

## THE LAW ON VIOLENT INTERVENTION DEUTERONOMY 25:11-12 REVISITED

**Marc Cortez**  
Western Seminary  
Portland, OR

The law found in Deuteronomy 25:11-12 is one of the more intriguing laws in the biblical legal corpus. Not only does it present a situation that is almost unique among ancient near eastern legal texts but it presents a number of challenging hermeneutical questions: What exactly did the woman do and why was it so harshly censured? If the woman intervened in the fight to save her husband, should that not mitigate some of the blame for her actions? Does the law require that her hand be literally removed? Involved in any effort to answer these questions are complicated issues involving the nature of the Deuteronomic laws, the proper background for understanding this law, and the *lex talionis*.

To unravel these issues, this study will (1) briefly examine the text to determine the nature of the woman's action and her intentions; (2) evaluate options for understanding the woman's action; and (3) determine the relationship of this law to the *lex talionis*. Through interaction with these three issues, the study will argue that the woman intervened in the fight to save her husband from imminent threat of significant physical harm or even death by grabbing the assailant's genitals. In doing so she injured the assailant and thus became liable to an application of the *lex talionis*. This understanding of the law provides the best perspective from which to incorporate all the details of the text and its surrounding context.

### WHAT DID SHE DO AND WHY DID SHE DO IT?

The particulars of this casuistic law are clearly laid out in several basic pieces: the context (a fight), the perpetrator (the wife), the intent (rescue the husband), the reason (his safety is threatened), the action (seizing the opponent's genitals), the punishment (cut off her hand), and the exhortation (show no mercy).

Although the text does not give specific details regarding the nature of the struggle, it seems likely that she intervened in the fight because there was significant risk of injury and possibly even death on the part of her husband. The three verbs that indicate this element of risk ( $\omega\% \chi\nu\% \Phi\psi\text{I}$   $\lambda\psi\chi=\eta\alpha\lambda\iota$  and  $\omega\% \eta\kappa\equiv\exists\mu\alpha$ ) do not themselves express the idea of imminent danger. Each is commonly used in contexts where physical injury is in view (e.g. Gen. 31:9; Exod. 2:13; 21:2, 12; Josh 10:26). But taken together they provide a much different perspective. The only other time that all three words are brought together in the same text is in 2 Samuel 14:6 where two men are fighting ( $\omega\% \chi\nu\% \Phi\psi\text{I}\omega\text{A}$ ) in the field. Since there was no one to act as rescuer ( $\lambda\psi\chi=\mu\alpha$ ), one of the men was able to strike ( $\omega\text{O}\kappa\equiv\psi, \text{A}\omega\text{A}$ ) the other and kill him. Two of the three words can also be found together in various other places that explicitly address the threat of physical harm (e.g. Gen. 32:12; 37:21; 1 Sam 17:35).

The general idea of significant physical distress is strengthened when  $\lambda\chi\text{A}\nu\phi$  is connected with  $\delta\psi\equiv\phi\mu\iota$ . The idea of coercive control or imminent physical harm stands out especially in the Pentateuch where  $\delta\psi\equiv\phi\mu\iota$   $\lambda\chi\text{A}\nu\phi$  refers to the physical harm planned by another individual (Gen. 32:12; 37:21-22; and Num. 35:25), of Israel being rescued from Egypt (Exod. 3:8; 18:9, 10), and of the impossibility of being rescued from the hand of the Lord stretched forth in discipline (Deut. 32:39). Only one verse in the Pentateuch does not clearly

indicate some form of physical harm or severe repression (Exod. 2:19) although even there the idea of strong coercion with negative results is in view.

Passamaneck argues for this interpretation on the basis of the difficulty involved in grabbing a man's genitals. He concludes that the only conceivable circumstance for this law is when the man has her husband pinned on the floor or against a wall and thus his life is truly in danger.<sup>1</sup> Hirsch notes a similar understanding among the Rabbis; the Sifri in contrast to the Gemora understands this to be not an issue of shame but 'an example of behaviour when there is danger to life'.<sup>2</sup> The stretching out of the hand is 'taken literally as the means of saving the threatened life of the contestant'.<sup>3</sup>

Having thus established the likelihood that at least potential physical harm to the husband is in view, we can see that the woman, fearing for her husband's safety, stretched out her hand (η≡δφψΦ ηξφλ;#≡φω:) and seized (ηθφψζιξπρηεω:) the man by his genitals (ωψ#≡φβυμ;β≡ι). Although later in the study we will consider the possibility that this action caused physical harm to her husband's opponent, this element is not explicitly indicated anywhere in the text itself. θζαξφ itself does not necessarily denote physical harm to the object or person being seized (e.g. Gen. 19:16; 21:18; Exod. 4:4). While θζαξφ is frequently used in passages where physical harm is in view (e.g. Jdg. 19:25; 1 Sam. 15:27; 17:35; 2 Sam. 2:16; 2 Kings 2:12), the destructive idea is not carried by θζαξφ but by some other lexical element. Therefore any indication that there was damage to the man will need to be located elsewhere.

