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## VOLUME 6, ARTICLE 3

**YUNG SUK KIM, *LEX TALIONIS* IN EXOD 21:22-25: ITS  
ORIGIN AND CONTEXT**

## **LEX TALIONIS IN EXOD 21:22-25: ITS ORIGIN AND CONTEXT<sup>1</sup>**

YUNG SUK KIM

### **1. INTRODUCTION**

This essay is concerned with the following questions. Is the biblical *lex talionis* to be applied by equal retribution or in a figurative sense? What is its origin? How or for what purpose was this specific *lex talionis* practiced in ancient Israelite life? What were some underlying economic or social values behind the actual practice in a village context throughout ancient Israelite history? How does the *lex talionis* function in biblical law? Whose *lex talionis* is it? How much did Southwestern Asian Laws influence the Israelite law? To answer these questions, I will approach the ancient Israelites life through an anthropological perspective.<sup>2</sup> In other words, I will focus on their economic and social life to see how a customary law of the *lex talionis* works in every day lives. On the other hand, I will examine the biblical *lex talionis* of Exod 21:22-25 (miscarriage and bodily injury) in the literary context: how the *lex talionis* functions in biblical law and/or how Southwestern Asia Laws (hereafter referred to as SAL) are related to the biblical *lex talionis*.<sup>3</sup> My thesis is that the *lex talionis* in biblical law should be interpreted figuratively in view of theological emphasis on the value of life.<sup>4</sup> Actually, this emphasis of life did not come one day suddenly, but the law should be traced back to the ancient villages where a customary law should be present through history even before formal writings of biblical law.

An attempt to find the origin of the *lex talionis* is not an easy task because there are no direct records<sup>5</sup> other than biblical laws though SAL

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<sup>1</sup> The important task for interpreters is to reconstruct an ancient social context. Otherwise, legal materials do not simply hold true because law needs a specific context or vice versa: a context specifies the law. For example, if there is a sign: “no vehicles in the park,” what is this sign to be meant? In the twentieth century context this sign was put up to protect lives, especially children playing there, from possible car accidents in the park. Without knowing that context, for example, ten centuries later, if one historian studying law in America, looking at this sign as law, interprets that all vehicles including handcarts or children’s moving bicycles must be prohibited in the park, based on the literal sense of “no vehicles in the park,” which comes this person disregards its context and misses some very important questions: why the sign (or law) was built? Who has power to legislate such sign (or law)? See Alvin Esau, “Old Testament Law” available at

[http://www.umanitoba.ca/Law/Courses/esau/lr/lr\\_oldtestament.html](http://www.umanitoba.ca/Law/Courses/esau/lr/lr_oldtestament.html)

<sup>2</sup> I use here “anthropological” as an approach to understand human behavior from a basic human point of view in aspects of community living including economic, cultural, and religious life.

<sup>3</sup> This *lex talionis* in relation to the woman/miscarriage issue is well attested in the Hammurabi Code 196-214 and Middle Assyrian Law 50 as well.

<sup>4</sup> Douglas A. Knight, “The Ethics of Human Life in the Hebrew Bible” in Douglas A. Knight and Peter J. Paris (eds.), *Justice and The Holy: Essays in Honor of Walter Harrelson* (Atlanta: Scholars Press, 1989) 83.

<sup>5</sup> Robert R. Wilson, “The Role of Law in Early Israelite Society” in Baruch

has good parallels.<sup>6</sup> The existence of these parallels does not automatically point to the origin of the *lex talionis*. My attempt is to find an oral form or a customary law of the *lex talionis*.<sup>7</sup> Its origin should be traced back to agricultural village life of ancient Israel, and accordingly, that its development and practice, with much complexity, will be examined from an anthropological perspective.<sup>8</sup> At the same time it should be noted that the development (and application) of the *lex talionis* should be understood as a complex process, depending on a period and its social structure/power. Put differently, its origin should not be taken as a one-time and simple phenomenon. Rather, various social contexts (small villages, towns, clans, state, and monarchy) change the focus of the *lex talionis*.<sup>9</sup>

