

AN EYE FOR AN EYE IN CONTEXT:
THE MEANING AND FUNCTION OF THE LEX TALIONIS IN THE TORAH

by

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ABSTRACT

An Eye for an Eye in Context: The Meaning and Function of the Lex Talionis in the Torah

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This study explores the meaning and function of the “eye for an eye” formula as it appears in the legal corpora of the Pentateuch. Past attempts to determine the meaning of the formula have been based on either its historical function or its rhetorical effect. In either case, the specific contexts in which the formulae occur are only of ancillary interest. In contrast, this study places *primary* emphasis on the three contexts in which the formulae occur. The meaning(s) of the formulae within the Torah are determined based on how they functioned in their respective literary contexts. In the end, it is shown that the *lex talionis* in the Torah did not convey one single meaning, but rather it was rhetorically flexible and could convey a variety of meanings depending on how it was used.

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Introduction

The *lex talionis* (or “an eye for an eye” as it is commonly known) is perhaps the most famous and widely quoted phrase from biblical law. The formula occurs three times in the Old Testament, each time with unique variations and set in different contexts: Exod 21:22–25 (the case of third party injury), Lev 24:10–23 (the half-breed blasphemer narrative), and Deut 19:15–21 (the case of false accusation). Although the phrase likely finds its roots in earlier sources, it is most often associated with the Old Testament.¹ It has been the subject of much commentary and citation from the Second Temple period² through to the present day, both in scholarship and popular culture.³

¹ While the Latin phrase “*lex talionis*” derives from Roman law, the roots of the biblical formulation (eye for eye) likely find their origins in other Mesopotamian legal corpora. The second law of the eighth table of the Roman Twelve Tables (originally published in 450 BC) reads, “If one has maimed a limb and does not compromise with the injured person, let there be retaliation [*talio esto*].” See, Adkins and Adkins, *Ancient Rome*, 3, and Kugelmass, “Lex Talionis in the Old Testament,” 1. As for the specific phrase “eye for eye,” it likely finds its roots in Mesopotamian legal corpora. Several laws within these texts use a similar form (although in different Semitic languages). The laws of Hammurabi (LH), which predate the Pentateuchal laws by more than 500 years, use the phrase “slave for slave” (LH 12, 219), “ox for ox” (LH 245), and “sheep for sheep” (LH 263). The Sumerian Laws also use the phrase “ox for ox” (SL 10). See, Pritchard, *ANET*, 160, 175–77, 526. Additionally, there are numerous penalties listed throughout these codes, which, although they do not use an “X for X” formula, mirror the given offense with language that resembles the biblical talion. For example, LH 195–197 reads, “If a son has struck his father, they shall cut off his hand. If a seignior has destroyed the eye of a member of the aristocracy, they shall destroy his eye. If he has broken a(nother) seignior’s bone, they shall break his bone.” See, Pritchard, *ANET*, 175. For a complete list of these “mirroring” punishments, see, Driver and Miles, *The Babylonian Laws*, 499. These clear parallels suggest that the talionic formula of Old Testament law is derived from earlier Mesopotamian sources.

² The most famous early reference is Jesus’ comments in Matt 5:38, where the (equally famous) phrase “turn the other cheek” was coined to contrast the rule of talion. For a list and analysis of all the Second Temple sources that allude to, cite, or comment on the Old Testament talion see, Davis, *Exhortation of Jesus*, 55–72.

³ Aside from the comments made throughout the history of biblical interpretation, the talionic formula is also of concern to legal historians and Assyriologists. Legal historians David Daube and his student Bernard Jackson, for example, have written extensively on the *lex talionis* in the Old Testament. See, Daube, *Studies in Biblical Law*, 102–53 and Jackson, “Models in Legal History,” 1–30 (this is but one example of the many articles and chapters Jackson has written on the talion). As well, it is the title of a recent book by William Miller (a legal scholar), which surveys talionic justice in the ancient Near East and Icelandic sagas. See, Miller, *Eye for an Eye*. Assyriologist Raymond Westbrook also dedicated a large chapter of one of his books to the *lex talionis*. See, Westbrook, *Studies in Biblical and Cuneiform Law*, 39–88. In addition, the biblical formula has been cited in numerous sources of popular culture (where it seems to be used as a catch-phrase that embodies the principle of retaliation in kind or vengeance in general). A few classic and modern examples will illustrate its prominence. William Shakespeare, for example, entitled one of his plays, *Measure for Measure*. It was also cited in Alexander Dumas’ classic novel, *The*

Due to the ubiquity of the phrase, which has persisted for centuries, its meaning has taken on a life of its own. In popular culture, it is the catch-phrase for retaliation in kind and vengeance in general. As a consequence, this meaning, which has evolved over centuries, is often imposed (anachronistically) on the Old Testament.⁴ The talion is often assumed to typify the vengeful nature of the Old Testament God, which, in turn, is contrasted with the forgiving God of the New Testament. In all likelihood, it is this understanding that lies behind the statement of Max May, who wrote, “The dominant idea in Biblical law was the *lex talionis*.”⁵ Thus the frequent citation of this biblical phrase has had negative consequences for popular understandings of the Old Testament.

The problem is that the meaning of this biblical phrase has become severed from the contexts in which the formulae occur. It is quoted, cited, and even discussed in scholarship without full consideration of these contexts. The literal meaning of the phrase is often excised from its context and understood to be the catch-phrase for vengeance and retaliation. As a result of this problem, there is a need to identify both how the formula was employed in the Torah and to discover what it meant to the authors and editors of the Pentateuch. This thesis seeks to respond to this need.

Count of Monte Cristo. In chapter 35, the main character, Edmond Dantes, said, “in return for a slow, profound, eternal torture, I would give back the same, were it possible; an eye for an eye, a tooth for a tooth.” The formula is still prominent today. It was used in the movie *Ghandi*, where Mahatma Gandhi said, “An eye for an eye, and soon the whole world is blind.” A 1996 movie starring Sally Field and Kiefer Sutherland came out that bore the title *Eye for an Eye*. In the 2006 movie *Lucky Number Slevin*, the character played by Morgan Freeman quoted the Latin phrase “*lex talionis*” and the biblical formulation “an eye for an eye.” Retaliation in kind served as the controlling theme for the entire movie. All these examples demonstrate how prominent this biblical phrase has become throughout the entire Western world, both in academia and popular culture.

⁴ For modern examples of this from legal scholarship and the media, see, Pritikin, “Old Testament Justice,” 728 n89 and n90. For examples of courtroom citations, see, Baruch, “Capital Punishment in the United States,” 43–44.

⁵ May, “Jewish Criminal Law,” 438.

Chapter 1

History, Methodology, and the Lex Talionis

The goal of this thesis is to determine the meaning (or meanings) of the *lex talionis* as the formulae are used in the Torah. In order to better explain how this goal can be achieved, a brief history and evaluation of past attempts for identifying the meaning of the formula will be given; this will provide a necessary background to identify the particular problem I intend to address. This will be followed by an outline of three significant issues scholarship faces when it comes to Pentateuchal law: 1) the identity of the legal corpora of the Pentateuch; 2) the nature of biblical law; 3) methodology in biblical law. Finally, chapter one concludes with an explanation of the aim and scope of this study, along with its methodology, an outline, and a statement of its main thesis.

1.1 Past Interpretations of the Lex Talionis

There have been two main approaches for identifying the original meaning of the biblical talion: the historical approach and the rhetorical approach.

1.1.1 The Historical Approach

The historical approach focuses on the function of the *lex talionis* within the ancient community. There are two main streams of thought in this approach. First, there are those who try to identify the original intended application of the talion. Second, there are those who have sought to place the talion within the history of legal development.

1.1.1.1 Application of the Talion

Those who are concerned with the way in which the talion was meant to be applied take three main positions: 1) The talion prescribes literal physical retaliation; 2)

The talion prescribes monetary compensation; 3) The talion allows the option of either retaliation or compensation.

First, although many assume the formula refers to literal retaliation, there are few who explicitly argue this position.¹ David Daube is the only scholar (to my knowledge) who argued at length that the original formulations entailed literal retaliation. He, however, conceded that by the time of the final draft of the Torah, retaliation had likely given way to compensation.²

Second, many argue the (somewhat antiquated) position that the talion prescribes monetary compensation. This is particularly evident in the Rabbinic tradition, which provided a number of arguments as to why literal retaliation could not apply. For example, the Rabbis reasoned that literal retaliation could never have been the intention of the law because it assumes that each party's eye is of the same value. Since the law would not be equitable if a blind person damaged another's eye, the law must refer to monetary compensation. Accordingly, "eye for an eye" ought to be understood as "the value of an eye for an eye."³ Many arguments similar to those of the Rabbis are still found in modern times by scholars such as, Miklisanski, Doron, West, and Chiniz. They each analyse the contexts in which the formula is found to find clues that suggest either that monetary compensation is intended or that physical talion is impossible.⁴ Thus many scholars who are concerned with the issue of application argue that the formula originally meant "the value of an eye for an eye."

¹ Proponents of the second historical approach, the developmental approach, generally assume the formula refers to literal retaliation. This will be dealt with below.

² See, Daube, *Studies in Biblical Law*, 102–153, esp. 109.

³ For an examination of the Rabbi's arguments, see, Milgrom, "Lex Talionis and the Rabbis," 16; and Leibowitz, *Studies in Vayikra (Leviticus)*, 245–57.

⁴ See, Chiniz, "An Old Canard," 79–85; Doron, "A New Look," 21–27; Miklisanski, "The Law of Retaliation," 295–303; and West, "Lex Talionis," 183–88. Most of their arguments will be dealt with as each text is analysed.

Third, the view that the talion entails the option of retaliation or composition is old but still popular. It is demonstrated in Josephus' rendition of the law,

He that maimeth anyone, let him undergo the like himself, and be deprived of the same member of which he hath deprived the other, unless he that is maimed will accept of money instead of it; for the law makes the sufferer the judge of the value of what he hath suffered, and permits him to estimate it, unless he will be more severe.⁵

This third view is also held by some mainstream scholars of biblical law, such as Raymond Westbrook and Bernard Jackson.⁶ They suggest the formula originally meant (or implied) "an eye for an eye in lieu of monetary settlement." What is common to these interpretations is their focus on issues of application.

1.1.1.2 The Talion in Legal History

The second historical approach to the talion concerns its place within the history of legal development common to most societies. Scholars trace the various stages of legal development that a society goes through and place a talionic culture within a certain evolutionary scheme. These developmental models have produced three main interpretations.

The first view is based on the sociological assumption that societies generally move from the practice of primitive clan law to the more advanced legal institutions of the centralized state. This is shown in the writing of the 19th century judge Mayer Sultzberger. He contended that the talion reflected primitive tribal law (known as the blood feud) that was literally practiced as a means of maintaining balance between tribes

⁵ Josephus, *Ant* 4:280.

⁶ See, Westbrook, *Studies in Biblical and Cuneiform Law*, 45–47; and Jackson, *Semiotics*, 280–81. It should be noted that it is an oversimplification of these scholars' arguments to say they believe the talion was originally meant to be applied in this way. They both recognize and take into account the complexity of ancient written law, namely the fact that it was not composed for literal application. See sec. 1.3.2 below.

and clans. As these tribes grew and became more territorial and less dependent on kin based structures, they gradually formed centralized institutions which, in turn, replaced clan law with criminal law. According to this model, the biblical text reflects some progression over primitive tribal law, though it still falls short of the sophistication of a centralized state. This progression is seen particularly in laws related to the avenger of blood and the kinsmen redeemer, which demonstrates the vestiges of primitive law with some advancement.⁷

This sociological explanation of ancient law has given rise to one of the more popular interpretations of the talion, which is the idea that the formula was meant to limit revenge. According to this explanation, primitive clan law always resulted in escalating feuds. If a member from tribe A injured a member from tribe B, then tribe B would kill a member from A, who in turn would make war on tribe B and so on.⁸ The *lex talionis* reflects advancement over this by putting a cap on the amount of vengeance that could be taken. It therefore displays progression over the chaotic violence of primitive law. This interpretation is adopted by such scholars as Mary Douglas and Hans Boecker.⁹ They suggest the original meaning of the talion was “no more than an eye for an eye.”

A second developmental interpretation of the talion is based on the assumption that primitive law is characterized by brutality while more civilized legal systems require

⁷ For defences of this basic position (with some variations), see, Sulzberger, “The Ancient Hebrew Law of Homicide,” 129–30, 143; May, “Jewish Criminal Law,” 438–39; Driver and Miles, *The Babylonian Laws*, 497, 501–03; van den Haag, “The ‘Lex Talionis’ Before and after Criminal Law,” 2; Barmash, “Blood Feud,” 183–99 and Barmash, *Homicide*, 20–70.

⁸ This assumption is endorsed by those who adhere to what legal anthropologists call the “social contract theory.” They believe that a state forms when a group of people band together to curb the chaotic violence of primitive social structures. See, Whitman, “Origins of Law,” 41.

⁹ Douglas, for example, wrote, “[I]t [the *lex talionis*] is there to set a limit to the amount of vengeance that can be demanded,” 213. See also, Boecker, *Law and the Administration of Justice*, 174. He wrote, “The intention of the talion was not, therefore, to inflict injury – as it might sound to us today – but to limit injury.” This idea that the law was meant to limit vengeance was already espoused by Hertz in 1928. See, Hertz, “Ancient Semitic Codes,” 215.

monetary compensation. Since monetary compensation is more humane, it reflects advancement while physical retaliation is primitive. This is evident in the work of Driver and Miles, who wrote, “[T]he natural remedy for assault is retaliation and . . . talion was a fundamental principle of early law and was only gradually replaced by a system of fixed composition.”¹⁰ This assumption is clearly reflected in the interpretation of the talion by the Rabbis, who were uneasy with calling the Torah “primitive.”¹¹ Thus, a second developmental approach to the talion sees it as a sign of primitive brutality (unless it can be demonstrated that monetary compensation was the original intention of the law).¹² Proponents of this interpretation, therefore, assume the talion originally meant “eye for eye” in the literal sense.¹³

A third developmental interpretation is in direct opposition to the above; it asserts that primitive law employs monetary compensation since it is purely a civil matter. Advanced law, on the other hand, employs corporal punishment, which is a matter of criminal law. Thus, the law develops from primitive civil law to sophisticated criminal law. The main evidence for this view came with the discovery of two law codes, the laws of Eshnunna and the laws of Ur-Nammu, which prescribe monetary compensation for physical injury.¹⁴ These codes pre-date the laws of Hammurabi (LH), which demand physical talion. This suggested to A. S. Diamond and J. J. Finkelstein that the talion

¹⁰ Driver and Miles, *The Babylonian Laws*, 408.

¹¹ See, Milgrom, “Lex Talionis and the Rabbis,” 16. This assumption that primitive equals brutal also lies behind the accusation that Jewish law is primitive. For examples of this accusation, see, Meron, “Eye for an Eye,” 93n1, 93n2.

¹² Greengus provides evidence for this position from several revisions in the Hittite laws that eliminate corporal punishment in favour of monetary compensation. See, Greengus, “Coherence of the Legal Tradition,” 65.

¹³ It should be noted that proponents of this view usually see the biblical talion as an archaism, which gave way to monetary compensation by the canonization of the Pentateuch (see Daube mentioned above). See also, Driver and Miles, *The Babylonian Laws*, 499; and scholars cited by Diamond, “An Eye for an Eye,” 175.

¹⁴ See, for example, LU 15–19 and LE 42–46 in, Pritchard, *ANET*, 163, 524–25.

reflects legal advancement.¹⁵ While commenting on the corporal punishments of LH, Finkelstein wrote, “[W]hat the talionic rules in LH actually herald is the enlargement of the scope of criminal law.”¹⁶ Thus the talion reflects a more sophisticated legal system whereby civil law gave way to criminal law.

This third developmental approach has since been adopted by numerous Bible scholars. It is appealing because it has given rise to the view that the biblical formulation represents a further progression beyond that of Hammurabi. For example, LH only requires corporal punishment for crimes committed against members of the higher social class, as demonstrated by laws 196–200,

If a seignior has destroyed the eye of a member of the aristocracy, they shall destroy his eye. If he has broken a(nother) seignior’s bone, they shall break his bone. If he has destroyed the eye of a commoner or broken the bone of a commoner, he shall pay one mina of silver. If he has destroyed the eye of a seignior’s slave or broken the bone of a seignior’s slave, he shall pay one-half his value. If a seignior has knocked out a tooth of a seignior of his own rank, they shall knock out his tooth.¹⁷

Monetary fines are imposed for offenses against slaves while corporal punishments are for those against the social elite.¹⁸ In contrast, the biblical formulations demonstrate far less distinction between social classes than LH. Thus the biblical talion reflects an advanced stage in criminal law, one which places offenses against all humanity in the realm of criminal law, regardless of social standing.¹⁹

Two prominent interpretations have arisen from this observation. First, many see the law as a statement of equality. It should thus be read as “an eye for anyone’s eye” or,

¹⁵ See, Diamond, “An Eye for an Eye,” 174–76; and Finkelstein, “Ammişaduqa’s Edict,” 91–104.

¹⁶ See, Finkelstein, “Ammişaduqa’s Edict,” 99.

¹⁷ Pritchard, *ANET*, 175.

¹⁸ The Akkadian term for the social elite is *awilum*. While the meaning of the term is debated, all agree that it refers to those in the higher rung of Babylonian society. See, Driver and Miles, *The Babylonian Laws*, 409–11.

¹⁹ These arguments have been taken up by numerous scholars. See, for example, Paul, *Studies*, 77–79.

put another way, “the eye of the rich is equal to the eye of the poor.” A related interpretation sees the talion as reflecting the biblical ideal of individual responsibility, which is also an advance over the Laws of Hammurabi. For example, LH 209–210 read,

If a seignior struck a(nother) seignior’s daughter and has caused her to have a miscarriage, he shall pay ten shekels of silver for her fetus. If that woman has died, they shall put his daughter to death.²⁰

Such examples are common in the legal collections of the ancient Near East.²¹ In light of this, the biblical talion’s prohibition against vicarious punishment also represents progression over the “cuneiform” legal collections.²² As a result of this, Paul wrote, “Hence the strict application of talion in the biblical corpus is to be understood in the light of other prescriptions current in Mesopotamian corpora: vicarious punishment.” He later wrote, “[I]t [the talion] became an expression of equality.”²³ These popular interpretations arose from this third developmental approach.²⁴ They suggest the talion originally meant either “an eye for anyone’s eye” or “only the offender’s eye for an eye.” Thus the historical approach has yielded three explanations for the original meaning of the biblical talion.

1.1.2 The Rhetorical Approach

While the historical approach focuses on the function of the *lex talionis* within the ancient community, the rhetorical approach focuses on how the talion functions as a

²⁰ See, Pritchard, *ANET*, 175.

²¹ See also, CH 116, 230 and MAL 50, 55.

²² The term “cuneiform law” was first coined by Koschaker in 1935. It was used to encompass all the ancient Near Eastern legal texts that seem to form one common tradition, despite the fact that they emanate from very diverse cultures. For purposes of this thesis, the term will be used to include the main ancient Near Eastern legal texts related to the Old Testament: the Laws of Ur-Nammu (LU), Sumerian Laws (SL), The Edict of Ammişaduqa, Lipit-Ishtar Lawcode (LL), Laws of Eshnunna (LE), the Laws of Hammurabi (LH), Middle Assyrian Laws (MAL), Hittite Laws (HL) and Neo-Babylonian Laws. See, Paul, *Studies*, 4n5. For a defense of the appropriateness of this term see, Speiser, “Cuneiform Law,” 57–60.

²³ Paul, *Studies*, 73, 76.

²⁴ See also, Childs, *The Book of Exodus*, 472; Propp, *Exodus*, 227–28; and Stuart, *Exodus*, 493. For the related view that the biblical talion prohibits the multiple punishments found in cuneiform law, see, Sonsino, “Characteristics,” 207.

literary expression. It asks the question, “What meaning is conveyed by this formulaic expression?”

The rhetorical approach arose on account of the loose connection the talion has with each context in which it occurs. In all three contexts, the *literal* connection between the talion and its context seems inappropriate.²⁵ As a result, numerous scholars have concluded that the formula is not about eyes, teeth, and feet; it is merely a rhetorical expression. The specific members of the formula only serve to express a concept. Tikva Frymer-Kensky wrote, “The sanction ‘eye for eye’ . . . is intended as a formulaic statement of the philosophical principle of equal retribution.”²⁶ Similarly, Barmash wrote, “The talionic formula does not refer to ‘a burn for a burn’ as a particular punishment. Rather, it uses specific injuries to articulate equivalence as a principle of justice.”²⁷ Thus the loose connections between the talion and its contexts have led to this rhetorical approach.

The precise meaning conveyed by the formula is most often said to be the legal ideal of equal retribution. This is due to the symmetry between the crime and punishment embedded in the formula. The roots of this can be seen as early as Philo, who wrote,

For to exact a different and wholly unequal punishment which has no connection with or resemblance to the offence, but which is wholly at variance with it in all its characteristics, is the conduct of those who violate the laws rather than of those who would establish them.²⁸

He thus argues that exact correspondence between crime and punishment represents ideal justice. The 19th century legal philosopher, Jeremy Bentham similarly argued that crime and punishment in written law had to demonstrate symmetry in order to be

²⁵ This will be dealt with at length as each context is analysed.

²⁶ Frymer-Kensky, “Tit for Tat,” 232.

²⁷ Barmash, *Homicide*, 159.

²⁸ Philo, *Spec. Laws* 3:182.

efficacious.²⁹ As a result, the loose connections between the talion and its contexts, along with the symmetry between crime and punishment found in the formula, has led numerous scholars to argue that the formula is simply an expression of the legal ideal of equal retribution.

1.2 Problems with Past Interpretations

There are two main problems with the historical and the rhetorical approaches to the biblical talion.³⁰ The first involves the assumptions about ancient written law that are implicit within the historical approach. The second problem is related to the assumption that the formula has the same function and meaning in each context.

1.2.1 Historical Assumptions

The historical approach is built on the assumption that the legal corpora of the Pentateuch served as statutory law for the ancient community. It thus imposes the modern concept of law on the ancient text. This involves two further assumptions. First, the historical approach assumes that written law in the biblical period served as the basis for adjudication. To the modern mind, all judicial practice must be anchored in a written code; a judge can only render a verdict based upon a written source. This, as will be discussed below, was not the case for the ancient Israelites. A second related assumption is that the law is literally binding. If every judicial decision is anchored in a written code (according to the above assumption), then the specific wording and syntax of each statute

²⁹ I refer here to two legal philosophers, Yelle and Kevelson, who both heavily rely on Bentham to arrive at a rhetorical view of the talion. Robert Yelle argued that analogical punishments (such as the talion) were rhetorical, based on observations by Bentham, who spoke of the “rhetorical force of resemblance,” and the fact that analogical punishments persist in modern legal systems. See, Yelle, “Rhetorics of Law,” 627–647. Similarly, Robert Kevelson, following Bentham, has argued that the vivid imagery of the talion made it efficacious as a deterrent. See, Kevelson, “Equivalence and Evolution,” 155–70.

³⁰ Another problem not addressed here is the sociological assumption of the developmental approach: that all cultures undergo the same process of legal development. The problems with this assumption go beyond the scope of this study and will be left to the sociologists and legal historians. For a critique on sociological grounds, see, Miller, *Eye for an Eye*, 25–26.

are of utmost importance. Each law must answer the question: “What situations do the words of this law cover?” For example, the modern interpreter, as a result of these assumptions, would look at the sixth commandment (you shall not kill) and ask, “What about war-time killing, manslaughter, self defence, or other mitigating circumstances?” These questions are built upon the presupposition that written law is literally binding. The word used in the Decalogue, however, is *רצח*, which does not yield any clues as to how these questions ought to be answered.³¹ Ancient laws were not meant to undergo such scrutiny; they were not literally binding.³² Thus, the historical approach imposes modern assumptions about the function of written law upon the ancient text.

1.2.2 Standardized Formula Assumption

The second problem is that both the historical and rhetorical approaches assume that the formula functions in the same way in each context, or, put another way, the *lex talionis* is a standardized formula. This lacks consideration for the contexts in which the talion is found. That the proponents of the historical approach assume one particular meaning regardless of context is clear. For them, unless the talion is the prescribed penalty for an offense, there can be little discussion as to how it fits into legal history. At best, they explicitly ignore the context. Legal scholar William Miller recently wrote,

Consider the law of the talion . . . the biblical eye for an eye, tooth for a tooth. Never mind for now that the rule gets stated in varying ways and different contexts in Exodus, Leviticus and Deuteronomy, each raising its

³¹ In Num 35, this word describes both the intentional killer (vv. 16 and 21) and the accidental killer (v. 11).

³² For more on the non-literal character of biblical law see, Jackson, *Wisdom-laws*, 24–29. He makes a distinction between semantic and narrative meaning in the law. The legislative model (see below) applies a literal semantic reading to the law. It asks the question, “What situations do the words of this law cover?” A narrative reading, on the other hand, asks, “What are the typical images and situations that this rule evokes?” In the case of the goring ox law (Exod 21:28–32), for example, a literal legislative reading has to relegate this provision to goring oxen alone, since that is the only situation the words of the law cover. The narrative reading is free to extend the law to cover similar situations as well. Although I do not fully subscribe to Jackson’s narrative reading, his distinction is very helpful.

own substantial interpretive problems. It is more general matters that I wish to focus on.³³

Thus, the historical approach either assumes that the talion has the same function wherever it is employed, or, it simply ignores the contexts. The proponents of the rhetorical approach also make a similar assumption. They focus on the talionic formula as a discrete literary unit. If it expresses the legal principle of equal retribution, the same principle is expressed in all three occurrences.³⁴ Sarna makes this explicit, calling the formula “a discrete legal unit” and further argues for a homogenous meaning in each context.³⁵

This supposition that the talion is a standardized formula fails to take full account of the three unique contexts in which the formula occurs. The developmental explanations, for example, completely ignore each context when they consider how the talion fits into their evolutionary schemes. If it is deduced, then, for example, that the talion was meant to limit vengeance or to ban vicarious punishment, this conclusion is not considered in light of each context. There is little to no explanation as to why or how limitation or individual responsibility fits with the context of collateral damage from brawls (Exod 21:22–25), blasphemy (Lev 24:10–23), or false accusation (Deut 19:15–21). Thus the contexts are ignored.

At best, the contexts are taken into account only insofar as they serve a particular view of the talion. For example, the rhetorical proponents simply fit the principle of equal retribution into each context, as it serves their purposes. Although this may seem valid in some contexts (such as Exodus), it makes no sense in Deuteronomy, which deals

³³ Miller, *Eye for an Eye*, 20.

³⁴ See, for example, Barmash, *Homicide*, 154–77; and Frymer-Kensky, “Tit for Tat,” 230–34.

³⁵ Sarna, *Exploring Exodus*, 187.

with a crime that has caused no physical harm. If there is no damage, then the idea of retribution is irrelevant and thus not germane to the context. Barmash, for example, does a fine job explaining how equal retribution fits with the Exodus and Leviticus contexts but glosses over Deuteronomy with one small paragraph, saying, “*Lex talionis* articulates a concept of equivalence.”³⁶ The rhetorical proponents also use the loose connection between talion and its contexts to justify their approach.³⁷ Similarly, those who argue for monetary compensation look for clues in each context to suggest either that the talion was inapplicable or that it referred to composition.³⁸ Thus, the contexts are only taken into account as they serve an interpretational agenda.

The context is also considered by those who explain the talion as an interpolation. This is done most often by the proponents of the historical approach who see the talion as an archaism. Diamond, for example, contended that every occurrence of the formula is “one of the plainest interpolations in the Pentateuch.”³⁹ Bernard Jackson explained its occurrence in Exodus as a series of interpolations.⁴⁰ Alt wrote, “Two laws distinct in every respect, even to their origin, come into contact here.”⁴¹ Gerstenberger described the talionic laws of Leviticus set within the blasphemy narrative as “utterly different texts from extremely different life situations.”⁴² Of the talion in Deuteronomy, Vod Rad wrote, “This ancient and weighty legal maxim occupies merely a modest position here,

³⁶ See Barmash, *Homicide* 155–77, esp. 158.

³⁷ This is especially evident in Sarna, *Exploring Exodus*, 185–89.

³⁸ Their arguments will be dealt with in the next three chapters.

³⁹ Diamond, “An Eye for an Eye,” 175. See also, Kugelmass, “Lex Talionis in the Old Testament,” 33–183. He wrote a doctoral dissertation on the biblical talion and concluded that in all three instances, it was a Priestly interpolation.

⁴⁰ Jackson’s monographic article breaks down the compositional history of the Exod text into four pre-canonical stages and two post-canon stages. Each stage of composition was subject to amendments which, in the end, made the law virtually unintelligible. See, Jackson, “Ius Talionis,” 273–304 esp. 302.

⁴¹ Alt, “Origins,” 106.

⁴² Gerstenberger, *Leviticus*, 367.

being cited as part of a sermon-like addendum.”⁴³ Thus, those who explain the talion as an interpolation use the context to support that claim.

Consequently, past approaches to the talion have proved to be inadequate. The historical approach makes unwarranted assumptions about the nature of ancient law-writing. Similarly, the view that the talion is a standardized formula with one meaning in every context is a significant problem thus far unaddressed by scholars. This assumption has brought about a lack of consideration for the unique and individual contexts in which the talionic formulae are found.

Before a solution to the problem can be proposed, some comments need to be made about scholarship on biblical law in general. This will provide the necessary background from which a solution and methodology can be set forth.

1.3 Scholarship on Biblical Law

Three aspects of scholarship on biblical law are relevant for the present study. First, since the talion is found in the three main legal corpora of the Pentateuch, an overview of these texts must be given. Second, a brief explanation of the current scholarly consensus on the nature of biblical law, along with its implications for the present inquiry, is required. Third, an outline of the history of methodology in biblical law is needed. A summary of these three aspects of biblical law will provide the necessary background for the rest of the study.

1.3.1 The Legal Corpora of the Pentateuch

Scholars have traditionally distinguished three main bodies of legal material in the Pentateuch: Exod 20:22—23:19; known as the Covenant Code (CC) or the Book of

⁴³ Von Rad, *Deuteronomy*, 129.

the Covenant; Deut 12–26 (D), which does not have a common moniker;⁴⁴ and Lev 17–26, known as the Holiness Code (H). Furthermore, the Holiness Code is found in the Priestly material (P), which contains much cultic law (and narrative) but is generally not considered a legal code. The talionic formula is found in the three major codes: CC, D, and H.

