

The Enduring Two-Part Law of Deut. 19:15-21
The Plurality of Witnesses to Establish Guilt and
Lex Talionis as Proportional Judicial Assessment

A Paper

Presented to

Jan Verbruggen, PhD

Western Seminary

In Partial Fulfillment

of the Requirements for the Course

OT670H—The Christian and the Old Testament Law

Daniel J. Harrison

April 4, 2021

Introduction

In this paper, I will evaluate Deut. 19:15-21 from a variety of angles and argue that the two major components (a plurality of witnesses and *lex talionis*) still hold value for contemporary Christians and secular society. In the sections that follow, I will demonstrate that Deut. 19:15-21 is an interruption of the larger context dealing with the conquests of YHWH to primarily speak to a specific situation of determining guilt in those who flee to cities of refuge. While the principle to a plurality of witnesses was to protect the innocent, and the principle to *lex talionis* was fair judicial assessment, I will show that the underlying principle to their convergence in Deut. 19:15-21 was for Israel to consume the evil from among them, rather than allow it to persist.

I will evaluate both of these components separate from one another, first analyzing other usages from the Hebrew Bible and then the New Testament. For the plurality of witnesses, I will evaluate Num. 35 and Deut. 17, followed by a brief case study in 1 Kings 21. Then I will evaluate ten passages from the NT where I will argue that qualifying witnesses could be multiple individuals, the same individual multiple times with adequate time intervals, or non-human tangible evidence. For *lex talionis*, I will evaluate Ex. 21 and Lev. 24, followed by a brief case study in Obadiah. Then I will evaluate Jesus' interaction in the Sermon on the Mount to suggest Jesus changes the direction of *lex talionis* without abolishing it.

I will conclude the paper with some contemporary examples of why these two components are still relevant by not allowing sinful behavior to persist and to preserve fair proportional retribution. My examples pinpoint areas that Church has failed and could improve by taking another look at these laws.

Examination of the Text and its Context

¹Deuteronomy 19:15-21 – ¹⁵One witness shall not stand [*yaqum*] against a man concerning any iniquity or sin [*chataat*] in any sinful matter [*bekal het*] that he commits. By the mouth of two witnesses or by the mouth of three witnesses shall the matter stand [*yaqum*]. ¹⁶If a violent [*chamas*] witness stands [*yaqum*] against a man to answer/testify [*laanoth*] against him of rebellion [*sarah*], ¹⁷then the two men, between whom is dispute [*hareev*], shall stand before the face of YHWH, before the face of those who are priests and judges in those days. ¹⁸And the judges shall make a careful search [*vadareshu*]. Behold, if the witness is a false witness who has falsely answered/testified [*anah*] against his brother, ¹⁹then you shall do to him as he intended [*tsamam*] to have done to his brother. So you shall consume [*uviartha*] the evil [*hara*] from among you. ²⁰Those who remain shall hear, fear, and not ever again do [*yosiphu laasoth od*] this evil [*hara*] thing among you. ²¹Your eye [*eneka*] shall not show pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.

Deut. 19:1-4 begins with a discussion of what the Israelites are to do when YHWH annihilates the nations who inhabit the Promised Land. This is a thought returned to in Deut. 20. However, Deut. 19 takes a detour from the militaristic conquest of the Land with a discussion of establishing designated refuge cities for those who unintentionally take the life of another, deemed manslaughter, to live in exile rather than face physical death—a provision alluded to in Ex. 21:12-14 and Num. 35:9-15.² Deut. 19:4 qualifies this designation of manslaughter, as opposed to murder, because the offender did not previously hate the victim. This is a concept Jesus shares in Matt 5:21-22 when he says that the hate/anger that precedes actual murder is nonetheless a violation of the sixth commandment not to murder, reiterated in 1 John 3:15. In Deut.19:4, the component of prior hate is relevant in determining whether the taking of life was intentional (murder) or unintentional (manslaughter), with the former carrying the

¹ All translations are my own unless otherwise noted.

² Jacques Koppel Mikliszanski. “The Law of Retaliation and the Pentateuch.” *Journal of Biblical Literature*, Vol. 66, 1947. Page 297.

commandment-violating penalty of death and the latter carrying the lesser punishment of exile in the city of refuge.

Deut. 19:5-10 continues by making the case that the one who commits manslaughter is *innocent* of having his blood avenged, and that the taking of his life would be a *guilty* shedding of blood by any would-be avenger. There is still the need to punish the one who took human life, even unintentionally. The need for the cities of refuge is twofold: 1) to hold the perpetrator of manslaughter accountable for taking human life; and 2) to protect the perpetrator of manslaughter from an undue avenger. The cities of refuge are necessarily good gifts from YHWH to Israel, and here YHWH promised the quantitative expansion of cities of refuge would come at a later time in Israel's history (cf. Josh. 20).

Deut. 19:11-14 turns to discuss the potential of murderers taking refuge in these cities of refuge to avoid prosecution and due punishment. The elders and priests are to hand over the murderer to the avenger so that the evil from among them may be consumed (vs.13). This raises the question of determining the guilt of someone who has fled to one of these cities of refuge, which flows into our passage in verses 15-21, and is done for the same reason: that the evil may be consumed from among them (vs.19).³ Deut. 20 continues the thread Deut. 19:1 began about YHWH's conquest of the Promised Land. Deut. 19 interrupts this thread with its discussion of cities of refuge then answering the necessary question of determining the guilt of those who flee to such cities.⁴ Having finished the detour, Deut. 20 returns to the primary point about YHWH's conquest of the Promised Land. *This context demonstrates that Deut. 19:15-21 is primarily concerned with determining the guilt of those who flee to cities of refuge.*

³ John Sailhamer. *The Pentateuch as Narrative: A Biblical-Theological Commentary* (Grand Rapids: Zondervan, 1992), page 458.

⁴ Ronald Kenneth Harrison. *Introduction to the Old Testament* (Grand Rapids: Eerdmans, 1969), page 656.

