

## The Reception of Priestly Laws in Deuteronomy and Deuteronomy's Target Audience

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In the fifth [book] . . . Moses repeats the whole law, with the story of all that has happened to them (except what concerns the priesthood), and explains anew everything that belongs either to the bodily or to the spiritual government of a people.

—Martin Luther, *Prefaces to the Books of the Bible (Vorreden zur Heiligen Schrift)*

In my book *Mosetora und Jahwetora*, I argue that the Deuteronomic law presupposes Exodus, Leviticus, and Numbers more or less in their present shape and in quasicanonical prestige. While it is widely acknowledged that there is an intertextual relationship between the Deuteronomic law and the Covenant Code,<sup>1</sup> and also between the Deuteronomic law and the Holiness Code<sup>2</sup> (regard-

1. See, e.g., Samuel R. Driver, *A Critical and Exegetical Commentary on Deuteronomy*, 2nd ed., ICC (Edinburgh: T&T Clark, 1896), iii–xix; Benjamin Kilchör, “Frei aber arm? Soziale Sicherheit als Schlüssel zum Verhältnis der Sklavenfreilassungsgesetze im Pentateuch,” *VT* 62 (2012): 381–97; Kilchör, “The Direction of Dependence Between the Laws of the Pentateuch,” *ETL* 89 (2013): 1–14; Kilchör, *Mosetora und Jahwetora: Das Verhältnis von Deuteronomium 12–26 zu Exodus, Levitikus und Numeri*, BZABR 21 (Wiesbaden: Harrassowitz, 2015); Bernard M. Levinson, *Deuteronomy and the Hermeneutics of Legal Innovation* (Oxford: Oxford University Press, 1997); Levinson, “The Manumission of Hermeneutics: The Slave Laws of the Pentateuch as a Challenge to Contemporary Pentateuchal Theory,” in *Congress Volume Leiden 2004*, ed. André Lemaire, VTS 109 (Leiden: Brill, 2006), 281–324; Norbert Lohfink, “Fortschreibung? Zur Technik von Rechtsrevisionen im Deuteronomischen Bereich, Erörtert an Deuteronomium 12, Ex 21,2–11 und Dtn 15,12–18,” in *Das Deuteronomium und Seine Querbeziehungen*, ed. Timo Veijola, SFEG 62 (Helsinki: Finnische Exegetische Gesellschaft, 1996), 127–71; John Van Seters, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (Oxford: Oxford University Press, 2003).

2. See, e.g., Georg Braulik, “Die Dekalogische Redaktion der deuteronomischen Gesetze: Ihre Abhängigkeit von Levitikus 19 am Beispiel von Deuteronomium 22,1–12:24,10.22, 25,13–16,” in *Bundesdokument und Gesetz: Studien zum Deuteronomium*, ed. Georg Braulik, HBS 4 (Freiburg: Herder, 1995), 1–25; Braulik, “Weitere Beobachtungen zur Beziehung zwischen dem Heiligkeitsgesetz und Deuteronomium 19–25,” in Veijola, *Das Deuteronomium und seine Querbeziehungen*, 23–55; Alfred Cholewiński, *Heiligkeitsgesetz und Deuteronomium*, AnBib 66 (Rome: Biblical Institute, 1969); Driver, *Deuteronomy*, iii–xix; Sara Japhet, “The Relationship Between the Legal Corpora in the Pentateuch in Light of Manumission Laws,” in *Studies in Bible*, ed. Sara Japhet,

less of the direction of dependence), already Samuel R. Driver noted concerning the connection between the Priestly laws and Deuteronomy, “There are *no* verbal parallels between Dt. and P; much that is of central significance in the system of P is ignored in Dt., while in the laws which touch common ground, great, and indeed irreconcilable, discrepancies often display themselves: hence the legislation of P cannot be considered in any degree to have been one of the sources employed by the author of Dt.”<sup>3</sup>

In this essay, I will argue that the Priestly laws are presupposed in the Deuteronomic law indeed. However, since the target audience of Deuteronomy is the common people rather than the priests, Deuteronomy adapts Priestly legislation only as far as necessary for the people.

### Deuteronomy 24:8 as a Hermeneutical Key for the Relationship Between P and D

We find the clearest reference to Priestly legislation in the Deuteronomic law in Deut 24:8: “Take care, in a case of leprosy disease, to be very careful to do according to all that the Levitical priests shall direct you. As I commanded them, so you shall be careful to do” (ESV).

