

## Article

# The Constellation of Agents: An Often Overlooked Aspect in the Comparison of Deuteronomy and Ancient Near Eastern Treaties

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**Abstract:** Ever since the pioneering studies of George Mendenhall, Klaus Baltzer, Dennis McCarthy, and Moshe Weinfeld, the structural analogies between Deuteronomy and ancient Near Eastern treaties have been a key issue in the scholarly study of the book. More recently, the hypothesis that Deuteronomy 13\* and 28\* could even represent a Hebrew rendering of the Neo-Assyrian Succession Treaties of Esarhaddon has prompted a yet intensified investigation of the matter. Yielding nuanced models to account for the traditio-historical pluriformity of features in Deuteronomy vis-à-vis the various strands of tradition found in late Hittite and Neo-Assyrian, as well as Aramaic comparative evidence, this latter discussion has arguably once again broadened the horizon. In any case, it only emphasizes that reading Deuteronomy against the background of the ancient Near Eastern treaty tradition more broadly provides an indispensable perspective when it comes to the literary genesis of Deuteronomy as we have it. What is more, it also opens a window on its interpretation. At the same time, however, it can also lead to certain misconceptions, for as much as major parts of Deuteronomy are modeled on a treaty, Deuteronomy is no treaty. The comparative perspective thus requires one to heed both commonalities and differences. This article focuses on one such difference, namely the constellation of agents. It is typical of ancient Near Eastern treaties that the contracting parties agree to delegate the task of safeguarding the treaty to a third party constituted by deities. It is these gods who figure as “witnesses” of the curses that the contracting parties call upon themselves if they should act contrary to the treaty, the term “witness” also denoting, according to the semantics of ancient Near Eastern treaty discourse, “agent of the sanctions.” Hence, the agreed upon sanctions are conceived of as coming into effect without the further involvement of the contracting parties. In fact, this particular feature is the operating principle which makes an ancient Near Eastern treaty work. In Deuteronomy, however, it does not apply. While intriguingly enough there are certain entities in the close context of the curse sections which are called “witnesses,” none of them can truly figure as a witness in the sense described above, for none of them is a deity; neither is there an attempt made to charge these “witnesses” with putting into effect the curse sanctions. Often overlooked, this aspect has significant ramifications for the understanding of the curses in Deuteronomy and the treaty style structure in general.



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## 1. Introduction

Ever since the pioneering studies of George Mendenhall, Klaus Baltzer, Dennis McCarthy, and Moshe Weinfeld, the structural analogies between Deuteronomy and ancient Near Eastern treaties have been a key issue in the scholarly study of the book.<sup>1</sup> More recently, the hypothesis that Deut 13\* and 28\* could even represent a Hebrew rendering of one specific Neo-Assyrian treaty has prompted a yet intensified investigation of the matter. Yielding nuanced models to account for the traditio-historical pluriformity of features in Deuteronomy vis-à-vis the various strands of tradition found in comparative evidence,

this latter discussion has arguably once again broadened the horizon. In any case, it only emphasizes that reading Deuteronomy against the background of the ancient Near Eastern treaty tradition more broadly provides an indispensable perspective when it comes to the literary genesis of Deuteronomy as we have it. What is more, it also opens a window on its interpretation. At the same time, however, it can also lead to certain misconceptions, for as much as major parts of Deuteronomy are modeled on a treaty, Deuteronomy is no treaty.<sup>2</sup> The comparative perspective thus requires one to heed both commonalities and differences. In this paper, the focus will be on one such difference, namely the constellation of agents.

## 2. Comparing Deuteronomy and Ancient Near Eastern Treaties

The importance of comparing Deuteronomy and ancient Near Eastern treaties, or ancient legal institutions more broadly for that matter, is uncontroversial in critical scholarship.<sup>3</sup> There will be no full understanding of Deuteronomy without taking into account the unmistakable allusions to the basic structure of a political treaty. This is the lasting relevance of approximately three quarters of a century of research into the Hebrew Bible and ancient Near East, the history of which is well documented.<sup>4</sup> Only recently, two superbly edited journal issues took stock of the discussion: a 2019 volume of *Hebrew Bible and Ancient Israel* titled “Perspectives on the Treaty Framework of Deuteronomy” (Edenburg and Müller 2019b) and a 2020 double issue of *Maarav* in memory of George Mendenhall (Levinson 2020a).<sup>5</sup> In light of this, there is no need for another full review of earlier research here. Instead, I will enter the debate with some brief remarks on the much-discussed contention that core chapters of Deuteronomy are in fact a Hebrew rendering of parts of the Neo-Assyrian Succession Treaties of Esarhaddon (EST),<sup>6</sup> and the fruitful controversy sparked by it.