In our passage, there are two important components in order to establish the guilt of one who has fled to a city of refuge, with the ultimate purpose of consuming the evil from among them. The first is that there must be a plurality of witnesses to establish the truthfulness of a claim. The second is that the punishment for a false witness should be proportionally assessed by a judicial determination, known as *lex talionis*. Neither of these two components is established exclusively in our passage, as we will see in later sections. Our passage is rather the application of these two principles to the specific need to establish the guilt of someone who has fled to a city of refuge and of those guilty of lying under oath.⁵ The proportional punishment of the guilty perpetrator or a general crime is not established in this specific passage; this is established elsewhere.⁶ Rather, the establishment of proportional judicial assessment in our passage is specific to those guilty of perjury, with the intended purpose of dissuading false testimony.⁷

The discussion of the false testimony in Deut. 19:15-21 is also limited to accusing someone of doing a crime that they did not do. It does not speak of lying to state that someone has not done something they actually have done. This may reflect what is still used—in principle—in the United States of being innocent until proven guilty, rather than guilty until proven innocent. However, this perhaps more probably reinforces that this passage is about those who fled to a city of refuge after taking the life of another person. If they are not proven guilty of murder then they may stay in the city of refuge without fear of being avenged—something that would be undue. This discussion would suggest that someone who has fled to the city of refuge for manslaughter may face accusations of murder. The absence of litigating false testimony of

⁵ Shlomo Naeh and Aharon Shemesh. “Deuteronomy 19:15-19 in the Damascus Document and Early Midrash.” *Dead Sea Discoveries*, Vol. 20, 2013.

⁶ J. Daryl Charles. “Do Not Suppose That I Have Come: The Ethic of the Sermon on the Mount Reconsidered.” *Southwestern Journal of Theology*, Vol. 46, 2004. Page 61.

⁷ Eugene Fisher. “Lex Talionis in the Bible and Rabbinic Tradition.” *Journal of the Ecumenical Studies*, Vol. 19, 1982. Page 585.

innocent behavior reflects the specific situational context of our passage to cities of refuge where a crime has in fact been committed, but determining whether the crime was intentional (murder) or unintentional (manslaughter)—and therefore the severity of punishment—remains in question.

Plurality of Witnesses in the Hebrew Bible (HB)

Beyond Deut. 19:15-21, the HB contains two other laws requiring a plurality of witnesses to establish guilt.

Num. 35:30 — Whoever kills a person, by the mouth of witnesses the murderer shall be murdered. But one witness is not a [*valid*] answer/testimony against a person for death.

Similar to Deut. 19:15-21, Num. 35:26-32 also speaks of the need for a plurality of witnesses in the context of the cities of refuge. A person who has killed a person and has not been determined guilty by a judicial assessment must stay in the city of refuge until the high priest dies, at which point the one who committed manslaughter may return to his possession. The cities of refuge were meant to protect such a person from the avenger of blood.⁸ If a person who has committed manslaughter is outside the city of refuge and the avenger of blood kills him, the avenger is *not guilty*, “because he should have remained/sat in his city of refuge until the death of the high priest” (vs.28a). Such an unusual release based on the death of the high priest is better seen as an application of the principle underlying the debt/land release of Jubilee, rather than typological of the atonement of Christ.⁹

Num. 35:30 seems to interrupt the passage’s primary topic of the cities of refuge; however, functions as a necessary introduction to the subject of ransom payments relative to the cities of refuge. If someone is guilty of murder, compensation cannot be paid; they must be put

⁸ Sailhamer, 421.

⁹ Warren Driver. “The Release of Homicides from the Cities of Refuge: A Critical Monograph on Numbers 35:25.” *Grace Journal*, Vol. 1, 1960. Page 20.

to physical death (vs. 31). How is guilt to be determined in such a case? By the mouth of two or three witnesses is someone determined guilty, and thus condemned to be killed and forbidden from compensatory redemption. Moreover, if someone has killed someone but is not guilty of murder and therefore contained in a city of refuge, compensation cannot be paid for them to return to their land/possession *prior* to the death of the high priest (vs. 32). In Num. 35, as in Deut. 19, guilt is determined by a plurality of witnesses, and the death penalty may not be carried out in any case lacking a plurality of witnesses.

Deut. 17:6 — By the mouth of two witnesses or three witnesses shall whoever is deserving of death be put to death. He shall not be put to death by the mouth of one witness.

Contrary to Num. 35 and Deut. 19, Deut. 17:2-7 is more open-ended about which guilt is to be established; the requirement for a plurality of witnesses extends beyond differentiating between manslaughter and murder. It is open-ended in that it refers to any evil YHWH has forbidden, but specifically mentions violation of the first and second commandments by worshipping other gods or bowing down to created things (i.e. sun, moon, and stars). Similar to Num. 35 and Deut. 19, this passage prescribes death for those guilty of violation, with guilt determined by the testimony of a plurality of witnesses. Moreover, Deut. 17:2-7 is connected to Deut. 19 in that the purpose of this is so they may consume the evil from among them (vs. 7).

While the course of action taken against those guilty of perjury is spelled out primarily in Deut. 19, Deut. 17:7 provides an interesting caveat to deter against violating the ninth commandment through giving false testimony.¹⁰ An individual determined to be guilty and deserving of death was to be stoned *first* by those who gave testimony against the individual and then by the rest of the people. Interestingly, on this point, when the Pharisees brought to Jesus the woman caught in adultery, with her guilt determined by their own plurality of witness against

¹⁰ Fisher, 585.

her, Jesus did not respond by disputing her guilt but rather told the Pharisees that whoever was without sin ought to cast the *first* stone (John 8:7). Although the manuscript evidence disputes this passage's original authenticity, this passage nonetheless reflects Deut. 17:7's prescription for those deserving of death to be stoned *first* by those whose testimony determined their guilt.

