber: YHWH instructs Moses to write "this song" (31:19), which Moses voices in the first person (32:1–3) yet which quotes YHWH extensively (32:20–27, 34–35, 37–42). The same process describes Deuteronomy as a whole: Moses claims authority delegated from both YHWH and the people to proclaim laws as first-person commands, yet as YHWH's commandments (thus, e.g., "Listen to the voice of YHWH your God and do his commandments and ordinances which I am commanding you today" [27:10]). Author, editor, and publisher unite in Moses the scribe, yet the lawgiver remains YHWH alone.³⁵

³³ Blenkinsopp noted that in Deuteronomy, "Moses is presented as teacher and scribe; as such, he not only enunciates the laws but provides motivation for their observance" (*Wisdom and Law in the Old Testament: The Ordering of Life in Israel and Early Judaism* [rev. ed.; Oxford: Oxford University Press, 1995] 118); also Carmichael, *Laws of Deuteronomy*, 34–52; Olson, *Deuteronomy*, 11. The definitive study of wisdom influence on Deuteronomy is Moshe Weinfeld's *Deuteronomy and the Deuteronomistic School* [Oxford: Clarendon, 1972].

³⁴ The scribe's authority depends, of course, on the claim to transmit the text faithfully and is endangered by charges of overt modification (e.g., Jer 8:8, "the lying pen of the scribes"). Yet transmission of law always requires its interpretation and application, which is a creative process (as the career of "Ezra the scribe" illustrates). Even in the process of simply reproducing texts, editorial creativity is by necessity involved as well (both for ancient scribes and modern text critics: see James W. Watts, "Text and Redaction in Jeremiah's Oracles Against the Nations," *CBQ* 54 [1992] 436–42). Deuteronomy employs on a massive scale both defensive rhetoric of fidelity to the tradition and creative reinterpretations of it.

³⁵ At one point in the Sinai story, YHWH serves as scribe (Exod 24:12; 31:18; 32:16; Deut 5:22;

How does this scribal characterization of Moses affect the contradictions between Deuteronomy and preceding pentateuchal law codes? Moses can be quite bold in his modifications of previously given narrative, legal, and theological traditions. For example, he omits to mention his own mistakes in the wilderness, blaming the people for his death sentence instead (cf. Moses' claims in Deut 1:37; 3:26; 4:21–22 with YHWH's version in 32:51). Moses modifies the laws regarding the location of altars and the possibility of secular slaughter (Deut 12:13–27) and provides new legislation regarding kings (17:14–20). The most blatant theological example is his denial of multi-generational retribution in 7:9–10, a key idea for YHWH's self-characterizations in Exod 20:5–6 and 34:6–7.³⁶

It must be noted that contradictions mar Moses' own teaching and scribal work since conflicts appear within Deuteronomy itself. For example, one should judge the legitimacy of prophets by their predictive accuracy according to 18:21–22 (Moses quoting YHWH), but by their doctrinal orthodoxy according to 13:1–4 [Eng. 12:32–13:3] (Moses alone). Polzin argued that God's direct discourse in chap. 18 overrules Moses' indirect report in chap. 13, and that the two texts represent conflicting tendencies found throughout the book.³⁷ This contradiction differs, however, from those listed above in that Moses voices both versions, only in one case quoting YHWH directly (though the original statement goes unrecorded in the Pentateuch), in the other not. Thus Moses remains the authority for both rulings.³⁸

Moses in Deuteronomy, like YHWH in Exodus-Numbers, gives voice to changing and incommensurate legal traditions.³⁹ Contradiction in pentateuchal

9:10), but only Moses reads the tablets before they are destroyed (Exod 32:15, 19; Deut 9:17). Who inscribed the second set of tablets remains curiously ambiguous (Exod 34:1, 4, 27–28). Nohrnberg summarized the effect of this story on the characterization of Moses: "Moses functions as the inspired author of both the law and the Pentateuch, that is, he stands for the keeping of the texts of the law and the keeping of the covenant history embodied in them. Moses is the only one who saw what the finger of God had written on the first set of tables before they were broken; the correspondence with the second set, which he wrote at God's dictation, presumes his faithfulness as an intermediary and scribe" (*Like Unto Moses*, 60).