While much can be said of these legal corpora, only a few comments are relevant for present purposes.⁴⁵ First, although the laws of Deuteronomy are designated Deut 12–26, it should be noted that Deuteronomy as a whole reflects a great deal of homogeneity. Nicholson, for example, wrote, “The most perplexing difficulty in attempting to analyse the literary growth of Deuteronomy is the remarkable homogeneity in language style and ideology which pervades the book.”⁴⁶ Hence, I will not rely heavily on Deut 12–26 as a distinct corpus, but will often refer to the book of Deuteronomy as a whole.

Two comments need to be made regarding the Covenant Code. First, the priority of CC must be established since it will be argued (in chapter three) that the Leviticus talion draws from the Covenant Code. Fortunately, the priority of CC reflects the general scholarly consensus and does not need extensive comment.⁴⁷ Among the many pieces of

⁴⁴ This body of laws is often referred to as “Deuteronomic law” (see, for example, Westbrook, “Riddles in Deuteronomic Law,” 159–74), “the laws of Deuteronomy” (see, for example, Carmichael, *The Laws of Deuteronomy*), “the D Code” (see, for example, Stulman, “Social World of the D Code,” 613–32”), or simply as “the legal corpus of Deuteronomy” (see, for example, Levinson, *Legal Innovation*). Often, there is little distinction between the whole book of Deuteronomy and the legal section. This is evident in Levinson’s book. Given these diverse ways in which this corpus is labelled, it is safe to say that it does not have a unique moniker, as the other codes do.

⁴⁵ Although it is fairly dated now, Patrick provides an excellent introduction to each of the legal corpora of the Pentateuch in his introductory book. See, Patrick, *Old Testament Law*, 63–66, 97–103, 151–54.

⁴⁶ Nicholson, *Deuteronomy and Tradition*, 26.

⁴⁷ The list of scholars who hold to the priority of CC is long. See, Levinson, *Legal Innovation*, 7n9 for a recent list of such scholars. It will perhaps be more fruitful to cite the only scholar I know of who dissents from this view and argues that CC is dependent on D, Jon Van Seters. See, Van Seters, “Cultic Laws in the Covenant Code,” 319–45, and Van Seters, *A Law Book for the Diaspora*. Van Seters’ arguments have not won over many adherents. For a critique of his position see, Jackson, “Revolution in Biblical Law,” 86–98, and Levinson, “A Response to John Van Seters,” 272–325. Van Seters has recently responded to his

evidence given for this, the most common is that D relied on the Covenant Code.⁴⁸ Since D is affiliated with Josiah's reform and the Priestly material likely postdates D, it is reasonable to conclude that CC is the oldest code.⁴⁹ The Covenant Code's antiquity is also demonstrated on sociological grounds. While the agricultural laws (Exod 22:5–7) seem to assume settlement life, there is a distinct lack of reference to the monarchy, and no signs of urbanization.⁵⁰ Thus, CC is often dated to the time of the judges, which, in all likelihood, would make it the earliest code.⁵¹ Second, although scholars have identified several strata within the Covenant Code, two distinct units must be identified: the *Mishpatim* (Exod 21:1–22:16) and the cultic laws (Exod 20:22–26, 22:17–23:19).⁵² This is significant because the talion is found in the *Mishpatim* and, as will be demonstrated in chapter two, reflects the distinct ideals of that particular unit of laws.

Comment must also be made concerning the identity of the Holiness Code, on which there is less scholarly agreement. In chapter three, H (Lev 17–26) will be treated as a literary unit with its own theological agenda, distinct from the rest of the Priestly material. It is thus necessary to comment on whether or not this can be justified. The

critics. See, Van Seters, "Response to my Critics," 5–28. The losing battle he seems to be involved in demonstrates that scholars generally agree on the priority of CC.

⁴⁸ See, for example, Levinson, *Legal Innovation*, and Stackert, *Rewriting the Torah*, who argue that D was a comprehensive revision of CC. See also, Clements, *Deuteronomy*, 24–27.

⁴⁹ While the priority of CC is almost universally agreed upon, the dating of the Priestly material, the Holiness Code, and D is less certain. Fortunately, the present study does not depend on the relative dating of P, H, and D, since the talion in Deuteronomy does not bear a clear literary relation to H. For a helpful introduction to the dating of D and the Priestly material, see the debate between Blenkinsopp and Milgrom: Blenkinsopp, "Date of the Priestly Material," 495–518 and Milgrom, "Antiquity of the Priestly Source," 10–22. Milgrom and Knohl argue that H is associated with Hezekiah and thus predates D (see, Knohl, *Sanctuary of Silence*, 199–225). These scholars, however, still maintain CC is oldest since H was aware of JE. See, Milgrom, *Leviticus 17-22*, 1355–56. See, further, Weinfeld, *Deuteronomistic School*, 179–239. He provides the alternative that D and P are contemporaneous. Whichever position one takes, however, the priority of CC can still be maintained.

⁵⁰ See, Sarna, *Exploring Exodus*, 161–62, 171.

⁵¹ See, for example, Patrick, *Old Testament Law*, 65.

⁵² For an excellent survey of the literary history of CC and its dating see, Childs, *The Book of Exodus*, 451–61; and Patrick, *Old Testament Law*, 63–66. Childs especially highlights the distinction between the cultic laws and the *Mishpatim*.

term “holiness law” was first (parenthetically) coined by Klostermann in 1877.⁵³ According to the Wellhausian scheme, H was originally an older collection of laws that were incorporated into Leviticus by the Priestly editor.⁵⁴ While this is widely accepted, many still deny the existence of H as a distinct corpus.⁵⁵ Recently Knohl (and later Milgrom) argued that the Holiness material actually represents a later Priestly stream that can be found in numerous places outside Leviticus and should be considered an additional distinct Pentateuchal source.⁵⁶ Consequently, arguments for this have been made, based on terminology and unique theological emphases.⁵⁷ While I agree with Knohl, it goes beyond the present study to establish his claim that the Holiness material is an additional Pentateuchal source. At this point, it is enough to claim that Lev 17–26 forms a distinct literary unit with its own theological emphases.⁵⁸ This will become more evident in chapter three, when a distinct preoccupation with the alien will be demonstrated in Lev 17–26. Having identified the main legal corpora of the Pentateuch, an explanation as to the nature of Old Testament law is necessary.

1.3.2 The Nature of Biblical Law and its Implications for the Talion

It is of utmost importance to discuss the nature of biblical law, a highly complex issue. Unless some general conclusions can be reached, no meaningful discussion of the

⁵³ See, Rendtorff, “A Separate Book,” 27–28. He explicitly cites and comments on the parenthetical nature of Klostermann’s term.

⁵⁴ See, Patrick, *Old Testament Law*, 151–54. For a list of other scholars who argue this position, see, Joosten, *People and Land*, 7n17; and Knohl, *Sanctuary of Silence*, 2n6.

⁵⁵ See, Warning, *Literary Artistry in Leviticus*, 12–14, and the scholars he cites. He seriously questions the existence of H. Weinfeld seems to take for granted that the Priestly material is a single source. Throughout his book, he does not make any distinction between P and H, even when referring to texts within Lev 17–26. Weinfeld, *Deuteronomistic School*, 179–239.

⁵⁶ See, Knohl, *Sanctuary of Silence*.

⁵⁷ See, Knohl, *Sanctuary of Silence*, 168–98; Kugler, “Theological Conflict in Leviticus,” 3–27; and Wright, “Holiness in Leviticus,” 351–64.

⁵⁸ See especially Kugler, “Theological Conflict in Leviticus,” 3–27. He explicitly focuses on Lev 17–26 to test Knohl’s hypothesis.

talion can take place. Therefore, at this point, a discussion on the nature of biblical law, along with its implications for the study of the talion must be undertaken.

1.3.2.1 The Nature of Biblical Law

Over the past fifty years, the traditional view of the Pentateuch's legal material has been called into question. Until recently, this material was viewed as the source of ancient Israel's legal practices. This, however, was always assumed since there was no evidence to contradict it. However, recent evidence, particularly in the Mesopotamian sources, has suggested that this legislative view of the Pentateuch's legal material is most likely inappropriate. One of the many insights yielded by the field of Assyriology for biblical studies is that ancient legal texts were not directly related to legal practice. In other words, the legal corpora of the ancient Near East did not serve as legislation.⁵⁹ Rather, cuneiform law was composed for different purposes; perhaps they were royal apologia or scribal exercises,⁶⁰ or they may have served an archival, ritual, or didactic function.⁶¹ Regardless, they were not statutory law. All the evidence suggests that their practices of adjudication were in no way dependent on written law.

⁵⁹ This began when Assyriologists noticed that the records of legal practice did not cite and often conflicted with the legal codes. Driver and Miles, for example, wrote, "There is not a single case in the thousands of legal documents and reports which have been preserved in which reference is made to the wording of the text of the Laws [LH]; indeed, neither judges nor private persons in their documents seem to have regarded it as verbally binding." See, Driver and Miles, *The Babylonian Laws*, 53. These absences and conflicts eventually caused Kraus and Finkelstein to suggest (almost simultaneously) that the cuneiform codes were something other than normative law. See, Kraus, "Codex Hammu-rabi," 283–96; and Finkelstein, "Ammiṣaduqa's Edict," 91–104. Although some would say this is an argument from silence (an absence of evidence from the records of legal practice), it is fairly convincing since archaeologists have recovered several thousand court records that are contemporaneous to the various codes. See further, Lemche, "Justice in Western Asia," 2–3.

⁶⁰ These functions were suggested by Finkelstein. See, Finkelstein, "Ammiṣaduqa's Edict," 91–104 esp. 103, and Finkelstein, *The Ox That Gored*, 17–20. The idea that the law was a scribal exercise has since been taken up by numerous other scholars, perhaps most notably Raymond Westbrook and Bernard Levinson. See, Westbrook, "Covenant Code," 15–36 esp. 24; Levinson, "Revision and Interpolation," 42; and Levinson, *Legal Innovation*, 5, 18, 28, 122–24.

⁶¹ These were noted by Bernard Jackson. See, Jackson, *Semiotics*, 121–141. See also, Jackson, "Ideas of Law," 195.

On account of the numerous parallels between biblical and cuneiform law,⁶² this insight has been applied to biblical law. It has helped clarify some of the longstanding problems associated with biblical law that the legislative model was unable to address. These problems include a general lack of citation in legal narratives,⁶³ numerous impracticalities, inconsistencies, and legal lacunae.⁶⁴ In addition, there is the historical problem of literacy, as well as the question of how legal collections would have been composed and disseminated throughout the land for use in the judiciary.⁶⁵ Such problems become less significant if biblical law was not originally meant to function as legislation. It also explains why judges are only exhorted to adjudicate according to practical wisdom, rather than written law.⁶⁶ Thus, there is much evidence to suggest that the legal

⁶² Much has been written on this. Finkelstein, for example, wrote, “[T]he specific wording of the biblical rules of the goring ox is so close to that of the cuneiform antecedents that any explanation of the resemblances other than one based on some kind of organic linkage is precluded.” See, Finkelstein, *The Ox That Gored*, 19. Recently David P. Wright went so far as to argue that CC was directly dependent on LH. See, Wright, “Hammurabi as a Source,” 11–87. In fact, few scholars deny that the literary links between LE 53 and Exod 21:35 suggest direct literary dependence. See, Harrelson, “Law in the OT,” 82–83.

⁶³ The most notable exception would be in the use of the law in Ezra–Nehemiah. In Ezra 10:3, for example, Ezra commands the people to leave their foreign wives “according to the law.” This, however, is not a literal application of the law. Boda notes, “The manner in which the Law is treated [by Ezra] probably indicates that the Law is considered a unity in which its constituent parts can be blended to address a particular situation.” See, Boda, *Praying the Tradition*, 31. See, also, Grätz, “Legal Status of the Torah,” 276–77. In this case, a ruling is arrived at through hermeneutics, which is not compatible with the legislative model. At best it could be argued that the written law of the Torah was an authoritative text for the ancient religious community. This example does not, however, provide evidence that the Torah served as the basis of adjudication. See also, Lefebvre, *Collections, Codes and Torah*, 103–31.

⁶⁴ Dale Patrick has provided a helpful analysis of the lack of reference to specific laws as well as the deficiencies in the law from the legislative perspective. See, Patrick, *Old Testament Law*, 189–98.

⁶⁵ These problems were raised by Jackson, Kneirim, and Knight. Kneirim pointed out that one ought not to assume that those who pass judgments in particular cases were responsible for composing and compiling the laws. This is for linguistic and sociological reasons. First, adjudicatory language is formally different from legislative language. Second, the social setting of adjudication is in a court (or at the city gate) and the judgments would most often have been passed orally. Legislation, on the other hand, is carefully crafted by scribes and draftsmen, probably not at the city gate. This natural disconnect between judges and legislators indicates, at the very least, an indirect relationship between the judiciary and written law, which suggests the law was not necessarily written for legislative purposes. See, Kneirim, “Israel’s Prescriptive Legal Traditions,” 7–25. See also, Knight, “Village Law,” 163–79. Similarly, Jackson noted that not all of the local judges throughout Israel were literate and furthermore, “permanent judges . . . were unlikely to have continuing access to authoritative written sources.” See, Jackson, “Legalism and Spirituality,” 248.

⁶⁶ See, for example, Deut 16:18–20, 17:8–11, Exod 23:1–9, Lev 19:15–16 and 2 Chr 19:6–7. Regarding these passages, Patrick wrote, “From this silence one may surmise that Israelite judges were not expected to consult the legal codes to find the rule that applied to the case before them.” See, Patrick, *Old Testament*

corpora of the Pentateuch were not originally legislative texts, just as the cuneiform laws did not serve a legislative function.

Further support for the non-legislative character of biblical law can be found in the work of Sarianna Metso. While examining judicial meetings recorded in Qumran's Community Rule, Metso wrote, "[W]hat catches my attention in these passages is the total lack of reference to any written text. The authority for decision making is granted not to any book but rather to the rabbim . . . members of the camps . . . or to the sons of Aaron." She later wrote, "[T]he suggestion is reasonable that in the community's court proceedings, the leading authorities perhaps did not resort to written regulations, but rather were guided by oral tradition." Therefore, the Community Rule was likely not a "lawbook in the modern sense."⁶⁷ This lends support to the claim that written law in the ancient Near East throughout the biblical period did not function as legislation.⁶⁸ While it is beyond the scope of the present study to identify the precise nature of biblical law,⁶⁹ it

Law, 191. Similarly, see, Jackson, "Legalism and Spirituality," 245. He believes that these verses suggest the judges had to employ the "conventional norms of practical wisdom," as opposed to following written rules. Furthermore, Weinfeld has noted that three elements of these admonitions (distortion of justice, partiality and favouritism, and taking bribes) are paralleled in Hittite instructions. See, Weinfeld, "Judge and Officer," 76. The fact that such judicial admonitions were common throughout the ancient Near East further lends credence to the claim that ancient written law was not legislative.

⁶⁷ Metso's findings actually suggest that written law was not legislative in the early Roman period. See, Metso, *The Serekh Texts*, 61–70 esp. 66, 68–69.

⁶⁸ For a helpful survey on when and how the biblical legal corpora may have been interpreted according to a legislative perception of written law, see, Lefebvre, *Collections, Codes and Torah*. It should be noted that most scholars seem to favour the Persian period, particularly Ezra's reforms. See, for example, Jackson, *Semiotics*, 141–43; Fitzpatrick-McKinley, *Transformation of Torah*, 172n68, and Cassuto, *Exodus*, 262. Along these same lines is Peter Frei's theory that Persian imperial authorization ascribed Yehud's local law with coercive legislative force. See, Frei, "Imperial Authorization," 5–40. A recent minor departure from these views was proposed by Sebastian Grätz. Although he agrees that Ezra applied a legislative function to the Torah (Ezra 10:3), he demonstrates that this is done through hermeneutics in lieu of explicit command (following Milgrom, "Laws of Purity of the Temple Scroll," 93–96). He also further contrasts Ezra's use of the law with the book of Ruth. From this contrast, he concludes, "In (early) Second Temple times, the legal status of the Torah was therefore far from being uniform." See, Grätz, "Legal Status of the Torah," 273–87, esp. 286.

⁶⁹ Wells, "Pentateuchal Rules and Near Eastern Practice," 223–43.

is helpful to establish that the general scholarly consensus holds that the legal material of the Pentateuch was not legislative – that is, it was not the basis for legal practice.

1.3.2.2 Implications

The fact that the biblical law codes were not legislative texts has direct implications for a study of the *lex talionis* in the Bible. There are two notable implications. The first bears upon the problems with the historical approach. As was noted above, the historical approach assumes that ancient law served as the basis for adjudication. In other words, it assumes a direct relation between written law and legal practice. This, however, is not necessarily the case. The talion may or may not have been practiced. This, at best, can be inferred through extra-biblical trial records (which will be demonstrated in chapter 4). While the laws may reflect practice, they do not prescribe it. This is not to say the law codes are entirely bankrupt as a source for the legal practices of ancient Israel. Bruce Wells made the helpful comment, “[E]ven though they [the law codes] were not a source for ancient Near Eastern law [practice], ancient Near Eastern law [practice] was a source for them [the codes].”⁷⁰ In any case, since the laws do not prescribe legal practice, it cannot be assumed that the talion was applied according to its usage in the Pentateuch. Consequently, one need not assume that the talionic laws of Hammurabi or the Bible reflect their (advanced) legal practices, while the compensatory fines of Ur-Nammu reflect their (primitive) legal system. Therefore, the non-legislative character of biblical law further demonstrates the weakness of the historical approach.

Furthermore, not only does the non-legislative character of the law call into question a direct relation between legal practices and written law, it is also inappropriate

⁷⁰ Wells, *Law of Testimony*, 13. For similar comments, see, Westbrook, “Origins of Legislation,” 204; and Roth, “Scholastic Exercise,” 142.

to scrutinize the law with strict questions of application. The specific wording of the law was not binding. Thus, it is anachronistic to question whether the talion prescribes monetary compensation, literal retaliation, or the option of either. The text itself was never literally prescriptive. In reference to all these problems, Jackson wrote, "It [the historical approach] involves assumptions . . . regarding the character of legal language on the one hand and the manner in which it was used on the other."⁷¹ Since these views cannot be supported, the historical approach proves unsatisfactory.

A second implication of the non-legislative character of biblical law is that it frees these texts to function as something other than legislation. If they were not legislative, then they must have been compiled for another purpose. While some would argue that the law was entirely an intellectual exercise for scribes with no higher purpose,⁷² most would agree that, in one way or another, it did serve a greater purpose. Westbrook, for example, viewed biblical and cuneiform law as academic treatises that served as reference texts for judges.⁷³ Fitzpatrick-McKinley, Weinfeld, and Jackson argue that the law belongs in the sphere of moral wisdom.⁷⁴ Levinson demonstrates that

⁷¹ Jackson, "Models in Legal History," 7.

⁷² This is either argued or assumed by such scholars as Wright, "Hammurabi as a Source," 11–87; and Stackert, *Rewriting the Torah*. For a complete analysis of this position, see, Fitzpatrick-McKinley, *Transformation of Torah*, 92–96.

⁷³ In 1985, Raymond Westbrook introduced the "judicial reference model" to biblical scholarship. He argued that although biblical and cuneiform law were not legislative, they did serve as reference texts that judges could consult for difficult cases. See, Westbrook, "Biblical and Cuneiform Law Codes," 247–64. This was influential for a while but has been heavily criticized, mainly on account of the implication that all biblical and cuneiform law was part of a single static tradition, which ignores any kind of development, literary or otherwise. In 1994, Bernard Levinson edited a book that took Westbrook's theory to task. It begins with an essay by Raymond Westbrook, which delineates this view. The remaining essays dismantle his theory. See, Levinson, *Theory and Method*. Perhaps the best argument against Westbrook was marshalled by William Morrow, who aptly demonstrated that the second person address of the Covenant Code is not found in any of the ancient Near Eastern scientific literature and reveals, at the very least, development of the tradition. See, Morrow, "A Generic Discrepancy," 136–151.

⁷⁴ While Weinfeld mainly argues this for Deuteronomy (see, Weinfeld, *Deuteronomical School*, 244–319), Jackson and Fitzpatrick-McKinley argue this for all biblical law. See, Fitzpatrick-McKinley, *Transformation of Torah*; and Jackson, *Wisdom-laws*, 23–39. Similar to this is Finkelstein who argues biblical and cuneiform law served an admonitory purpose. See, Finkelstein, *The Ox That Gored*, 34.

law was the medium through which religious ideology and religious reform was propagated.⁷⁵ Without delving too deeply into this complex issue, it will suffice to say that the purpose of the law was greater than mere behaviour control. This point is relevant for the talion because the formula may have been employed to serve a greater ideological purpose or agenda. Indeed, this will be demonstrated, especially in chapter three.

1.3.3 Methodology in Biblical Law

While much could be written on the history of methodology in biblical law,⁷⁶ for present purposes it is only necessary to focus on synchronic and diachronic approaches, in light of this shift from legislative to non-legislative perception of the law.

1.3.3.1 Diachronic approaches

Before the non-legislative understanding of law became prominent, diachrony dominated the study of biblical law. It was considered the “step-child” of the source critical method.⁷⁷ This is because legislative law, by its very nature, is intimately connected with its social setting and changes according to social development. Sophie LaFont, for example, noted, “By nature, law is in motion, because it belongs to the world of things. Law is an object, a tool which adapts to the demands of a society.”⁷⁸ Thus, law changes dramatically between different social settings and times. Israel went through

⁷⁵ Throughout his book, Levinson argues that the laws of Deuteronomy were meant to mandate religious reform according to the Deuteronomist’s religious ideals. See, for example, Levinson, *Legal Innovation*, 16, 27, 93 and 124. Similar to this is Douglas, who argues that the series of laws in Leviticus demonstrate analogical reasoning. Instead of employing dialogical discourse, the authors of Leviticus communicated their theology through lists of laws. See, Douglas, *Leviticus*, 18.

⁷⁶ For an analysis of six different approaches to biblical law, see, Jackson, “The Ceremonial and the Judicial,” 33–40.

⁷⁷ Greenberg, “Postulates,” 144.

⁷⁸ LaFont, “Ancient Near Eastern Laws,” 107. This notion was recognized by many early 20th century scholars who assumed the legislative model. Max May, for example, wrote, “[L]aw, being part of a nation’s culture, is the product of a slow process of growth and development.” See, May, “Jewish Criminal Law,” 438.

numerous social changes throughout the composition of the Pentateuch. Therefore, if biblical law is viewed as legislative, then the developing social structure of ancient Israel would be reflected throughout the legal codes' various laws. Any differences or conflicts among them provide ample evidence for scholars to reconstruct the social history of ancient Israel. Rofé, for example, wrote,

[T]he different codes are simply different embodiments of Israelite law during the biblical period. Since this law varied from place to place and from generation to generation, the laws of one compilation are not the same as those of another.⁷⁹

An excellent example of an early 20th century scholar who argued this based on the legislative assumption is Clarence Lightner. In 1911 he wrote,

Mingled together, with no apparent chronological sequence, are laws of nomadic people and laws of an agricultural nation; laws reflecting a simple ritual and laws portraying an elaborate ceremonial; laws denouncing what other laws command; laws recognizing a primitive political organization, and laws regulating the elaborate social structure incident to a monarchy; and finally, laws reflecting a low moral standard, with others of the loftiest tone. . . . How is it that a compilation of laws so incongruous can be styled the Law of Moses? A satisfactory answer is difficult, if not impossible, except upon the theory that the Pentateuch contains the customs and laws which prevailed among the Jewish people at the various stages of the development of the nation.⁸⁰

Therefore, when the legislative model is assumed, the legal material of the Pentateuch provides ample material for developmental explanations.

Consequently, the Pentateuchal laws became very attractive to source critics and form critics and have provided fertile soil for numerous theories. This was evident as far back as the 19th century from Wellhausen's seminal work, *Prolegomena to the History of*

⁷⁹ See, Rofé, *Composition of the Pentateuch*, 30. What is interesting about Rofé's comment is that he wrote it in the late 1990s. The fact that he assumes such a direct relationship between law and social structure demonstrates his legislative understanding of the law. This shows how deeply rooted the legislative understanding is. It should be noted, however, that elsewhere Rofé has suggested the law is a mix of positive (legislative) law and priestly ideals. See, Rofé, "The Study of Biblical Law," 1–5.

⁸⁰ See, Lightner, "The Mosaic Law," 109–110.

Israel.⁸¹ It has been estimated that almost half of his argument for reconstructing the history of Israel was devoted to placing the law in a developmental scheme.⁸² While Wellhausen's documentary hypothesis applied to the entire Pentateuch, Albrecht Alt, in the early 20th century, applied another diachronic approach specifically to the legal texts. Alt was a form critic who first noted the distinction between apodictic and casuistic law, arguing that the former was unique to Israel while the latter was part of the Near Eastern legal tradition.⁸³ Although the conclusions of Alt's essay (*Origins of Israelite Law*) were criticized, most scholars since that time have embraced his diachronic (and usually form critical) approach to the Pentateuchal laws.⁸⁴ Numerous legislative diachronic theories have since that time been proposed.⁸⁵

Despite the decline of the legislative model, the diachronic approach is still very prevalent. In lieu of the legislative model, many (if not most) scholars view the law as a scribal exercise.⁸⁶ This position has brought about a focus on the literary development

⁸¹ Wellhausen, *Prolegomena*.

⁸² Dale Patrick notes that 200 of the 425 pages of his argument are devoted to law. See, Patrick, "Humanities," 43n5.

⁸³ See, Alt, "Origins," 79–132.

⁸⁴ Form criticism dominated the study of Old Testament law for decades. In fact, the Biblical Law Group of the Society of Biblical Literature originated as a subunit of the Form Critical Project in the 1970s.

⁸⁵ Rolf Knierim has summarized a few examples of form critical approaches by scholars such as Shulz, Liedke and Wagner. See, Knierim, "Israel's Prescriptive Legal Traditions," 9–14. See also, Sonsino, "Characteristics," 201–209. He focused on the motive clauses of biblical law, compared them to cuneiform law, and suggested possible functions for biblical law. Another prominent example is Martin Noth. He identified a tradition of pre-exilic laws that "applied only amongst one particular group of people . . . made to fit certain specific circumstances" (p. 87) which was "a controller of behaviour" (p. 88), though not state law (p. 20). The exilic community then transformed this law into what we see now, which did not necessarily prescribe behaviour but was an "absolute entity," the only remnant of their former way of life. See, Noth, "The Laws in the Pentateuch," 85–107. Noth's essay, originally published in 1940, demonstrates the tension felt by scholars before non-legislative understandings of the law became known. He had to identify a *Sitz im leben*, which could apply the law (the confederation of twelve tribes), on the one hand, and an explanation for their impracticality and idyllic nature on the other.

⁸⁶ See, for example, Wright, "Hammurabi as a Source," 11–87; and Stackert, *Rewriting the Torah*. They maintain that the law codes from the Near East form a single legal-scholastic tradition. Evidence in the cuneiform sources supports this claim. Assyriologists have determined that numerous tablets inscribed with legal material were actually school exercises. They have also found fragments that appear to be

between the codes. Ironically, this trend began with Michael Fishbane, who favours a legislative understanding of biblical law.⁸⁷ In his landmark study on inner-biblical exegesis, *Biblical Interpretation in Ancient Israel*, Fishbane finds numerous cases where one statute seemed to revise another – what he refers to as “legal exegesis.” He wrote,

Taken as a whole, the . . . types of legal exegesis reflect normal processes of lawyerly handling of the laws: a concern with scrutinizing the content of laws for real or anticipated deficiencies; a concern with contradictions among the inherited cases; a concern with making the law comprehensive and integrated; and a concern with making the law workable and practicable.⁸⁸

Fishbane’s approach paved the way for his student Bernard Levinson, who argues for the literary model.⁸⁹ Levinson puts forward a theory of literary revision (as opposed to Fishbane’s legal revision), where later codes develop out of earlier ones.⁹⁰ Levinson’s theory of literary revision has been continued by numerous scholars, such as Eckart Otto,⁹¹ John Van Seters,⁹² and most recently by Jeffery Stackert.⁹³ These and numerous other proponents of this literary view seem to understand the legal texts as a single,

copies of LH, which date to various periods from Old-Babylonian to Neo-Babylonian. See, Driver and Miles, *The Babylonian Laws*, 24–26, 29–34, esp. 30.

⁸⁷ Although Fishbane favours a legislative understanding of biblical law, he does maintain that his theory of legal revision is consistent with the emerging literary perception of the law. For example, at one point he wrote, “[T]he internal traditions of the Hebrew Bible present and regard the covenantal laws as legislative texts.” Elsewhere, however, he wrote, “[I]t should be realized that these various explanations and elaborations [what he calls legal exegesis] may also have been stimulated by a developing legal scholasticism, one which studied the received laws independently of practical cases.” See, Fishbane, *Biblical Interpretation*, 96; 165.

⁸⁸ Fishbane, *Biblical Interpretation*, 164.

⁸⁹ See Levinson, “Revision and Interpolation,” 37–59, esp. 42.

⁹⁰ Levinson, *Legal Innovation*, 16.

⁹¹ According to Jackson, Otto views D as a pre-exilic revision of CC. See, Jackson, *Wisdom-laws*, 17n73, or Otto, *Kontinuum und Proprium*, 112–22.

⁹² Van Seters uses a theory of literary development to argue in a direction opposite to Levinson and most other scholars. While almost all scholars regard the Covenant Code as the earliest, Van Seters argues that it is the latest code, an exilic document. See, section 1.3.1.

⁹³ Stackert argues that the H legislator (according to him, the latest legal code) intended to revise and replace both D’s and CC’s prescriptions regarding asylum, manumission, seventh year, and tithe. See, Stackert, *Rewriting the Torah*.

though progressive, literary tradition where one code develops the next.⁹⁴ Thus, the diachronic approach is very much prevalent in biblical law.

1.3.3.2 Synchronic Approaches

Despite the dominance of diachrony in biblical law, numerous scholars still argue for a synchronic approach. First, Raymond Westbrook argued that biblical and cuneiform law were part of a single scientific tradition that remained static for centuries. The laws were much like academic documents that have a “timeless quality.”⁹⁵ As such, his approach to the legal texts was synchronic. He wrote,

Difficulties in the interpretation of a verse in a biblical law code should not therefore be ascribed to amendment or interpolation, as if it were a legislative provision. Nor, since the laws have to make sense, should apparent conflicts between verses be ascribed to different sources that incomplete editing has failed to reconcile.⁹⁶

Thus, Westbrook argued for a synchronic approach to biblical (and cuneiform) law.⁹⁷

Moshe Greenberg also argued for a synchronic approach. He was interested in how the final form of the legal texts could be interpreted as a coherent system of underlying postulates. Greenberg achieved that aim by viewing the law as an expression of principles. Therefore, the conflicts actually deal with totally separate realms since they were written to communicate principles, as opposed to delineating legal practice. He wrote,

⁹⁴ Another significant contributor to the theory that the legal codes form a single literary tradition is David P. Wright. He includes the laws of Hammurabi as part of that tradition, arguing that LH was the source for CC. See, Wright, “Hammurabi as a Source,” 11–87.

