

CAST THEM OUT FOR THEIR MANY CRIMES

Reading the Violent Psalmist as Part of
Ancient Near Eastern Legal Culture

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ABSTRACT

The question this study has asked is, How does the psalmist craft the images of his enemies in the terms of law? In the process of answering, I address three major theses. The first thesis revolves around the observation that the lamenting psalmist tends to follow up his descriptions of the enemies' wrongs with specific punishments. As this study argues, the psalmist's muse for that wrong/punishment exchange is his own legal culture. The second thesis is that the psalmist's calls for violent punishments of his enemies reflect legal norms in his external reality. This is proposed in direct response to the persistent scholarly assumption that the punishments invoked in these psalms are internally born of the psalmists' fantasies, as well as being confined to that realm. I argue that the psalmist not only draws on legal-cultural punishment norms but in fact depends on their normative status in order to convey to his readers the nature of his enemies' crimes. The third thesis is that the external reality in question is the ancient Near Eastern legal milieu of which biblical law is a part.

Chapter Three shows how the psalmist's use of talionic language with reference to his enemies happens only when their behaviour is consistent with crimes punished in the "like for like" pattern elsewhere throughout ancient Near Eastern legal history. Chapter Four demonstrates that the psalmist's description of his enemies as slanderers and as "those who reproach" is framed in a legal-cultural understanding of shame as a sanctioned – and necessary – form of punishment for these crimes. After establishing the primacy of orality in contract procedure, Chapter Five shows how the psalmist's mouth-focussed punishments assume the nature of contract-making and breaking in ancient Near Eastern law.

Underlying these three theses is a theoretical critique of approaches to law in the psalms thus far, which have consistently assumed a definition of law that coheres with a contemporary Western understanding of law but diverges from that of the psalmist. I propose (in Chapter Two) that a definition of law guided by functional criteria, technical meaning, and the observation of norms, is the most fitting for an encounter with the psalmist's own legal understanding. Taking this approach then allows this study to present the lamenting psalmist as a participant in a legal culture that extends far beyond the confines of the Pentateuch.

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ABBREVIATIONS

A USS	Andrews University Seminary Studies
AA	Ägyptologische Abhandlungen
AAAP	American Anthropological Association Publications
AB	Anchor Bible
AbB	<i>Altbabylonische Briefe in Umschrift und Übersetzung</i> , ed. F. R. Kraus et al. (Leiden 1964 ff.)
ABD	Anchor Bible Dictionary
ABS	T&T Clark Approaches to Biblical Studies
<i>ActTh</i>	<i>Acta Theologica</i>
AHANEL	R. Westbrook, ed. <i>A History of Ancient Near Eastern Law</i> . 2 vols. HOS 72. Leiden: Brill, 2003.
AHW	W. von Soden and Bruno Meissner. <i>Akkadisches Handwörterbuch; unter Benutzung des lexikalischen Nachlasses von Bruno Meissner (1868-1947)</i> . Wiesbaden: Harrassowitz, 1965
AJSL	<i>American Journal of Semitic Languages and Literatures</i>
AKT:	Ankara Kültepe Tabletleri / Ankara Kültepe Tablets or Texts (vol. 1-2, Ankara 1990/1995, vol. 3 = FAOS Beih. 3, 1995)
AnOr	Analecta orientalia
AO	<i>Aula Orientalis</i>
AOS	Aula Orientalis Supplementa
AOAT	Alter Orient und Altes Testament
ARET XIII	P. Fronzaroli, <i>ARET 13.: testi di cancelleria : i rapporti con le città : archivio L. 2769</i> . Roma: Missione archeologica italiana in Siria, 2003.
ARM	A. Parrot and G. Dossin. <i>Archives royales de Mari</i> . Paris: Impr. nationale, 1950. (= TCL 22-31)
AS	<i>Assyriological Studies</i>
ASJ	A Tsukimoto publications in <i>Acta Sumerologica</i>
AT	Tel Atchana (Alalakh) Text, excavation sigla for 1937
AUSS	<i>Andrews University Seminary Studies</i>
B TAT	<i>Beiträge zur Theologie des Alten Testaments</i>

B WANT	Beitrage zur Wissenschaft vom Alten und Neuen Testament
<i>BASOR</i>	<i>Bulletin of the American Schools of Oriental Research</i>
BBB	Bonner biblische Beitrage
BDB	F. Brown, S.R. Driver, and Charles A. Briggs. <i>The New Brown, Driver, Briggs, Gesenius Hebrew and English Lexicon: With an Appendix Containing the Biblical Aramaic</i> . Peabody, Mass: Hendrickson, 1979.
BETL	Bibliotheca ephemeridum theologiarum lovaniensium
<i>BHK</i>	R. Kittel, ed., <i>Biblia hebraica</i> . Stuttgart: Württembergische Bibelanstalt, 1937.
<i>BHS</i>	K. Elliger and W. Rudolph, eds., <i>Biblia hebraica stuttgartensia</i> . Stuttgart: Deutsche Bibelstiftung, 1977.
<i>BI</i>	<i>Biblical Interpretation</i>
<i>Bib</i>	<i>Biblica</i>
BibS(N)	Biblische Studien (Neukirchen, 1951-)
BIN	Babylonian Inscriptions in the Collection of J. B. Nies. New Haven, 1917 ff.
<i>BJRL</i>	<i>Bulletin of the John Rylands University Library of Manchester</i>
<i>BK</i>	<i>Bibel und Kirche</i>
BKAT	Biblischer Kommentar: Altes Testament
<i>BLit</i>	<i>Bibel und Liturgie</i>
BM	Museum siglum of the British Museum, London
<i>BM</i>	<i>Beth Mikra</i>
<i>BSac</i>	<i>Bibliotheca Sacra</i>
<i>BTB</i>	<i>Biblical Theology Bulletin</i>
BZAW	Beihefte zur Zeitschrift für die alttestamentliche Wissenschaft
BZNW	Beihefte zur Zeitschrift für die neutestamentliche Wissenschaft
CAD	M. T. Roth, ed. <i>The Assyrian Dictionary</i> . 21 vols. Chicago, Ill.: The Oriental Institute of the University of Chicago, 1956-2010
<i>CBQ</i>	<i>Catholic Biblical Quarterly</i>
CBQMS	Catholic Biblical Quarterly Monograph Series
CBS	Museum siglum of the University Museum in Philadelphia. Catalogue of the Babylonian Section.

