

KEVIN MATTISON

Rewriting and Revision as Amendment in the Laws of Deuteronomy

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Mohr Siebeck

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Mohr Siebeck

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Abstract

One of the defining features of Deuteronomy is its reworking of textual sources. Many of Deuteronomy's laws rewrite the laws of the Covenant Collection, also known as the Covenant Code (Exod 20:22–23:19). The purpose of the rewriting is disputed: was Deuteronomy designed to stand alongside the Covenant Collection as a supplement to it, or to stand alone as a replacement for it? This study proposes a mediating model of amendment: Deuteronomy was designed to change how the Covenant Collection would be understood by its readers.

The competing models of replacement and supplementation emphasize different aspects of the relationship between Deuteronomy and the Covenant Collection: models of "replacement" focus on discontinuity (contradictions and tensions), whereas models of "supplementation" focus on continuity (presupposition, reference, and complementation). An amendment model accounts both for the seriousness of the disagreements between Deuteronomy and the Covenant Collection and for the extent to which Deuteronomy requires reference to the Covenant Collection.

The internal growth of laws within Deuteronomy provides an important point of comparison to Deuteronomy's reworking of the Covenant Collection. Deuteronomy's authors responded to their own growing text in a range of ways that parallels their responses to the Covenant Collection: they contradicted it and changed its meaning at certain points, but also presupposed it and referenced it. This similarity in interpretive results suggests a similarity in purpose, suggesting that Deuteronomy's authors sought to amend the Covenant Collection even as they continued to amend their own growing text. I analyze the responses to source texts evident in three sets of Deuteronomic laws: its laws of cultic place, sacrifice, and slaughter (Deut 12:1–28; cf. Exod 20:24–26); its tithe and firstling regulations (Deut 14:22–29; 15:19–23; 26:12–15; cf. Exod 22:28–29); and its asylum legislation (Deut 19:1–13; cf. Exod 21:12–14).

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Chapter One

Introduction

1.1 Purpose and Rationale

The purpose of this study is to examine how and why the authors of Deuteronomy (D) responded to source texts. I analyze D's responses to the laws of the Covenant Collection (CC: Exod 20:22–23:19), track internal responses within the growing text of D itself, and compare the two phenomena. D's laws respond to CC in a complex way, presupposing and complementing it while overriding it at some points. The same combination of responses is evident within D: later texts presuppose and complement earlier ones even as they override some parts of them.

Existing models of the relationship between D and CC fall into two categories, each of which emphasizes one aspect of the relationship: models of "replacement" focus on contradictions, whereas models of "supplementation" focus on presupposition and complementation. In the present study, I propose a model of "amendment" that builds on the existing models of supplementation and replacement. D's authors sought to amend CC, just as they amended the growing text of D, by overriding the existing text at specific points but otherwise letting it stand, presupposing it and complementing it. This amendment model provides a robust explanation that encompasses D's presupposition and complementation of CC as well as its subversion of some aspects of CC. The amendment model also accounts for the similarities between the Deuteronomic authors' treatment of CC and their handling of the existing text of D.

1.2 Deuteronomy as a Responsive Text

One of the defining features of the book of Deuteronomy is its reworking of textual sources. D responds directly and substantially to narratives and divine laws now found in the Tetrateuch (the books of Genesis through Numbers). The nature and purpose of this response have occupied interpreters for over two millennia, who have sought to reconcile D's claims with the differing and sometimes conflicting claims of parallel texts in the Tetrateuch.

Modern scholars have been able to clarify the relationship between D and the Tetrateuch in important ways that were not possible in a pre-critical framework. Two basic critical insights are especially important for understanding D in general, and for the present study in particular. The first is the distinction between Priestly and non-Priestly portions of the Tetrateuch. Almost all scholars agree that D responds extensively to the non-Priestly texts of the Tetrateuch. The relationship between D and the Priestly portions of the Tetrateuch is disputed. Some scholars see D as responding to Priestly as well as non-Priestly texts.¹ Others argue that D does not depend on Priestly texts, except in a few isolated cases.² A second important insight is that parallel Pentateuchal texts