## 2. THE SEAT OF THE *LEX TALIONIS* IN ANCIENT ISRAEL

### 2.1 VILLAGES

My first presupposition is that most of ancient Israelites lived in villages throughout Israelite history.<sup>10</sup> Therefore, their primary life context lies in agricultural,<sup>11</sup> family-oriented (or clan),<sup>12</sup> cultural religious life through which people have strong emotional attachment in villages, though sometimes, their life could go beyond their immediate boundaries of life. All people in villages know each other very well, frequently gathering in important social or religious festivals. They work together in the fields, probably helping each other, for efficiency. Imagine a time without a television set. People gather as often as possible. In other words, the meaning of life lies in the community: they work, eat, drink, sing, and dance in the community. Good or bad, if anything happens, it is a community event: birth, marriage, sickness, disputes, and death. The point is that the primary life context lies in the community with an average village

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Halpern and Deborah W. Hobson (eds.), *Law, Politics, and Society in the Ancient Mediterranean World* (Sheffield: Sheffield Academic Press, 1993) 90-99.

<sup>6</sup> Some parallels are in Laws of Hammurabi 196-214 and Middle Assyrian Law 50.

<sup>7</sup> Alt's study on inscription of North Africa confirms a general practice of compensation in a similar case of the *lex talionis*. See Joe M. Sprinkle, "The Book of the Covenant: A Literary Approach" (JSOTSup 174; Sheffield: Sheffield Press, 1994) 173.

<sup>8</sup> E. Otto, "Town and Rural Countryside in Ancient Israelite Law: Reception and Redaction in Cuneiform and Israelite Law," *JSOT* 57 (1993) 3-22.

<sup>9</sup> Robert R. Wilson, "Enforcing the Covenant: The Mechanisms of Judicial Authority in Early Israel" in H. B. Huffmon, F. A. Spina, and A. R. W. Green (eds.), *The Quest for the Kingdom of God: Studies in Honor of George E. Mendenhall* (Winona Lake, IN: Eisenbrauns, 1983) 59-75.

<sup>10</sup> Douglas A. Knight, "Village Law and the Book of Covenant," in Saul M. Olyan and Robert C. Culley (eds.), *A Wise and Discerning Mind: Essays in Honor of Burke O. Long* (BJS 325; Providence: Brown University, 2000) 163-179.

<sup>11</sup> Frank Crusemann, *The Torah: Theology and Social History of Old Testament Law* (Minneapolis: Fortress, 1996) 110.

<sup>12</sup> Douglas A. Knight, "Village Law and the Book of Covenant."

population 50-100 people.<sup>13</sup> Actually, most of Israelites (70-95%) are believed to live in villages.<sup>14</sup>

What does this emphasis on the community suggest in relation to the seat of the *lex talionis*? Given the small village context, the literal application of the *lex talionis* by equal retribution is hardly the case because they know each other very well. The function of the *lex talionis* would have been initially to avoid an unregulated revenge but its primary role is support the victim's family with a virtual compensation.<sup>15</sup> In other words, legal disputes will be dealt case by case with a consideration of the community welfare and individual costs. How? Village elders, whose primary function is keep, interpret, and deliverer the customary law or tradition, will exercise the administration of justice.<sup>16</sup> This means that elders take a sort of leadership position in community events. Elders do not constitute a legal court in a strict sense; rather, in case of disputes, they would take a third party role as an interpreter of the tradition and as an arbitrator of disputes. Elders do not have a full power or authority over the cases. Rather, in view of community rapport and justice, elders should treat both parties involved in the case equally so that the result of arbitration might be acceptable for the community as a whole.

In addition, it would be almost impossible to apply the *lex talionis* by equal retribution in subsistence economy of agriculture, which depends on human labor and animals. The implication is that human labor must be preserved. Therefore, body parts such as eye, nose, hand, and feet are essential not just for physical and social life but for labor power for survival of family and community. If one eye were lost, it would be a great loss for an individual and a family as well. The loss or decrease of labor power affects the victim's family directly. This reality of life requires some sort of compensation for the victim's family so that they could continue their life. Therefore, an equal retribution through cutting off an offender's hand does not help a victim's family or an offender's. Likewise, the offender's family needs to maintain their social and economic life even with difficult situations like this. The offender's family can wisely approach the issue by agreeing to pay for the loss of time, for medical cost and for the loss of economic production. Any possible unregulated retaliation against a customary law of compensation could lead to a warlike situation with hatred. How can the victim's family see the offender walk by without a hand? In a close community context, that kind of situation is hardly bearable psychologically. The literal application of the *lex talionis* by equal retribution can be another form of injustice by ruining the other family in the name of equal retribution. If an offender does not have enough means to pay, he/she should sell one's labor to compensate. Furthermore, in villages,

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<sup>13</sup> Robert R. Wilson, "Role of Law in Early Israelite Society."