Said contention builds on the observation that both Deut 13\* and 28\* feature passages which resemble paragraphs from EST in such a way that one cannot but reckon with some sort of genetic relationship; and that relationship, in turn, is assumed to be that of a literal translation (Steymans 1995; Otto 1999). The force of this hypothesis lies in the basic observation, for the parallels are in fact remarkably close. That is to say, they need to be explained. However, the explanation is not predetermined by the observation itself (for a careful methodological discussion, see Arnold and Shockey 2022). Caution is recommended already by the fact that, apart from EST, there are no fully preserved Neo-Assyrian treaties at our disposal (Radner 2006). Critically important, however, is the additional observation that next to the Neo-Assyrian there are also clear traits of various Northwest Semitic traditions to be discerned in the very same chapters of Deuteronomy (see in particular Koch 2006, 2008; see also Quick 2018). Against this background, more nuanced traditio-historically informed models of explanation have been proposed, attaching particular importance to the guild of scribes in the ancient Near East, their decidedly international outlook, and the largely standardized training they received (see again Koch 2008; cf. Ramos 2016). In this vein, the pluriformity of features in Deuteronomy has been fruitfully compared with the amalgam of genuinely Aramaic, late Hittite, and Neo-Assyrian traditions found in the Sefire inscriptions (Fitzmyer 1995; see Koch 2006; d’Alfonso 2006).<sup>7</sup>

It should be noted at this point that these more recent insights do *not* call for a flat denial of any specific relationship between Deut 13 and 28 and the Neo-Assyrian treaty tradition as represented by EST. In my view, attempts to downplay the parallels in question as “general,” “imprecise,” and “superficial” (Crouch 2014, p. 92) do justice neither to the translation hypothesis<sup>8</sup> nor to the actual features of the texts themselves.<sup>9</sup> While claims of *exclusive* dependence of Deuteronomy on EST are demonstrably unwarranted, and claims of direct *literary* dependence are uncertain at best, it is impossible to deny specific Neo-Assyrian influence in Deuteronomy; and the copy of EST recently unearthed at Tell Tayinat (Lauinger 2012) only confirms this.<sup>10</sup>

Having said this, my discussion will now focus, not on particular features relevant for the comparison of Deuteronomy with just one instance of the ancient Near Eastern treaty tradition, but on the essential elements common to any and all political treaties in

the ancient Near East and, in fact, the ancient world altogether.<sup>11</sup> Notwithstanding an almost bewildering variety of actual manifestations, which is only to be expected when one looks at the history of a tradition over the course of more than a millennium and through widely differing historical and cultural contexts, three main elements are to be discerned throughout and in fact allow one to speak of a common tradition. These elements are the actual treaty provisions, or stipulations; sanctions for non-compliance with these provisions, which come in the form of curses, optionally to be complemented by sanctions for compliance, which come as blessings; and the invocation of divine witnesses.

When searching for analogies to this basic structure in Deuteronomy, EST provides a particularly well-preserved and well-known example. A treaty of the Assyrian Great King Esarhaddon with various vassal kings stating that Esarhaddon's son, Assurbanipal, shall succeed his father as overlord, EST obliges the vassal kings to show, after Esarhaddon's death, the same obedience to Assurbanipal as they now show to Esarhaddon; hence, the usual designation "Esarhaddon's Succession Treaty."<sup>12</sup> This is, in essence, the provision of the treaty. In order to enforce compliance with this provision, EST goes on to describe the consequences of non-compliance, that is, of acts of disloyalty towards Assurbanipal. As is typical of a treaty in the ancient world, the passages in question present themselves as curses, that is, as invocations for harm to come upon the perpetrator.<sup>13</sup> Opening with § 58, the pertinent passage reads: "If you should sin against this treaty which Esarhaddon, king of Assyria, [your] lord, [has concluded] with you concerning Assurbanipal, the great crown prince designate, . . . May Aššur, father of the gods, st[ri]ke [you] down with [his] fierce weapons. (59) May Palil, the fore[most] lord, let eagles and vultures [eat your f]lesh. (60) May Ea, king of the Abyss, lord of the springs, give you deadly water to drink, and fill you with dropsy." And so it continues, finally invoking "all the gods that are [mentioned by name] in th[is] treaty tablet" (63).<sup>14</sup>