While not part of the law code, the plurality of witnesses does play a role in the remainder of the HB. One example is 1 Kings 21:10-13, in which the need for a plurality of witnesses is misused by wicked men to have an innocent man killed. Naboth, the innocent man, was accused of cursing God and the king by two wicked men. Upon their corroborating testimony, Naboth was declared guilty and they stoned him to death. The "they" refers to the two wicked men who make the testimony, thus fulfilling what Deut. 17:7 prescribed. How could the system condemn an innocent man to death? This example in the HB highlights how the law meant to protect the innocent could be intentionally manipulated to condemn the innocent.¹¹ Nevertheless, the system functioned as it was supposed to: testimony was provided by a plurality of witnesses and the witnesses were those who stoned the one declared guilty.

Lex Talionis in the HB

Beyond Deut. 19:15-21, the HB contains two other laws establishing what is known as *lex talionis*, or the law of retaliation. The location of these three passages mean that each of the three major HB law codes (Covenant, Holiness, and Deuteronomy) establish *lex talionis*.

Ex. 21:23-25 – But if harm follows, then you shall give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, stripe for stripe.

¹¹ Laurence Welborn. "By the Mouth of Two or Three Witnesses: Paul's Invocation of a Deuteronomic Statute." *Novum Testamentum*, Vol. 52, 2010. Page 211. Patrick Miller. *Deuteronomy* (Louisville: John Knox Press, 2012), page 144.

In the casuistic laws laid out in Ex. 21:22-27, a hypothetical scenario is presented about two men who are fighting. While the pregnant woman who loses her baby appears to be the primary subject due to her prominence in the passage, it is nevertheless the fighting men who are the actual subjects. There are many open-ended questions relating to this law, such as why the woman was there in the first place and what level her participation in the matter actually was? Considering it is multiple men who are fighting, but one who pays according to the husband of the struck, pregnant woman, we suggest that the woman was an innocent bystander.¹²

We also disagree with Bruce Waltke, who sees a differentiation between the life of a fetus and the life of a born person. The text speaks of a pregnant woman whose child is brought forth or born *without injury*.¹³ This suggests that the birth—albeit premature—of the woman who was struck resulted in no injury for her or her child, and a husband mediated through a judicial body may impose necessary compensation for such a premature birth.¹⁴ However, if there is an injury—with the presumption that this possibility applies to the woman and/or her prematurely born child—then the *lex talionis* enters the picture.

As is well-established in the literature, the *lex talionis* laws did not refer to physical mutilation but rather to compensation of a proportional level.¹⁵ Each ANE society established their own criteria for compensation levels.¹⁶ Num. 35, as discussed in the previous section, forbids the payment of compensation for two specific purposes: compensation to offset the death penalty for murder; and compensation to return to one's land possession from a city of refuge

¹² Mikliszanski, 296.

¹³ Bruce Waltke, "Old Testament Texts Bearing on Abortion." *Christianity Today*, Vol. 13, 1968.

¹⁴ Meredith Kline. "Lex Talionis and the Human Fetus." *Journal of the Evangelical Theological Society*, Vol. 20, 1977. Page 196.

¹⁵ Maimonides, cited in Stuart West. "The Lex Talionis in the Torah." *Jewish Bible Quarterly*, Vol. 21, 1993. Page 62. Robert Alter. *The Hebrew Bible: Volume 1: The Five Books of Moses: Torah: A Translation with Commentary* (London: Norton & Co., 2019), page, 303. See also Kline. Although in disagreement with this assessment is Gerhard von Rad. *Old Testament Theology Volume 1* (London: SCM Press, 1973), page, 203.

¹⁶ Charles Cruise. "A Methodology for Detecting and Mitigating Hyperbole in Matthew 5:38-42." *Journal of the Evangelical Theological Society*, Vol. 61, 2018. Page 98.

prior to the high priest's death. That these exceptions are provided suggests retaliatory compensation was a normal judicial assessment. The final verses of our present passage, Ex. 21:26-27, provide a glimpse into the numeration of certain defects. For a slave, both the eye and a tooth carry the same retaliatory compensation from a master who has harmed them: their freedom. Considering the slave in God's economy was working toward freedom in the Sabbath year, an injury sustained by a master would expedite that freedom. This is one example of how *freedom* is the telos of slavery in the Bible.

Lev. 24:17-21 is presented in a chiasm, shown below; while the translation is mine, the chiasm's structure is not.¹⁷

A¹ But whoever kills a person shall surely be put to death

B¹ And he who kills the life of an animal is to make it right, creature for creature

C¹ If a man causes his neighbor's defect, as he has done so shall it be done to him:

D. Fracture for fracture, eye for eye, tooth for tooth

C² As he has caused a man's defect so shall it be done to him

B² And whoever kills an animal shall make it right,

A² But whoever kills a person shall be put to death.

The *Lex Talionis* is situated at the more prominent position of this chiasm, setting the standard for the rest of the passage, which is inherently proportional. The one who kills shall be killed. The one who takes the life of an animal is to make it right with another animal. The one who causes a defect shall have it done to him. The outer edge of this chiasm sets this passage in step with the other passages we have thus far evaluated in that it establishes the death penalty for the taking of life. There is one omission and one vocabulary shift in the second half of the

¹⁷ W. Justin Ilboudo. "The Lex Talionis in the Hebrew Bible and the Jewish Tradition." *Boston College, School of Theology and Ministry*. Page 20. Ronald Kenneth Harrison. *Leviticus: An Introduction and Commentary* (Downers Grove: IV press, 1980), page 222.

chiasm: 1) B² provides no addition of “creature for creature;” and 2) C² is a simplified, single-clause version of C¹. Neither of these changes holds any significance to the structure of the chiasm.

The prescription of death for anyone who kills another that is emphasized on the outside of the chiasm cannot be meted out as precisely black-and-white as the passage would suggest, or there would not be a need in Deut. 19 to differentiate between the intentional and the unintentional taking of life. Nevertheless, this law provides a level of proportional reciprocity in judicial assessment of penalties emphasized in chiastic form in order to “make it right” (in B¹ and B²), both from the root *shalam*.