<sup>14</sup> Douglas A. Knight, "Village Law and the Book of Covenant."

<sup>15</sup> Francesco Parisi, "The Genesis of Liability in Ancient Law" (Final Draft) American Law and Economics Review (2001) available at <http://www.gmu.edu/departments/law/faculty/papers/docs/00-27.pdf>

<sup>16</sup> Robert R. Wilson, "Role of Law in Early Israelite Society," and idem, "Israel's Judicial System in the Pre-exilic Period" *JQR* 74 (1983) 229-248. See also Alvin Esau, "Old Testament Law" available at

[http://www.umanitoba.ca/Law/Courses/esau/lr/lr\\_oldtestament.html](http://www.umanitoba.ca/Law/Courses/esau/lr/lr_oldtestament.html).

people know that equal retribution is not fair. Not every hand has an equal price. If a physician's hand were cut off by the penalty of the *lex talionis*, people will know that it is not fair. Then, realistically, people will consider compensation as a possible solution through negotiation.<sup>17</sup>

## 2.2 DEVELOPMENT

Another important question about the *lex talionis* is this: if social structure changes from a family or clan-based society to a larger social unit like state, how would the *lex talionis* work? The danger of an unregulated revenge or retaliation will be much higher than in the village context because expectedly such a larger society gets difficulty to reach a consensus between the parties. This difficulty arises from their lack of mutual understanding about the customary law. If disputes happen in villages, the possibility of rampant revenge can be reduced because of a close community context. But if legal disputes occur between clans or tribes or from a state-level, it would be hard to regulate seemingly high hatred-ridden retaliations. It is highly probable that the case like bodily injury could be treated as a criminal case. The implication is that a larger society may be controlled efficiently.<sup>18</sup> From the privileged high-class point of view, society (the status quo) should be maintained. It is also equally highly possible that a compensation sense of the *lex talionis* could be abused by the wealthy or the powerful in the way that "money" can buy anything.<sup>19</sup> Depending on the power dynamics between local authorities and the central government, legal remedy could take any point of the spectrum, ranging from a proper mix of a criminal case to pecuniary compensation.<sup>20</sup>

## 2.3 VALUES AND MORAL PRINCIPLES BEHIND THE LEX TALIONIS

What are some important values and moral principles behind the practice of the *lex talionis*? In villages, a living spirit in communal life is strong so that people will handle any legal disputes with good rapport. I suppose that the Sinai tradition was already known at this time, and wonder that an impact on community life would be more meaningful with the value of honoring life. This value constitutes a symbolic application of the *lex talionis* with virtual compensation through the community spirit. Therefore, a derivative moral principle can be something like this: "share life; do not retaliate; help each other; live together in the community."

## 3. THE LEX TALIONIS IN EXODUS 21:22-25

### 3.1 THE LEX TALIONIS AND MISCARRIAGE/BODILY INJURY

Biblical law took a final form during the exile, the fact of which suggests biblical law has a strong literary dependency on the Babylonian Law.<sup>21</sup> In

<sup>17</sup> This kind of anthropological reasoning is based on my experience of living in an agricultural village. The same analogy could be applied to different cultures.

<sup>18</sup> Martin J. Buss, "The Distinction between Civil and Criminal Law in Ancient Israel" in A. Shinan (ed.) *Proceedings of the Sixth World Congress of Jewish Studies*, (Jerusalem: World Union of Jewish Studies, 1977) vol. 1, 51-62.

<sup>19</sup> Francesco Parisi, "Genesis of Liability in Ancient Law."

<sup>20</sup> David Daube, *Studies in Biblical Law*. (Cambridge: University Press, 1947), 103.