Precisely this basic structure of a political treaty in the ancient world is to be discerned in the depiction, given in Deuteronomy, of the special relationship, or "covenant," of Yhwh and his people Israel.<sup>15</sup> Following the extensive body of stipulations found in Deut 12–26, Deut 28 details the sanctions for non-compliance and, notably, compliance. Verses 1–2 read as follows: "If you will only obey Yhwh your God, by diligently observing all his commandments that I am commanding you today, Yhwh your God will set you high above all the nations of the earth; (2) all these blessings shall come upon you and overtake you, because you obey Yhwh your God: . . ." <sup>16</sup> The chapter thus opens with the desired scenario, namely, Yhwh blessing his people elect. But if Israel will not live up to its obligations in this special relationship, here as well curse is impending. In fact, depicting the sanctions for non-compliance is the focal point of the chapter, the function of which is to safeguard the covenant.<sup>17</sup> Thus, v. 15 reads: "But if you will not obey Yhwh your God by diligently observing all his commandments and decrees, which I am commanding you today, then all these curses shall come upon you and overtake you: . . ." <sup>18</sup>

### 3. The Constellation of Agents

Thus far, our comparison has covered two of the three essential elements of a political treaty in the ancient world, namely the actual provisions and the sanctions for non-compliance, or curses. Yet the third element, the invocation of divine witnesses, has also come into view. As the above quote from a curse section of EST demonstrates, Esarhaddon calls upon gods to execute the curses he utters: "May Aššur . . . May Palil . . . May Ea . . ." In so doing, he notably includes gods, not only from his own pantheon, but also from that of the other contracting party. In this respect, the copy of EST found at Tell Tayinat is most instructive, for here we find a curse not preserved in the Nimrud fragments, § 54B, invoking the "Queen of Ekron": "May Šarrat-Ekron make a worm fall from your insides" (Lauinger 2012, p. 113). By including these and numerous other invocations, the contracting parties agree to delegate the task of safeguarding the treaty to a third party constituted by deities. It is these gods who figure as "witnesses" of the curses that the contracting parties call upon themselves if they should act contrary to the treaty, the term "witness"

also denoting, according to the semantics of ancient Near Eastern treaty discourse, “agent of the sanctions” (see [Kitz 2014](#); [Christiansen 2012](#)). Using the example of EST again, if the vassal king will, at some point in the future, refuse to show obedience to Assurbanibal as he agreed to, the invoked gods, not Assurbanibal himself, will retaliate.

To be sure, there are examples of aggrieved parties claiming to execute divine wrath when taking punitive action on their own behalf or, looking at the other side of the coin, of divine agents who employ human instruments to implement sanctions (see [Kitz 2014](#), pp. 195–96; cf. also [McCarthy 1978](#), pp. 138–39). However, by referring to the conceptual frame of divine agency, these examples actually affirm the principle. In any case, the content of most curses lies beyond human, or royal, reach. Instead, there is, in the Neo-Assyrian realm, a standard division of competencies among prominent members of the pantheon: Sin is responsible for skin diseases, Šamaš for blindness, etc. ([Weinfeld 1965; 1972](#), pp. 117–21).

All this is to say that, according to the idea of divine witnesses, the agreed upon sanctions for non-compliance with the provisions of a treaty are conceived of as coming into effect without the further involvement of the contracting parties. Because the treaty is safeguarded by the gods, there *will* follow disaster from disloyalty. One may even be tempted to speak of a “curse automatism.” This coinage, however, immediately calls for further clarification, as it tends to blur the border between divine agency and magical practice. Needless to say, the latter also features prominently in the realm of treaty-making (see [Kitz 2014](#), pp. 9–31; [Steymans 1995](#), pp. 209–20; [Aitken 2007](#), pp. 5–17), as do, in certain contexts, curses that are phrased in the passive participle, that is, without explicitly invoking an agent.<sup>19</sup> Against this backdrop, the description of an “automatism” may seem either unfit or quite instructive when referring to the conditional self-imprecations of the treaty partners under scrutiny here, depending on which aspect we wish to consider. Looking at the divine witnesses and their independent agency, the term “automatism” would in fact be misleading. But it is illuminating from the perspective of the contracting parties (according to our example, the Assyrian Great King and the respective vassal king), for the force of their conditional self-imprecations lies precisely in the fact that these sanctions will be implemented by an independent third party. Indeed, this particular feature is the operating principle which makes an ancient Near Eastern treaty work.