⁹⁵ Westbrook, “Covenant Code,” 24.

⁹⁶ Westbrook, “Biblical and Cuneiform Law Codes,” 7.

⁹⁷ Perhaps the biggest drawback to Westbrook’s theory is that it ignores a large piece of evidence, namely the literary features of the texts. His model removes any possibility for development, literary or otherwise, which clearly exists in both biblical and cuneiform law. See, Levinson, “Revision and Interpolation,” 35–59; and Morrow, “A Generic Discrepancy,” 136–51.

Only by endeavouring to interpret the laws as they now stand does one guard himself against excessive zeal in finding discrepancies which involve totally different subjects rather than historical development. . . . Recourse to literary-critical surgery is resisted until all efforts at making distinctions have failed.⁹⁸

Thus Greenberg argued for a synchronic approach to biblical law based on his view that the laws comprise a coherent whole which communicates a series of principles and values. His view has found most of its adherents among proponents of the synchronic approach.⁹⁹ Therefore, despite the dominance of diachrony in biblical law, some scholars have made room for synchronic approaches.

1.4 Aim, Scope and Methodology

1.4.1 Aim and Scope

As stated earlier, the goal of this thesis is to determine the meaning of the *lex talionis*, as it is used in the Torah. In order to do this, primary emphasis will be placed on discovering how the formula functioned in its literary context. In contrast to past approaches, which examine the context to serve another agenda regarding the talion's meaning, I propose an inductive study, which places *primary* focus on the function of the formulae in each literary context. I will assume that the way in which the talion functions in each context will provide the best clues to understand what the talion meant to the ancient draftsmen. I, therefore, break from the past approach of focusing on the historical function of the talion and depart from the rhetorical focus on the talion as a discrete literary unit, in favour of a focus on its function within its literary context. While I recognize, along with the rhetorical proponents, that the *literal* talion has little

⁹⁸ See, Greenberg, "Postulates," 144; and Greenberg, "More Reflections," 1–17.

⁹⁹ It has been taken up by scholars such as Dale Patrick, John Welch, Peter Haas, and (seemingly) Joe Sprinkle. See, Patrick, "Humanities," 27–47; Welch, "Reflections on Postulates," 113–25; Haas, "The Structure of Homicide," 67–87; esp. 67–73; and Sprinkle, *A Literary Approach*, 204–06.

connection with its context,¹⁰⁰ I will assume that the authors and editors of the Pentateuch were nonetheless competent draftsmen who were deliberate and purposeful in their use of the formula. Rather than impose modern standards of legal drafting on the ancient compilers, which would render the formula as awkward and inappropriate, I will assume they were competent draftsmen according to the legal-literary practices of their time. I will thus look for the specific relation between the *lex talionis* and its immediate context (no matter how awkward it may seem) to judge how it functions and would have been understood by the ancient draftsmen. This will result in a more accurate picture of what the talion meant to those who employed the formula.

In order to generate conclusions about the talionic formula from its relation to each context, I will conduct a synchronic approach on two levels. First, each local context in which the talion occurs (Exod 21:22–25, Lev 24:10–23, Deut 19:15–21) will be analysed. The goal of this will be to answer the question, “How is the talionic formula functioning in this particular context?” Although the talion is often treated as an awkward addition, I will assume it would not have been awkward according to the legal/literary norms of its time. With the decline of the legislative model, this synchronic method becomes appropriate. If the law is a non-legislative piece of literature, then the draftsmen were free to employ creative rhetorical strategies in legal drafting to serve their purposes. While the talionic formula may not make sense in each context according to the literal scrutiny of the legislative model, it may well have been a creative means by which the draftsmen expressed a principle or advanced an ideological agenda. I will therefore assume the talionic formula was carefully and purposefully chosen for its specific context. Based on this assumption, the question, “How is the talionic formula

¹⁰⁰ This will become evident as each context is discussed in detail.

functioning in this particular context?” will be answered for each occurrence of the formula.

The second level of this synchronic approach will extend the investigation to the larger contexts in which the talionic formulae are found: CC, D, and H. The goal here will be to answer the question, “How does the use of the talion in this local context serve the greater ideological agenda of its larger context?” This question must be asked in order to fully understand the way in which the talionic formula was employed by the authors and editors of the Pentateuch. Although the use of the talion in a given law code may not always be of great significance for its larger ideological agenda, the question must be explored in order to gain the clearest picture of how the formula was being used. Thus the synchronic analysis will extend to the larger contexts in which formulae are found.

Since I am concerned only with identifying the meaning(s) of the formulae as they occur in their contexts, I will not push my conclusions beyond the bounds of each legal corpus. How these occurrences interact with each other in the larger context of the Pentateuch, while an important issue, goes beyond the scope the present inquiry. I will focus on each legal corpus as a distinct unit, which is informed by its own ideological agenda. Where relevant, I will explore the diachronic relation between the codes. I will thus consider whether or not a later use of the talion draws on an earlier one. This, however, will only be considered where it further illuminates how the authors/editors of a given code employed the formula. This synchronic approach on a micro level along with some diachronic considerations on a macro level will prove most fruitful for

determining how the formula was employed in the Pentateuch and ultimately determine the meaning(s) of the talion in the Torah.

1.4.2 Methodology

On the micro level, my synchronic reading will resemble the methodology of Moshe Greenberg and his followers. They view each law as an idyllic expression of principles and ideals, in the form of a specific command. While commenting on cuneiform law, Finkelstein wrote, “[T]hey [Mesopotamian penalty prescriptions] certainly were not meant to be complied with literally . . . be it the goring-ox laws or ius talionis.” Rather, each law should be “read and translated in terms of the principle which it is attempting to illustrate.”¹⁰¹ For example, the goring ox laws (Exod 21:28–32) may illustrate the principle of culpable negligence.¹⁰² The laws ought not to be read as prescriptions for specific behaviour and actions, but rather as the expression of ideals, which ultimately influence behaviour, attitude, and action. Similarly, the laws of Deut 12, which command sacrifice at the central sanctuary and allow for local animal slaughter, are more an expression of the Deuteronomic ideal of cult centralization than a literally binding procedure for sacrifice and slaughter.¹⁰³ Although this was obviously meant to affect behaviour, it was primarily an expression of religious ideology through the medium of law. Thus each local context in which the talion is found will be examined for the principles and ideals the law illustrates.

Greenberg’s method can also be extended to the larger codes in which the formulae are found. The principles and ideals communicated in each statute combine to express the ideological agenda of the larger codes. For example, Levinson has

¹⁰¹ Finkelstein, *The Ox That Gored*, 35.

¹⁰² This is argued by Finkelstein, *The Ox That Gored*, 21–23.

¹⁰³ For an excellent explanation of this, see, Levinson, *Legal Innovation*, 23–52.

demonstrated that many of the (seemingly disparate) laws of Deuteronomy work together to flesh out the ideals of cult centralization in the face of the local sanctuaries.¹⁰⁴ While Jackson has shown that this method cannot be pushed too far,¹⁰⁵ it will be assumed that the individual laws of a given code combine to serve the overall ideological purposes of the larger code.

Greenberg's approach, however, will not extend beyond the bounds of each law code. While I recognize that biblical law communicates principles, I would argue this happens on a small scale with the individual statutes. I do not agree with Greenberg's hypothesis that all biblical law together forms a coherent system of underlying postulates. Houtman also critiqued this aspect of Greenberg; he wrote, "As to the main points, I share the view of Greenberg and his supporters. However, in my view they are inclined to create forced contrasts."¹⁰⁶ I recognize independent themes, emphases, and even tension and conflicts between the legal corpora and the differing strata of the Pentateuch, which make it difficult to posit a single system of underlying postulates throughout all biblical law. Thus my approach will follow Greenberg only to the level of the individual legal corpora.

¹⁰⁴ This was the whole point of his book. See, Levinson, *Legal Innovation*.

¹⁰⁵ Bernard Jackson has provided the most cogent critique of Greenberg's method. In 1973, he initially critiqued Greenberg's approach with the essential claim that it suffers the danger of "the attribution to an early source of more abstract and sophisticated legal concepts of a later date." See, Jackson, "Reflections," 153. He claimed that the law could only communicate principles that were explicit. Since then, however, he has "abandoned the form of legal positivism implicit in the demand for explicit principles in favour of the reconstruction of values by semiotic methods." See, Jackson, *Semiotics*, 175n11. While Greenberg allows for a fair amount of abstraction, Jackson takes a more conservative approach, relying on a semiotic model that corresponds to the ancient communicational norms (also taking account of development of those norms when a society moves from orality to literacy), in order to glean principles. See also, Jackson, "Practical Wisdom," 92, where he acknowledges that the rules of the *Mishpatim* serve as paradigms (which is to say they communicate principles through a process of abstraction). In my mind, the most significant critique of Greenberg's method is against his claim that all of biblical law forms a coherent system of principles and ideals. I am inclined to follow his approach for the individual laws and extend it, in a more limited degree, to the larger legal corpora. Beyond that, the contrasts become too forced and the abstractions become too great to extract viable principles.

¹⁰⁶ Houtman, *Exodus*, 92.

On the macro level, I will both explore diachronic relations between the legal corpora, as well as compare the ways the talionic formulae were employed. The diachronic inquiry will be made only where it directly relates to my main goal of identifying the meaning and function of the talion within the Pentateuch. It will resemble the methodology of Levinson, who emphasizes the creative reuse of older material in later codes.¹⁰⁷ Thus, wherever it serves my main focus, I will consider any intertextual connections between the legal corpora and the three talionic formulae. This will be relevant mainly in chapter three, where I will show that the H draftsmen creatively reused the CC talion toward their agenda. If intertextuality cannot be clearly established, however, or if it does not shed light on how the draftsmen employed the formula, then the diachronic relation between the codes will not be considered.¹⁰⁸ Thus, on the macro level, my methodology will be similar to that of Levinson, but only insofar as it helps illuminate how the talion functions in its context.

In addition to the diachronic considerations on the macro level, comparison between the uses of the talion will be made. This will serve the main goal of this thesis which is to determine the meaning of the *lex talionis* as it is used in the Torah. I will focus on the issue of how the occurrences conceptually relate to each other. I will ask such questions as: Is there a common thread linking each context of the talion? Do the formulae function in similar ways in each context? If not, is there a common thread

¹⁰⁷ See, Levinson, *Legal Innovation*; Levinson, "The Birth of Lemma," 617–39.

¹⁰⁸ While Levinson is less guilty of this, the literary revisionists often force literary dependence on independent texts. See Jackson's critique of Van Seters. Jackson wrote, "[T]he criteria which Van Seters adopts in order to justify the literary dependency of the Covenant Code on D and H are problematic. These criteria are so broad, and generally related to theme rather than specific content, that the case for such dependency may always be made. Thus, if the Covenant Code is shorter than its 'antecedents,' it is a summary, if longer, an expansion. If it treats an entirely new issue, it is filling a 'gap' though where it fails to address issues in D and H, that is not seen as a problem." See, Jackson, "Revolution in Biblical Law," 91–92. See also my critique of Stackert, Vroom and Boda, review of *Rewriting the Torah*.

behind their function and meaning in each context? Answers to these questions will illuminate the meaning(s) of the biblical talion. Therefore, on the macro level, the three uses of the talion will be compared.

1.5 Outline and Thesis

The heart of this thesis will analyse the three contexts in which the talion is found, in the order in which they appear in the Pentateuch. Thus, chapter two will be an analysis of Exod 21:22–25, set within the Covenant Code. Chapter three will be an analysis of Lev 24:10–23, set within the Holiness Code. Chapter four will analyse Deut 19:15–21, as it appears in Deuteronomy. Each of these chapters will be divided into two main sections. The first will examine the talion in its local context and will answer the question, “How is the author employing the talionic formula in its local context?” The second section will examine the larger context by answering the question, “How does the use of the talion in this context serve the ideological agenda of the larger legal corpus?” Thus, the bulk of this study will examine the three contexts in which the talion is found.

Once this is done, the final chapter will synthesize the results in order to determine the meaning(s) and function of the biblical talion. Therefore, the final chapter will compare the results of chapters two, three, and four, to come up with an explanation as to the meanings of the talion. In the end, it will be demonstrated that the *lex talionis* in the Torah did not convey one single meaning, but rather it was rhetorically flexible and could convey a variety of meanings, depending on how it was used.

Chapter 2

Talion, Miscarriage, and *Mishpatim*

Of the three local contexts in which the talion is found, Exod 21:22–25 poses the most challenges. In addition to the usual complexities the formula brings to any context, this text is rife with interpretational difficulties and loaded with ethical implications. These issues caused Fishbane to write, “There is virtually no feature of its present formulation and redaction which is entirely unambiguous and self-evident.”¹ As a result, the basic flow of this case is entirely unclear. Thus, before the question, “How is the talionic formula functioning in its local context?” can even be approached, some interpretive challenges must be dealt with. The following is the text and translation.²

22 וכי ינצו אנשים ונגפו אשה הרה ויצאו ילדיה ולא יהיה אסון ענוש יענוש כאשר ישית עליו
בעל האשה ונתן בפללים
23 ואם אסון יהיה ונתתה נפש תחת נפש
24 עין תחת עין שן תחת שן יד תחת יד רגל תחת רגל
25 כויה תחת כויה פצע תחת פצע חבורה תחת חבורה

And if men fight and they hit a pregnant woman and her children come out but there is no harm, he shall surely pay a fine according to what the woman's husband sets upon him and the judges give. But if there is harm then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, bruise for bruise, blow for blow.

The basic thrust of the passage deals with various potential damages that result from a physical altercation, along with its prescribed penalties. Aside from this basic outline, the identities of the injurer and the injured parties, along with the extent of the injuries are entirely unclear. The first order of business will be to deal with some of the basic interpretational difficulties in this text so that the basic scenarios of vv. 22b–23a can be established.

¹ Fishbane, *Biblical Interpretation*, 94.

² Unless otherwise indicated, all translations are my own. Also, in cases where there is conflict, I will follow the verse order of BHS rather than modern translations.

2.1 The Scenarios of Exodus 21:22b–23a

While this passage presents numerous challenges,³ the main question that must immediately be answered is, “Who does אסון refer to?” The word אסון is of utmost importance to understanding this text. While its meaning is heavily debated, it will suffice to say it refers to some sort of harm.⁴ The real question is, “Who receives this harm?” The options are: a) the mother; b) the foetus; c) the mother and foetus; d) either the mother or the foetus (not both). The initial case depicts two scenarios, one with (v. 22b) and one without אסון (v. 23a). The heart of the issue, when it comes to אסון’s referent, is whether or not the case depicts miscarriage or premature birth.⁵ If the case depicts miscarriage, then אסון refers solely to the mother (option a). In such a case, the first scenario (v. 22b) assumes the fight resulted in a miscarriage, while the mother was unharmed. The second case (v. 23a), deals with further harm to the woman. If the case depicts live birth, however, then options b, c, and d are open. Therefore the question of

³ Some of the other difficulties that will not be dealt with include the odd plural verb and subject יצאו ילדיה in v. 22, the shift from the typical casuistic 3rd person to the 2nd person in v. 23, the identity of the subject of ונתחה (v. 23) the incongruence between the plural verb ונגפו and the singular יענש (v. 22), and the meaning of the obscure phrase ונתח בפללים (v. 22). While these issues are important, they do not directly affect the main goal of determining the function of the talion in this context.

⁴ The reason the word has caused so much discussion is on account of its rarity. It is only used in one other context in the HB: the Joseph narrative. Three times Jacob refused to let Benjamin go to Egypt with the rest of his brothers, lest אסון befall him (Gen 42:4, 38, 44:29). This possibility caused Jacob to say to his sons, “You will bring down my old head in distress to Sheol” (Gen 44:29). Based on its use in this context, some have concluded that the word refers to grave injury – possibly death. See, for example, Cassuto, *Exodus*, 275; Loewenstamm, “Exodus 21:22-25,” 358; Jackson, “Ius Talionis,” 276; Driver, *The Book of Exodus*, 219. See also, Jackson, *Wisdom-laws*, 215n17 for a list of other references. Others suggest the word refers exclusively to death. This is based on the cuneiform parallels, most of which deal with the death of the mother (SL 1–2; MAL 21; 50–53; HL 17–18; LH 209–214). See, for example, Wright, “Miscarriage and Talion,” 4; Otto, “Town and Rural Countryside,” 15–16; and Houtman, *Exodus*, 168. Still others, based on the list of injuries in the talion, argue that the term refers to any kind of injury – whether it is minor, serious, or even fatal. See, for example, Childs, *The Book of Exodus*, 471–72; van Staalduein-Sulman, “Legislative and Linguistic Parallels,” 219–20; and Propp, *Exodus*, 222. In the end, I agree with this last position, and thus translate the word as harm, which encompasses a whole range of injuries.

⁵ While most commentators consider only whether or not the case depicts miscarriage or premature birth, others such as Fishbane and Stuart, suggest the case may also depict a full-term delivery as well. See, Fishbane, *Biblical Interpretation*, 93–94; and Stuart, *Exodus*, 492. I will use the term “live birth” to include both possibilities.

miscarriage or premature birth is significant in order to understand the basic flow of the law. It has also invited much commentary on account of its ethical implications. Many conservative scholars try to avoid the conclusion of Paul, who wrote, “[T]he acceptance of a sum of money for the loss of a foetus in Exodus shows that according to biblical law, at least, a foetus is not considered to be a human being.”⁶ Thus, to further clarify the scenarios encompassed within this law, the most common evidence for miscarriage and live birth will be given.

2.1.1 Live Birth

First, there are two pieces of evidence for the less common “live birth” interpretation.⁷ The first comes from the word יצא. The typical term used for miscarriage in the Hebrew Bible is שכל⁸ or possibly נפל.⁹ The basic meaning of the common root יצא (occurring more than 1000 times in the Hebrew Bible) is “to come forth.”¹⁰ This is somewhat ambiguous in the context. When it refers to offspring, however, the word typically denotes live birth (Gen 25:25–26; 38:28; Jer 1:5; 20:18). Thus, the presence of the word יצא, and the absence of the typical miscarriage term (שכל), has suggested to numerous scholars that the case depicts live birth.¹¹ A second, though less prominent

⁶ Paul, *Studies*, 71.

⁷ The live birth interpretation is held by numerous scholars. See, Cassuto, *Exodus*, 275 (although he uses the term miscarriage, it is clear he favours the live birth interpretation); Cottrell, “Abortion and the Mosaic Law,” 8–9; Durham, *Exodus*, 323–24; Ellington, “Premature Birth,” 336–37; Gispén, *Exodus*, 213, Grisanti, “Abortion Dilemma,” 182–85; Hoffmeier, “Abortion,” 57–60; House, “Miscarriage or Premature Birth,” 108–123; Jackson, “Ius Talionis,” 292; Janzen, *Exodus*, 297; Keil and Delitzsch, *Biblical Commentary*, 134; Propp, *Exodus*, 222–23; and van Staaldoune-Sulman, “Legislative and Linguistic Parallels,” 224.

⁸ This word often means “to be bereaved,” but is also used for miscarriages (both animal and human). See, Hamilton, “שכל,” 923.

⁹ This root normally means “to fall.” A derivative is used twice in the Hebrew Bible to refer to an “untimely birth,” though a stillborn delivery cannot be ruled out. See, Fisher, “נפל,” 587.

¹⁰ Gilchrist, “יצא,” 393.

¹¹ See, van Staaldoune-Sulman, “Legislative and Linguistic Parallels,” 220–221; Kline, “Human Fetus,” 198; House, “Miscarriage or Premature Birth,” 110–12; Jackson, “Ius Talionis,” 292; Grisanti, “Abortion Dilemma,” 183; and Cottrell, “Abortion and the Mosaic Law,” 8.

piece of evidence comes from the meaning of the word יָלַד. Grisanti, for example, emphasizes the fact that “customary lexical sources” indicate this word always refers to living people, which lends support for the live birth interpretation.¹² Although there are other arguments for their position, these two words are the primary pieces of evidence to suggest the case depicts live birth and, thus, אִסוּן refers to both a mother and/or her unborn child.

2.1.2 Miscarriage

While the live birth interpretation may be appealing, the weight of the miscarriage explanation is most persuasive and has therefore found the majority of adherents among OT scholars.¹³ This interpretation is taken for numerous reasons. First, medically speaking, the likelihood of a foetus surviving such trauma in those days would have been so rare that such a scenario would almost certainly never have been in the minds of the draftsmen or their audience. Physician Robert Congdon researched this possibility in light of modern medical studies. He found that the foetal mortality rate in cases where the mother suffered physical trauma is between 34 and 68 percent. He further suggests that without modern medical aid, “the vast majority of these cases would

¹² Grisanti, “Abortion Dilemma,” 182. See also, House, “Miscarriage or Premature Birth,” 112–114; and Keil and Delitzsch, *Biblical Commentary on the Old Testament*, 134–35.

¹³ The following is a list of scholars who argue, assume, or favour the miscarriage interpretation. See, Amram, “Retaliation and Compensation,” 197; Ashby, *Exodus*, 104; Boecker, *Law and the Administration of Justice*, 172; Childs, *The Book of Exodus*, 472; Chinitz, “An Old Canard,” 80; Clements, *Exodus*, 135, 138; Coggins, *The Book of Exodus*, 88; Cole, *Exodus*, 169; Congdon, “The Abortion Debate,” 139–146; Davies, *Exodus*, 178; Doron, “A New Look,” 22; Driver, *The Book of Exodus*, 219; Enns, *Exodus*, 446–47; Fisher, “Lex Talionis,” 584; Fuller, “The Miscarriage Interpretation,” 175–76; Greenberg, “Crimes and Punishments,” 741; Greengus, “Law,” 242; Houtman, *Exodus* 160, 164; Huffmon, “Lex Talionis,” 321; Hyatt, *Exodus*, 233; Isser, “Two Traditions,” 30 (at least when reading the MT); Jacob, *Exodus*, 650; Janzen, *Exodus*, 164; Kim, “Origin and Context,” 9; Kline, “Human Fetus,” 194 (although she seems to prefer the live birth interpretation, she concedes to miscarriage); Loewenstamm, “Exodus 21:22–25,” 356; McNeile, *Exodus*, 130; Meyer, *Message of Exodus*, 135; Meyers, *Exodus*, 192; Noth, *Exodus*, 181; Osborn and Hatton, *Exodus*, 507; Otto, “Town and Rural Countryside,” 17; Pixley, *A Liberation Perspective*, 173; Sarna, *Exodus*, 125; Sprinkle, *A Literary Approach*, 248–51; Waltke, “Old Testament on Abortion,” 3n3; West, “Lex Talionis,” 183; Westbrook, “Lex Talionis and Exodus,” 53; Westbrook, “Punishments and Crimes,” 551; and Wright, “Miscarriage and Talion,” 1.

be death.”¹⁴ Furthermore, given the fact that only in the last seven weeks of pregnancy does a foetus have sufficiently developed lungs to survive, Congdon concludes, “If medical data has anything to say about Exodus 21:22, it indicates that the overwhelming probability for such a situation is an outcome of trauma-induced abortion with foetal demise.”¹⁵ This is further supported by the fact that all the ancient sources do not even consider the live birth option.¹⁶ Thus, medically speaking, the ancient draftsmen would likely have assumed miscarriage in the case of a labour-inducing blow. This suggests that אסון refers only to the mother.

Another argument of the miscarriage interpretation is that it provides for a more coherent case. If the live birth interpretation is taken, it gives rise to a number of other issues that would not otherwise exist. For example, if the text refers to live birth and there is no injury (אסון), then what is the purpose of the fine? Houtman, for example, notes that “there would be no reason for the fine . . . [unless] the underlying assumption is that the foetus is dead.”¹⁷ Furthermore, the live birth interpretation calls for the possibility of two penalties for one offense. If there is harm (אסון), the culprit would have to pay both a fine and be subject to the talion. Additionally, if the case depicts live birth, then the referents of אסון in v. 22 are both mother and foetus. If this is the case, then who is referred to in v. 23? It could be the baby, the mother, or both. Why is this not specified? If we assume both mother and child in v. 22, must we then assume that for v. 23 also?¹⁸ If אסון refers solely to the mother, then it has a consistent referent in both

¹⁴ Congdon, “The Abortion Debate,” 141.

¹⁵ Congdon, “The Abortion Debate,” 142.

¹⁶ For a list of these, see, Collins, “Exodus XXI 22,” 291 and 291n11.

¹⁷ Houtman, *Exodus*, 165.

¹⁸ This caused Collins, who assumes the foetus could have survived, to come up with a creative textual emendation in v. 22 in which ולא should have been לו. He believes it ought to be read “and to him (the foetus) there is harm.” Thus אסון explicitly refers to the child in v. 22 and, by implication, refers to the

verses. If, on the other hand, miscarriage was assumed and live birth never entered the draftsmen's minds, then there is no issue. Therefore, אִסַּח refers to the woman alone. Thus many commentators favour the miscarriage interpretation as it allows for a more coherent text.

One final piece of evidence in support of the miscarriage interpretation is the cuneiform laws that deal with miscarriage. Although much more can be said on the relation between these biblical and cuneiform laws, only one point will be made. The numerous legal texts of Mesopotamia that deal with a labour-inducing blow all envisage miscarriage.¹⁹ Given the affinities between CC (especially the *Mishpatim*) and cuneiform law, it is likely that the biblical draftsmen also envisaged miscarriage.²⁰ All this evidence for the miscarriage interpretation suggests that the term אִסַּח refers solely to the mother.

2.1.3 Summary

Having established the miscarriage interpretation,²¹ we can now gain a better picture of the scenarios depicted in this case. The case concerns the collateral damage that results from a physical altercation. There are two possible results. First, the fight could result in a miscarriage with no further harm to the woman (v. 22b), in which case, the penalty is a fine. Second, in the event that the fight results in both a miscarriage and

mother in v. 23. See, Collins, "Exodus XXI 22," 294. This same problem also caused Kline to provide another creative interpretation. She contends that אִסַּח in v.22 refers to the death of the mother and live birth of the child and in v. 23 it refers to the death of the child alone. See, Kline, "Human Fetus," 193–201. These interpretations, however, seem too far-fetched and may create more problems than they solve.

¹⁹ The main laws that deal with this issue are: SL 1–2; MAL 21; 50–53; HL 17–18; LH 209–214. Paul cites one other text (UM 55–21–71, iii, 2'3'), which is not in ANET. See, Paul, *Studies*, 71n3.

²⁰ Some have even suggested direct literary dependence between the cuneiform miscarriage laws and CC. Wright went so far as to argue that all of Exod 21:22–27 is dependent upon CH. Many of his arguments are appealing as he explains several of the textual difficulties as the result of "the imperfect blending of sources." See, Wright, "Miscarriage and Talion," 10–11.

²¹ At this point, given my regard for Scripture and abhorrence of abortion, I feel compelled to direct the reader to articles by Joe Sprinkle, Russell Fuller, and Robert Congdon (see bibliography). They each demonstrate that this text does not necessarily imply that the foetus is not a person, despite the miscarriage interpretation.

harm to the mother, talion is the prescribed penalty. With this basic flow of the law established, we can broach the question of how the talion fits into the local context.

2.2 The Local Context

2.2.1 The Problem of the Talion

Although the basic scenarios of Exod 21: 22b–23a have been established, the place of the talion in this text is far from clear. The reason for this is that the injuries listed in the talion do not match the scenarios depicted in vv. 22b–23a. As was demonstrated, the opening scene depicts a physical altercation between men, in which an uninvolved pregnant woman becomes the victim of collateral damage. The blow she received while these men fought was very specific and precise; it caused her to miscarry. Whether or not the fight caused אֶסוֹן, the blow (at the very least) caused a miscarriage. The long talionic formula, however, is inapplicable to this specific injury. The talion in this text covers almost every imaginable injury: damage to eyes, teeth, limbs, and even a burn (כַּוִּיהָ). How could a burn result from a fight, much less cause a miscarriage? This inconsistency is the most significant challenge in determining the function of the talion in this text; it reeks of poor editorial work.²²

Although the rhetorical approach to the talion provides a viable explanation to this problem, it does not account for the long list of talion dyads. Proponents of the rhetorical approach view this as the expression of a principle in concrete terms. Sprinkle, for example, wrote, “This confirms the conclusion that this formula is broader than the

²² While I would argue that the talion is appropriate according to the ancient practices of legal drafting, scholarship generally views it as an awkward addition. Wright, for example, wrote, “[T]he delineation of other talion penalties in vv. 24–25 . . . is almost universally viewed as secondary to the miscarriage law. The style of these verses deviates from casuistic law, and they include injuries that go beyond the context of injury to a pregnant woman or her child.” See, Wright, “Miscarriage and Talion,” 1.

present context, expressing a general principle in a poetic/proverbial manner.”²³ If the talion was simply an expression of equivalence in concrete terms, however, a few common injuries would have sufficed – eyes, teeth, and perhaps some limbs. The other occurrences of the talion contain much shorter lists.²⁴ In fact, the following verses that deal with injury to a slave (Exod 21:26–27) only mention eyes and teeth. The laboriously long list of injuries in the miscarriage case, however, spans three verses and contains eight wounds which cover almost any imaginable injury. Such a lengthy list seems excessive if the design of the talion was simply to express the principle of equivalence in concrete terms.

Furthermore, the length of the talionic formula (if such a long text can even be considered a formula) demonstrates purpose. Boecker has noted that such a long list finds no parallel in cuneiform law and is, thus, distinctly Hebrew.²⁵ Additionally, the long talion demonstrates logical order. Sprinkle wrote,

There is clear organization in three sections: (1) ‘life for life’ representing the most serious, i.e., deadly injury; (2) ‘eye for eye, tooth for tooth, hand for hand, foot for foot’ representing various parts of the body injured, working progressively from the head down to the foot; (3) ‘burning for burning, wound for wound, stripe for stripe’ representing various types of injuries.²⁶

These factors suggest that the long list of talion dyads were included for a purpose, and that purpose goes beyond the mere expression of a principle in concrete terms.

Since the long list of talion dyads was purposefully crafted, yet not consistent with the “rhetorical” explanation nor consistent with the depicted crime, the problem of the talion in this case remains.