First, it is very clear that the common people are addressed in distinction from the Levitical priests. Second, it is also clear that Priestly legislation is presupposed (“As I commanded them”—כַּאֲשֶׁר צִוִּיתֶם). Norbert Lohfink rightly states that, as a matter of course, Deuteronomy here presupposes legislation between Sinai and Moab.<sup>4</sup> And Moshe Weinfeld notes, “It [i.e., Deut 24:8] is doubtless referring to the instructions relating to the various forms of leprosy as they appear in Lev 13–14.”<sup>5</sup> For the open and unbiased reader who does not know any pentateuchal theory, it is indeed very clear that Deut 24:8 refers to Lev 13–14. However, due to pentateuchal theory, scholars do not consider that Lev

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ScrHier 31 (Jerusalem: Magnes VIII, 1986), 63–90; Kilchör, “Frei aber arm?”; Kilchör, “Direction of Dependence”; Kilchör, *Mosetora*; Kilchör, “Levirate Marriage in Deuteronomy 25:5–10 and Its Precursors in Leviticus and Numbers: A Test Case for the Relationship Between P/H and D,” *CBQ* 77 (2015): 429–40; Levinson, “Manumission”; Jacob Milgrom, *Leviticus 17–22: A New Translation with Introduction and Commentary*, AB 3A (New Haven: Yale University Press, 2000), 1357–61; Christophe Nihan, *From Priestly Torah to Pentateuch: A Study in the Composition of the Book of Leviticus*, FAT, 2nd ser., no. 25 (Tübingen: Mohr Siebeck, 2007), 401–544; Eckart Otto, “Innerbiblische Exegese im Heiligkeitsgesetz Levitikus 17–26,” in *Levitikus als Buch*, ed. Heinz-Josef Fabry and Hans-Winfried Jüngling, BBB 119 (Berlin: Philo, 1999), 125–96; Jeffrey Stackert, *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation*, FAT 52 (Tübingen: Mohr Siebeck, 2007).

3. Driver, *Deuteronomy*, xi–xii.

4. Norbert Lohfink, “Prolegomena zu einer Rechtshermeneutik des Pentateuchs,” in *Das Deuteronomium*, ed. Georg Braulik, ÖBS 23 (Frankfurt am Main: Lang, 2003), 21.

5. Moshe Weinfeld, *Deuteronomy 1–11*, AB 5 (New York: Doubleday, 1991), 30.

13–14 can be familiar to the author of Deut 24:8. Dieter Skweres, for example, writes in his monograph on back-references in Deuteronomy that Deut 24:8 refers to an ancient collection of laws that has been adapted by P.<sup>6</sup> With the assumption that P adapts an older law collection, Skweres avoids the conclusion that D here presupposes P in a direct way. More recently, scholars often choose another explanation in suggesting a post-Priestly redaction of Deuteronomy. This is indeed what Harald Samuel proposes for Deut 24:8. This leads him, however, to the somewhat awkward conclusion that the term “Levitical priests” (which according to him is otherwise a pre-Priestly term in Deuteronomy) here has another function than in the other appearances in Deuteronomy.<sup>7</sup> Samuel gives no explanation why a post-Priestly redactor should have inserted Deut 24:8–9 here.<sup>8</sup> Yet whoever is not willing to follow the Wellhausenian dogma that D must be older than P can take the most obvious possibility, that Deut 24:8 does indeed refer to Lev 13–14 (and, even more explicitly, Deut 24:9 refers to Num 12).

If we now take a look at Lev 13:1–14:32, we find a twofold speech introduction. In 13:1 YHWH is speaking to Moses and Aaron, while in 14:1 he is speaking to Moses alone. In many speech introductions in Leviticus (e.g., 11:2; 12:2) Moses (and Aaron) are told to whom they shall pass on the instructions of YHWH, but there is no such hint in Lev 13–14. According to Lev 13:2 and 14:2, a person with leprous disease shall be brought (*hophal*) to Aaron and his sons. In both cases the following verbs then have the priest as subject (13:3 and 14:3), with instructions for the priests rather than for the persons with diseased skin. The instructions in Lev 13–14 hence perfectly fit the back-reference in Deut 24:8bβ.

Due to this clear back-reference, Deut 24:8 can serve as a hermeneutical key for the adaptation of Priestly legislation in the Deuteronomic law. The Deuteronomic law is aware that detailed instructions for the priests exist, but it is written for common people. However, the common people do not have to be informed about the details of these priestly instructions. They are just advised to go to the priests and to observe their instructions. The priests will know what they have to do.

This raises the question about whether the hermeneutical key of Deut 24:8 fits the relationship between D and other Priestly laws.

6. Dieter E. Skweres, *Die Rückverweise im Buch Deuteronomium*, AnBib 79 (Rome: Biblical Institute Press, 1979), 194.

7. Harald Samuel, *Von Priestern zum Patriarchen: Levi und die Leviten im Alten Testament*, BZAW 448 (Berlin: De Gruyter, 2014), 146.