¹ Michael A. Fishbane, *Biblical Interpretation in Ancient Israel* (Oxford; New York: Clarendon Press; Oxford University Press, 1985), 64–66, 163–65, 220; John E. Harvey, *Retelling the Torah: The Deuteronomistic Historian's Use of Tetrateuchal Narratives*, JSOTSup 403 (London; New York: T & T Clark International, 2004), 10; Jacob Milgrom, *Leviticus 1–16: A New Translation with Introduction and Commentary*, AB 3 (New York: Doubleday, 1991), 8–13, 29, 698–704; *Leviticus 17–22: A New Translation with Introduction and Commentary*, AB 3A (New York: Doubleday, 2000), 1357–61; Moshe Weinfield, *Deuteronomy 1–11: A New Translation with Introduction and Commentary*, AB 5 (New York: Doubleday, 1991), 30–35.

² Joel S. Baden, *The Composition of the Pentateuch: Renewing the Documentary Hypothesis*, AYBRL (New Haven: Yale University Press, 2012), 133; Samuel Rolles Driver, *A Critical and Exegetical Commentary on Deuteronomy*, ICC (Edinburgh: T & T Clark, 1973), xi–xvi; Abraham Kuenen, *An Historico-Critical Inquiry into the Origin and Composition of the Hexateuch (Pentateuch and Book of Joshua)*, trans. Philip H. Wicksteed (London: Macmillan and Co., 1886), 170–72; Jeffrey H. Tigay, *Deuteronomy*, JPS Torah Commentary (Philadelphia: Jewish Publication Society, 1996), xxiv.

The clearest cases of D's interaction with priestly texts are the dietary laws of Deut 14:2–21 and the command regarding skin disease in Deut 24:8. D's dietary laws closely parallel those found in Lev 11:1–23. David Wright refers to the source of D's dietary laws as "proto-Priestly," suggesting that the text was not yet part of a larger Priestly document (see "The Spectrum of Priestly Impurity," in *Priesthood and Cult in Ancient Israel*, ed. Gary A. Anderson and Saul M. Olyan, JSOTSup 125 [Sheffield: JSOT Press, 1991], 168–69 and discussion at 168 n. 3). D also authorizes the priests to treat skin diseases in accordance with a Mosaic command to them (Deut 24:8; cf. Lev 13:1–14:57). Milgrom also regards Deut 18:1–8 as a response to P, suggesting that D's granting of priestly privileges to all Levites is a polemic against P's exclusion of the Levites from Priestly service ("Profane Slaughter and a Formulaic Key to the Composition of Deuteronomy," *HUCA* 47 [1976]: 11–13). If these D texts respond merely to "priestly instructions," and not to a Priestly document set in Israel's foundational past, it is noteworthy that D portrays them as among the founding laws of Israel given by the deity and promulgated by Moses. This portrayal is especially clear in the case of Deut 24:8, which refers to Moses' prior transmission to the priests of skin disease regulations. D's attribution of such priestly instructions to Moses would fit D's tendency to attach all law to Moses, with Deut 13:2–6 and 18:15–22 imposing strict limits on future revelation (see Jeffrey Stackert, *A Prophet like Moses: Prophecy, Law, and Israelite Religion* [New York: Oxford University Press, 2014], 126–67). Eventually, this incorporation of priestly instructions into Mosaic law serves to

often stand in real tension that reflects real points of disagreement, rather than only apparent tension that is to be alleviated through harmonization.³

Such tensions exist not only *between* D and other parts of the Pentateuch but also *within* D: D was composed by multiple authors with different viewpoints, and as a result it contains internal contradictions.⁴ Several legal contradictions within D are treated in the present study. D portrays the establishment of centralized worship and secular slaughter as immediate (Deut 12:2–7, 13–19) or delayed (12:8–12, 20).⁵ Secular slaughter is allowed in all settlements (12:15) or only those far from the cult site (12:21).⁶ D strictly excludes tithes and firstlings from secular use (12:17–18; 15:19–20) but also permits and regulates their sale (14:23–26).⁷ Several other legal contradictions can be observed within D. D both calls for summary execution of idolaters (Deut 13:7–12) and grants them due process (17:2–7).⁸ D both affirms and rejects transgenerational divine punishment (Deut 5:9–10; 7:9–10).⁹ D allows women, children and livestock to be plundered from conquered cities (20:10–14) and regulates the taking of captive women as wives (21:10–14), but elsewhere requires that all people and livestock in the promised land be devoted to destruction (חרם: Deut 20:15–18) and forbids outright the marrying of captive women (Deut 7:3–4).¹⁰

increase the coherence of the compiled Pentateuch, since Moses now refers to some of the laws that the deity spoke to him in the book of Leviticus.