CDLI	"Cuneiform Digital Library Initiative," n.d. http://cdli.ucla.edu/ .
CKLR	<i>Chicago-Kent Law Review</i>
CM	<i>Cuneiform monographs</i>
CPNIV	The College Press NIV Commentary
CRB	Cahiers de la Revue biblique
CT	Cuneiform Texts from Babylonian Tablets
CTJ	<i>Calvin Theological Journal</i>
CTM	<i>Concordia Theological Monthly</i>
CalTM	<i>Calwer theologische Monographien</i>
Cyr.	J. N. Strassmaier, <i>Inschriften von Cyrus, König von Babylon (538-529 v. Chr) von den Thontafeln des Britischen Museums</i> . Leipzig: Eduard Pfeiffer, 1890.
EA	J. A. Knudtzon and Otto Weber. <i>Die El-Amarna-Tafeln</i> . Aalen: O. Zeller, 1964. (= VAB II, Leipzig 1915)
EG	M. G. Kovacs. <i>The Epic of Gilgamesh</i> . Stanford: Stanford University Press, 1989.
EL	F. Eisser and J. Lewy, <i>Die altassyrischen Rechtsurkunden vom Kültepe</i> (I = MVAeG 33 [1930]; II = 35/3 [1935])
ELTS	I.J. Gelb, O. Steinkeller, and R. Whiting, <i>Earliest Land Tenure Systems in the Ancient Near East: Ancient Kudurrus, OIP 104</i> . Chicago: Oriental Institute, 1991.
Emar	D. Arnaud, <i>Recherches au pays d'Aštata. Paris 1985-1987</i> .
ETL	<i>Ephemerides theologicae lovanienses</i>
ETR	<i>Etudes theologiques et religieuses</i>
FAOS	Freiburger Altorientalische Studien (Freiburg 1975 ff.); Beih. = Beihefte: Altassyrische Texte und Untersuchungen (1984 ff.) 5/1-2 Steible, H.: Die altsumerischen Bau- und Weihinschriften. Freiburger Altorientalische Studien 5/I-II. Stuttgart: Steiner Verlag, 1982
FAT	Forschungen zum Alten Testament
FH	<i>Fides et Historia</i>
FOTL	Forms of the Old Testament Literature
FRLANT	Forschungen zur Religion und Literatur des Alten und Neuen Testaments
HAT	Handbuch zum Alten Testament

HBS	Herders Biblische Studien
HL	Hittite Laws
HLR	Harvard Law Review
HOS	Handbook of Oriental Studies (= Handbuch der Orientalistik)
<i>HS</i>	<i>Hebrew Studies</i>
HSM	Harvard Semitic Monographs
HSS	Harvard Semitic Studies
<i>HTR</i>	<i>Harvard Theological Review</i>
<i>HUCA</i>	<i>Hebrew Union College Annual</i>
ICK	B. Hrozný. <i>Inscriptions cunéiformes du Kultépé</i> . Prague: Státní Pedag. Nakl., 1952.
<i>IEJ</i>	<i>Israel Exploration Journal</i>
<i>Int</i>	<i>Interpretation</i>
<i>JANESCU</i>	<i>Journal of the Ancient Near Eastern Society of Columbia</i>
<i>JAAR</i>	<i>Journal of the American Academy of Religion</i>
<i>JAOS</i>	<i>Journal of the American Oriental Society</i>
<i>JBL</i>	<i>Journal of Biblical Literature</i>
<i>JBR</i>	<i>Journal of Bible and Religion</i>
<i>JCS</i>	<i>Journal of Cuneiform Studies</i>
JEN	Joint Expedition with the Iraq Museum at Nuzi (= Publications of the Baghdad School. Texts, 1-6, Paris/Philadelphia 1927-1939)
<i>JESHO</i>	<i>Journal of the Economic and Social History of the Orient</i>
<i>JETS</i>	<i>Journal of the Evangelical Theological Society</i>
<i>JfP</i>	<i>Journal for Preachers</i>
<i>JHS</i>	<i>Journal of the History of Sexuality</i>
<i>JJS</i>	<i>Journal of Jewish Studies</i>
<i>JNES</i>	<i>Journal of Near Eastern Studies</i>
<i>JNSL</i>	<i>Journal of Northwest Semitic Languages</i>
<i>JQR</i>	<i>Jewish Quarterly Review</i>
<i>JRAI</i>	<i>The Journal of the Royal Anthropological Institute</i>
<i>JRE</i>	<i>Journal of Religious Ethics</i>

<i>JSOT</i>	<i>Journal for the Study of the Old Testament</i>
JSOTSup	Journal for the Study of the Old Testament, Supplements
<i>JSR</i>	<i>Journal of Scriptural Reasoning</i>
<i>JSS</i>	<i>Journal of Semitic Studies</i>
<i>JTS</i>	<i>Journal of Theological Studies</i>
Kbo	H. H. Figulla and Ernst Friedrich Weidener. <i>Keilschrifttexte aus Boghazköi</i> . Leipzig: J.C. Hinrichs'sche Buchhandlung, 1916.
Kienast no.	Texts edited in B. Kienast, <i>Das altassyrische Kaufvertragsrecht FAOS 1</i> . Stuttgart: Steiner 1984.
kt	Inventory numbers of Kültepe texts (kt 89/k+number= texts found 1989 and after, a/k+number = unpublished texts from Kültepe (kt), found in karum Kanish (/k), since the first year of excavations, 1948 (= a), until 1972 (= z))
KTS	V. Donbaz, ed. <i>Keilschrifttexte in den Antiken-Museen zu Istanbul</i> (= FAOS Beih. 2, 1989)
KTU	M. Dietrich, O. Loretz, and J. Sanmartín. <i>Die Keilalphabetischen Texte aus Ugarit</i> . Kevelaer: Butzon und Bercker, 1976. (= AOAT 24/1, 1976)
LE	Laws of Eshnunna
LH	Laws of Hammurabi
LHBOTS	Library of Hebrew Bible/Old Testament Studies
LL	Laws of Lipit-Ishtar
MAL	Middle Assyrian Laws
<i>MECCJ</i>	<i>Bulletin of the Middle Eastern Culture Center in Japan</i>
MEDA	<i>Middle Euphrates Digital Archive</i> http://virgo.unive.it/
MSL	B. Landsberger, M. Civil; E. Reiner, eds. <i>Materialien zum Sumerischen Lexikon</i> . Rome: Pontifica Biblical Institute, 1937-2004
NBL	Neo-Babylonian Laws
Nbn.	J. N. Strassmaier, <i>Inschriften von Nabonidus, König von Babylon</i> . Leipzig: Pfeiffer, 1889 (= BT 1-4).
Nbk.	J. N. Strassmaier, <i>Inschriften von Nabuchodonosor, König von Babylon</i> . Leipzig: Pfeiffer, 1889 (= BT 5-6).

