

PART I

Biblical & Theological
Studies

I

A Janus Decalogue of Laws from Homicide to Sexuality: Deuteronomy 22:1–22

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IT IS AN HONOR to be invited to contribute to this festschrift for my esteemed friend Dr. Richard Pratt. Richard is a passionate entrepreneur for the gospel of Jesus Christ, an extraordinary teacher—“an edutainer,” as he calls himself—a highly respected scholar, a sober theologian, and an exemplary Christian.

This essay, dedicated to Richard, aims to establish through poetics that the ten laws of Deuteronomy 22:1–12 are a Decalogue that functions as a transition between laws concerning homicide or preserving life (Deut. 19:1–21:23), which are to be associated with the Sixth of the Ten Commandments—“you shall not murder”—and laws concerning sexuality (Deut. 22:13–23:14), which are to be associated with the Seventh Commandment¹—“you shall not commit adultery.”

Principles of poetics will be employed to the extent necessary to establish that thesis. To contextualize the focus of this study, the essay introduces the discipline of poetics, and then constantly narrows the focus from known principles of arrangement for composing biblical literature in general and legal material in particular to the book of Deuteronomy as a whole, then to the so-called Deuteronomic codex (Deut. 12–26), and finally to the text (Deut. 22:1–12).

1. *Commandment* with uppercase *C* in this essay refers to one of the Ten Commandments. Quotations from the Bible in this chapter are taken from from the NIV translation.

The book of Deuteronomy presents the history of Moses' writing the Book of the Law: "So Moses wrote down this law and gave it to the priests. . . . After Moses finished writing in a book the words of this law . . . he gave this command to the Levites . . . : 'Take this Book of the Law and place it beside the ark of the covenant of the LORD your God'" (Deut. 31:9, 24–26). The so-called Deuteronomic codex within the Book of the Law, it will be argued, is arranged according to the Ten Commandments (Deut. 5).

The essay's conclusion reflects upon the relevance of this study to theology and to the interpretation of Deuteronomy.

INTRODUCTION

During the past half-century, scholars have been developing the discipline of "poetics."² Adele Berlin defines poetics as "an inductive science that seeks to abstract the general principles of literature from many different manifestations of those principles as they occur in actual literary texts." Its aim is "to find the building blocks of literature and the rules by which they are assembled."³ As linguistics is the science of language—a study of the meaning of words and the rules that govern their interrelationship—poetics is the science of literature—a study of how basic components of writing interrelate to create meaning. In other words, poetics is a grammar of literature, and just as we need grammar to make sense of a language, we need poetics to make sense of a body of literature. A serendipity of this relatively recent discipline has been the increasing awareness that the composers of Scripture were brilliant authors, not bungling redactors as was previously thought by the scholarly consensus.

2. This approach was employed by the rabbis in their homilies, either haggadic or halachic, and by Rashi, but was not developed by them as a science. A scientific approach began with F. Delitzsch, *A Commentary on the Book of Psalms* (New York, n.d.), 1:26, and by J. Lindblom, *Hosea literarisch untersucht* (Åbo: Åbo Akademi, 1927), 115–19. It was further developed by M. D. Cassuto, "The Sequence and Arrangement of the Biblical Sections," in his *Biblical and Oriental Studies*, trans I. Abrahams, vol. 1 (Jerusalem, 1973), 1–6; by U. Cassuto, "The Arrangement of the Book of Ezekiel," in *Biblical and Oriental Studies*, 1:227–49; and by S. D. Mowinckel, "Die Komposition des Deuteromes Buches," *ZAW* 49 (1931): 87–112, 242–60. Today, it is widely employed in biblical studies. See B. K. Waltke with C. Fredricks, *Genesis: A Commentary* (Grand Rapids: Zondervan, 2001); B. K. Waltke, *Proverbs 1–15 and Proverbs 15–31* (Grand Rapids: Eerdmans, 2004, 2005); B. K. Waltke with C. Yu, *An Old Testament Theology* (Grand Rapids: Zondervan, 2007); and B. K. Waltke and J. M. Houston, *Psalms as Christian Worship* (Grand Rapids: Eerdmans, 2010).

3. Adele Berlin, *Poetics and Interpretation of Biblical Narrative*, Biblical Literature Series, JSOTSup 9 (Sheffield, UK: Almond Press, 1983), 15.

The principles of poetics involve various sorts of associations and of repetitions such as: concatenation of ideas;⁴ key words; motifs; refrains; inclusio to frame material; janus (smooth transitions linking topics and/or units); generalization and particularization;⁵ patterns of structure, such as symmetrical (A-B-C/A'-B'-C'), chiasmic (A-B-C-X-C'-B'-A'), and concentric (A-B-C/C'-B'-A'). In addition to these principles of association, Alexander Rofe noted that principles of chronology and length (i.e., in decreasing order as can be seen in the order of the books of the prophets) were at work in the arrangement of biblical literature.⁶ The biblical authors are too creative to be bound to a Promethean rock of taxonomy of rules of composition. Poetics is both an art and a science, and what is most needed in its application is sound common sense.

