Historically speaking, the progression of literary revisions within Deut 11:31–12:28 reconstructed in the analysis above makes it hard to resist conjuring up a social scenario, however general.\(^4^4\) Despite the programmatic formulation of each of the amendments to the law restricting the sacrifice to a single site, they could all represent so much legislative scrambling that aims to justify after the fact what the people at large do. Whenever the framers of the law concentrating cultic worship wrote and however their law came to impress itself upon the public consciousness, they simply could not persuade folks not to eat the meat of domesticated animals at home.\(^4^5\) So in successive stages they recast the law from one that restricts all consumption of domesticated animals to one that restricts cultic consumption of domesticated animals and transferred the burden of sacrality from action to context, from the act itself to the location of the action and the human intent that defines the action. The religious imagination—however compellingly it interprets history, however richly it embeds everyday objects, senses, and actions—has its practical limits. As a human faculty, as a human endeavor, it faces human limits. The original law conjures up an image of the temple as a dynamic center of regular feasting, palpably consolidating social life and national identity. The subsequent versions of the law progressively dull that vision and limit the temple’s exclusivity to a few imposed feasting obligations, recasting the temple’s regular significance largely as a matter of deictic symbolism.\(^4^6\)

\(^4^4\) Compare LEVINSON, Deuteronomy, 39–40.

\(^4^5\) Instructively in this regard, the author of 1 Sam 14:31–35 can entertain the idea of Israelites who, driven to exhaustion by Saul’s relentless campaign against the Philistines, do not scruple to slaughter the livestock in their war booty and eat it without properly draining the blood, and can describe Saul as dedicating a rock to Yahweh and setting up a makeshift altar for the purpose.

\(^4^6\) Analogously, the law of firstborn animals in Deut 15:19–23 and the original tithe law in 14:22–23 consolidate all giving into a single annual trip to the one chosen site (contrast Exod 22:28–29), but even this dispensation underwent adaptation, in 14:24–26, because of “distance from the one chosen site,” such that the offerer consumes this food, too, at home and stores up credit—“silver pieces”—instead. Because silver pieces have no shelf life, the amendment effectively, if not deliberately, undermines the obligation for an annual tithe and firstborn trip altogether and lays the groundwork for a far-less regular visit. Indeed, analysis of rabbinic halakha and hermeneutics regarding the obligation of pilgrimage tends to indicate that Jews of the Second Temple period simply did not go on pilgrimage three times every year, or even once per year, but much more sporadically, so much so that the rabbis felt constrained to reinterpret the pentateuchal laws of pilgrimage wholly against their plain sense. See Shmuel SAFRAI, “The Pilgrimage Commandment,” in The Pilgrimage in Second Temple Times: An Historical Monograph (Tel Aviv: Am Hasefer, 1965) [Hebrew], 24–41; repr. with addenda in IDEM, In the Days of the Temple and in the Days of the Mishnah: Studies in the History of Israel (2 vols.; Jerusalem: Magnes, 1994) [Hebrew], 1:43–60; CHAVEL, “Second Passover,” 17–19.

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The Deuteronomic Evidence for the Documentary Theory  
**JOEL S. BADEN**

In classical source-critical scholarship, it was held as axiomatic that the historical retrospective in the opening speeches of Deuteronomy was written on the basis of the combined J and E narratives (the so-called “JE” document).\(^1\) In recent years, as the very existence of J and E has been challenged, it is more commonly argued that some or all of the non-Priestly texts of the Hexateuch are in fact the product of Deuteronomic revisions of earlier materials or even entirely new Deuteronomic compositions.\(^2\) In this paper, I will examine two passages from the beginning of Deuteronomy that have an undisputed literary connection with texts from Exodus and Numbers. I hope to demonstrate that neither of the two aforementioned models does justice to the literary evidence.

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\(^2\) See the contemporary scholarship cited below. Throughout I will use the term “Deuteronomic,” rather than “Deuteronomistic,” for the sake of simplicity and clarity: the texts under discussion are from or resonate with Deut itself, rather than the Deuteronomic History. Although the distinction between D and Dtr is frequently muddied, we must in fact distinguish between the two; see the analyses of Menahem HARI, The Biblical Collection (3 vols.; Jerusalem: Magnes, 1996–2008) [in Hebrew], 2:195–200.
The first text to be examined is Moses’ recollection of the appointing of judges in Deut 1:9–18. In vv. 9–12, Moses recalls his complaint that the people have grown too numerous to control. The language used here is nearly identical to that of Num 11:

Deut 1:9

I cannot bear you by myself.

Num 11:14

I cannot bear all this people by myself.

Deut 1:12

And they will bear with you the burden of the people, and you will not bear it by yourself.

How can I bear myself your trouble and your burden and your conflict?

