

A Study
by
Abdorrahman
Boroumand Foundation



Lex Talionis
An Ancient Principle
Limiting Capital Punishment

Lex Talionis: An Ancient Principle Limiting Capital Punishment in Abrahamic Faiths

I. Introduction

Lex talionis, also known as the law of retribution (“tooth for a tooth, eye for an eye”), is one of the world’s most recognizable legal concepts. Aside from its independent importance in the study of ancient legal development, it has provided an important theoretical and historical justification for the retributivist account of criminal law. Although some form of it has appeared in civilizations and cultures throughout the world, *lex talionis* is identified most closely with the laws and customs of the ancient Near East and the Abrahamic faiths of Judaism, Christianity and Islam.

Today, *lex talionis* no longer plays a prominent role in Western law, as mutilating punishments have disappeared and other philosophical justifications for retribution in the criminal law have been formulated.¹ *Lex talionis* is far from a mere historical or religious object of curiosity, however. The belief that the law of retribution is an immutable religious command which must be applied literally is one that occurs across religious boundaries and is especially prominent in Islam. Efforts to curb capital punishment and amputation, or even specific methods such as stoning, have frequently run up against the shoals of religious objection. Islamic political and religious scholars who advocate the rigid enforcement of these aspects of *shari’a* law often express their justification in religious terms.²

Therefore, it would be illuminating to accurately outline the historical development of *lex talionis* within the specific social and temporal context of the distinct societies which both adopted and refined it. In particular, what are the scriptural bases of the law of retribution? Was it a novel concept, or did it build upon existing norms and customs? Did it emerge in each faith independently or as a result of cultural, religious and commercial interactions? Attempting to answer these questions should help furnish a richer understanding of the contemporary controversy over the death penalty and other punishments in the Islamic world. This

¹ Michael Davis, “Harm and Retribution,” 15 *Philosophy and Public Affairs*, No. 3 (Summer 1986). (Arguing for a retributive theory of punishment not based on *lex talionis*.) Cf. Jeremy Waldron, “Lex Talionis,” 34 *Arizona Law Review*, (1992). (Arguing that a defense of *lex talionis* can be consistent with rejection of capital punishment.)

² Richard Dowden, “Death by Stoning,” *New York Times Magazine*, 27 January, 2002. (Application of Shariah in Nigeria.) Paul McGeough, “In God’s Name,” *Sunday Morning Herald* (Australia), August 11, 2001. (Application of Sharia in Taliban-controlled Afghanistan)

examination into the roots of *lex talionis* will begin with mankind's first human settlements in the Mesopotamia, continue with the Biblical law of Judaism and Christianity, and end with the consolidation of Islamic law in the decades after Mohammad's death.

II. The Theory of *Lex Talionis*

Properly accounting for, and explaining, *lex talionis* has played an important role the scholarship on legal history and the evolution of criminal law. For Hegel, "the guiding problem posed by early legal history was the problem of the transition from an Old Testament rule of 'eye for an eye, tooth for a tooth,' to the new covenant of Christ."³ For most early scholars, this transition was explained by the "self-help" model. Articulated and developed by, among others, Max Weber, it has been used to explain the rise of the legal system in Mesopotamia, Greece, Rome, pre-Christian Germany, and early Islam.⁴

The self-help model rests on four stages. The first stage is the state of nature, ordered by vengeance-seeking individuals and clans who meted out talionic punishments. Stage two is characterized by the primitive state, which seeks to supervise, rather than completely control or eliminate, the existing system of vengeance. In stage three, the maturing state seeks to function as the enforcer, seeking vengeance on behalf of the aggrieved individual or family. Finally, in stage four, the state moves to gain a monopoly on force by completely eliminating private violence. At this stage, the state also institutes a system for "compensations," substituting money damages for talionic vengeance.⁵

This long-standing and intuitively appealing view has been subject of considerable revision.⁶ According to these new perspectives, the origins of *lex talionis* are inseparably intertwined with early attempts to define notions of justness and evenness.⁷ Though commentators often juxtapose *lex talionis* and compensation, the interconnection between distributive and corrective justice run deep, and "getting even is at the core of both." This is

³ James Q. Whitman, "At the Origins of Law and the State," 71 *Chicago-Kent Law Review* (1995), 45.

⁴ *Ibid.*, 42-43.

⁵ *Ibid.*, 42.

⁶ Henberg, *Retribution: Evil of Evil in Ethics, Law, and Literature*, p.62 (arguing that the traditional account in which compensation replaces talionic punishments cannot be assimilated to the historical record of ancient Near Eastern law); see MacCormack *Revenge and Compensation* p83 (

⁷ William Ian Miller, *Eye for an Eye*, (Cambridge University Press, 2006), 7-37.

because the worry and difficulty about coming up with equivalences is at the core of primitive systems of justice. Disputes often revolved around the form and amount of compensation, not whether a wrong had been committed and reparation was due.

The retribution at the core of *lex talionis* involves two precepts: first, insistence that evil demands to be requited with evil; and, second, that the evil to be paid back must be the “moral equivalent of the original.”⁸ Implicit in the *lex talionis* is the idea that the doer of evil suffers, even if this aspect “lurks in the shadows.”⁹

III. Ancient Near East

The legal traditions of the ancient Near East are rich and varied, befitting a land often labeled the cradle of civilization. The area between the Euphrates and Tigris has experienced organized human activity since at the least the Bronze Age. By the third millennia BCE this had evolved into complex societies based in urban areas. Due to climactic and geographical reasons, large-scale farming needed to sustain such large sedentary populations was only possible through the use of irrigation along river basins. The concentration of population along an easily accessible area, along with the need to build and maintain an intricate network of dams, aqueducts, and irrigation channels, gave rise to relatively strong central government.

Though the Code of Hammurabi is the most well-known of the cuneiform laws, there are a number other important legal texts, some of which precede Hammurabi’s by several centuries.¹⁰ The leap in understanding arising from the discovery of these ancient texts should not paper over the many difficulties that remain in understanding the (often fragmentary) texts and placing them in the proper context. Aside from obvious problems of incompleteness and interpretation, other issues muddy the waters of analysis.

For one, the purpose of the texts is still unclear. Though usually referred to as “codes” or “laws”, we simply do not know if these are accurate labels. The discovery and investigation of the ancient texts took place when the codification of law in various European nations was going

⁸ Henberg, *Retribution*, 18.

⁹ *Id.* at 19.

¹⁰ They are so termed because they employ the cuneiform script that originated with the Sumerian civilization (c. 3400 BCE).

full steam ahead, perhaps providing a conscious or unconscious backdrop.¹¹ In fact, there is no evidence that the notion of a written, authoritative law existed in ancient Mesopotamia.¹²

According to one authority, “the provisions in the Mesopotamian law collections do not reflect the actual practice of law in their epochs, for these collections are more truly documents of legal philosophy than prescriptive law.”¹³ If anything, “the judges of ancient times had neither the custom nor the techniques for arriving at a decision by means of interpreting and applying an authoritative written law code.”¹⁴ Evidence for the actual application of the law must, therefore, be found in the letters, contracts, lawsuits, and “other documents of daily life.”

One scholar has suggested that the Assyrian Code was essentially the work of a private jurist. Another possibility is that the texts were propaganda issued by new rulers to solidify their positions. One of the more convincing arguments is that the main function was “the description of the legal tradition regarded as the standard by the promulgator.”¹⁵ Another pitfall lies in the process of comparing different legal systems. Aside from linguistic and structural issues, there are several analytical problems in comparative legal history, especially in trying to determine the influence of one body of law on another.¹⁶ Therefore, claims of influence should always be viewed with some degree of skepticism. Regardless of these caveats, on one point

¹¹ George E. Mendenhall, “Ancient Oriental and Biblical Law,” 17 *Biblical Archaeologist*, No. 2 (May 1954), 31.

¹² *Ibid.*

¹³ Tikva Frymer-Kensky, “Tit For Tat: Then Principle of Equal Retribution in Near Eastern and Biblical Law,” *Biblical Archeologist* (Fall 1980), 231.

¹⁴ *Ibid.*

¹⁵ *Ibid.*, 34.

¹⁶ Bernard S. Jackson, “Evolution and Foreign in Influence Law,” 16 *American Journal of Comparative Law*, No. 3 (Summer 1968), 372-380. There are several methods to establish the presence of influence. The most obvious is to note and compare parallel developments in two different systems. This method is susceptible to the argument of independent parallel development, “legal systems faced with similar problems will tend to produce solutions which are familiar- and quite independently of the influence of one system upon another.” Another potentially valuable clue is terminology. This can take the form of either finding legal terms that are not native to the language of the text, or by isolating a specific phrase and tracing it back to the purported source. An alternate method would be to “identify the overall development of a legal system, and then to isolate any element within it which appears wholly inconsistent with the overall stage.” If such elements are found and there is evidence of contact with another civilization, then the probability of influence cannot be discounted. This method, however, is fraught with difficulties. First, it is very difficult to examine any legal system at some point and assign it to stage “y” of development. This is even assuming that there exist universal and identifiable stages which all legal systems pass through. Similar to this, one can also locate institutions which “stand[] out as wholly inconsistent with the general culture of which it is part,” irrespective of the stage of legal development. Finally, one may focus the presence of legal rituals or procedures, especially those “where social requirements demand only some form of ritual and not a specific ritual.”

most scholars agree: there existed a common law in the area, with successive legislators knowing and making uses of the work of their predecessors.¹⁷

One of the oldest texts is the Code of Lipit-Ishtar, dated approximately 1860 BCE (two hundred years before the Code of Hammurabi). Lipit-Ishtar was the fifth ruler of the first dynasty of Isin, a city in lower Mesopotamia.¹⁸ The laws of Lipit-Ishtar that are legible mostly address domestic law and economic torts. There are two clauses that are interesting for our purpose. The first concerns the breaking and entering of an orchard for the purpose of theft.¹⁹ Somewhat surprisingly for an act that would have constituted a capital crime in 19th century Britain, the penalty is ten shekels of silver. Another clause addresses the giving of shelter to a runaway slave.²⁰ Here the penalty is again solely pecuniary: a slave if the guilty party owns one, and 15 shekels of silver if he does not.