Some principles of poetics are unique to legal material: e.g., prioritization of laws; groupings by form of qualified, casuistic law through *kî* (“when”/“if”) in the general instance and through *im* (“if”) in the particular instance⁷ and of unqualified, apodictic law (e.g., “thou shalt not do X”); arrangement according to socioeconomic worth, descending from human beings (men, women, children, slaves [male, female]) to animals (ox, sheep, donkey) and other movable property; and a predilection for triadic grouping of laws.⁸

Poetics serves two primary functions: to enable authors to embed meaning in their texts without explicit articulation and to serve as a mnemonic device for their audiences. For example, alternating parallelism is like the waves of the sea; the second wave reinforces and expands the first. Chiasmic parallelism is like a rock thrown into a pond that ripples out from its pivot, the pivot being the focal point of the unit. Concentric parallelism is like a tide that moves in and then out. Adele Berlin coined a memorable dictum: “We don’t know *what* a text means until we know *how* it means.”⁹ Hopefully, this essay will give new

4. The concatenation of ideas can be readily seen in the arrangement of the Hebrew alphabet; e.g., *kaph* (“palm”) follows *yodh* (“elbow to fingertip”), *nun* (“snake”) follows *mem* (“water”), *peh* (“mouth”) follows *ayin* (“eye”), and *resh* (“front of the head”) follows *qoph* (“part of head having hair”).

5. For example, Moses’ second address has the pattern of giving first the larger, governing principles (Deut. 5:1–11:32), then the specific rules (Deut. 12:1–26:19).

6. Alex Rofe, “The Arrangement of the Laws in Deuteronomy,” *Ephemerides Theologicae Lovanienses* 64 (1985): 265–87.

7. Ehud Ben Zvi, Maxine Hancock, and Richard Beinert, *Readings in Biblical Hebrew: An Intermediate Textbook* (New Haven, CT and London: Yale University Press, 1993), 55.

8. Some of these principles have been argued by Herbert Petschow (“Zur Systematik und Gesetzstechnik im Codex Hammurabi,” *ZA* 23 [1965]: 146–72) from his study of the Code of Hammurabi.

9. Berlin, *Poetics and Interpretation*, 15.

insights into the book of Deuteronomy, especially Deuteronomy 22:1–12, and empower the audience to meditate better on God’s Word.

THE STRUCTURE OF THE BOOK OF DEUTERONOMY

Until the last half-century, A. C. Welch’s sardonic comment, “While any order into which the laws may be placed is sure to be unsatisfactory, none can be quite so bad as the order in which they appear in Deuteronomy today,”¹⁰ expressed the scholarly consensus. H. M. Wiener,¹¹ however, argued for an arrangement of law based on free association and expansions. D. A. Bergen in his doctoral dissertation at Calgary University in 2003 made a convincing case that the book of Deuteronomy is a craftily constructed chiasm, as the following schema suggests:¹²

- A. Narrator’s outer frame: Introduction (1:1–5)
 - B. Moses’ first address: mixture of motivations with a call for witnesses (1:6–4:40)
 - C. Narrator’s inner frame break (4:41–5:1)
 - X₁. Primary pivot: Moses’ second address
 - a. Covenant at Horeb: Ten Commandments (5:1b–36)
 - b. Parenthesis of the first two commandments: Love God (6:1–11:25)
 - c. Ebal-Gerizim frame break (11:26–32)
 - X₂. Second pivot: Deuteronomic codex: detailed laws for Israel’s worship and conduct (12:1–26:15)
 - c.’ Ebal-Gerizim frame break (27:1–28:68)
 - C.’ Narrator’s inner frame break (29:1–2a)
 - B.’ Moses’ third address: mixture of motivations with a call for witnesses (29:1–30:20)
 - A.’ Narrator’s outer frame: Conclusion (31:1–34:12)

10. A. C. Welch, *The Code of Deuteronomy: A New Theory of Origin* (London: Clarke, 1924), 23.

11. H. M. Wiener, “The Arrangement of Deuteronomy XII–XXVI,” in *Posthumous Essays* (London: Oxford University Press, 1932), 26–36.

12. D. A. Bergen, “Dialogic in the Narrative of Deuteronomy” (Ph.D. diss., University of Calgary, 2003).

A/A'. The narrator's narrative frame introduces first the book (1:1–2) and then the first address (1:3–5). His conclusion includes Moses' appointment of Joshua to succeed him (31:1–8); arrangements for the public reading of the law (31:9–13); prediction of Israel's rebellion and in that light Moses' song (31:14–47); a prediction of Moses' death on Mount Nebo (31:48–52); Moses' blessing on Israel's tribes (chap. 33); and his obituary (chap. 34).

B/B'. Moses' first and third addresses frame his pivotal second address.