## HOW SHOULD HER ACTIONS BE UNDERSTOOD

### AN ACT TO SAVE A LIFE

Given the nature of the fight as involving a significant threat to the husband's well-being, a prominent rabbinic tradition understands this law primarily from the perspective of saving someone's life. Maimonides saw both the grabbing of the genitals and the command to cut off the woman's hand from the perspective of saving a life: the husband's life in the former and the assailant's in the latter.<sup>4</sup> The Sifri likewise saw this act in terms of 'behaviour when there is danger to life' and therefore taught the duty 'of saving the life of anybody who is threatened with losing it by wounding the one who is threatening, or if no other means are possible, even by killing him'.<sup>5</sup> While the woman's desire to save her husband from serious physical affliction is without question, this perspective does not adequately explain why the action undertaken was wrong and is therefore dependent on one of the following interpretations for a more complete explanation. If anything, this interpretation only makes the case more difficult. If she is acting to

---

<sup>1</sup> S. M. Passamaneck, *Jewish Law Association Studies III: The Oxford Conference Volume*, ed. A. M. Fuss (Atlanta: Scholars Press, 1987), 96-98.

<sup>2</sup> S. R. Hirsch, *The Pentateuch, vol. V. Deuteronomy*, trans. Isaac Levy, 2nd ed. (New York: The Judaica Press, 1971), 518-519.

<sup>3</sup> Ibid.

<sup>4</sup> Cited in George Horowitz, *The Spirit of Jewish Law: A Brief Account of Biblical and Rabbinical Jurisprudence: With a Special Note on Jewish Law and the State of Israel* (New York: Central Book, Co., 1979), 73.

<sup>5</sup> Hirsch, *The Pentateuch*, 518-519. See also W. Gunther Plaut, *The Torah: A Modern Commentary*, 5 vols. (New York: The Union of American Hebrew Congregations, 1983) 5.280.

save her husband's life, would her actions not be justified? Why, then, the harsh penalty? If the law is given in order to protect the life of the husband's assailant, why is there no indication that his life is in danger and why is such a severe penalty prescribed based on the mere threat of injury?

## AN ACT OF UNWOMANLY ASSERTION

Many have argued that the previous law (Deut. 25:5-10) grants the widow 'great independence'<sup>6</sup> or 'a particularly bold sexual freedom'<sup>7</sup> in a manner that 'would seem repugnant to the modest retiring nature of Jewish women'<sup>8</sup> and needed to be protected from being understood as granting a 'false freedom'.<sup>9</sup> Against this background, the Law on Violent Intervention serves to reinforce a woman's proper role in society and keep the freedom demonstrated in the prior law 'to a narrowly circumscribed, carefully supervised area of life'.<sup>10</sup>

Similarly, Carmichael argues that both this law and the previous one express the Deuteronomist's interpretation of the Judah and Tamar narrative (Gen. 38:6-26).<sup>11</sup> He grounds this connection in several shared elements: lack of progeny, conflict between brothers, and the sexual assertiveness of a woman. Arguing that both the prior law and the Judah and Tamar narrative granted an unusually bold freedom to the woman, Carmichael asserts that this law was given to demonstrate that such freedom 'is absolutely intolerable in any other circumstances'.<sup>12</sup> This law thus serves to enforce limits on a woman's proper role in society.

Against this interpretation, Eslinger contends that Carmichael's argument fails to convince because (1) it does not explain why this rather obscure case was chosen, (2) it would have been much easier to simply state the limitations of the prior law, and (3) if the case was to provide an enduring standard for other cases, a more representative case should have been chosen.<sup>13</sup> Eslinger's arguments, though, do not seem to do justice to Carmichael's position. (1) It is entirely possible that this particular law was chosen because of the reference to a woman in the prior law and possibly also because the case of a woman seizing a man's testicles was in use as a textbook legal case at the time (e.g. MAL A8).<sup>14</sup> (2) This objection appears to make a categorical error by faulting a casuistic law for not being an apodictic law. (3) A number of the biblical laws appear to be of such narrow scope as to be of little representative value and yet this

---

<sup>6</sup> C. F. Keil and F. Delitzsch. *Commentary on the Old Testament*, 27 vols. (Grand Rapids: Eerdmans, 1949), 1.424.

<sup>7</sup> Calum M. Carmichael, 'A Ceremonial Crux: Removing a Man's Sandal as a Female Gesture of Contempt,' *Journal of Biblical Literature* 96.3 (1977) 332.