<sup>21</sup> John Van Seters suggests that biblical laws were formed by the influence of

particular, the *lex talionis* of Exod 21:22-25 is similar in terms of structure, mood, and in terms of form (casuistic law). See the following comparison table.<sup>22</sup>

Exod 21: 18-27	Hammurabi Code #196-214
(bodily injury)	(bodily injury)
18-19: injuries during a fight	206-208: injuries received in a fight
22-23: injury to a pregnant woman	209-212: injuries to a pregnant woman
24-25: <i>lex talionis</i> series	196-97, 200: injuries to eye, bone and tooth of awilu ( <i>lex talionis</i> )
20-21, 26-27: injuries to slaves	199: injuries to slaves

This literary dependency does not simply point to the origin of the *lex talionis* in SAL; rather, such an origin should be located in the village life. Then how can we account for this literary connection between the two laws? Certainly, the form of casuistic laws seems borrowed from the cuneiform laws in Babylonia, but the details of the *lex talionis* (Exod 21:22-25) significantly differ from those of the Hammurabi Code. See the following laws.

*Exod 21:22-25*

<sup>22</sup>When people who are fighting injure a pregnant woman so that there is a miscarriage, and yet no further harm follows, the one responsible shall be fined what the woman's husband demands, paying as much as the judges determine. <sup>23</sup>If any harm follows, then you shall give life for life, <sup>24</sup>eye for eye, tooth for tooth, hand for hand, foot for foot, <sup>25</sup>burn for burn, wound for wound, stripe for stripe. (NRSV)

*Laws of Hammurabi (LH)*<sup>23</sup>

209 If an *awilu* strikes a woman of the *awilu*-class and thereby causes her to miscarry her fetus, he shall weigh and deliver 10 shekels of silver for her fetus. 210 If that woman should die, they shall kill his daughter. 211 If he should cause a woman of the commoner-class to miscarry her fetus by the beating, he shall weigh and deliver 5 shekels of silver. 212 If that woman should die, he shall weigh and deliver 30 shekels of silver. 213 If he strikes an *awilu's* slave woman and thereby causes her to miscarry her fetus, he shall weigh and deliver 2 shekels of silver. 214 If that slave woman should die, he shall weigh and deliver 20 shekels of silver.

*Middle Assyrian Laws (MAL)*<sup>24</sup>

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the Babylonian Law during the exile. The reason lies in the fact that the *lex talionis* formula and casuistic laws share similarity between the two. So, the Covenant Code is not the earliest one as opposed to the common understanding. John Van Seters, "Comparison of Babylonian Codes with the Covenant Code and its Implications for the Study of Hebrew Law" available at

[http://www.law2.byu.edu/Biblical\\_Law/papers/vansetterssbl2001.pdf](http://www.law2.byu.edu/Biblical_Law/papers/vansetterssbl2001.pdf)

<sup>22</sup> John Van Seters, "Comparison of Babylonian Codes with the Covenant Code and its Implications for the Study of Hebrew Law"

<sup>23</sup> Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*. (Atlanta: Scholars Press, 1997) 123.

50 [if a man] strikes [another man's wife thereby causes her to abort her fetus, ...] a man's wife [...] and they shall treat him as he treated her; he shall make full payment of a life for her fetus. And if that woman dies, they shall kill that man; he shall make full payment of a life for her fetus. And if there is no son of that woman's husband, and his wife whom he struck aborted her fetus, they shall kill the assailant for her fetus. If her fetus was a female, he shall make full payment of a life only. 52 If a man strikes a prostitute causing her to abort her fetus, they shall assess him blow for blow, he shall make full payment of a life.

In a bodily injury and miscarriage case, Laws of Hammurabi (LH) have less respect for life and applies the *lex talionis* to *avilu* class only (LH #210: "if that woman (*avilu*) should die (as a result of miscarriage), they shall kill his daughter"). Clearly, LH 210 specifies death penalty while Exod 21:23-25 does not use the same language as the Laws of Hammurabi. Maybe, the harsh language of literal application of the *lex talionis* conveys an exaggerating, symbolic sense of "class ideology" that *avilu* class should be more honorable than the other class such as commoner class or a slave. Life of a commoner-class and a slave woman has a fixed price. A commoner-class will receive 30 shekels of silver while an *avilu*'s slave will receive 20 shekels of silver if they die in case of miscarriage. Accordingly, fetus's value is also subject to mother's class. Similarly, MAL #50 harshly states the bitterness of the *lex talionis*, which is almost same as LH 210. Surprisingly enough, MAL #50 is very specific about who will be retaliated with death penalty. But there is no mentioning of a prostitute's dying.