Also important are the Laws of Eshnunna (LE). Unearthed in modern-day Iraq, these texts date to the 18th century BCE and classify homicide, burglary and rape as capital offenses. All personal injuries and thefts, however, are compensation offenses:

“If a man bites the nose of a(nother) man and severs it, he shall pay 1 mina of silver. (For) an eye (he shall pay) 1 mina, (for) a tooth 1/2 mina, (for) an ear 1/2 mina, (for) a slap in the face he shall pay 10 shekels of silver.”²¹

"If a man severs a(nother) man's fingers he shall pay 2/3 of a mina of silver."²²

"If a man throws a(nother) man to the floor in an altercation(?) and breaks his hand(?) he shall pay 1/2 mina of silver."²³

"If he breaks his foot, he shall pay 1/2 mina of silver."²⁴

"If a man assaults a(nother) man and breaks his he shall pay 2/3 of a minas of silver."²⁵

¹⁷ A.S. Diamond, "An Eye for an Eye," 19 *Iraq* (Autumn 1957), 152.

¹⁸ Francis R. Steele, *The Code of Lipit-Ishtar*, University of Pennsylvania Monographs, 8.

¹⁹ Law of Lipit-Ishtar, §9.

²⁰ *Ibid.*, §§ 12-13.

²¹ Laws of Eshnunna, §42.

²² *Ibid.*, § 43.

²³ *Ibid.*, § 44.

²⁴ *Ibid.*, § 45.

²⁵ *Ibid.*, § 46.

The Code of Hammurabi, dated 1790 BCE, is the best known of all the cuneiform laws and has been regarded as a significant step in legal development. It contains several *talionic* and sympathetic punishments. One of the best known is provides that “If a builder has built a house for a man and his work is not strong, and the house he has built collapses and kills the owner of the house, that builder shall be put to death. If the son of the owner is killed, they shall kill the builder’s son.”²⁶ Note the vicarious aspect of the punishment; the builder himself is not killed, instead his son is condemned in order to repay the sins of his father. Another clause holds that “If a free man has injured the eye of a patrician, his bones shall be broken.”²⁷ According to one interpretation, the Code of Hammurabi was “in reality legislating for another aspect of law, with which the earlier laws were not concerned.”²⁸ The law was moving from private to the control of the individual’s actions by the state; what we would deem the criminal law. CH was seeking to make the punishment fit the crime rather than solely to compensate the victim. This gradual shift from a victim-centered to a more universal approach became prevalent throughout the region and reflected the changing structure of ancient Near East society.

IV. *Lex Talionis* in Judaism

The most well-known examples of Talionic punishments are found the in the Old Testament.²⁹ Though sharing a broader common heritage, it is important to emphasize that Biblical law was different from that of the rest of the ancient Near East. Much of this distinction can be explained by the separate forms that ancient Israeli and other Mesopotamian societies took.

²⁶ C.H. 229, 230.

²⁷ C.H. 196, 197

²⁸ Stuart West, “The Lex Talion in the Torah,” 21 Jewish Bible Quarterly, No.3 (1993), 187.

²⁹ In general, the Old Testament is used in Christianity to denote the books that form the first part of the Christian Bible. It corresponds roughly to the Jewish Bible (some Christian denominations, including some Protestants, Roman Catholics, and Eastern Orthodox, include writings, often referred to as deuterocanonical books, that are not recognized in Judaism). The New Testament refers to the second part of the Christian Bible and is centered on the life and teachings of Jesus. The Jewish Bible is composed of three parts: the *Torah* (also known as the Pentateuch), the *Nevi'im* (or Prophets), and the *Ketuvim* (or Writings). Traditionally, the Torah has been referred to as the “written law”. The Talmud, consisting of the *Mishna* and *Gemara*, is known as the “oral law.” The former is a compilation of Jewish law that had been transmitted orally for centuries before being written down in 70-200 A.D. The latter is composed of commentaries about the *Mishna* by rabbinical experts.

A. Biblical and Mesopotamian Society

Despite links of language, culture and history, biblical Israeli society was fundamentally different from that of the ancient cities of Mesopotamia. These variations in the organization of society led to profound disparities in the institutions and remedies concerned with homicide.

Biblical Israel was rural, with social organization based predominantly on kinship ties.³⁰ This was reflected in the prevalence of small towns rather than major urban settlements. Cities were primarily used for administrative purposes; Jerusalem at its greatest size (about 124 acres) was only 15 percent the size of the central cities in Mesopotamia.³¹

The concept of kinship, which emphasized socio-economic benefits, transcended purely blood relations and sometimes took territory into account. Its foundations rested on an extended family organized along patriarchal lines which gave preference to adult males.³² The extended family usually comprised three or four generations and included adult children, unmarried aunts, slaves and even aliens (*gerim*). Smaller villages might consist of only one kinship group while larger villages could have several.³³ These groups played an instrumental role in village life. The construction of the hillside terraces essential for farming and the processing of agricultural products both involved not just the extended family, but the larger kinship unit.³⁴ The importance of these ties did not dissipate even as ancient Israel was evolving towards a primitive state.³⁵

The decentralized, kin-based organization of biblical Israeli society was reflected in the centrality of the blood feud, which cannot be severed from *lex talionis*.³⁶ The blood feud was the critical mechanism for restricting violence in a society without police or prosecutors.³⁷ Its

³⁰ Pamela Barmash, "Blood Feud and State Control: Differing Legal Institutions for the Remedy of Homicide During the Second and First Millennia B.C.E.," 63 *Journal of Near Eastern Studies*, No. 3 (2004), 195.

³¹ Barmash, "Blood Feud and State Control," 198.

³² Avraham Faust, "The Rural Community in Ancient Israel during Iron Age II," *Bulletin of the American Schools of Oriental Research*, No. 317 (Feb. 2000), 29.

³³ *Ibid.*, 28.

³⁴ *Ibid.*, 23.

³⁵ Use Master, "State Formation Theory" instead

³⁶ Although the terms "blood feud," "blood revenge," "vengeance killing," are often used interchangeably, it is helpful to distinguish a blood feud from other types of retaliatory killings. A blood feud must include a sequence of at least three homicides (or attempts) and reflect a pattern of alternating killing between the parties involved. Most importantly, a blood feud must involve some element of group responsibility or group liability.

³⁷ Barmash, *Homicide in the Biblical World*, 8.

origins can be traced to the nomadic period of Israel's existence, with numerous illustrations present in the Old Testament.³⁸ In Judges 8:18, Gideon successfully defeats and captures members of the Midianite tribe who had earlier killed his brothers. Though he is the proper avenger, Gideon attempts to humiliate and dishonor the Midianite chiefs by having his eldest son and heir commit the slaying. Judges 19 contains a particularly gruesome incident of unbridled vengeance. A Levite, along with his servant and concubine, took refuge at the house of an Ephraimite. Later that night, the Benjamites who inhabited the area descended upon the house and demanded that the host surrender the Levite. The host refused and instead offered his own daughter and the Levite's concubine. The Benjamites proceeded to rape the women and kill the concubine. Upon discovering his concubine's death in the morning, the Levite carved her body into twelve pieces and sent them to all corners of Israel. The Israelites, outraged at the atrocity, attacked the Benjamites. Despite being repulsed twice (and suffering 40,000 casualties in the process), the Israelites succeeded on the third try. After defeating the Benjamite fighting force, they "turned again upon the children of Benjamin, and smote them with the edge of the sword, as well the men of every city, as the beast, and all that came to hand: also they set on fire all the cities that they came to."³⁹

Given the organization of ancient Israeli society, it was logical that the victim's family bore primary responsibility in seeking justice for the slaying of one of its own.⁴⁰ Contrary to contemporary images of uncontrolled bloodletting (e.g. the Hatfields and McCoys in West Virginia), a blood feud operated within well-defined boundaries. Its purpose was to redress wrongs and limit violence to acceptable levels.⁴¹ The first, more abstract reason was connected to deep-seated Semitic notions about the sanctity of blood and the purity of land. The spilling of blood that resulted from a homicide did not just affect the victim or his kin. It polluted the land and was an offense to god.⁴² Therefore, the perpetrator himself must be made to shed blood.

³⁸ Walter M. Patton, "Blood-Revenge in Arabia and Israel," 5 *American Journal of Theology*, (October 1901), 718.

³⁹ Judges 20:48.

⁴⁰ Barmash, "Blood Feud and State Control," 185.

⁴¹ Barmash, *Homicide in the Biblical World*, 23.

⁴² Barmash, *Homicide in the Biblical World*, 94.