While not part of the law code, the application of *lex talionis* in setting penalties does play a role in the remainder of the HB. One example is Obadiah, in which God responds with justice to the pride and exaltation of Edom as representative of the nations. Edom, illustrated by a soaring eagle, will be brought low for failing to come to (their brother) Jacob’s aid when the nations ransacked Israel. Of particular interest to this paper is Obad. 15-16, in which the principle underlying the *lex talionis* is attested.¹⁸ God’s justice is spoken of in terms of proportional reciprocity. “As you have done, it shall be done to you; your recompense shall return on your own head. For as you drank on my holy mountain, so shall all the nations drink...” This provides a glimpse into the nature of YHWH’s justice: it fits the crime; YHWH does not punish/judge beyond what is deserved, in order to produce shalom.

¹⁸ Bradford Anderson. “Poetic Justice in Obadiah.” *Journal for the Study of the Old Testament*, Vol. 35, 2010. Pages 247-248. Elie Assis. “Structure, Redaction and Significance in the Prophecy of Obadiah.” *Journal for the Study of the Old Testament*, Vol. 39, 2014. Page 209.

Plurality of Witnesses in the New Testament (NT)

What follows is a brief analysis of twelve examples to sufficiently demonstrate that the need for a plurality of witnesses to establish guilt or truth is a necessary background for understanding the Gospels, and the Pauline and Johannine corpora.

1. Mark 6:7-13 (cf. Luke 10:1) – “He called the twelve near and began to send them forth in *two*’s and gave them authority over unclean spirits... He said to them, ‘If wherever you enter a house, remain there until you leave from there. And whatever place will neither receive you nor hear you, when departing from there, shake the dust off which is under your feet *as a witness/testimony* against them...”

In the above passage, the testimony in question is whether a home is welcoming or not to the disciples, and by extension Jesus. For houses that are welcoming, the disciples are to “remain there until you leave from there.” However, for houses that will neither welcome them or listen to them, the disciples were to provide testimony of their lack of hospitality by shaking the dust off their feet as they leave. Since the disciples were sent in two’s, we have here a situation in which *two* people would provide *testimony* of an unwelcoming house by shaking the dust. The plurality of witnesses established the house as unwelcoming.¹⁹

2. John 5:31-38 – “If I provide testimony about myself, my testimony is not true. There is another who provides testimony about me, and I know that the testimony he gives about me is true. You have sent for John, and he has testified to the truth... The same works which I do provide testimony about me that the Father has sent me. And the Father who has sent me has himself provided testimony about me.”

¹⁹ John Craghan. “Redactional Study of Lk 7:21 in the Light of Dt 19:15.” *Catholic Biblical Quarterly*, Vol. 29, 1967.

In the above passage, central to establishing the mission of Jesus, we read of three distinct witnesses that are in agreement. Not only this, but Jesus appeals to the basis of the law that if he *alone* testifies then it is not true. He openly recognizes the need for a plurality of witnesses to establish a matter as true. He goes on to supply two more witnesses: John the Baptist and the Father. The passage goes on to suggest that his audience does not recognize the third witness because they do not believe in the Father. Nevertheless, they had John the Baptist, so the two of them should have been sufficient. However, Jesus' discussion of the Father as the third witness provides the basis for what will continue to unfold in other NT applications of the plurality of witnesses.

3. John 8:17-18 – “And even in your law it has been written that the testimony of two witnesses is true. I am the one providing testimony about myself, and the Father who sent me provides testimony about me.”

In the above verses, Jesus directly quotes the law in question and continues a point he began in John 5. The Humanness of a witness is irrelevant. Jesus provides testimony about himself, which is along insufficient, but also the Father provides testimony in agreement to Jesus about Jesus. The identity and mission of Jesus is established through the unified testimony of two witnesses.

4. Matt. 18:15-17, 20 – “Now if your brother sins against you, go rebuke him, only between you and him. If he hears you, you have gained your brother. However if he will not hear, take with you one or two more, so on the testimony of two or three witnesses every word

may stand... For where two or three are gathered together unto my name, there I am with them.”

In the above passage, Jesus applies the law requiring a plurality of witnesses in the case of what has become the basis of church discipline. One brief point to identify is that it is the harmed individual who is to rebuke the one who sinned. This is not a license for Christians to privately rebuke anyone who sins; rather, those who sin against them specifically. The first layer is between the perpetrator and the victim, the two parties most familiar with the circumstances. The intended purpose of this is to provide an opportunity to produce shalom between the two with minimal or no shame by avoiding a public revelation. The second layer is between the perpetrator, the victim, and one or two others whom the victim brings to such a meeting. The intended purpose of this is, again, to provide an opportunity to produce shalom between the two with minimal shame by avoiding a public revelation. There is, though, the added component of the one or two additional witnesses to the conversation who can add extra weight toward achieving the intended purpose, but also to serve as “witnesses of the refusal” to make things right.²⁰ The third layer is before the whole church in which the potential for shame is exacerbated; yet, this is still done with the intended purpose of producing shalom between the perpetrator and the victim.²¹ It is only if the perpetrator has not listened to the rebuke of the whole church that he should be effectively removed from the community.

In the above verse, only a few verses beyond the previous passage, Jesus alludes again to the law he directly quoted in the last passage. This verse is speaking of prayer, but the repetition

²⁰ Victor Pfitzner. “Purified Community-Purified Sinner: Expulsion from the Community According to Matthew 18:15-18 and 1 Corinthians 5:1-5.” *Australian Biblical Review*, Vol. 30, 1982. Maarten J.J. Menken. “Deuteronomy in Matthew’s Gospel” in *Deuteronomy in the New Testament*, ed. Maarten Menken and Steve Moyise. New York: T&T Clark, 2008. Page 55. Craig Blomberg. “Matthew” in *Commentary on the New Testament Use of the Old Testament*, ed. Greg Beale and Don Carson (Grand Rapids: Baker, 2007), page 56.