<sup>8</sup> Hirsch, *The Pentateuch* 518.

<sup>9</sup> Keil and Delitzsch, *Commentary on the Old Testament*, 1.424.

<sup>10</sup> Carmichael, "A Ceremonial Crux," 332.

<sup>11</sup> Calum M. Carmichael, *Law and Narrative in the Bible: The Evidence of the Deuteronomistic Laws and the Decalogue* (Ithaca: Cornell University Press, 1985), 297-299.

<sup>12</sup> Carmichael, "A Ceremonial Crux," 332.

<sup>13</sup> Lyle Eslinger, "The Case of the Immodest Lady Wrestler in Deuteronomy XXV 11-12," *Vetus Testamentum* XXXI 3 (1981), 270.

<sup>14</sup> This parallel between Deuteronomy 25:11-12 and the Middle Assyrian Laws will be considered more completely a little later.

is more likely due to our limitations as interpreters than their limitations as laws. The law of the goring ox might at first glance appear to be similarly limited and yet is applicable to many aspects of life and was one of the most broadly cited case studies in the ancient near east.<sup>15</sup> The fact that this law is also found in the Middle Assyrian Laws may be an indication that it is not as obscure as Eslinger seems to think.

That being said, Eslinger is right that this interpretation is not entirely convincing. First, arguments based on the proximity of two laws are notoriously difficult to substantiate. Second, it is not enough to simply note that there are structural and thematic similarities between two laws; the specific point(s) of contact need to be established more clearly. Although Carmichael notes the presence of a shame-aspect and the possibility of a damage-aspect to the law, he simply opts for the idea of an unwomanly assertion as the primary point of the law without any real substantiation. This is probably because he is able to provide no evidence from Deuteronomy 25:11-12 itself for an unwomanly assertion and must rely instead on his narrative and contextual constructions. Thus, while this option is interesting, it does not appear that it has been sufficiently established

## AN ACT OF IMPROPER INTERVENTION

Though following the same narrative approach as Carmichael, Christensen finds the primary focus of this law in the idea of fair practice. He approaches Deuteronomy 25 as a chiasmic structure in which verses 11-15 deal with treating others fairly; verse 13 serves as a hinge verse connecting both 11-12 and 14-15 and is read differently in each context. Thus, he argues that 11-13 deal with intervening unfairly in a fight (where verse 13 refers to use of a weapon) and 13-15 deal with unfair business practices.<sup>16</sup>

Similarly, Eslinger comes to the same basic conclusion as Christensen but using a different narrative background; he argues for Genesis 32:22-32 as the narrative framework of this law.<sup>17</sup> Eslinger finds the point of contact between the two texts in that both use Πκ≅α uniquely (Gen. 32:26, 33; Deut. 25:12). He reasons from these two references and its occurrence in Song of Solomon 5:5 that Πκ≅α can refer to ‘the genitals, the scrotum or the labia respectively’.<sup>18</sup> Furthermore, he argues that it was Jacob who touched the Πκ≅α of his assailant during the wrestling match rather than the more traditional understanding.<sup>19</sup> The Jacob narrative and the Law on Violent Intervention thus share three details in common: 1) the situation of two men wrestling where one has the clear advantage; 2) the use of a ‘below the belt’ move; and 3) the unusual use of Πκ≅α.<sup>20</sup>

Both of these interpretations, however, run into some difficulties. Eslinger’s interpretation rests almost entirely on his argument that Πκ≅α refers to the genitals or genital

---

<sup>15</sup> E.g. Code of Hammurabi 251.

<sup>16</sup> Duane L. Christensen, *Deuteronomy 21:10-34:12*, WBC (Nashville: Thomas Nelson, 2002), 612.

<sup>17</sup> Eslinger, “The Case of the Immodest Lady Wrestler in Deuteronomy XXV 11-12,” 269-281.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid., 279-280.

<sup>20</sup> Ibid., 277.

area both here and in the Jacob narrative. Although his argument addresses the question of why the law switches from  $\delta\psi\phi$  (v. 11) to  $\Pi\kappa\equiv\alpha$  (v. 12), his lexical argument is simply not sufficient to bear the burden of his hermeneutical claim. Regardless of whether or not  $\Pi\kappa\equiv\alpha$  can refer to the genitals in Deuteronomy 25:12 and Song of Solomon 5:5 (a debatable point), his whole case centers on being able to establish that it does so in Genesis 32 and that Jacob is the subject of the action. But his arguments on both of these points are unconvincing. While the definition of  $\Pi\kappa\equiv\alpha$  in this passage may be somewhat ambiguous, the traditional understanding that this word refers to the hip socket fits the context at least as well as Eslinger's proposal. His argument for Jacob as the subject of the action in verse 26a is at least plausible but the same cannot be said for his understanding of verse 33. There the use of the construct form  $K7\rho\epsilon\psi E$  in 33b makes it very unlikely that Jacob is the subject of the touching rather than his assailant. Given the weakness of Eslinger's arguments with respect to Genesis 32, his use of this narrative as the background to the Law on Violent Intervention is unsustainable.