NG	A. Falkenstein, <i>Die neusumerischen Gerichtsurkunden</i> . München: Verlag der Bayerischen Akademie der Wissenschaften, 1956- (= ABAW NF 39, 40, 54, 1956-57).
NRSV	New Revised Standard Version
OBO	Orbis biblicus et orientalis
OBT	Overtures to Biblical Theology
OTE	<i>Old Testament Essays</i>
OTL	Old Testament Library
OTS	<i>Oudtestamentische Studien</i>
OTWSA	<i>Ou-Testamentiese Werkgemeenskap in Suid-Afrika</i>
PEQ	<i>Palestine Exploration Quarterly</i>
PHSC	Perspectives on Hebrew Scriptures and Contexts Series
POAT	W.C. Gwaltney Jr., <i>The Pennsylvania Old Assyrian Texts</i> , HUCA Supplements 3. Cincinnati: Hebrew Union College, 1983.
PoLAR	<i>Political and Legal Anthropology Review</i>
PRU	C. Virolleaud, Jean Nougayrol, and Charles Virolleaud. <i>Le Palais Royal D'Ugarit</i> . Paris: Imprimerie Nationale, 1965.
RA	<i>Revue d'assyriologie et d'archeologie orientale</i>
RAC	<i>Reallexikon für Antike und Christentum</i>
RAE les	D. Arnaud, <i>Recherches au pays d'Aštata</i> . Paris : Recherche sur Civilisations, 1985-1987
RB	<i>Revue biblique</i>
RBC	Tablets in the Rosen Babylonian Collection. Yale University.
RBJ	<i>Revue Biblique Jérusalem</i>
RE	G. Beckman, <i>Texts from the Vicinity of Emar in the Collection of Jonathan Rosen</i> . Padova: Sargon, 1996.
RevExp	<i>Review and Expositor</i>
RevistB	<i>Revista biblica</i>
RGRW	Religions in the Graeco-Roman World
RIDA	Revue Internationale du Droit d'Auteur
RLA	E. Ebeling, B. Meissner, E. Weidner, W. von Soden, D. Edzard, M. Streck, and G. Frantz-Szabó, <i>Reallexikon der Assyriologie</i> . Berlin; Leipzig: de Gruyter, 1928-.

RRBS	Recent Research in Biblical Studies
RS	Museum siglum of the Louvre and Damascus :Ras Shamra.
<i>RSO</i>	<i>Rivista degli studi orientali</i>
<i>RSP</i>	L. R. Fisher and S. Rummel, eds., <i>Ras Shamra Parallels: The Texts from the Ugarit and the Hebrew Bible</i> . 3 vols. Rome, Pontificium institutum biblicum, 1972-1981.
<i>RSR</i>	<i>Recherches de science religieuse</i>
RSV	Revised Standard Version
<i>RTP</i>	<i>Revue de theologie et de philosophie</i>
<i>RTR</i>	<i>Reformed Theological Review</i>
SAA	<i>State Archives of Assyria</i>
SBB	Stuttgarter biblische Beitrage
SBLAB	Society of Biblical Literature Academia Biblica
SBLDS	Society of Biblical Literature Dissertation Series
SBLMS	Society of Biblical Literature Monograph Series
<i>SBLSP</i>	<i>Society of Biblical Literature Seminar Papers</i>
SBM	Stuttgarter biblische Monographien
SBS	Stuttgarter Bibelstudien
SBT	Studies in Biblical Theology
SCE	Studies in Christian Ethics
<i>SEA</i>	<i>Svensk exegetisk arsbok</i>
<i>Sem</i>	<i>Semitica</i>
<i>SHR</i>	<i>Studies in the History of Religions</i>
<i>SJOT</i>	<i>Scandinavian Journal of the Old Testament</i>
<i>SJT</i>	<i>Scottish Journal of Theology</i>
SK	<i>Skrif en Kerk</i>
<i>SPS</i>	<i>Studies in Peace and Scripture</i>
SRU	D. O. Edzard, <i>Sumerische Rechtsurkunde des III. Jahrtausends aus der Zeit vor der III. Dynastie von Ur</i> . Abhandlungen der Bayerischen Akademie der Wissenschaften NF 67. München: Verlag der Bayerischen Akademie der Wissenschaften, 1968.
<i>STU</i>	<i>Schweizerische theologische Umschau</i>