²¹ Jeffrey Gibbs and Jeffrey Kloha are incorrect when they suggest that reintegration is not the intended purposes of the application of two or three witnesses; however, they also have not provided a compelling alternative. “Following Matthew 18: Interpreting Matthew 18:15-20 in its Context.” *Concordia Journal*, Vol. 29, 2003. Page 16.

of “two or three” is clearly an allusion back to what was quoted in verse 16. In prayer, the agreement among two or three is rooted in the name of Jesus. Where two or three are in agreement about Jesus, so Jesus is there with them. By this, “if two of you on earth may agree about any matter you ask, it will be done for them” (vs. 19). This verse alone may not be a sufficient connection; however, it’s relation to Matt. 18:15-17 and use of “two or three” makes it difficult to discount.

5. Mark 14:29-31 (cf. Matt. 26:33-35; Luke 22:60-62) – And Peter was saying to him, “Even if all will fall away, I will not.” And Jesus said to him, “Truly I say to you that today, this very night, before the rooster crows two times, you yourself will deny me three times.”

This event is depicted in each of the Synoptics all with slight variations. In Mark’s account, we have what may be the loosest allusion to the law of a plurality of witnesses of the twelve examples I am providing. This is not primarily because the numbers two and three appear connected, but more because it establishes that a single person may provide a plurality of testimonies if separated by time. This is a concept we will return to in 2 Cor. 13:1. The two-ness of the rooster’s crow provides one aspect of the interval of time and the three individual denials separated from one another establish Jesus’ claim that Peter would deny him that very night. The three individual denials constitute the claim that Peter denied Christ.

6. Matt. 26:59-65 (cf. Mark 14:55-64) – And the chief priests and the whole Sanhedrin were seeking false testimony against Jesus so that they might put him to death, but they found none, of the many false witnesses who came forward. Then at last, two who came

forward said, “This man has been saying, ‘I am able to destroy the temple of God and rebuild it in three days.’” And the high priest stood up and said to him, “Do you not have an answer to what these have testified against you? But Jesus kept silent... Then the high priest tore his garments, saying... “Why have we any further need for witnesses?”

The above passage is among the most significant uses of the law for the plurality of witnesses without a direct quote of the law itself. First, Matthew records that the Council was seeking false testimony in order to put Jesus to death. This is an important allusion to what was clearly shown in a previous section: no one should be put to death on the testimony of a single witness.

Second, interestingly, Matthew records that they found no false testimony despite many false witnesses coming forward. This appears at face value to be strange; how can they have no false testimony if *many* false witnesses came forward? This is an important allusion to the law for it demonstrates that the word of individual witnesses does not establish truth or testimony unless there is agreement among two or three.

Third, only after Matthew records that two of the many false witnesses finally agreed that the trial proceeded beyond the accusation stage. The high priest provided Jesus an opportunity to answer to what “these,” presumably the two who were in agreement, had testified against him.

Fourth, following Jesus’ initial silence and then his answer, the high priest gave an opportunity to Jesus that was typically used in situations of “he said-she said,” where witnesses did not agree: making an oath before God. At this, Jesus did answer, agreeing with their assessment of his identity as the messianic Son of God. This was perhaps an extra layer afforded to the accused to protect the innocent, but could also perhaps speak to the fact that so many false witnesses in disagreement with one another came forward.

Fifth, after this exchange the high priest asked the question: Why have we any further need for witnesses? This question is an important allusion to the law for it demonstrates that they had achieved the two or three witnesses required to establish truth or guilt: the two false witnesses who inadvertently told the truth out of context, and Jesus who affirmed his identity as the Son of God. These three witnesses satisfied the requirement, and provide another example of the law's potential for manipulation by the wicked, as with Jezebel and Naboth (cf. 1 Kings 21).

7. Mark 16:1-8 (cf. Matt. 28:1-7) – And when the Sabbath had passed, Mary Magdalene, Mary of James, and Salome bought spices, that having come they might anoint him... And having entered into the tomb, they saw a young man sitting on the right, clothed in a white robe... And he said to them, “Be not amazed. You seek Jesus the Nazarene, who has been crucified. He is risen; he is not here! Behold the place where they laid him. But go, say to his disciples and Peter that he goes before you into Galilee; you will see him there as he said to you.”

In the above passage, Mark records that the original witnesses to the resurrection were *three* specifically named individuals. In the entire exchange with the young man, all three women were in view. The grammar in this passage is plural all the way through when referring to the witnesses; only the young man and Jesus are referred to with singular verbs and pronouns. *Eiselthousai* (“Having entered”) is plural; a plurality of witnesses saw the empty tomb. *Eidon* (“They saw”) is third-person plural; a plurality of witnesses saw the young man who *legei autais* (“said to them”), which is also third-person plural; a plurality of witnesses were spoken to by this young man who they saw after they entered the empty tomb. *Hypagete* (“Go”) is second-person plural; a plurality of witnesses were commanded to go to the disciples to share a message that

Jesus is going before *hymas* (“you all,” second-person plural) just as he told *hymin* (“you all,” second-person plural). Through and through, the original witnesses were involved at every stage of the exchange in order that in agreement *three* witnesses would establish to the original disciples the truthfulness to the claim that Christ was raised from the dead.

8. 2 Cor. 12:20-13:3 – For I fear that perhaps having come I may find you not as I wish...Otherwise, if I come again, my God should humble me before you, and I should mourn over many of those who have sinned without repentance... I am coming to you a third time, for the mouth of two witnesses or three witnesses will every word stand. I have warned and will warn, as when I was present the second time... that if I come to you again, I will not be relaxed.

In the above passage, we return to a scenario initially raised several passages ago with the denials of Peter. Here you have Paul, a lone witness, applying the law with a direct quote to his own separate visits. He does this to add weight to his warning about impending church discipline of a harsher nature because their unrepentant sin will have been attested to three separate times.²² Contrary to Brian Rosner, Paul’s reference of his *second* visit and the imminent *third* visit in relation to the law about *two* or *three* witnesses is unmistakably an application of the law, not merely rhetoric.²³ Rather, the historically held interpretation has been that Paul sees the law satisfied by a lone individual who can provide testimony about two or three separate occasions of

²² J. Daniel Woodington. “A Precedented Approach: Paul’s Use of the Law of Witnesses in 2 Corinthians 13:1.” *Journal of Biblical Literature*, Vol. 137, 2018. Page 1013.

