

Robert Vannoy, Deuteronomy, Lecture 10A

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Treaty Covenant Analogy and Date of Deuteronomy – Objections and Responses

Sefire Aramaic Treaties and Their Differences

While the Aramaic treaties cite the gods of both places, the Assyrian treaties only cite the gods of the Assyrian king. There are certain features of the Aramaic treaties that seem closer to the Hittite treaties. In the selection of gods called upon as witnesses to the treaty, the Aramaic treaty cites the gods of both of the suzerain and the vassal, the great king and the vassal. The Hittite treaties also name the gods of both partners as witnesses, while the Assyrian treaties name only the Assyrian gods. In other rather technical points of style of formulation in the Aramaic treaties of Sefire, that I won't go into, but there's a lot of the phraseology that is closer to that of the Hittite treaty than to that of the Assyrian treaty in style of formulation. So you find certain segments of the Sefire treaties closer to the Hittite treaties than to the Assyrian treaties.

Conclusions in regard the Sefire treaties. They exhibit certain, close affinities with the earlier Hittite treaties, but at the same time important differences, particularly the lack of the historical prologue, the basic obligation, and the one-sided nature of the stipulations. Now, I didn't mention the one-sided nature of the stipulations, but there are many more clauses that protect the rights of the head partner in the Sefire treaties than compared to the Hittite treaties.

3. Implications of the Treaty Covenant Analogy for the Date of Deuteronomy

3. Here is, "Implications of the Treaty Covenant Analogy for the Date of Deuteronomy." To draw all this together, present evidence does indicate that the Hittite suzerainty treaty represents a unique early form of the treaty document that is not duplicated in the later 7th century Assyrian treaties of Esarhaddon, or in the

Aramaic Sefire treaties what Kline calls its classic form. And connected with that difference in form is a different spirit. The gratitude and respect of the vassal for the surzerain is an essential element in the Hittite treaties. That is quite different than the Assyrian and Sefire treaties. So Kline speaks with good reason of the evolution of the documentary form of the suzerainty treaty. And while the differences should not be exaggerated and Kline admits that, he says, “Indeed, there is one species that we meet throughout Old Testament time, and in spite of that one species, there are certain parallel elements but there are these differences that can be pointed to. I think there is reason to define this discernable evolution, and then Deuteronomy corresponds more closely in its structure and spirit to the earlier Hittite treaties than it does to either the 8th century Sefire treaties or the 7th century Assyrian treaties.” That’s his thesis.

So Kline’s conclusion, page 43, in *The Treaty of the Great King*, I think has a great deal of merit and deserves more attention than it has received. He puts it this way: “While it is necessary to recognize its essential continuity and pattern between the earlier and later treaties, it is proper to distinguish the Hittite treaties of the second millennium B.C. as the classic form and without any doubt the book of Deuteronomy belongs to the classic stage in this documentary evolution. Here then is significant confirmation of a *prima facie* case for the Mosaic origin of the Deuteronomic treaty of the great king.” That’s the nature of Kline’s argument; that’s the basis on which it rests. I think he’s made a good case.

Rejection of Kline’s Conclusion: 7th Century Historical Prologue(?)

Now our time is quickly running out, but let me--before getting into responses of some contemporary critical scholars who reject this conclusion and why--just mention J.A. Thompson again. Some of you may have already read this in his commentary on Deuteronomy that’s in the *Tyndale Commentary Series*, pages 51 and 52, in that introductory section. He expresses reservation about the strengths of Kline’s argument. Here’s what he says, “The possibility must be

allowed that Deuteronomy was cast in the shape of an ancient treaty by someone who wrote long after Moses' day." Someone writing later put this material in the earlier form. In addition, he questions the view that the historical prologue was uniquely characteristic of the treaties of the second millennium B.C., citing an article by A.F. Campbell on the historical prologue in a seventh century treaty. Now, as I indicated just a few minutes ago, the historical prologue was in the Hittite treaty, but it was not known in any part of the 7th or 8th century treaty. Thompson cites an article by A.F. Campbell, "An Historical Prologue in the Seventh Century Treaty." Thompson then concludes, "Hence the fact that Deuteronomy has a historical introduction is not necessarily an argument for a date in the second millennium, although it may be." In other words, if you have the treaty back here with a historical prologue, the fact that you have the historical prologue here is not necessarily an argument for a Mosaic date, although it may be.