C/C'. The narrator's inner frame demarcates the second address, making it the pivot of the three addresses.

X₁. The second address begins by repeating the Ten Commandments that were enacted at Horeb/Sinai (Ex. 20 = a). The First and Second Commandments are elaborated in a parenthesis: "Love God with all your being" (= b) (author's translation).

c/c'. As the narrator's inner frame isolated the second address, the Ebal-
Gerizim frame isolates the Deuteronomic codex (chaps. 12–26).

X₂. D. L. Christensen labels the Deuteronomic codex as "The Central Core: Covenant Stipulations."¹³ This codex is the immediate context of the putative Decalogue of 22:1–12.

THE STRUCTURE OF THE DEUTERONOMIC CODEX: 12:1–26:15

The Deuteronomic codex begins with the phrase *'elleh haḥuqqîm w^ahammishpaṭîm*, "these are the decrees and laws." The phrase "decrees and laws"—we need not decide here whether they mean different things or the same thing—functions as an inclusio that frames the codex (cf. Deut. 12:1; 26:16).

S. A. Kaufman called critical attention to the commentary on Deuteronomy by Fr. W. Schultz. Schultz argued that the arrangement of laws in Deuteronomy 6–26 is dictated by the order of the Commandments. He says: "In Deuteronomy . . . the Law . . . is itself, in a certain sense, a commentary," because in it Moses, "by means of the order in which he treats

13. D. L. Christensen, *Deuteronomy 1–11*, Word Biblical Commentary 6a (Dallas: Word Books, 1991), xli.

them, has placed each section of the Torah in close relationship to one of the [C]ommandments of the Decalogue. In this way he has made the Decalogue the key to the rest of the Law, but equally and at the same time has made the rest of the Law an interpretive expansion on the Decalogue.”¹⁴ Schultz did not gain a following, however, because his sequential arrangement began with the Deuteronomic parenthesis (Deut. 6–11), not with the Deuteronomic codex (Deut. 12–26), and because, as both Kaufman and Braulik agree, his commentary also endeavored to uphold the Mosaic authorship of Deuteronomy and was thus lightly regarded by the academy. Braulik noted that A. E. Guilding in 1948 suggested that not only Deuteronomy 13–15 (*sic*, 25) but also the Book of the Covenant (Ex. 20:22–23:17) and the collection in Leviticus 10–23 were “an orderly exposition of the Decalogue, which is the basis of the whole legal system.”¹⁵ Kaufman, who seems unaware of Guilding’s work, credits Hermann Schulz as “the first among modern scholars to identify the structure of the Deuteronomic Law.” Kaufman’s own erudite analysis laid the foundation for what is becoming a scholarly consensus: “the Law of Deuteronomy (chaps. 12–26) is a highly structured composition whose major topic units are arranged according to the order of the laws of the Decalogue—more specifically the Decalogue as it appears in chapter 5.”¹⁶ Preuss wrote, “For the fact that Deut 12–25 is oriented, at least in some parts and in a general sense, toward the sequence of laws in the Decalogue appears to be a central conclusion of recent scholarship that awaits further verification and testing.”¹⁷ G. Braulik¹⁸ provided further verification and testing. J. G. McConville essentially agrees with

14. W. Schultz, *Das Deuteronomium* (Berlin: G. Sclawitz, 1959), iii, cited by G. Braulik, “The Sequence of the Laws in Deuteronomy 12–26,” in *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy*, ed. D. L. Christensen (Winona Lake, IN: Eisenbrauns, 1993), 313–35 (esp. 317); English translation of “Die Abfolge der Gesetze in Deuteronomium 12–26 und der Dekalog,” in *Das Deuteronomium: Entstehung, Gestalt and Botschaft*, ed. Norbert Lohfink, trans. Linda M. Maloney, *Bibliotheca ephemeridum theologiarum lovaniensium* 68 (Louvain: Louvain University Press, 1985), 252–72.

15. A. E. Guilding, “Notes on the Hebrew Law Codes,” *JTS* 49 (1948): 43–52, at p. 43.

16. S. Kaufman, “The Structure of the Deuteronomic Law,” *Maarav* 2 (1978): 105–58, esp. 108, 111.

17. H. D. Preuss, *Deuteronomium* (Darmstadt: Wissenschaftliche Buchgesellschaft, 1982), 108–12.

18. Braulik, “The Sequence of the Laws in Deuteronomy 12–26,” 313–35.

Kaufman and Braulik, “even if it [their thesis] is not wholly convincing at every point.”¹⁹ I essentially agree with McConville’s conclusion.