²³ Brian Rosner. “Deuteronomy in 1 and 2 Corinthians” in *Deuteronomy in the New Testament*, ed. Maarten Menken and Steve Moyise. New York: T&T Clark, 2008. Page 134.

similar behavior.²⁴ The amount of time between the three intervals is irrelevant, other than that they were long enough for Paul to expect an outward show of repentance.

9. 1 Tim. 5:17-21 – The elders who rule well are to be counted worthy of double honor, especially those straining in the word and teaching. For the Scripture says... Do not receive an accusation against an elder except if not upon two or three witnesses. However rebuke all those seen sinning so that the rest also might have fear.

In the above passage, it is not as clear whether the quotation formula Paul uses is exclusively for his statement about not muzzling the ox in reference to elders to strain well at teaching the word, or whether this quotation formula is distributed also to his reference to two or three witnesses in the clause that follows. Regardless, Paul either directly quotes or alludes to the law for a plurality of witnesses in order to protect innocent elders from false accusations that would run counter to their need to be above reproach.²⁵ Interestingly, Paul then says to publicly rebuke those who sin, still speaking of elders. Therefore, if two or three witnesses bring testimony of sin against an elder, then their testimony has established guilt on the part of the elder, and he is therefore to be rebuked rather than repent quietly. Those in leadership are given special privileges above the congregation, and when they fall into sin and are rebuked before the congregation, the congregation is left with fear of sinful behavior. However, no guilt or sin is to be declared over an elder without two or three witnesses.

²⁴ Margaret Thrall. *A Critical and Exegetical Commentary on the Second Epistle to the Corinthians*. Edinburgh: T&T Clark, 1994. Page 874. Welborn, 207-208. Peter Balla. "2 Corinthians" in *Commentary on the New Testament Use of the Old Testament*, ed. Greg Beale and Don Carson (Grand Rapids: Baker, 2007), page 782.

²⁵ Philip Towner. "1-2 Timothy and Titus" in *Commentary on the New Testament Use of the Old Testament*, ed. Greg Beake and Don Carson (Grand Rapids: Baker, 2007), page 900.

10. 1 John 5:6-9 – And the Spirit is the testifier, because the Spirit is the truth. For there are three testifying: the Spirit, the water, and the blood—and these three are unified.

In this tenth example, we return to a concept we discussed in an earlier passage: that witnesses are not required to be human. The testimony discussed in the context is about the mission of Jesus. The water by which Jesus came is a witness to Jesus' mission. In the literature, the witness of water is debated as to whether it is Jesus' baptism or his birth. I agree with Witherington that it is his birth.²⁶ The blood by which Jesus departed is a witness to Jesus' mission, referring to the death of Christ. The Spirit is a witness to Jesus' mission, referring to its success, at which point the Spirit was given to the followers of Jesus. These three witnesses, abstract concepts representing certain aspects of Jesus life, provide satisfactory testimony about the mission of Jesus, revealed in verse 11: "And this is the testimony: That God has given eternal life to us, and that this life is the Son's." John has spent several verses parsing about the different witnesses, emphasizing that they are in agreement or unified, and then concluding rightly what testimony their collective witness has established.²⁷

Lex Talionis in the NT

While the plurality of witnesses is the more prominent component from Deut. 19:15-21 appearing in the NT, Jesus also interacts with the *lex talionis* in the Sermon on the Mount in Matt. 5:38-42: "You have heard that it was said, eye for eye and tooth for tooth. However I say to you, do not resist the wicked. Instead, [1] whoever shall strike you on your right cheek, turn also to him the other. [2] And to the one wanting to sue to take away your tunic, yield also to him your garment. [3] And whoever compels you to go one mile, go with him two. [4] Give to the

²⁶ Ben Witherington III. "The Waters of Birth: John 3. 5 and 1 John 5. 6-8." *New Testament Studies*, Vol. 35, 1989. Page 160.

²⁷ Witherington, 155.

one who asks of you. [5] And you shall not turn away from the one wanting to borrow from you.”

Jesus only utilizes two of the *lex talionis* examples: eye and tooth. These two are the only ones that appear in all three HB passages cited in a previous section (2/8 in Ex. 21:22-27; 2/3 in Lev. 24:17-21; and 2/5 in Deut. 19:15-21), making it improbable to pinpoint which of the three passages he is referencing; however, that may not be relevant considering *lex talionis* was established in all three major law collections, and his introduction of the law was for the purpose of taking it in a different direction altogether. By citing the two examples that appear in all three law codes, Jesus makes clear that this new direction is a rebuttal to *lex talionis* altogether, rather than to one specific law.

In Jesus' change of direction for *lex talionis*, he provides five illustrations of what it means not to resist the wicked.²⁸ The first deals with physical harm, the third deals with physical activity and time, and the second, fourth, and fifth deal with financial matters. That a majority of Jesus' illustrations for his change to *lex talionis* still nonetheless deal with matters of compensation is significant. The core principle of *lex talionis* was that if person-A has harmed person-B in a non-murderous way, then person-B is entitled to a proportionally fair level of compensation. The change Jesus introduces is not dismantling this proportional compensation; rather instead of the harmed party receiving the compensation, it is the harming party that receives compensation for their own harm. If person-A has harmed person-B, then instead of

²⁸ Although I am here arguing that Jesus changes the direction of *lex talionis* but more so keeps it in effect, David Van Drunen states that “Jesus abolishes the *lex talionis*...” I am not willing to make that jump. “Bearing Sword in the State, Turning Cheek in the Church: A Reformed Two-Kingdoms Interpretation of Matthew 5:38-42.” *Themelios*, Vol. 34, 2009. Page 325. In agreement with Van Drunen is Charles Erdman. *The Book of Leviticus* (London: Fleming Revell Company, 1951), page 126. I am more so arguing in line with J. Daryl Charles who states, “Jesus does not question the legitimacy of moral retribution as a principle of justice...” Charles, 62. Blomberg, 27.

person-B being entitled to proportional compensation, person-B ought to provide that compensation to person-A.²⁹ In this way person-B does not resist the wicked.