In Numbers, Moses’ complaint (vv. 11–15) is answered by Yahweh’s promise that a portion of his own prophetic spirit will descend upon Israel’s elders, who will share with Moses the burden of leadership (vv. 16–17). In Deuteronomy, however, Moses says that he solved his own problem by appointing the tribal leaders as judges, thereby relieving himself of the responsibility of judging every case, whether major or minor, on his own (1:13–18). This second part of the story, in vv. 13–18, is connected with Num 11 but rather with Exod 18, and this is confirmed by a similar set of parallels:

Deut 1:15

I set them as heads over you, chiefs of thousands, chiefs of hundreds, chiefs of fifties, and chiefs of tens, and officials for your tribes.

Exod 18:26

The matter which is too difficult for you you will bring near to me and I will hear it.

I set them as heads over the people, chiefs of thousands, chiefs of hundreds, chiefs of fifties, and chiefs of tens.

The difficult matter they will bring to Moses.

3 See also 18:21: “Seek out from among all the people capable men, God-fearers, trustworthy men, those who do not care for profit, and set these over them, chiefs of thousands, chiefs of hundreds, chiefs of fifties, and chiefs of tens.”

4 See also 18:22: “Every major issue let them bring to you.”

We have in this one D text, therefore, resonances with two tetrarchal passages, separated by a considerable distance, relating to two distinct events that occurred at different times.

While Exod 18 is, for the most part at least, a unified text, the same cannot be said of Num 11. Virtually all scholars have correctly recognized two separate strands in this chapter: one about the people’s desire for meat and one about Moses and the prophesying elders. These two strands are isolated from each other with relative ease, and the precise demarcation of the text has been made persuasively by more than one scholar. Thus to the first strand, of the people’s desire for meat, belong vv. 4–10, 13, 18–24a, 31–34; to the second strand, of Moses and the prophesying elders, belong vv. 11–12, 14–15, 24b–30. Recognition of the composite nature of Num 11 further complicates the picture with regard to Deut 1:9–18. The elements of Num 11 that have a counterpart in D come exclusively from the prophesying-elders strand. We now have to reckon with a single passage in D that is connected with two separate tetrarchal passages (the prophesying elders strand in Num 11 and the appointing of the judges in Exod 18), one of which is itself interwoven with a story entirely unmentioned in Deut 1:9–18 (the people’s desire for meat in Num 11).

The driving question, therefore, is of direction of dependence: is the text of Deuteronomy dependent on those of Exodus and Numbers, or are the tetrarchal passages dependent on D? In recent years, the latter opinion is more regularly held. There are difficulties with this claim, however. We must con-
tend first with the structural issue: one Deuteronomic text that has been divided into two separate stories. If it is claimed that the entirety of Exod 18 and the elders’ strand of Num 11 are “Deuteronomic,” then one must ask why the relatively brief story of Deut 1:9–18 has been both split in two and dramatically expanded in both parts. The account in D could hardly give rise to such expansions. Even if, however, one claims only that the resonances in Exodus and Numbers are the result of Deuteronomic revision of an earlier text, in which the “Deuteronomic” elements would have been secondarily inserted into a preexisting narrative, the issue is fundamentally unchanged. The single, simple story of complaint and resolution in Deut 1:9–18 would still, in this view, be taken as related to two distinct events in Israel’s past. What’s more, the resolution (Exod 18) is placed chronologically prior to the complaint (Num 11).\(^9\)

Beyond the structural issue, the differences in content between the Deuteronomic and tetrarchal passages prohibit any easy supposition that all belong to the same school, much less the same author. According to Deut 1:9–18, Moses addresses his own complaint by appointing judges to relieve himself of the burden of hearing all the petty judicial disputes of the people: In Num 11, this same complaint is answered by Yahweh’s granting seventy of the Israelite elders the power of prophecy (vv. 16–17, 24b–30). Neither the seventy elders nor the concept of prophecy among this group (or any other) are mentioned anywhere in D, and for good reason. For D, as long as Moses is around, there are no other prophets, as there is no need for any other prophets.\(^10\) No one but Moses operates as the leader of the Israelites in D; he is the one who receives all the credit and all the blame for the people’s behavior.\(^11\) That a prophetic spirit could descend on people other than Moses – even for a short period of time – is fairly well unthinkable from the perspective of D. Thus it is very difficult to credit the story of the elders in Num 11 entirely to a Deuteronomic author.\(^12\) It is only slightly less difficult to credit a Deuteronomic redactor with the insertion of Moses’ complaint at the head of the elders story. We would have to imagine that another complaint originally stood there, for the prophesying of the elders is explicitly described as a response to Moses’ complaint (Num 11:16–17). Second, that original complaint must have employed very similar language to the “Deuteronomic” one, as Yahweh’s response in vv. 16–17 picks up directly on the language of the complaint in vv. 11–12, 14–15, especially in the use of the keyword ṯw. Third, we are left with the question of why a Deuteronomic redactor would have taken up the distinctly non-Deuteronomic concept of non-Mosaic prophecy as the solution to a complaint that is, in Deuteronomy itself, resolved differently.