In early times, there was no requirement that retaliation be limited to the actual perpetrator: all members of the slayer's kin were held responsible.⁴³ This accorded with the early Old Testament view of the inheritance of guilt. Gradually, a developing sense of individualism ameliorated some of the collective aspects of the blood feud.⁴⁴ First, only the actual culprit was targeted. Additionally, only a specific member of the victim's family, the "blood avenger", could take revenge.⁴⁵ Additionally, there existed cities of refuge where a slayer could take asylum without fear of retribution.

The dominant feature of Mesopotamian life was urbanization. Social organization was "centralized, bureaucratic, and specialized."⁴⁶ Urban centers in the area were close to one another and densely settled. Nomadic customs were held in contempt as the city was regarded as the seat of all culture. In contrast to ancient Israel, the state played a more active role in the relationship between its subjects, partly manifested in state control of the legal process. As a result, under cuneiform law the state, as opposed to the family, had primary responsibility for bringing perpetrators of violence to justice.⁴⁷ Though anyone could bring a charge of homicide, the central authorities would then assume oversight of the situation.⁴⁸ An official investigation would ensue, with a trial necessary before any punishment could be meted. For example, during the Neo-Assyrian period (934 - 609 BCE), when the parties opted to assert their rights through negotiations, the crown managed the process by defining the limits of their rights, serving as a mediating body, and ensuring that any obligations were fulfilled.⁴⁹ Concomitant with the strong presence of state oversight was the lack of "anxiety engendered by the specter of a blood avenger waiting to pounce."⁵⁰

B. The Old Testament

⁴³ Patton, "Blood Revenge in Arabia and Israel," 725.

⁴⁴ Ibid.

⁴⁵ "The revenger of blood himself shall slay the murderer: when he meeteth him, he shall slay him." Numbers 35:19.

⁴⁶ Pamela Barmash, "Blood Feud and State Control: Differing Legal Institutions for the Remedy of Homicide During the Second and First Millennia B.C.E.," 63 *Journal of Near Eastern Studies*, No. 3 (2004), 194.

⁴⁷ Barmash, *Homicide in the Biblical World*, 27.

⁴⁸ Barmash, "Blood Feud and State Control," 190.

⁴⁹ Barmash, "Blood Feud and State Control," 192.

⁵⁰ Barmash, "Blood Feud and State Control," 193.

Though probably cognizant of the earlier legal tradition, the exact relationship between Biblical law and cuneiform law is unclear.⁵¹ However, there is almost universal agreement that there must be “some direct or indirect dependence of Israelite case law upon earlier codification of law in the ancient world.”⁵² The difficulties surrounding the ancient Near East texts also apply to Biblical passages. There is no consensus on the date of authorship and “no external objective evidence from which a compelling conclusion can be derived.”⁵³

The Talionic Punishments are all found in the Torah or first five books of the Old Testament. Talionic punishment first appears in Exodus. This portion of Exodus, also known as the Covenant Code, sets forth many of the rules of Jewish law, including familial relationships, torts, and criminal law. Amidst these rules, chapter 21:

"If men who are fighting hit a pregnant woman and she gives birth prematurely but there is no serious injury, the offender must be fined whatever the woman's husband demands and the court allows. But if there is serious injury, you are to take life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise."⁵⁴

Lex talionis next emerges in the book of Leviticus, which is chiefly concerned with priestly rituals and rules.⁵⁵

“If anyone takes the life of a human being, he must be put to death. Anyone who takes the life of someone's animal must make restitution—life for life. If anyone injures his neighbor, whatever he has done must be done to him: fracture for fracture, eye for eye, tooth for tooth. As he has injured the other, so he is to be injured. Whoever kills an animal must make restitution, but whoever kills a man must be put to death.”

The final example of the *talion* is found in Deuteronomy.⁵⁶ A significant portion of Deuteronomy is taken up by three sermons by Moses reviewing the time the Jews spent

⁵¹ Pamela Barmash, *Homicide in the Biblical World*, (Cambridge 2004), 2.

⁵² George E. Mendenhall, “Ancient Oriental and Biblical Law,” 17 *Biblical Archaeologist*, No. 2 (May 1954), 31.

⁵³ *Ibid.*, 34.

⁵⁴ Exodus 21:22-25

⁵⁵ Leviticus is the third book of the Torah and is tentatively dated c. 550-400 BCE. It is primarily concerned with laws and priestly rituals.

wandering in the wilderness. The rest of the book is concerned with the core of law by which the Israelites will live once in the promised land. The *talion* appears in a section addressing with punishment for a false witness:

“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 testifies against his brother. And you shall do to him as he plotted to do to his brother. And you shall purge 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, but life shall go for life, eye for eye, tooth for tooth, hand for hand, foot for foot.”⁵⁷

The provision in Exodus poses the most challenges.⁵⁸ Even setting aside uncertainty regarding whether the fetus or expectant mother suffers the injury, it is unclear from the passage whether the victim was the target of violence.⁵⁹ This is problematic because under Mosaic Law, capital punishment was never applied unless the killing was intentional.⁶⁰ Furthermore, the exhaustive list of injuries in the talionic formula (to include burn for burn, wound for wound, bruise for bruise) seems odd for a scenario in which a pregnant woman may be accidentally injured in a fight.

Additionally, corporal punishment and mutilation were not generally part of ancient Israeli law.⁶¹ Linguistically, this is reflected by the fact that when retribution is literal, as in Ex 21:12 (“he shall surely be put to death”) and Lev 24:17, the terms are unequivocal. This parallels usage in other Near East societies like that of Hammurabi’s Code, “If a man caused the

⁵⁶ Deuteronomy is the fifth book of the Torah. Believed to have been composed sometime in the late 7th century BCE, its central element is a detailed law code that the Israelites are to use in the Promised land.

⁵⁷ Deut 19

⁵⁸ Jonathan Vroom, “An Eye for an Eye in Context: The Meaning and Function of the Lex Talionis in the Torah,” (master’s thesis, McMaster Divinity College, 2009) at 36.

⁵⁹ Davis, *Lex Talionis*, p. 39

⁶⁰ *Ibid.*, 296. One author has argued that rather than accidentally wading into the fight, the woman, having some sort of standing, intentionally thrust herself into the fight in order to bring peace. David Werner Amram, “Retaliation and Compensation,” *2 Jewish Quarterly Review* (1911/12), 198.

⁶¹ P. Eddy Wilson, “Deuteronomy XXV 11-12: One for the Books,” *47 Vetus Testamentum*, (April 1997), 220, 229.

loss of a noble's eye, his eye they shall cause to be lost." Retribution must be expressly formulated. The Hebrew expression, "like-for-like" only requires full and just indemnity.⁶² According to Maimonides, the use of *tachat* in Exodus 21:22 is also found in Ex. 21:18-19 which deals with compensation for wounding of one man by another.⁶³ This transformation occurred gradually.⁶⁴

Rather, the passage in Exodus can be regarded as a statement regarding culpability due to reckless negligence. Since reckless conduct can bring about almost any form of harm, from miscarriage to burns and loss of limbs, the talon is an ideal form of covering that range.⁶⁵

The talion in Leviticus is presented in a more straightforward manner than in Exodus and provides the strongest and most compelling case that a literal application of the talion as punishment for intentional maiming was intended.⁶⁶ The text is imbedded in a short narrative that takes a chiasmic structure in the midst of instructions to Israel on feasts, the tabernacle, and sabbatical requirements.⁶⁷ The talion in Leviticus is about universal obligation to Israel's known law regardless of ethnicity. In this context, the *lex talionis* serves as a paradigmatic example of secular law.⁶⁸

The punishment in Deuteronomy is also logically troubling because of the absence of any possibility that the defendant on trial could be subject to the aforementioned punishments. As stated above, the ancient Israelites did not generally inflict mutilation as a punishment for a crime and no such case has ever been recorded.⁶⁹ The burning, wounding, and bruising mentioned in Exodus is absent.⁷⁰ Talionic punishments for false testimony were common in the ancient Near East, which is natural since ancient legal systems were so dependent on witness testimony. The use of the talion in the provisions for treatment of a false witness clearly is intended as a formulaic statement of a philosophical principle of equal retribution. It is rhetorical

⁶² *Ibid.*, 297.

⁶³ Stuart West, "The Lex Talion in the Torah," 21 *Jewish Bible Quarterly*, No.3 (1993), 185.

⁶⁴ David Werner Amram, "Retaliation and Compensation," 2 *Jewish Quarterly Review* (1911/12), 192.

⁶⁵ Vroom, "An Eye for an Eye in Context," at 46.

⁶⁶ James Davis, *Lex Talionis in Early Judaism and the Exhortation of Jesus*, 3.

⁶⁷ A chiasmic structure is a literary device in which a sequence of ideas is presented and then repeated in reverse order. The result is a "mirror" effect as the ideas are "reflected" back in a passage. Each idea is connected to its "reflection" by a repeated word, often in a related form.

⁶⁸ Vroom, "An Eye for an Eye in Context," at 66.

⁶⁹ Stuart West, "The Lex Talion in the Torah," 21 *Jewish Bible Quarterly*, No.3 (1993), 184.