Christensen's argument likewise runs into some difficulties. While he rightly points out that an element of fair treatment is present in the immediate context of this law (5-10; 13-15), he does not make a sufficiently strong argument for seeing this as the primary element of the law rather than the ideas of shame, loss of progeny, or danger which have also been seen to be aspects of this law and its surrounding context. The only argument he is able to provide for this point is the supposedly chiasmic structure of chapter 25 but the various aspects of this chiasmic structure do not seem to be sufficiently well established to suffice as the primary support for his case.

Both of these arguments share one other short-coming. If the understanding advanced above with respect to the risk of injury or death facing the husband is accurate, why would the woman's use of force still be deemed inappropriate? While such a wrestling move might be considered *underhanded* or *unfair* in a normal wrestling match, would this hold true in a situation where someone's life was at risk? Certainly the question of fairness disappears in the face of such a circumstance. Would she likewise be faulted for trying to save her husband by hitting the man while his back was turned? Would that not also be unfair? If we are to understand why the woman's action was deemed inappropriate and worthy of judgment, it seems that we must look for a stronger vantage point than this one.

## AN ACT OF SHAME OR VIOLATION OF A TABOO

One of the most prevalent interpretations of this law understands it as an act that brings shame on the man or violates a sexual-taboo in a shameful manner and is thus an act of immodesty on the part of the woman. According to Daube, Deuteronomy as a whole constitutes a 'culture of shame' that is developed in this part of the book through the laws regarding shaming parents (21:18-21), the shame falling on a falsely accused virgin (22:13-21), undignified punishment (25:1-2), and the Law on Violent Intervention.<sup>21</sup> Hirsch contends that the shame theme can also be found in the previous law (vv. 5-10) where the uncovering of the man's feet in 25:9 thus constitutes a shame-act that is analogous to the grabbing of the man's genitals in

---

<sup>21</sup> Cited in Calum M. Carmichael, *The Laws of Deuteronomy* (Ithaca and London: Cornell University Press, 1974), 46-47.

25:11.<sup>22</sup> The question of shame also arises from the word for genitals,  $\omega\psi\#\exists\phi\beta\upsilon\mu;\beta\equiv\iota$ . This word, a *hapax legomena*, is most likely derived from the stem  $\#\exists\omega\beta$  and has thus been translated as ‘shame parts’<sup>23</sup> or that which ‘excites shame’.<sup>24</sup>

Given the strong contextual element of shame in Deuteronomy and the likelihood of such an element in the preceding law it seems likely that this should play some role in our understanding of the present law. But once again we must ask what role the mitigating circumstances of the woman’s action should play in our considerations. Assuming that the action was something that would bring shame on either the man or the woman, wouldn’t the threat to the husband’s well-being be sufficient to warrant such an action? Despite the fact that shame undoubtedly played a much more prominent role in ancient near eastern cultures than in our own one is hard pressed to find any scriptural precedent for the view that bringing shame on another person (or yourself) or committing a ‘breach of modesty’<sup>25</sup> is grounds for enforcing such a significant penalty.

Driver recognizes this difficulty and thus moves the discussion from shame to *tabu*.<sup>26</sup> He infers from the fact that her action was treated severely despite the mitigating circumstances that the action was *tabu* and thus ‘unpardonable under any circumstances’.<sup>27</sup> From this perspective, the woman’s action should not be understood in terms of the shame she may have brought on herself or the man but in terms of breaching an inviolable social boundary such that it required significant punishment regardless of the intentions underlying the violation. Whether or not this proves to be a sustainable understanding of the woman’s action will have to wait until after the discussion of the punishment.

## AN ACT OF DAMAGE OR THREAT TO THE PROGENY

The law can also be understood in terms of the woman harming the man in such a way that he actually or potentially becomes unable to sire children. We have already seen that Carmichael argues that the potential loss of progeny is one of the points of contact connecting this law to the previous one and to the Judah and Tamar narrative. The idea also finds expression in Merrill’s commentary when he argues that the clue to the context of verses 11-12 lies at least partially in ‘the matter of the progeny and anything that might threaten it’.<sup>28</sup>

---

<sup>22</sup> Hirsch, *The Pentateuch* 518. See also Carmichael, “A Ceremonial Crux,” 321-326.