In fact, this also holds when we broaden the horizon to look at other legal institutions and other cultural contexts of the ancient world.<sup>20</sup> To this end, let me introduce an additional, lesser-known example, namely an oath taken by the citizens of the Cretan Itanos<sup>21</sup> from the third century BCE (*IC III iv 8*).<sup>22</sup> As this example is not cited quite as often, I will reproduce the pertinent passages of the oath and offer a translation before discussing it.<sup>23</sup> The oath commences as follows (ll. 1–9):

Θε]ῶς ἀγαθός.  
 τά]δε ὤμοσαν τοῖ Ἰτάνιοι πά[ν-  
 τε]ς] Δία Δικταῖον καὶ Ἥραν καὶ θ-  
 εο]ῦς τοὺς ἐν Δίκται καὶ Ἀθαν-  
 5 α]ίαν Πολιάδα καὶ θεοὺς ὄσσο[ι-  
 ς] ἐν Ἀθαναίαι θύεται πάντα  
 κ]αὶ Δία Ἀγοραῖον καὶ Ἀπόλλω-  
 ν]α Πύθιον καθ’ ἱερῶν νεοκαύ-  
 10 τ]ων· πόλιν τὰν Ἰτανίων οὐ πρ[ο-  
 δ]ωσέω . . .

“God is beneficent. The following oath was sworn by all the Itanians, in the name of Zeus of Dicte, Hera, the gods at Dicte, Athena Polias, all the gods to whom sacrifices are offered in the sanctuary of Athena, Zeus Agoraeus and Pythian Apollo, over newly burnt offerings: I will not betray the city of Itanos. . . .”

Falling in line with the first promise just quoted, “I will not betray the city of Itanos” (ll. 9–10), there are numerous other promises, detailing the loyalty a citizen owes to the city and its environs, to other citizens, and to the form of government, including the agreed

upon laws (ll. 10–38). After this main body of the oath, we find the following conclusion (ll. 38–49):

τοῖς δ' εἰ-  
 ορκέοσι καὶ κατέχουσι τὸν [ῥο-  
 40 κο]ν τέκνων ὄνασ[ι]ν γίνεσθ[αι]  
 καὶ γᾶν ἔνκαρπο[ν] φ[έρ]ειν καὶ [πρ-  
 ὀ]βρατα εὐθηγ[εῖ]ν κα[ὶ] ἄλλ[α] πολ[λ]-  
 ᾶ καὶ ἀγαθὰ [γίνε]σθαι [κα]ὶ αὐτῶ[ι]  
 45 κ]αὶ τοῖς τέκνο[ις,] τοῖς δὲ ἐπιορκέ-  
 ο]σι μήτε γᾶν φέρειν μήτε τέκν-  
 ω]ν ὄνασιν γίνεσθαι μήτε πρό-  
 βρα]τα εὐθηγεῖν, ἐξόλλυσθαι δὲ  
 κα]κῶς κακοῦς καὶ αὐτοῦς καὶ γ-  
 εν]εἶν αὐτῶν.

“May those who honor and respect the oath be blessed with children, see their land produce crops and their flocks flourish, and may they and their children enjoy many other blessings; but for those who break the oath may their land be infertile, and may they be denied children and flourishing flocks, and may they perish miserably in their wickedness together with their descendants.”

A citizen’s oath taken by equals who pledge loyalty to their body politic and to each other, this example could hardly be farther removed from an ancient Near Eastern vassal treaty. At the same time, however, it features the three essential elements which make up the basic structure reconstructed in the latter: actual provisions; sanctions for compliance or non-compliance with these provisions, which come in the form of blessings and curses; and the invocation of divine witnesses responsible for implementing these sanctions.<sup>24</sup> Admittedly, there is no explicit reference to divine agency in the concluding section, with both blessing and curse being phrased impersonally: “may their land be infertile,” etc.<sup>25</sup> However, the assumption that one would look to the divine sphere for the origin of such calamities suggests itself, if not from the cultural context per se,<sup>26</sup> then arguably in view of the extensive introduction which mentions a whole range of gods, in the name of which the Itanians took the oath.<sup>27</sup>

Thus, the operating principle, according to which not the legal partners themselves, but an independent third party protects the treaty or oath, seems to hold here as well. In fact, it may well be characterized as *the* core feature of legally binding agreements in the ancient world.<sup>28</sup> In Deuteronomy, however, it is precisely this feature which does not apply. While intriguingly enough there are certain entities, in the close context of the curse sections, which are called “witnesses,” none of them can truly figure as a witness in the sense described above, for none of them is a deity; neither is there an attempt made to charge them with putting into effect the curse sanctions.