³ See Bernard M. Levinson, “‘The Right Chorale’: From the Poetics to the Hermeneutics of the Hebrew Bible,” in *“The Right Chorale”: Studies in Biblical Law and Interpretation*, FAT 54 (Tübingen: Mohr Siebeck, 2008), 11. For an overview of such contradictions, see Jean Louis Ska, *Introduction to Reading the Pentateuch* (Winona Lake, Ind: Eisenbrauns, 2006), 40–75.

⁴ Contradictions can also be observed within other parts of the Pentateuch, such as the Priestly-Holiness text (see Ska, *Reading the Pentateuch*, 152–53).

⁵ See 2.3.2, 2.3.5 below.

⁶ See 2.3.3 below.

⁷ See 3.5.1 below.

⁸ See Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (New York: Oxford University Press, 1997), 118–27. Raymond Westbrook suggests that the two cases do not actually conflict: in Deut 13:7–12, only a single witness is needed because his testimony against his own close friend or relative is “contrary to interest,” and no other witnesses would exist because the enticement to apostasy was carried out in secret (“A Matter of Life and Death,” in *Law from the Tigris to the Tiber: The Writings of Raymond Westbrook. Volume 2: Cuneiform and Biblical Sources*, ed. Bruce Wells and F. Rachel Magdaline [Winona Lake, Ind.: Eisenbrauns, 2009], 262).

⁹ See Bernard M. Levinson, *Legal Revision and Religious Renewal in Ancient Israel* (New York: Cambridge University Press, 2008), 72–84. Strictly speaking, this is a theological contradiction rather than a legal one, but it involves a legal text (the Decalogue).

¹⁰ On the shift within D from allowing the taking captives to requiring חרם, see Cynthia Edenburg, “Joshua 9 and Deuteronomy, an Intertextual Conundrum: The Chicken or the Egg?,” in *Deuteronomy in the Pentateuch, Hexateuch, and the Deuteronomistic History*,

Additional contradictions are evident among D's narratives. The revelation of the Decalogue is portrayed as both direct (Deut 5:4, 22) and mediated (v. 5).¹¹ The Israelites are in some cases depicted as being less numerous than the promised land's current inhabitants (4:38; 7:1; 9:1; 11:23) and even the least numerous of all peoples (7:7), but in other passages they are said to be as innumerable as the stars in the sky (1:10; 10:22).¹² The forecasted conquest of Canaan is described as both sudden (9:3) and gradual (7:22).¹³

Knowing that D responded primarily to one or more once-distinct portions of the Tetrateuch, to the (near) exclusion of others, that D disagreed with its source(s) in important ways, and that D itself was written by multiple authors who disagreed with one another, we can start to glimpse D as it might have been in ancient Judah and earliest Judaism, before it was subsumed into the Torah.

Nearly all scholars agree that D responded extensively to CC.¹⁴ Exceptions to this view are rare. John Van Seters has argued for dependence in the oppo-

ed. Konrad Schmid and Raymond F. Person, Jr., *FAT* 2.56 (Tübingen: Mohr Siebeck, 2012), 119–22, 130; cf. A. D. H. Mayes, *Deuteronomy*, NCB (London: Marshall, Morgan & Scott, 1979), 303.

¹¹ Driver, *Deuteronomy*, 83–84; Arnold B. Ehrlich, *Randglossen zur hebräischen Bible: Textkritisches, Sprachliches und Sachliches. Zweiter Teilband: Leviticus, Numeri, Deuteronomium* (Leipzig: J. C. Hinrichs, 1909), 267; Bernard M. Levinson, "Deuteronomy," in *The Jewish Study Bible*, ed. Adele Berlin and Marc Zvi Brettler (New York: Oxford University Press, 2004), 374; Mayes, *Deuteronomy*, 166; Gerhard von Rad, *Deuteronomy: A Commentary*, trans. Dorothea Barton, OTL (Philadelphia: Westminster Press, 1966), 55; Carl Steuernagel, *Übersetzung und Erklärung der Bücher Deuteronomium und Josua und Allgemeine Einleitung in den Hexateuch*, HKAT, I.3 (Göttingen: Vandenhoeck & Ruprecht, 1900), 21.