My analysis of the correlation between the Ten Commandments (Deut. 5) and the Deuteronomistic codex most closely follows that of Dennis Olson.²⁰

First and Second Commandments

The *First* Commandment, which prescribes monolatry, is expanded and commented on in the eloquent Shema (Deut. 6:4): “Hear, O Israel: the LORD our God, the LORD is one. Love the LORD your God with all your heart and with all your soul and with all your strength,” and Deuteronomy 6–11 is a passionate, parenthetic expansion of the Shema. Unlike Baal, who has different identifications at different sanctuaries, “‘the LORD’ is one,” without different identifications at different sanctuaries, such as came to be the case when the northern tribes separated from Judah. Clearly, Deuteronomy 12, which proscribes any sanctuary other than a central sanctuary, matches the First Commandment and its parenthetic expansion in the Shema. Similarly, Deuteronomy 13, which proscribes the worship of other gods, is to be associated with the *Second* Commandment, which forbids idolatry, a concomitant aspect of polytheism in the ancient Near East.

Third Commandment

The connection between the *Third* Commandment, a command to protect the sanctity of God’s name, and the laws within the framing inclusio that gives as their rationale “you are a people holy to the LORD your God” (Deut. 14:2, 21) is the least convincing of the sequential arrangement of the Deuteronomistic codex with the Ten Commandments. Kaufman, who associates also Deuteronomy 13 with the Third Commandment, writes: “Those who have serious doubts as to the validity of the theory herein presented might be well-advised to skip this section and return only after having become convinced of the Decalogue-structure of the rest of D[euteronomistic] L[aw].”²¹ The mentioned inclusio connects the prohibition of pagan mourning rites

19. J. G. McConville, *Deuteronomy*, Apollos Old Testament Commentary 5 (Downers Grove, IL: IVP Academic, 2002), 122.

20. Dennis Olson, *Deuteronomy and the Death of Moses: A Theological Reading* (Eugene: OR: Wipf & Stock, 1994).

21. Kaufman, “The Structure of the Deuteronomistic Law,” 124.

(Deut. 14:1–2) with pure and impure food (Deut. 14:3–21).²² These two regulations aim to preserve the sanctity of the people who bear God’s name. In Braulik’s opinion, the laws of the tithe and firstborn (Deut. 14:22–27) belong with the Fourth Commandment, not with the Third, because there is an interest in temporal periodicity at the central sanctuary in Deuteronomy 14:28–16:17 (see below). McConville associates the stipulation of tithes and firstborn with the preceding laws because, though the holiness rationale does not appear on the surface, “the image of the people at worship in joyful unity ‘before the Lord’ was seen [in Deut. 12] to be a portrayal of it precisely as holy people.”²³ The association of the tithe and firstborn with the Third Commandment is quite apparent in the stipulation that the people eat the tithe and the firstborn with rejoicing “in the presence of the LORD your God at the place he will choose as a dwelling for his Name, so that you may learn to revere the LORD your God always” (Deut. 14:23). In my opinion, Deuteronomy 14:22–27 functions as a janus between Deuteronomy 14:1–21 and 15:1–16:27.

Fourth Commandment

Stipulations involving temporal periodicity (Deut. 15:1–17:17), which can be associated with the *Fourth* Commandment, a prescription to observe the weekly Sabbath, include the “sabbatical” year (cf. Lev. 25:3–8)—following a socioeconomic descending order—for canceling debts (Deut. 15:1–11), freeing slaves (Deut. 15:12–18), the annual eating of the firstborn male of herds and flocks (Deut. 15:19–22), and—in a chronological sequence—celebrating the Passover in the spring (Deut. 16:1–8), the Festival of Weeks fifty days later (Deut. 16:9–12), and the Festival of Tabernacles in the fall (Deut. 16:13–17).

Fifth Commandment

These stipulations are followed by laws regarding national authorities, which can be associated with the *Fifth* Commandment to honor parents, which entails recognizing their authority. These national authorities include judges at local courts (Deut. 16:18–17:7), the high priest and judge at the high court (Deut. 17:8–13), the king (Deut. 17:14–20), the Levitical priests (Deut. 18:1–13), and the prophet (Deut. 18:14–22).

22. Mary Douglas, *Purity and Danger: An Analysis of Concepts of Pollution and Taboo* (London: Routledge and Kegan Paul, 1966).

23. McConville, *Deuteronomy*, 246.

Sixth Commandment

Deuteronomy 19–26 forms a distinct subsection of the stipulations in Deuteronomy 12–26. In the scheme of following the arrangement of the Ten Commandments, they cover the second half of the Decalogue, the Sixth to Tenth Commandments. According to McConville, their style “is generally less hortatory than in chs. 12–18.” Moreover, “a significant new beginning in the argument of Deuteronomy is signaled by the terms of 19:1.” Following Gertz, McConville observes that the verb *karat*, Hiphil (“cut off”), in “when the LORD your God has cut off the nations,” occurs elsewhere in Deuteronomy only at 12:29. McConville continues, “Deut. 12:29 came at the end of the major chapter on arrangements for worship in the land after occupation, and at the beginning of specific laws on the subject; this one stands at the head of a wide range of laws to be applied in the land.”²⁴