In contrast, the *lex talionis* of Exodus and related bodily injury laws have more respect for life than SAL. Before looking at Exod 21:22-25 in detail, we need to see bodily injury case found in Exod 21:18-19 because this bodily injury law does not apply the *lex talionis*. Instead, full payment of the medical cost and the compensation of loss of time are sufficient. See the below text.

#### *Exod 21:18-19*

<sup>18</sup>When individuals quarrel and one strikes the other with a stone or fist so that the injured party, though not dead, is confined to bed, <sup>19</sup>but recovers and walks around outside with the help of a staff, then the assailant shall be free of liability, except to pay for the loss of time, and to arrange for full recovery.

From the nature of bodily injury caused by a fighting (probably intentional), the above case falls into a category of bodily injury. But in fact no *lex talionis* formula is found here. The remedy for the victim is substantial and does make sense. If this fighting case of Exod 21:18-19 has compensation as a measure, why not Exod 21:22-25? If this *lex talionis* is understood by equal retribution, it is not consistent with the previous case of bodily injury (vv.18-19). Moreover, the *lex talionis* of Exod 21:23-25 does not clearly spell out "death penalty" like LH or MAL; it says "life for life, ... eye for eye." This "life for life" formula is not equal with "taking out life" by equal retribution. As Daube suggests, the Hebrew word תחת is close to the concept of "substitute," as similarly expressed in Lev 24:18, where in

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<sup>24</sup> Ibid., 174.

case of animal killing “life for life” means a substitution, not killing an animal as equal retribution.<sup>25</sup>

In fact, Exod 21:22-25 is exegetically one of the most difficult laws. However, I will show that a *lex talionis* formula should not be taken as an equal retribution or by monetary compensation but that it should be read figuratively.<sup>26</sup> At the outset, interpreters have the difficulty because of an unclear context and language: for example, why is a woman there on the scene? Is she a mere bystander? Is a man’s fighting intentional or not? Is there premature birth or miscarriage if there is no וְיָדָא? What does וְיָדָא mean?<sup>27</sup>

A group of scholars (from an anti-abortion position), imposing their view of life (“a fetus is life”) on the text, applies the *lex talionis* specifically to a fetus: the harsh *lex talionis* should be effective with the death of a fetus because it is life. Their points are as follows, as reflected in the NIV translation below.<sup>28</sup> 1) A premature birth without וְיָדָא (as serious injury) requires pecuniary compensation only, as demanded by a husband. 2) A death of fetus with further וְיָדָא (a woman receiving serious injury) requires the *lex talionis*: life for life, eye for eye, etc.

<sup>22</sup> "If men who are fighting hit a pregnant woman and she gives birth *prematurely* but there is *no serious injury*, the offender must be fined whatever the woman's husband demands and the court allows. <sup>23</sup> But if there is *serious injury*, you are to take life for life, <sup>24</sup> eye for eye, tooth for tooth, hand for hand, foot for foot, <sup>25</sup> burn for burn, wound for wound, bruise for bruise (*New International Version*).

But their interpretation does not stand strong. The problem is manifold. The text does not convey a sense or possibility of a fetus’ being-born-alive. The Hebrew term וְיָדָא conveys a sense of “coming out” (depart). From the casuistic law form of Laws of Hammurabi 209-214 and MAL 50-52, the general trend of law forms indicates miscarriage throughout the laws, for instance, the Laws of Hammurabi 209: “if an *amīlu* strikes a woman of the *amīlu* class and thereby causes her to miscarry her fetus...”. If we consider relatively poor medical advancement in ancient society, we can assume easily that the possibility of premature birth would be rare.