We encounter similar problems in Exod 18. According to D, it was Moses himself who came up with the idea of appointing judges (1:13–18). Yet in Exodus, this was the innovation of Jethro (18:14–23).\(^13\) This change is not of little significance. One of the main purposes of Moses’ retrospective at the beginning of Deuteronomy is to establish a pattern of behavior among the people and, at the same time, a contrast with Moses’ own faithful leadership. The people in D are repeatedly reminded of their constant intransigence through the recollection of examples from the time in the wilderness (Deut 1:26; 6:16; 9:6–8, 24; 10:16). This intransigence is accounted to them as an unavoidable part of their character as a people, such that even after Moses gives them the law, he remains certain that they will end up disobeying and being punished for it (31:16–18, 20–22, 27, 29). Moses also repeatedly reminds the people in the opening speech of Deuteronomy that he has been entirely blameless, as noted above. In the course of establishing this counterpoint between the people’s intransigence and his stawfall faith, Moses takes credit for virtually every possible act of innovation and leadership: encouraging the Israelites in the episode of the spies, granting the Transjordan to the two and a half tribes (3:12–20), establishing cities of refuge (4:41–43), saving Aaron from God’s wrath after the golden calf (9:20) – and creating the judici-

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\(^9\) The argument of VAN SEITERS, Life of Moses, 217, that the (later) Yahwist has created midrashic expansions of the passage in Deut does not take into account this reversal of order.

\(^10\) Prophets exist, according to D, explicitly for the purpose of acting as an intermediary between Yahweh and the people (Deut 8:20–26; 18:16–17). It is only after Moses’ death that the existence of other prophetic figures is even a possibility (18:15–22).

\(^11\) This singular burden of leadership is made clear through Moses’ repeated reminder to the people that he has been forbidden from entering Canaan not because of anything he did wrong but because of the people’s behavior (1:27; 3:26; 4:21) – though Moses acted rightly, he is responsible for the people’s actions.

\(^12\) The entire element of prophecy in Num 11 goes unmentioned by JOHNSTONE, Chronicles and Exodus, 253–55.

\(^13\) Indeed, this seems to be the main reason that Jethro comes to Moses in the first place: after Moses accepts and implements his father-in-law’s plan, Jethro heads home, his work completed (v. 27).
ary system for the wilderness (1:13–18). These acts – none of which, it should be noted, is attributed to Moses’ innovation in its tetrateuchal counterpart\textsuperscript{14} – are integral to the Deuteronomic depiction of Moses as the faithful leader of the troublesome Israelites. If a Deuteronomic author or editor in Exod 18 removed credit from Moses and gave it to Jethro, it would be entirely against the program of Deuteronomy itself.

Whether the elders strand in Num 11 and the story of Jethro in Exod 18 are considered entirely Deuteronomic or only reworked by Deuteronomic redactors, the result of either argument is that these materials are, in their final stage, “Deuteromic” – authored by someone from the Deuteronomic school or reshaped and taken up into the work of someone from the Deuteronomic school. Yet in both texts there are historical claims and concepts that are not only foreign but even anathema to Deuteronomy. And on the purely structural level, it is nearly impossible to see how the text of Deut 1:9–18 could have been so completely torn asunder, its order reversed, and its two parts attached to such completely different episodes.\textsuperscript{15}

Traditional source critics were well aware of both the division of Num 11 into two strands (assigning the meat strand to J and the elders strand to E) and the relationship between Deuteronomy and Num 11 and Exod 18 (which is classically assigned to E).\textsuperscript{16} Yet the firmly entrenched concept of a “JE” doc-

\textsuperscript{14} According to Num 13:30, it is Caleb who encourages the Israelites after they hear the report of the spies; the Transjordanian territory is requested by the Reubenites and Gadites according to Num 32:1–5; the places of refuge are ordained by Yahweh in Exod 21:13; no punishment for Aaron is ever raised as a possibility in Exod 32; as we have seen, the judiciary is the idea of Jethro in Exod 18:14–23.

\textsuperscript{15} Even more so if Num 11 as a whole is Deuteronomic. Crucial to the idea that the prophetic-elders strand in Num 11 is a secondary, Deuteronomic stratum is the claim that this strand is not a self-standing narrative but is somehow redactional, that is, that it is dependent on, and in fact a reworking of, the earlier text: namely, the preexisting story of the people’s desire for meat (cf. Martin Noth, Numbers [trans. James D. Martin; OTL; Philadelphia: Westminster, 1968], 83–91; Blum, Studien, 83 n. 169; Reinhart Achimcich, Die Vollen-
dung der Tora: Studien zur Redaktionsgeschichte des Numeribusches im Kontext von Hexateuch und Pentateuch [BZAR 3; Wiesbaden: Harassowitz, 2003], 237–51; Romer, “Nombres 11–12;” see the response to these claims in Benjamin D. Sommer, “Reflecting on Moses; The Redaction of Numbers,” JBL 118 (1999): 601–24 [at 607–8]). Yet I can see no evidence for this. First of all, the elders strand makes no reference to the story of the meat, neither in Moses’ complaint (vv. 11:12–13, 14–15) nor in Yahweh’s response (vv. 16–17). More important, it is in fact a complete narrative, internally consistent and coherent in and of itself, as is evident from the analysis of the chapter as provided by some of the very scholars who say otherwise. See further below.