8. “Auch wenn es für die These, dass die Verse nachgetragen seien, eine gewisse Hypothek darstellt, dass das Ziel der Einfügung an Ort und Stelle nicht befriedigend geklärt werden kann, scheinen mir alles in allem hinreichende Gründe vorzuliegen, die These dennoch zu vertreten” (Samuel, *Von Priestern zum Patriarchen*, 129–30). I have argued that the motives of Lev 13–14 and the strongly related text in Num 12 are already subtly present in Deut 23 (see Kilchör, *Mosetora*, 277–78).

## The Sacrifices (Lev 1–7)

In the Deuteronomic law we do not find any detailed explanations or instructions for the different types of sacrifices as in Lev 1–7. In comparison with Lev 1–7 the Deuteronomic law uses only the two terms *עֹלָה* (12:6, 11, 13, 14, 27) and *זָבַח* (12:6, 11, 27; 18:3). Both terms are used for blood sacrifices; *עֹלָה* designates the sacrifice where the whole animal is burned, while *זָבַח* designates any type of blood sacrifice which is partly eaten by the people (see Deut 12:27). These two types of sacrifices are found in Lev 1 (*עֹלָה*) and 3 (*זָבַח שְׁלָמִים*). The other two blood sacrifices that are treated in Lev 1–7 are the *תְּשֵׁבַח* and the *שֶׁמֶן*. It seems likely that Deut 12 does not mention the *תְּשֵׁבַח* and the *שֶׁמֶן* because “the flesh of these two sacrifices was to be consumed by priests only (Lev 6:24ff. [MT Lev 6:18ff.]; 7:1ff.; Num 18:9).”<sup>9</sup> With regard to the fact that Deut 12:15–27 deals with the question of the consumption of meat by the people, it is clear that the consumption of meat by the priests is not of relevance for Deuteronomy. Only in the law of the priests and Levites is the consumption of meat by the priests briefly mentioned (Deut 18:1–8). The formulation in verse 3 is telling: “And this shall be the right (*מִשְׁפָּט*) of the priests *from the people* (*מֵעַם הָעָם*) who are offering a sacrifice (*זָבַח*).” This law is not directed to the priests but to the people. They are informed about the right of the priests regarding the meat of their *זָבַח* sacrifices. Unlike Num 18, Deut 18:3 does not instruct the priests about what they can eat from these sacrifices, but it instructs the people about what they are obliged to give to the priest (*לַכֹּהֵן*, v. 3b). From the three stated parts that shall be given to the priest, the first (*הַזֵּרֵעַ*, arm) corresponds to the instruction in Lev 7:32 for the *זָבַח שְׁלָמִים*, where the right leg (*שׁוֹק הַיְמִינִי*) is determined for the priests. The latter two parts seem to be Deuteronomic additions. Note also that with regard to the right of the priests and the Levites, Deut 18:1 uses the very general term *אֹשֶׁת* (food gift),<sup>10</sup> which is a term used for all kind of sacrifices (except for the purification offering) throughout Lev 1–7.<sup>11</sup>

9. J. Gordon McConville, *Law and Theology in Deuteronomy*, JSOTS 33 (Sheffield: JSOT Press, 1984), 54. The same distinction can also be found in Ezek 40:38–43 and 42:13. On the one hand, the *זָבַח* is partly eaten by the people. On the other hand, the *עֹלָה* is completely sacrificed to *יְהוָה*. The *תְּשֵׁבַח* and the *שֶׁמֶן*, however, are most sacred offerings like the *עֹלָה*, but they are partly to be eaten by the priests. But like most sacred offerings, the priestly parts must not leave the holy area; they shall be kept away from the people (see Walther Zimmerli, *Ezekiel 25–48*, BKAT, vol. 13, no. 2 [Neukirchen-Vluyn: Neukirchener Verlag, 1969], 1063).

10. For the translation “food gift” instead of “fire offering” see Jacob Milgrom, *Leviticus 1–16: A New Translation with Introduction and Commentary*, AB 3 (New Haven: Yale University Press, 1991), 161–62.

11. The term is used throughout Exod 29–30 and both the books of Leviticus and Numbers. Otherwise it is attested in the Old Testament only in Deut 18:1; Josh 13:14; and 1 Sam 2:28. The latter two verses are quoting Deut 18:1. Thus it is clearly a “Priestly” term.