A fetus is not considered as life in SAL as in the Hebrew Bible. Laws of Hammurabi treat miscarriage as an economic accident; thereby it is sufficient to compensate for the loss of a fetus. For example, LH #209 states that an *amīlu*’s miscarriage requires payment of 10 shekels of silver only. MAL #50 also asks for full payment of a life for a fetus. A fetus has economic value in miscarriage. According to this view, the fetus is not yet

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<sup>25</sup> Bernard S. Jackson, “Lex Talionis: Revisiting Daube’s Classic,” available at [http://www.law2.byu.edu/Biblical\\_Law/papers/jackson\\_bs\\_lex\\_talionis.pdf](http://www.law2.byu.edu/Biblical_Law/papers/jackson_bs_lex_talionis.pdf).

See also Joe M. Sprinkle, “The Interpretation of Exodus 21:22-25 (Lex Talionis) and Abortion” *WTJ* 55 (1993) 233-253.

<sup>26</sup> Joe M. Sprinkle, “Interpretation of Exodus 21:22-25 (Lex Talionis) and Abortion.”

<sup>27</sup> *Ibid.*,

<sup>28</sup> The New King James Version (NKJ) follows the NIV. Other than that, a majority of translations such as RSV, NRSV, NJB, and TNK assumes “miscarriage” throughout the case.

full life as a person. Then the opposition may arise from an anti-abortion perspective: biblical law can be different from SAL and may treat a fetus as life. But this opposition does not hold true from the Hebrew Bible in general and also from the agricultural village context.<sup>29</sup> In the Hebrew Bible life begins after birth. Of course, the Hebrew Bible does not mention clearly word-for-word that “life begins after birth.” Some biblical passages seemingly express the idea of “beginning of life” before birth (Ps. 139:13). But that should not be understood as a literal sense of “life” as a person. Rather, it must be understood as emphasizing almighty God. In other words, Psalm’s language is rather poetic and theological. Similarly, Jer. 1:5 also emphasizes God’s sovereignty and almighty in a theological context: “Before I formed you in the womb I knew you, before you were born I set you apart.” In Gen 2:7, however, we can see God form a human being from the dust of ground with “breath of life” (נשמת חיים). Then האדם became a living being (נפש חיה). Unlike from Psalm 139:13 or Jer. 1:5, Gen 2:7 deals with a human origin and the beginning of life.

Next, if אסון means a critical condition, thereby damaging a woman severely, and as a result, if a fetus dies, how exactly does this *lex talionis* operate? (vv. 23-25: “life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, strife for strife”). If “life for life” as death penalty is operative due to a fetus’s death, what is about other *lex talionis*, for example, eye for eye, tooth for tooth? Are these other details of body parts only operative to a woman’s injury? Did a woman’s tooth break? What is about burn for burn? Was she burn? How is “strife for strife” working? As all these questions seem to be answered, the list of the *lex talionis* does not make sense by equal retribution. Even נפש תחת נפש (life for life) cannot be simply taken as meaning death penalty.<sup>30</sup> All subsequent תחת (e.g. עין תחת עין ...) can figuratively express the importance of equal payment. This concept of equal payment is close to the seat of the *lex talionis* I discussed in the previous section.

Throughout the process in Exod 21:22-25, miscarriage is assumed with or without אסון. A fetus is not full life yet, thus financial payment is fine. If there is further harm (אסון) to a woman, this is the case of bodily injury like 21:18-19. Furthermore, with an economic and psychological mode of reasoning, the equal retribution of *lex talionis* is less reasonable; it does not help anybody, leaving only burden or uneasiness of a woman, or the hatred of an offender.

A figurative sense of the *lex talionis* comes out of the idea that life (not a fetus but a woman) is precious. This line of thought is consistent with 21:18-19 (bodily injury) and with 21:26-27 (a slave owner’s striking of a slave’s eye or tooth.)<sup>31</sup> In this latter case, the penalty is not the *lex talionis* as expected. Rather, a slave must go free because a slave is also life. If the biblical *lex talionis* were applying here as literal equal retribution, a slave owner’s eye or tooth would have to be pulled out equally. But that is not

<sup>29</sup> In the agricultural ancient community where infant mortality & miscarriage is high, a fetus can be hardly a human person. Circumcision might be a sign that a child becomes a person.

<sup>30</sup> Joe M. Sprinkle, “Interpretation of Exodus 21:22-25 (Lex Talionis) and Abortion.”