¹² See Driver, *Deuteronomy*, 100; Mayes, *Deuteronomy*, 158. David Ben-Gad HaCohen has observed that P and J texts portray the Israelites as numerous, whereas E depicts them as a small group ("Biblical Criticism from a Geographer's Perspective: 'Transjordan' as a Test Case," in *The Formation of the Pentateuch: Bridging the Academic Cultures of Europe, Israel, and North America*, ed. Jan Christian Gertz et al., *FAT* 111 [Tübingen: Mohr Siebeck, 2016], 699–700). D likely drew upon multiple sources for its conflicting descriptions of Israel's size.

¹³ Driver, *Deuteronomy*, 104; Levinson, "Deuteronomy," 384; Steuernagel, *Deuteronomium und Josua*, 32.

¹⁴ See Alfred Bertholet, *Deuteronomium*, KHC, V (Freiburg; Leipzig; Tübingen: J. C. B. Mohr (Paul Siebeck), 1899), XIV–XV; Marc Zvi Brettler, *The Creation of History in Ancient Israel* (London; New York: Routledge, 1995), 62, 65; David M. Carr, *The Formation of the Hebrew Bible: A New Reconstruction* (New York: Oxford University Press, 2011), 120; Driver, *Deuteronomy*, iii–xix; Kuenen, *Hexateuch*, 166–68; Levinson, *Deuteronomy and the Hermeneutics*; Bernard M. Levinson and Jeffrey Stackert, "Between the Covenant Code and Esarhaddon's Succession Treaty: Deuteronomy 13 and the Composition of Deuteronomy," *JAJ* 3 (2012): 125; Hindy Najman, *Seconding Sinai: The Development of Mosaic Discourse in Second Temple Judaism*, JSJSup 77 (Leiden: Brill, 2003), 21;

site direction, with D serving as a source for a “Yahwist” who composed the non-Priestly tetrateuchal narratives as well as CC.¹⁵ Carl Steuernagel has argued that the commonalities between D and CC are not as strong as others have suggested and only reflect their having drawn on common customs.¹⁶ The present study builds on the prevailing view that D depends on CC, providing evidence for a direct literary connection between the laws of D and CC and showing that all signs point to D’s dependence on CC rather than the inverse.

The present study deals almost exclusively with legal revision, but it is important to keep in mind that these laws exist within larger *narrative* texts. D’s laws are framed by substantial narratives, paraneis, blessings and curses, and other elements (see Deut 1–11; 27–34: many but not all of these texts can be ascribed to D). CC is likewise embedded in a narrative frame, to which D also responds. Many of CC’s laws are comprehensible without their present contextualization, so it is possible that CC existed prior to its incorporation into an exodus-wilderness narrative.¹⁷ Deuteronomy’s laws, in contrast to those of

Eduard Nielsen, *Deuteronomium*, HAT, I.6 (Tübingen: J. C. B. Mohr (Paul Siebeck), 1995), 1; Eckart Otto, “The Pre-exilic Deuteronomy as a Revision of the Covenant Code,” in *Kontinuum und Proprium: Studien zur Sozial- und Rechtsgeschichte des Alten Orients und des Alten Testaments*, OBC 8 (Wiesbaden: Harrassowitz, 1996), 112–22; Rad, *Deuteronomy*, 13–15; Stackert, *Prophet like Moses*, 31–32, 126–35; Tigay, *Deuteronomy*, xxiv; Weinfeld, *Deuteronomy 1–11*, 1, 19–24; Julius Wellhausen, *Prolegomena to the History of Israel*, trans. Allan Menzies and J. Sutherland Black (New York: Meridian, 1957), 32, 369–73; David P. Wright, *Inventing God’s Law: How the Covenant Code of the Bible Used and Revised the Laws of Hammurabi* (New York: Oxford University Press, 2009), 356–57, 506 n. 19.

¹⁵ See especially John Van Seters, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (New York: Oxford University Press, 2003).

¹⁶ Steuernagel, *Deuteronomium und Josua*, XXVII–XXIX.