In Deut 12, we find further allusions to the sacrifice laws of Leviticus, especially in light of the concern of Deut 12. According to Norbert Lohfink, the main corpus of Deut 12 consists of four laws that are logically built upon each other:<sup>12</sup>

12:4–7	A single sanctuary for Israel
12:8–12	Time of entry into force
12:13–19	Distinction of sacrifice and slaughter
12:20–28	Limitation of permission to slaughter; dealing with blood

In these four laws, detailed instructions regarding the performance of sacrifices are not the focus. The first main issue is the place of God’s dwelling. In the repeated and varied formulas regarding the place, there are lists of sacrifices, duties, and gifts that shall be brought there. None of them are explained, but they are presupposed as known. I have argued elsewhere that all items of these lists (except the primogeniture) are established in Priestly texts.<sup>13</sup>

Another issue of interest here is the distinction between sacrifice and slaughter.<sup>14</sup> While Lev 17 distinguished between sacrificial animals that must always be brought to the sanctuary for slaughter and wild animals that can be slaughtered for profane use, Deut 12 introduces the profane slaughter of sacrificial. It raises the question as to whether these animals should be slaughtered according to the rules of sacrificial animals (Lev 3) or according to the rules of wild animals (Lev 17:13–14). There are two main distinctions between these sets of rules. First, according to Lev 3:17, it is forbidden to eat any fat or blood from sacrifices, while according to Lev 17:13, only the consumption of blood is forbidden for wild animals. Second, according to Lev 3, the blood of sacrifices always belonged to the altar, while according to Lev 17:13, the blood of wild animals was to be poured out on the ground and covered with earth. Within this focus, Deut 12:16a quotes Lev 3:17 to answer the question:

Lev 3:17b	All fat and all blood you must not eat
Deut 12:16a	Only the blood you must not eat

12. See Lohfink, “Fortschreibung?” 130 (thereby he is following Georg Braulik, *Die deuteronomischen Gesetze und der Dekalog: Studien zum Aufbau von Deuteronomium 12–26*, SBS 145 [Stuttgart: Katholisches Bibelwerk, 1991], 23–24 and 29–30). This challenges the widespread theory that sees different redactional additions in Deut 12, whereby the oldest law is to be found in Deut 12:13–18/19 (see, e.g., Simeon Chavel, “The Literary Development of Deuteronomy 12: Between Religious Ideal and Social Reality,” in *The Pentateuch: International Perspectives on Current Research*, ed. Thomas B. Dozeman, Konrad Schmid, and Baruch J. Schwartz, FAT 78 [Tübingen: Mohr Siebeck, 2011], 303–26; Thomas Römer, *The So-Called Deuteronomistic History: A Sociological, Historical and Literary Introduction* [London: T&T Clark, 2007], 56–65). In the inner logic of Deut 12, it is clear that Deut 12:13–18 presupposes Deut 12:4–12. However, even if one assumes Deut 12:13–18 is the oldest part of Deut 12, it is striking that it is exactly this sequence out of Deut 12 that presupposes the legislation of Lev 3 and 17.

13. Kilchör, *Mosetora*, 82–83.

14. For the following see *ibid.*, 84–88.

As Deut 12:15 states, profane slaughter of sacrificial animals shall be done according to the rules of the gazelle and deer. These rules are given in Lev 17:13–14. Thus, according to Deut 12:16b, the blood does not belong to the altar but is to be poured out like water, as commanded in Lev 17:13.

The third main focus in reference to these sacrifices is the insistence that the blood from sacrifices (both *עֹלָה* and *זֶבַח*) must be brought to the altar, as commanded several times in Lev 1–7.

Finally, Deut 21:1–9 is a further instance where the Priestly laws concerning sacrifices are possibly presupposed, dealing with the case of residual murder. As I have argued,<sup>15</sup> Num 35:33–34, where it is stated that only the blood of the murderer can make atonement for the land, might be the background behind Deut 21:1–9. The latter provides a rite in case the blood of the murderer is unavailable due to lack of knowledge of the murderer's identity, formulated as *לֹא נֹדָע*, “it is not known.” The verb *יָדַע* plays an important role in Lev 4 (vv. 14, 23, 28) and 5 (vv. 1, 3, 4, 17, 18), especially in the instructions on the *זֶבַח־עֹלָה*. In the case of Deut 21:1–9, atonement is necessary, but it cannot be done in the usual way. Deuteronomy 21:8 uses the term *כָּפַר* for atonement, which is only used here in the Deuteronomic law (but also in Deut 32:43), in contrast to sixty-eight times in P/H (ten times in Lev 4–5). The context of this verse (Deut 21:1–9) gives instructions for the elders and judges who are responsible for the processing. The shed blood was to be atoned by the blood of a young cow (*עֵגְלָה*), a term that is never used in the sacrificial laws of Leviticus.<sup>16</sup> The atoning blood does not belong to the altar, but to the running water used to ritually rinse the shed blood out of the land. It is noteworthy that Deut 21:5 mentions the Levitical priests who shall come forward, for YHWH has chosen them to minister to him. Again, there are no instructions to the priests about what they are to do, but the elders are informed that the performance of the rite with the young cow is a priestly matter.