There are also possible allusions to *lex talionis* in 2 Cor. 9:6 (“But this: the one who sows sparingly will also reap sparingly; and the one who sows upon blessings will also reap upon blessings.”), and Gal. 6:7-8 (“For whatever a man sows, so also will he reap. For the one who sows of his own flesh will reap from his flesh decay. However, the one who sows of the Spirit will reap from the Spirit eternal life.”). However, it is my view that these allusions do not represent a direct link to *lex talionis*. Even though the *lex talionis* would not need to be directly quoted to constitute a link, the formula of “matter for matter” is not met for several reasons.³⁰ First, the principle communicated in these verses more so reflects the words of Jesus in John 4:36-37 of that which is reaped representing the fruit and wages of one’s prior labor rather than that of *lex talionis*. Second, the matter of sowing and reaping is a matter of compensation for wages, not a matter of compensation for justice. Third, these sowing-reaping examples do not have their telos in the production of *shalam* between two disputing individuals.

The Application of the Plurality of Witnesses for Christians Today

In our #MeToo and cancel-culture, an accusation is automatically equated with guilt. You may still be—in principle—innocent until proven guilty in a court of law, but in the court of public opinion, it only takes one accusation to destroy someone’s reputation. On the flip side, celebrity-church culture leads high profile figures, most recently Ravi Zacharias, to continue serving despite even more witnesses than merely two or three who testify to inappropriate behavior. To protect their ministry, or more frankly their own pride, accusations are dealt with

²⁹ Van Drunen, 328.

³⁰ Mikliszanski, 298.

privately rather than openly (in violation of 1 Tim. 5:17-21), thus allowing the behavior to persist. It is my view that the law for a plurality of witnesses is entirely relevant and needed not just by Christians, but the larger-society as well. It is needed to protect the innocent—innocent leaders who are falsely accused; but also innocent people who are unnecessarily victimized by perpetrators who side-stepped this good law.

Several years ago when an accusation of sexual misconduct was filed by Dr. Christine Blasey Ford against now-Justice Brett Kavanaugh, I engaged in a conversation with a friend from college who is politically liberal and a non-practicing Catholic. I asked, “What if he did do this as a teenager? Is his life of coaching his daughter’s sports teams and providing job opportunities for women beyond any of his colleagues with no accusations of misconduct during his professional career make up for stupid behavior as a teenager?” Her answer was a flat-no. In our culture, there is no paradigm for redemption over time. The Church should model this for the larger society in how we deal with those who sin. Church discipline is the means through which we do this, not just to punish but to lead to reconciliation among the congregation. By sweeping high profile Christian leader misconduct under the rug, when culture lifts the rug, all they see is hypocrisy. Whereas, a leader who is removed for a time to repent and adjust previous behavior is better suited for leadership after a time, and the Church is better served. The larger culture, if they hear of such an event, can slowly regain a paradigm of redemption.

In our age of sexual misconduct accusations, allowing for two or three witnesses to be established the same person with a separation of time is an appropriate application of this portion of Deut. 19:15-21. This is especially pertinent if the multi-layered discipline structure laid out by Jesus is followed by alleged victims. If things escalate beyond layer one, they will have further backup of witnesses if the behavior persists. If the alleged perpetrator and the alleged victim

make it right “shalam” without going to layer two, but the behavior occurs again at a later date, the alleged victim has grounds to suggest that the alleged perpetrator did not actually hear the wrong they had done.

We live in an age that is far more advanced technologically than the ANE context in which Deut. 19:15-21 and the many NT passages were written. Our forensic science and cameras-everywhere climate can recreate events without human witnesses. Should Christians set this aside? Not at all! The NT passages evaluated show not just that a lone witness can satisfy the requirement for two or three with a separation of time between occurrences, but that testimony can come from non-human sources. In 1 John 5, the water of Jesus’ birth and the blood of Jesus’ death are tangible pieces of evidence that, in a sense, *speak for themselves*. Hearsay should still be rejected as legitimate witness to an event; however, what was previously considered hearsay coupled with tangible evidence that are in agreement ought to be received as legitimate and considered truthful.

The Application of *Lex Talionis* for Christians Today

In our litigation-happy culture, finding fault in others and taking them to court is fairly common practice. Christians even sue their fellow believers, in violation of 1 Cor. 6:1-8. Worker’s Comp provides compensation to workers who get sick or injured on the job. Much like how each ANE culture attempts to assign compensatory values to certain physical losses due to working conditions, so also our culture attempts to provide quantitative compensatory values for the loss of an eye or a finger, for example.³¹ Workers Comp provides a much softer evaluation of fair compensation than did *lex talionis* in the HB. In the HB, a slave—more likely a debt-servant, working temporarily for another to pay off a debt—that lost a physical body part was granted

³¹ Cruise, 98.

their freedom from debt. I wonder what would happen to our Student Loan crisis if graduates who suffered injuries working high-risk jobs received the payment of their debts rather than Worker's Comp providing the equivalent to an insurance payment based on an arbitrary designation of compensation for the lost limbs. Certainly this would be a more HB version of the principle underlying *lex talionis*.

But Christians, on the other hand, have to consider the words of Jesus, which take *lex talionis* in a different direction of providing compensation payment from the harmed to the harmer, rather than the harmer to the harmed. Just as the application of *lex talionis* in the HB ultimately pointed toward God's desire for his people to be free (cf. Jubilee), the application of Jesus' reworking of *lex talionis* ultimately points toward God's desire for his people to suffer on the earth for the sake of glorifying him. This may involve an employee *not* suing an employer who has wronged them, while still bringing the complaint to them, thus taking the brunt of the harm. Certainly, the underlying principle of *lex talionis* of proportional retribution, whether by payment or other means to make it right, is one that still holds value in contemporary society.