<sup>23</sup> Plaut, *The Torah* 280.

<sup>24</sup> Christensen, *Deuteronomy* 613.

<sup>25</sup> Shalom M. Paul, *Religion and Law: Biblical-Judaic and Islamic Perspectives*, eds. Edwin B. Firmage, Bernard G. Weiss, and John W. Welch (Winona Lake: Eisenbrauns, 1990), 336-337. See also Carmichael, “A Ceremonial Crux,” 332.

<sup>26</sup> Markham Geller defines taboos as “sanctions developed by society to govern anti-social behavior not already proscribed by cultic or civil laws” (“Tabu in Mesopotamia,” *Journal of Cuneiform Studies* 42 [Spr 1990], 112).

<sup>27</sup> G.R. Driver and John C. Miles, eds., *The Assyrian Laws* (Oxford: Clarendon, 1935), 31.

<sup>28</sup> Eugene H. Merrill, *Deuteronomy* (The New American Commentary; Broadman & Holman, 1994). 329.

The primary difficulty with this interpretation is that there is no mention of physical injury in the law itself. Arguments for physical injury to the man are therefore derived in one of three ways: (1) the parallel with Middle Assyrian Law (MAL) 8, (2) the loss-of-progeny connection with verses 5-10, and (3) the severe nature of the prescribed penalty.

The parallel in the Middle Assyrian Laws has generated a considerable amount of discussion with respect to its applicability to the Law on Violent Intervention.<sup>29</sup>

If a woman should crush a man's testicle during a quarrel, they shall cut off one of her fingers. And even if the physician should bandage it, but the second testicle then becomes infected (?) along with it and becomes..., or if she should crush the second testicle during the quarrel – they shall gouge out both her [...]s.<sup>30</sup>

Two intriguing similarities—a woman attacking a man by means of his genitals and a punishment that involves body mutilation—have caused some scholars to argue that this text is sufficiently parallel to Deuteronomy 25:11-12 to substantiate the claim that the biblical law assumes physical injury to the husband's assailant. Thus, Tigay argues that although there are significant differences between the two laws, only the perspective of the Assyrian law justifies the severity of the punishment found in both laws.<sup>31</sup>

This proposal, though, has been staunchly rejected by a number of biblical scholars. Paul contends that although there are several 'external similarities' between the two laws, the significant differences between them preclude the establishment of any significant parallel.<sup>32</sup>

---

<sup>29</sup> According to Moshe Weinfeld, S. Loewenstam argues that MAL 7-9 all address the same kinds of situations and therefore they should all be seen as parallel to Deuteronomy 25:11-12 (*Deuteronomy and the Deuteronomistic School* [Oxford: Oxford University Press, 1972], 292-293, n. 4). Weinfeld and Driver though both point out that there is no explicit indication in either 7 or 9 that they are dealing with the same subject matter as 8 and they should thus be treated separately (Ibid. and Driver, *Assyrian Laws*, 30). Although Weinfeld also proposes another parallel from the Nuzi texts, Christensen asserts that the text is too ambiguous to be of any real help (Weinfeld, *Deuteronomy and the Deuteronomistic School*, 293; Christensen, *Deuteronomy*, 613).

<sup>30</sup> Martha T. Roth, ed., *Law Collections from Mesopotamia and Asia Minor*, 2d ed., Society of Biblical Literature Writings from the Ancient World Series (Atlanta: Scholars Press, 1997), 156-157. Several of the details in the second part of this law are unclear. Most presume that the circumstances involve the man's second testicle becoming infected and unusable so that the man is completely unable to sire children. The talionic punishment in this case, though, is difficult to determine. Driver argues that since whatever is gouged out from the woman is plural and since the talionic principle seems to require something analogous to the injury inflicted, the punishment must have involved either the breasts or the nipples of the woman (Driver, *Assyrian Laws*, 31).

<sup>31</sup> Tigay, *The JPS Torah Commentary: Deuteronomy* (Philadelphia: The Jewish Publication Society, 1996), 485-486.

<sup>32</sup> Paul, *Religion and Law*, 336-337. Tigay also notes these differences but he does not think that they necessarily eliminate any validity to the proposed parallel (*The JPS Torah Commentary*, 486).