³⁶ On the latter, see Watts, "Legal Characterization of God," 9–11; for the process of interpretation at work in Deut 7:9–10, see Fishbane, *Biblical Interpretation*, 436; and Levinson, "Human Voice," 53–56.

³⁷ Robert Polzin, *Moses and the Deuteronomist: A Literary Study of the Deuteronomistic History* (New York: Seabury, 1980) 63–65.

³⁸ Deuteronomy 18 therefore presents no exception to Polzin's observation that Deuteronomy 12–26, unlike its framework, tends "to raise the authority of the Mosaic voice to a position almost indistinguishable from that of the voice of God. Conversely, in this address the direct voice of God is almost totally silenced" (*Moses*, 55). Similarly, Fishbane, *Biblical Interpretation*, 436 and n. 28; Savran, *Telling and Retelling*, 114.

³⁹ Olson explained the difficulties by means of a theological rationale based in Deut 28:69's [Eng. 29:1] distinction between a Horeb covenant and a Moab covenant. The former "deconstructs

law does not pose a conflict between YHWH and Moses so much as it authorizes legal change as a natural part of Torah. The very nature of Deuteronomy, a “second law” delivered to a new generation in Moab, highlights the role of reinterpretation and reapplication in legal and religious traditions.⁴⁰ A unique introduction to Moses’ speech emphasizes this function: משה באר את־התורה, הוֹאֵת לְאָמָר, “Moses clarified this law, saying” (Deut 1:5).⁴¹ The scribal character of Moses’ voice emerges precisely in his mastery of the tradition to present it in a new form, as Fishbane argued:

The very fact that the traditions are represented on the Plains of Moab to the post-exodus generation is emblematic of the fundamental trope of instruction basic to aggadic exegesis—that the traditions have to be retaught and revised in each generation. . . . It is *the* Torah, which for Deut 1:5 as for Ps 78:5 . . . means *the entirety of the traditions*—the historical, the hortatory, and the legal.⁴²

Ironically, awareness of change creates concern for the tradition’s integrity within Deuteronomy itself, which contains the only pentateuchal injunctions against modifications (13:1 [Eng. 12:32]). The tension between this prohibition and the character of the book that contains it may be intended to highlight the issue, as Polzin suggested.⁴³ Or, since a scribe’s authority depends on claims to

itself through the ambiguities of its own statutes and ordinances that shipwreck in the end upon the curses of Deuteronomy 28. . . . The Moab covenant [Deuteronomy 29–32] does not negate but decenters the Horeb covenant with an emphasis on the judging and saving action of God in the face of the failure and limitation of human obedience. Thus, Yahweh will be the one who will create obedience through the strategies of the Moab covenant, an obedience that humans could not achieve under the Horeb covenant (compare Deut 10:16; 30:6). Yet the Horeb covenant remains in effect and humans continue to struggle, however imperfectly, toward faithfulness” (*Deuteronomy*, 176). Olson’s interpretation employs narrative development (from Horeb to Moab) to explain legal change, forcing law to conform to narrative conventions of genre (for a critique of this strategy when applied to the golden calf story and the priestly legislation, see James W. Watts, “Public Readings and Pentateuchal Law,” *VT* 45 [1995] 550–51). Legal explanations for differences and change accord better with Deuteronomy’s instructional genre and produce a very different rhetorical result: interpretation of law makes obedience very possible indeed. Lohfink provided a reading more compatible with the book’s genre by arguing that Deuteronomy 5–28 and 29–30 represent the *same* Moab covenant depicted from the two different perspectives of the covenant document and the covenant ritual respectively (Lohfink, “Bund als Vertrag,” 229–33).