⁷⁰ Amram, *Retaliation and Punishment*, 195.

and stylistic; it is a catch-all phrase expressing a range of punishments corresponding to the range of possible false accusations entailed in the crime.⁷¹

C. *Lex Talionis* in Jewish Thought and Practice

On its face, all three examples in the Old Testament appear to be clear applications of *lex talionis*. In the popular imagination, they are the embodiments of Biblical vengeance. A closer examination, however, reveals that vengeance is far from the primary motive. In fact, Jewish rabbis and scholars have been at pains to point out that these passages have been taken out of context. Rather than viewing them in isolation, they should be seen as part of a complete and organic body of law. In particular, “one cannot perceive the true bearing of a law without considering how it has been applied in life.”⁷²

Under this interpretation, the *talionic* passages served a dual purpose: to ensure compensation for the injured and to limit vengeance. Rather than viewing the law of retribution as a floor on punishment, it was crucially a ceiling on vengeance. A wronged man or woman could take no more than an eye or a tooth. An injury could not lead to death. As one scholar has argued, “Far from encouraging vengeance it limits vengeance and stands as a guide for a judge as he fixes a penalty suited to the crime.”⁷³ Thus the *talion* “cuts two ways, it both punished and protected the criminal offender.”⁷⁴ Additionally, Biblical *lex talionis* removed the specter of vicarious punishment; only the perpetrator was subject to punishment, not his wife or children. This stands as marked improvement over, for example, the *talion* in the Code of Hammurabi. Therefore, *lex talionis* in the Old Testament “is not to be taken in its literal sense, but in the sense of full and proper compensation.”⁷⁵ Maimonides, arguably the most influential Jewish philosopher of the last millennium, “was never in doubt that the *lex talionis* was not to be taken literally and that it was based on the idea of monetary compensation.”⁷⁶

A potentially useful guide to Jewish practice in the centuries encompassing the life of Jesus and the loss of Jewish sovereignty in ancient Israel are non-Biblical texts such as the

⁷¹ Vroom, p. 96.

⁷² J.K. Miklitzanski, “The Law of Retaliation and the Pentateuch,” *Journal of Biblical Literature* 1947, 295.

⁷³ Wilson, “Deuteronomy XXV 11-12,” 229, quoting J.A. Thompson, *Deuteronomy* (London, 1974), 218, note 3.

⁷⁴ Wilson., 230.

⁷⁵ Miklitzanski, “The Law of Retaliation and the Pentateuch,” 296.

⁷⁶ Stuart West, “The Lex Talion in the Torah,” 21 *Jewish Bible Quarterly*, No.3 (1993), 184.

Talmud, the Antiquities, and the Pseudepigrapha.⁷⁷ Though these works do not demonstrate a homogenous interpretation of the lex talionis, the weight of evidence tips towards a more nuanced reading of the Old Testament provisions; one that leans against a literal meaning of mutilations.

Dated from the 1st century CE, the Second Book of Enoch is not regarded as scripture by either Christians or Jews. It is, however, theologically representative of Jewish apocalyptic literature and has been of interest to scholars. The relevant passage for purposes of interpreting the lex talionis is the provision 2 Enoch, 50.2-4:

“Every assault and every persecution and every evil word endure of the sake of the LORD. If the injury and persecution happen to you on account of the LORD, then endure them all for the sake of the LORD. And if you are able to take vengeance with a hundredfold revenge, do not take revenge, neither on one who is close to you nor on the one who is distant from you. For the LORD is the one who takes vengeance, and he will be the avenger for you on the day of the great judgment, so that there may be no acts of retribution here from human beings, but only from the LORD.”

This passage makes clear that retribution is not to be taken to a personal level. Vengeance is God’s alone, to be taken on the Day of Judgment.⁷⁸

The talionic punishment is referenced in Antiquities 4.280:

“He that maimeth a man shall undergo the like, being deprived of the that limb whereof he deprived the other, unless indeed the maimed man be willing to accept money; for the law empowers the victim himself to assess the damage that

⁷⁷ According to Jewish tradition, the Talmud (also referred to as the “Oral Torah”) was taught to Moses by God. It was subsequently handed generation-by-generation through word of mouth until it was compiled and written down beginning in the 2nd century C.E. The Talmud is comprised of the Mishnah and the Gemara. The Pseudepigrapha is a diverse collection of Jewish religious works written between c. 300 B.C.E. and 300 C.E. Although not accepted as holy scripture by most Jews and Christians, they provide historical context and background. The *Antiquities of the Jews* is a 20-volume historiographical work on the history of the Jews composed by the Jewish historian Flavius Josephus in the late 1st century C.E. Although criticized for being too sympathetic to the Roman empire, the author’s familiarity with Jewish law and participation in the sect of the Pharisees makes the work valuable background material to historians wishing to understand 1st-century AD Judaism and the early Christian period. The problem is aggravated by the fact that the two primary sources of early Judaism were not composed until well after the oral traditions of ancient Israel had receded in the embers of time.

⁷⁸ Davis, p. 61.

has befallen him and makes his concession, unless he would show himself too severe.”

The text appears to endorse, or at least acknowledge the availability of a literal talion but provides an additional safeguard that places a limitation on the amount of compensation imposed on the assailant as judged by the court. This text has been debated and has at best only partially been accepted as representing a mainstream view of Judaic law and practice. It is strenuously opposed by those who argue that normative Judaism is only represented by the Talmud.⁷⁹

Though the Mishna and Tosepfta were compiled in the 2nd century CE and later, they remain critical because they may represent older views than the composition of the documents themselves, and are more representative of the early Jewish rabbis.⁸⁰ The talionic mindset is best represented by a passage from m.Sota 1.7 in connection with adulterous woman:

“with what measure a man metes it shall be measured to him again; she bedecked herself for transgression- the Almighty likewise laid her bare; she began transgression with the thigh first and afterward with the belly – therefore the thigh shall suffer first and afterward the belly; neither shall aught else for the body go free.”

But more representative of the Mishna is the Baba Qamma, which is the primary text in the Mishna on lex talionis in relation to wounding or maiming. This provision is contained in the fourth division of the Mishnah called *nezikin* (damages):

“If a man wounded his fellow he thereby becomes liable on five counts: for injury, for pain, for healing, for loss of time, and for indignity inflicted.

‘For injury’ – thus if he blinded his fellow’s eye, cut off his hand, or broke his foot, [his fellow] is looked upon as if he was a slave to be sold in the market: they assess how much he was worth and how much he is worth now.

‘For pain’ – thus, if he burnt his fellow with a spit or a nail, even though it was on his fingernail where it leaves no wound, they estimate how much money such a man would be willing to take to suffer so.

‘For healing’ – thus, if he struck him he is liable for the to pay the cost of his healing; if by reason of the blow ulcers arise he is liable [for the cost of their healing], but if they did not arise by reason blow, he is not liable. If the wound healed and then opened and healed again and again opened, he continues liable for the cost of his healing; but once it is properly healed he is no longer liable to pay the cost of his healing. ‘For

⁷⁹ Davis, *Lex Talions*. P. 70

⁸⁰ Davis at p. 72. The Tosefta is a compilation of Jewish oral law that complements the Mishnah.

loss of time' – thus, he is looked upon as a watchman of a cucumber field, since he had already paid the value of his hand or foot.

'For indignity suffered' - all is in accordance with [the condition of life of] him that inflicts and him that suffers the indignity. If a man inflicted the indignity on a naked man, or a blind man, or a sleeping man, he is [still] liable; but if he that inflicted the indignity was asleep he is not liable. If a man fell from the roof and caused injury and inflicted indignity, he is liable for the injury but not for the indignity, for it is written, And she putteth forth her hand and taketh him by the secrets – a man is liable only when he acts with intention [of causing injury]."⁸¹

This passage shows a jump from the possible intent of the Old Testament law of a literal talion to that of financial compensation; retaliatory maiming is not provided as an option.⁸² The Mishnaic materials reveal a unified position on the requirement of only financial compensation for maiming cases.⁸³

The discussion in Baba Qamma 83b-84a is the most extensive discussion in the early rabbinic sources on the *lex talionis*.⁸⁴ It comprehensively seeks to justify the interpretation that the maiming element of the talionic formula does not require a literal talion but instead financial compensation. The text reveals the intense and extensive effort by rabbis to show that biblical law would allow for monetary compensation.

V. Christianity

The evolution of *lex talionis* in Christianity was heavily influenced by attempts to distinguish the new faith from its Jewish roots and by the traditions and practices of the Germanic and other nomadic tribes in Europe which in the second half-millennium after Jesus's death constituted the majority of converts.⁸⁵ Combined with the bifurcation and subsequent development of religious and secular law attendant with the legal revolution of the eleventh and twelfth centuries, the law of retaliation occupied a less prominent place in the legal tradition of Christianity than it did in either Judaism or Islam.

A. The New Testament

⁸¹ Baba Qamma 8.1.

⁸² Davis, *Lex. P.* 74

⁸³ Davis, *Lex Talionis*, p. 81

⁸⁴ Davis, *Lex Talionis*, 90

⁸⁵ These tribes include the Franks, Burgundians, Visigoths, Ostrogoths, Lombards, Angles, Saxons, Danes, Norsemen, Magyars.

Mirroring, if not talionic, punishments lurk behind a number of New Testament verses. In Acts, Saul and Barnabas come across a proconsul who was open to the “word of God” but was kept in spiritual blindness by Elymas the sorcerer. In retaliation for “perverting the right ways of the Lord,” Saul temporarily blinds her.⁸⁶ In 2 Timothy 4:14, Alexander the metalworker is the culprit and God himself “will repay him for what he has done.” Finally in Revelations 18:20 Babylon’s downfall is cause for delight, “Rejoice over her, O Heaven! Rejoice saints and apostles and prophets! God has judged her for the way she treated you.”