Carmichael rejects the parallel even more strongly: ‘Why interpreters persist in trying to understand the law in terms of damage to the man's reproductive capacity when it simply does not raise the topic in any way is puzzling. The interpreter's reasons for bringing in the Middle Assyrian laws, in which this topic is raised, are equally obscure’.<sup>33</sup>

Despite these criticisms of the Assyrian parallel, it seems that it can be useful in two ways. First, its existence in another set of ancient near eastern laws, demonstrates that the Law on Violent Intervention is not as obscure as it first seems and was possibly an acknowledged part of an ancient near eastern legal tradition. The ways in which these two laws might be mutually informing should therefore not be ignored. As Westbrook notes: ‘The provisions of the Ancient Near Eastern Law Codes on liability for death or injury...are an area of the law where evidence for inter-relation between the Codes is at its strongest. That they were all linked to a common schools tradition is apparent from the recurrence of the same standard legal problems’.<sup>34</sup>

Second, if these two laws can be viewed as part of a shared tradition, it at least raises the possibility that damage was an implicit part of that tradition lying behind the biblical law. Having said that, it must also be acknowledged that this second point is not a strong one and does no more than raise a possibility. Whether or not damage is a part of the biblical law will need to be established on grounds other than the ancient parallels.

The second argument used in favor of seeing damage in this law is the loss-of-progeny connection with verses 5-10. This view argues that the loss of progeny was the primary element of that previous law and that structural and thematic similarities between the two passages suggest a similar theme here as well. Thus, the contact point between the two laws is a man's inability to sire children: in the first law either through death or refusal and in the second law through injury to the man's genitals. Phillips thus states that the prescribed punishment was warranted not simply because of her immodesty but because ‘she may have damaged the man's genitals’ leaving him ‘in the position of being unable to father a son, and therefore of having his name blotted out’.<sup>35</sup> Arguing in a similar vein, Naude points to the fact that such a physical disfigurement would also have resulted in the man's becoming ceremonially unfit (Lev. 21:20; Deut. 23:1[2]).

The third argument advanced in favor of this position is that it alone explains the harsh nature of the penalty in verse 12. Since we will be considering that issue in the next section we will allow this to remain an open question temporarily.

But before leaving the question of damage, one other perspective needs to be briefly investigated. Taking the lack of any reference to physical damage seriously, some commentators have attempted to modify the argument for damage to the man so that what is really at stake is the *possibility* of injuring the man so that he is unable to sire children.<sup>36</sup>

---

<sup>33</sup> Carmichael, *Law and Narrative in the Bible*, 298 n. 19.

<sup>34</sup> Raymond Westbrook, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Leiden: E.J. Brill, 1970), 39.

<sup>35</sup> Anthony Phillips, *Deuteronomy* (Cambridge: University Press), 170. See also Merrill, *Deuteronomy*, 329.

<sup>36</sup> Tigay cites this interpretation as one of the major interpretive options (*The JPS Torah Commentary*, 234. See also Frank Ritel Ames, “Levirate Marriage,” in *The New International Dictionary of Old Testament Theology and Exegesis*, ed. William A. Vangemeren [Grand Rapids: Zondervan, 1997] 4.903).



Though this position tries to take seriously the law's silence on the matter of injury, it runs into problems of its own. Most critically, this interpretation must explain the strong penalty instituted simply for the mere potential of bodily damage. It is hard to understand how the possibility of damaging a man's reproductive system could be more serious than taking a man's life and yet the biblical laws do not institute penalties for actions that *might* result in death or injury but only for those that do.

Although we have considered the various options as distinct entities, it should be clear that they are not mutually exclusive. Most commentators operate, either consciously or unconsciously, with a view that mixes several elements together. One commonly finds interpreters arguing for shame and damage (e.g. Carmichael), improper intervention and shame (e.g. Christensen) or a variety of other combinations.<sup>37</sup> But inevitably every commentator will see one element as being the predominant issue and that is what must be established.

### THE PUNISHMENT AND THE LEX TALIONIS

The first and most important question that must be addressed with respect to the woman's punishment is whether or not it should be understood as an application of the *lex talionis*. Although talionic formulas are only explicitly stated in three places (Exod. 21:23-25; Lev. 24:19-20; Deut. 19:21), many people argue that the talionic principle underlies a number of other laws as well including the Law on Violent Intervention.

Several authors have argued against seeing this law as an application of the *lex talionis* based on the fact that the principle of retaliation does not seem to be in force. Jackson argues that since the woman was not punished by the same injury she inflicted, this cannot be a talionic punishment.<sup>38</sup> Carmichael likewise contends that since the Deuteronomist was only concerned with the shamefulness of the woman's act and not the damage involved, retaliation is not in view.<sup>39</sup>

Eslinger counters this argument with his unique understanding of Πκ≡α. Since he understands this to refer to the genitalia he argues that the punishment involves some form of female circumcision and is thus analogous to the injury inflicted and subject to the law of retaliation.<sup>40</sup> But there are some difficulties with this argument. First, as mentioned previously, his lexical arguments regarding Πκ≡α have failed to convince most scholars and cannot bear the weight of his interpretation. Second, Eslinger does not take into account the possibility that, given the obvious physical dissimilarities, Hebrew society may not have viewed female and male genitalia in the same way. If this was the case, then even if Eslinger's understanding of Πκ≡α is correct, his point would not hold. And third, the two studies Eslinger cites to support the practice of female circumcision in early societies deal with those practices in Egypt and Africa. He does

---

<sup>37</sup> Maimonides argued for a similar combinational perspective by stating that both the shame-act and the act-to-save-life are in view here (Hirsch, *The Pentateuch*, 519; see also David Lieberman, *The Eternal Torah* [River Vale, NJ: Twin Pines, 1979], 509).