Vannoy's Response

Now in response to that, I think it should be noted that the historical prologue found by this man Campbell that he cites in seventh century document is not a clear cut example. I could refer you to an article that discusses that and goes into it in detail. A comment by another fellow is very confusing. E.F. Campbell, as compared to an A.F. Campbell--two different articles in two different periodicals--E.F. Campbell says, "The reading is far from clear" that there is a historical prologue in the seventh century treaty. In addition, I think this ought to be noted, that while the possibility that someone cast Deuteronomy in the shape of the treaty form long after Moses' day cannot be totally ruled out; you can't totally rule that out as a theoretical possibility. Somebody could've, in a later time, used the Hittite treaty form, took the material, and ran with it. You can't rule that out as a possibility. Still, Kline's position is scarcely invalidated in this way, and his model still has a great deal of evidence in its favor.

Kline comments in his more recent book, *The Structure of Biblical Authority*, page 10: “If it is once recognized that the Deuteronomic treaty must have been produced whole for a particular occasion, the pervasive orientation of the book to the situation of Israel in the Mosaic age, and especially the central concern of this treaty with, of all things, the dynastic succession of Joshua which is always awkward for advocates for the 7th century origin of the book, becomes quite explicable for them.” In other words, if you’re going to take the structure of Deuteronomy as a whole, and all this pushes towards the Mosaic era, and particularly the matter of dynastic succession of Joshua and Moses, that becomes quite inexplicable to someone who wants to hold a seventh century origin.

Our time is up. This is taking me much longer than I anticipated because I wanted to discuss, before your presentations start, this matter of centralization of worship. I only have two more class hours. I may not make it. Next hour we’ll look at some scholars that reject Kline’s model.

Starts the next hour:

b. Responses of Some Contemporary Critical Scholars Who Reject the Conclusion that the Evolution of this Treaty Form Points toward a Mosaic Origin for the Book of Deuteronomy.

Deuteronomy corresponds to the classic stage of the treaty form. We’ve noted that under “a”, “The Comparison with the Assyrian and Sefire Treaties with the Hittite Treaties.” Small “b” is, “Responses of Some Contemporary Critical Scholars Who Reject the Conclusion that the Evolution of this Treaty Form Points toward a Mosaic Origin for the Book of Deuteronomy.” We can’t do this in detail. I want to get on to our next topic which is the centralization of worship, but we’ll have to see how it goes. A man named J.C. Platares in the *Catholic Biblical Quarterly*, 1967, reviewed K.A. Kitchen’s *Ancient Orient and Old Testament*. That is a book you are familiar with. Kitchen in *Ancient Orient and Old Testament* really takes a very similar position to Kline, arguing on the basis of a

treaty structure for a Mosaic era for the origin of Deuteronomy.

1. Plasteras' Argument Contra K. Kitchen

Plasteras says, and I'll just quote a paragraph from him: "He, [Kitchen] argues against D.J. McCarthy and in favor of the earlier unnuanced position of G.E. Mendenhall that the treaty form similar to the Old Testament covenant traditions were current only during the 2nd millennium but not afterward. Well and good, but then Kitchen goes on to conclude that the covenant narratives could not have taken six literary forms only in the 6th century since the writers could have had no knowledge of the long since obsolete covenant forms. Kitchen seems to have overlooked the very essential fact that no matter at what date the Hittite covenant form may have gone out of current use in the Ancient Near East, Israel would always have retained the same basic covenant form in her cult. So that every layer of tradition, J, E, D, or the redactional combination of these earlier sources would all reflect the same basic covenant structure." What he's really arguing is simply this: the form that we find in biblical material corresponds to the evolution of the treaty with the Hittite form back in the second millennium. But what he's saying is that Kitchen's argument presumes that Israel could not have picked up the form much later, having this form preserved in some fashion in the cult, and then adopted at a much later point in time. So to argue that Deuteronomy must be composed in the second millennium ignores the possibility of preservation in the cult. So Deuteronomy could have been composed later.

Now, I think that you have to grant that as a theoretic possibility, but I think what that position leaves open is the question of when the covenant form was adopted in Israel. Where did this form in the cult come from? When was it originally adopted in Israel? And in addition, the objections we made earlier towards some simply cultic derivation of the form that deemphasizes the historical setting, occasion, and basis for the whole covenant relationship certainly is also to be brought to bear on this. The cultic origin hypothesis doesn't do justice to

Kline's argument. Even if you assume a cultic origin for the form, where does that come from? I think you still are faced with the force of Kline's position.