²³ Sprinkle, “Interpretation of Exodus 21:22-25,” 243.

²⁴ Lev 24:20 contains fracture, eye, and tooth while Deut 19:21 contains life, eye, tooth, hand, and foot.

²⁵ Boecker, *Law and the Administration of Justice*, 173.

²⁶ Sprinkle, “Interpretation of Exodus 21:22-25,” 243.

2.2.2 The Solution

Despite this challenge, a solution does exist. First, it must be recognized that while the initial scene depicts a brawl which causes a miscarriage, the case itself is not about brawling that causes injury to pregnant women; it is about culpability in the face of possible mitigating circumstances. A common feature of the *Mishpatim* is that it presents a small number of cases that have broad implications, rather than a comprehensive system of laws that covers all scenarios. These cases serve as paradigms, in lieu of abstract legal categories. Propp, for example, while comparing the *Mishpatim* to cuneiform law, wrote, “Unlike the cuneiform law collections, which delight in listing numerous eventualities, Israelite legal scholars proved their virtuosity by posing a small number of cases possessing broad implications.”²⁷ Thus, a feature of the *Mishpatim* is that it poses complex paradigmatic cases that cover numerous legal issues.²⁸

This can be demonstrated, for example, with the goring ox laws (Exod 21:28–32). This law stipulates that the owner of an ox that kills a person is free from guilt (גָּדֹל), unless three conditions are met: 1) the ox was prone to goring; 2) the owner was informed; 3) the owner did not guard the ox (v. 29). If those conditions were met, then the owner was to be put to death (v. 29) unless a settlement could be arranged (v. 30). It is unlikely that the draftsmen were narrowly concerned with the phenomenon of killer oxen. Finkelstein’s observations confirm this. He wrote, “[I]n all the tens of thousands of cuneiform documents relating to legal matters which have thus far come down to us, there is hardly a single allusion to a real instance in which an ox killed or injured a

²⁷ Propp, *Exodus*, 221.

²⁸ For others who recognize this feature of the *Mishpatim*, see, Greengus, “Coherence of the Legal Tradition,” 86; Jackson, *Wisdom-laws*, 304; and Finkelstein, *The Ox That Gored*, 34. Westbrook has likened it to the way in which precedent functions in modern law. See, Westbrook, “Origins of Legislation,” 218.

person.”²⁹ The real issue that the draftsmen were concerned with is the question of culpability in the face of mitigating circumstances. The goring ox was simply the medium through which these legal issues were addressed. The owner of the ox is culpable if those three conditions are met, while he is guiltless if his conduct was not blameworthy. Therefore the case was not really about goring oxen. Rather, the real issue it addresses is culpable negligence. Put differently, the law establishes that guilt can still exist, even where there is no intent to cause harm.

Similarly, this tendency to express abstract legal concepts through complex paradigmatic examples can be seen in the property offenses of Exod 21:37—22:8. In this block of laws, only one verse deals with simple theft (21:37). Most of the section deals with complex scenarios that illustrate abstract concepts. These examples include letting an animal graze in another’s field (22:4), letting a fire get out of control (22:5), and property that has been lost, stolen, or damaged while in another’s care (22:6–12). None of these are simple property offenses. They all deal with complex legal issues such as liability, intentions, negligence, proof, evidence, and testimony. Therefore, the *Mishpatim* tends to pose a small number of complex paradigmatic examples that illustrate complex legal issues.

This fact provides insight into the real issues that underly the initial scenario of Exod 21:22a. This case is not concerned with what ought to happen when pregnant women are accidentally injured while men brawl. Rather, the initial scene is depicted in this complex and obscure manner because it illustrates the principle of reckless culpability. It is establishing culpability in the face of a mitigating circumstance, i.e. an

²⁹ Finkelstein, *The Ox That Gored*, 21.

unintentional injury.³⁰ The real issue addressed in this case is culpability due to reckless negligence. Just as with the goring ox law, the fact that the injury was unintentional does not absolve the injurer of guilt. These legal issues are merely framed in this concrete scenario.

Once this is recognized, then the place of the talion is no longer impertinent to the case. If the draftsmen were only concerned with pregnant women who were inadvertently injured during a brawl, then the talion makes no sense. On the other hand, if reckless negligence (or guilt without intent) was actually the principle at issue, then the full range of injuries in the long talionic formula is entirely appropriate. Since reckless conduct can bring about almost any form of harm, from miscarriage, to death, to burns, to loss of limbs, then the talion is an ideal way of covering that range. Not only does it express punishment in terms of exact equivalence, but it covers the range of injuries that can result from reckless conduct – the real concern of the law. Therefore, the talion fits very well into this case, despite the inconsistency between the initial paradigmatic example and the long list of injuries.

Finkelstein and Greenberg provide confirmation that this interpretation is valid. They both recognize that often, in an attempt to express an ideal, the ancient draftsmen did not depict a practically coherent case. While commenting on LH 230 Finkelstein wrote,

[T]his paragraph states a kind of ideal principle rather than a literal rule. That principle is stated in terms which reach the absurd, as is often also

³⁰ For a contrary position, see, Paul, *Studies*, 74. He contends that culpability exists precisely because there was intent to cause harm (though not to the pregnant woman). Others scholars try to explain the phenomenon of guilt without intent by suggesting that the woman got involved in the fight and the blow was thus intentional. See, Congdon, "The Abortion Debate," 137; Sarna, *Exodus*, 125; McNeile, *Exodus*, 129; Hyatt, *Exodus*, 233; Gispén, *Exodus*, 213; Davies, *Exodus*, 178; Coggins, *The Book of Exodus*, 87; Cole, *Exodus*, 169. To further this, Amram noted that a pregnant woman who wandered into a "danger zone" was guilty of gross negligence. See, Amram, "Retaliation and Compensation," 198.

the case with modern illustrations that are used to explain a theorem in logic, for absurdity in terms of real possibility is no bar to the validity of the principle being illustrated. Indeed, the absurdity of the example often promotes a clearer focus upon the principle by disencumbering it of the clutter of the specific and the real.

He went on to transfer this same phenomenon to Biblical law, particularly the miscarriage case,

In Mesopotamian exposition the paradigm serves in place of the abstract principle or theorem; . . . it is not necessary that all the constituents of the paradigm . . . be 'real.' *Similarly the consideration that the talionic formula as stated in Exod 21:23–24 is 'absurd' from the standpoint of application in real life in no way vitiates its validity as an 'ideal' or as a principle* [italics mine].³¹

Therefore, the fact that the talion dyads do not fit the initial paradigmatic case in no way nullifies its position as a viable and meaningful penalty in this law.

2.2.3 The Function of the Talion

Having established that the talion is actually appropriate to this case, the question, "How is the formula functioning in this particular context?" can be answered. The long talionic formula of Exod 21:23b–25 was employed by the draftsmen to expand the range of possible offenses entailed in the law. It opens with the most obscure of situations, a brawl that results in the miscarriage of an innocent and vulnerable bystander. This strange beginning serves as a paradigmatic example of reckless behaviour. The consequences of this offense become less paradigmatic, however, as the law progresses. While the initial offense is very specific, the consequences are generalized. The vague word *וְיָסַח* reduces the specificity of the initial offense, and begins this broadening trend. The talion completes this expanding trend by listing almost any and every imaginable injury in concrete terms. Thus the talion serves to broaden the

³¹ Finkelstein, *The Ox That Gored*, 34. For similar comments, see, Greenberg, "Idealism and Practicality," 59–66.

scope of this law to ensure it covers all cases of recklessness, not just brawls that cause miscarriages.

This generalizing trend can also be seen in the deposit laws of Exod 22:6–8, which read,

6כי יתן איש אל רעהו כסף או כלים לשמר וגנב מבית האיש אם ימצא הגנב ישלם שנים
7אם לא ימצא הגנב ונקרב בעל הבית אל האלהים אם לא שלח ידו במלאכת רעהו
8על כל דבר פשע על שור על חמור על שיה על שלמה על כל אבדה אשר יאמר כי הוא זה
עד האלהים יבא דבר שניהם אשר ירשיען אלהים ישלם שנים לרעהו

If a man gives to his neighbour *silver or utensils* to keep, and it is stolen from the man's house, if the thief is found, he shall pay double. If the thief is not found, then the owner of the house shall draw near to God [to show] whether or not he sent his hand against his neighbour's *property*. Upon every false word, *about an ox, about a donkey, about a sheep, about a garment, about any lost thing* that he says, "This is he," the case of the two shall come to God. Whoever God declares wicked, he shall make restitution twofold to his neighbour.

This case similarly begins with a specific scenario: the deposit of silver or utensils. The specificity of this paradigmatic example is broadened in v. 7, when the deposited items are referred to with the general term "property" (מלאכה). This pattern is completed with the long list of property in v. 8 – ox, donkey, sheep, garment, and any lost thing. While the reason for this trend differs in each case,³² it demonstrates that it was a common drafting technique; namely to begin with an obscure paradigmatic example and progressively to broaden the scope of the law, thus making explicit what otherwise had to be obtained through inferential reasoning.³³

³² Westbrook has demonstrated that the expanded list in v. 8 of the deposit law was meant to ensure that the compensatory penalty was always twofold for this offence, in contrast with the varying penalties of Exod 21:37. See, Westbrook, "Deposit Law," 396–97.

³³ Jackson, "Two or Three Witnesses," 164–69, refers to these expanding trends as "catch-all" phrases. Draftsmen often felt compelled to explicitly state what could be inferred by expanding the details of the initial paradigm. See also, Fishbane, *Biblical Interpretation*, 170–177.

This understanding lends support to the claim that the talionic formula of Exod 21:22–25 broadens the specificity of the initial case. Therefore, the talionic formula is an integral part of this law. It was not arbitrarily appended to a miscarriage law that required a punishment. The full effect of this law depends upon the talion. It was used to ensure that the case had implications beyond the narrow bounds of brawling and injured pregnant women. Thus the *lex talionis* functioned in the miscarriage law to expand the scope of offense to encompass all possible consequences of reckless conduct.

2.3 The Broader Context

Now that the question, “How does the talionic formula function in the local context?” has been answered, we can explore the question, “How does the use of the talion in this local context serve the greater ideological program of its larger context?” To answer this, I will focus particularly on the *Mishpatim*, Exod 21:1—22:16. Scholars have long recognized distinct formal and ideological differences between the *Mishpatim* and the rest of the Covenant Code (Exod 20:22–26, 22:17—23:19).³⁴ Formally, the *Mishpatim* bears the closest resemblance to cuneiform law. They are distinguished by casuistic law, which depicts concrete legal scenarios along with their prescribed penalties. The rest of the CC, on the other hand, is marked by apodictic law and moral admonitions with little reference to judicial penalties.³⁵ Thematically, the *Mishpatim* are more concerned with secular (non-sacral) affairs, while the rest of the CC involves cultic (sacral) issues. Based on this thematic distinction, Paul, in his landmark monograph, chose to focus entirely on the *Mishpatim*. He wrote, “The moral and sapiential

³⁴ While I recognize that this is a gross oversimplification of the (highly debated) literary divisions within CC, for present purposes it will suffice to distinguish between the *Mishpatim* and the rest of CC. For a full commentary on the literary divisions of CC, see, Jackson, *Wisdom-laws*, 431–78.

³⁵ See, Houtman, *Exodus*, 81–82, for an explanation of the stylistic differences between the *Mishpatim* and the rest of the CC.

exhortations and the cultic calendar that follow the juridical corpus proper (Ex. 22:17—23:19) . . . will not be studied here.” While the fact that they were combined into a single body of laws is significant, it goes beyond the present goal to examine how the use of the talion in the miscarriage law fits into the whole Covenant Code.³⁶ The use of the talion in the miscarriage law demonstrates the formal and thematic characteristics of the *Mishpatim*.

2.3.1 Legal Philosophy of the *Mishpatim*

Since the *Mishpatim* does not deal with sacral matters, its ideological underpinnings are less informed by a theological agenda and better reflect issues of legal philosophy. Thus, to get at the ideals of the *Mishpatim*, we will have to draw from the field of legal philosophy. The closest modern category of law that could describe its underlying assumptions is that of corrective justice.³⁷ Law professor Ernest Weinrib describes corrective justice as follows,

Corrective justice . . . features the maintenance and restoration of the notional equality with which the parties enter the transaction. This equality consists in persons’ having what lawfully belongs to them. Injustice occurs when, relative to this baseline, one party realizes a gain and the other a corresponding loss. The law corrects this injustice when it re-establishes the initial equality by depriving one party of the gain and restoring it to the other party. . . . The result is a restoration of the original equality of the two lines.³⁸

³⁶ Childs has made the attractive suggestion that the secular (national) laws of the *Mishpatim* were incorporated into the cultic law to subsume all Israel’s law under the aegis of Israel’s covenant theology. See, Childs, *The Book of Exodus*, 459. Jackson, has also made the persuasive point that both parts of CC have the same function. He wrote, “Both halves of the Covenant Code, in my view, came to have a significant didactic function, though they may reflect different forms of the wisdom tradition, that of the *Mishpatim* more influenced by the drafting traditions of the ancient Near Eastern ‘law codes.’” See, Jackson, *Wisdom-laws*, 455.

³⁷ To draw the connection between corrective justice and the *Mishpatim* – particularly the talion – I rely on the legal scholar William Miller. See, Miller, *Eye for an Eye*, 4–5, 17–19.

³⁸ Weinrib, “Corrective Justice in a Nutshell,” 349.

Although the sophistication of modern categories of law has limited application to ancient law, the basic ideal of corrective justice seems to underlie the *Mishpatim*. Restoring balance between persons is the main thrust of the provisions of the *Mishpatim*.³⁹

This is evident from the proliferation of the verb שלם in the piel stem in the provisions for property offenses (Exod 21:34—22:14). This term occurs in a legal context no less than 24 times in the Hebrew Bible. It occurs 14 times in this section of the *Mishpatim*⁴⁰ and only four other instances in the legal codes of the Pentateuch (at least, in a strictly legal context).⁴¹ In the property laws, the word means “to make full” or “to restore,”⁴² which clearly embodies the ideals of restoring balance. For all theft-related cases, the guilty party is to restore his unlawful gain. This can be seen in numerous other laws as well. The injury laws of Exod 21:18–19, for example, stipulate that if one man injures another in a fight, the injurer is to pay for the victim’s loss of time and ensure a full recovery (שבתו יתן ורפא ירפא). Thus the injurer’s liability only extends to the point of restoring the victim to his former state, before the balance was upset. These examples demonstrate that the ideals of corrective justice (i.e. restoring balance) underlie the *Mishpatim*. Evidence of this ideal is also pointed out by biblical scholars. Houtman, for example, argued that the *Mishpatim* aimed at “the preservation of a stable and liveable society that is marked by justice [in which,] through conflict management, the

³⁹ The participial laws of Exod 21:15–17 may be an exception (and are largely thought to be of separate origin).

⁴⁰ Daube was the first scholar to devote great attention to the significance of this verb in legal contexts. For an analysis of all the examples of this term in legal contexts, see, Daube, *Studies in Biblical Law*, 135–44.

⁴¹ It also occurs twice in Lev 5 and twice in Lev 24 (which will be noted in chapter 3) in a very similar context. Its occurrences in Deut 20:12 and 23:22 hardly qualify as legal texts and can thus be excluded from the list. The first deals with peace in a military context and the second concerns the fulfillment of vows.

⁴² See, Daube, *Studies in Biblical Law*, 134; and Gerleman, “שלם,” 1340.

offering of compensation and finding equitable settlements, harmony is promoted and restored.”⁴³ Similarly, Clines wrote that it demonstrates “a fair system of reparations so that the equilibrium between neighbours can be sustained.”⁴⁴ Thus, the ideals of corrective justice underlie the *Mishpatim*.

2.3.2 Talion and *Mishpatim* Legal Ideals

In the context of the *Mishpatim*, the talion expresses these same ideals. This requires some explanation. Since, as established above, the miscarriage law emphasizes the scope of injuries that can result from reckless conduct – from miscarriage to bruising to death – the drafters of the *Mishpatim* were faced with a challenge. On the one hand, they wanted to emphasize the range within the offense – reckless conduct can bring about any sort of injury. On the other hand, they had to prescribe a penalty that was in keeping with their ideals of restoring balance. The talion fulfills this two-fold purpose. It states that the degree of culpability is in exact proportion to the extent of the offense. This exact proportion expresses the ideals of balance. To the extent that a person’s culpable negligence injures another, to that same degree will the injurer suffer, thus achieving balance.

This raises a further question however: “How does the talion fit into the *Mishpatim* ideal of corrective justice (restoring balance)?” While it is obvious that removing one man’s eye hardly “restores” the victim’s eye, these details were not the concern of the draftsmen. The law was not meant for literal application. The issue is not about how the case depicts the law’s application. The issue is how the language of the law expresses an ideal. In the case of the talion, the language of corrective justice –

⁴³ Houtman, *Exodus*, 83.

⁴⁴ Although Clines deals with the entire CC, at this point he was speaking explicitly of laws from the *Mishpatim*. See, Clines, “Being a Man,” 5.

restoring balance – is employed in a context of punishment – just desserts. This can be demonstrated by the connection of the verb שלם, which (as demonstrated above) characterizes the ideals of corrective justice (restoration), with a talionic formula found in Exod 21:36. This verse stipulates that the negligent owner of the ox that killed another ox “shall surely make restitution [שלם ישלם], an ox for the ox [שור תחת השור].” This correspondence between שלם and this talionic formula is very telling. Here, the language of reparation and restoration (שלם) is connected with the language of the talion. While in Exod 21:36, the balance is achieved through restoration (literally replacing the dead ox with a live one),⁴⁵ this is impossible in the miscarriage law – especially for injuries like burns and bruises (v. 25). The fact remains, however, that the talionic formula of the miscarriage law employs the same language that is used in clear restoration contexts.⁴⁶ Thus, regardless of the absurdity this creates from the standpoint of literal application, the language of restoration is employed in the talion of the miscarriage law.

Some comments by the legal scholar William Miller will help bring this into focus. He noted that one of the fundamental challenges faced by ancient societies (and indeed modern ones too) around matters of maintaining justice, was with the ability to measure equivalence. In the case of stolen property, it was easier; the guilty party would simply restore his unlawful gain. It became more difficult, however, in the case of

⁴⁵ See, Kugelmass, “Lex Talionis in the Old Testament,” 12–13. He also demonstrates this in two narrative passages that employ a talionic formula (1 Kgs 20:39 and 2 Kgs 10:24).

⁴⁶ At this point, it would be helpful to briefly summarize a debate between Daube and Milgrom. Daube argues that תחת refers only to payment in kind; thus an actual ox will be given to replace the missing ox (see also, Jackson, *Semiotics*, 271–80). Beyond this, he further associates the word ‘שלם’ with replacement in kind. See, Daube, *Studies in Biblical Law*, 103–04, 134–44. Milgrom, on the other hand, argues that שלם refers only to monetary compensation. See, Milgrom, “Legal Terms,” 271–73. In the end, Milgrom seems to ignore the evidence Daube presents while Daube must resort to literary surgery to explain the evidence Milgrom uses for his conclusion. I would suggest the solution is that the ancient draftsmen did not make a clear distinction between repayment in kind and repayment in money. Before coinage was common, replacement would have been an ideal way to measure exact value. Both replacement and compensation were likely practiced and thus the distinction was negligible to the ancient draftsmen. See further, Miller, *Eye for an Eye*, 25–26.

injuries. This was because coinage was not in common use in these times. While Miller was mainly concerned with legal practice, his comments are helpful. He wrote,

The problem for early talionic culture was not the conceptual one of being too primitive to understand notions of exchange, but the practical one of how to measure value and then how to find an appropriate means of payment once value had been determined. In a sense, the problem was one of money, of how to fulfill the standard money functions of providing a means of payment and a measure of value.

Miller went on to write,

Money gives us the equivalence in the form of $A = B$, with two unlikes being equated by a price. But one never really trusts that A really equals B . . . [I]f I state my principle as a rule of identity, $A = A$, rather than of equivalence, $A = B$ then I can indulge the thought that I struck the balance exactly right.

Despite Miller's obvious preoccupation with legal practice, these comments are helpful for understanding the ideals that the *Mishpatim* draftsmen expressed in the formula. The talionic formula sets forth exact equivalence, literally giving an eye to substitute for one which was unlawfully taken. This is evident from its use in Exod 21:36. The draftsmen, however, used this language in a context where restoration is absurd. Nonetheless, as Miller demonstrates, the talionic formula achieves the ideals of restoration and balance for this crime.

Alternatively, Lamont, another legal scholar, argued that corrective justice "may take the form of reparation or punishment."⁴⁷ Thus, punishment also achieves a balance. If A handicaps B in some way, then the infliction of the same handicap on A will restore balance between the two. This notion may also be implicit in the talion. The fact that the formula includes burns and bruising certainly suggests this since these injuries do not involve removable body parts. In either case, while using the language of restoration, the

⁴⁷ Lamont, "Justice: Distributive and Corrective," 3.

draftsmen employed the talionic formula to express exact equivalence that would restore balance between two parties. Whether this depicts the idyllic absurdity of actually giving an eye to the victim (as suggested by the formula in 21:36) or the more realistic notion of equal retribution (as suggested by the injuries that do not involve removable body parts), it is beyond the specificity of the original draftsmen. In either case, the talion embodies the ideals of corrective justice – resolving disputes by restoring balance.

2.4 Conclusion

To sum up, the miscarriage law is very complex, rife with interpretational difficulties, absurdities, and ambiguities. This is particularly evident from the incongruence between the depicted offense and the list of injuries in the talion. This, however, finds resolution when the paradigmatic nature of the *Mishpatim*'s legal cases is recognized. The miscarriage law deals with the issue of reckless culpability, which fits well with the other provisions of the *Mishpatim*.

The talion, which forms an integral part of this law, has a two-fold function. On the local level, it both expands the scope of the law (which highlights the range of injuries that can result from recklessness) and it expresses exact proportion between inflicted injury and penalty. In its larger context, the talion expresses the ideals of restoration and balance that pervade the *Mishpatim*.

Chapter 3

Blasphemy, Talion, and Alien Duty

The next instance of the *lex talionis* is found in Lev 24. In contrast to the other two formulae, the context of this occurrence is unique. While the other two appear as the prescribed penalty for a specific casuistic law (the case of miscarriage resulting from a brawl and the case of false accusation), the talion here is embedded in a short narrative (24:10–23).¹ A further complication comes from the fact that this short narrative is somewhat anomalous to Leviticus. The only other narrative recorded in the book occurs in chapters 8–10, particularly chapter 10, which describes the offense and subsequent deaths of Nadab and Abihu. Additionally, Fishbane has identified the narrative of Lev 24:10–23 as one of four “ad hoc legal situations set during the period of the desert wanderings” (Num 9:6–14; 15:32–36; 27:1–11).² Thus not only is this occurrence of the talion distinct from the other two, its framework is atypical for Leviticus and seems analogous to three pericopae in Numbers.

The whole text is translated as follows:

10 ויצא בן אשה ישראלית והוא בן איש מצרי בתוך בני ישראל וינצו במחנה בן הישראלית
ואיש הישראלי

¹ It should be noted that not all commentators agree that this is a narrative. Gerstenberger, for example, wrote, “The excessively abbreviated storyline . . . and scarcity of concrete details concerning those involved prevent us from classifying this section as a ‘narrative.’ It is merely a stereotyped ‘case’ placed before the actual legal text.” See, Gerstenberger, *Leviticus*, 361. Noth, while recognizing the narrative qualities, calls it a “legal sentence . . . in the form of a narrated precedent.” See, Noth, *Leviticus*, 179. Hartley, on the other hand, argues that this text bears all the marks of a narrative and should be considered as such. See, Hartley, *Leviticus*, 406. In resolution to this conflict, Kiuchi suggests that it is anachronistic to impose “the modern distinction between law and narrative” on this ancient text. See, Kiuchi, *Leviticus*, 435. James Watts has further cited numerous cases in other ancient literature where law and story are intertwined, which lends credence to Kiuchi’s claim. See, Watts, *Reading Law*, 40–45. Regardless, this particular mix of law and narrative within the Book of Leviticus, which is so dominated by lists of laws, is a peculiarity. For the sake of simplicity, I will make this ‘anachronistic’ distinction between law and narrative in this particular pericope since it is atypical of the form of the rest of the book (other than chapters 8–10).

² Fishbane, *Biblical Interpretation*, 98.

11 ויקב בן האשה הישראלית את השם ויקלל ויביאו אתו אל משה ושם אמו שלמית בת
 דברי למטה דן
 12 ויניחהו במשמר לפרש להם על פי יהוה
 13 וידבר יהוה אל משה לאמר
 14 הוצא את המקלל אל מחוץ למחנה וסמכו כל השמעים את ידיהם על ראשו ורגמו אתו
 כל העדה
 15 ואל בני ישראל תדבר לאמר איש איש כי יקלל אלהיו ונשא חטאו
 16 ונקב שם יהוה מות יומת רגום ירגמו בו כל העדה כגר כאזרח בנקבו שם יומת
 17 ואיש כי יכה כל נפש אדם מות יומת
 18 ומכה נפש בהמה ישלמנה נפש תחת נפש
 19 ואיש כי יתן מום בעמיתו כאשר עשה כן יעשה לו
 20 שבר תחת שבר עין תחת עין שן תחת שן כאשר יתן מום באדם כן ינתן בו
 21 ומכה בהמה ישלמנה ומכה אדם יומת
 22 משפט אחד יהיה לכם כגר כאזרח יהיה כי אני יהוה אלהיכם
 23 וידבר משה אל בני ישראל ויציאו את המקלל אל מחוץ למחנה וירגמו אתו אבן ובני
 ישראל עשו כאשר צוה יהוה את משה

And the son of an Israelite woman who was the son of an Egyptian went out in the midst of the people of Israel. And the son of the Israelite and a man of Israel fought in the camp. And the son of the Israelite woman blasphemed the name and he cursed. And they brought him to Moses. And the name of his mother was Shemolith daughter of Dibri of the tribe of Dan. And they placed him under guard in order to distinguish for themselves the will of the Lord. And YHWH spoke to Moses saying, "Bring the curser outside the camp and those who heard shall lay their hands on his head and all of the congregation will stone him. And to people of Israel you shall speak saying, "Any man that curses his god will bear his sin. And whoever blasphemes the name YHWH shall surely be put to death. All the congregation shall surely stone him. As the alien so the native, when he blasphemes a name he shall be put to death. *And a man that fatally strikes any human life shall surely be put to death. And one who fatally strikes the life of an animal shall make restitution for it, life for life. And a man that gives a blemish to his neighbour, according to whatever he did, so shall it be done to him: fracture for fracture, eye for eye, tooth for tooth. According to whatever blemish he gave to a human, so shall it be done to him. And one who fatally strikes an animal shall make restitution for it. But one who fatally strikes a human shall be put to death.* There shall be one law for you. It will be the same for the alien and the native. For I am YHWH your God." And Moses spoke to the people of Israel. And they brought the curser outside the camp and they stoned him with stones. And the people of Israel did according to what YHWH commanded Moses. [My translation]

The passage depicts a scene in which the will of YHWH is sought to determine a sentence for the half-breed foreigner who committed blasphemy (vv. 10–12). Through

Moses, the sentence is declared (vv. 12–16a) and subsequently carried out (v. 23).

Between the declaration of the sentence and its execution, there are a series of laws (vv. 16b–22), one of which is the *lex talionis* (v. 20a). While the entire pericope has numerous interpretational difficulties, most do not bear on the present task at hand, which is to identify the place and function of the talion in this text.³

3.1 The Local Context

In order to answer the question, “How is the author employing the talionic formula in its local context?” the main focus of the entire pericope must be established. Once this is done, the function of the talion in this local context can be determined.

3.1.1 Focus of the Pericope

The main emphasis of the pericope can be seen in three features of this passage. First, the structure of the passage reveals that its focus is on the universal obligation to the law, regardless of ethnicity. Second, the language of the legal section (vv. 17–21) confirms this. Third, parallels with the Covenant Code identify the nature of this law to which all humanity is bound, regardless of ethnicity. All these features demonstrate that the main emphasis of this passage is on the universal obligation to Israel’s secular and sacral law, regardless of ethnicity.

3.1.1.1 Structure of the Blasphemy Narrative

Although chiasms are often over-emphasized in biblical texts,⁴ there is overwhelming evidence that the author carefully and purposefully crafted this narrative

³ For a comprehensive analysis of the interpretational difficulties of this text, see, Milgrom, *Leviticus 23–27*, 2100–45. The most significant issue is found in vv. 15–16, which concerns the nature of blasphemy.

⁴ Boda has noted the danger of placing too much weight on chiasms (also called introversions or palistrophes). They are often either imposed on the text or mistakenly identified as a result of the inherent repetitions within a given genre. See, Boda, “Chiasmus in Ubiquity,” 55–58. Similarly, Jackson has noted that literary artifice within legal texts may simply be the result of typical legal drafting and legal development (inherent to the genre). He wrote, “In short, what we think of as a literary artifice, chiasmus,

and law into one homogeneous unit with a chiastic structure.⁵ The following chart will demonstrate this:

A	13	And YHWH spoke to Moses saying וידבר יהוה אל משה לאמר
B	14	Bring the curser outside the camp and those who heard shall lay their hands on his head and all the congregation will stone him. הוצא את המקלל אל מחוץ למחנה וסמכו כל השמעים את ידיהם על ראשו ורגמו אתו כל העדה
C	15–16a	And to people of Israel you shall speak saying, ‘Any man that curses his god will bear his sin. And whoever blasphemes the name YHWH shall surely be put to death. All the congregation shall surely stone him. ואל בני ישראל תדבר לאמר איש איש כי יקלל אלהיו ונשא חטאו ונקב שם יהוה מות יומת רגום ירגמו בו כל העדה
D	16b	As the alien so the native, when he blasphemes a name he shall be put to death. כגר כאזרח בנקבו שם יומת
E	17	And a man that fatally strikes any human life shall surely be put to death.

can develop from quite simple cognitive operations.” See, Jackson, “Practical Wisdom,” 87–92 esp. 89–90. Jackson, however, goes on to write that in many cases there is not “any sense of opposition between the categories of the functional and the aesthetic” (p. 90). Indeed, as will be demonstrated below, Jackson is one of the scholars who propose a chiasm for Lev 24:13–23. Mary Douglas and Jacob Milgrom, on the other hand, go a step further and embrace such rhetorical structures as the primary means of interpreting ancient texts. While responding to the criticism of imposing modern structure on ancient texts, Douglas wrote, “[T]he discipline of looking for structures is not one that may be shirked. Assuming that a text is written with no structure is imposing the linear sequential structure of our own conventions. By disregarding deliberate repetitions, signals for reading the conventional structure are missed. For us, for lack of a way of recognizing wrong structures, the challenge is to study the literary conventions of the region at the supposed time of redaction.” Mary Douglas does just this, comparing Leviticus to the Ode of Pindar. See, Douglas, “Poetic Structure in Leviticus,” 239–45. In regard to Lev 24:13–23, Milgrom wrote, “By use of repeated words and inner chiasms, and, above all, by choice of the centre or fulcrum around which the introversion is structured, the ideological thrust of each author is revealed. In a word, structure is theology.” See, Milgrom, *Leviticus 23–27*, 2129–30. In the end, while Boda’s warnings must be heeded, the obvious chiastic structure of Lev 24 merits recognition and serious consideration.