¹⁷ For the view that CC was only secondarily incorporated into its setting as divine law given at Horeb, see Bernard M. Levinson, “Is the Covenant Code an Exilic Composition? A Response to John Van Seters,” in “*The Right Chorale*”: *Studies in Biblical Law and Interpretation*, FAT 54 (Tübingen: Mohr Siebeck, 2008), 289–90; William H. C. Propp, *Exodus 19–40: A New Translation with Introduction and Commentary*, AB 2A (New York: Doubleday, 2006), 307. For the argument that CC was originally composed for such a context, see Wright, *Inventing God’s Law*, 332–44. The framing of laws with narratives has a precedent in the ancient Near Eastern convention of “framing the series of legal provisions with a literary prologue and epilogue in which a royal speaker claims responsibility for promulgating the laws” (Levinson, *Legal Revision*, 25–26). If CC once circulated independently, this would have ancient Near Eastern parallels as well: the Laws of Eshnunna and the Hittite laws were transmitted without frames, and some copies of the Laws of Hammurabi omit the prologue and epilogue: see Levinson, 29–30 and n. 14; Jeffrey H. Tigay, “The Stylistic Criterion of Source Criticism in the Light of Ancient Near Eastern and Postbiblical Literature,” in *Empirical Models for Biblical Criticism*, ed. Jeffrey H. Tigay (Philadelphia: University of Pennsylvania Press, 1985), 156.

CC, are thoroughly anchored in their setting prior to entrance into the promised land. As Joel Baden notes, “the laws of Deuteronomy cannot stand on their own literarily.”¹⁸ D regularly looks forward to the conquest of the promised land as a future event.¹⁹ Similarly, non-Samaritan versions of D look forward to the future establishment of sacrificial worship and other activities in “the place YHWH your God *will* choose.”²⁰ This future period, in which Israel is to observe the laws, contrasts with the Mosaic present in which the laws are given.²¹ Given the pervasive connections of D’s law code to its Mosaic setting, it is likely that the code was composed for this setting.²² Even if CC originated as an independent law collection, it was probably integrated into a narrative frame by the time of D’s composition, and this narrative-legal document served as a model for D.²³

Because each law code is integrated into a larger narrative context, any explanation proposed for Deuteronomy’s individual interpretive decisions must fit into a larger model not merely for how one law code revised another but for how one legal-narrative *document* revised another. I refer to D’s source document as “the Covenant Collection Document” or “CC Document.” This appellation is meant to reflect the contents and genre of the text: it presents a covenant between the Israelites and their deity, with the Covenant Collection constituting the terms of that covenant.²⁴

¹⁸ Baden, *Composition of the Pentateuch*, 129.

¹⁹ See Deut 12:1–3, 8–11, 20, 29–30; 15:4–6; 16:18; 17:2, 14–20; 18:1–2, 9, 12, 14–19; 19:1–3, 7–10, 14; 20:16; 21:1, 23; 25:19; 26:1–11.

²⁰ See Deut 12:5, 11, 14, 18, 21, 26; 14:23–25; 15:20; 16:2, 6–7, 11, 15–16; 17:8, 10; 18:6; 26:2; 31:11.

²¹ See Deut 12:8, 11, 14, 21, 28; 13:1, 19; 15:5, 11, 15; 17:3; 18:15–21; 19:7, 9; 24:18, 22.

²² Baden, *Composition of the Pentateuch*, 129; Driver, *Deuteronomy*, lxx–lxxvii; Stackert, *Prophet like Moses*, 14; Van Seters, *Law Book for the Diaspora*, 61; cf. Joseph Blenkinsopp, *The Pentateuch: An Introduction to the First Five Books of the Bible* (New York: Doubleday, 1992), 213; Karel van der Toorn, *Scribal Culture and the Making of the Hebrew Bible* (Cambridge, Mass.: Harvard University Press, 2007), 168.

²³ For the view that D depended on an E narrative, with CC at its center, see Baden, *Composition of the Pentateuch*, 136–37.