In summary, we see that the substance of Lev 1–7 influences Deut 12 and 18, and possibly also Deut 21:1–9, in several ways. However, the laws concerning the sacrifices in Leviticus are adapted just as far as they deal with the newly raised questions in Deuteronomy, and as far as they are relevant for the people apart from the detailed instructions for the priests.<sup>17</sup>

15. Kilchör, *Mosetora*, 242–43.

16. The cow can be understood in relation to Lev 4:27–35 and 5:6 (cf. Num 15:27), where a female flock animal is required for purification offerings for individual laypersons. For a group, a larger female animal is used (cf. Num 19). Deuteronomy 21:1–9 is not an offering but a ritual of elimination (see David P. Wright, “Deuteronomy 21:1–9 as a Rite of Elimination,” *CBQ* 49 [1987]: 387–403. I thank Roy Gane for this reference).

17. It might be worth noting here that in Lev 1–7 the instructions for the people and for the priests are interwoven, although the task of each group is always clearly stated. This shows a clear awareness of the relevance of different laws for different addressees.

## The Priests (Lev 8–10)

In Lev 8–10, the consecration of Aaron and his sons with their first sacrifices, and the tragic death of two of Aaron’s sons, are situated as a narrative rather than a legal text. Nevertheless, in light of Lev 8–10, it is remarkable that among the Deuteronomic laws that deal with the different offices in Israel (Deut 16:18–18:22) there are none for the appointment of priest and Levites. In contrast, we do find instructions for the appointment of judges and officers (16:18–20) and for the appointment of a king (17:14–20). Moreover, God prohibits the people from choosing their own “prophets,” who would be soothsayers and the like (18:9–14), and instead promises to appoint himself a prophet like Moses (18:15–18). The only offices without a word about their appointment are the offices of the priests and Levites. The best explanation for the lack of their appointment is, in my view, that they already have been appointed as a hereditary dynasty (Lev 8–10 and Num 3). A renewed instruction for their appointment in Deuteronomy would weaken the sense for their appointment, which is already affirmed in Numbers, for example, Num 17–18.<sup>18</sup> Nevertheless, the fact that the appointment of the different offices is such an important theme in Deut 16:18–18:22, shows again that the Deuteronomic law addresses the people, who are responsible for appointing their officials, and not the officials appointing themselves. Thus, Deut 18:1–8 clearly presupposes an appointment of priests and Levites that has already taken place.

If we look at the content of Deut 18:1–8, which is arranged similarly to the respective laws in Exodus, Leviticus, and Numbers, we see again that Deuteronomy is interested not in the functions and duties of the priests and Levites but only in the duty of the people in contrast to the priests and Levites. In fact, Deut 18:1–8 only informs the people about the right the priests and Levites have regarding the offerings of the people. The same concern is already in the focus of Deuteronomy’s tithe and firstborn laws (Deut 14:22–29; 15:19–23), where the people are addressed. In contrast, in Num 18 the priests and Levites are addressed by these issues, which explains why Num 18 treats these things in more detail.

But can the appointment of priests and Levites, as we find it in the books of Leviticus and Numbers, really be presupposed in Deuteronomy? Does not Deuteronomy identify the priests with the Levites as Wellhausen already argued, and as the scholarly term “identity formula” for the wording לַכֹּהֲנִים הַלְוִיִּם כָּל־שֹׁבֵט לְוִי (“the Levitical priests, the whole tribe of Levi”; Deut 18:1) suggests?<sup>19</sup> I cannot answer this issue in detail here but will give a few hints:

18. For the distinction in appointment of the different offices in Deuteronomy, see Joshua Berman, *Created Equal: How the Bible Broke with Ancient Political Thought* (Oxford: Oxford University Press, 2008), 51–80.