⁵ The following chiastic diagram is not unique. At least nine other scholars have noted almost identical chiasms in this pericope. Although some focus on smaller portions, and some build from other scholars’ work, the areas of agreement are overwhelming. See, for example, Gane, *Leviticus, Numbers*, 425; and Kiuchi, *Leviticus*, 441. They identify vv. 17–21 as a chiasm. Alternatively, see, Balentine, *Leviticus*, 189; Gorman, *Book of Leviticus*, 175; and Wenham, *The Book of Leviticus*, 312. They extend this from v. 16 to v. 22. Going one step further is Knohl, *Sanctuary of Silence*, 175n23. He identifies v. 15 to v. 23 as a chiasm. The most significant scholars of biblical law, however, extend the chiasm from v. 13 to v. 23. See, Milgrom, *Leviticus 23–27*, 2128–29; Jackson, “Talio and Purity,” 119–20; and Welch, “Chiasmus in Biblical Law,” 8. Welch, in turn, cites earlier scholars who identified the same chiasms (p. 7n11–n12). Another scholar who has offered a much different chiastic structure is Wilfred Warning. His structure encompasses the entire chapter and is based on the common noun בן (son). His entire approach to literary artifice, however, seems to place too much emphasis on terminology, while largely ignoring thematic links. As a result, his structure has little thematic coherence. Additionally, his proposed structure is blatantly “lopsided,” which, according to Boda (p. 56), is one of the most frequent errors of rhetorical analysis. See, Warning, *Literary Artistry in Leviticus*, 96–97.

		ואיש כי יכה כל נפש אדם מות יומת
F	18	And one who fatally strikes an animal life shall make restitution for it, life for life. ומכה נפש בהמה ישלמנה נפש תחת נפש
G	19	And a man that gives a blemish to his neighbour, according to whatever he did, so shall it be done to him. ואיש כי יתן מום בעמיתו כאשר עשה כן יעשה לו
H	20a	Fracture for fracture, eye for eye, tooth for tooth. שבר תחת שבר עין תחת עין שן תחת שן
G'	20b	According to whatever blemish he gave to a human, so shall it be given to him. כאשר יתן מום באדם כן ינתן בו
F'	21a	And one who fatally strikes an animal shall make restitution for it. ומכה בהמה ישלמנה
E'	21b	But one who fatally strikes a human shall be put to death. ומכה אדם יומת
D'	22	There shall be one judgment for you. As the alien so the native it shall be. I am YHWH your God משפט אחד יהיה לכם כגר כאזרח יהיה כי אני יהוה אלהיכם
C'	23a	And Moses spoke to the people of Israel. וידבר משה אל בני ישראל
B'	23b	And they brought the curser outside the camp and they stoned him with stones. ויוציאו את המקלל אל מחוץ למחנה וירגמו אתו אבן
A'	23c	And the people of Israel did according to what YHWH commanded Moses. ובני ישראל עשו כאשר צוה יהוה את משה

Although there are some minor expansions and abbreviations between the corresponding members, the pattern of repetition clearly exhibits a chiasmic structure.⁶

This structure reveals that the focus of the pericope is on the universal obligation to the law, regardless of ethnicity. This can be seen as the chiasm progresses. The first section of the chiasm deals with the issue of whether or not a foreigner is to be punished

⁶ Oddly enough, Kiuchi suggests that v. 17 to v. 21 form a “thematic chiasmus.” See, Kiuchi, *Leviticus*, 441. The repetition of terminology, however, is clear. The most obvious is found in v. 21, which presents the clearest evidence of an intentional chiasm. Noth, who did not even recognize this structure, wrote, “Strangely enough, v. 21 repeats these sentences once more in shortened form.” See, Noth, *Leviticus*, 181. Milgrom also notes another two (otherwise superfluous) repetitions in v. 23, which further lend support to the claim that we are dealing with a chiasm. See, Milgrom, *Leviticus 23–27*, 2128–29.

for blasphemy in the same way a native Israelite is punished. This is the main plot of the narrative. Noth wrote, “The assumptions and circumstances of the previous history of the case are only shortly and inadequately implied . . . because it is solely a question of the matter of fact that a foreigner has vilified and cursed ‘the Name.’”⁷ The resolution to this plot is found in v. 14: the blasphemer is to be stoned. This, however, is not the focus of the text, as the chiasm indicates. It continues in vv. 15–16, which explicitly brings all people, regardless of ethnicity, under the law against blasphemy: כגר כאזרח בנקבו שם יומת: (as the alien so the native, when he curses a name he shall be put to death). Yet this is still not the focus of the passage, as the progression of the chiasm continues further. Not only does this line conclude the law on blasphemy, it also introduces the legal section of vv. 17–21, which forms the centre of this chiasm. This section concludes with the line משפט אחד יהיה לכם כגר כאזרח (there shall be one judgement for you, as the alien so the native). This demonstrates the main emphasis of the whole pericope: both the law of blasphemy and the laws of vv. 17–21 are universally binding, regardless of ethnicity. Therefore the structure reveals the pericope’s main focus.

3.1.1.2 Language of the Legal Section

While the structure of this passage reveals its main focus, the language of the legal section further confirms the above conclusion. This is particularly evident from the use of the word אדם in vv. 17, 20, and 21, which explicitly encompasses all humanity in the Holiness Code. This was recently recognized by Joosten. He identified two occasions where this term was explicitly used to refer to all humanity beyond mere Israel. The first is Lev 18:5, which reads,

ושמרתם את חקתי ואת משפטי אשר יעשה אתם האדם וחי בהם אני יהוה

⁷ Noth, *Leviticus*, 179–80.

And you shall observe my commands and my judgments. If a human does them then he will live by them. I am YHWH.

This verse comes after a command to avoid the lewd cultic practices of the other nations (v. 3) in favour of YHWH's law (v. 4). It is followed by a series of prohibitions that reflect these practices (vv. 6–23),⁸ which are then given as the reason the Canaanites were vomited from the land (vv. 24–25). This chapter emphasizes that anyone living in the land, regardless of their ethnicity, is bound to follow the statutes of YHWH. The use of אדם in v. 5 is one of the means by which this message is communicated.⁹ It is advantageous for all humanity to follow the laws of YHWH, not just ethnic Israel, if they want to live well in the land.

The second significant use of אדם, according to Joosten, is found in chapter 24, our present concern. He compares 24:17 with two other verses: Gen 9:6 and Exod 21:12.

Lev 24:17	Gen 9:6	Exod 21:12
And a man that fatally strikes any human life shall surely be put to death.	Whoever spills the blood of a human, by a human shall his blood be spilt. For in the image of God he made humanity.	Whoever hits a man so that he dies shall surely be put to death.
ואיש כי יכה כל נפש אדם מות יומת	שפך דם האדם באדם דמו ישפך כי בצלם אלהים עשה את האדם	מכה איש ומת מות יומת

There are obvious parallels between these verses. In Gen 9:6, there is a clear emphasis on all humanity. Exodus 21:12, on the other hand shows less concern to emphasize the universal application of the law. In fact, it will be demonstrated below that the Holiness authors were aware of the Covenant Code provisions which reveal an implicit distinction between the native Israelite man and the foreigner. Thus the contrast between the use of

⁸ Although at first glance the offenses of Lev 18 and 20 seem to be purely sexual, Mary Douglas has shown they actually refer to foreign cultic practices, which are to be contrasted with the laws of YHWH. See, Douglas, "Justice as the Cornerstone," 343–44.

⁹ It is additionally emphasized by v. 26, which explicitly states "the native and the sojourner" shall observe these commands.

אדם in Lev 24:17, 20, and 21, and the use of איש in Exod 21:12 adds credence to the claim that there is an emphasis in Lev 24 on the universal obligation to the law.

Therefore, the use of the term אדם further confirms that the main focus of this pericope is on the universal obligation to the law, regardless of ethnicity.

3.1.1.3 Blasphemy Narrative and the Covenant Code

Thus far, the structure of this passage and the language of the legal section have demonstrated that the main focus of this passage is on the universal obligation to the law regardless of ethnicity. One other feature of this passage further specifies this main emphasis, i.e. its parallels with the Covenant Code. The intertextual connections between these texts demonstrate that the main focus of this passage is on universal obligation to all of Israel's secular and sacral law, regardless of ethnicity.

In addition to the parallel between Lev 24:17 and Exod 21:12 noted above, there are several terminological similarities between this passage and the Covenant Code. The most obvious is the identical talionic formulae. While Deut 19:21 expresses the formula with the preposition ב (עין בעין), both Exod 21:23–25 and Lev 24:20 (and v. 17) use the preposition תחת (עין תחת עין). Second, there is a common use of the root שלם in the piel stem in Lev 24 and the Covenant Code. As demonstrated in chapter two, this term in the piel stem is common in legal contexts, occurring 24 times. Of these occurrences, only 18 are found in the legal corpora (CC, D, and H) and of these 18 occurrences, 14 are found in the Covenant Code. Thus the parallel use of the talionic formula, along with the dual occurrence of שלם in the piel stem is significant evidence of intertextuality.

Furthermore, the explicit connection between the “X for X” formula and the word שלם is only found in Lev 24:18 and CC (Exod 21:36). This verse reads,

או נודע כי שור נגח הוא מתמול שלשם ולא ישמרנו בעליו שלם ישלם שור תחת השור
והמת יהיה לו

Or if it was known that an ox was a gorer previously and its owner did not guard it, he shall surely make restitution, an ox for the ox and the dead [ox] shall be to him.

This connection in CC between the talion and restitution (שלם), especially in the context of dead livestock, bears a striking resemblance to Lev 24:18,

ומכה נפש בהמה ישלמנה נפש תחת נפש

And one who fatally strikes a beast shall make restitution, life for life.

The similarities are clear. They both make a connection between the talionic formula and the verb שלם in the piel stem, which, as demonstrated in chapter two, is very significant to the *Mishpatim*.

There are also notable parallels between the Covenant Code and the larger pericope (Lev 24:10–23). For instance, the only other explicit prohibition against blasphemy is found in Exod 22:27, לא תקלל (you shall not curse God).

Furthermore, the use of the verb נצה in the context of the talion parallels the miscarriage case of CC. This is a rare word, which only occurs eight times in the Hebrew Bible. The case of the miscarriage in Exod 21:22–25 is presented as the by-product of men engaging in a fight (נצה). Similarly, the incident of blasphemy is depicted as the by-product of the same situation (v. 10). It is also worth noting that the talionic ruling for a woman who seizes a man's testicles is also presented in the context of a fight (נצה).¹⁰ Furthermore, the famous מות יומת formula of Exod 21:12–17 and 22:18 resurfaces twice in Lev 24:16–17.

¹⁰ An alternate explanation to this was proposed by Mittwoch. He suggested that the verb נצה is an allusion to Exod 2:11–14, the incident when Moses killed the Egyptian (note this parallel, as well) and later attempted to break up a fight (נצה) between two Hebrews. Mittwoch, however, uses these parallels to come up with the unlikely conclusion that Moses was the Israelite involved in the fight of Lev 24:10. See, Mittwoch, "Story of the Blasphemer," 386–89. The parallels between these texts are not substantial enough. After all, Moses, the one with the Egyptian upbringing, was not involved in the fight (נצה) of Exod 2:13; that was between two native Hebrews.

Although this parallel is notable, it also occurs nine times in Lev 20 and is common in narratives with a “para-legal flavour” (Yaron’s term).¹¹ Nonetheless, the numerous terminological parallels between the blasphemy narrative and the Covenant Code clearly demonstrate deliberate intertextuality.

These parallels have not gone unnoticed by scholars. Jackson, for example, wrote, “[T]he Levitical passage gains immensely in coherence if viewed as a literary reworking of themes from the Covenant Code.”¹² These parallels were also of special significance to Westbrook¹³ and noted by several other scholars.¹⁴

When these parallels are recognized, the main focus of the passage becomes clearer. Not only is it about universal obligation to the law, it is also about universal obligation to Israel’s known law (the Covenant Code), regardless of ethnicity. Furthermore, the nature of the law borrowed from the Covenant Code is of significance, especially when contrasted with the law of blasphemy. While blasphemy is the worst of sacril offenses, the laws of vv. 17–21 are noticeably secular (non-sacril). The Holiness authors specifically chose to borrow laws from the most secular and innocuous of Israel’s law, the *Mishpatim*. As was demonstrated in chapter two, this body of laws expresses the ideals of restoration and balance for interpersonal relationships. This is especially demonstrated with the use of the word שלם in the piel stem and its pairing with

¹¹ It occurs in Lev 20:2, 9, 10, 11, 12, 13, 15, 16, and 27. See, Yaron, “Absolute Infinitive in Biblical Law,” 451–53 for a synopsis of this formula in the Hebrew Bible.

¹² Jackson, “Talion and Purity,” 121.

¹³ See, Westbrook, “Lex Talionis and Exodus,” 68–69; and Westbrook, *Studies in Biblical and Cuneiform Law*, 81. While there is merit to Westbrook’s claim, it does not take into account the inclusion of these laws within the narrative, specifically the framing of the legal section with the statement, “as the alien so the native.” As will be demonstrated below, the distinction between crimes of composition and capital crimes does not align with the purpose for which these laws were incorporated into the narrative.

¹⁴ See, for example, Joosten, *People and Land*, 70n199; Milgrom, *Leviticus 23-27*, 2106; and Noth, *Leviticus*, 180; Kellogg, *The Book of Leviticus*, 483; Gerstenberger, *Leviticus*, 366. Alternatively, Budd suggests that these laws and the Covenant Code come from comparable sources. See, Budd, *Leviticus*, 335.

the talionic formula of Exod 21:36. What is most notable about these laws is that they are entirely secular (non-sacral). This is further highlighted by the absence of reference to bloodguilt in vv. 17 and 22, which is common in Priestly sources.¹⁵ Thus the intertextual connections between the blasphemy narrative and the Covenant Code suggest that the main point of this passage is universal obligation to Israel's known law, both secular and sacral, regardless of ethnicity.

3.1.2 The Role of the Talion

Now that the main focus of the passage has been recognized, the role of the talion in its local context can be determined. We note first the contrast between the laws of vv. 17–21 and blasphemy, which illuminates how the talion functions in its local context. While blasphemy serves as the paradigmatic example of sacral offenses, the talion, along with the surrounding laws of vv. 17–21 serves as the paradigmatic example of secular law. Together, these form a merism to encompass the breadth of secular and sacral law.¹⁶ Since, as established above, the focus of this passage is on the universal obligation to the law regardless of ethnicity, the main point of the whole pericope is to emphasize that both the native Israelite and the alien are subject to all of Israel's secular and cultic law. The central position of the talion in this passage is to highlight the fact that even foreigners are obligated to Israel's secular law. Therefore, an examination of the local context indicates that the talion serves as the paradigmatic example of secular law.

¹⁵ See, Num 35:33. For an account of the theme of bloodguilt in the Bible, see, Greenberg, "Bloodguilt," 449–50; and Sperling, "Bloodguilt in the Bible," 19–25.

¹⁶ Hartley also noted that the blasphemy offense pertains to the deity, while the laws of vv. 17–21 pertain to persons. See, Hartley, *Leviticus*, 407.

3.2 The Broader Context

Having established the role of the talion within the local context, the question arises, “How does the use of the talion in this local context serve the greater ideological agenda of its larger context?” In order to answer this question, the place of Lev 24:10–23 within the theological flow of the Holiness Code must be established. As was demonstrated above, the main focus of this passage is the universal obligation to Israel’s secular and sacral law, regardless of ethnicity. Two aspects of this proposition fit into the Holiness Code’s theological agenda: 1) the focus on the alien; 2) the integration of secular and sacral law. When these are explained, the significance of the talion for the Holiness Code can be fully identified.

3.2.1 Focus on the Alien

Two questions must be answered in order to establish how the alien in Lev 24 fits into the theological agenda of H: 1) What is the position of the alien in H? 2) Why does the alien hold this unique position? An answer to these questions will reveal how the focus on the alien in Lev 24 fits into the theological agenda of H.

3.2.1.1 The Unique Status of the Alien in the Holiness Code

Even a cursory reading of the Holiness Code reveals a distinct interest in the alien who resides in the land. While the noun גר only occurs once in Lev 1–16,¹⁷ there are twenty occurrences of it in Lev 17–26.¹⁸ It is often paired with the verb גור (the stranger who sojourns)¹⁹ or coupled in a hendiadys with תושב (strangers and sojourners).²⁰ While

¹⁷ The word occurs in Lev 16:29. Noth has even suggested that this was a late insertion based on its similarity to the Holiness Code. If this is correct, then the term גר does not appear anywhere in the Priestly section of Leviticus. See, Noth, *Leviticus*, 126. See also, Milgrom, “Case for the Pre-exilic and Exilic Provenance,” 50–51; and Knohl, *Sanctuary of Silence*, 27–28.

¹⁸ Lev 17:8, 10, 12, 13, 15; 18:26; 19:10, 33, 34 (twice); 20:2; 22:18; 23:22; 24:16, 22; 25:23, 35, 47 (thrice).

¹⁹ Lev 17:8, 10, 12, 13; 18:26; 19:33, 34; 20:2.

three of these occurrences refer to Israelites (metaphorically or in a simile), the rest concern the alien who resides in the land of Israel.²¹ A brief survey of its usage will demonstrate that the Holiness authors were particularly concerned with how the alien should fit into the religious matrix of Israelite society.

While five of the 17 occurrences of גֵר are associated with the poor of the land, whom the Israelites are admonished to help,²² the remaining 12 are all in the context of legal and sacral obligations.²³ In Lev 17:1–16, there are five paragraphs (vv. 3–7, 8–9, 10–12, 13–14, and 15–16) that deal with regulations for animal slaughter. In the last four paragraphs (which deal with the restriction against offering sacrifice anywhere but in the sanctuary, the prohibition against consuming blood, the injunction to pour out blood, and the prescription for purification after eating impure meat), both the Israelites and aliens are mentioned but the alien is omitted in the first. This omission suggests that the alien could slaughter any animal (for the purpose of food) wherever they pleased, while the native was obligated to bring all kills to the tent of meeting. However, if the alien does wish to kill an animal for sacral purposes, they were to bring it to the sanctuary and were required to follow the set prescriptions that applied to the native. This suggests there was a distinction between the Israelite and the alien in religious duties.

²⁰ Lev 25:23, 35, 47. See also, Milgrom, *Leviticus 23-27*, 2187, who notes the hendiadys.

²¹ Lev 19:34; 25:23, 35.

²² Lev 19:10, 33–34; 23:22. For an evaluation of the use of the triadic construction “alien, orphan and widow” within the Hebrew Bible see, Sneed, “Concern for the Alien,” 498–507. Milgrom notes that since the alien could not own land and did not have family to turn to, they were generally poor. See, Milgrom, “The Alien in Your Midst,” 18. It is therefore not surprising that, given the ethical emphasis of the Holiness School, the people are admonished to treat the alien fairly. This is a common theme throughout the Hebrew Bible. What I am concerned with is the unique emphasis on the legal and cultic obligations of the alien in the Holiness Code.

²³ What follows is a summary of arguments made by Milgrom and Joosten. See, Milgrom, “Religious Conversion,” 170–71; and Joosten, *People and Land*, 63–68.

A comparison between Lev 22 and Lev 23 confirms this distinction. Leviticus 22:17–33 describes the types of offering that are acceptable for sacrifice. These regulations are specified for any man from Israel or the alien, who is in Israel (איש איש (מבית ישראל ומן-הגר בישראל). Thus, whenever anyone makes an offering, it must be performed according to the prescribed regulations. Chapter 23 presents a series of festivals and celebrations. Although there is no mention of the alien, the absence of this term is significant. One of the festivals, the Feast of Booths, is restricted exclusively to the native (Lev 23:42). With one other exception, this is the only occurrence of אֹרֶחַ (native) in the Hebrew Bible that is not paired with the term גֵּר.²⁴ This makes sense since the Feast of Booths, which commemorates Israel's Exodus from Egypt, is only appropriate for the native. From the presence of the term אֹרֶחַ and the absence of the word גֵּר in v. 42, it can be inferred that the other festivals are open to alien participation.²⁵ When all of this is put together, it can be deduced that the alien could voluntarily participate in many of the cultic practices of the natives; the only requirement was that they do so according to the prescribed regulations.

Voluntary participation, however, was not true for all of Israel's obligations. The alien was explicitly required to follow all the prohibitions and admonitions of Lev 18–20. It has been noted above that the use of the word אֹדֶם in Lev 18:5 helps expand the prohibition against foreign cultic practices (chapters 18 and 20) as well as the admonitions of chapter 19, to include all humanity. This is also evident from the explicit

²⁴ This term occurs 17 times: Exod 12:19, 48–49; Lev 16:29; 17:15; 18:26; 19:34; 23:42; 24:16, 22; Num 9:14; 15: 13, 29–30; Josh 8:33; Ezek 47:22; and Ps 37:35. In Ps 37:35, it refers to a tree, which is likely due to the term's etymological roots. Gesenius notes that the term comes from the root זרַח, which means to shoot forth. Thus the native is one who comes from the land. Similarly, the tree of Ps 37 is one that is indigenous and not transplanted from other soil. The wicked person attempted to plant himself like a native tree but wound up dying. See, Gesenius, *Gesenius*, 27. Other than Ps 37 and Lev 23:42, the term אֹרֶחַ is always juxtaposed with גֵּר.

²⁵ For further explanation of this distinction in Lev 23, see, Weinfeld, *Deuteronomic School*, 231–32.

inclusion of the גר (18:26 and 20:2). Since, as Mary Douglas has shown, chapters 18–20 form a structural unit,²⁶ it is reasonable to conclude that the גר is obligated to follow all the prohibitions and admonitions therein, just as the native Israelite.

Putting all of this together, it becomes evident that the alien had a unique position in Israel, according to H. On the one hand, they were permitted voluntary participation in some of Israel's cultic practices. On the other hand, they were bound by the same prohibitions and admonitions as the natives. Leviticus 24:10–23, which further obligates the alien to Israel's law, fits well within this general flow of H. The way in which this furthers its theological agenda, however, can only be established when the reason for this unique position is given.

3.2.1.2 Alien Status and Holiness of the Land

The reason H is preoccupied with the unique position of the alien is due to its perception of the land of Israel. According to H, the land is holy. Milgrom wrote, "In the priestly writing system whatever belongs to God is sacred. Whereas P restricts the sacred sphere to the sanctuary, H extends its borders to embrace the entire land."²⁷ This can be seen in three ways. First, the statement כִּי־לִי הָאָרֶץ (for the land is mine) in Lev 25:23 suggests that the physical land of Israel bore special significance. Second, the fact that the land must have a Sabbath rest (Lev 25:1–7) suggests it was regarded as holy. Third, the fact that sin causes the land to vomit out its inhabitants (Lev 18:24–30; 20:22) indicates that it had a sacral significance similar to that of the tabernacle.²⁸

²⁶ Douglas, "Justice as the Cornerstone," 341–50.

²⁷ Milgrom, *Leviticus 23–27*, 2185. See also, Knohl, *Sanctuary of Silence*, 181–86; and Wright, "Holiness in Leviticus," 355–58.

²⁸ For more comments on this specific theological emphasis on the holiness of the land see, Joosten, *People and Land*, 176–80; and, Weinfeld, *Deuteronomistic School*, 228–29 (although, he does not distinguish between P and H).

The implication of this theological emphasis is that the inhabitants of the land, whether native or alien, must not pollute the land. This is made explicitly clear in chapters 18 and 20, which indicate that the land vomited out the previous occupants (who were obviously not Israelites), on account of their lewd cultic practices (Lev 18:24–30). Thus, the alien, if he wanted to live there, must not pollute the land. This explains the particular emphasis on the alien in the Holiness Code. The presence of foreigners was a reality for the authors and had to be dealt with according to their stress on the holiness of the land.²⁹

Furthermore, this point explains the peculiar position of the alien in H. On the one hand, they were required to adhere to the prohibitions and admonitions of the law. On the other hand, they were only permitted voluntary inclusion in cultic rituals, so long as they conformed to the proper rules of the cult. Non-compliance with the former resulted in pollution. If, however, they decided to enter into the allowable cultic practices, they had to adhere to the regulations for sacrifice (Lev 17:8–16; 22:17–33). If not, their profane sacrifices to YHWH resulted in pollution.³⁰ On account of these arguments, Milgrom wrote,

²⁹ Milgrom has noted that much of H is written in reaction to the particular situation of its own time. See, Milgrom, “Centralization of Worship,” 63. This has caused some scholars to posit an exilic/post-exilic date for its composition, when the presence of aliens would have been a significant issue. See, for example, Van Houten, *The Alien in Israelite Law*, 117–19. Others, however, note that the alien would have been an issue to Israel while wandering in the desert (Exod 12:38). See, Noordtjij, *Leviticus*, 244. I would suggest one cannot draw conclusions as to the date of H, based on the emphasis on the foreigner. The fact is the alien in the land was always an issue to Israel during the desert wanderings, settlement, exile, and post-exile. The emphasis on the alien in the Holiness Code is the result of theological, as opposed to historical, factors.

³⁰ Further clarification of the peculiar placement of the alien may also be found in vv. 15–16 of this pericope. It states, “Anyone who curses his god shall bear his sin. Anyone who blasphemes YHWH shall be put to death.” This indicates that the alien was free to worship whomever he wanted. If he cursed his god, that was his problem and he would have to account to his god. Blasphemy against YHWH, on the other hand, was a capital offence for every human residing in Israel. This suggests that the alien could voluntarily participate in most of Israel’s worship, but they were also free to pursue their own religious practices. See, Noordtjij, *Leviticus*, 246–47.

It must be kept in mind that H is obsessed with the problem of the *ger* both legally and theologically. Since H has expanded P's holiness horizon from the sanctuary to the promised land, it must *ipso facto* be concerned with the *ger* because, as a resident of the land, he is capable of polluting it. Thus the *ger* must heed all the prohibitions incumbent on the Israelite (but not the nonpollutable permissive commandments . . .).³¹

Thus the theological emphasis on the holiness of the land brought about the distinct concern for the alien who resided in the land. The alien was required to follow the law insofar as it related to land pollution.³²

3.2.1.3 Conclusions

Therefore, the way in which Lev 24:10–23 fits into the theological agenda of H can be explained. Up to Lev 24, the Holiness Code demonstrates a tension. On the one hand, it has laid certain prohibitions on the alien, and, on the other hand, it has made certain cultic practices voluntary for the alien. This tension prompts the question, “To what degree are foreigners obligated by Israel’s law?” The blasphemy narrative addresses this question. The extensive intertextual connections between the blasphemy narrative and CC (given above) suggest that the Holiness authors were citing Israel’s known law. Therefore, the significance of blasphemy and the laws of Lev 24:17–21 is clear. In responding to the question, “To what extent was the foreigner obligated to

³¹ Milgrom, *Leviticus 23–27*, 2131–32. Milgrom first argued in 1982 that the alien was required to follow the prohibitive commands since they polluted the land. See, Milgrom, “Religious Conversion,” 170–72. For similar comments, see, Weinfeld, *Place of the Law*, 90–94.

³² The notion that the alien legal obligations of Leviticus relate to land pollution is held by numerous scholars. In addition to the references to Milgrom cited above, see, Milgrom, *Book of Ritual and Ethics*, 175–187; Weinfeld, *Deuteronomical School*, 229–32; Van Houten, *The Alien in Israelite Law*, 139; and Joosten, *People and Land*, 72–73. Levine makes a similar conclusion without recognizing the theological emphasis on the land. He suggests that foreigners were obligated to follow whatever was necessary to maintain the “religious character of the community.” See, Levine, *Leviticus*, 167. For the general priority of the sanctity of the land in H, see, Blenkinsopp, “Structure of P,” 289–92. In contrast, to this general consensus, McConville believes the land is not uniquely holy in Leviticus. Rather, the aliens could voluntarily become full members of Israel since the Israelites in P represent the “destiny of humanity” (30–32). See, McConville, “Israel and Humanity in Leviticus,” 26–27.

Israel's law?" the Holiness authors cite the Covenant Code, which indicates that the foreigner is obligated by all of Israel's known law.

Furthermore, the Covenant Code bears a distinct national focus. This can be inferred from the use of the phrase עֶבֶד עִבְרִי in Exod 21:2 and the different punishments for crimes against slaves in 21:20–21, 26–27, and 32. Since the manumission laws of Exod 21:1–11 are exclusive to native Israelites (עֶבֶד עִבְרִי), then the other laws related to slaves refer to foreign slaves. Furthermore, since a Hebrew slave was only temporarily indentured, he was still viewed as a citizen with full rights; thus all the laws applied to him. The foreign slave, however, was of a different status. This explains why there were separate punishments for the slaves of Exod 21:20–21 and 21:32. This distinction likely prompted Childs to write, "The stamp of Hebrew national law is everywhere and affects the stringency and leniency of the different stipulations. The Israelite is to be handled differently from the stranger."³³ Numerous other scholars have made similar remarks on the national character of the Covenant Code.³⁴

This distinct national character gives further weight to the claim that the Holiness authors were responding to the implied question, "To what extent is the foreigner obligated to Israel's law?" The Holiness authors were keenly aware of the Covenant Code and its distinct national focus. Furthermore, given their view on the holiness of the land, the legal obligations of the foreigner weighed heavily on their minds. While the alien was not obligated to follow all of Israel's cultic practices, they had to avoid land

³³ Childs, *The Book of Exodus*, 437.