\textsuperscript{17} See the rhetorical question of Gerhard von Rad, Deuteronomy (trans. Dorothy Barton; OTL; Philadelphia: Westminster John Knox, 1966), 39: “Is [the author of D] really likely to have selected only a small part out of the abundance of material offered in JE?”

\textsuperscript{18} This brief recital of a list of episodes for rhetorical purposes is typical of D’s style; cf. Deut 8:1–16; 11:2–6.

\textsuperscript{19} Exod 18 and the elders strand in Num 11 are assigned to E because they contain historical claims that are both contradictory to some pentateuchal passages and continuous with others. In Exod 18, Moses’ father-in-law is named Jethro (vv. 1, 2, 5, 6, 9, 10, 12), as in Exod
The rationale for both the choice of these E passages and the manner in which they have been reconfigured is clear. The two E passages belong together not only because they are from the same document; even within the E document, they form a matched pair. Not only are there verbal connections between the two texts, most notably in the use of the keywords "בֹּאוּ (Exod 18:22; Num 11:11, 12, 14, 16, 17) and "וּסָפֵר (Exod 18:14, 21, 23; Num 11:11, 12, 14, [29])", but the two stories play a structural role in the larger E narrative. Exodus 18, the last episode before the law-giving at Horeb, describes the institution of the secular judiciary; Num 11, the first episode after the law-giving at Horeb, describes the institution of oracular prophecy. The stories are similar, in that each relates how one of Moses’ functions devolved onto a portion of the Israelite leadership; together, they establish the historical justification for the two main bodies of community decision-making in ancient Israel: judges and oracles. Both institutions originated in Moses, and thus both have Mosaic authority.\(^\text{22}\)

For the author of D, the account of Moses recognizing the difficulties of leading the Israelites into the wilderness by himself in the E story of Num 11 fits nicely with the thrust of his overall argument; that the people are inherently difficult.\(^\text{23}\) Yet the remainder of this story, with its depiction of prophetic abilities for anyone other than Moses, was unacceptable. The establishment of the judiciary in Exod 18 was also important, as D addresses the judiciary in the laws (Deut 16:18–20). Yet the context of the E story, with the prominent role of Jethro, ran counter to D’s focus on Moses as the sole leader of the Israelites.\(^\text{24}\) Thus D takes up the elements of each that serve its purpose and leaves aside those that do not.\(^\text{25}\)

In adopting these two stories, however, the author of D fashioned them into an entirely new one, one that fits its purposes narratively and its themes rhetorically. Moses’ complaint is transformed from one about leadership in general to one about his role as arbiter of Israelite disputes. To this end, the author of D added to the part he took from Num 11 a key word, in v. 12: יָמַע. It is no longer just the burden of so many people that is the problem, as in E; it is their יָמַע, their disputes. This small addition eases the transition from the complaint of Num 11 to the solution of Exod 18, while at the same time highlighting the differences in theme and concept between the two tetra-


\(^\text{22}\) The placement of the elders story in E also fits well with D’s program. In E, this episode takes place at the moment of the departure from Horeb. Moses’ complaint is not rooted in any specific event (though he may have the golden calf in mind), but originates rather in the realization as departure is imminent that he alone will be leading the vast Israelite people through the wilderness (cf. Otto EISENLEIT, Hexateuch-Synopse [Leipzig: J. C. Hinrich, 1922], 41; Josef SCHARRERT, Numeri [NeueB 27; Würzburg: Echter, 1992], 50). This aspect of the E story is picked up and expanded on by D: not only is the episode located at Horeb (before the departure from the mountain), as Deut 1:19 makes clear, but in 1:10–11 D makes explicit the fact that the burden of which Moses complains is simply the number of the people.

\(^\text{23}\) Cf. Marc Z. BRETTLER, The Creation of History in Ancient Israel (London: Routledge, 1993), 66. We may also consider the possibility that the very presence of Jethro in Exod 18 would have been an embarrassment to the author of D, given the Deuteronomistic ban on inter-marriage (cf. Graham I. DAVIES, "K 2 in Exodus: An Assessment of E. Blum’s Proposal," in Vervenne and Lust, Deuteronomy and Deuteronomistic Literature, 419).

\(^\text{24}\) As for the J story of the meat in Num 11, as already noted, D makes only oblique mention of it (Deut 9:22) but does so with a clear rhetorical purpose, as yet another example of Israelite insubordination in the wilderness. As with the other episodes mentioned in that verse, Massa and Taberah, the plot of the story is unimportant to D; only the fact that the Israelites failed to keep faith with Yahweh matters.
teuchal passages.⁴⁶ Numbers 11 and Exod 18 tell two entirely different stories about two entirely different events, set at two entirely different times in Israel’s history. We can make sense of D’s adoption and adaptation of the stories from Numbers and Exodus; the reverse is not true.