19. The term *Identitätsformel* was first introduced by Antonius H. J. Gunneweg, *Leviten und Priester: Hauptlinien der Traditionsbildung und Geschichte des israelitisch-jüdischen*

1. There are many scholars who have argued with good reason that Deuteronomy does indeed distinguish between priests and Levites.<sup>20</sup>
2. Even scholars who think that in Deuteronomy all Levites are allowed to do full priestly service, and who think that the respective Deuteronomic texts predate Num 3 and 18, see in the “identity formula” an awareness in Deuteronomy of a distinction between priests and Levites. If no distinction existed, the whole formulation would be much too circuitous.<sup>21</sup>
3. As I have argued, it is possible to understand לַיְהוָה הַלְוִיִּים כְּלִי־שָׂרָט לַי as meaning “the Levitical priests, [moreover] the whole tribe of Levi.”<sup>22</sup> If this reading is correct, Deut 18:1 distinguishes between priests and Levites in the same sense as the book of Numbers does: the priests are a subset of the Levites. This distinction is then found in the subsequent law regarding priests and Levites. While Deut 18:1–2 is concerned with both priests and Levites, Deut 18:3–5 is explicitly concerned only with the priests, and 18:6–8 is concerned only with the Levites.
4. The distinction between the priests as Aaron’s sons and the Levites as Aaron’s brothers instituted in Num 3 can be terminologically seen in Deut 18:1–8 as well. While the priests are called sons (Deut 18:5), the Levites are called brothers (Deut 18:7).<sup>23</sup>

In summary, there are good reasons to suggest that Deut 18:1–8 indeed presupposes the texts regarding the appointment of priests and Levites in Leviticus and Numbers. However, they are not repeated verbatim, but Deuteronomy only addresses the issues of priests and Levites that pertain to the common people.

## Clean and Unclean Animals (Lev 11)

In the introduction to this essay I quoted Samuel R. Driver’s statement arguing for no verbal parallels between P and D. Yet he noted that this was not absolutely true when he wrote the following: “There is only one exception to what has been stated, viz. the law of clean and unclean animals in Dt. 14:3–20, which present undoubtedly, in the main . . . , a remarkable verbal parallel with Lev. 11:2–23 (if this is referred rightly to H, rather than to P): the section, it is plain, must

*Kultpersonals*, FRLANT 89 (Göttingen: Vandenhoeck & Ruprecht, 1965), 4.

20. See, e.g., Raymond Abba, “Priests and Levites in Deuteronomy,” *VT* 27 (1977): 257–67; Rodney K. Duke, “The Portion of the Levite: Another Reading of Deuteronomy 18:6–8,” *JBL* 106 (1987): 193–201; Kilchör, *Mosetora*, 215–20; McConville, *Law and Theology*, 124–53; G. Ernest Wright, “The Levites in Deuteronomy,” *VT* 4 (1954): 325–30.

21. See, e.g., Samuel, *Von Priestern zum Patriarchen*, 16–147, for the respective formulations in Deuteronomy, and especially the summary on 142.

22. Kilchör, *Mosetora*, 218–19.

23. See *ibid.*, 218.



have been derived directly either from H, or from an older collection of Priestly *Tôrôth* . . . , the immediate source (in this case) of both H and Dt.”<sup>24</sup>

The wording of Lev 11:1–20 and Deut 14:1–20 is largely identical.<sup>25</sup> Since Driver rejects a relationship between P and D otherwise, he feels pressed to connect Lev 11 with H instead of P. In any case, recently Christophe Nihan called Lev 11 and Deut 14 “the most remarkable instance of legislation shared by Priestly and non-Priestly legal traditions within the Torah.”<sup>26</sup>

Because of this outstanding parallel, several scholars who otherwise argue for the priority of D in relation to P/H see here a post-Priestly addition in Deuteronomy, as with Deut 24:8–9.<sup>27</sup> According to Römer, for instance, the adaptation of Lev 11 in Deut 14 belongs to the Persian period and is “perhaps an indication that the Persian revision of the Deuteronomistic History paid already some attention to Priestly interest, preparing in a way the compromise that gave birth to the Torah.”<sup>28</sup> In this scenario, the adaptation of Priestly material in Deuteronomy is exceptional. But if there was a revision of Deuteronomy and the Deuteronomistic history, with some sort of Priestly interest that led to large verbal quotations at one place in Deuteronomy, one might ask why there is no other Priestly legal material adapted in a similar way in Deuteronomy.

A close comparison between Lev 11 and Deut 14 shows that Lev 11 is more extensive in general, while Deut 14 only has a few passages that exceed the text of Lev 11. This has led Nihan and others to suggest that there is not a direct relationship between Lev 11 and Deut 14 but that, rather, both of them use a common source and extend it at some places.<sup>29</sup> The underlying assumption is some kind of *lectio brevior*: the longer text is an addition to the shorter, more original text. Achenbach, however, has argued that Lev 11 contains a more detailed version of the food-Torah for Priestly instructions, while Deuteronomy contains a simplified food-Torah for the common people.<sup>30</sup> Shortness can also be explained by simplification, not only by originality. This does fit perfectly with

24. Driver, *Deuteronomy*, xi.

25. See the synopsis in Kilchör, *Mosetora*, 97–98.

26. Christophe Nihan, “The Laws About Clean and Unclean Animals in Leviticus and Deuteronomy and Their Place in the Formation of the Pentateuch,” in Dozeman, Schmid, and Schwartz, *Pentateuch*, 401.