Associated with the *Sixth* Commandment, a proscription against killing innocent humans, is a series of laws dealing with homicide and aiming to prevent the taking of innocent life: cities of refuge in cases of alleged manslaughter (Deut. 19:1–13); not moving a neighbor’s landmark (Deut. 19:14); a verdict involving *lex talionis*, including “life for life,” being established by two or three witnesses (Deut. 19:15–20); going to war (Deut. 20:1–20); atonement for an unsolved murder (Deut. 21:1–9); marrying a captive woman of war and allowing her to mourn the loss of her parents (Deut. 21:10–14); and the inheritance right of the firstborn (Deut. 21:15–17). The latter follows quite naturally within Israel’s social, polygamous context, implying sons by different wives, including the captive wife. More importantly, the law of inheritance entails the father’s death. Obviously connected with homicide are the laws of stoning a rebellious son (Deut. 21:18–21) and of hanging and exposure of a corpse on “a tree,” thereby demonstrating the criminal’s shame and his being under God’s curse (Deut. 21:22–23).

C. M. Carmichael, who seems unaware of the larger context of Deuteronomy 19–21, notes that the laws in Deuteronomy 21, which “set the interest in manifold types of death,” are “a concern characterized by [their] conspicuous association with life,”²⁵ and Braulik, while associating the laws in Deuteronomy 19:1–21:23 with the Sixth Commandment, groups them

24. *Ibid.*, 308–9.

25. C. M. Carmichael, “A Common Element in Five Supposedly Disparate Laws,” *Vetus Testamentum* 29, 2 (1979): 9–42.

under the notion of “preserving life.”²⁶ The law on landmarks in Deuteronomy 19:14 can be interpreted within the context of preserving life.

The series of commands in Deuteronomy 21, according to McConville, “deal with restrictions and procedures surrounding the legitimate taking of life—in the justice system and in war—and thus the prevention of shedding innocent blood.” This series of laws begins with *kî* (“when”/“if”), but the last law, dealing with the exposure of a corpse, begins with *w^ekî* (“and if”). This suggests to McConville “that the compiler of this group of laws indicates . . . that it [the series of laws beginning with *kî*] finishes with the law of the hanged man.”²⁷ The motifs of the land-gift formula (Deut. 21:1, 23b) and of not desecrating that land (Deut. 21:9, 23b) form an *inclusio* around Deuteronomy 21. The three apodictic laws (“do not . . . ignore”) of Deuteronomy 22:1–4 stand in stark contrast to this preceding series of case laws beginning with *kî* and ending with *w^ekî*.

We will return to Deuteronomy 22:1–12 in the next section of this essay.

Seventh Commandment

Laws of sexuality in Deuteronomy 22:13–23:14 can be associated with the *Seventh* Commandment, proscribing adultery. Laws dealing with sexuality include marriage violations (Deut. 22:13–30);²⁸ the composition of the holy assembly, from which, among others, the emasculated and bastards are excluded (Deut. 23:1–8); and holiness in the camp, including procedures and regulations of uncleanness due to seminal emission (Deut. 23:9–14).

Eighth Commandment

Laws pertaining to holiness in commerce (Deut. 23:15–25)—no return of a runaway slave (vv. 15–16);²⁹ no temple earnings from shrine

26. Braulik, “The Sequence of the Laws in Deuteronomy 12–26,” 331–22.

27. McConville, *Deuteronomy*, 326.

28. Lyle Eslinger, “Drafting Technique in Some Deuteronomic Laws,” *Vetus Testamentum* 30, 2 (1980): 251–52, notes the unity of Deut. 22:13–29 based on the formal structure of each law, the logical order of the cases, the chiasmic order of the punishments, and the triadic division of the whole section.

29. Returning a runaway slave probably involved a financial gain. In the book of Deuteronomy *slave* is never used of an Israelite after Israel’s liberation from Egypt apart from one who voluntarily submits himself to be a slave out of love for his master. (A runaway slave is not likely to be the same one who surrendered his life to his master.) So probably the slave is a foreigner and possibly a high official. This interpretation fits the ancient Near Eastern international treaties that concern

prostitution (vv. 17–18); no taking interest from the poor (vv. 19–20); paying vows (vv. 21–23); and generosity of sharing crops but no socialism (vv. 24–25)—can clearly be associated with the *Eighth* Commandment, proscribing theft. This is also true of the following Decalogue of laws protecting the vulnerable (Deut. 24:1–22). These include not taking a millstone as a pledge (v. 6); putting the kidnapper to death (v. 7); procedures regarding pledges (vv. 10–13); paying a worker (vv. 13–14); protecting the vulnerable in court and not taking “the cloak of the widow as a pledge” (v. 17); and a recognition that the vulnerable own that portion of the harvest that Providence gives them (vv. 19–21). On the surface, however, the law prohibiting levity in marriage (vv. 1–4) and freeing a man from national responsibility during his first year of marriage, presumably to produce offspring in case of his death in war (v. 5), better fit the Seventh Commandment or the Tenth Commandment—not to covet a neighbor’s wife—than they fit the Eighth Commandment.