II

We can trace even more easily the resonances between Deut 10 and the second giving of the tablets of the Decalogue in Exod 34. The similarities between the two texts here are extensive and, for the most part, nearly word for word:

Deut 10:1–5
Exod 34:1–5.²⁸

At that time Yahweh said to me, “Carve for yourself two tablets of stone like the first ones, and come up to me on the mountain, and make for yourself an ark of wood. I will write on the tablets the words that were on the first tablets, which you smashed, and you will place them in the ark.”⁴ I made an ark of acacia wood and I carved two tablets of stone like the first ones, and I went up to the mountain and the two tablets were in my hand.

Yahweh said to Moses, “Carve for yourself two tablets of stone like the first ones, and I will write on the tablets the words that were on the first tablets, which you smashed.”⁴⁴ He carved two tablets of stone like the first ones, and he went up the mountain as Yahweh had commanded him, and he took in his hand two tablets of stone.⁴⁵ Yahweh came down in the cloud. ...⁴⁶ He was there with Yahweh forty days and forty nights; he did not eat bread

¹⁴⁶ The use of this word to conjoin elements from Num 11 and Exod 18 was noted, although perhaps downplayed somewhat, by Brettler, Creation, 68. Brettler also highlights the change from the general terms “between a man and his neighbor” in Exod 18:16 to the typically Deuteronomic terms “between a man and his kinsman and his resident alien” in Deut 1:16 (ibid.). Note also the added emphasis in D on the wisdom of the appointed judges (Deut 1:13, 15), as in Deut 1, which is generally more wisdom-oriented than E (cf. Moshe Wynnefeld, Deuteronomy 1–11: A New Translation with Introduction and Commentary [AB 5; New York: Doubleday, 1991], 140).

Deut 10:1–5
Exod 34:1–5.²⁸

⁴And he wrote on the tablets like the first writing, the ten words that Yahweh spoke to you on the mountain from the midst of the fire on the day of the assembly, and Yahweh gave them to me. Then I turned and went down from the mountain, and I placed the tablets in the ark that I had made, where they still are, as Yahweh had commanded me.

Here, as in Num 11, we can see that D does not connect with all of Exod 34 but only with parts of it. And here again, as in Num 11, the parts that resonate with D form a coherent narrative. Furthermore, as in Num 11, this narrative has a set of historical claims, themes, and terminology entirely different from the rest of the chapter. The verses that connect with D describe the reinscribing and regiving of the tablets of the Decalogue that Moses had destroyed in his anger back in Exod 32. They use the words “like the first ones” (34:1, 4) and “which you shattered” (34:1) in explicit reference to the events of Exod 32. The other strand in Exod 34—also a coherent narrative unto itself—makes no mention of the tablets, neither the first set nor the second. It resonates not with Exod 32 but rather with Exod 33, with which it connects directly:

Exod 33:19–23

²⁸He said, “I will make all my goodness pass before you, and I will proclaim before you the name Yahweh, and the grace that I grant and the compassion that I show.” He said, “But you cannot see my face, for man may not see me and live.”⁴⁴ Yahweh said, “There is a place near me. Station yourself on the rock.⁵² As my presence passes by, I will put you in a cleft of the rock and shield you with my hand until I have passed by. Then I will take my hand away and you will see my back, but my face must not be seen.
words I hereby make a covenant with you
and with Israel."

This strand describes the making of a covenant - not a renewed covenant to accompany the second set of tablets, but a brand new covenant, one based on Moses' appeal to Yahweh in the previous chapter to accompany the Israelites through the wilderness.27

Again, the question is the direction of dependence. As in the previous case, there are two possible ways of conceiving of Exod 34 as being "Deuteronomistic": either the entire chapter is a Deuteronomistic composition or the elements that resonate with Deut 10:1–5 have been secondarily inserted into a pre-existing text to create a new, Deuteronomically reshaped whole.28 As in the previous case, however, there are significant problems with either option. In either scenario, the canonical text should be "Deuteronomistic" one way or the other. Yet the canonical text of Exod 34 contains significant contradictions to D. It is of the utmost importance for D that the only laws written down at Horeb were the Decalogue and that the only covenant made at Horeb was on the basis of the Decalogue; the rest of the law, though given orally at Horeb to Moses, is only to be publicized and written down in the plains of Moab, and it is on the basis of these, and at that time, that the second covenant is made (see Deut 4:13–14). Thus in Deuteronomy, the words that are inscribed on the second set of tablets are explicitly said to be those that were on the first set: the Decalogue (10:2, 4; see 4:13; 5:19; 9:9–11). This is, indeed, what the tablets strand in Exod 34 states as well (34:28). But in the canonical text of Exod 34, it appears that the words inscribed on the second set of tablets are the words of the covenant made in the other strand (v. 27). From a Deuteronomist perspective, this is unimaginable.