³⁴ See, for example, Houtman, *Exodus*, 89. He noted that the Covenant Code was written "with an eye to the male Israelite." See also, Clines, "Being a Man," 3–9; Chirichigno, *Debt Slavery*, 160; and Milgrom, *Leviticus 23–27*, 2126. It should be noted that not all agree that the different punishments for slaves were directed only to foreign slaves. See, for example, Boecker, *Law and the Administration of Justice*, 162; Houtman, *Exodus*, 171; and Marshall, *Israel and the Book of the Covenant*, 116.

pollution, lest all the inhabitants are vomited out. The blatant references to and citation of the distinctly national Covenant Code, therefore, demonstrate that the Holiness authors wanted to make all of Israel's known law binding on the alien. This was necessary because, according to H, non-compliance with the Covenant Code would pollute the land, regardless of ethnicity. Therefore, the focus on the alien in Lev 24:10–23 furthers the theological agenda of the Holiness Code.

3.2.2 Secular and Sacral Law in H

The second aspect of this passage that furthers the theological agenda of H is its integration of secular-moral law with sacral law. Israel Knohl has recently recognized that the incorporation of secular-moral law into the cultic sphere is one of the distinguishing features of the Holiness School.³⁵ The blasphemy narrative is important for this conclusion. He wrote,

[A]ccording to PT's [Priestly Torah's] view, the cultic sphere is completely detached from justice and social morality. HS, on the other hand, which recognizes no separation between the religious realm and the social-moral one, juxtaposes the law of the murderer to that of the blasphemer.³⁶

Thus the use of these distinctly secular laws in this context (vv. 17–21) emphasizes that all offenses cause pollution to the land, even the most innocuous of secular offenses. This is particularly evident when the range of offenses depicted in vv. 17–21 is considered: murder, injury, and property damage. These, according to H, are all sacral offenses that can pollute the land. Knohl further notes, based on Lev 19, that “[T]he

³⁵ Knohl, *Sanctuary of Silence*, 175–80. It should be noted that this is the most significant point of difference Knohl has with Milgrom, who believes P is concerned with morality and ethics. See, Knohl, *Sanctuary of Silence*, 225–30.

³⁶ Knohl, *Sanctuary of Silence*, 179.

violation of any one of God's commandments is considered a defilement of his name."³⁷ This further highlights the significance of the secular laws of talion, set alongside the prohibition against blasphemy. According to H, all these offenses qualify as forms of blasphemy. Therefore, the Holiness authors specifically chose the most heinous of sacral offenses and the most innocuous of secular offenses from the CC to demonstrate that the alien was subject to all of Israel's law. What was once considered innocuous – purely interpersonal – is now subsumed into the sacral sphere.

This claim is strengthened when a sacral element is detected in the terminology of vv. 17–21. The author uses the term מום (blemish) for bodily injuries (vv. 19 and 21). In Lev 21:17–23, the priests are disqualified from service on account of blemishes (מום) and in chapter 22, blemished (מום) sacrifices are deemed unacceptable (vv. 20–21). In light of this, the choice of the word blemish in 24:17–21 may reflect a sacral element in these laws. The author may well have chosen that word to recast the secular laws of CC into the sacral sphere. The Holiness authors considered all offenses found in Israel's law – even the completely secular laws – to have a polluting effect. The alien and the native who inhabit the land must follow all these commands, lest it vomits them out. In this way, the integration of the secular-moral and sacral law of Lev 24:10–23 furthers the theological agenda of the Holiness Code.

³⁷ See, Knohl, *Sanctuary of Silence*, 184 n45. This was also noted by Wright. He wrote, "Apparently any transgression can profane God's name." See, Wright, "Holiness in Leviticus," 352.

3.3 Summary and Conclusions

The form and function of the *lex talionis* in the Holiness Code can now be fully understood.

3.3.1 Function of the Talion

The Holiness authors sought to explicitly incorporate their secular law into the cultic sphere, thus making anyone who dwelt in the land (even the alien) obligated to follow it. The laws of Lev 24:17–21, which are in a central position in the chiasm, embody the ideals of their known secular law. They represent the heart of non-sacral offenses. The talion, in turn, is the centre of the chiasm. Thus the talionic formula lay at the heart of secular law – restorative justice for interpersonal offenses. The holiness authors used the *lex talionis* as a compact and pithy summary of all secular-moral law. They did this to further their theological agenda. Since, according to the Holiness authors, the land was holy and there was little distinction between secular morality and the cultus, the authors paired the talionic formula with blasphemy to demonstrate that the alien was obligated to follow all of Israel's law, secular and sacral, so as to ensure the land would not vomit out its inhabitants.

3.3.2 Form of the Talion

Since the form of the talion in this context has aroused comment, it also bears explanation. Two features of the form of the talion are noteworthy. First, Lev 24:20 is the shortest version of the talion. It has only three members: שבר תחת שבר עין תחת עין שן (fracture for fracture, eye for eye, tooth for tooth). Since the sole function of the formula is to represent secular law, only the essential members are necessary. Eyes and teeth are the most familiar and essential members of the formula. They are the only

members cited in all three biblical occurrences (they are also the members cited by Jesus in Matt 5:38). Additionally, they are the same injuries listed in the closest cuneiform parallel to the biblical formulae: LH 196, 197, and 200. These laws state,

If a seignior has destroyed the eye of a member of the aristocracy, they shall destroy his eye. If he has broken a(nother) seignior's bone, they shall break his bone. . . . If a seignior has knocked out a tooth of a seignior of his own rank, they shall knock out his tooth.³⁸

Therefore there was no need to elongate the formula; it needed only to state its essential members to represent secular offenses. Furthermore, the less common injury שבר (fracture) had to be included on account of the line ואיש כי יתן מום בעמיתו (and a man that gives a blemish to his neighbor . . .). This ensured that the formula encompassed the range of secular offenses from murder to injury to property damage.

The second feature of the talion's form to be explained is the disjoint between תחת נפשנפש (life for life) in v. 18 and the rest of the formula in v. 20. This has prompted two interpretations. First, the proponents of the monetary compensation interpretation argue that "life for life" was paired with the death of an animal so as to explicitly associate the talion with compensation.³⁹ This however, does not take account of vv. 19–20, which use the phrase כאשר עשה כן יעשה לו (according to whatever he did, so it shall be done to him). Westbrook has provided an appealing explanation based on his view that the talion entails the option of compensation or retaliation. He suggests that the Priestly author reinterprets the Exodus talion to separate "life for life" from the rest of the formula, to conform to the Priestly prohibition against composition for murder (Num

³⁸ Pritchard, *ANET*, 175.

³⁹ See, Chinitz, "An Old Canard," 79–85; Doron, "A New Look," 21–27; Mikliszanski, "The Law of Retaliation," 295–303; and West, "Lex Talionis," 183–88.

35:31–34).⁴⁰ While appealing, Westbrook’s interpretation does not take account of the clear emphasis on the native and the alien in this passage. I would suggest that the formula was separated so that it would include a broad range of secular-moral offenses. The laws surrounding the talion (vv. 17–19 and 20b–21) serve an explanatory function to fill out the meaning of the formula. “Life for life” was associated with property damage to make sure the formula encompasses the whole gamut of offenses from murder (v. 17) to injury (v. 19) to property damage (v. 18).

3.3.3 Conclusion

Therefore, the Holiness authors creatively reworked the talionic formula of the Covenant Code to bolster their overall agenda. Although it carried the same basic meaning as that of the *Mishpatim* (restoration and balance for interpersonal offenses), to the Holiness authors the talion was symbolic of something more significant; it represented all of Israel’s secular-moral law. As such, it was set at the centre of a chiasm, which emphasized the integration of sacral and secular-moral law into the cultic sphere. To H, there is no difference between secular and sacral law. On account of this, along with their perception of the land, the Holiness authors paired the talionic formula with blasphemy to demonstrate that the alien was obligated to follow all of Israel’s law, secular and sacral, so as to ensure the land did not vomit out its inhabitants.

⁴⁰ See, Westbrook, “Lex Talionis and Exodus,” 68–69; and Westbrook, *Studies in Biblical and Cuneiform Law*, 81. While there is merit to Westbrook’s claim, it does not take into account the inclusion of these laws within the narrative – specifically the framing of the legal section with the statement, “as the alien so the native.” Westbrook’s distinction between crimes of composition and capital crimes does not align with the purpose for which these laws were incorporated into the narrative.

Chapter 4

The Talion and Courtroom Drama

The final occurrence of the talionic formula is found in the case of the false witness (Deut 19:15–21). The pericope is translated as follows:

15 לא יקום עד אחד באיש לכל עון ולכל חטאת בכל חטא אשר יחטא על פי שני עדים או
 על פי שלשה עדים יקום דבר
 16 כי יקום עד חמש באיש לענות בו סרה
 17 ועמדו שני האנשים אשר להם הריב לפני יהוה לפני הכהנים והשפטים אשר יהיו בימים
 ההם
 18 ודרשו השפטים היטב והנה עד שקר העד שקר ענה באחיו
 19 ועשיתם לו כאשר זמם לעשות לאחיו ובערת הרע מקרבך
 20 והגשארים ישמעו ויראו ולא יספו לעשות עוד כדבר הרע הזה בקרבך
 21 ולא תחוס עינך בנפש עין בעין שן בשן יד ביד רגל ברגל

A single witness shall not arise against a man for any offence or for any wrong against any wrong that he wrongs. Upon the mouth of two witnesses or the mouth of three witnesses shall a matter arise. If a malicious witness arises against a man to testify against him rebellion, then the two men who are in the dispute shall stand before YHWH and before the priests and the judges who are in those days, and the judges shall seek diligently and behold a false witness. The witness is false. He testified against his brother. And you shall do to him as he plotted to do to his brother. And you shall purge the evil from your midst. And those remaining shall hear and they shall fear and they shall never do again according to the matter of this evil in your midst. And your eye shall not pity, life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.

The basic flow of the case is fairly clear. It begins with a general principle: all legal cases require more than one witness (v. 15). This is followed up with the procedure for the eventuality of a false witness. The conflicting parties must go to the central sanctuary where an investigation will be conducted and a verdict pronounced (vv. 16–18). Then follows a punishment that corresponds to that which the accused would have

otherwise received (vv. 19–21). Other than the function of the talion and a few minor issues,¹ the case is clear.

As was done in chapters two and three, the function of the talion will be examined on two levels. First, the local context will be examined with the aim of answering the question, “How is the talionic formula functioning in this particular context?” Second, the broader context will be examined with the aim of answering the question, “How does the use of the talion in this local context serve the greater ideological agenda of its larger context?” These examinations will shed light on how the Deuteronomic draftsmen employed the talionic formula.

4.1 The Local Context

There are two issues regarding the relation between the talion and the case of false accusation. The first has to do with the seriousness of the allegation, while the second involves the degree to which it corresponds to the crime.

4.1.1 Seriousness of the Accusation

There seems to be a tension within this case as to whether it refers solely to a capital accusation or to any type of allegation. On the one hand, there are signals in the text that suggest the law deals with capital accusations, which has implications for the talion. If it assumes only capital allegations, then only the first part of the talion is appropriate (life for life). There are three indications that this may be the case. First, the fact that this law follows the homicide laws (Deut 19:1–13) suggests it is serious.

¹ One interpretational difficulty has to do with the identity of the parties that are in the dispute. Is it the false witness and the accused? Or, is it a conflict between a false witness and a true witness? On the one hand, the opening verse indicates that a matter can only arise on the testimony of more than one witness. Thus a lone witness (false or not) is insufficient to arouse a legal case. This would suggest we are simply dealing with a dispute between a slanderer and the slandered. On the other hand, the language indicates that we are dealing with a legal case. If it is true that it can only be made with multiple witnesses, then the dispute may be between a false witness and a true witness.

Second, the case contains three motive clauses² that imply the death penalty:³ 1) the purge formula (and you shall purge the evil from your midst);⁴ 2) the “hear and fear” formula (those remaining shall hear and fear and not repeat);⁵ 3) the pity formula (your eye shall not pity).⁶ These only seem appropriate to the case if the false witness was to be executed. Third, the use of the word טרה suggests the allegation has to do with apostasy, which required the death penalty.⁷ All these clues strongly suggest the only possible

²Sonsino defines motive clauses as “dependent clauses or phrases which express the motive behind the legal prescriptions or an incentive for obeying them.” See, Sonsino, “Characteristics,” 207. Frymer-Kensky similarly wrote that motive clauses “underline the origin of the law, make a promise for keeping it, explain the reason for it, hold out threats, and give purpose for the laws.” See, Frymer-Kensky, “Israel,” 979. Doron gave the narrower definition, calling them, “sentences in which the motivation, or reason for the commandment, is given.” See, Doron, “Motive Clauses,” 62.

³Two scholars who argued that the death penalty is in view in this case, based on the motive clauses, are Weaver and Davis. Both these scholars are most concerned with Jesus’ use of the formula in Matt 5:38. On account of verbal and contextual evidence, it is suggested (Weaver, “Transforming Nonresistance,” 38) that Jesus was drawing on this occurrence of the formula. These scholars appear to favour the capital interpretation of this law because it is the only way the law can be interpreted as literal talion, which would make it most antithetical to Jesus’ statement “do not resist an evil one” (Matt 5:39). Weaver thus wrote, “For the Deuteronomist the *lex talionis* is an active and enforceable piece of legislation that defines in specific terms the punishment to be meted out to the ‘unjust witness.’” She further wrote, based on the purge formula, “[T]here is for the Deuteronomist one fundamental means for ‘removing the evil one from your midst’ namely, *the execution of the offender by the community*” (Italics hers). See, Weaver, “Transforming Nonresistance,” 44–45. Similarly, Davis wrote, “The focus of the passage does indeed appear to be on the ultimate accusation, an accusation that if proven true would warrant the death penalty.” He further wrote, “[T]he phrase ‘life for life’ in Deuteronomy 19 must be interpreted literally.” See, Davis, *Exhortation of Jesus*, 47. For other scholars who argue this see, Mayes, *Deuteronomy*, 290; and Phillips, *Ancient Israel’s Criminal Law*, 143.

⁴This formula is particularly strong evidence, recommending a capital allegation. It is seen in ten other instances in Deuteronomy (13:6; 17:7, 12; 19:13; 21:9, 21; 22:21, 22, 24, 24:7), each time in the context of the death penalty.

⁵This formula occurs three times in Deuteronomy (13:12; 17:13; 21:21).

⁶This formula, though not often identified as a motive clause, serves to suppress sympathy in the face of a harsh punishment. In this way it can be categorized as a motive clause. It is repeated four other times in Deuteronomy (7:16; 13:9; 19:13; 25:12).

⁷The only other occurrence of this word in Deuteronomy is found in 13:6, which condemns one for propagating טרה. Carmichael has also highlighted the significance of this term to denote the seriousness of the accusation. He, however, has an entirely different approach to this case. He believes this law (and all biblical law) was formulated in reflection upon Israel’s history, as depicted in the biblical narratives. Specifically, the talion in Deuteronomy was formulated in response to the Naboth narrative of First Kings, especially the talionic language of 21:19 and 22:38. As such, it refers to public mutilation of the corpse after the death penalty is administered, much the same as dogs licked the blood of Naboth and Ahab. He wrote, “It means a life for a life – to be followed by the systematic mutilation of the offender’s corpse.” See, Carmichael, “Biblical Laws of Talion,” 107–13; and Carmichael, “The History of a Formula,” 4, 7–18. Driver noted that while it is often used in the context of defection against God, “here it appears from the context to be used more generally.” See, Driver, *Deuteronomy*, 235,

punishment for the crime would be the death penalty. If so, the lengthy talionic formula does not seem to fit since it deals with both injury and death.

On the other hand, there are also clues in this case that suggest it deals with any type of false allegation. There are three clues. First, the opening verse (v. 15) uses broad language to describe the range of offenses that require multiple witnesses (no case may arise for any offense or any wrong in all wrongs that he wrongs).⁸ This, in turn, creates the impression that the false witness of vv. 16–19 may launch an allegation regarding any offense, not just capital ones. Second, the use of the phrase ועשיתם לו כאשר זמם לעשות לאחיו (and you shall do to him what he plotted to do to his brother) suggests a range of possible accusations. If the case depicts a capital accusation, then the death penalty would be expected. Deuteronomic law contains 13 crimes requiring the death penalty. The draftsmen had numerous means at their disposal to specify whether or not the allegation was capital.⁹ The punishment is not stated in fixed terms, however. Brueggemann has noted, “The punishment is not set out in terms of exact measure, but is simply a statement of proportionality.”¹⁰ This is further emphasized by the range of injuries listed in the talion. These punishments therefore suggest that the offense could involve a range of allegations.

In the end, the tension between a capital allegation and any other allegation cannot be fully resolved. The clues recommending a capital accusation cannot be

⁸ Wells argues (persuasively) that this line explicitly included both secular and cultic crimes. This is confirmed by the numerous intertextual affinities with Deut 17:2–7 and 8–13. Levinson has demonstrated that these two sets of laws are intimately connected. The first stipulates that the worst of cultic offenses is to be settled locally by rational means. The second lists a series of secular offenses that are to be tried at the central sanctuary. See, Wells, *Law of Testimony*, 103–04; and See, Levinson, *Legal Innovation*, 110–37. It is likely that Deut 19:15 builds on these two laws to include all secular and all cultic law.

⁹ For a complete list and summary of all the capital crimes in the D code, see, Stulman, “Social World of the D Code,” 617–20.

¹⁰ Brueggemann, *Deuteronomy*, 205.

ignored, while the clues suggesting otherwise must be taken seriously. It, therefore, seems the draftsmen primarily had a capital (perhaps cultic) allegation in mind, but went out of their way to leave open the possibility of lesser (perhaps secular) charges.¹¹ The presence of the talion can be explained in this way. The draftsmen used the talionic formula to complement the phrases 'לכל עון ולכל חטאת בכל חטא אשר יחטא' and 'ועשיהם לו' 'כאשר זמם לעשות לאחיו' which was an intentional means of including all forms of false accusation in this law.¹²

4.1.2 Connection between the Formula and False Accusation

A second issue regarding the function of the talionic formula in this case has to do with the degree to which it relates to the depicted crime. One cannot conceive of many accusations that could lead to talionic punishment other than death. There is hardly any mention of a crime in Deuteronomy that would require physical maiming. In fact, of all the punishments listed, death is most common. There are two references to whipping (22:18) and another reference to beating (25:2–3). The only punishment that prescribes mutilation is Deut 25:11–12. This case specifies that a woman who clutches a man's testicles in the course of a fight must have her hand cut off. Other than this case, there does not seem to be any indication from the Deuteronomic laws that the talion dyads (except life for life) would correspond to any false testimony. While it is possible that the draftsmen had other crimes in mind that require penalties beyond the laws of

¹¹ Perhaps including the offenses listed in Deut 17:8.

¹² Jackson also sees a direct connection between the talion and the phrase 'ועשיהם לו כאשר זמם לעשות לאחיו'. See, Jackson, *Semiotics*, 271–80.

Deuteronomy,¹³ it is unlikely that the *lex talionis* would have been included in this. Thus, the talion does not seem to fit with the details of the crime of false accusation.

Furthermore, there is one text in Deuteronomy that deals with an actual instance of a false accusation, which does not prescribe talionic punishment (Deut 22:13–21). In this case, a man accuses his new bride of being unchaste (vv. 14, 17). If the accusation cannot be disproved, the woman is to be stoned to death (vv. 20–21). If evidence of her virginity can be produced, however, then the man is to be whipped, fined, and prohibited from divorcing her (vv. 15–19). Thus, the husband’s false accusation does not bring about the punishment that his bride would have received had the allegations been true (death). While some explanations have been made that negate this incongruence,¹⁴ it still gives rise to the question of how appropriate the talionic formula is to the crime of false accusation.

Additionally, the talionic formula does not seem to fit with the crime of false accusation, since the crime does not bring any harm. Although the talionic phrase “you shall do to him as he plotted to do to his brother” fits, the formula “eye for an eye” does not. The text states that the accuser will be punished according to what he plotted (זמם) against his brother, not according to what punishment the accused actually received.

¹³ The possibility of other crimes can be inferred from Deut 22:18. This case limits the amount of lashes a guilty man can receive for his crime to no more than forty. The crime, however, is not specified. It simply states if there is a dispute between men (כִּי־יִיָּהֶה רִיב בֵּין אַנְשִׁים), then the guilty party ought to be beaten (בֶּן (הַכּוֹחַ הַרְשַׁע (כְּדִי רִשְׁעוֹ בַּמִּסְפֵּר) according to the number sufficient for the offense (וְהִכּוֹהוּ) for a penalty, it can be inferred that there must have been other crimes that may have warranted talion. From this it may also be inferred that there were other crimes that may warrant talion.

¹⁴ For a full account of all the issues and past explanations, see, Wells, “Sex, Lies, and Virginal Rape,” 41–72. While using comparative historical legal analysis, Wells determines that no incongruence exists. The accusation was against the girl’s father and did not involve intent to harm the girl, only shame to the father. His punishment corresponds to the shame her father would have received had the accusation been proven true. This, according to Wells, is consistent with records of legal practice in neighbouring nations.

Thus, no physical harm was actually inflicted against the accused.¹⁵ The language of the talionic formula entails harm. An eye has to be lost in the first place for an eye to be extracted as punishment. At best, the formula in this context must be read as “an eye for the attempt to cause harm to an eye.” Thus, the talionic formula does not seem appropriate to the crime depicted in Deut 19:16–21.

As a result of these difficulties, some have suggested that the talion was a late addition to the law with no real relevance. Von Rad, for example, wrote, “This ancient and weighty legal maxim occupies merely a modest position here, being cited as part of a sermon-like addendum.”¹⁶ This, however, does not recognize the formula’s relation to the talionic phrase *ועשיתם לו כאשר זמם לעשות לאחיו* (and you shall do to him what he plotted to do to his brother) in v. 19 and the range of offenses in v. 15 (*לכל עון ולכל חטאת*) (*בכל חטא אשר יחטא*). Thus the loose connection between false accusation and talion is not sufficient grounds to deem the formula irrelevant to the text.

Others have argued that the formula refers to monetary compensation since all penalties for maiming were compensatory in the first place. Huffmon, for example, wrote, “The penalty in the case involving perjury would be compensation or fine.”¹⁷ Similarly, Chinitz wrote, “[I]f he testifies that his fellow maimed another man, what he intended for the victim of his false testimony was not the literal eye-for-eye but monetary compensation. Therefore his punishment is also monetary and not literal.”¹⁸ While this

¹⁵ While I recognize that a false accusation causes reputational damage, particularly in the Near Eastern context, I am concerned with the literal connection between the talion and this context. Thus the lack of physical harm in the crime of false accusation demonstrates that the talion has no literal connection with the depicted crime.

¹⁶ Von Rad, *Deuteronomy*, 129. For similar positions, see, Vogt, *Significance of Torah*, 132–33; Mayes, *Deuteronomy*, 291; Nelson, *Deuteronomy*, 243; and Sarna, *Exodus*, 126.

¹⁷ Huffmon, “Lex Talionis,” 321.

¹⁸ Chinitz, “An Old Canard,” 84. See also, Mikliszanski, “The Law of Retaliation,” 299; and West, “Lex Talionis,” 184.

explanation makes the talion more relevant to the case at hand, it proves to be unsatisfactory. It does not fit the motive clauses mentioned above, which assume a harsh penalty.

Another means of dealing with the loose connection between the crime and the talion is to view it as a rhetorical means of expressing a principle. Sarna, for example, wrote,

The detailed specification [of the talion] is . . . entirely inappropriate to the case in question, if taken literally. . . . No witness, truthful or lying, could by his testimony in court have caused the defendant to receive any of the mutilations listed. Hence the witness could never himself have lost an eye or a limb. The 'eye for an eye' formula manifestly reiterates the generalized principle in concrete form for the sake of emphasis.¹⁹

Proponents of this rhetorical interpretation, however, still seem to favour the compensation understanding. Sarna also wrote,

It is a rhetorical formulation in concrete terms of an abstract principle. . . . On the operational level this is possible only in respect of the death penalty . . . Exact equivalence in respect of bodily injury is literally unenforceable. In such cases, pecuniary compensation would be the logical procedure.²⁰

Several other scholars maintain the monetary compensation understanding, while recognizing the formula's rhetorical function.²¹ This understanding is also unsatisfactory, however, because it does not recognize the force of the motive clauses. If the principle was meant to function as a guide for compensation, the punishment would be ineffective, both as a deterrent as well as a means of purging evil. The injunction to show no pity would also be inappropriate for a fine. Thus, while the rhetorical interpretation has merit, it is not consistent with the compensation interpretation.

¹⁹ Sarna, *Exploring Exodus*, 188.

²⁰ Sarna, *Exploring Exodus*, 186.

²¹ See, Sprinkle, "Interpretation of Exodus 21:22-25," 242-43; Vogt, *Significance of Torah*, 133; Craigie, *The Book of Deuteronomy*, 270; and de Vaux, *Ancient Israel*, 149-50.

This rhetorical interpretation can only be maintained if it avoids the pitfalls of the monetary compensation explanation. Tikva Frymer-Kensky, for example, attempted this.

She wrote,

Here [Deut 19:16–21] the literal meaning of ‘eye for eye’ makes no sense, for Israel did not have a system of mutilation as punishment except as talionic retribution for physical injury. . . . The sanction ‘eye for eye’ in the provisions for the treatment of the false witness clearly is intended as a formulaic statement of the philosophical principle of equal retribution.²²

This interpretation, however, does not seem to fit the crime. In the case of false accusation, no harm was actually done. Therefore, the principle of equal retribution, which assumes the severity of punishment must correspond to the inflicted harm, cannot apply to a case where no harm was ever inflicted. Barmash (a defender of this same rhetorical explanation) was more reserved and, while commenting on Deut 19, wrote, “*Lex talionis* articulates a concept of equivalence.”²³ Thus, the rhetorical interpretation is difficult to maintain, whether one resorts to monetary compensation or philosophical principles.

Jeffrey Tigay has provided helpful insight for solving this loose connection between the talion and false accusation. He wrote,

The meaning of the formula is not limited to what it says literally. Had the accused been charged with murder or maiming, the false witness would indeed pay with his life, eye, tooth, hand, or foot. In other cases, however, he would pay whatever other penalty would have been imposed on the accused.²⁴

Thus Tigay believes the *lex talionis* is a type of synecdoche. The talion dyads are a few possibilities that represent the range of punishments that might apply to the crime.²⁵

²² Frymer-Kensky, “Tit for Tat,” 232.

²³ See Barmash, *Homicide* 155–77, esp. 158.

²⁴ Tigay, *Deuteronomy*, 185.

²⁵ See also, Tigay, *Deuteronomy*, 378n52.

Although Sarna is correct in saying the talion dyads are not applicable to the case at hand, Tigay's contention that they represent more than their individual members is noteworthy. Even if the members of the talion are applicable to this crime (as Tigay contends), they are an odd choice to represent the whole since other types of accusation would be more typical. It seems, therefore, that the talionic formula, as employed in this case, is a generalized formula that represents the range of punishments that might apply to the crime of false accusation. Although the eyes, teeth, hands, and feet are not relevant, the formula is appropriate because it is a poetic "catch-all" punishment that fits the potential diversity within the crime of false accusation.

4.1.3 Summary and Conclusion

An explanation as to how the talionic formula fits into this local context can now be given. There are two reasons why the formula cannot literally apply to this case. First, the types of corporal punishment listed in the formula appear inappropriate as a penalty for any type of false accusation. Second, the formula does not fit because the crime did not bring about any injury. Even if corporal punishment was possible, the case does not envisage a successful crime. There was no harm done. Thus, the phrase "eye for an eye" does not apply since no eye was lost in the first place. Therefore, the talionic formula does not literally apply to this crime.

Despite this lack of literal connection, the formula bears two rhetorical connections. It has been demonstrated that the draftsmen took pains to ensure that the crime covers all ranges of possible false accusation. Tigay has shown that talion dyads represent a range beyond its individual members; it was rhetorically flexible. Even if the members of the formula do not match, the range of the talion corresponds to the range of

possible false accusations. Thus, the first rhetorical connection to this crime has to do with range.

The second connection has not been precisely articulated by any of the commentators cited above. Rather, a legal scholar, William Miller, noted this second connection. This has to do with the idea of reciprocity, or fitness. Much has been made of the equivalence between crime and punishment expressed in the formula. The injurer must suffer to the exact same degree as the injured. Also embedded in this is the concept of “fitness” – the punishment must fit the crime. While equivalence and fitness are normally inseparable – especially in the talion – the Deuteronomic author is only concerned with the aspect of “fitness.” Equivalence makes no sense in this crime since no physical harm was actually done. Fitness, however, does apply to this crime. Miller wrote, “[H]e [the Deuteronomist] is concerned with fitness, if not quite balance, the aptness of making the punishment fit the crime, of having what the offender thought to do to his brother rebound upon his own head.”²⁶ This ideal of “fitness,” or reciprocity, is exactly what is entailed in the phrase “you shall do to him as he plotted to do to his brother.” In this way, the formula fits into the local context. Therefore, at the local level, the formula bears two rhetorical connections to this case. On the one hand, it emphasizes the range within the crime of false accusation. On the other hand, it expresses the legal ideal of reciprocity that complements the phrase, “you shall do to him as he plotted to do to his brother.”

4.2 The Broader Context

With the function of the talionic formula in its local context established, the question can be asked, “How does the use of the talion in this local context serve the

²⁶ Miller, *Eye for an Eye*, 64.

greater ideological agenda of its larger context?" In order to answer this question, a distinction must be made between talionic *punishment* and the talionic *formula*. This case contains both. The punishment is stated in the phrase, "you shall do to him as he plotted to do to his brother" (v. 19). It is simply a penalty that directly corresponds to an offense. The formula, on the other hand, uses the specific "X for X" wording. It is a stylized and poetic complement to the punishment of v. 19. The *punishment* is common in the ancient Near East. Driver and Miles, for example, cite 13 punishments in the laws of Hammurabi that they describe as, "mirroring punishments, where the peccant organ suffers the penalty."²⁷ This type of punishment is also found in relation to the talion of the Holiness Code, Lev 24:19b (according to whatever he did, so shall it be done to him). The talionic "X for X" formula, on the other hand, never occurs in the Mesopotamian law as a punishment.²⁸ This distinction is important because it will be demonstrated that while talionic *punishment* does not bear great significant for the case of false accusation, the talionic formula does; it reflects the Deuteronomic mode of expression.²⁹

²⁷ See, Driver and Miles, *The Babylonian Laws*, 499. They cite LH 192–97, 200, 205, 218, 226, 253, and 282.

²⁸ It should be noted that although there is no "X for X" formula as a punishment in cuneiform law, an "X for X" formula does occur in reference to offenses involving movable property. For example, the laws of Hammurabi use the phrase "slave for slave" (LH 12, 219), "ox for ox" (LH 245), and "sheep for sheep" (LH 263). The Sumerian Laws also use the phrase "ox for ox" (SL 10). See, Pritchard, *ANET*, 160; 175–77; 526. Since these all refer to movable property, it is likely that they refer to repayment in kind, not retaliation.