Ninth Commandment

Six of the seven laws in Deuteronomy 25:1–18 pertain to justice with appropriate compassion and shaming. Thus, they can be related to the *Ninth* Commandment, namely, to protect another’s reputation. The first of these laws protects even a criminal’s dignity by limiting his corporal punishment (vv. 1–3); the second gives the ox (i.e., the worker) dignity by allowing him to share in the rewards of work (v. 4); the third preserves the name of the childless deceased (vv. 5–7); the fourth shames the brother-in-law who fails to show compassion to the deceased (vv. 8–10); the fifth applies talion to a wife who shames her husband’s assailant (vv. 11–12); and the sixth asserts that God detests dishonesty (vv. 13–16). The seventh, “blot out the name of Amalek from under heaven” (vv. 17–18), stands apart, probably symbolizing by the Amalekites the certain, future, eternal death of the unjust and the inhumane.

Tenth Commandment

The laws of firstfruits and tithes (Deut. 26) can be correlated with the *Tenth* Commandment, not to covet.

themselves with officials who seek asylum with another nation. See Jeffrey H. Tigay, “Psalm 7:5 and Ancient Near Eastern Treaties,” *JBL* 39 (1970): 178–86.

THE PUTATIVE DECALOGUE OF DEUTERONOMY 22:1–12

Its Demarcation

Principles of poetics set the laws of Deuteronomy 22:1–12 apart from the laws of Deuteronomy 21:1–23 and 22:13–23:14. On the one hand, the laws of 22:1–12, beginning with laws dealing with straying and lost animals (Deut. 22:1–4), are demarcated from the laws dealing with homicide or preserving human life in Deuteronomy 19–21 by, with reference to the latter, the device of inclusio—both the land-gift formulae and purging the land from the guilt of shedding innocent blood (Deut. 21:1, 22–23)—of a final *wêkî* (“and if”) at the end of a series of initial *kî*; and the change of form from case law to apodictic law. (Unfortunately, the NIV blurs this distinction by transforming the apodictic law of Deut. 22:1 [“do not look on”] into the case-law formula [“if you see”]. Perhaps this contributed to the NIV’s *unique*³⁰ linking of Deut. 21:22 with Deut. 22:1–12 and its unhelpful labeling of the unit of Deut. 21:22–22:12 by “Various Laws.”) In sum, the change of topic, reinforced by the noted poetic devices, demarcates Deuteronomy 22:1–12 from 21:1–23.

On the other hand, the apodictic laws of Deuteronomy 22:9–12, which proscribe various mixtures and prescribe wearing tassels, stand in marked contrast to the following series of case laws that deal with sexuality.

Its Content and Arrangement

Within the demarcated unit of laws in Deuteronomy 22:1–12 there are ten imperatives or commandments, the first nine being essentially prohibitions and the tenth being a prescription:

1. Do not ignore a straying animal (v. 1).
2. Do not ignore a lost animal or cloak (vv. 2–3).
3. Do not ignore a fallen animal (v. 4).
4. Do not confound the sexes (v. 5).

30. In addition to the other essays and commentaries cited in the paper, I have consulted Joseph Reider, *Deuteronomy: A Commentary* (Philadelphia: The Jewish Publication Society of America, 1948); P. D. Miller, *Deuteronomy* (Louisville, KY: John Knox Press, 1990), 166; and W. Brueggemann, *Deuteronomy* (Nashville, TN: Abingdon Press, 2001), 218f. The Committee of Bible Translators, which is responsible for the NIV, in a forthcoming revision of the NIV will separate 21:22 from 22:1–9 by heading 22:1–12: “Protecting Life and Preserving Purity.”

5. Do not kill a hen and her young (vv. 6–7).
6. Build a parapet on the roof so as not to be guilty of bloodshed (v. 8).
7. Do not mix seed (v. 9).
8. Do not mix animals (v. 10).
9. Do not mix clothing (v. 11).
10. Wear tassels on your “covering” (v. 12).

The nine prohibitions are arranged in groups of three, a favorite device in Hebrew legal literature, as Lyle Eslinger observes and documents.³¹ The Decalogue’s first triad is linked by the verbal threefold repetition of the key imperative *hith’allēm* (“ignore” [lit. “hide oneself”], Deut. 22:1, 3, 4). As will be argued, the triadic seventh to ninth laws are united by the notion of not mixing two kinds of diverse things. The second triad of commandments in the putative Decalogue, four through six, is linked by a concatenation of ideas dealing with preserving future life.