²⁴ It is not my purpose here to delineate the exact extent and nature of CC’s narrative frame, but the “CC Document” used by D would have included an extensive narrative-historical prologue and a core of legal stipulations (the Covenant Collection) followed by a record of the covenant conducted on the basis of these stipulations. Notably, the covenant ceremony is followed by repeated breaches of the covenant by the Israelites. In the compiled Pentateuch, these violations serve to justify Deuteronomy’s Mosaic lectures and Moab covenant. It is likely that they also contributed to D’s choice to set its own document at the end of the Wilderness period. On the one hand, the Israelites’ rebellions illustrate their need for further instruction, as Moses stresses repeatedly. On the other hand, because it is set after the wilderness rebellions, D’s covenant is pristine when the Israelites enter their land.

1.3 Existing Models for D's Relationship to CC

Within the near-consensus that D responds to the CC Document, there is significant disagreement surrounding the purpose of that response. Many scholars regard D as a *replacement* for the CC Document that reworked its laws and narratives to produce an independent alternative to it. Others see D as a *supplement* to the CC Document that continues to accept it as legitimate and builds on it. Each type of model focuses on different aspects of D vis-à-vis the CC Document. Replacement models emphasize discontinuity between D and the CC Document, arguing that D's laws cannot be reconciled with CC's and that D's narrative presentation serves to crowd out or silence CC. Supplementary models emphasize continuity instead, focusing on various types of references in D that seem to point to the CC Document, as well as gaps in D that seem to presuppose information found in the CC Document. The present study proposes a mediating model of amendment, in which D overwrote specific parts of its source but left the rest intact.

1.3.1 Replacement Model

Proponents of a replacement model have cited a number of features of D and the CC Document in support of such a model:

- (1) Contradictions between corresponding laws in D and CC;²⁵
- (2) attempts within D's introductory narratives to reject or silence CC;²⁶
- (3) lack of coordination between parallel texts in D and the CC Document.²⁷

²⁵ Levinson, *Deuteronomy and the Hermeneutics*; Juha Pakkala, *God's Word Omitted: Omissions in the Transmission of the Hebrew Bible* (Göttingen; Bristol, CT: Vandenhoeck & Ruprecht, 2013), 119; Jeffrey Stackert, *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation*, FAT 52 (Tübingen: Mohr Siebeck, 2007), 139, 219; cf. David M. Carr, *Writing on the Tablet of the Heart: Origins of Scripture and Literature* (New York: Oxford University Press, 2005), 137–38.

²⁶ Baden, *Composition of the Pentateuch*, 146; Joel S. Baden, *J, E, and the Redaction of the Pentateuch*, FAT 68 (Tübingen: Mohr Siebeck, 2009), 193; Kuenen, *Hexateuch*, 259–60; Levinson, *Deuteronomy and the Hermeneutics*, 142–43; Levinson, “Response to Van Seters,” 291; Levinson and Stackert, “Between the Covenant Code and Esarhaddon's Succession Treaty,” 126; Dominik Markl, “The Ten Words Revealed and Revised the Origins of Law and Legal Hermeneutics in the Pentateuch,” in *The Decalogue and Its Cultural Influence*, ed. Dominik Markl, HBM 58 (Sheffield: Sheffield Phoenix Press, 2013), 20, 23–24; Stackert, *Rewriting the Torah*, 219 n. 17; Weinfeld, *Deuteronomy 1–11*, 19.

²⁷ For the general argument, see Pakkala, *God's Word Omitted*, 119. Stackert argues specifically that D's asylum law (Deut 19:1–13), by making no mention of altar asylum, fails to coordinate with CC's asylum law in Exod 21:12–14 (*Rewriting the Torah*, 55; see 4.2.2, 4.3.1 below).

In addition to such text-internal evidence, advocates of a replacement model also appeal to the question of textual authority. According to Levinson, CC's authoritative status prompted D to utilize it and even invoke it, but did not preclude its replacement.²⁸ According to Pakkala, CC was not necessarily authoritative and simply provided D with raw material.²⁹ Common to these views is the more general sense that CC was not authoritative in the same way that it would later be as part of the Pentateuch. The difference between D's interactions with CC and "post-canonical" interpretations of the Pentateuch within early Judaism is emphasized especially by Stackert, who suggests that:

The earlier time period in which the Deuteronomic authors and other biblical authors (including the Holiness legislators) work, as well as the different perceptions of source texts and their authority that prevailed in such a pre-canonical setting, thus shape these authors' literary revisions and their intentions for their compositions in a way that is different from that in the post-biblical era.³⁰