<sup>38</sup> B.S. Jackson, *Essays in Jewish and Comparative Legal History* (Leiden: Brill, 1975), 83 n. 57.

<sup>39</sup> Carmichael, *The Laws of Deuteronomy*, 234. See also E. Roth, "Does the Torah Punish Impudence? Notes to Deuteronomy xxv 11-12," in *Etudes Orientales a la Memoire de Paul Hirschler*, ed. Otto Komlos (Budapest, 1950), 120.

<sup>40</sup> *Ibid.*, 272-273.

not provide any indication that such a practice occurred in Israel or any Mesopotamian society. Without such substantiation, he has not established that this form of retaliatory action was even a legitimate possibility.

Citing a variety of ancient near eastern parallels supporting an extended use of the talionic principle, Paul dismisses both Jackson's and Eslinger's interpretations: 'All of these very dubious interpretations can be rejected out of hand. This regulation is actually an example of talionic extension or vicarious talionic punishment of the peccant member'.<sup>41</sup> Craigie also sees such an extended sense here and argues that since women have no external genitalia, cutting off the hand was understood to be an analogous compensation.<sup>42</sup> While Jackson's point regarding the differences between the crime and the punishment is well taken, he does not provide any good reason for supposing that the talionic principle could only be applied in cases where part-for-part retaliation was possible. In this situation, where the female genitalia may not have been viewed as analogous to the male genitalia, it is at least possible that the retaliatory principle could have been applied in another way. This law cannot therefore be excluded from the talionic realm on that basis alone.

Having discussed the major objection to interpreting this law in light of the *lex talionis*, we must now consider whether there are any positive reasons for understanding this principle to be at work here. Eslinger notes several significant structural parallels between this law and all three passages containing the talionic formulation. (1) Verse 11 and Exodus 21:22 begin with the same phrase (Μψ#Ξινφ)φ ω≡χν≡φψι-ψκ≡ι); (2) this same verb is also found in Leviticus 24:10; and (3) verse 12 and Deuteronomy 19:21 both contain the exhortation Κ1νεψ(ε σωΟξτφ )λο.<sup>43</sup> Such similarities are significant and at least suggest the possibility that the talionic principle is at work here as well.

One important difference, though, must also be accounted for. In both texts where the hand serves as part of the talionic formula, δψ φis used rather than Πκ≡α. Given that the Deuteronomist has already used δψφ twice in the previous passage, why switch to Πκ≡α if an allusion to the *lex talionis* is intended? The difficult question of why the Deuteronomist opted for a different word in verse 12 has not been taken seriously by most interpreters (with the obvious exception of Eslinger) and has as yet received no convincing answer. It does not seem, though, that using a different word for hand necessarily excludes this law from the talionic realm. It is clear that the Deuteronomist is not quoting a talionic formula here and therefore is not bound by the specific words of the *lex talionis*.<sup>44</sup> If he is merely alluding to the principle, he needs only appeal to the idea of physical retaliation. While we might wish for a clearer allusion, one is not necessary.

A final indication that the *talionis* is in view is the fact that without such a connection, this law would stand completely without precedent among the biblical laws. A number of commentators note that, in contrast to the laws of other ancient near eastern societies, this law is

---

<sup>41</sup> Paul, *Religion and Law*, 335-336. He cites the Code of Hammurabi 116, 195, 210, 230 and the Middle Assyrian Laws A50 and 55 in favor of this interpretation.

<sup>42</sup> P.C. Craigie, *The Book of Deuteronomy* (Grand Rapids: Eerdmans, 1976), 315-316.

<sup>43</sup> Eslinger, "The Immodest Lady Wrestler in Deuteronomy XXV 11-12," 271.