The most prominent and consequential example, however, is Jesus’s sermon on the mount. Occurring after he has been baptized by John the Baptist and begun in Galilee, the Sermon is the longest piece of teaching from Jesus in the New Testament, and has been regarded as key element of Christian ethics. On his sermon on the mount, Jesus proclaimed:

“You have heard that it was said, ‘Eye for Eye, and tooth.’ But I tell you, Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also. And if someone what to sue you and take your tunic, let him have your cloak as well. If someone forces you to go one mile, go with him two miles. Give the one who asks you, and do not turn away from the one who wants to borrow from you.”⁸⁷

In seeking to distinguish themselves and their creed from its Judaic heritage, the early Christians renounced many aspects of their Judaic heritage. Though the central tenets of the Old Testament remained, many of its religious laws, including almost all of the dietary laws, grooming laws, etc., were cast aside, though towards the view that Jesus came not to abolish the law but to fulfill it.⁸⁸

On the surface, Jesus’s exhortation seems to be a clear renunciation of the law of retaliation (scholars generally agree that Jesus was referencing the Deuteronomic version) and plays a central role in discussions about Christianity’s ethic of compassion and mercy.⁸⁹ But a closer reading reveals that the sermon presents a vast array of difficulties in regard to translation,

⁸⁶ Acts 13:6-12.

⁸⁷ Matthew 5:38-42.

⁸⁸ Think not that I am come to destroy the law, or the prophets: I am not come to destroy, but to fulfil.

⁸⁹ Lidija Novakovic, “Turning the Other Cheek to a Perpetrator: Denunciation or Upholding of Justice” paper present at annual meeting of the Society of Biblical Literature, 2.

social context and focus.⁹⁰ Some commentators have argued that, rather than questioning the principle of *lex talionis*, which came directly from God and was therefore immutable, Jesus was attempting to recover the original intents of the law.⁹¹ Contrary to its intent, the Old Testament verses were being used as justification for private vengeance, which Jesus denounced.

Another interpretation is that by the time of Jesus, *lex talionis* had already lost its literal meaning. The omission of the first element reflects the fact that “life for life” (which continued to provide the basis for capital punishment) was separated from the rest of the formula, while the examples used by Jesus (battery, lawsuit, etc.) are not illustrative of retaliatory punishment. Rather, Jesus’s exhortation is concerned with the victim in powerless situations.

Another scholar has argued that the purpose of the Sermon on the Mount was far more basic. It concerned the “urge to resent a wrong done to you as affront to your pride, to forget that the wrongdoer is your brother before God and to compel him to sooth your unworthy feeling and it advocates, instead, a humility which cannot be wounded. A giving of yourself to your brother which will achieve more than can be achieved by narrow justice.”⁹²

Another scholar argues that Jesus was explicitly laying aside the *lex talionis*, as they are mutually exclusive; “if and when Jesus’s word is binding, then the other is not.” Jesus makes no effort to integrate the two commands into a consistent whole. Jesus’s example applies to both personal and legal affairs.⁹³

Another take is that *Lex Talionis* is neither a form of corporal punishment nor a formula for financial compensation, but must be understood in the religious context of a priestly covenantal theology. The Priestly tradition only allows an individual the right to live in the land as an unblemished, ritually pure individual and that a man’s life is the exclusive property of God as his creator. Thus, the maimed individual is “dead” and cannot continue living in the land.⁹⁴

Jesus is neither advocating passivity nor violent action, but rather advocating third option of “active non-violent resistance.” Jesus is not advocating surrender or passivity in the face of

⁹⁰ Davis, p. 30.

⁹¹ John N. Day, *The Imprecatory Psalms and Christian Ethics*. Abstract. (Dallas Theological Seminary, 2000), 184. (available at http://faculty.gordon.edu/hu/bi/Ted_Hildebrandt/OTeSources/19-Psalms/Text/Books/Day-ImprecatoryDiss/Day-ImprecatoryPsalms.htm)

⁹² Daube, *New Testament and Rabbinic Judaism*, p. 258-59

⁹³ Davis, *Lex Talionis in Early Judaism*, p. 16 (Quoting John Piper)

⁹⁴ Davis, *LT in early Judaism*, p. 19 (quoting Harvey Kugelmass)

injustice. Rather, in each scenario, the oppressed is taking control of the situation in a non-violent manner to assert his or her human dignity in a way that confronts the oppressor.⁹⁵

Jesus's sermon does not contradict Old Testament law but takes vengeance out of a personal level to be placed solely in God's hands. There is no "genuine contradiction between the rejection of the *lex talionis* and a belief that eschatological punishment will fit the crime." What Jesus rejected was vengeance executed on a personal level. He still assumes that God, the only wise and capable judge, will, in the end, inflict fitting punishment on sinners. So the law of reciprocity is not utterly repudiated but only taken out of human hands to be placed in divine hands. Jesus does not throw out the principle of equivalent compensation on a governmental or institutional level, but only invalidates such approach in private disputes. Jesus's text cannot be divorced from political significance in its first-century context and must have had "pacifistic implications."⁹⁶

B. Retaliation and Germanic Folk Law

The Germanic and nomadic peoples that came to dominate the European continent and went on to form the bulk of the new creed's followers had their own tradition of retaliation, blood feud, and compensation. Each tribe had its own "law."⁹⁷ Though largely independent from each other, these laws were nevertheless remarkably similar to each other.⁹⁸ These "folk laws" served as the foundation of Western Christendom's nascent legal system – with the disintegration of the Western Roman Empire, what little there had been of the great fabric of Roman law in Germanic kingdoms diminished or virtually disappeared.⁹⁹

The basic legal unit in these tribes was the household, with community ties based partly on kinship and partly on oaths of mutual protection.¹⁰⁰ Violation of the peace of the household (*frith*) by an outsider would lead to retaliation in the form of a blood feud, or alternatively, to

⁹⁵ Davis, *LT in early Judaism*, p. 25 (quoting Walter Wink)

⁹⁶ Davis, *LT in early Judaism*, p. 27-28 (quoting Davis & Allison)

⁹⁷ These tribes include the Franks, Burgundians, Visigoths, Ostrogoths, Lombards, Angles, Saxons, Danes, Norsemen, Magyars.

⁹⁸ Harold Berman, "The Background of the Western Legal Tradition in the Folklaw of the Peoples of Europe," *University of Chicago Law Review* 45, No. 3 (Spring 1978), 554-55.

⁹⁹ Berman, 556.

¹⁰⁰ Harold J. Berman, "The Background of the Western Legal Tradition in the Folklaw of the Peoples of Europe," *University of Chicago Law Review* 45, No. 3 (Spring 1978), 554-55.

inter-household or inter-clan negotiations to forestall or mitigate the blood feud.¹⁰¹

Notwithstanding these potential constraints, the extent of the injured party's ambit for retaliation was almost unlimited; he was his own judge and executioner.¹⁰² Although self-help was supposed to be authorized by the informal folk courts or tribunals, this was more often observed in breach; royal and ecclesiastical authorities did not attempt to fundamentally alter the essentially tribal and local character of the existing legal order.

The heavy reliance on blood feud, especially in Germanic society, can be explained by the high value placed on honor as a means of winning glory (*lof*) in a worldview dominated by warring gods and a hostile and arbitrary fate.¹⁰³ The challenge of maintaining *lof* was particularly acute in cases of killing because the dead could never recover their lost honor. This duty rested on their kinsmen, whose first instinct was vengeance.¹⁰⁴

Along with the potential for retaliation, there also was a long-standing tradition of compensation. One of the earliest surviving laws, the *Lex Salica* of the Franks (c. 496 CE), included a list of monetary fines to be paid by the wrongdoer for a litany of offenses- homicides, assaults, thefts, and others.¹⁰⁵ Other laws were even more specific. In Ethelbert of Kent's (c. 600 CE) detailed register of penalties, a price called the *bot* was attached to almost every body part. For example, the four front teeth were worth six schillings each, the teeth next to them four, and other teeth only one. Each finger and its attendant nail also had a separate *bot*. A distinction was even made between ears that were destroyed, cut off, pierced, or lacerated. There existed 36 instances of offenses against a person, including head wounds, hair wounds, ear wounds, nose wounds, eye wounds, limb wounds, hand wounds, nail wounds, feet wounds, belly wounds, ribs wounds, rupture of great sinews, or tendons of the neck.¹⁰⁶

For deaths compensation was based on *wergild*. This "man price" factored in social rank and was utilized to forestall inter-family vendettas. In many cases the valuations were not iron-clad; they often served as the starting point for negotiations between the parties. As the pithy

¹⁰¹ *Id.*

¹⁰² Hampton Carson, "Sketch of the Development of English Criminal Law as Displayed in Anglo-Saxon Law," *Journal of Criminal Law and Criminology*, 649.

¹⁰³ Berman Background at 558.

¹⁰⁴ *Id.*

¹⁰⁵ Berman, "Background of the Western Legal Tradition," 556.

¹⁰⁶ Carson 652.

Anglo-Saxon proverb went, the offender could “buy off the spear or bear it.” One of the principal purposes of establishing public prices was to induce adversarial parties to submit to a decision of the local assembly instead of resorting to a vendetta.¹⁰⁷

Nonetheless, as Germanic society evolved towards a more centralized system, even before the migration of Anglo-Saxons to Britain, tribalism was yielding to individualism and kinship was being replaced by the personal relationship of the warrior to his chief.¹⁰⁸ As feudalism developed in England between 700 and 1066, lords and bishops began to gradually replace the kinship groups as the recipient of the wergild. The wergild was now determined by the amount of land owned by a man; his feudal rank rather than rank within family.¹⁰⁹

This evolution towards a more centralized society and away from *lex talionis* in European Christendom quickened considerably in the late 11th century and early 12th century, driven by the papal revolution and increased feudalism.¹¹⁰ Under Pope Gregory VII (1073-1085) the western Catholic Church vigorously asserted its independence from lay rulers, resulting in the gradual but inevitable separation of religious and secular law.