Perhaps more important, the tablets strand of Exod 34 contains a significant omission with respect to Deut 10:1–5. Almost every word of Deut 10:1–5 has a parallel in Exod 34, with the stark exception of the thrice-repeated reference to the ark (vv. 1–2, 3, 5). The ark of D, as has long been recognized, is a uniquely Deuteronomistic construction.29 It is not a palladium for the Israelites as they cross the wilderness, nor is it a massive gold-plated cultic centerpiece. It is a simple wooden box, designed exclusively for the purpose of storing the tablets of the Decalogue and, later on, the Torah book (Deut 31:26) - all in accord with D's unique notion that Moses himself provided all of the means for preserving, teaching, and transmitting the divine instruction, a notion utterly unknown outside of D. Given the unique conception of the ark in D, its importance for D's overall program, and its literary centrality in Deut 10:1–5, it is more than interesting that the ark is not mentioned in Exod 34. Especially when virtually every other aspect of D's story is present in Exod 34, the absence of the ark stands out even more prominently.

In this case, then, we have in Exod 34 a text that in its canonical form contradicts the presentation of D, and we have a strand within Exod 34 that looks exceptionally similar to D but that is missing a crucial element from the parallel D text. Neither the canonical text of Exod 34 nor the tablets strand therein can plausibly be attributed to a Deuteronomist author or redactor without severely undermining what it means to be Deuteronomistic.

Traditional source critics actually took a somewhat similar approach to Exod 34. It was almost universally thought that Exod 34 was essentially a J composition and that therefore the words that clearly refer back to Exod 32 - "like the first ones" (vv. 1, 4); "that were on the first ones, which you smashed" (v. 1) - were either fragments of E or, more often, redactional, inserted by the "IE" redactor to align Exod 32 (E) and 34 (J).30 It was also commonly assumed that Exod 34 did originally contain mention of the construction of the ark but that those portions had been removed by the redactor in deference to

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27 The separation of the two strands in Exod 34 was accomplished by Haran, Biblical Collection, 2:130 n. 48, and very nearly already by Bruno Baentsch, Exodus-Lévitique-Nombres übersetzt und erklärt (HKAT I/2; Göttingen: Vandenhoeck & Ruprecht, 1903), 289–85.


30 For the claim that these phrases are fragments of E, cf., e.g., S. R. Driver, The Book of Exodus (2nd ed.; WC; London: Methuen & Co., 1917), 216–17; Friedman, Sources Revealed, 177.
P’s tabernacle pericope. Thus the similarity between Deut 10:1–5 and Exod 34 was, again, seen as D’s dependence on the combined “JE” text – that produced by the “JE” redactor.

The classical source division, however, rested on a significant, and baseless, assumption: that all the sources, but especially J and E, must have told the same story in almost exactly the same way. Thus both J and E must have had a Decalogue, and both must have envisioned it as written on tablets. So too with the ark: since all the other sources have the ark (though all have it quite differently), E must have had it also. Without this assumption, it is clear that the tablets strand in Exod 34 stands quite apart from the rest of the chapter and that it forms a perfect continuation of the narrative from Exod 32 – indeed, the story of Exod 32 is unthinkable without it, as the tablets would remain shattered. The narrative comprising Exod 33 and the covenant strand of Exod 34 is also substantially clarified. And the absence of the ark in Exod 34 cannot be taken as a sign that it was removed from the text in favor of P; the presence of the innumerable contradictions between P and non-P throughout the Pentateuch testifies to the rarity, if not the complete absence, of redactional maneuvers of this kind.

We may again account for the literary evidence more completely if we recognize that while Deut 10:1–5 is indeed dependent on part of Exod 34, as held by the classical critics, it is dependent only on the independent elders strand. We may further recognize that the elders strand in Exod 34 is an indispensable part of the E Horeb narrative, while the covenant strand is equally central to J’s Sinai account. We may first and most easily note that no part of the J story, either in Exod 34 or anywhere in the J Sinai pericope, is mentioned in D. All of the hallmarks of this J narrative – the purification of the people (Exod 19:10, 14–15); the three days (19:10–11, 15–16); the prohibition against approaching the mountain (19:12–13, 21–24; 24:2); the purely visual aspect of the theophany (19:18; 24:10–11ab); the ascent of Aaron, Nadab, Abihu, and seventy elders (24:1–2, 9–11); Yahweh’s decision not to accompany the Israelites and the ensuing dialogue with Moses (33:1–3, 5, 12–17); Moses’ request to see Yahweh (33:18–34:8*); the covenant (34:10–27*) – are entirely absent from D.