TBER	J.M. Durand, <i>Textes Babylonien d'époque récente (= Recherche sur les grandes civilisations, Cahier 6, Paris 1981)</i>
TBij	<i>Theologische Bibliothek</i>
TBR	D. Arnaud, <i>Textes Syriens de l'âge du Bronze récent. Sabadell, Barcelona: Editorial AUSA, 1991.</i>
TC	G. Contenau, <i>Tablettes Cappadociennes Paris : Geuthner, 1920 (= TCL 4)</i>
TCL	<i>Textes cunéiformes, Musées du Louvre. Paris 1910-.</i>
TDOT	G. J. Botterweck and H. Ringgren, eds., <i>Theological Dictionary of the Old Testament</i> . Grand Rapids : Eerdmans, 1976-2006.
TGI	<i>Theologie und Glaube</i>
ThSt(B)	<i>Theologische Studien</i>
ThStK	<i>Theologische Studien und Kritiken</i>
TLZ	<i>Theologische Literaturzeitung</i>
TPK	C. Michel and P. Garelli, <i>Tablettes paléo-assyriennes de Kültepe</i> , vol 1 Kl 90/k. Paris : De Boccard, 1997
TQ	<i>Theologische Quartalschrift</i>
TRE	<i>Theologische Realenzyklopädie</i>
TTZ	<i>Trierer theologische Zeitschrift</i>
TUAT	O. Kaiser, ed., <i>Texte aus der Umwelt des Alten Testaments</i> . Gütersloh: G. Mohn, 1983-1997.
TUMSR	Trinity University Monograph Series in Religion
TynBul	<i>Tyndale Bulletin</i>
TZ	<i>Theologische Zeitschrift</i>
UAZP	M. Schorr, <i>Urkunden des altbabylonischen Zivil- und Prozessrechts</i> . Leipzig, J.C. Hinrichs, 1913.
UET	L. Woolley, ed., <i>Ur Excavations</i> . London: British Museum, 1928-.
UF	<i>Ugarit-Forschungen</i>
VAT	Museum siglum of the Vorderasiatisches Museum, Berlin.
VC	<i>Vigiliae Christianae</i>
VD	<i>Verbum domini</i>
VieS	<i>Vie spirituelle</i>

VT	<i>Vetus Testamentum</i>
VTE	Essarhaddon's Succession Treaties. ORACC.
VTSup	Vetus Testamentum, Supplements
WAW	Writings from the Ancient World, SBL.
WF	Wege der Forschung
WMANT	Wissenschaftliche Monographien zum Alten und Neuen Testamentum
WO	<i>Die Welt des Orients</i>
WTJ	<i>Westminster Theological Journal</i>
WuD	<i>Won und Dienst</i>
YLJ	<i>Yale Law Journal</i>
YOS	Yale Oriental Series: Babylonian Texts
ZA	<i>Zeitschrift für Assyriologie und Vorderasiatische Archäologie</i>
ZAS	<i>Zeitschrift für ägyptische Sprache und Altertumskunde</i>
ZAW	<i>Zeitschrift für die alttestamentliche Wissenschaft</i>
ZKT	<i>Zeitschrift für katholische Theologie</i>
ZNW	<i>Zeitschrift für die neutestamentliche Wissenschaft</i>
ZTK	<i>Zeitschrift für Theologie und Kirche</i>

CHAPTER 1: INTRODUCTION

For the better part of the 20th century, scholars who approached the lamenting psalmist returned again and again to a particular question: Who were these enemies provoking such a response from the psalmist? Were they foreign nations or community members? False witnesses or malicious diviners?¹ The back-and-forth on this matter continued in its fullest force until 1992 when John Day critically surveyed the debate and concluded that there was “no single solution to the problem...of the nature of the enemies referred to.”² As a growing number of scholars have argued in recent years,

¹ Birkeland spurred the argument in 1955 when he suggested that all enemies in the psalms were foreign nations. Harris Birkeland, *The Evildoers in the Book of Psalms* (Oslo: Dybwad, 1955). Mowinckel affirmed his suggestion by arguing that, in the context of foreign nations as enemies, one could identify national psalms of lament in which the psalmist speaks “about the dangers of war and hostility on the part of the whole ‘nations’.” Sigmund Mowinckel, “National Psalms of Lamentation in the I-Form,” in *The Psalms in Israel’s Worship*, trans. D.R. Ap-Thomas (Oxford: Basil Blackwell, 1962), 228. For those following Birkeland, see J. H. Eaton, *Kingship and the Psalms*, SBT 32 (London: SCM, 1976); T. Raymond Hobbs and P. Kenneth Jackson, “The Enemy in the Psalms,” *BTB* 21 (1991): 22-29; Harvey H. Guthrie Jr., “Yahweh’s Songs in an Alien Age,” in *Israel’s Sacred Songs: A Study of Dominant Themes*, 194-206. (New York: Seabury Press, 1966), 194-206. For a recent revival of Birkeland’s thesis, though quite nuanced: Derek Edward Wittman, “The Kingship of Yahweh and the Politics of Poverty and Oppression in the Hebrew Psalter.” (Ph.D. Dissertation, Baylor University, 2010).

For those who held that the enemies were a range of identities dependent on the particular psalm, see, H.A. Brongers, “Die Rache- und Fluchpsalmen im Alten Testament,” in *Studies on Psalms*, OTS 13 (Leiden: Brill, 1963), 21-42; G. W. Anderson, “Enemies and Evildoers in the Book of Psalms,” *BJRL* 48 (1965): 18-29; Hans-Joachim Kraus, *Theology of the Psalms* (Minneapolis: Augsburg, 1986); idem, “The Enemies,” in *Psalms 1-59*, trans. Hilton C. Oswald, 1st ed., CC 1 (Minneapolis: Fortress, 1993), 95-98; Steven J.L. Croft, *The Identity of the Individual in the Psalms*, JSOTSup 44 (Sheffield: Sheffield Academic, 1987); Gerald T. Sheppard, “‘Enemies’ and the Politics of Prayer in the Book of Psalms,” in *The Bible and the Politics of Exegesis: Festschrift Norman K. Gottwald* (Cleveland: Pilgrim, 1991), 61-82; John Day, “Psalms of Lament,” in *Psalms*, OTG 14 (Sheffield: JSOT Press, 1993), 19-38.

² Day, “Psalms of Lament,” 29.

though, the reason why there is no satisfactory answer to the question of the enemy's historical identity is the question itself is flawed. "Who were the enemies?" is a question that ignores what is most evident in these relevant psalms: the psalmist's agency as his enemy's creator.