²⁹ It should be noted that the false accusation case as a whole is significant for the theological agenda of the Deuteronomic corpus, apart from its use of the talionic formula. It demonstrates a direct literary relation to chapters 13 and 17 and may very well have drawn from Exod 22:6–10. It reflects Deuteronomy's polemic against overly mystical cult (perhaps of P) in favour of rationalization and secularization. Weinfeld has demonstrated that the rational investigation performed by the central officials in Deut 19:15–21 was part of D's program of secularization, which stands in contrast to previous supra-rational means of judicial resolution. See, Weinfeld, *Deuteronomic School*, 179–243, esp. 235–36. For a contrary view, see, Levinson, *Legal Innovation*, 110–37. He argues that Deut 17:2–7 and 8–13 reform the previous practice, whereby difficult cases were handled by supra-rational means at the local sanctuary. These two texts combine, according to Levinson, to secularize local adjudication and restrict supra-rational judicial measures to the central sanctuary. In this way, judicial practices were reformed according to Deuteronomy's program of cult centralization. Levinson's conclusions, however, seem to ignore the secular adjudication of the central sanctuary in 19:18. Thus, Weinfeld's observations are correct. See also,

To demonstrate this, two points will be made. First, it will be shown that talionic *punishment* for false accusation was common in the ancient Near East. From this it can be reasoned that since talionic punishment was the standard punishment for the crime of false accusation, it does not bear great significance for the larger Deuteronomic agenda. Second, it will be shown that although the talionic *punishment* is insignificant, the talionic *formula* was significant; it was employed to cast this law into the paranetic style that pervades Deuteronomy. Thus the formula serves a stylistic, rather than theological, agenda.

4.2.1 Talionic Punishment and False Accusation in the Ancient Near East

Talionic punishment (as opposed to the talionic formula) for the crime of false accusation was common in the ancient Near East, both in practice and the law collections. Frymer-Kensky, for example, cites a letter that indicates false accusers are burned to death.³⁰ Similarly, Wells cites two Neo-Babylonian trial records (Nbn 13 and Cyr 332), which indicate that talionic punishment was actually carried out against false accusers.³¹ This is natural, since the ancient legal systems relied so heavily on witness testimony. The stakes had to be high for those launching an accusation. Otherwise anyone could manipulate the legal system for personal benefit at the expense of another.³² On account of this, Westbrook wrote, “This act [false accusation] was

Wells, *Law of Testimony*, 102. He tries to uphold both opinions. Therefore the false accusation case is very significant for the Deuteronomic agenda. The talion, however, does not contribute to the larger corpus in this way.

³⁰ See, Frymer-Kensky, “Tit for Tat,” 231. The same text is also cited and translated by, Driver and Miles, *The Babylonian Laws*, 64.

³¹ See, Wells, *Law of Testimony*, 150–52.

³² Frymer-Kensky also notes this. In the letter she cites, the accusers stand to inherit the property of the accused, should the allegations prove true. Thus, anyone could launch an accusation for material gain. The stakes had to be high in order to “minimize the risk of false accusation in the hope of material gain.” See, Frymer-Kensky, “Tit for Tat,” 231.

considered ideal for application of the talionic principle.”³³ Thus talionic punishment was the standard penalty for the crime of false accusation.

This punishment is also found in the legal corpora. Although, as demonstrated in chapter one, these texts were not legislative and, therefore, not the source of legal practice, this is one case where legal practice served as a source for the written law.³⁴

Talionic punishment for false accusation can be found in the laws of Hammurabi. For example, LH 1–4 state,

If a seignior accused a(nother) seignior and brought a charge of murder against him, but has not proved it, his accuser shall be put to death. If a seignior brought a charge of sorcery against a(nother) seignior, but has not proved . . . the one who brought the charge of sorcery against him shall be put to death If a seignior came forward with false testimony in a case, and has not proved the word which he spoke, if that case was a case involving life, that seignior shall be put to death. If he came forward with (false) testimony concerning grain or money, he shall bear the penalty of that case.³⁵

Similarly, one of the laws of Ur-Nammu states, “If a man appeared as a witness (in a lawsuit), but declined to testify on oath, he must make good as much as is involved in that lawsuit.”³⁶ Furthermore, one of the Laws of Lipit Ishtar states,

If a man has accused another man without having seized him (in the act or in a matter about which he does not know) and that man has not

³³ Westbrook, “Punishments and Crimes,” 554.

³⁴ Proving this point seems to be the main goal of Bruce Wells. He did a comparative examination of the Pentateuchal laws of testimony with the Neo-Babylonian trial records to prove that the Pentateuchal laws reflect actual legal practice. Or, put differently, legal practice served as a source for the legal text. See, Wells, *Law of Testimony*, 155–57.

³⁵ See, Pritchard, *ANET*, 166. For the sake of simplicity, I have omitted a section from the sorcery law that involves an ordeal to prove the accused’s innocence. The way it is stated still proves the present point. For further explanation of these laws, see, Driver and Miles, *The Babylonian Laws*, 58–68. Despite difficulties, they conclude that talion is the basic principle behind these laws.

³⁶ Pritchard, *ANET*, 525. It should be noted that although Ur-Nammu contains this provision, elsewhere perjury is met with a simple fine. Frymer-Kensky suggests, “It was not until the early Old Babylonian Period that the idea of equal retribution became the standard operating procedure in the legal system.” See, Frymer-Kensky, “Tit for Tat,” 232.

substantiated (the charge), (the man) who cast the accusation will bear the penalty of the accusation that he charges.³⁷

In addition, even the deposit law of Exod 22:6–8 seems to impose talionic punishment in the case of false accusation. It states,

Upon every false word, about an ox, about a donkey, about a sheep, about a garment, about any lost thing that he says, “This is he,” the case of the two shall come to God. Whoever God declares wicked, *he shall make restitution twofold to his neighbour.*

Although this case only deals with theft, the penalty is still talionic; the false accuser is required to pay exactly what the accused would have had to fork over.³⁸ All these examples indicate that perjurers are to receive a punishment that corresponds to the weight of their allegation.

This, therefore, demonstrates that talionic punishment was the standard penalty for the crime of false accusation in the ancient Near East.³⁹ As such, there is no reason to suggest that the talionic punishment of Deut 19:19a is of great significance for the theological agenda of Deuteronomy; it was natural to the case.

4.2.2 Talionic Formula in Deuteronomy

Although talionic punishment (v. 19a) is only natural to the case of false accusation, the examination of the local context revealed that the talionic formula (v. 21b) was not natural; it had no literal connection to the crime. Rather, the formula was employed to help cast this law according to the unique Deuteronomic mode of expression. What is unique to Deuteronomy is its homiletic and exhortative style.

³⁷ This is LL 25, as translated by Frymer-Kensky. See, Frymer-Kensky, “Tit for Tat,” 231. For other false witness laws in the cuneiform legal corpora that have talionic punishments, see, LH 126–27 and MAL A 18.

³⁸ For more on the talionic nature of this punishment, see, Wells, *Law of Testimony*, 143; and Westbrook, “Deposit Law,” 397.

³⁹ For further confirmation of this, see, Westbrook, “Punishments and Crimes,” 554; and Wells, *Law of Testimony*, 141–57.

Weinfeld wrote, “The fundamental innovation in Deuteronomy is neither the legislation nor the history woven into it, but the homiletic framework, which enfolds the entire book.”⁴⁰ Elsewhere he wrote, “The book of Deuteronomy is . . . a synthesis of Torah and sapiential thought.”⁴¹ Similarly, Von Rad wrote, “This trend toward exhortation is the real characteristic of the Deuteronomic presentation of the law.”⁴² Therefore, a distinct feature of Deuteronomic law is that the legal statutes were cast into an exhortative and sapiential mode of expression. This is most evident from the proliferation of motive clauses throughout the laws.⁴³

The use of the talionic formula complements this mode of expression. When Deuteronomy’s law on false accusation is compared with the above examples, what is immediately noticeable is that none of the talionic punishments for false accusation use a formula. They all either specify the allegation and punishment, or they simply state that the punishment will correspond to the accusation.⁴⁴ This is typical of strictly legal discourse. If the false witness law of Deuteronomy stopped at v. 19a with, ועשיתם לו כאשר זמם לעשות לאחיו (then you shall do to him as he devised to do to his brother), then it would reflect the same style as these other provisions. The pericope, however, does not stop there. The Deuteronomic authors cast the false accusation law into its distinct sapiential style. The talionic punishment is followed by three motive clauses and the talionic formula.

⁴⁰ Weinfeld, “Humanism in Deuteronomy,” 242.

⁴¹ Weinfeld, *Deuteronomic School*, 294.

⁴² Von Rad, *Deuteronomy*, 19.

⁴³ Sonsino estimates that 50% of the laws of Deuteronomy contain motive clauses. See, Sonsino, “Characteristics,” 208.

⁴⁴ This is evident in the phrase, “he shall bear the penalty of that case” in LH 4 and 13. For an explanation of this phrase, see, Driver and Miles, *The Babylonian Laws*, 67–68.

The formula played a significant part in the Deuteronomist's effort to cast the false accusation law into this sapiential style. Two of the motive clauses (the "hear and fear" formula and the "no pity" clause) only occur in contexts with a particularly harsh penalty, which has a deterrent function.⁴⁵ This, along with the purge formula, suggests that the author wanted to ensure that the judiciary remained free from perjurers through strong exhortative language. Weinfeld called this law a "moral exhortation directed at the individual in a way characteristic of the book of Deuteronomy." This, according to him, is evident from its "sapiential phraseology."⁴⁶ The talionic formula was an ideal means of furthering this purpose. The more technical and benign phrase, ועשייתם לו כאשר (then you shall do to him as he devised to do to his brother) does not suit these motive clauses. The vividly brutal and poetic force of the talionic formula, on the other hand, complements these motive clauses well. Cairns also recognized this. He wrote,

The *lex talionis* is formally presented as the application of v. 19. Practically, however, the connection is much looser. The *lex talionis* here

⁴⁵ The "hear and fear" clause seems to be appended to cases that bear a particularly harsh or public punishment. The case of the intimate relation who promotes apostasy (Deut 13:7–12) and the case of the rebellious son (Deut 21:18–21) requires stoning. This method of execution was obviously public. Furthermore, the punishment seems harsh because each case deals with intimate relationships. The case of insubordination against the legal decision of the central court (Deut 7:8–13) also seems harsh. The crime does not seem to warrant death. The law begins (v. 9) with the instruction to bring difficult cases of any kind (דבר למשפט ביני-דם לדם ביני-דין לדין ובין נגע לנגע) to the central court. Once the central court gives a decision, insubordination against their instruction merits the death penalty. If the difficult case dealt with capital crimes, then death for insubordination (i.e., not executing the guilty party) may be appropriate. Death for failing to carry out a sentence for a lesser crime, such as נגע (assault) for instance, seems excessive. Thus, the "hear and fear" formula seems to be appended to punishments that would provide good deterrent value on account of their harshness or their public nature. The "pity" clause serves a similar function. Weinfeld wrote, "The phrase ולא תחוס עיניך . . . arises from the special context. Whenever there is a danger that the punisher would be lenient or even unwilling to perform the punishment, the author uses, "you must show (him) no pity." Examples are to be found in the case of the total extermination of the Canaanites (7:16), the executing of one's relative or friend (13:9), the killing of a person brought back from the city of refuge (19:13), the executing of a false witness who has not actually committed the crime (19:21), and the cutting off of the hand of a woman accused of immodesty (25:12)." See, Weinfeld, *Deuteronomistic School*, 2; and Paul, "Biblical Analogues," 338–39. Thus, these two motive clauses were generally appended to cases with particularly harsh penalties.

⁴⁶ See, Weinfeld, *Deuteronomistic School*, 288.

is simply used out of context, as an ancient solemnity to close the parenthesis with a stress on the extreme seriousness of bearing false witness.⁴⁷

Thus, the Deuteronomic authors introduced the talionic formula to recast its false accusation law into its distinct exhortative style. The hortatory motive clauses required the punishment to be stated in more vivid and radical terms to further this aim. Thus the talionic formula made a stylistic contribution to the larger Deuteronomic corpus, rather than a theological or ideological contribution.

4.3 Conclusion

To sum up, the talion in Deuteronomy is entirely rhetorical and stylistic. This can be seen from both the local and the broader contexts. At the local level, while the talion has no literal connection to the case, there are two rhetorical links. The first has to do with range. Just as this crime encompasses a range of possible accusations, so also the talionic formula covers a range of injuries. Thus, rhetorically speaking, it is a catch-all phrase expressing a range of punishments corresponding to the range of possible false accusations entailed in the crime. The second connection has to do with “fitness” and reciprocity. Although the equivalence between crime and punishment entailed in the talion does not literally match the crime, its principle of reciprocity does. The guilty party is to “get a taste of his own medicine” by suffering that which he thought to do to his brother. This principle of reciprocity is connoted in the talion and makes it appropriate to the case on the rhetorical level. Therefore, the talion has a rhetorical function in the local context.

This rhetorical function also extends to the broader context. The Deuteronomic author expended much effort to cast his legal discourse into a paranetic style. Thus,

⁴⁷ Cairns, *Deuteronomy*, 181.

motive clauses abound throughout the laws. Three examples are the purge formula, the pity clause, and the “hear and fear” formula. All of these are appended to harsh penalties that highlight the severity of a crime. Their presence in the false accusation case demonstrates that the authors also viewed this crime as particularly heinous. The typical and less verbally graphic punishment (you shall do to him as he devised to do to his brother) did not, however, fit with these motive clauses. Thus, based on the rhetorical connections noted above, the Deuteronomist appended the vivid and brutal talionic formula in this case to appropriate the motive clauses and paranetic style. Since the formula has no literal connection with the case, it can be concluded that it was a rhetorical means of heightening the atrocity of this crime in a sapiential style.

Chapter 5

Comparison and Conclusions

As stated at the outset, the goal of this thesis was to determine the meaning (or meanings) of the *lex talionis*, as the formulae are used in the Torah. This study has sought to respond to the lack of consideration for the contexts in which the talionic formulae occur by placing primary emphasis on these contexts, in an effort to identify the meaning of the *lex talionis* as it appears in the Pentateuch. Thus, the bulk of this study has been devoted to an examination of the specific ways in which the authors and editors of the Pentateuch employed this formula, both in their local contexts and in their broader contexts in order to determine the meaning of this phrase. The final step towards this goal is to synthesize the results of the study thus far. This will involve comparison of the ways in which the formula was employed, which is the purpose of this chapter. A brief summary of the foregoing chapters will facilitate this synthesis.

5.1 Summary

5.1.1 The Covenant Code

In the Covenant Code, the talion served as a literal penalty for a specific crime. Its function at the local level was two-fold. On the one hand, it had the obvious literal function of prescribing a penalty for a crime. Additionally, however, the formula served to broaden the scope of the initial case. The case opened with the paradigmatic example of reckless conduct, and the talion explicitly expands the scope of this law beyond the mere details of the initial case. Fishbane and Jackson have noted that this expanding trend is a common feature of biblical law.¹ The formula was necessary in the case of

¹ Fishbane, *Biblical Interpretation*, 170–74 argues that these expansions are later additions that demonstrate legal exegesis, which explicitly states what would otherwise have to be ascertained through

miscarriage because it emphasizes the underlying issues the law was meant to deal with: reckless culpability, or, guilt in the absence of intent. In the broader context, the formula was used to express the punishment for recklessness in terms of restoration and balance that is typical of the *Mishpatim*. The language of the talion demonstrates this ideal both in terms of reparations (literally replacing the damaged body part – as is evident in the formula in Exod 21:36, שׁוֹר חָחָה הַשׁוֹר), and in terms of retribution (inflicting the guilty party with the same harm that was inflicted – as is evident by the wounds that do not involve removable body parts). Therefore, in the Covenant Code, the talion served to prescribe a penalty for a crime, broaden the scope of the law, and express the ideals of restoration and balance.

5.1.2 The Holiness Code

In the Holiness Code, the formula was used much more toward theological purposes, playing a significant role in the author's theological agenda. Little difference is found between its use in its local and broader contexts. In each case, the talion served as the paradigmatic example for all of Israel's secular-moral law. This served the larger theological agenda regarding the holiness of the land and the incorporation of secular-moral law into the sacral sphere. On this theological basis, the alien and native are all bound by one law. Since both secular and sacral offenses pollute the land, all inhabitants are subject to the law, regardless of ethnicity, lest the land vomit out its inhabitants.

5.1.3 Deuteronomy

In Deuteronomy, the formula was used for rhetorical and stylistic purposes. At the local level, while it served as a penalty attached to a specific crime, it had no *literal*

inferential reasoning. Jackson, *Semiotics*, 101–03, argues that the phenomenon is the result of advanced legal drafting techniques that increase the amount of variability in a law. In either case, this expanding trend is a common feature of biblical law. The talion in Exod 21:22–25 demonstrates this same trend.

connection to this crime. Mutilation is an unlikely penalty, whether an accusation proves true or false. Furthermore, even if mutilation were a possible penalty, the equivalence of the formula does not match the crime. Since no harm was done, then no eye or tooth or foot could be taken, according to the literal wording “eye for an eye.” Rather, the formula bears two rhetorical connections. First, it is a catch-all phrase that expresses a range of punishments corresponding to the range of possible false accusations entailed in the crime. Second, it expresses the ideal of fitness and reciprocity (i.e. the punishment must fit the crime), which is entailed in the punishment of v. 19a (you shall do to him as he plotted to do to his brother.) Thus, at the local level, the talion bears two rhetorical connections to this case.

Its function in Deut 19:15–21, however, cannot be determined until it is examined in the broader context. The authors of Deuteronomy added the formula, based on the rhetorical connections, to cast the false accusation law into their sapiential style. The first half of the law is written as typical legal discourse, beginning with a crime (v. 16), followed by adjudication (v. 17–18), and ending with a penalty (v. 19a). Subsequent to this, three motive clauses were added to transform this statute into Deuteronomy’s hortatory style. The vivid brutality and poetic force of the talion complements these motive clauses, since they highlight the purpose and severity of the punishment. The talion was essential for casting the law in this exhortative style. Therefore, in Deuteronomy, the talion’s function was rhetorical and stylistic.

5.1.4 Summary

The following chart collates these results:

	Covenant Code Talion	Holiness Code Talion	Deuteronomy Talion
Local Context	Prescribes penalty for the crime and broadens the scope of the law	Paradigm for secular law that is contrasted with sacral law	Catch-all phrase that expresses the ideals of reciprocity entailed in the crime and punishment of false accusation
Broader Context	Expresses the ideals of restoration and balance	Paradigm for secular law that is incorporated into the cultic sphere	Graphic and harsh expression, which adds force to the motive clauses and D's exhortative style

5.2 Comparison

Having summarized the results of chapters 2–4, some comparisons can be made and some conclusions can be drawn. There are two significant similarities between these three occurrences of the talion and two notable differences.

5.2.1 Similarities

First, each occurrence of the formula is based on the same fundamental literal meaning of the formula, “an eye for an eye.” This is most obvious in the Covenant Code, where it is a literal penalty for a specific crime. Although it has the greater purpose of expanding the scope of the law and expressing ideals of restoration and balance, these only make sense if the formula had its literal and basic “eye for an eye” meaning. Similarly, in the Holiness Code, although the formula means more than the literal “eye for an eye,” that greater meaning is built upon the basic literal sense of the formula. This is demonstrated by the phrase, “according to whatever he did, so it shall be done to him” (Lev 24:19a). This literal meaning is the basis for its greater purpose of representing all

of Israel's secular-moral law. This literal sense is also essential to Deuteronomy. Although the literal formula makes no sense for the crime of false accusation, the vivid brutality depicted in the formula was essential to complement the motive clauses and cast the law into D's paranetic style. The literal meaning is essential for the Deuteronomist's aim. Therefore, despite their differences, all the occurrences of the talion are based upon the literal meaning of the talionic formula.

The second similarity between the three talionic formulae is seen in the fact that in all occurrences, the formula represents a wide range of offenses. In the Covenant Code, the range within the formula expanded the scope of the law. The long list represented the full scale of possible injuries that could result from reckless conduct. In the Holiness Code, the formula represented all of Israel's secular-moral law. It, therefore, represented a wide variety of offenses. In Deuteronomy, the range of the formula was a rhetorical catch-all that corresponded to the range of possible false allegations entailed in the crime. Kline even suggested that this aspect of range was the main reason the formula was employed in the cases of the Pentateuch. While commenting on Lev 24, he wrote, "Here as always this formula is resorted to because of the variety of offenses comprehended by the penalty clause."² Although this is an oversimplification that does not fully account for each context, his recognition that the range of the talion is essential to each context is helpful. Therefore, the second common element of each occurrence of the talion is that it is representative of a wide range of injuries and punishments.

5.2.2 Differences

There are two notable differences between each occurrence of the formula. First, there is a fundamental conceptual difference between the meaning of the formula as it

² Kline, "Human Fetus," 196–97.

occurs in the *Mishpatim* and Holiness Code and its meaning in Deuteronomy. While the *Mishpatim* uses the talion as a literal penalty for a crime, this penalty expresses the ideals of restoration and balance for interpersonal relationships. Whether the formula expresses restoration by literally turning over a body part to the victim or expresses balance by making sure the guilty party suffers to the same degree as the victim is unclear. In either case, it expresses restoration and balance for interpersonal relationships. This same interpersonal aspect of the law is what the Holiness authors exploited for their purposes. Restoration and balance between interpersonal relationships are distinctly moral and distinctly secular. They do not concern the deity. This aspect of the talion made it the ideal representative for all of Israel's secular moral law.

This meaning, however, has no place in the Deuteronomic talion. The crime of false accusation was only an attempted crime; no harm was done. Thus the balance between the parties was never upset and there is nothing to restore. If anything, talionic punishment in Deuteronomy upsets the balance in interpersonal relationships since only one party will be deprived of a body part, not two. The basic meaning that can be derived from Exodus and Leviticus cannot be found in or imposed on Deuteronomy. In Deuteronomy, the formula is about harshness and reciprocity, making sure the accuser receives the penalty he plotted for his brother. Thus there is a fundamental conceptual difference between the formula as used in the *Mishpatim* and Holiness Code and its occurrence in Deuteronomy.

The second difference has to do with function. In each context, the talion plays a very different role. It functioned in the most literal sense in the Covenant Code. Since it broadened the scope of the law, it served as a catch-all, similar to Deuteronomy's talion.

The formula in the *Mishpatim*, however, was much more closely related to the case at hand. The *Mishpatim* draftsmen felt constrained to delineate a long list of injuries, which ended in the most general terms (blow for blow): These injuries are entirely germane to the purpose of the law. Although the case begins with an obscure paradigmatic example, to which the formula does not relate, this example represents all reckless conduct, to which the formula does relate. Thus, talion was a prescribed penalty that literally applied to injury that resulted from culpable negligence. It played a very literal role in this context.

In contrast, the talion played a symbolic role in the Holiness Code. Although the Holiness authors cited the *Mishpatim* talion, they transformed it to represent all secular-moral law. For them, the formula was not about prescribing a penalty for a particular crime. They were not concerned with its relevance to specific crimes. Rather, to the Holiness authors, the talionic formula represented all of Israel's secular-moral law. Thus, it played a symbolic role in the Holiness Code.

The function of the talion in Deuteronomy differs from both of these; it was entirely rhetorical. Like the Covenant Code, the talion in Deuteronomy is attached to a specific crime. The talion in Exodus, however, has a close literal relation to the crime (or at least the paradigm represented by the crime). In Deuteronomy, on the other hand, the talion has no *literal* bearing on the case. Its function is entirely rhetorical. At the local level, it expressed the ideal of range and reciprocity. In the broader context, the talion was a rhetorical means of expressing severity, which corresponds to the Deuteronomist's motive clauses and paranetic style. Thus it was a rhetorical expression that heightened

the heinousness of the crime. Therefore, in Deuteronomy, the talion served a rhetorical function.

5.3 Conclusions

Having compared the three uses of the talion, some final conclusions can be drawn which will illuminate the meaning of the *lex talionis* as it is used in the Torah. Three points can be made. First, the three occurrences of the talionic formula are not completely independent, without any conceptual relation. Despite their differences, they are all built upon the basic literal meaning of the phrase and they each represent a wide range of offenses. This demonstrates some degree of ideological relatedness between the three occurrences.

Second, it can be concluded that despite their similarities, each formula conveyed its own variation in meaning. While in the Covenant Code, the formula was a literal punishment for a specific crime that expressed the ideal of restoration and balance, in the Holiness Code, the formula was a symbolic expression of secular-moral law. This represents a significant difference. In Deuteronomy, a whole other nuance is present – that of rhetorical force expressing harshness and reciprocity.

Finally, it can be concluded that the *lex talionis* in the Torah was rhetorically flexible. Although there are some basic conceptual similarities, the authors and editors of the Pentateuch obviously felt free to employ it in a variety of ways, for a variety of purposes. It could be used as the prescribed penalty for a crime, it could be used for a symbolic representation of secular-moral law, or it could be used as a rhetorical means of adding emphasis and expressing the principle of reciprocity. This variety reveals that the *lex talionis* in the Torah does not convey one single meaning, but rather, it has a certain

rhetorical malleability by which it could convey a variety of meanings depending on how it is used.

5.4 Implications

In the introduction of this thesis, I outlined problems that past approaches to the *lex talionis* left unaddressed. Aside from the problem of identifying the formula's historical function, the particular challenge I have attempted to address is the assumption that the talion is a standardized formula with a single and constant meaning. To deal with this, I have placed primary focus on the contexts in which the formulae occur. This was done in order to deduce, as much as possible, how the authors and editors of the Pentateuch employed the formula and, furthermore, to deduce what the formula would have meant to them. The product of this study has revealed that the talion is more complex than had originally been assumed. Not only has it taken different forms as it was placed in diverse contexts, it also conveys different meanings in each text.

This fact has important implications for synchronic approaches to the Pentateuch. The bounds of this study have extended only to the level of the three legal corpora of the Pentateuch. For reasons of clarity and space, it could not be pushed beyond that level. This, however, does not mean that such a study is unimportant. The Pentateuch is composed of differing literary strata that have been arranged for a purpose. The interaction between the Priestly, Holiness, and Deuteronomic streams is of utmost significance not just for the Pentateuch, but for study of the entire Old Testament. Two occurrences of the talionic formulae were shaped and incorporated into the Holiness and Deuteronomic material. Furthermore, the talion in the Holiness Code was derived from one of the earliest literary sources of the Pentateuch, the *Mishpatim*. The way in which

the formula furthered each agenda and style reflects the interaction between these sources. Although it goes beyond the scope of the present study, the diversity of the talionic formulae as they were set within the literary strata of the Pentateuch can shed further light on how the Pentateuch is to be read as a whole.³ Thus, the results of this study have further implications for the way in which the Pentateuchal sources interacted with one another in the context of the Old Testament.

³ The only scholar who has made any attempt to deal with the interaction between the Pentateuchal sources and their respective uses of the talion is Weinfeld. He suggested that P's sacral association of the talion (with blasphemy) stands in contrast to D's casting of the formula into the secular judicial arena.

Bibliography

- Adkins, Lesley and Roy Adkins. *Handbook to Life in Ancient Rome*. New York: Facts on File, 1994.
- Alt, Albrecht. "The Origins of Israelite Law." In *Essays on Old Testament History and Religion*. Translated by R. A. Wilson, 79–132. Oxford: Blackwell, 1966.
- Amram, David Werner. "Retaliation and Compensation." *JQR* 2 (1911) 191–211.
- Ashby, G. W. *Go Out and Meet God: A Commentary on the Book of Exodus*. International Theological Commentary. Grand Rapids: Eerdmans, 1998.
- Balentine, Samuel E. *Leviticus*. Interpretation. Louisville: John Knox, 2002.
- Barmash, Pamela. "Blood Feud and State Control: Differing Legal Institutions for the Remedy of Homicide During the Second and First Millennia B.C.E." *JNES* 63 (2004) 183–99.
- . *Homicide in the Biblical World*. New York: Cambridge University Press, 2005.
- Baruch, Chad. "In the Name of the Father: A Critique of Reliance Upon Jewish Law to Support Capital Punishment in the United States." *University of Detroit Mercy Law Review* 41 (2002) 41–66.
- Blenkinsopp, Joseph. "An Assessment of the Alleged Pre-Exilic Date of the Priestly Material in the Pentateuch." *ZAW* 108 (1996) 495–518.
- . "Structure of P." *CBQ* 38 (1976) 275–92.
- Boda, Mark J. "Chiasmus in Ubiquity: Symmetrical Mirages in Nehemiah 9." *JSOT* (1996) 55–70.
- . *Praying the Tradition: The Origin and use of Tradition in Nehemiah 9*. Berlin ; New York: Walter de Gruyter, 1999.
- Boecker, Hans Jochen. *Law and the Administration of Justice in the Old Testament and Ancient East*. Translated by Jeremy Moiser. Minneapolis: Augsburg 1980.
- Brueggemann, Walter. *Deuteronomy*. Abingdon Old Testament commentaries. Nashville: Abingdon, 2001.
- Budd, Philip J. *Leviticus: Based on the New Revised Standard Version*. New Century Bible Commentary. London: Marshall Pickering, 1996.

- Cairns, Ian. *Word and Presence: A Commentary on the Book of Deuteronomy*. International Theological Commentary. Grand Rapids: Eerdmans, 1992.
- Carmichael, Calum M. "Biblical Laws of Talion." *HAR* 9 (1985) 107–26.
- . "'An Eye for an Eye, and a Tooth for a Tooth:' The History of a Formula." In *Law, Morality, and Religion*. Edited by Alan Watson, 1–29. Berkeley: Snow Lion, 1996.
- . *The Laws of Deuteronomy*. Ithaca: Cornell University Press, 1974.
- Cassuto, Umberto. *A Commentary on the Book of Exodus*. Jerusalem: Magnes, 1967.
- Childs, Brevard S. *The Book of Exodus: A Critical, Theological Commentary*. Old Testament Library. Philadelphia: Westminster Press, 1974.
- Chinitz, Jacob. "Eye for an Eye – An Old Canard." *JBQ* 23 (1995) 79–85.
- Chirichigno, Gregory C. *Debt Slavery in Israel and the Ancient Near East*. JSOT. Sheffield, England: Sheffield Academic Press, 1993.
- Clements, Ronald E. *Deuteronomy*. Old Testament Guides. Sheffield: JSOT Press, 1989.
- . *Exodus*. Cambridge Bible Commentary. Cambridge: Cambridge University Press, 1972.
- Clines, David J. A. "Being a Man in the Book of the Covenant." In *Reading the Law*. Edited by J. Gordon McConville and Karl Möller, 3–9. New York: T & T Clark, 2007.
- Coggins, R. J. *The Book of Exodus*. Epworth Commentaries. Peterborough: Epworth, 2000.
- Cole, R. A. *Exodus: An Introduction and Commentary*. Tyndale Old Testament Commentaries. Downers Grove: Inter-Varsity Press, 1973.
- Collins, Nina L. "Notes on the Text of Exodus XXI 22." *VT* 43 (1993) 289–301.
- Congdon, Robert N. "Exodus 21:22–25 and the Abortion Debate." *BS* 146 (1989) 132–47.
- Cottrell, Jack W. "Abortion and the Mosaic Law." *Christianity Today* 17 (1973) 6–9.
- Craigie, Peter C. *The Book of Deuteronomy*. New International Commentary on the Old Testament. Grand Rapids: Eerdmans, 1976.