Arguing against a replacement model, both Hindy Najman and Joshua Berman have questioned the significance of the contradictions between CC and D. Najman suggests that scholars' fixation on contradictions stems from an anachronistic view of authorship and textual integrity.³¹ Berman similarly suggests that the replacement model is based on an inappropriate conception of biblical law. Berman suggests that, like other Ancient Near Eastern law collections, the biblical collections were customary rather than statutory, providing "records of *precedent* but not of *legislation*."³² Berman's claim that adherents of the replacement model regard biblical law as statutory is inaccurate: Stackert, for example, argues that there is no evidence that biblical law

²⁸ Levinson, *Deuteronomy and the Hermeneutics*, 13–17, 46–48, 146.

²⁹ Pakkala, *God's Word Omitted*, 119 n. 8. Baden similarly characterizes the E document (a narrative strand that, according to Baden and others, included or accompanied CC) as lacking in authority when D utilized it as a source (*J, E, and the Redaction of the Pentateuch*, 191). This view of E builds on Menahem Haran, *Hā'āsûppā^h hammiqrā'it*, vol. 2 (Jerusalem: Magnes, 2004), 206; (cited in Baden, *J, E, and the Redaction of the Pentateuch*, 191 n. 241).

³⁰ Stackert, *Rewriting the Torah*, 213; cf. Jeffrey Stackert, "The Holiness Legislation and Its Pentateuchal Sources: Revision, Supplementation, and Replacement," in *Strata of the Priestly Writings*, ed. Sarah Shectman and Joel S. Baden, ATANT 95 (Zürich: Theologischer Verlag Zürich, 2009), 187–204; Jeffrey Stackert, "Before and After Scripture: Narrative Chronology in the Revision of Torah Texts," *JAJ* 4 (2013): 168–85.

³¹ Najman, *Seconding Sinai*, 23–26. See 1.3.2 below.

³² Joshua A. Berman, "Supersessionist or Complementary?: Reassessing the Nature of Legal Revision in the Pentateuchal Law Collections," *JBL* 135 (2016): 206–11 (quoted text on p. 209).

collections “were actually practiced” or even “meant to be enacted.”³³ Nevertheless, Berman makes several important suggestions within his discussion of biblical law as customary. First, Berman suggests that a collection’s silence on a regulation present in another collection does not necessarily indicate a lack of concern for that regulation, let alone a rejection of it. Instead, silence reflects a presupposition of the existing ruling.³⁴ This view contrasts starkly with the “polemical silences” Weinfeld attributes to D and with Stackert’s argument that D replaced CC while ignoring parts of CC that were unimportant to D’s purpose.³⁵ Berman’s view of biblical law as customary rather than statutory also allows him to propose a compelling explanation for contradictions among the corpora: “as authors revised the collections, they certainly intended to invalidate former normative practices. But that did not entail a rejection of the authority of that text.”³⁶ This suggestion, including its acknowledgment of the contradictions among the legal corpora, starts to approach the amendment model that I propose. But it still fails to capture important aspects of the relationship between D and CC, including the magnitude of the contradictions between them, the importance of the disputed issues to D, and the power dynamics between the revising text and the text on which it exerts its interpretive will.

1.3.2 Supplement Model

Proponents of a supplementary model have marshalled a different array of internal evidence to support their view:

- (1) D fails to reproduce many of CC’s laws;³⁷
- (2) Individual D laws and narratives lack information that must be supplied from the CC Document;³⁸

³³ Stackert, *Rewriting the Torah*, 221. For a similar characterization of ancient Near Eastern law collections, see Levinson, *Legal Revision*, 23–25.

³⁴ Berman, “Supersessionist or Complementary?,” 210.

³⁵ Weinfeld, *Deuteronomy 1–11*, 20; Stackert, *Rewriting the Torah*, 221–22; cf. Stackert, “Holiness Legislation,” 197–99.

³⁶ Berman, “Supersessionist or Complementary?,” 211. Berman continues: “Rather the earlier prescription was seen to be fulfilled through its reapplication to meet a new challenge.” This suggestion may assume a greater interpretive deference than the authors of biblical law actually exhibit.