**THE ENEMY:
CRAFTED IN THE IMAGE OF CRIME AND PUNISHMENT**

There are a few key scholars who have presented notable arguments for why the psalmist's enemies are better understood as his creations rather than concrete references. Keel first argued in 1972 that the lamenting psalmist demonstrated a reluctance to specify his enemies' identities, based on the number and variety of images the psalmist used to describe them. Keel reasoned that these figures were therefore closer to impressions of sorrows and fears – paintings so stylized that they could accommodate any number of cultural and individual nemeses.³ Drawing from Keel's ideas as well as Berlin's metaphor theory, Doyle has recently argued that the psalmist's aim is to actually create – through metaphors – an "enemy image," rather than to depict existing persons at all.⁴ Brown, in fact,

³ See especially Keel's assigned label, "Spheres of Death," as arenas where the enemy exists: Othmar Keel, *The Symbolism of the Biblical World: Ancient Near Eastern Iconography and the Book of Psalms*, Reprint (Winona Lake: Eisenbrauns, 1997), 62-77. See also Keel, *Feinde und Gottesleugner*, SBM 7 (Stuttgart: Katholisches Bibelwerk, 1969).

⁴ Brian Doyle, "Words with Teeth and Childbearing Men: Metaphors in Psalm 7," in *Psalms and Liturgy*, ed. Dirk J. Human and Cas J. A. Vos, LHBOTS 410 (London: T&T Clark, 2004), 41-61; idem, *Words with Teeth: Metaphors and the Psalms of Imprecation*, LHBOTS 443 (London: T&T Clark, 2014); Adele Berlin, "On Reading Biblical Poetry: The Role of Metaphor," in *Congress Volume*, Cambridge, 1995, ed. John A. Emerton, VTSup 66 (Leiden: Brill, 1997), 25-36.

presupposes that the enemies are just that: images – “‘icons,’ even – crafted as animals by the psalmist in order to label and, in turn, dehumanize [them].”⁵

Eidevall has furthered the discussion of the psalmist’s creative agency by questioning if there is significance in the psalmist’s choice of those images as they relate to the enemy, the self, and YHWH.⁶ The traditional view is that the psalmist uses a docile creature or city under siege to portray the lamenting “I”; war, hunting, and wild animal images to portray the enemy; and absence or a protector to portray YHWH. The truth that Eidevall shows, however, is more complex: the enemy and YHWH often share the same image, which provokes the question of whom the psalmist actually fears more.⁷

Finally, Cottrill simply assumes the psalmist’s agency as a crafter of the enemy image by questioning what rhetorical role the enemies serve in the psalmist’s “figured world.”⁸ Cottrill suggests that the psalmist creates the

⁵ William P. Brown, *Seeing the Psalms: A Theology of Metaphor* (Louisville, Ky.: Westminster John Knox, 2002), 4-8, 144; See also Brown’s work on the imaging of God in William P. Brown, *The Oxford Handbook of the Psalms* (Oxford; New York: Oxford University Press, 2014), 386-89. For the theoretical foundation on Brown’s argument, see Lakoff and Turner’s cognitive linguistic theory: George Lakoff and Mark Turner, *More Than Cool Reason: A Field Guide to Poetic Metaphor* (Chicago; London: University of Chicago Press, 1989); see also George Lakoff and Mark Johnson, *Metaphors We Live By* (Chicago; London: University of Chicago Press, 1980).

⁶ Göran Eidevall, “Images of God, Self and the Enemy: On the Role of Metaphor in Identity Construction,” in *Metaphor in the Hebrew Bible*, ed. Pierre van Hecke, BETL 187 (Leuven: Peeters, 2005), 55. Eidevall has drawn from the study of the “enemy image” as it is imagined in Fiebig-von Hase and Lehmkuhl’s edited volume: Ragnhild Fiebig-von Hase and Ursula Lehmkuhl, eds., *Enemy Images in American History* (Oxford: Berghahn, 1997).

⁷ Eidevall, “Images,” 53-65.

⁸ Amy C. Cottrill, *Language, Power, and Identity in the Lament Psalms of the Individual*, LHBOTS 493 (New York: T&T Clark, 2008), 19.

enemy as “a caricatured figure” for the purpose of establishing the psalmist’s “worthy social identity.”⁹ The violent language pointed toward the enemy, she explains, simultaneously functions as a language of empowerment for the psalmist.¹⁰ Similarly, the psalmist’s descriptions of abandonment and being shamed are at the same time a rhetoric that persuades “listening others” and YHWH to come to the psalmist’s aid.¹¹ It therefore serves as the language of agency and restored honour.

The present inquiry falls in line with these respective scholars in that it also assume that the enemies in the psalms are better understood as “enemy images” that the psalmist has crafted for his reader. My contribution to this stream of scholarship is a focus on how *law* has informed the psalmist’s language in that process. My reason for choosing law began with the observation that the lamenting psalmist tends to follow up his descriptions of the enemies’ wrongs with specific calls to punish them. One part of this study’s thesis is that law is a muse for that exchange, which if proven suggests that the psalmist crafts his enemies’ images within the framework of crime and punishment.

To propose a connection between the psalmist and law is certainly not a new project. Yet scholarship has traditionally approached the subject as a question concerning Torah specifically – either as the psalmist’s object of

⁹ Cottrill, *Language*, 64.

¹⁰ Cottrill, *Language*, 63-99.

¹¹ Cottrill, *Language*, 130-7.

study or as his single legal reference.¹² This study's approach departs from that tradition by arguing that the psalmist's descriptions of his enemies' wrongs – coupled with his calls to punish them – constitute a combination of crimes and punishments that are widely attested across the corpus of ancient Near Eastern law.