To be sure, the second prohibition of the first triad, which is linked by the threefold imperative, “do not . . . ignore,” is an extension of the first, as signaled both by the case-law formula *w’im* (“and if,” Deut. 22:2) and by the absence of the apodictic formula *lō’-tir’eh* (“do not look”), as in Deuteronomy 22:1, 4. Nevertheless, a straying animal, whose owner (*’āḥikā*, “your brother Israelite”) is known and is close enough to have the lost animal returned to him, is not the same as a lost animal or a cloak, whose owner is unknown or is too distant to have it returned to him. According to the first law, the onus is on the finder to return the animal to its owner; according to the second law, the onus is on the owner to come to the finder. Without the second law, the finder could be held responsible to track down the unknown owner and/or to bear the onus of spending time and effort to find the loser.

The law regarding a lost garment (Deut. 22:3) possibly segues into a law regarding gender-mixed clothing (Deut. 22:5).

The prohibitions of the last three laws, seven through nine (Deut. 22:9–11), are linked by the concatenation of prohibiting the mixing of two diverse things: seed (*kil’āyim*, a dual; lit. “two kinds,” v. 9), animals (“an ox and a donkey,” v. 10), and fabric (“wool and linen woven together,” v. 11).

31. Eslinger, “Drafting Technique in Some Deuteronomic Laws,” 251–52. In the immediate context note the three family laws on preserving life (Deut. 21:10–14, 15–17, 18–21).

The middle three prohibitions (Deut. 22:5–8), laws four to six, are a concatenation of ideas to preserve the sources for future life and are formally united by adding to each a theological motivation clause. The confounding of sexes by transvestism or homosexuality, which is signaled by transvestite clothing, prevents reproduction of the following generations of human beings (v. 5). E. H. Merrill hints at this association when he writes, “Inasmuch as the latter at least indirectly touches on the subject of death (‘You may take the young’), the law on transvestism may also do so by association.”³² Obviously, taking a mother hen with her chicks or eggs eliminates an available future food to sustain life by consuming all of it in the present (v. 6). Not building a parapet around the roof of a house jeopardizes life, especially that of little children, and so of reproducing future generations (v. 8). The designation of the house as “new,” perhaps suggestive of a young family (cf. Deut. 20:5), and the motivation, “not to bring bloodshed on your house”—a unique reference to bloodguilt in Deuteronomy (cf. Deut. 21:7, 8, 9)—point to the culpability of all the members of a household for not protecting infants and little children.

In any case, all three have motivations that assume “the LORD” stands behind these three laws. The motivation not to transgress sexual boundaries is that “the LORD detests anyone who does this” (Deut. 22:5); the motivation for the second is “that it may go well with you” (v. 7); and the motivation for the third is “so that you may not bring the guilt of bloodshed on your house” (v. 8). No explicit motivation clause is given either for the first three laws of the putative Decalogue or for its last three. The seventh law, “do not plant two kinds of seed,” has the motivation that if you do plant two kinds of seed, the crops and fruit “will be defiled.” But the prohibition not to plant “two kinds” of seed clearly links it with laws eight and nine of this Decalogue. Accordingly, the seventh law of this Decalogue, prohibiting mixture plus motivation, is a janus.

Its Place in the Deuteronomiac Codex

Having demarcated and analyzed this putative Decalogue, let us turn to making sense of its placement by noting its connections to the Sixth (cf. Deut. 19:1–21:23) and Seventh Commandments (cf. Deut. 22:13–23:14). Kaufman rightly relates Deuteronomy 22:1–8 with the laws pertaining to taking life (Deut. 19–21). A straying, lost, or wounded domesticated ani-

32. E. H. Merrill, *Deuteronomy* (Nashville, TN: Broadman & Holman, 1994), 297.

mal may readily die of untoward Providence, or of predation, or of human greed. Although the one who lost an animal or article is too far away for the finder to go to him, nevertheless, the finder has the responsibility to preserve the life of the lost animal. We need not decide here who bore the cost of the maintenance of life or property. Elsewhere in the Law one observes a predilection for an arrangement according to descending socioeconomic worth, as here; namely, from human beings (men, women, children, slaves [male, female]) (cf. Deut. 21:1–23) to animals (ox, sheep, donkey) to other movable property (cf. Ex. 21:2–22:16 and units within it; e.g., Ex. 21:28–36).

Dennis Olson, not recognizing the Decalogue of Deuteronomy 22:1–12, plausibly unites Deuteronomy 22:9–12 with 22:13–23:18 and with the Seventh Commandment, which forbids adultery. According to Olson, the laws of improper mixture (Deut. 22:9–12), the laws of Deuteronomy 22:13–23:18, which as noted above pertain mostly to sexuality, “attempt to draw clear lines of proper relationship and conduct in order to avoid improper mixtures on three levels: the improper mixture of men and women in sexual relationships [Deut. 22:13–30], the improper mixture of Israelites in the place of worship [Deut. 23:1–8], and the improper mixture of unclean conduct or substances and the holy presence of God in the holy war camp [Deut. 23:9–14].”³³

Law ten, to wear tassels, naturally follows the prohibition not to weave diverse fabric. More importantly, the rationale for this tenth law of the putative Decalogue (Deut. 22:12) is explained by Moses thus: “You will have these tassels to look at and so you will remember all the commands of [the LORD], . . . and not prostitute yourselves by chasing after the lusts of your own hearts and eyes” (Num. 15:39), a notion that naturally segues into laws pertaining to sexuality.