So even granting Plasteras' position doesn't exclude an early date possibility, but merely provides a rationale for a late date in view of the admitted antiquity of the form. He's just giving a rationale for holding onto this late date while admitting the antiquity of the form. It doesn't force you into the late date, but he gives a rationale for a late date while admitting that it could be looked at in another way. So there is certain inconclusiveness to this kind of argumentation, and I think you have to keep that in mind. Even when you argue for a Mosaic date, you ultimately cannot prove in any sort of final sense that Deuteronomy is Mosaic by arguing on the basis of its form. However, I think you can build a case that has a lot of weight to it.

So that's one representative objection to this position and the reason that he follows it. I'd say the persistence in finding this form, and the findings of the treaty form at all stages and all kinds of different applications through Israel's history, points toward that conclusion. For example, you take the prayer of Solomon at the time of the dedication temple in 1 Kings 8, and the prayer roughly follows this form. Now I'm sure that Solomon was not consciously thinking of treaties, or even perhaps of the Sinai covenant document, or anything like that. But in the character of Israel's faith and the sequence of this: "I [Yahweh] have done this for you [Israel], you have these obligations and resulting blessings and curses." This was so embedded in the way Israel worshipped the Lord and thought of the Lord that it reflects itself in many ways. You find it all through Israel's history. If you're going to say that that whole form is late, then, of course, you take Solomon's prayer and say Solomon's did not really pray in that form. Rather that is a late construction of what the late Deuteronomic editor mythically constructed what Solomon should have said. So you wrench Solomon's prayer out of the present context in which it is set in the narrative.

2. Frankena's Argument and Covenant Curses

Another person that has raised an issue is R. Frankena. This is on your bibliography. "The Vassal Treaties of Esarhaddon and the Dating of Deuteronomy," is his article. The vassal treaties of Esarhaddon, as we know, are late seventh century Assyrian treaties. That is in this volume that I just took off the reserve shelf: *Alt Testamentum Studium*, volume 14. These are collections of articles that appear yearly. Many of the articles are in English. There are a lot of useful articles in these 14 volumes. This article by Frankena is in volume 14, 1965, pages 122 to 154. He argues in his article on the vassal treaties of Esarhaddon for the a 7th century date for Deuteronomy on the basis of certain points of correspondence between curse formulations in the treaties of Esarhaddon and in Deuteronomy. Certain curse formulations found in the Esarhaddon treaties, he points out, have close similarities to some of the curses in Deuteronomy, chapter 28.

His conclusion is on page 153: "The religious reform of Josiah was directed against Assyria, and it is therefore tempting to regard the renewed covenant with Yahweh as a substitution of the former treaty with the king of Assyria. That the text of this covenant should betray knowledge of the Assyrian treaties, which it seems to replace, seems only natural to me. The dating of Deuteronomy, moreover, would in that case find corroboration in a rather unexpected way, in the time of Josiah. At that time Assyrian power dominated Israel from asserting its independence and in that sense Deuteronomy is a treaty document of allegiance to Yahweh, no longer allegiance to Assyria." But the writer of Deuteronomy, as Frankena develops his thesis, almost copied a lot of these curses right out of the Assyrian treaty that was familiar to him. "So that Deuteronomy is subsequent to and dependent upon the Assyrian treaty of Esarhaddon." He argues on that basis for a date in the time of Josiah rather than Mosaic origin.

Now the interesting thing is he never discusses the implications of the differences that we have talked about the structure between the Hittite treaties and

the Assyrian treaties. He just doesn't discuss the lack of the historical prologue, for example. He makes one comment that even closely bears on that subject. On page 136 he says, "The omission of the blessings in the Assyrian treaties might be due to the fact that the treaty would bestow automatically blessings on the faithful vassal." In other words, he recognizes that difference of the blessings being in Hittite treaties but not in Assyrian treaties. Why aren't there blessings in the Assyrian treaties? Well, maybe the idea is that treaty would automatically bestow blessings on the faithful vassal. But he really doesn't get into any discussion of how you're going to explain the difference in *total* structure and form if the Deuteronomy document is essentially borrowed from the Assyrian document.