¹² A few key studies have been J. Reindl, "Weisheitliche Bearbeitung von Psalmen: Ein Beitrag zum Verständnis der Sammlung des Psalters," in *Congress Volume*, VTSup 32 (1981): 333-56; James Luther Mays, "The Place of the Torah-Psalms in the Psalter," *JBL* 106 (1987): 3-12; Kent Aaron Reynolds, *Torah as Teacher: The Exemplary Torah Student in Psalm 119*, VTSup 137 (Leiden; Boston: Brill, 2010); Jamie A Grant, "Torah-Kingship Theme in Psalms 1-2," in *The King as Exemplar the Function of Deuteronomy's Kingship Law in the Shaping of the Book of Psalms*, SBLAB 17 (Atlanta: SBL, 2004), 41-70. Gordon J. Wenham, *Psalms as Torah: Reading Biblical Song Ethically* (Grand Rapids: Baker Academic, 2012); Robert L. Hubbard, "Dynamistic and Legal Language in Complaint Psalms" (Ph.D., The Claremont Graduate University, 1980); Robert L. Hubbard, "Dynamistic and Legal Processes in Psalm 7," *ZAW* 94 (1982): 267-79; Giovanna Raengo Czander, "'You Are My Witnesses': A Theological Approach to the Laws of Testimony" (Ph.D., Fordham University, 2009); D. J. Human, Y. Steenkamp, and P. Styger, "Psalm 40 as a Torah Psalm," *IDS* 39 (2005): 133-53; Diane Jacobson, "Psalm 33 and the Creation Rhetoric of a Torah Psalm," in *My Words Are Lovely: Studies in the Rhetoric of the Psalms*, ed. Robert L. Foster and David M. (Jr.) Howard, LHBOTS 467 (New York/London: T&T Clark, 2008), 107-20.

**THE PSALMIST'S CALL TO PUNISH¹³:
BORN IN AN EXTERNAL REALITY, REFLECTING LEGAL NORMS**

Arguing that an external reality such as law is a source for the psalmist's depiction of enemies offers a new theological angle on the explicitly violent nature of his calls to punish them. These calls for punishment, to be sure, are not the easiest images to stomach: broken arms, crushed faces, impaled hearts and the smashed skulls of children, for instance, all make an appearance.¹⁴ Although approaches to these images abound, theological

¹³ A point of clarification is needed concerning my use of the word "punish" as a descriptor for these psalms. I use this word in line with its general definition, "to impose a penalty for a wrongdoing." It is the most precise term for broadly defining all of the psalms treated in this study because it centres on the psalmist's response to his enemies' wrongs without morally defining that response as either a "good" or an "evil." This is in contrast to the moral assignments in labels such as "the psalms of vengeance" or "the psalms of justice." For "punish" see Graeme R. Newman, *The Punishment Response*. 2nd ed. (London: Transaction, 2008), 1-11; for "psalms of vengeance," see Ionel Ababi, "Dieu des vengeances, resplendis! Prier la violence? Une lecture du Psaume 94," *ETR* 85 (2010): 467-78; Robert Althann, "The Psalms of Vengeance against Their Ancient Near Eastern Background," *JNSL* 18 (1992): 1-11; Leslie J Hoppe, "Vengeance and Forgiveness: The Two Faces of Psalm 79," in *Imagery and Imagination in Biblical Literature: Festschrift Aloysius Fitzgerald* (Washington: CBAA, 2001), 1-22; Jacob Lynn Goodson, "The Psalms of Vengeance: Dietrich Bonhoeffer's Theological Interpretation of the Psalms," *JSR* 12 (2013), <https://jsr.shanti.virginia.edu/>; Martin J. Ward, "Psalm 109: David's Poem of Vengeance," *AUSS* 18 (1980): 163-68; Stephen A Hamilton Wright, "Violent Vengeance in the Psalms: Can It Possibly Preach?," *JfP* 14 (1991): 16-22. For "psalms of justice," see John N. Day, *Crying for Justice: What the Psalms Teach Us About Mercy and Vengeance in an Age of Terrorism* (Grand Rapids: Kregel, 2005).

I have also chosen "punish" as a broad definition in lieu of the most common descriptor, "imprecatory psalms" or "psalms of imprecation" due to form-critical scholarship's assignment of this term as a genre to certain psalms. Opinion varies on the number of psalms that meet this genre qualification, but generally speaking scholars agree that there are nine Imprecatory Psalms: 7; 35; 58; 59; 69; 83; 109; 137; and 139. In a bid to avoid confusion concerning the term "imprecatory" as a form-critical category, this study refrains from using it as a broad descriptor of the psalms in focus because those psalms far outnumber the nine just listed. For the general reasoning on what qualifies these nine psalms as "imprecatory" in comparison to psalms that simply have an imprecation in them, see Laney, who argues that, "while many imprecations are in the Book of Psalms, it is evident that in some psalms the imprecations form the chief element." These particular psalms, he concludes, are the ones earning the label "imprecatory" as this element is their "leading feature" and "crucial to the psalmist's argument." Carl Laney, "A Fresh Look at the Imprecatory Psalms," *BSac* 138 (1981): 36. For a survey of scholarship on "the psalms of imprecation" form-critical category, see Brian Doyle, *Words with Teeth: Metaphors and the Psalms of Imprecation*, LHBOTS 443 (London: T&T Clark, 2014).

¹⁴ For a full account, see Elena Di Pede, "La violence dans les psaumes: violence souhaitée,

explanations for them have thus far come up short.

One problem has been theologians making the assumption that these images are born from a graphic fantasy or, in Hunter's words, "imaginative nastiness."¹⁵ In omitting the possibility that this imagery originates *externally* to the psalmist, scholarship has developed a strong theoretical tradition concerning the psalmist's fantastical mind. This tradition has in turn funnelled the questions theologians tend to pose to the psalmist toward a single, pointed theme which may be summarised as: *What drives a person to dream up such horrible ideas?* This assumption of fantasy, for instance, led Weiser toward claiming that the lamenting psalmist must have been an intolerant religious fanatic to come up with such violent images.¹⁶ In a similar vein, Lewis wrote that whoever conceived such words of reckoning was petty, vulgar, and "hard to endure," even "diabolical" and "devilish."¹⁷ To the question of why the presumably non-fanatical compilers of the Psalter would

violence racontée." In *Psaumes de la Bible* (Paris: Cerf, 2011), 73-90.