<sup>31</sup> Ibid.,

the case here. An implication from this case is that a literal equal retribution does not help anybody: both for a slave owner and a slave. If that happens, a slave is still in the same situation but with emotional burden with a slave owner; a slave owner would lose more than an eye. Probably his business will be in jeopardy because of his loss of an eye. A middle position can meet the need of both parties with justice (and also quality of life and respect for life). So, the release of a slave is properly operative in this case. My point is that equal retribution does not work in this case.

Furthermore, the verb נָתַן (to give) in Exod 21:23 can be used to express “substitution” or “compensation.”<sup>32</sup> This means that you shall give equal price for whatever damage is done.<sup>33</sup> Even the unintentional homicide case in 21:13-14 does not require capital punishment as such; instead, the offender can flee to a refugee place. Mosaic Law in general does not require death penalty for unintentional homicide.<sup>34</sup> Then what should we say about 21:22-25? Is these men’s fighting more serious than homicide?<sup>35</sup>

Even the *lex talionis* found in Deut 19:21 and Deut 24:17-21 should be understood figuratively.<sup>36</sup> In case of Deut 19:21, a false witness should be dealt, “life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.” Let us imagine one situation like this: if one person strikes another person, half-destroying his eye and one witness testifies against the victim. If a witness’s false testimony is found later, according to the literal application of the *lex talionis*, this witness’s eye should be half-destroyed. Then, who will care about the victim? The victim needs cure and his life must continue with virtual compensation. So, the witness’s eye-destruction as penalty would not help anyone and it is not justice. Who wants such a measure that does not help the victim? From this reasoning, it can be said that the *lex talionis* formula, life for life, eye for eye, tooth for tooth, hand for hand, foot for foot should be understood figuratively and then the witness’s virtual compensation would help the victim.

In case of Lev 24:17-21, intentional killing is dealt with death penalty (24:17, 21). But the following *lex talionis* formula, “anyone who maims another shall suffer the same injury in return: fracture for fracture, eye for eye, tooth for tooth, the injury inflicted is the injury to be suffered” (24:19-20) is different. It is unlikely that this *lex talionis* could mean equal retribution from a similar reasoning with Deut 19:21. So, this formula of Lev 24:19-20 also could be understood figuratively.

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<sup>32</sup> Joe M. Sprinkle, “Interpretation of Exodus 21:22-25 (Lex Talionis) and Abortion.” See also Bernard S. Jackson, “Lex Talionis: Revisiting Daube’s Classic” Center for Jewish Studies, available at

[http://www.law2.byu.edu/Biblical\\_Law/papers/jackson\\_bs\\_lex\\_talionis.pdf](http://www.law2.byu.edu/Biblical_Law/papers/jackson_bs_lex_talionis.pdf)

<sup>33</sup> S. Isser, “Two Traditions: The Law of Exod 21:22-23 Revisited,” *CBQ* 52 (1990) 30-44.

<sup>34</sup> J. K. Miklitzanski, “The Law of Retaliation and the Pentateuch” *JBL* 66 (1946) 295-303.

<sup>35</sup> Joe M. Sprinkle, “Interpretation of Exodus 21:22-25 (Lex Talionis) and Abortion.”

<sup>36</sup> *Ibid.*, See also J. K. Miklitzanski, “Law of Retaliation and the Pentateuch.”

#### 4. CONCLUSION

A derivative moral principle of honoring life emerges from the figurative sense of the *lex talionis*; there is only one **חַיָּוִת** as God-given life or life vitality (Gen 1:27; 2:7).<sup>37</sup> God is “the giver of life” (Deut 30:19; Job 33:4), the “fountain of life” (Ps. 36:9), and the “preserver of life” (Ps. 64:1).<sup>38</sup> The Laws of Hammurabi have underlying values of “serve the master” according to social structure. So hierarchy is clear in it. Class distinction is important in that society: *avilu* class, commoner-class and slave. In contrast, biblical law in general is concerned with community as God’s people, chosen by God as a covenant community. So the dominant value is to “serve God and the community.”

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<sup>37</sup> Douglas A. Knight, “The Ethics of Human Life in the Hebrew Bible” in Douglas A. Knight and Peter J. Paris, *Justice and The Holy: Essays in Honor of Walter Harrelson* (Atlanta: Scholars Press, 1989) 83.

<sup>38</sup> *Ibid.*, 82.