<sup>44</sup> We should also note the many differences between the three talionic formulations. The three formulations only share two words in common (νψι(α and Ν#Ξε) and differ on the elements included and the connecting preposition.

the one example outside of the *lex talionis* the prescribes mutilation as a punishment.<sup>45</sup> If this law is not understood as an application of the *talionis*, then this law is completely without parallel in the biblical legal corpus.<sup>46</sup> Rather than opt for this seemingly drastic conclusion, it seems much more reasonable to conclude that this law alludes to the talionic formulations through a series of semantic and structural markers and then demonstrates how the *talionis* applies to a very unique set of circumstances.<sup>47</sup>

A final consideration, whether the command to cut off the woman's hand was to involve literal physical mutilation or whether it allowed the possibility of monetary compensation, lies outside the scope of this paper. Many current scholars follow the traditional rabbinic interpretation and argue that the *lex talionis* was always understood to *allow* (not require) direct physical retaliation in response to personal injury but at the same time to allow monetary compensation in its place.<sup>48</sup> A smaller group continues to maintain that the *lex talionis* did not allow monetary compensation and thus always involved physical retaliation.<sup>49</sup> Resolving this question would necessitate a thorough investigation of the *lex talionis* - its nature, purpose, and relationship to other ancient near eastern laws – and thus cannot be addressed here. For this paper, it must suffice to say that however the command to cut off the woman's hand should be understood, it must be read in the same manner as the *lex talionis* in its more explicit formulations.

In the previous section, we evaluated a number of proposals for understanding the nature of the woman's action and concluded that the strongest contenders were (1) a violation of a taboo or (2) an act that caused physical damage to the husband's assailant. Now that we have seen several reasons for understanding this law in light of the *lex talionis* it appears that although strong cases can be made for both of these perspectives and some dimension of each may be involved, the latter is the prominent issue. As Driver notes, 'the principle of talion...is peculiarly applicable to cases of assault' and more specifically to cases where injury is the result of that

---

<sup>45</sup> See Phillips, *Deuteronomy*, 170; Westbrook, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law*, 77; and Christopher Wright, "Ethics," in *The New International Dictionary of Old Testament Theology and Exegesis*, ed. William A. Vangemeren (Grand Rapids: Zondervan, 1997), 4.593. Paul does note several examples of legislative mutilation from Hammurabi 218, 226, and 253 (*Religion and Law*, 335).

<sup>46</sup> It is important to note that other texts involving retributive mutilation are found in historical rather than legal texts and must be interpreted accordingly.

<sup>47</sup> C.f. Craigie, *The Book of Deuteronomy*, 316.

<sup>48</sup> C.f. Hirsch, *The Pentateuch*, 385-386 and 517-518; Gordon Wenham, *Law, Morality and the Bible: A Symposium*, eds. Bruce Kaye & Gordon Wenham (Downers Grove, IL: InterVarsity, 1978), 40; Westbrook, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law*, 39-78; S. M. Passamaneck, *Jewish Law Association Studies III: The Oxford Conference Volume*, ed. A. M. Fuss (Atlanta: Scholars Press, 1987), 96; J. J. Finklestein, *The Ox that Gored. Philadelphia* (American Philosophical Society, 1981), 35-36; and Anthony Phillips, *A Song of Power and the Power of Song: Essays on the Book of Deuteronomy* (Winona Lake, IN: Eisenbrauns, 1993), 237.

<sup>49</sup> See Earl S. Kalland. *The Expositor's Bible Commentary*, vol. 3, ed. Frank E. Gaebelien (Grand Rapids: Zondervan, 1992), 152. David Daube argues that at least with respect to Exodus 21 and Deut. 25:11-12 the *lex talionis* should be understood literally (*Studies in Biblical Law* [New York: KTAV Publishing House, 1969], 106-108).

assault.<sup>50</sup> The laws of talion do not seem to apply to an action that only involved shame or the violation of a tabu serious as those offenses might be. Rather, the limited range of application available for the *lex talionis* implicitly supports the presumption of injury to the man. Although such injury is not explicitly indicated in the law, it may be that the Deuteronomist felt that the punishment indicated and the semantic links to the *lex talionis* were sufficiently clear as to need no other indicators. This appears to be the case in Leviticus 24 as well where no mention of injury is given regarding the fight in verse 10 and yet the *lex talionis* is applied in verses 19-20.

Does this talionic background explain why such an apparently harsh penalty is prescribed when there appear to be mitigating circumstances? While the other approaches struggle to explain why shame or unfairness would justify the prescribed punishment, the talionic approach can view it as a personal injury case analogous to the cases involving talion and thus has no difficulty explaining the reason for the penalty.

## CONCLUSION

Having addressed the major interpretive problems in this text, this study has hopefully demonstrated that there are valid reasons for understanding this law in light of the *lex talionis* and thus as a law that may involve elements of shame or taboo but primarily rests on the issue of damage caused to the assailant. It would seem that this perspective can incorporate all of the major elements of the text - the contextual themes of shame and loss of progeny, the threat to the husband's life, the strong punishment, and the talionic background – more completely than the other options.

---

<sup>50</sup> Driver, *Assyrian Laws*, 31.