- Daube, David. *Studies in Biblical Law*. 2nd Edition. New York: Ktav, 1969.
- Davies, Gwynne Henton. *Exodus: Introduction and Commentary*. London: SCM Press, 1967.
- Davis, James F. *Lex Talionis in Early Judaism and the Exhortation of Jesus in Matthew 5:38–42*. JSNT Supplement Series. New York: T & T Clark, 2005.
- De Vaux, Roland. *Ancient Israel: Its Life and Institutions*. Biblical Resource Series. Grand Rapids: Eerdmans, 1997.
- Diamond, A. S. "An Eye for an Eye." *Iraq* 19 (1957) 151–55. Reprinted in Schreiber, *Jewish Law and Decision-Making*, 174–176. Philadelphia: Temple University Press, 1979.
- Doron, Pinchas. "Motive Clauses in the Laws of Deuteronomy: Their Forms, Functions and Contents." *HAR* 2 (1978) 61–77.
- . "A New Look at an Old Lex." *JANESCU* 1 (1969) 21–27.
- Douglas, Mary. "Justice as the Cornerstone : An Interpretation of Leviticus 18–20." *Interpretation* 53 (1999) 341–50.
- . *Leviticus as Literature*. Oxford: Oxford University Press, 1999.
- . "Poetic Structure in Leviticus." In *Pomegranates and Golden Bells*. Edited by David P. Wright and David Noel Freedman, 239–56. Winona Lake: Eisenbrauns, 1995.
- Driver, Godfrey Rolles and John Charles Miles. *The Babylonian Laws*. Ancient Codes and Laws of the Near East. Oxford: Clarendon, 1952.
- Driver, S. R. *The Book of Exodus*. Cambridge: Cambridge University Press, 1953.
- . *A Critical and Exegetical Commentary on Deuteronomy*. ICC. Edinburgh: T. & T. Clark, 1973.
- Durham, John I. *Exodus*. Word Biblical Commentary. Waco: Word Books, 1987.
- Ellington, John. "Miscarriage or Premature Birth?" *Bible Translator* 37 (1986) 334–37.
- Enns, Peter. *Exodus*. The NIV Application Commentary. Grand Rapids: Zondervan 2000.
- Finkelstein, Joel J. "Ammişaduqa's Edict and the Babylonian Law Codes." *JCS* 15 (1961) 91–104.

- . *The Ox That Gored*. Transactions of the American Philosophical Society. Philadelphia: American Philosophical Society, 1981.
- Fishbane, Michael A. *Biblical Interpretation in Ancient Israel*. Oxford: Clarendon, 1988.
- Fisher, Eugene J. "Lex Talionis in the Bible and Rabbinic Tradition." *JES* 19 (1982) 582–87.
- Fisher, Milton C. "לַפְּלֹ." In *TWOT* 2: 587.
- Fitzpatrick-Mckinley, Anne. *The Transformation of Torah from Scribal Advice to Law*. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 1999.
- Frei, Peter. "Persian Imperial Authorization: A Summary." In *Persia and Torah*. Edited by James W. Watts. Translated by James W. Watts, 5–40. Atlanta: Snow Lion, 2001.
- Frymer-Kensky, Tikva. "Israel." In *A History of Ancient Near Eastern Law*. Edited by Raymond Westbrook and Gary M. Beckman, 975–1046. 2 vols. Handbook of Oriental Studies. Leiden: Brill, 2003.
- . "Tit for Tat: The Principle of Equal Retribution in Near Eastern and Biblical Law." *BA* 43 (1980) 230–34.
- Fuller, Russell. "Exodus 21:22: The Miscarriage Interpretation and the Personhood of the Fetus." *JETS* 37 (1994) 169–84.
- Gane, Roy. *Leviticus, Numbers*. The NIV Application Commentary. Grand Rapids: Zondervan, 2004.
- Gerleman, G. "שֶׁלֶם." In *TLOT* 3: 1337–48.
- Gerstenberger, Erhard. *Leviticus: A Commentary*. Old Testament Library. Louisville: Westminster John Knox, 1996.
- Gesenius, Wilhelm. *Gesenius' Hebrew and Chaldee Lexicon to the Old Testament Scriptures*. Translated by Samuel Prideaux Tregelles. Grand Rapids: Eerdmans, 1949.
- Gilchrist, Paul R. "אֶפְרַיִם." In *TWOT* 1: 393.
- Gispén, Willem Hendrik. *Exodus*. Bible Student's Commentary. Grand Rapids: Zondervan, 1982.

- Gorman, Frank H. *Divine Presence and Community: A Commentary on the Book of Leviticus*. International Theological Commentary. Grand Rapids: Eerdmans, 1997.
- Grätz, Sebastian. "The Second Temple and the Legal Status of the Torah: The Hermeneutics of the Torah in the Books of Ruth and Ezra." In *Pentateuch as Torah*, 273–87. Ithaca: Eisenbrauns, 2007.
- Greenberg, Moshe. "Bloodguilt." In *IDB* 1: 449–50.
- . "Crimes and Punishments." In *IDB* 1: 733–44.
- . "Idealism and Practicality in Numbers 35:4–5 and Ezekiel 48." *JAOS* 88 (1968) 59–66.
- . "More Reflections of Biblical Criminal Law." In *Studies in Bible*. Edited by S Japhet, 1–17. Scripta Hierosolymitana. Jerusalem: Magnes, 1986.
- . "Some Postulates of Biblical Criminal Law." In *Yehezkel Kaufmann Jubilee Volume*. Edited by Menahem Haran, 5–28. Jerusalem: The Hebrew University, 1960. Reprinted in Schreiber, *Jewish Law and Decision-Making*, 143–150. Philadelphia: Temple University Press, 1979.
- Greengus, Samuel. "Law." In *ABD* 2: 242–52.
- . "Some Issues Relating to the Comparability of Laws and the Coherence of the Legal Tradition." In *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*. Edited by Bernard M. Levinson, 60–87. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 1994.
- Grisanti, Michael A. "The Abortion Dilemma." *Master's Seminary Journal* 11 (2000) 169–90.
- Haas, Peter J. "'Die he shall surely Die:' The Structure of Homicide in Biblical Law." *Semeia* (1989) 67–87.
- Hamilton, Victor P. "פְּקֹדֶה." In *TWOT* 2: 923.
- Harrelson, W. J. "Law in the OT." In *IDB* 3: 77–89.
- Hartley, John E. *Leviticus*. Word Biblical Commentary. Dallas: Word Books, 1992.
- Hertz, J. H. "Ancient Semitic Codes and the Mosaic Legislation." *Journal of Comparative Legislation and International Law* 10 (1928) 207–21.

- Hoffmeier, James K. "Abortion and the Old Testament Law." In *Abortion: A Christian Understanding and Response*, 49-63. Grand Rapids: Baker, 1987.
- House, Wayne. "Miscarriage or Premature Birth: Additional Thoughts on Exodus 21:22-25." *WTJ* 41 (1978) 105-23.
- Houtman, Cornelis. *Exodus*. 4 vols. Historical Commentary on the Old Testament. Kampen: Kok, 1993.
- Huffmon, H. B. "Lex Talionis." In *IDB* 3: 321-22.
- Hyatt, J. Philip. *Exodus*. New Century Bible. Grand Rapids: Eerdmans, 1980.
- Isser, Stanley. "Two Traditions: The Law of Exodus 21:22-23 Revisited." *CBQ* 52 (1990) 30-45.
- Jackson, Bernard S. "The Ceremonial and the Judicial: Biblical Law as Sign and Symbol." *JSOT* (1984) 25-50.
- . "Ideas of Law and Legal Administration: A Semiotic Approach." In *The World of Ancient Israel: Sociological, Anthropological, and Political Perspectives*. Edited by R. E. Clements, 185-202. New York: Cambridge University Press, 1989.
- . "Legalism and Spirituality: Historical, Philosophical, and Semiotic Notes on Legislators, Adjudicators, and Subjects." In *Religion and Law: Biblical-Judaic and Islamic Perspectives*. Edited by Edwin Brown Firmage, et al., 243-61. Winona Lake: Eisenbrauns, 1990.
- . "Models in Legal History: The Case of Biblical Law." *JLR* 18 (2002) 1-30.
- . "Practical Wisdom and Literary Artifice in the Covenant Code." In *Jewish Law Association Studies VI*. Edited by Bernard S. Jackson, 65-92. Atlanta: Scholars Press, 1992.
- . "Problem of Exod 21:22-5, Ius Talionis." *VT* 23 (1973) 273-304.
- . "Reflections on Biblical Criminal Law." *JJS* 24 (1973) 8-38. Reprinted in Schreiber, *Jewish Law and Decision-Making*, 151-57. Philadelphia: Temple University Press, 1979.
- . "Revolution in Biblical Law: Some Reflections on the Role of Theory in Methodology." *JSS* 50 (2005) 83-115.
- . *Studies in the Semiotics of Biblical Law*. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 2000.

- . “Talion and Purity: Some Glosses on Mary Douglas.” In *Reading Leviticus*. Edited by John F. A. Sawyer, 107–23. Sheffield: Sheffield Academic Press, 1996.
- . “Two or Three Witnesses.” In *Essays in Jewish and Comparative Legal History*, 153–71. Studies in Judaism in Late Antiquity. Leiden: Brill, 1975.
- . *Wisdom-laws: A Study of the Mishpatim of Exodus 21:1–22:16*. Oxford: Oxford University Press, 2006.
- Jacob, Benno. *The Second Book of the Bible: Exodus*. Translated by Walter Jacob. Hoboken: Ktav, 1992.
- Janzen, J. Gerald. *Exodus*. Westminster Bible Companion. Louisville: Westminster John Knox, 1997.
- Janzen, Waldemar. *Exodus*. Believers Church Bible Commentary. Waterloo: Herald, 2000.
- Joosten, Jan. *People and Land in the Holiness Code: An Exegetical Study of the Ideational Framework of the Law in Leviticus 17–26*. Supplements to VT. New York: E.J. Brill, 1996.
- Josephus. *The Works of Josephus: Complete and Unabridged*. Translated by William Whiston. Peabody: Hendrickson, 1987.
- Keil, Carl Friedrich and Franz Delitzsch. *Biblical Commentary on the Old Testament*. Clark's Foreign Theological Library. Edinburgh: T. & T. Clark, 1857.
- . *Biblical Commentary on the Old Testament*. Clark's Foreign Theological Library. Edinburgh: T. & T. Clark, 1857.
- Kellogg, Samuel H. *The Book of Leviticus*. The Expositor's Bible. London: Hodder and Stoughton, 1906.
- Kevelson, Robert A. “Lex Talionis: Equivalence and Evolution in Legal Semiotics.” *IJSL* 8 (1994) 155–70.
- Kim, Yung Suk. “Lex Talionis in Exod 21:22–25: Its Origin and Context.” *JHS* 6 (2006) 2–11.
- Kiuchi, Nobuyoshi. *Leviticus*. Apollos Old Testament Commentary. Downers Grove: InterVarsity, 2007.
- Kline, Meredith G. “Lex Talionis and the Human Fetus.” *JETS* 20 (1977) 193–201.

- Knierim, Rolf P. "The Problem of Ancient Israel's Prescriptive Legal Traditions." *Semeia* (1989) 7–25.
- Knight, Douglas A. "Village Law and the Book of the Covenant." In *Wise and Discerning Mind: Essays in Honor of Burke O Long* Edited by Burke O. Long, 163–79. Providence: Brown Judaic Studies, 2000.
- Knohl, Israel. *The Sanctuary of Silence: The Priestly Torah and the Holiness School*. Minneapolis: Fortress Press, 1995.
- Kraus, F. R. "Ein Zentrales Problem des Altmesopotamischen Rechtes: Was ist der Codex Hammu-rabi?" *Geneva* 8 (1960) 283–96.
- Kugelmass, Harvey J. "Lex Talionis in the Old Testament." Ph.D diss., University of Montreal, 1981.
- Kugler, Robert A. "Holiness, Purity, the Body, and Society: The Evidence for Theological Conflict in Leviticus." *JSOT* (1997) 3–27.
- Lafont, Sophie. "Ancient Near Eastern Laws: Continuity and Pluralism." In *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*. Edited by Bernard M. Levinson, 91–118. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 1994.
- Lamont, W. D. "Justice: Distributive and Corrective." *Journal of the British Institute of Philosophy* 16 (1941) 3–18.
- Lefebvre, Michael. *Collections, Codes, and Torah: The Re-characterization of Israel's Written Law*. Library of Hebrew Bible. New York: T & T Clark, 2006.
- Leibowitz, Nehama. *Studies in Vayikra (Leviticus)*. Jerusalem: World Zionist Organization, 1982.
- Lemche, Neils Peter. "The Development of Law in the Ancient Near East: Justice in Western Asia in Antiquity, Or: Why No Laws were Needed!" *Chicago-Kent Law Review* 70 (1995) 1695–716.
- Levine, Baruch A. *Leviticus: The Traditional Hebrew Text with the New JPS Translation*. JPS Torah Commentary. Philadelphia: Jewish Publication Society, 1989.
- Levinson, Bernard M. "The Birth of the Lemma: The Restrictive Reinterpretation of the Covenant Code's Manumission Law by the Holiness Code (Leviticus 25:44–46)." *JBL* 124 (2005) 617–39.

- . “The Case for Revision and Interpolation within the Biblical Legal Corpora.” In *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*. Edited by Bernard M. Levinson, 37–59. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 1994.
- . “The Case for Revision and Interpolation within the Biblical Legal Corpora.” In *Theory and Method in Biblical and Cuneiform law: Revision, Interpolation and Development*. Edited by Bernard M. Levinson, 37–59. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 1994.
- . *Deuteronomy and the Hermeneutics of Legal Innovation*. New York: Oxford University Press, 1997.
- . “Is the Covenant Code an Exilic Composition? A Response to John Van Seters.” In *In search of Pre-exilic Israel*, 272–325. New York: T & T Clark, 2004.
- . *Theory and Method in Biblical and Cuneiform law: Revision, Interpolation and Development*. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 1994.
- Lightner, Clarence A. “The Mosaic Law.” *Michigan Law Review* 10 (1911) 108–19.
- Loewenstamm, Samuel E. “Exodus 21: 22–25.” *VT* 27 (1977) 352–60.
- Marshall, Jay W. *Israel and the Book of the Covenant: An Anthropological Approach to Biblical Law*. SBL Dissertation Series. Atlanta: Scholars Press, 1993.
- May, Max. “Jewish Criminal Law and Legal Procedure.” *Journal of Criminal Law and Criminology* 31 (1940) 438–47.
- Mayes, A. D. H. *Deuteronomy*. New century Bible. Grand Rapids: Eerdmans, 1979.
- Mcconville, J. Gordon. “‘Fellow Citizens’: Israel and Humanity in Leviticus.” In *Reading the Law*. Edited by J. Gordon Mcconville and Karl Möller, 10–32. New York: T & T Clark, 2007.
- Mcneile, A. H. *The Book of Exodus, with Introduction and Notes*. London: Methuen, 1908.
- Meron, Ya'akov. “An Eye for an Eye: A Comment.” In *Jewish Law Association Studies VI*. Edited by Bernard S. Jackson, 93–94. Atlanta: Scholars Press, 1992.
- Metso, Sarianna. *The Serekh Texts*. Library of Second Temple Studies. New York: T & T Clark, 2007.

- Meyer, Lester. *The Message of Exodus: A Theological Commentary*. Minneapolis: Augsburg, 1983.
- Meyers, Carol L. *Exodus*. New Cambridge Bible Commentary. Cambridge: Cambridge University Press, 2005.
- Miklitzanski, Jacques Koppel. "The Law of Retaliation and the Pentateuch." *JBL* 66 (1947) 295–303.
- Milgrom, Jacob. "The Alien in Your Midst." *BR* 11 (1995) 18.
- . "The Antiquity of the Priestly Source: A Reply to Joseph Blenkinsopp." *ZAW* 111 (1999) 10–22.
- . "The Case for the Pre-exilic and Exilic Provenance of the Books of Exodus, Leviticus and Numbers." In *Reading the Law*. Edited by J. Gordon McConville and Karl Möller, 48–56. New York: T & T Clark, 2007.
- . "Does H Advocate the Centralization of Worship?" *JSOT* (2000) 59–76.
- . "The Legal Terms Šlm and Br'šw in the Bible." *JNES* 35 (1976) 271–73.
- . *Leviticus 17–22: A New Translation with Introduction and Commentary*. Anchor Bible. Toronto: Doubleday, 2000.
- . *Leviticus 23–27: A New Translation with Introduction and Commentary*. The Anchor Bible. New York: Doubleday, 2001.
- . *Leviticus 23–27: A New Translation with Introduction and Commentary*. The Anchor Bible. Toronto: Doubleday, 2001.
- . *Leviticus: A Book of Ritual and Ethics*. Continental Commentaries. Minneapolis: Fortress, 2004.
- . "Lex Talionis and the Rabbis: The Talmud Reflects an Uneasy Rabbinic Conscience toward the Ancient Law of Talion, Eye for Eye, Tooth for Tooth." *BR* 12 (1996) 16.
- . "Religious Conversion and the Revolt Model for the Formation of Israel." *JBL* 101 (1982) 169–76.
- . "The Scriptural Foundations and Deviations in the Laws of Purity of the Temple Scroll." In *Archaeology and History in the Dead Sea Scrolls*. Edited by Larry H. Schiffman, 83–99. Sheffield: JSOT Press, 1990.
- Miller, William Ian. *Eye for an Eye*. New York: Cambridge University Press, 2006.

- Mittwoch, H. "Story of the Blasphemer Seen in a Wider Context." *VT* 15 (1965) 386–89.
- Morrow, William. "A Generic Discrepancy in the Covenant Code." In *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*. Edited by Bernard M. Levinson, 136–51. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 1994.
- Nelson, Richard D. *Deuteronomy: A Commentary*. Old Testament Library. Louisville: Westminster John Knox, 2002.
- Nicholson, Ernest W. *Deuteronomy and Tradition*. Philadelphia: Fortress, 1967.
- Noordtzi, A. *Leviticus*. Translated by Raymond Togtman. Bible Student's Commentary. Grand Rapids: Zondervan, 1982.
- Noth, Martin. *Exodus: A Commentary*. Translated by J. S. Bowden. Old Testament Library. Philadelphia: Westminster, 1962.
- . "The Laws in the Pentateuch: Their Assumptions and Meaning." In *The Laws in the Pentateuch and Other Studies*. Translated by D. R. Ap-Thomas, 1–107. 1st American Edition. Philadelphia: Fortress, 1967.
- . *Leviticus: A Commentary*. Translated by J. E. Anderson. Old Testament Library. Philadelphia: Westminster Press, 1965.
- Osborn, Noel D. and Howard Hatton. *A Handbook on Exodus*. UBS Handbook Series. New York: United Bible Societies, 1999.
- Otto, Eckart. *Kontinuum und Proprium: Studien zur Sozial – und Rechtsgeschichte des Alten Orients und des Alten Testaments*. Orientalia Biblica et Christiana,. Wiesbaden: Harrassowitz, 1996.
- . "Town and Rural Countryside in Ancient Israelite Law: Reception and Redaction in Cuneiform and Israelite Law." *JSOT* (1993) 3–22.
- Patrick, Dale. *Old Testament Law*. Atlanta: John Knox, 1985.
- . "Studying Biblical Law as a Humanities." *Semeia* (1989) 27–47.
- Paul, Shalom M. "Biblical Analogues to Middle Assyrian Law." In *Religion and Law: Biblical-Judaic and Islamic Perspectives*. Edited by Paul M. Shalom, et al., 333–51. Winona Lake: Eisenbrauns, 1990.
- . *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law*. Supplements to VT. Eugene: Wipf and Stock, 2006.

- Phillips, Anthony. *Ancient Israel's Criminal Law: A New Approach to the Decalogue*. Oxford: B. Blackwell, 1970.
- Philo. *The Works of Philo: Complete and Unabridged*. Translated by Charles Duke Yonge. Peabody: Hendrickson, 1993.
- Pixley, Jorge V. *On Exodus: A Liberation Perspective*. Translated by Robert R. Barr. Maryknoll: Orbis Books, 1987.
- Pritchard, James Bennett. *Ancient Near Eastern Texts Relating to the Old Testament*. Princeton: Princeton University Press, 1969.
- Pritikin, Martin H. "Punishment, Prisons, and the Bible: Does 'Old Testament Justice' Justify Our Retributive Culture?" *Cardozo Law Review* 28 (2006) 715–78.
- Propp, William Henry. *Exodus 19–40: A New Translation with Introduction and Commentary*. Anchor Bible. Toronto: Doubleday, 1999.
- Rendtorff, Rolf. "Is it Possible to Read Leviticus as a Separate Book?" In *Reading Leviticus, 22–35*. Sheffield: Sheffield Academic Press, 1996.
- Rofé, Alexander. *Introduction to the Composition of the Pentateuch*. Biblical Seminar. Sheffield: Sheffield Academic Press, 1999.
- . "Methodological Aspects of the Study of Biblical Law." In *Jewish Law Association II*. Edited by Bernard S. Jackson, 1–16. Atlanta: Scholars Press, 1986.
- Roth, Martha T. "The Scholastic Exercise 'Laws about Rented Oxen'." *JCS* 32 (1980) 127–46.
- Sarna, Nahum M. *Exodus: The Traditional Hebrew Text with the New JPS Translation*. JPS Torah Commentary. Philadelphia: Jewish Publication Society, 1991.
- . *Exploring Exodus: The Heritage of Biblical Israel*. New York: Schocken Books, 1986.
- Sneed, Mark. "Israelite Concern for the Alien, Orphan, and Widow: Altruism or Ideology?" *ZAW* 111 (1999) 498–507.
- Sonsino, Rifat. "Characteristics of Biblical Law." *Judaism* 33 (1984) 202–09.
- Speiser, E. A. "Cuneiform Law and the History of Civilization." In *Jewish Law and Decision-Making*. Edited by Aaron M. Schreiber, 57–62. Philadelphia: Temple University Press, 1979.

- Sperling, David S. "Bloodguilt in the Bible and in Ancient Near Eastern Sources." In *Jewish Law in our Time*. Edited by David S. Sperling, et al., 19–25. New York: Bloch, 1982.
- Sprinkle, Joe M. *The Book of the Covenant: A Literary Approach*. JSOT Supplement Series. Sheffield: JSOT Press, 1994.
- . "The Interpretation of Exodus 21:22–25 (Lex Talionis) and Abortion." *WTJ* 55 (1993) 233–53.
- Stackert, Jeffrey. *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation*. Forschungen zum Alten Testament. Tübingen, Germany: Mohr Siebeck, 2007.
- Stuart, Douglas K. *Exodus*. The New American Commentary. Nashville: Broadman & Holman, 2006.
- Stulman, Louis. "Encroachment in Deuteronomy: An Analysis of the Social World of the D Code." *JBL* 109 (1990) 613–32.
- Sulzberger, Mayer. "The Ancient Hebrew Law of Homicide." *JQR* 5 (1915) 127–61; 289–344; 559–614.
- Tigay, Jeffrey H. *Deuteronomy: The Traditional Hebrew Text with the New JPS Translation*. JPS Torah Commentary. Philadelphia: Jewish Publication Society, 1996.
- Van Den Haag, Ernest. "The 'Lex Talionis' Before and after Criminal Law." *Criminal Justice Ethics* 11 (1992) 2–4.
- Van Houten, Christiana De Groot. *The Alien in Israelite Law*. JSOT Supplement Series. Sheffield: JSOT Press, 1991.
- Van Seters, John. "Cultic Laws in the Covenant Code and their Relationship to Deuteronomy and the Holiness Code." In *Studies in the Book of Exodus*. Edited by Marc Vervenne, 319–45. Louvain: Leuven University Press, 1996.
- . *A Law Book for the Diaspora: Revision in the Study of the Covenant Code*. New York: Oxford University Press, 2003.
- . "Revision in the Study of the Covenant Code and a Response to my Critics." *SJOT* 21 (2007) 5–28.
- Van Staalduine-Sulman, Eveline. "Between Legislative and Linguistic Parallels: Exodus 21:22–25 in its Context." In *Interpretation of Exodus*. Edited by Riemer Roukema, 207–24. Leuven, Paris: Peeters, 2006.

- Vogt, Peter T. *Deuteronomistic Theology and the Significance of Torah: A Reappraisal*. Winona Lake: Eisenbrauns, 2006.
- Von Rad, Gerhard. *Deuteronomy: A Commentary*. Translated by Dorothea Barton. Old Testament Library. London: S.C.M. Press, 1966.
- Vroom, Jonathan and Mark J. Boda. Review of *Rewriting the Torah: Literary Revision in Deuteronomy and the Holiness Legislation*, by Jeffrey Stackert. *Shofar* (2009).
- Waltke, Bruce K. "Reflections from the Old Testament on Abortion." *JETS* 19 (1976) 3–13.
- Warning, Wilfried. *Literary Artistry in Leviticus*. Biblical Interpretation Series. Boston: Brill, 1999.
- Watts, James W. *Reading Law: The Rhetorical Shaping of the Pentateuch*. Biblical Seminar. Sheffield: Sheffield Academic Press, 1999.
- Weaver, Dorthy Jean. "Transforming Nonresistance: From Lex Talionis to 'Do Not Resist the Evil One'." In *The Love of Enemy and Nonretaliation in the New Testament*. Edited by Willard M. Swartley, 32–71. Louisville: John Knox Press, 1992.
- Weinfeld, Moshe. *Deuteronomy and the Deuteronomistic School*. Oxford: Clarendon Press, 1972.
- . "Judge and Officer in Ancient Israel and in the Ancient Near East." *IOS* 7 (1977) 65–88.
- . "Origin of the Humanism in Deuteronomy." *JBL* 80 (1961) 241–47.
- . *The Place of the Law in the Religion of Ancient Israel*. Supplements to VT. Boston: Brill, 2004.
- Weinrib, Ernest J. "Corrective Justice in a Nutshell." *University of Toronto Law Journal* 52 (2002) 349–56.
- Welch, John W. "Chiasmus in Biblical Law: An Approach to the Structure of Legal Texts in the Hebrew Bible." In *Jewish Law Association Studies IV: The Boston Conference Volume*. Edited by Bernard S. Jackson, 5–22. Atlanta: Scholars Press, 1990.
- . "Reflections on Postulates: Power and Ancient Law – A Response to Moshe Greenberg." In *Religion and Law: Biblical-Judaic and Islamic Perspectives*.

Edited by Edwin Brown Firmage, et al., 113–25. Winona Lake: Eisenbrauns, 1990.

Wellhausen, Julius. *Prolegomena to the History of Israel*. Translated by J. Sutherland Black and Allan Menzies. Atlanta: Kessinger, 2004.

Wells, Bruce. *The Law of Testimony in the Pentateuchal Codes*. Wiesbaden: Harrassowitz, 2004.

—. “Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy.” *JBL* 124 (2005) 41–72.

—. “What is Biblical Law? A Look at Pentateuchal Rules and Near Eastern Practice.” *CBQ* 70 (2008) 223–43.

Wenham, Gordon J. *The Book of Leviticus*. New International Commentary on the Old Testament. Grand Rapids: Eerdmans, 1979.

West, Stuart A. “The Lex Talionis in the Torah.” *JBQ* 21 (1993) 183–88.

Westbrook, Raymond. “Biblical and Cuneiform Law Codes.” *RB* 92 (1985) 247–64.

—. “Cuneiform Law Codes and the Origins of Legislation.” *ZAA* 79 (1989) 201–22.

—. “The Deposit Law of Exodus 22,6–12.” *ZAW* 106 (1994) 390–403.

—. “Lex Talionis and Exodus 21:22–25.” *RB* 93 (1986) 52–69.

—. “Punishments and Crimes.” In *ABD* 5: 546–56.

—. “Riddles in Deuteronomic Law.” In *Bundesdokument und Gesetz: Studien zum Deuteronomium*. Edited by Georg Braulik, 159–74. Freiburg: Herder, 1995.

—. *Studies in Biblical and Cuneiform Law*. Cahiers de la Revue Biblique. Paris: J. Gabalda et Cie, 1988.

—. “What is the Covenant Code?” In *Theory and Method in Biblical and Cuneiform Law: Revision, Interpolation and Development*. Edited by Bernard M. Levinson, 15–36. JSOT Supplement Series. Sheffield: Sheffield Academic Press, 1994.

Whitman, James. “Ancient Rights and Wrongs: At the Origins of Law and the State: Supervision of Violence, Mutilation of Bodies, or Setting of Prices?” *Chicago-Kent Law Review* 71 (1995) 41–84.

Wright, David P. “Holiness in Leviticus and Beyond: Differing Perspectives.” *Interpretation* 53 (1999) 351–64.

- . “The Laws of Hammurabi as a Source for the Covenant Collection.” *Maarav* 10 (2003) 11–87.
- . “Miscarriage and Talion in Exodus 21:22–27,” presented at the Annual Meeting of the Society of Biblical Literature, San Diego, 2007.
- Yaron, Reuven. “Stylistic Concepts II: The Absolute Infinitive in Biblical Law.” In *Pomegranates and Golden Bells: Studies in Biblical, Jewish, and Near Eastern Ritual, Law, and Literature in Honor of Jacob Milgrom*. Edited by David P. Wright, et al., 449–60. Winona Lake: Eisenbrauns, 1995.
- Yelle, Robert A. “Rhetorics of Law and Ritual: A Semiotic Comparison of the Law of Talion and Sympathetic Magic.” *JAAR* 69 (2001) 627–47.