In contrast, virtually every aspect of E’s Horeb narrative is present in D: the establishment of Mosaic prophecy in Exod 19:9; 20:15–17 (cf. Deut 5:20–26); the auditory theophany in 19:16*, 19 (cf. Deut 4:12, 15; 5:19–20); the reluctance of the people to approach the mountain in 19:17; 20:17–18 (cf. Deut 5:5); the Decalogue in 20:1–14 (cf. Deut 4:13; 5:6–18); the giving to Moses of a law code in 20:23–23:33 (cf. Deut 4:14; 5:28; 12–26); the tablets in 24:12; 31:18* (cf. Deut 4:13; 5:19; 9:9–11); the forty days and nights in 24:18b (cf. Deut 9:9, 11, 18, 25); and the episode of the golden calf in Exod 32 in almost all of its details (cf. Deut 9:12–29). For the specific text in question here, Exod 34, these parallels are even more apparent. Virtually every single word of E’s narrative in Exod 34 is present in D – and the one phrase that isn’t directly represented in Deut 10:1–5, “he was there with Yahweh forty days and forty nights; he did not eat bread and he did not drink water” (Exod 34:28a), is found one chapter earlier (Deut 9:9, 18). It seems an unavoidable conclusion that at least in the case of Exod 34, but in fact across the entire Horeb pericope, D has adopted, virtually out of whole cloth, the E narrative.

As in the preceding example, the accurate delimitation of D’s sources allows for a clearer understanding of how the author of D altered those sources in creating his new composition. The most significant overall change, of course, was the removal of the Covenant Code of Exod 20:23–23:33 and its covenant ceremony in 24:3–8, 11b), which D replaces with its own laws in Deut 12–26. In Deut 10:1–5, D adds the element of the ark. As already noted, the ark plays a significant role in D as the receptacle for the tablets of the Decalogue and the written law code but has no place in E. With this addition, D changes the focus of the story: the Decalogue, which in E has no role beyond standing as the proof of Moses’ prophetic authority before the giving of the Covenant Code, becomes in D an everlasting reminder of Israel’s obligations to Yahweh and the covenant made in the plains of Moab. This is in line with the rest of D, in which the constant reminder of Israel’s obligation to obedience, and regular failure to meet that obligation, is the central rhetorical device and in

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31 Cf., e.g., Carpenter and Harford-Battersby, Hexateuch, 2:134; Driver, Deuteronomy, xvi; Weinfield, Deuteronomy 1–11, 417. See also Johnstone, Chronicles and Exodus, 268–69.

32 For the same reasons, the claim that Deut 10:1–5 is a secondary insertion into the original D narrative (Aurelius, Fürbitter, 44–48; Van Seters, Life of Moses, 302) cannot be accepted: the tablets must be given again.

33 As already noted, the refashioning of the tablets and the reinscription of the Decalogue thereon belongs as the natural conclusion to the first giving of the Decalogue in Exod 20:1–14 and the destruction of the tablets in 32:19 in E; the descent of Yahweh in the cloud in 34:5a is part of E’s procedure for the theophany (cf. Exod 19:9; so too with the tent of meeting, cf. Exod 33:9; Num 11:25; 12:5; Deut 31:15); the forty days and nights of fasting on the mountain in 34:28 is a repetition of the same from 24:18b. As for J, beyond the direct continuity with the end of Exod 33 in content, theme, and language, we may note the reference to the morning in 34:2, 4* (cf. 19:16*); the prohibition against anyone approaching the mountain in 34:3 (cf. 19:12–13, 21–24; 24:2); the repeated request that Yahweh accompany the Israelites in 34:9 (cf. 33:1–3, 5, 12–17).

34 Thus the remark of Van Seters, Life of Moses, 330, is perfectly correct: “To suppose that Dtn could have skillfully deleted all of the extra material from a J source to obtain his simple, homogenous, and consistent account is hard to believe.” This statement is strikingly similar to that of von Rad on Deut 1:9–18, quoted above in n. 17. Van Seters, of course, takes this as an indication that Exod 34 is a later expansion on the basis of D. Similarly, Johnstone, Chronicles and Exodus, 154, suggests that the elements of Exod 34 that parallel D are in fact a D composition that has been altered and expanded by P(!).
which everything is paranetically directed to the postsettlement period. The author of D inserted the description of the ark’s construction here because it is the most logical place for it: since the ark contains the tablets of the Decalogue, it is only sensible that when Moses goes to receive the second set of tablets, those that actually survive, he should make the ark at the same time.  

III

From only the two examples that we’ve looked at—and there are others—we may draw a number of important conclusions. First, it seems clear that the tetrateuchal passages that resonate with texts in Deuteronomy cannot logically be attributed to a Deuteronomistic redactor, editor, author, or reviser. It is obvious that there are very real resonances between D and the non-Priestly corpus,

[35] The other element of Deut 10:1–5 that does not seem to be derived directly from Exod 34, or from any part of E, is the mention of the fire in 10:4. This aspect of the theophany is clearly important to the author of D (cf. 4:12, 15, 33, 36; 5:4–5, 19–23; 9:10, 15; 18:16): according to D, Yahweh is, in essence, fiery; cf. Deut 4:24; 9:3. The fiery appearance of Yahweh is described in Exod 19:18: “because Yahweh had come down upon it [i.e., the mountain] in fire.” The majority of this verse, describing the appearance of the mountain when Yahweh appears on it, belongs to J, as the opening words (“Mount Sinai was all in smoke”) shows. Thus, it seems that D has taken up this single aspect of the J narrative—“we have seen, the author of D did know the J document—and it should be noted that this aspect does not stand in any substantive contradiction to the presentation of E.