⁴⁰ Perliitt, *Bundestheologie*, 99; Blenkinsopp, *Wisdom and Law*, 118; Polzin, *Moses*, 65–67; Olson, *Deuteronomy*, 12.

⁴¹ In its only other appearances in the Hebrew Bible, the verb באר describes clear writing (Deut 27:8; Hab 2:2) and therefore probably should convey scribal overtones here.

⁴² Fishbane, *Biblical Interpretation*, 439–40.

⁴³ “How better to focus on the absurdity of forbidding any ongoing process of interpreting the word of God than by putting such a prohibition within a lawcode whose basic style already inextricably combines word of God with commentary and response to that word?” (Polzin, *Moses*, 65).

accurate transmission of the tradition, the injunction may serve to camouflage Deuteronomy’s innovations with a “rhetoric of concealment,” as Levinson put it.⁴⁴ At any rate, the overall force of Deuteronomy’s rhetoric aims at identifying divine law and its interpretive tradition as one and the same thing.

Deuteronomy works to merge the voices of YHWH and Moses into a unifying rhetoric of authority. Yet the larger structure of the Pentateuch distinguishes them sharply and accords them separate functions, as speaker of law and speaker of sanctions respectively. Moses’ scribal role bridges this discrepancy by making him the only authorized tradent of divine law. To Moses falls the responsibility not only of announcing the consequences of law but also of writing, interpreting, and applying the law. Although the structure of the Pentateuch relegates Moses to the role of commentator on all that precedes Deuteronomy, the power of the entire religious tradition derives precisely from such commentary. Moses thus becomes a “cipher” for the “correlation of tradition and autonomy,” as Crüsemann said.⁴⁵

The narrative contexts of the laws reinforce this dialectic of divine law and human mediation. Though Deuteronomy inflates Moses’ stature a great deal, the context of his speech is his own impending death, decreed as punishment for his rash action at Meribah. On the other hand, though the regulations of Leviticus and the later chapters of Exodus elevate the role of priests and even in a few places cast Aaron as a mediator of divine law (Lev 10:8; 11:1), the narratives qualify this characterization by showing Aaron and the priesthood’s role in idolatry (Exodus 32; Lev 10:1–3). Thus, the mediators of pentateuchal law are always flawed. Though conflicts between them are frequently settled by divine intervention (Num 12:1–16; 16:1–40), differences in interpretation may also be settled by human reason and compromise, as the curt argument at the end of Leviticus 10 shows. The narrative context, then, uses characterization of the mediators to relativize Israel’s various legal traditions while maintaining the authority of divine commandment.

Hence the ambiguity in the title תורה *Torah* for the Pentateuch: it is the “law” of YHWH and also the “instruction” of Moses. As prophet and scribe, Moses depends on divine and human acknowledgment for his authority. Yet there is no access to the divine law except through him. The three dominant

⁴⁴ Levinson, “Human Voice,” 45.

⁴⁵ Crüsemann, *Die Tora*, 131 (my translation). Kenneth Burke described the inevitable ramifications of this rhetorical phenomenon wherever it is encountered: “When a figure becomes the personification of some impersonal motive, the result is a *depersonalization*. The person becomes the charismatic vessel of some ‘absolute’ substance. And when thus magically endowed, the person transcends his nature as an individual, becoming instead the image of the idea he stands for. He is then the representative not of himself but of the family or class substance with which he is identified. In this respect he becomes ‘divine’ (and his distinctive marks, such as his clothing, embody the same spirit)” (*A Rhetoric of Motives* [Berkeley: University of California Press, 1950], 277).

voices of the Pentateuch thus become interdependent and almost interchangeable: the anonymous narrator, like Moses the scribe, requires both divine inspiration and reader acceptance for authorization of the story; the divine lawgiver depends on reader acceptance of human mediation of the commandments; the prophetic scribe depends on authority delegated by both God and readers to interpret the stories, the laws, and the sanctions. No wonder the Pentateuch's rhetoric led tradition to claim both divine *and* Mosaic authorship of the whole.