The connection of the laws in Deuteronomy 22:9–12 with 22:13ff. can also be made by noting that in Leviticus 19:19 a law pertaining to purity with regard to animals and to seed and to woven fabric is followed by a law pertaining to punishment for having sex “with a female slave who is promised to another man” (Lev. 19:20).

Christopher Wright³⁴ recognizes Deuteronomy 22:1–12 as a distinct unit; but his heading for it, “Respect for Life in All Its Forms,” is appropri-

33. Olson, *Deuteronomy and the Death of Moses*, 99.

34. Christopher Wright, *Deuteronomy*, New International Biblical Commentary (Peabody, MA: Hendrickson, 1996), 240.

ate only for the first six laws (Deut. 22:1–8), not for laws seven through ten (Deut. 22:9–12). These last four laws, with their concern for purity, relate more readily to the following series of laws on adultery and sexual purity.

Its Function

In sum, the Decalogue in Deuteronomy 22:1–12 functions as a janus between laws pertaining to the Sixth (Deut. 19:1–21:23; 22:1–8) and Seventh Commandments (Deut. 22:9–12; 22:13–23:14). I came to this conclusion before I read Braulik, who came to the same conclusion. He labels Deuteronomy 22:1–12: “*Transition from the topic ‘preserving life’ to that of ‘sexuality.’*” He associates its laws somewhat differently, however, from my analysis. For example, he agrees that verse 8 ends the section pertaining to killing, but he confounds the analysis by superficially linking the law on transvestism (v. 5) to the laws on mixing and sexuality.³⁵ Moreover, his arguments, though detailed, are not always convincing—e.g., linking Deuteronomy 21:1 and 22:4, 8 together by the repetition of the verb *npl* (“to fall”).³⁶

CONCLUSION

This essay, arguing that Deuteronomy 22:1–12 is a transitional Decalogue, suggests other theological and biblical reflections.

First, it reinforces that the discipline of poetics is important in the interpretation of biblical literature and in theological reflection.

Second, it shows that both the exilic author’s book of Deuteronomy and Moses’ Book of the Law are a unified composition of “consummate literary artistry—a code whose provisions flow smoothly and logically from one to the other while the sequence of its major topical divisions consciously reflects the order of the Decalogue.”³⁷ As such, it did not grow in stages in a haphazard fashion of constant augmentation and reediting—that is to say, without any definite plan as had long been thought. It is the composition of a genius in jurisprudence and in literature.

35. Braulik, “The Sequence of the Laws in Deuteronomy 12–26,” 322.

36. *Ibid.*, 330.

37. Kaufman, “The Structure of the Deuteronomic Law,” 125.

Third, the essay reinforces the priority of the Ten Commandments. They have pride of place both in Exodus 20–24 and in Moses’ Second Address (Deut. 5–28); they are a better form of revelation, being uniquely spoken by God, not mediated by Moses (Ex. 20:18–21; Deut. 5:23–32); and they are uniquely placed in the ark of the covenant in the Most Holy Place (Deut. 10:1). These ten “words” are foundational to all of Israel’s laws. Kaufman comments, “Due largely to its role in Deuteronomy, the Decalogue has ever since been viewed as the primary and essential code of biblical religious law—the code which, for the Rabbis, Philo, and the New Testament, for Jewish and Protestant reforms, and for Bible commentators through the ages[,] was and is the eternal and unimpeachable divine law upon which all else is but commentary.”³⁸

Fourth, the essay shows that Deuteronomy 5, the Ten Commandments, is a key structural chapter in that it provides a summation and road map of the overall structure of the book of Deuteronomy and of the Book of the Law.

Fifth, the book of Deuteronomy expands the Ten Commandments to laws appropriate for Israel’s life in the land. Christian ethicists are implicitly enjoined to establish rules of conduct derived from the Ten Commandments in various social situations. In other words, the Ten Commandments are foundational to Christian ethics and give substantive meaning to the Lord’s prayer: “thy will be done.”

Sixth, we hope that noting the concatenation of ideas and associations of the laws in Deuteronomy 22:1–12 provides a deeper understanding of these laws. For example, it provides insight into the value of preserving life, descending from humans to animals, as seen in the first triad of laws, and into the value of preserving future life, as seen in the second triad of laws. If our interpretation of proscribing transvestite clothing is correct, it condemns transvestism and homosexual practice as forms of social suicide.

Seventh, the questionable associations of Deuteronomy 14 with the Third Commandment and of the laws of marriage in Deuteronomy 24:1–4 and 24:5 with the Eighth Commandment reinforce that the arrangement of ancient laws and of the Deuteronomic codex in particular is not yet fully understood.

38. *Ibid.*, 110–11.