27. Among these scholars are Reinhard Achenbach, Eckart Otto, and Thomas Römer. For a good short overview on the state of research, see Sias Meyer, “Leviticus 11, Deuteronomy 14 and Directionality,” *Journal for Semitics* 23 (2014): 71–72.

28. Römer, *Deuteronomistic History*, 171.

29. Nihan, “Laws,” 401–32. Others include, e.g., Walter Houston, *Purity and Monotheism: Clean and Unclean Animals in Biblical Law*, JSOTS 140 (Sheffield: Academic Press, 1993), 63–65; Naphtali Meshel, “Pure, Impure, Permitted, Prohibited: A Study of Classification Systems in P,” in *Perspectives on Purity and Purification in the Bible*, ed. Baruch J. Schwartz, Naphtali S. Meshel, Jeffrey Stackert, and David P. Wright (New York: T&T Clark, 2008), 33.

30. Reinhard Achenbach, “Zur Systematik der Speisegebote in Leviticus 11 und in Deuteronomium 14,” *BZABR* 17 (2011): 173. See also Kilchör, *Mosetora*, 97–108.

the observations above, in that Deuteronomy is aware of the Priestly legislation but uses its laws only selectively as far as they are relevant for Deuteronomy's aim and focus on the common people. In this light, regarding the relationship of P and D, it is not at all surprising that Deut 14 treats the topic in a simplified and shorter way in comparison to Lev 11.

What is surprising and calls for an explanation is the extent to which Deuteronomy is still verbally quoting Lev 11. The key to understand why Deuteronomy adapts this law from Lev 11 can be found in Deut 14:4–5, an addition in comparison to Lev 11. While Lev 11 only lists the animals that are forbidden to eat, Deut 14:4–5 places a short list of animals that are allowed to be eaten before the list of the forbidden animals. First, the list of permitted animals names the three sacrificial animals: bull, ram, and goat. In the whole Old Testament, these three animals are listed together otherwise only in Lev 7:23; 17:3; 22:27; and Num 18:17, which are all texts with Priestly concerns.<sup>31</sup> Second, Deuteronomy lists several wild animals, starting with gazelle and deer, the two animals that are named in Deut 12, where the profane slaughter of sacrificial animals is introduced. Thus, due to the previous innovation of profane slaughter of sacrificial animals, Deut 14 sees the need to add an explication of allowed animals to the list of Lev 11. Since there is nothing new to be said about touching unclean animals, there is no need to quote the second half of Lev 11 in the Deuteronomic law.

### Other Cases of Uncleaness (Lev 12–15)

While, as far as I can see, no reference to Lev 12 is found in the Deuteronomic law, Lev 13–14 is presupposed in Deut 24:8, as argued above. With regard to the topic of uncleaness, it is worth taking note of the term *מְהוּרַץ לַמִּטְהָרָה*, as it is used twenty-nine times in the Old Testament, twenty-six of these in Exod 29 and 33, Leviticus, and Numbers. The other three appearances are in Deut 23:11, 13 and Josh 6:23. The wilderness context is very important for this concept. Israel was camping around the sanctuary, and this means that there was a high risk that the sanctuary would be contaminated by uncleaness. Therefore, according to Lev 17:15, the sojourner as well as the native were forbidden to eat carrion. Later on, when the camp was abolished and Israel was in the land and not near to the sanctuary, they were allowed to slaughter sacrificial animals for profane use apart from the sanctuary as discussed above (Lev 17 and Deut 12), and the sojourner was also allowed to be unclean and eat carrion (Deut 14:21) since he did not live next to the sanctuary anymore.

31. See Achenbach, "Zur Systematik der Speisegebote," 178; Kilchör, *Mosetora*, 103.

The same principle is valid for other kinds of uncleanness, such as leprous disease (cf. Num 5:1–4). The unclean had to go out of the camp (מִחֹרֶץ לַמִּתְּנָה) until he was clean again (cf. Lev 13:46; Num 12:14–15). In the Deuteronomic law, the concept of מִחֹרֶץ לַמִּתְּנָה does not play a role, since the law is for the situation in the land where the people are not camping around the sanctuary anymore. However, there is one exception: when Israel went to war, they would live in camps again, and the ark would be with them. This is why Deut 23:15 states that in the situation of a war, the camp must be kept clean. Here the term מִחֹרֶץ לַמִּתְּנָה appears two times (Deut 23:11 and 13), when it is otherwise only attested in Priestly materials. Considering all this, it is not very surprising that Deut 23:11–12 takes up a case formulated in Lev 15:16, with verbal allusions to Lev 15:16 and Num 5:3.<sup>32</sup>

In summary, it becomes clear that the whole Priestly concept of cleanness and uncleanness was known to the writer of the Deuteronomic law. However, it was taken up only selectively, where Deuteronomy has something to say for a new situation and where it is of relevance for the common people.