³⁷ Depending on how the laws are counted, estimates of laws in CC that D does not reproduce range from about half to two thirds: see Blenkinsopp, *The Pentateuch*, 210; John J. Collins, “Changing Scripture,” in *Changes in Scripture: Rewriting and Interpreting Authoritative Traditions in the Second Temple Period*, ed. Hanne von Weissenberg, Juha Pakkala, and Marko Marttila, BZAW 419 (Berlin: de Gruyter, 2011), 27; Mayes, *Deuteronomy*, 57; Najman, *Seconding Sinai*, 24–26; Rad, *Deuteronomy*, 13.

- (3) D as a whole does not contain sufficient introduction or background to stand on its own;³⁹
- (4) D seems to fill gaps in CC;⁴⁰
- (5) D echoes key terms and phrases from the CC Document, as well as the entire Decalogue;⁴¹
- (6) D cites the CC Document using formulae such as כאשר צויתך (“as I have commanded you”);⁴²
- (7) D takes on a new literary frame and setting as retrospective speeches of Moses, rather than imitating CC’s form as a divine lawgiving set at Mount Horeb;⁴³
- (8) In some passages, D presents itself as explanatory (Deut 1:5; 4:1–5).⁴⁴

³⁸ Otto argues that D’s asylum law (Deut 19:1–13) assumes knowledge of CC’s asylum law (Exod 21:12–14: “Pre-exilic Deuteronomy,” 116; see 4.2.2, 4.3.1 below). For examples of D narratives that assume knowledge of Tetrateuchal narratives, see Suzanne Boorer, *The Promise of the Land as Oath: A Key to the Formation of the Pentateuch*, BZAW 205 (Berlin; New York: Walter de Gruyter, 1992), 384; Harvey, *Retelling the Torah*, 10–13; Mayes, *Deuteronomy*, 188; Najman, *Seconding Sinai*, 24–25; Tigay, *Deuteronomy*, xxiv.

³⁹ For the argument that the introduction in Deut 1–4, and D as a whole, assume knowledge of parallel Tetrateuchal texts, see Konrad Schmid, “Deuteronomy within the ‘Deuteronomistic Histories’ in Genesis–2 Kings,” in *Deuteronomy in the Pentateuch, Hexateuch, and the Deuteronomistic History*, ed. Konrad Schmid and Raymond F. Person, Jr., FAT 2.56 (Tübingen: Mohr Siebeck, 2012), 12, 28; Reinhard Gregor Kratz, “The Headings of the Book of Deuteronomy,” in *Deuteronomy in the Pentateuch, Hexateuch, and the Deuteronomistic History*, ed. Konrad Schmid and Raymond F. Person, Jr., FAT 2.56 (Tübingen: Mohr Siebeck, 2012), 36.

⁴⁰ Otto argues that many of D’s laws were designed to address lacunae in CC (“Pre-exilic Deuteronomy,” 115–16).

⁴¹ On the echoing of terms, see Najman, *Seconding Sinai*, 22–24. Schmid suggests that the repetition of the Decalogue serves to equate the laws of Sinai and Moab, and Kratz ascribes a similar function to all of Deuteronomy 5 (Schmid, “Deuteronomy,” 15; Kratz, “Headings of Deuteronomy,” 42).

⁴² Berman, “Supersessionist or Complementary?,” 203, 222. On the use of citation formulae in D, see 2.3.3.2, 2.3.5.1, 2.3.5.2, 3.5.2.4; Levinson, *Deuteronomy and the Hermeneutics*, 41–43, 46–47; Milgrom, “Profane Slaughter.”

Berman presents “explicit cross-referencing” as evidence of the complementary nature of all biblical law collections, but such cross-references are found, as Berman notes, only in D. Cross-references constitute some of the strongest evidence against a replacement model, so it is crucial to note that PH does not cross-reference CC or D.

⁴³ Collins, “Changing Scripture,” 28; Otto, “Pre-exilic Deuteronomy,” 115; Ska, *Reading the Pentateuch*, 39, 170; cf. Molly M. Zahn, *Rethinking Rewritten Scripture: Composition and Exegesis in the 4QRevised Pentateuch Manuscripts*, STDJ 95 (Leiden; Boston: Brill, 2011), 10. Schmid suggests more specifically that, because ancient Near Eastern laws come from kings, D’s Mosaic law is “not a plausible construct in the context of ancient Near Eastern legal theories” except as an interpretation of divine law (“Deuteronomy,” 16 and n. 25).