¹⁵ Alastair G. Hunter, *An Introduction to the Psalms*, ABS (London: T&T Clark, 2008), 6; For similar sentiments, see Keel, *Feinde und Gottesleugner*, 166-76; Kraus, *Theology of the Psalms*, 131; Hans-Joachim Kraus, *Psalms 1-59*, trans. Hilton C. Oswald, CC 1 (Minneapolis: Fortress, 1993), 26-9, 141; Anton Arens, *Die Psalmen im Gottesdienst des Alten Bundes* (Trier: Paulinus Verlag, 1961), 1-17; James Luther Mays, *Psalms*, Int (Louisville: John Knox, 1994), 6; J. Clinton McCann, Jr., "The Book of Psalms," in *The New Interpreter's Bible*, ed. Leander E. Keck, vol. 4 (Nashville: Abingdon, 1996), 1125; S. Edward Tesh and Walter D. Zorn, *Psalms*, vol. 1, CPNIV (Joplin: College Press, 1999), 104; Konrad Schaefer, *Psalms*, Berit Olam (Collegeville: Liturgical Press, 2001), 12; Brown, *Seeing the Psalms*, 136-44; Doyle, "Words with Teeth and Childbearing Men"; Jerome F. D. Creach, *Violence in Scripture*, Int (Louisville: WJK Press, 2013), 200-2; Geoffrey Grogan, "The Basic Convictions of the Psalmists," in *Psalms* (Grand Rapids: Eerdmans, 2008) 257-58.

¹⁶ Artur Weiser, *The Psalms: A Commentary*, trans. Herbert Hartwell, OTL (Philadelphia: Westminster, 1962), 432.

¹⁷ C. S. Lewis, *Reflections on the Psalms* (London: G. Bles, 1958), 20-23.

include such an extremist in the book's final form,¹⁸ Gunn suggested it was to teach a moral lesson at the expense of this psalmist: compilers arranged these "problematic" passages between passages of hope to stress that one should not "indulge in such imprecations" and rather "rise above" feelings of rage.¹⁹

The assumption of fantasy that leads to the theories of a fanatical psalmist has also led to an alternative set of theories concerning a victimised psalmist, specifically one driven to madness. In this case the diabolical figure is the enemy, an evil that is "monstrous" enough to justify the psalmist's imaginative depictions of his own violent revenge.²⁰ DeClaissé-Walford, for example, aligns the psalmist's enemy with the Holocaust, worldwide starvation, sexual abusers, and perpetrators of hate crimes.²¹ In drawing these associations, she intends to convey an evil that would drive modern readers to dream up our own vengeful fantasies in empathy with this poet-victim. The appeal, she explains, is to the "basic human desire for revenge

¹⁸ Or, in Gunn's words, "a collection that was intended solely for use in the worship of God." George S. Gunn, "The Divine Conflict with Evil," in *God in the Psalms* (Edinburgh: St Andrew Press, 1956), 99.

¹⁹ Gunn, "The Divine Conflict with Evil," 102; see also Roland E. Murphy, "The Faith of the Psalmist," *Int* 34 (1980): 238; Denise Dombkowski Hopkins, *Journey through the Psalms* (St. Louis: Chalice, 2002), 88-91; Firth, *Surrendering Retribution*, 141; John H. Hayes, "Personal Psalms of Distress," in *Understanding the Psalms* (Valley Forge: Judson Press, 1976), 57-84; for this theory specifically with regard to Psalm 137, see Salvatore Maurizio Sessa, "Sal 137: Il ruggito della fede: per una riconsiderazione del genere letterario imprecatório come chiave di lettura fondamentale," *RevistB* 53 (2005): 129-72.

²⁰ J. Clinton Jr. McCann, *A Theological Introduction to the Book of Psalms: The Psalms as Torah* (Nashville: Abingdon, 1993), 119.

²¹ Nancy L. DeClaissé-Walford, "The Theology of the Imprecatory Psalms," in *Soundings in the Theology of Psalms: Perspectives and Methods in Contemporary Scholarship*, ed. Rolf Jacobson (Minneapolis: Fortress, 2011), 89.

when we or those we love have been wronged."²² Crucially here, DeClaissé-Walford's whole approach is founded on the assumption that the psalmist *dreams up* the punishments as a desperate, fantastical response. The same assumption also drives Hicks' portrayal of the psalmist's existence as so grim it dwarfs any moral culpability that the psalmist might bear for imagining such violence.²³ One instead is to sympathize with this victim of enemies who have oppressed him to the point of insanity.

As with the fanatical psalmist, there is the question of why compilers would include these revenge fantasies in the Psalter. Brueggemann has argued that these fantasies are included because they are just that: fantasies, no more.²⁴ In drawing from psychological notions of victimhood, the arguments following this logic claim that rage-filled demands for violence are necessary for the psalmist to "heal" without carrying out "real life" acts of violence.²⁵ The Psalter's compilers thereby become pastoral in their efforts, including such imagery to demonstrate that "God does not ask us to suppress those emotions but rather to speak about them in plain and

²² DeClaissé-Walford, "Imprecatory Psalms," 89.

²³ John Mark Hicks, "Preaching Community Laments: Responding to Disillusionment with God and Injustice in the World," in *Performing the Psalms*, ed. Dave Bland and David Fleer (St. Louis: Chalice, 2005), 75; see also Erich Zenger, *A God of Vengeance?: Understanding the Psalms of Divine Wrath*, 1st ed. (Louisville: WJK Press, 1996), 85; James L. Crenshaw, "The Psalms as Prayers," in *The Psalms: An Introduction* (Grand Rapids: Eerdmans, 2001), 55-71; Lyn Fraser, *Prayers from the Darkness: The Difficult Psalms* (New York: Church Publishing, 2005).

²⁴ Walter Brueggemann, *The Psalms and the Life of Faith* (Philadelphia: Fortress, 1995), 150-66.

²⁵ As McCann puts it, "What must be felt is grief, rage, and outrage. In their absence, evil becomes an acceptable commonplace." McCann, *A Theological Introduction*, 119-20; For other examples of this logic, see, Jeremy Young, *Violence of God and the War on Terror* (New York: Church Publishing, 2008), 76-77; Firth, *Surrendering Retribution*, 141; DeClaissé-Walford, "Imprecatory Psalms," 86.

heartfelt terms."²⁶ Thus in speaking out, "we give voice to the pain, the feelings of helplessness, and the burning anger."²⁷

The current project challenges the assumption shared by these theories: that the explicitly violent imagery in the psalmist's calls to punish enemies is the product of his imagination. Part of this study's thesis is that psalmist's violent imagery is not only born in an external reality, but reflects legal norms in that reality. If convincing, this claim draws to a close the debate over which portrait of a raging psalmist one should adopt to theologically contend with his calls to punish enemies. If those calls reflect legal norms, how much of a one-off radical can the psalmist really be? Commensurately, if that violent imagery is born in an external *reality*, how tenable is it to claim that the psalmist has succumbed to a vengeful *fantasy*?