Though it does not impinge on this discussion directly, it is possible, if not in fact probable, that not all of Exod 19:18 is from J. Whereas the last clause reads in the MT “the mountain trembled greatly,” the LXX has “the people were astonished” (translating the same verb, ἀπαθουσία). Either reading is equally plausible from a text-critical standpoint: the MT may have adopted “the mountain” from the immediately preceding context, while the LXX may have adopted “the people” from the parallel in v. 15. (The argument of August DILLMANN, Die Bücher Exodus und Leviticus [3rd ed., Kurzgefasstes exegetisches Handbuch zum Alten Testament 12; Leipzig: S. Hirzel, 1897], 217, that the verb τρέμοντως, “to tremble,” elsewhere only takes animate objects as its subject is in fact incorrect; though it is generally the case that humans, or hearts, are the subject of this verb, we may point to counterexamples such as Isa 10:29; 41:5; Ezek 26:18.) There is no difficulty with taking the phrase, as rendered in the MT, as part of J, continuing the description of the mountain when Yahweh descends on it. There are, however, compelling arguments for taking it, as rendered in the LXX, as part of E. The last clause of Exod 19:18—“the people trembled greatly,” would follow directly from the end of v. 17 and continue directly in v. 19. The E narrative would have the people trembling in the camp (v. 16), then trembling even more when they are brought to the foot of the mountain (v. 18), thereby playing directly into E’s presentation of the people as afraid of approaching Yahweh (cf. Exod 20:16–18—as opposed to J, in which the people are evidently eager to rush the mountain and behold the deity; Exod 19:12–13, 21–24; 24:2). Attributing the end of v. 18 to E would leave a very nice continuity in J, from “the smoke rose like the smoke of a kiln” in v. 18 into v. 20, “Yahweh came down on Mount Sinai,” thus creating the counterposed images of the smoke rising while Yahweh descends.

and it is no doubt these connections that account for the impression some scholars have that the tetrateuchal passages are somehow “Deuteronomistic.” Scholars of many stripes tend to take Deuteronomy as the starting point for their analysis of other texts, perhaps because it is a well-defined corpus with a strong and easily recognizable rhetoric. Yet in the cases examined above, the similarities between D and Exodus or Numbers do not stand alone but are accompanied by crucial differences. On the one hand, there are those elements in the non-Priestly texts that are both more expansive than D and that also contain concepts and themes that are not only foreign to D but actually contradict basic tenets of the Deuteronomistic perspective. This is what we encounter in Exod 18 and Num 11. On the other hand, there are those elements in the D text that are central to the Deuteronomistic presentation but that are markedly absent in the tetrateuchal passages. This is what we see in Exod 34. These differences, working in both directions, make the attribution of the tetrateuchal passages to a Deuteronomistic author or redactor exceptionally unlikely. Furthermore, the fact that in both Num 11 and Exod 34 the purportedly Deuteronomistic elements are interwoven with an entirely different story means that the special Deuteronomistic ideas that ought to be highlighted in a supposedly Deuteronomistic redaction are in fact muted. If one is compelled to posit a Deuteronomistic redactor as the creator of these texts, then one must posit, essentially, a “bad” Deuteronomist, one who either does not understand D or does not agree with it. Of course, if the term “Deuteronomistic” can be taken to indicate a text, or a redactor, that disagrees with the basic historiographical and theological principles of Deuteronomy, then pan-Deuteronomism obviously becomes a far more viable option.

In both of the foregoing examples, however, it is eminently more reasonable, on literary grounds alone, to understand the tetrateuchal passages not as the product of a bad Deuteronomistic redaction but rather as pre-Deuteronomistic: as the sources for D, as the basis for D’s adoption and reimagining thereof. This approach permits the texts of Exodus and Numbers to have their own independent perspectives, which, as the case, we have seen. At the same time, it allows us to understand not only that D has borrowed from these texts, but also why they suit the D author’s purposes thematically and how he has adjusted them to fit his own notions of history and theology. In other words, it accounts for both the similarities between the passages in D and Exodus and Numbers and their important differences.

Although the idea that a Deuteronomistic redactor is responsible for the tetrateuchal passages is untenable, so too is the classical idea that D was dependent on a combined “JE” text. If the author of D was in fact dependent on a combined “JE” text, it is almost impossible to believe that he could have so precisely taken those elements that originally belonged to E and left aside those that belonged to J. The author of D may have been a wonderful writer,
but he was not the first source critic. The fact that D uses only the E parts of these closely interwoven texts demonstrates that the author of D knew E as an independent document, one that he followed closely and used as the basis for his own retelling of Israel’s history in the wilderness. D represents a major piece of evidence for the separation of J and E, for the independent existence of E as a document, and for the Documentary Hypothesis as a whole.