Kline's Response to Frankena

Now, Kline was aware of this article by Frankena by the time he wrote his book, *The Structure of Biblical Authority*. In Kline's book, *The Structure of Biblical Authority*, he says, "As for the similarities of a group of Deuteronomic curses to a section of curses in the later [Assyrian] treaty, this is not adequate evidence to date even this particular material late." Why? He says, "For the tradition of curse formularies extends far back into the 2nd millennium B.C." In other words, there is a traditional way of formulating curses, and that kind of stereotypical, traditional way of doing that is something that goes way back. "Moreover, since the critics in question suppose that Deuteronomy developed over a period of time through a process of additions and modifications, they would be in no position to appeal to the presence of demonstratively 7th century curses formulations, if there were such, as compelling evidence for the late origin of the treaty structure of the book as a whole."

So that seems to me the point to be made is: you can look at these formulations yourself if you want to look in detail and see how valid you think either argument is. There are general similarities; the wording is different, it's been modified, but there are similar kinds of curses. Seems to me that's to be

explained much more readily by the rather stereotyped common nature of curses in the Ancient Near East generally, that are included in the book of Deuteronomy, which goes back even into the Hittite treaties rather than on the dependence on the way Assyrian treaties are and much more important, Frankena says nothing about the explanation for the correspondence in structure of Deuteronomy as a *whole* with that of the Hittite treaties as compared to the Assyrian treaties.

Kitchen in *Ancient Orient and Old Testament* comments on Frankena's article in a footnote, page 100. He says, "Useful comparisons between the curses of Deuteronomy and the neo-Assyrian treaties are made by R. Frankena and Moshe Weinfeld. However, they betray some naiveté in assuming that similarity automatically spells Hebrew dependence on late Assyrian treaties. The old Babylonian data cited by Weinfeld already points toward a different answer, to a long standing tradition going well back into the 2nd millennium at least, which could have been known in the west lands even before Moses." He argues the same way we have above. But you should be aware that this treaty material has been used by Frankena and Weinfeld, and both use it to argue for a late date.

Here is von Rad, and I won't go into detail because we've discussed him before. He sees the structure, and he admits this structure is analogous to the Hittite treaty structure; there must be a relationship, but he holds on to this sort of cultic argument and argues for a late date. He doesn't depend on the Assyrian treaty, but in his view the whole development of the book is such that all these layers of the material that structure it are rooted in the cult with a long process of development. He doesn't say how far it goes or what the original cause was, but it's that the cultic origin type of viewpoint.

3. Nicholson Cultic/Liturgical Connection

Another recent book on Deuteronomy is by D.W. Nicholson entitled *Deuteronomy and Tradition*. It is very similar to von Rad but with slight deviation. He concludes, "The form of Deuteronomy is derived from the cult, and

follows the liturgical pattern of the festival of the renewal of the covenant.” But in his view the Levites are not the ones who are really responsible for the preaching that you find in Deuteronomy and the preservation material. He regards prophetic circles in Northern Israel as the responsible agents for the preservation and transmission of good traditions underlining the book. He suggests that these circles of prophets fled to the south after the destruction of the Northern Kingdom, in other words, after 722 B.C. and the fall of Samaria. They eventually drew up their program for reform during the time of Manasseh. This book of the law in the temple in Jerusalem was then found during the reign of Josiah. So prophetic circles from the north developed this material after they come south in 722 B.C. They drew up this program for reform, which is basically what you have in Deuteronomy. That was deposited in the temple and eventually found during the reign of Josiah in 621 B.C. So it’s in a sense basically the old Wellhausen position, but instead of saying it was all late material composed right at the time of 621, it’s got a century-long history behind it. This whole prophetic movement is behind it and developed it. The original form comes out of the cult. How far back that goes and where it originated from is left open.

4. Moshe Weinfeld Literary Non-Cultic Origin from Hezekiah’s or Josiah’s Time

One last name, Moshe Weinfeld, is a rather important name. He wrote *Deuteronomy and the Deuteronomistic School* which I believe it’s from Oxford University Press. It just recently it came out in the last few years. He has opposed any cultic derivation of the covenant form. In other words, he opposed von Rad, or Nicholson, or whoever. He says that the structure of Deuteronomy follows a literary tradition of covenant writing rather than imitating a periodic cultic ceremony. In other words, there is a literary tradition behind the structure of Deuteronomy, not some sort of cultic ceremony. Instead of then ascribing the book to Levitical circles as von Rad, or prophetic as Nicholson, he attributes it to the court scribes at the time of Hezekiah and Josiah. He says, “If a literary pattern

lies behind the book of Deuteronomy and [behind] the form of Deuteronomy, it would be much more reasonable to assume that a literary circle which was familiar with treaty writing.” In other words, court scribes composed the book of Deuteronomy.