In England, the reign of Henry II marked an important milestone in the secularization of law. As the ambit of a standardized royal law enveloped the entire realm, the wergild, bot, and wite disappeared as a system of writs, procedures, and common law emerged.¹¹¹ With consolidation of royal authority, new courts replaced local tribunals and trial by oath and by ordeal were gradually replaced by trial by jury.¹¹² Additionally, the writ of trespass allowed private litigants to use the King’s court to collect damages while the crown alone could initiate criminal trials. By 1226, an agreement between an accused murder and the family of the victim would not avail to save the criminal from an indictment and sentence of death. The state no longer allowed a private settlement of criminal cases.¹¹³

The emerging distinction between torts and crimes was aided by the Crusades. Owing to renewed contact with Eastern Christianity (along with renewed contact with Roman law) and the

¹⁰⁷ Berman at 556.

¹⁰⁸ Jeffrey at 648

¹⁰⁹ *Id.* at 656

¹¹⁰ Also known as the Gregorian reformation.

¹¹¹ Jeffrey at 660.

¹¹² Jeffrey at 661.

¹¹³ Jeffrey at 662.

idealism of returning crusaders, Western Christendom ceased to regard murder, arson, rape, and theft as regrettable torts which could be compensated by payment to the victim or the victim's kin but rather as both sins for which penance was required by the Church and crimes against society at large to be prosecuted by the community.¹¹⁴

VI. Islam

Beginning with the prophecy revealed to Muhammad by the archangel Gabriel, followed with the *Hajj* to Medina, and continuing after his death, Islam was to prove a profound spiritual, religious, political, military, and legal force. Given the long shadow cast by Islam, and the still-present conviction that Islam is a total, unitary, and self-encompassing body of work, popular conception has favored a view of Islam arising from the tabula rasa of an Arabia lacking in civilization and sparsely populated by nomadic tribesman. The reality is far more complicated, as pre-Islamic Arabia was already steeped in a long history which gave Muhammad's teachings its own particular sheen.

A. Geography, Politics & Religion

The defining aspect of pre-Islamic Arabia was its geography. Just as how Egypt and Mesopotamia were defined by the Nile and Tigris-Euphrates, respectively, the Arabian Peninsula is defined by its harsh and unremitting climate. By the seventh century AD, Mecca and Medina, with a long history of settlement, were firmly situated in "cultural continuum" that had dominated the Near East since ancient Sumerians. At the time of Muhammad, the greater Middle East was dominated by two empires, Byzantine to the West and Sassanid to the East.¹¹⁵ Additionally, two nearby tribes that had emigrated from Yemen, the Ghassanids and Lakhmids, had long experience with city life, high civilization, and rule by central authority.¹¹⁶ Even more important were the indirect ties that the Arabs had through commerce. Bedouin tribes engaged in extensive trade across the Arabian Peninsula, especially between the lower eastern Mediterranean and the Arabian Sea.¹¹⁷ These trade routes gained in importance as conflict

¹¹⁴ Jeffrey at 662.

¹¹⁵ Hallaq, *Origins and Evolution of Islamic Law*, 9.

¹¹⁶ *Ibid.*, 10.

¹¹⁷ *Ibid.*, 11.

between the Roman and Persian Empires erupted into frequent warfare, inhibiting direct trade routes.

Despite these interactions, the dominant feature of life in central and northern Arabia was a Bedouin tribalism that generated its own “radically different social and political dynamic.”¹¹⁸ Social order was based on family ties, customs, and traditions.¹¹⁹ Given the importance of group solidarity for survival in such a harsh environment, the social unit was the group, not the individual.¹²⁰ Duties and rights accrued to the group, not the individual.¹²¹ Internally, the social adhesive of the tribe was the blood-ties of descent in the male line. Political organization was diffuse and rested on members of particular lineages who through military exploits or control of cultic sites acquired a type of nobility (*sharaf*).¹²² The leader, or sheikh, who was in reality *prima inter pares*, had limited powers and acted in accordance with tradition and convention.¹²³ He followed, rather than led, public opinion, and could not impose duties or inflict punishments.¹²⁴ Within this decentralized system, the principal function of the sheikh’s government was to arbitrate. Some tribes also utilized a council of elders, the *majlis*, which elaborated public opinion.

Pre-Islamic Arabia was religiously diverse. It contained adherents of the monotheistic faiths as well as pagans. Christian missionaries had been active in the area by the 5th century AD and found converts in both eastern Arabia and Yemen. Additionally, there were isolated pockets of Christianity located in tribes throughout the region. Judaism was also well-established in Arabia by the time of Muhammad. Medina was populated with numerous Jewish tribes and Yemen was also home to a sizable Jewish population.¹²⁵ The most important religious tradition, however, was polydaemonism, a form of the paganism practiced by the ancient Semites.¹²⁶ This

¹¹⁸ Jonathan Berkey, *The Formation of Islam: Religion and Society in the Near East, 600-1800*. (Cambridge 2003), 40.

¹¹⁹ Terance D. Miethe & Hong Lu, *Punishment: A Comparative Historical Perspective*, (New York: Cambridge University Press 2005), 158.

¹²⁰ Lewis, *Arabs in History*, 24.

¹²¹ *Ibid.*

¹²² Berkey, *The Formation of Islam*, 40.

¹²³ Fysee, *Outlines of Muhammadan Law*, 6.

¹²⁴ Lewis, *Arabs in History*, 24.

¹²⁵ Halleq, *Origins and Evolution of Islamic Law*, 19.

¹²⁶ Lewis, *Arabs in History*, 25.

involved living beings living in trees, fountains, and stones, with numerous gods.¹²⁷ Religious importance was also attached to markets, which were often situated near the presence of a deity or idol.¹²⁸ Furthermore, extensive trading patterns had exposed much of the Arabian peninsula to influences and ideas from a cross-range of civilizations.

Early seventh-century Mecca was the most important trading hub of central Arabia. It was connected to not only the other tribes on greater region, but also to the Near East at large.¹²⁹ Additionally its commercial relations placed it in indirect contact with the cultures of Sassanid Persia, China, India and Central Asia.¹³⁰ “Meccan society was unusual in Arabia, featuring in its ranks non-tribal members and foreigners who would otherwise have had no place in a strictly tribal social structure.”¹³¹ Together with the presence of a sizable number of Jews and Christians, this resulted in Mohammed’s having sophisticated knowledge of legal practices.

Functioning social groups within Meccan society tended to be formally organized on the principle of fiction of kinship by blood.¹³² The mechanism of kinship was crucial for individuals who were poor or powerless. It put the weight of a powerful group of ritual kin behind them. An isolated individual without such backing was exposed to attack or unobstructed killing in a blood feud. Conversely, the same mechanism could be potentially disruptive of social stability for the group. If a client was attacked, the group had to make a show of force, which would involve it in ever-widening circles of conflict.¹³³

B. Pre-Islamic Law

Compared to other civilizations in classical antiquity, extant knowledge about law in pre-Islamic Arabia, especially personal delicts, is rather limited.¹³⁴ Muslims themselves refer to the

¹²⁷ Ibid.

¹²⁸ Halleg, *Origins and Evolution of Islamic Law*, 13.

¹²⁹ Ibid., 15.

¹³⁰ Hallq, *Origins and Evolution of Islamic Law*, 15.

¹³¹ Ibid.

¹³² Eric R. Wolf, “The Social Organization of Mecca and the Origins of Islam,” *Southwestern Journal of Anthropology* vol 7 number 4, (1951), 336.

¹³³ Id.

¹³⁴ A.K. Irvine, “Homicide in Pre-Islamic South Arabia”, 30 *Bulletin of the School of Oriental and African Studies*, (1967), 277.

period as *jahiliyya*, “time of ignorance.”¹³⁵ Almost no written records have survived. What little documented written evidence exists is from southern Arabia. It is from the city of Kuhlan, the ancient capital of Qataban. Tentatively date 200 BCE, the Qatabanian inscription RES, 3878, prescribes both the *talion* and wergild (blood money) for homicide.¹³⁶ Since it is not specified which should be used, it seems the decision was left to the king. Additionally, there was no distinction drawn between accidental and deliberate homicide.¹³⁷ Another possible consequence was for the offender to be outlawed. The offender’s property was forfeited to the chief and the loss of the protection and resources of the tribe in the harsh environment of the desert was tantamount to a death sentence.

Despite the relative lack of existing sources, scholars have been able to construct a basic picture of ancient Arabian law and what has emerged is “not altogether rudimentary.”¹³⁸ The commercial contacts the Bedouins developed “exposed them to the general legal culture of the Near East.” The most salient aspect of pre-Islamic law, and not surprising given its oral tradition, was its basis on customary law, or Sunna. This customary law, handed down through generations formed the basis for social relations within the tribe. The customary law of the Bedouin Arabs was similar to that recorded for other Near Eastern cultures.¹³⁹ Aside from the Sunna, there was another set of laws for sedentary, agricultural, and commercial needs.¹⁴⁰ Related to the flexibility of tribes, this dual legal system was not collateral with the tribe but dependent on which activity the tribe was involved in.