### The Day of Atonement (Lev 16)

Leviticus 16 is exclusively addressed to Aaron alone (v. 2). It is therefore no surprise that these instructions are neither explicitly nor implicitly mentioned in the Deuteronomic law.

### Laws for the Priests in H (Lev 21–22)

The different laws in the Holiness Code have clear target audiences: Lev 17 addresses the priests and the people (v. 2); Lev 18–20 and 23–27 address only the people; and Lev 21–22 addresses the priests exclusively. It is striking that the Deuteronomic law has a substantial amount of allusions to the Holiness Code but no clear allusions to Lev 21–22.<sup>33</sup> This shows that there is no distinction in the use of P and H in principle, but laws that are relevant for the people are more intensively adapted than laws that are primarily given to the priests. The reason why the laws of H are much more frequently and more explicitly adapted in D than the laws of P is not because P and H are two different sources (whereby

32. See Kilchör, *Mosetora*, 260.

33. I have argued for the following few allusions: Lev 22:31–32 in Deut 14:1–1 (Kilchör, *Mosetora*, 104–7); Lev 22:18–25 in Deut 15:19–23 (Kilchör, *Mosetora*, 156–62); Lev 22:19–20 in Deut 17:1 (Kilchör, *Mosetora*, 211–12).

P was not available to D), but simply because H contains issues of much more relevance for the target audience of the Deuteronomic law.

## Conclusions

An examination of the allusions of Lev 1–16 in the Deuteronomic law shows that, except for Lev 12 and 16, the material of the Priestly Torah is indeed presupposed in the Deuteronomic law. In several places in Deuteronomy we can see that the concerns of the priests are not directly of interest for the Deuteronomic target audience of the people. Therefore, the allusions to the Priestly Torah only go as far as it is of relevance to the people. It is important to see that the same is also true for the Holiness Code. Thus, in the Deuteronomic law there are only a few allusions to H in the places where H addresses the priests. In my view, this leads to the following two conclusions for the composition of the Pentateuch:

1. It confirms the thesis of my book *Mosetora und Jahwetora* that the Deuteronomic law presupposes Exodus, Leviticus, and Numbers more or less in their present shape.
2. It shows that Deuteronomy in principle does not use P in another way than it uses H. This means that there is, at least on this point, no reason to assume that the Deuteronomic law used P and H as two distinct texts and under different hermeneutical viewpoints. Where H treats issues that are of Priestly concern, H is used in a way that is identical to the use of P.

Therefore, the reason for the different intensity in the use of P and H by D does not lie in a different ideology of P and H or in a different availability of the two sources, but in Deuteronomy's target audience. For the people, the contents of Priestly laws are, in general, of lower relevance than most of the contents of the Holiness Code.

Since the large majority of scholars predate D as against P, the question of the way in which D deals with P has not been much discussed. However, two giants in pentateuchal research have discussed the issue with different results, although both predated P in relation to D. Moshe Weinfeld argued for discontinuity between P and D, which he formulated in terms of "Demythologization and Secularization."<sup>34</sup> Jacob Milgrom, on the other hand, argued for continuity between P and D. He states, "If then D presupposes a crystallized (if not final)

34. Moshe Weinfeld, *Deuteronomy and the Deuteronomic School* (Oxford: Clarendon, 1972), 191–243; cf. Weinfeld, *Deuteronomy 1–11*, 28–29.

form of P, is it plausible to argue that its silence in respect to P's laws bespeaks their abolition? So Weinfeld claims. For example, on the basis of 20:14, he concludes that 'according to D all spoils of war accrue to the warriors, and there is no need to consecrate any of them to the Lord' (p. 239). This *ex silentio* deduction cannot be correct, because D never deprives God of His due."<sup>35</sup>

The present study confirms Milgrom's position. D does not compete against P in cultic concerns, but presupposes the Priestly Torah (Deut 24:8). Wherever we find allusions to P in D, it becomes clear that D presupposes that the priests obey the instructions they have already received; the people do not have to be informed about details pertaining to the Priestly office.

35. Jacob Milgrom, "Alleged Demythologization and Secularization in Deuteronomy," *IEJ* 23 (1973): 160.