Now, Weinfeld rejects the view of Mendenhall, Kline, Bright, and Albright that the Hittite treaty is unique and that the covenant form of Deuteronomy, therefore, corresponds with the classic form of the 2nd millennium B.C. He rejects that view; he claims that treaty form is basically only one form all the way through. He dismisses the lack of a historical prologue in the Assyrian treaties as not significant. It is not important that there is no historical prologue. You could debate that, but I think it’s enormously important as we have already discussed it. So he concludes really in agreement with Frankena, although on a slightly different basis. He agrees that Deuteronomy reflects contemporary Assyrian treaties rather than the earlier Hittite treaties. He rejects this idea of evolution of the documentary form of treaties, concluding that Deuteronomy has a literary background that is a product of these scribes in Jerusalem. These scribes in Jerusalem were familiar with Assyrian treaties. It’s the Assyrian treaties that are behind Deuteronomy. That’s his basic thesis.

Kline’s Response to Weinfeld

Kline, in his book *The Structure of Biblical Authority*, on page 14 comments on Weinfeld. And he says and I quote, “The oration character of Deuteronomy Weinfeld explains as a literary device.” Deuteronomy does have an oration character; Moses is giving these addresses, these speeches. “Weinfeld explains that as a literary device. Programmatic speeches were placed in the mouths of famous persons to express the ideological views of the author.” Now that’s really Wellhausen again: that we have programmatic speeches placed in the mouth of Moses, placed in the mouth of Joshua, and placed in the mouth of Samuel. It’s all from later times being represented as early; in short, a pious fraud.

On this point Kline says, “von Rad comes closer to the truth. For while he too deems fictional the casting of Deuteronomy in the form of a farewell speech from Moses, he does at least formally integrate this speech with the covenantal elements in the book. He identifies the speech as an officer bears farewell. You have Moses there giving his farewell. Von Rad advocates that, and he explains the presence of the covenant formulary within this and other such speeches by reference to the attested practice of renewing covenants when vassal leaders transferred their office to a successor.

Unfortunately, von Rad fails to recognize in the oration form the true explanation of the hortatory, Deuteronomic treaty. The speaker does not derive from levitical preaching, nor from a late literary circle of court scribes, but from the historical circumstance that Deuteronomy is the documentary deposit of a covenant renewal which was also Moses’ farewell to Israel. The element of paranesis, or exhortation, already present to some extent in the ancient treaties was naturally exploited to the fullest by Moses on that stirring occasion.” So that’s basically Kline’s response to Weinfeld. The situation in which you have Moses giving an address to people at the point of his departure, on the occasion of the covenant renewal, is a far better “situation in life” to which to ascribe the book of Deuteronomy than court scribes sitting in Jerusalem at the time of Josiah copying from an Assyrian treaty.

Fixity of the Text of Deuteronomy

In *The Structure of Biblical Authority*, Kline takes this idea of the treaty/covenant analogy and the concept from the treaty documents and asserts the text is not something to be tampered with. Once it was put down, it was set. It was not to be added to, changed, or modified, and he takes that idea and applies it to the idea of canon in Scripture. Once Scripture is written and given, it’s something that does not go through all this process of reformulation. So the

structure of biblical authority is tied into that.

Conclusion:

The debate turns on several things. The historical prologue: how important is that? Biblical covenants and Hittite treaties have it. Weinfeld argues this really makes no difference. The form is still one form. Well, I don't think he realizes the significance, not just of this element in the form, but the *function* of this element in the form. You cannot just cancel that out and ignore it. But that's one point of debate. Is there one continuous form from the Hittites down to the Assyrians or is there a development? There is a difference of opinion on that.

Second, even those who say the form does change say that does not therefore prove that the biblical material is of Mosaic origin. But then you haven't answered these questions: when, where, and why did that form become part of Israel's history. Even if Deuteronomy comes at some late point, preservation of form by the Levites or prophets, where did that start? That is the question. What situation in the history of Israel can you posit other than the conclusion of the covenant at Sinai that really gives you a legitimate entrance of that form into Israelite use? I think there is the strength of Kline's argument, not to the point of conclusive proof, but it is certainly the most satisfactory model that deals with all the factors involved.

I should go on to the matter of centralization of worship. You can make this Roman numeral III on your outline. We'll cover that in our next hour together.

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 Rough edited by Ted Hildebrandt
 Final edit by Dr. Perry Phillips
 Re-narrated by Dr. Perry Phillips