Criminal law in particular (along with family status and inheritance), was dominated by ancient tribal custom. This custom incorporated the “fundamental Semitic notion” of the sacredness of blood and the belief that the common blood takes in all members of the same kin.¹⁴¹ Much like in ancient Israel, the blood feud played a central role, with the primary

¹³⁵ Jonathan Berkey, *The Formation of Islam: Religion and Society in the Near East, 600-1800*. (Cambridge 2003), 39.

¹³⁶ Irvine, “Homicide in Pre-Islamic South Arabia,” 279.

¹³⁷ Ibid.

¹³⁸ Schacht, *Introduction to Islamic Law*, 6.

¹³⁹ Irvine, “Homicide in Pre-Islamic South Arabia,” 277.

¹⁴⁰ Hallq, *Origins and Evolution of Islamic Law*, 18.

¹⁴¹ Patton, “Blood-Revenge in Arabia and Israel,” 703.

component being a form of self-help based on *lex talionis*.¹⁴² Because the tribal authorities exercised such little power, responsibility for making good rested on the injured party. Blood feuds within and between tribes were the primary response to personal injury.¹⁴³ Given deeply ingrained notions of collective responsibility, blood feuds could persist long after the initial act was perpetrated and involve persons whose connections to the initial act were remote at best. Thus, blood feuds were “almost unrestricted in scope.”¹⁴⁴

Responsibility for retaliation rested on the *raht*, all descendants of a great-grandfather, or five generations.¹⁴⁵ The brother and eldest son had equal responsibility for carrying out vengeance. When the *raht* failed in its responsibility, the tribe would take over. This would often lead to outright warfare.¹⁴⁶ In carrying out the blood feud, any member of the wrongdoer’s tribe was a legitimate target. Aside from its harshness, several of the aspects of pre-Islamic law in Arabia stand out. In most cases involving the payment of compensation instead of physical retaliation, not the culprit but his ‘*aqila* (solidarity group, e.g., his tribe, the soldiers of the same regiment, merchants of the same market) were obligated to pay blood money.¹⁴⁷ Additionally, retaliation was directly proportional to the relative social positions of the tribes.¹⁴⁸ Stronger tribes tended to exact greater vengeance, for example, two victims instead of one, a male instead of female, and a free man instead of slave. Finally, torture sometimes accompanied the taking of the *talion*.

C. Early Islamic Law¹⁴⁹

¹⁴² Miethe & Lu, *Punishment: A Comparative Historical Perspective*, 164.

¹⁴³ Miethe & Lu, *Punishment: A Comparative Historical Perspective*, 158.

¹⁴⁴ J.N.D Anderson, “Homicide in Islamic Law,” 4 *Bulleting of the School of African and Oriental Studies*, (1951), 812.

¹⁴⁵ Patton, “Blood-Revenge in Arabia and Israel,” 705.

¹⁴⁶ Patton, “Blood-Revenge in Arabia and Israel,” 708. (The ancient terms for blood feud, *tha’r* and *thu’ra*, also applied to war.)

¹⁴⁷ Rudolph Peters, *The Islamization of Criminal Law*, p. 248.

¹⁴⁸ Matthew Lippman, “Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Law,” 12 *Boston College International and Comparative Law Review*, no. 29 (1989), 30.

¹⁴⁹ The terms Islamic law, *shari’a*, and Qur’anic law are often loosely bandied about without proper attention to their specific meanings. Islamic law refers broadly to “the entire system of law and jurisprudence associated with the religion of Islam. *Shari’a*, which is the primary source of law, lies at the core of this system. *Shari’a*, in turn, is composed of two parts, the Qur’an and the *Sunnah*. The latter is a rather broad collection of the Prophet Muhammad’s words and deeds. It includes saying and the things he did, or refrained from doing. The other major element of Islamic law is *fiqh*. *Fiqh*, the most dynamic facet of Islamic law, can be very loosely described as Islamic

At the time of the first revelations, Mohammed was mostly concerned with faith and morality. It is doubtful that prior to his arrival he had in mind the establishment of a new polity, much less law.¹⁵⁰ This can be gleaned from the fact that only 50 or so of the Qu'ran's more than 6,000 verses deal with legal issues. This began to change as Mohammed faced increasing resistance from the residents of Mecca. This transformation was hastened by Islam's meteoric rise. By 652, two decades after Mohammed's death, the forces of Islam had defeated and conquered the Sassanid Persian empire, Syria, Armenia, Egypt, and a large portion of North Africa. In possession of far-flung lands, with a core of tribal Bedouin soldiers unaccustomed to central authority, Muhammed's successors recognized the importance of establishing an Islamic legal ethic.¹⁵¹ Along with the construction of places of worship, military administrators who doubled as religious leaders were appointed to settle conflicts and propagate the ideas of Islam.¹⁵² It is crucial to note that many decades after Muhammad's death, Qu'ranic injunctions and the public policies of the new order "represented the sole modification to the customary laws prevailing among the Peninsular Arabs."¹⁵³ During this era, Mohammad's successors supplemented the Quran with improvised solutions to legal disputes, but made no attempt to elaborate a comprehensive code."¹⁵⁴

A large portion of pre-Islamic Arabian legal customs survived into the legal structure that was slowly being constructed, though it was reduced to a symbol, with the *shari'a* exerting a powerful assimilative power.¹⁵⁵ For example, the Sharia's treatment of personal status and inheritance law derived their legal material (mitigated and softened by Islamic ethical norms) from custom with either pre-Islamic Arab customs or provincial practice.¹⁵⁶

jurisprudence, the "process of deducing and applying Shari'a principles and injunctions in real or hypothetical situations." Irshad Abdal-Haqq, "Islamic Law: An Overview of its Origins and Elements," 7 *Journal of Islamic Law & Culture*, No. 27 (2002), 31-36. Cf. Frank Vogel, "An introduction to Law of the Islamic World," 31 *International Journal of Legal Information* (2003), 357. (Arguing that jurisprudence is not an apt term because *fiqh* is neither philosophy, as in the common law tradition, nor court practice, as in civil law tradition, but rather both scholarly doctrine and legislated law.)

¹⁵⁰ Hallaq, *Origins and Evolution of Islamic Law*, 19-20.

¹⁵¹ *Ibid.*, 31.

¹⁵² *Ibid.*

¹⁵³ *Ibid.*, 32.

¹⁵⁴ Lippman, "Islamic Criminal Law and Procedure," 30-31.

¹⁵⁵ Layish- *The Transformation of Shari'a*, 97

¹⁵⁶ Layish, 97

This pattern also held true for penal law. Islam's treatment of criminal law, especially with respect to homicide and grievous personal injury, was essentially similar to that of customary Bedouin law. The principle of *lex talionis*, along with the payment of blood money occupied a central role. Capital punishment and amputations also figured prominently in Islamic criminal law. There were, however, several important innovations in Islamic law. First, there was the introduction of three categories of criminal offense: *hudood*, *ta'zir*, and *qisas*. *Hudood* crimes, are considered offenses against God and, therefore, the prescribed punishment may not be mitigated or subject to negotiations. These crimes include theft, highway robbery, fornication, bearing false witness, consumption of alcohol, and apostasy. *Ta'zir* crimes are those established by the state to protect "its political, economic, and social systems."¹⁵⁷ Because they are derived from secular authority, punishments for *taz'ir* crimes are flexible and discretionary, and could be fairly characterized today as regulatory laws (e.g., environmental protection, occupational licensing, etc.).

D. Lex Talionis in Islam

Qisas, the Islamic variation of *lex talionis*, is concerned with murder and the intentional infliction of physical harm. The clearest elucidation of the principle is found in verse 45 of Sura V:

"We ordained therein for them: 'Life for life, eye for eye, nose or nose, ear for ear, tooth for tooth, and wounds equal for equal.'"

The wording, almost identical to that found in the Old Testament, appears to be a classic statement of *lex talionis*. In fact, however, this was a call for moderation and merci, not vengeance as it is followed immediately by a call for compassion.

"But if any one remits the retaliation by way of charity, it is an act of atonement for himself. And if any fail to judge by (the light of) what Allah hath revealed, they are (No better than)

¹⁵⁷ Evan Gottesman, "The Reemergence of *Qisas* and *Diyat* in Pakistan," 23 *Columbia Human Rights Law Review*, (1991-92), 444.

wrong-doers.”¹⁵⁸

This is also supplemented with demands for equality and the possibility of compensation in lieu of vengeance:

“O ye who believe! the law of equality is prescribed to you in cases of murder: the free for the free, the slave for the slave, the woman for the woman. But if any remission is made by the brother of the slain, then grant any reasonable demand, and compensate him with handsome gratitude, this is a concession and a Mercy from your Lord. After this whoever exceeds the limits shall be in grave penalty.”¹⁵⁹

Curtailed of the pre-Islamic blood feud, rather than a desire for harsh retribution characterized the practice of *lex talionis*. Therefore, the new Islamic polity did not suppress *lex talionis* but rather insisted that manner in which it was applied conform to “penance enjoined by God” and attempted to convert the demand for blood into demand for compensation.¹⁶⁰

The insistence of parity in the Qur’an was a significant step away customary Arab law. By uniformly evaluating the lives of all free men (as well as women and even slaves), the new Islamic ethic was moving towards the principle of social equality, a important and necessary step for the creation of a modern and just legal system. Social rank and tribal strength were no longer the determinants of punishment or compensation for death or personal injury. These commands were “designed to transpose the individual from the tribal to the Islamic domain, where he or she would have a status in a community of equal members.”¹⁶¹

Additionally, the wording of the Qur’anic verse, to “grant any reasonable demand,” displays a clear preference for compensation over retaliation. Contrary to tribal custom, and echoing the evolution found in the Judaic tradition, retaliation was limited only to the wrongdoer. Muhammad also forbade the use of torture in carrying out any retribution. Additionally, there

¹⁵⁸ Koran V:45

¹⁵⁹ Koran II:178. The Qu’ran and Sunna do not specify the amount of compensation required for injuries.