Bibliography of Works Cited and Consulted

- Alter, Robert. *The Hebrew Bible: Volume 1: The Five Books of Moses: Torah: A Translation with Commentary* (London: Norton & Co., 2019).
- Anderson, Bradford. "Poetic Justice in Obadiah." *Journal for the Study of the Old Testament*, Vol. 35, 2010.
- Assis, Elie. "Structure, Redaction and Significance in the Prophecy of Obadiah." *Journal for the Study of the Old Testament*, Vol. 39, 2014.
- Balla, Peter. "2 Corinthians" in *Commentary on the New Testament Use of the Old Testament*, ed. Greg Beale and Don Carson (Grand Rapids: Baker, 2007).
- Blomberg, Craig. "Matthew" in *Commentary on the New Testament Use of the Old Testament*, ed. Greg Beale and Don Carson (Grand Rapids: Baker, 2007).
- Charles, J. Daryl. "Do Not Suppose That I Have Come: The Ethic of the Sermon on the Mount Reconsidered." *Southwestern Journal of Theology*, Vol. 46, 2004.
- Craghan, John. "Redactional Study of Lk 7:21 in the Light of Dt 19:15." *Catholic Biblical Quarterly*, Vol. 29, 1967.
- Cruise, Charles. "A Methodology for Detecting and Mitigating Hyperbole in Matthew 5:38-42." *Journal of the Evangelical Theological Society*, Vol. 61, 2018.
- Driver, Warren. "The Release of Homicides from the Cities of Refuge: A Critical Monograph on Numbers 35:25." *Grace Journal*, Vol. 1, 1960.
- Erdman, Charles. *The Book of Deuteronomy* (London: Fleming Revell Company, 1953).
- . *The Book of Leviticus* (London: Fleming Revell Company, 1951).
- Fisher, Eugene. "Lex Talionis in the Bible and Rabbinic Tradition." *Journal of the Ecumenical Studies*, Vol. 19, 1982.
- Gibbs, Jeffrey and Jeffrey Kloha. "Following Matthew 18: Interpreting Matthew 18:15-20 in its Context." *Concordia Journal*, Vol. 29, 2003.
- Harrison Ronald Kenneth. *Leviticus: An Introduction and Commentary* (Downers Grove: IV press, 1980).
- . *Introduction to the Old Testament* (Grand Rapids: Eerdmans, 1969).
- Ilboudo, W. Justin. "The Lex Talionis in the Hebrew Bible and the Jewish Tradition." *Boston College, School of Theology and Ministry*.
- Kline, Meredith. "Lex Talionis and the Human Fetus." *Journal of the Evangelical Theological Society*, Vol. 20, 1977.
- Menken, Maarten J.J.. "Deuteronomy in Matthew's Gospel" in *Deuteronomy in the New Testament*, ed. Maarten Menken and Steve Moyise (New York: T&T Clark, 2008).
- Miklitzanski, Jacques Koppel. "The Law of Retaliation and the Pentateuch." *Journal of Biblical Literature*, Vol. 66, 1947.
- Miller, Patrick. *Deuteronomy* (Louisville: John Knox Press, 2012).
- Moo, Douglas. "Jesus and the Authority of the Mosaic Law." *Journal for the Study of the New Testament*, Vol. 20, 1984.
- Naeh, Shlomo and Aharon Shemesh. "Deuteronomy 19:15-19 in the Damascus Document and Early Midrash." *Dead Sea Discoveries*, Vol. 20, 2013.
- Pfitzner, Victor. "Purified Community-Purified Sinner: Expulsion from the Community According to Matthew 18:15-18 and 1 Corinthians 5:1-5." *Australian Biblical Review*, Vol. 30, 1982.

- Rosner, Brian. "Deuteronomy in 1 and 2 Corinthians" in *Deuteronomy in the New Testament*, ed. Maarten Menken and Steve Moyise (New York: T&T Clark, 2008).
- Routledge, Robin. *Old Testament Theology: A Thematic Approach* (Downers Grove: IV Press, 2008).
- Sailhamer, John. *The Pentateuch as Narrative: A Biblical-Theological Commentary* (Grand Rapids: Zondervan, 1992).
- Thompson, J.A. *Deuteronomy: An Introduction and Commentary* (Leicester: IV Press, 1974).
- Thrall, Margaret. *A Critical and Exegetical Commentary on the Second Epistle to the Corinthians* (Edinburgh: T&T Clark, 1994).
- Towner, Philip. "1-2 Timothy and Titus" in *Commentary on the New Testament Use of the Old Testament*, ed. Greg Beale and Don Carson (Grand Rapids: Baker, 2007).
- Van Drunen, David. "Bearing Sword in the State, Turning Cheek in the Church: A Reformed Two-Kingdoms Interpretation of Matthew 5:38-42." *Themelios*, Vol. 34, 2009.
- von Rad, Gerhard. *Old Testament Theology Volume 1* (London: SCM Press, 1973).
- Waltke, Bruce. "Old Testament Texts Bearing on Abortion." *Christianity Today*, Vol. 13, 1968.
- Welborn, Laurence. "By the Mouth of Two or Three Witnesses: Paul's Invocation of a Deuteronomic Statute." *Novum Testamentum*, Vol. 52, 2010.
- West, Stuart. "The Lex Talionis in the Torah." *Jewish Bible Quarterly*, Vol. 21, 1993.
- Witherington III, Ben. "The Waters of Birth: John 3. 5 and 1 John 5. 6-8." *New Testament Studies*, Vol. 35, 1989.
- Woodington, J. Daniel. "A Precedented Approach: Paul's Use of the Law of Witnesses in 2 Corinthians 13:1." *Journal of Biblical Literature*, Vol. 137, 2018.