These surrogate witnesses are the book of the Torah written down by Moses, according to Deut 31:26; a song associated with Moses, according to Deut 31:19, 21; and, most prominently, heaven and earth, according to Deut 30:19 (see also Deut 31:28; 32:1; 4:26). These references come from various sub-units and mostly rather late literary layers. Of importance here, however, is both that “witnesses” *are* being referred to—apparently the basic structure of a treaty-like arrangement called for including this element, and the diachronic aggregation only confirms this assumption—and, for another thing, that not one of these “witnesses” is actually able to serve in the capacity of a witness in the sense of traditional treaty discourse, plainly because none of them is a deity. Notably, the latter also holds regarding heaven and earth. While the comparative evidence, especially (but not limited to) the Hittite tradition, does in fact testify to the invocation of heaven and earth, or their numina, as divine witnesses of a treaty,<sup>29</sup> it is evident that, in Deuteronomy, heaven and earth are not conceptualized as divine entities.<sup>30</sup>



a given subject matter into relief. Summarizing the present study, one such difference—and arguably the most important one when it comes to a theological interpretation—is to be found in the constellation of agents, according to which Yhwh is both a partner to this covenant and the agent of the sanctions. In stark contrast to the operating principle of ancient Near Eastern treaties and of legal institutions in the ancient world altogether, according to which it is not the legal partners themselves but an independent third party who act as “witness,” it is Yhwh and Yhwh alone who will bring about his own curse threat.

Looking at the other end of this constellation, the latter insight is tantamount to the conclusion: It is not Israel’s “compliance,” or “non-compliance,” with the provisions of the covenant that will unleash the calamity. To be sure, it is part and parcel of the novel concept of a covenant between Yhwh and Israel to point out that not only the former but also the latter is responsible for keeping this relationship. Unlike a treaty, however, the sanctions do not come into effect automatically once Israel violates the covenant. Instead, they come into effect when Yhwh puts them into effect.<sup>37</sup>

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## Notes

- 1 Further developing insights first expounded in chap. IV.2 of (Krause 2020), an earlier draft of this article was presented at the 2020 SBL Virtual Annual Meeting.
- 2 Unless one is willing to considerably stretch the meaning of the word, as does, e.g., (Levinson 2020b, p. 42), when describing the particular form given to the “covenantal relationship” in Deuteronomy as “a national treaty between god and people.”
- 3 Most recently, see the review article of (Morrow 2021).
- 4 To list but the four most influential contributions, see (Mendenhall 1955) and (Baltzer 1960), both building on (Korošec 1931), then (McCarthy 1978) and (Weinfeld 1972).
- 5 See the rich editorial introductions in both issues.
- 6 Standard edition in (Parpola and Watanabe 1988).
- 7 Such approaches have been reinforced by the recent work on translating Akkadian texts into Northwest Semitic by (Crouch and Hutton 2019), who offer a theoretical introduction as well as a thorough case study of one particularly instructive example, the Tell Fekheriyeh inscription. Using the latter as the benchmark for other purported instances of Akkadian–Northwest Semitic translations, including the alleged translation from EST in Deuteronomy 28, they arrive at a profoundly skeptical evaluation of that hypothesis.
- 8 See now especially (Otto 2016, pp. 1201–72) and, responding to criticism, (Otto 2016, pp. 1222–26).
- 9 On Deut 13, see also (Levinson and Stackert 2012), among others.
- 10 On the importance of this find, see (Steymans 2013), among others.
- 11 See (Weinfeld 1990). From the more recent discussion, see, e.g., (Weeks 2004; Beckman 2006; Koch 2006; Christiansen and Devecchi 2013), among others.
- 12 For the controversy over interpreting EST as either vassal treaties or loyalty oaths, see (Otto 2000, pp. 15–32; Koch 2008, pp. 78–97), each with bibliography.
- 13 For this definition, see (McCarthy 1978, p. 11). For the distinction between preemptive and punitive use of curse material, see (Pomponio 1990).
- 14 All translations of EST are taken from (Parpola and Watanabe 1988).
- 15 It is still useful to consult the seminal reconstructions in (McCarthy 1978; Weinfeld 1972).
- 16 Throughout this article, biblical translations follow the New Revised Standard Version with modifications.
- 17 On this point, see, e.g., (Nelson 2002, p. 327).
- 18 As for Deuteronomy 28, the key questions of the original unity (or diachronic profile) and provenance of the material remain far from settled. See, e.g., the discussion in (Edenburg and Müller 2019a, pp. 81–83), with further references, and the contributions by (Pakkala 2019; Morrow 2019; and Steymans 2019). These issues are particularly pressing if one wishes to clarify the precise genetic relationship of Deuteronomy and EST.





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