¹⁶⁰ Wolf at 345

¹⁶¹ Hallaq, *Origins and Evolution of Islamic Law*, 22.

was no retaliation for injury to the tongue, bones (other than teeth), sexual organs, or for the removal of the eye from the socket since such injuries are difficult to replicate.¹⁶²

The moratorium on blood feud was so much part of the new creed that certain tribes postponed their affiliation with Mohammed, until they had settled all questions of blood revenge.¹⁶³ According to one of the earliest Muslim historians, upon his triumphant return to Mecca, Mohammad “declared that all demands for interest payments, for blood revenge, or blood money stemming from pagan times as null and void.”¹⁶⁴ The same demand was expressed in a letter to the people of Najran: “there are no interest payments and no demands for blood revenge from pagan times.”¹⁶⁵

Islam built on ties other than those of kinship, it had to put a limit on the disruptive exercise of power and protection implicit in the blood feud.¹⁶⁶ The subordination of the right of the blood feud to the power of the state brought out more clearly the character of the new community. The blood feud implied exercise of power based on kinship and the consequence of its exercise was warfare between kin groups. With the limitation of the blood feud under Islam, there was a separation of war and blood revenge.¹⁶⁷

Mohammad’s preference for compensation rather than retaliation can also be glimpsed from the Constitution of Medina.¹⁶⁸ Though the Constitution of Medina recognized the collective responsibility of tribes for their members’ actions, it emphasized blood money instead of retaliation. Complementing the blood money payments, which provided financial restitution to provide from the worldly needs of the victim and his family, Islam’s promise of a Final Judgment, on which God will exact divine retribution for all wrongdoers, provided the spiritual basis for accepting payment in lieu of vengeance.¹⁶⁹

¹⁶² Matthew Lippman, *Islamic Criminal Law and Procedure: Religious Fundamentalism v. Modern Law*, p. 44.

¹⁶³ Wolf at 345.

¹⁶⁴ Wolf at 345 (quoting Muhammad Ibn Umar al-Wakidi (c. 748-822 CE), *Muhammed in Medina* (transl. and abbreviated by Wellhausen; Berlin) (1882).

¹⁶⁵ Wolf at 345.

¹⁶⁶ Wolf at 345.

¹⁶⁷ Wolf at 347

¹⁶⁸ The Constitution of Medina refers to a charter of executed by Muhammad shortly after his migration from Mecca to Medina in 622 CE. Considered one of the most significant documentary sources of early Islam, it governs relations between Muhammad’s followers and local Jewish and pagan tribes.

¹⁶⁹ Terance D. Miethe and Hong Lu, *Punishment: A Comparative Historical Perspective*, Cambridge University Press (2005), 164-165.

E. Foreign Elements in Islamic Law

Similar to its Judaic and Christian counterparts, Islamic law did not develop in a vacuum. Four legal systems whose influence on Islamic law and jurisprudence is plausible comprise: 1) Persian Sassanian Law 2) Roman Byzantine Law 3) Canon law of eastern churches 4) Talmudic law.¹⁷⁰

In fact, one of the thorniest issues concerning the origins of Islamic jurisprudence is its relationship with Talmudic law. In discussions of the three Abrahamic faiths, the Judeo-Christian tradition is usually set off of and contrasted with the Islamic tradition. Structurally, however, there are arguably more similarities between Judaism and Islam. At their root, they are both “theocratic legal systems resting on the concept of a divine law revealed to a prophet in a scripture.”¹⁷¹

The obvious theological similarities between Judaism and Christianity, and Islam have been well-noted. What is often overlooked is the intimate relationship between Jewish and Islamic law. The extent of this relationship is revealed under close linguistic and historical scrutiny. Particularly striking is the connection between the four roots of law in Islamic jurisprudence, *usul al-fiq*, and its counterparts in Talmudic law.¹⁷²

At the heart of both systems are the scripture. For example, the root of the word *qur’an*, *qara’a*, is not native to Arabic (a South Semitic language) and was probably borrowed from Hebrew or Aramaic (North Semitic languages).¹⁷³ Additionally, Muhammad repeatedly referred to “an Arabic *qur’an*,” showing the importance he attached to an indigenous scripture for his new faith (along with acknowledgement that previous ones existed).¹⁷⁴

The second root of Islamic law, the *Sunna*, or body of oral tradition handed down from the Prophet or his contemporaries in an unbroken transmission, has obvious parallels to the *Sunna* of the pre-Islamic Arab tribes noted earlier. Nonetheless, it is also analogous to a related concept in the Torah, the *sinnen*, which “appears in the context of an exhortation to the Children

¹⁷⁰ Schacht, *Foreign Elements in Ancient Islamic Law*, 10

¹⁷¹ Judith Romney Wegner, “Islamic and Talmudic Jurisprudence: The Four Roots of Islamic Law and Their Talmudic Counterparts,” 26 *American Journal of Legal History*, 25.

¹⁷² *Ibid.*

¹⁷³ Wegner, “Islamic and Talmudic Jurisprudence,” 32.

¹⁷⁴ *Ibid.*

of Israel to inculcate their creed and customs to their descendants.”¹⁷⁵ Both words derive from the same Semitic root and symbolize the importance of traditional practice in tribal societies of the greater-Near East region. Even more telling is the correspondence between the Islamic Sunna and the Jewish Mishnah, a second century A.D. codification of the Jewish oral law.¹⁷⁶ Translated as repetition, the Mishna served much the same function as the Sunna, a corpus of rules of oral law to be utilized by later generations. The Islamic exhortation to “read the Qur’an and teach the Sunna,” echoes the Talmudic coupling of *miqra u-mishna*, “that which is read and that which is taught by rote.”¹⁷⁷ Though the evidence is not definite, this analogy between the Sunna and Mishnah was probably perceived by Islamic jurists.¹⁷⁸ Coincidentally, both oral traditions are known as the Six Books.

The third root of Islamic law, *ijma* or consensus, also finds strong parallels with Jewish law. Both kinds of *ijma*, *ijma al-umma* and *ijma al-ulama*, find counterparts in Talmudic law. The former is represented by *minhag*, custom followed by common consent, while the latter is represented by *halaka*, the rule of the Jewish law as laid down by the Talmudic sages.¹⁷⁹

The fourth root of Islamic law, the system of logical reasoning called *qiyas*, was accepted at a later time than the other three. At its heart, *qiyas* relies on analogy to more accepted rules. Unlike other aspects of Islamic jurisprudence, the genesis of *qiyas* has garnered the attention of comparative lawyers.

Several scholars have argued that the concept was consciously borrowed from the Talmudic method of deduction known as *heqqes*.¹⁸⁰ The argument rests mostly on linguistic evidence. *Qiyas* is not native to Arabic. More surprisingly, however, the root q-y-s is not native to Hebrew or any other Semitic language. However, the root of *maqis* (the technical term that introduced many Talmudic analogies) is n-q-s, rather than q-y-s, which would have not been apparent to a person more familiar with Arabic than Hebrew.¹⁸¹ The former, which is found in

¹⁷⁵ *Ibid.*, 36.

¹⁷⁶ *Ibid.*

¹⁷⁷ *Ibid.*

¹⁷⁸ *Ibid.*, 37. After having ordered a written copy of the Sunna to be burned, the Caliph ‘Umar is reported to have exclaimed that the Muslims did not need “a *matthnah* like the *matthnah* (Mishnah) of the Jews.”

¹⁷⁹ *Ibid.*, 42.

¹⁸⁰ *Ibid.*, 45.

¹⁸¹ *Ibid.*, 46.

both languages, has the primary sense of “to strike together,” and was conjugated into *maqqis*. A misreading of *maqqis* as *meqis* would have produced the verb *qas* “deduce by analogy” and the noun *qiyas*, “deduction by analogy.” The failure to use the correct root is “clearly due to the fact that the concept, and the term *qiyas*, entered the language from outside before Muslim lawyers had developed it themselves.”¹⁸²

VII. Conclusion

Despite the many differences of time, geography, culture, and social structures, the development of the law of retribution in Judaism, Christianity and Islam shared certain traits. Most prominently, in none of the faiths was *lex talionis* an innovative concept introduced by one of the respective prophets. The law of retribution, rather than being a bequest from Moses or Muhammad, was a deep-rooted component of the traditions and customs of those respective societies. In turn, those traditions and customs came about from the particular social and environmental conditions of ancient Israel and the Arabian Peninsula. Folded into the religious teachings of the prophets, *lex talionis* was designed to mitigate and rationalize criminal punishments. Rather than a floor, the proportionality of the law of retribution served to create a ceiling on punishments. Forgiveness and recourse to compensation were encouraged. Taken together, this reading of the historical basis for *lex talionis* contradicts contemporary claims that any particular punishments (including the death penalty, stoning, and amputation) are required. The early legal manifestations of the three Abrahamic faiths, though concerned with timeless principles of justice, display pragmatic understandings of the complexities facing society. They eschewed the very same rigid interpretations that some would offer today in defense of punishments better left to the past.

¹⁸² Ibid.

"An **eye** for an **eye**
only ends up making the whole world blind."

Mahatma Gandhi