THE LAW: EXISTING BEYOND THE BIBLE

To claim that the psalmist's calls to punish enemies reflect legal norms in an external reality introduces the third and final part of this study's thesis, which is that such a reality refers to the ancient Near Eastern legal milieu of which biblical law is a part. Said another way, when this study speaks of "law," it refers to territory well beyond the confines of the Hebrew Bible. To do so heeds what scholarship has already shown about the psalms: they reflect the

²⁶ DeClaissé-Walford, "Imprecatory Psalms," 89; Daniel S. Mynatt, "Poetry and Literature of the Psalms," in *An Introduction to Wisdom Literature and the Psalms: Festschrift Marvin E. Tate*, ed. Jr H. Wayne Ballard and W. Dennis Tucker (Macon: Mercer University Press, 2000), 64; Daniel J. Harrington, *Why Do We Suffer?: A Scriptural Approach to the Human Condition* (Franklin: Rowman and Littlefield, 2000), 9-11.

²⁷ DeClaissé-Walford, "Imprecatory Psalms," 64.

influence of various cultures of the ancient Near East.²⁸ The current study takes this explicit approach because, traditionally, theologians have tended to ignore the possibility that the psalmist would draw from a wider *legal* culture. This has resulted in two particular kinds of false construct. The first is a construct of exceptionalism concerning the connection between the psalmist and the laws in the Pentateuch. For example, in assuming that the psalmist's legal references exist only in relation to the Pentateuch, Wenham argues that the psalmist is guided by an ideological fidelity to the Decalogue. This fidelity, he reasons, is what guides the psalmist to create an enemy figure that commits many of the sins forbidden in the Decalogue.²⁹ However, if one considers that the only sins in the Decalogue which the enemy commits are also the most commonly shared crimes across ancient Near eastern legal history, Wenham's isolation of the enemy's wrongs as Decalogue-specific is less convincing.

The second construct is that of single-principled "retributions," homogenized to fit within the confines of the Torah. A good example of this is the recent movement taken up by Wenham, Firth, and Zenger to explain most if not all of the psalmist's calls for punishment as applications of *lex talionis*, the retributive principle that a punishment should be proportionate

²⁸ Joel M. LeMon, *Yahweh's Winged Form in the Psalms: Exploring Congruent Iconography and Texts*, OBO (Fribourg: Academic Press, 2010); Martin Klingbeil, *Yahweh Fighting from Heaven: God as Warrior and as God of Heaven in the Hebrew Psalter and Ancient Near Eastern Iconography*, OBO (Fribourg: Academic Press, 1999); Keel, *The Symbolism of the Biblical World*, 1-34.

²⁹ Gordon J. Wenham, *Psalms as Torah: Reading Biblical Song Ethically* (Grand Rapids: Baker Academic, 2012), 98-117, 139-49, 165-66.

to a crime. Retribution is a key word here because its use in these works draws on the philosophical theory of retributive justice, which is generally defined by a commitment to three principles. First is the principle that those who commit wrongful acts morally deserve to suffer a proportionate punishment. Second is that this proportionate response is “intrinsically morally good,” meaning that it needs no other legitimation than that it is simply a punishment the criminal deserves. Finally, the third principle is that it is “morally impermissible” to either punish the innocent or “inflict a disproportionately severe punishment on the wrongdoer.”³⁰

Crucial here is that retributive justice and its three principles have a biblical presence, conveyed for instance in the “eye for an eye” phrases of Exodus 21:23–5. Thus Wenham, following Firth, argues that the psalmist’s calls to punish enemies reflect the Torah’s retributive principle of *lex talionis*, given that the enemies are “punished in the way they have afflicted or intended to afflict” the psalmist.³¹ The psalmist imploring YHWH to let his enemies be ensnared in their own trap, for example, is one common retributive image to which the argument refers.³² Following that logic, Zenger has reasoned that if the psalmist is appealing to a *biblical* principle of justice, then one should recognize a strong commitment to the justice of God in all of the psalms which convey “an ongoing battle against

³⁰ Leo Zaibert, *Punishment and Retribution*. (Aldershot: Ashgate, 2006), 1, 4–26.

³¹ Wenham, *Psalms as Torah*, 171; Firth, *Surrendering Retribution*, 117–40.

³² On which see Ch 3, Pt 2: The Psalmist’s Call for Talion.

enemies."³³ Thus the psalmist's calls to punish, and therefore the psalmist, are justified by a principled adherence to Torah.

The issue, though, is that a single biblical principle does not explain all of the punishments in the psalms. The current project clearly concurs with Firth, Wenham, and Zenger that the psalmist draws on *lex talionis*, given that a chapter is devoted to it. That being said, many of the calls for punishment in the psalms do not fit the "retributive" classification of justice to which "eye for an eye" belongs. Some psalms, for instance, fail to convey an obviously "proportionate judgment" to a wrong or to demonstrate what Jacobs calls a talionic response in the "strict sense."³⁴ Other psalms appeal to reasons beyond just-deserts to legitimate the punishment of enemies. The psalmist, for instance, appeals to his own safety, the safety of his community, and YHWH's honour for reasons to punish enemies, which contradicts the retributive notion that a punishment is "intrinsically morally good" because the criminal deserves it.³⁵ Thus if one is to address *all* of the psalmist's calls to punish his enemies, it is necessary to consider the presence of principles in the Psalter that are not explicit in the Torah, but are still common to the wider legal culture of the ancient Near East.

³³ Zenger, *A God of Vengeance?*, 9. See also Ionel Ababi, "Dieu des vengeances," 467-78.

³⁴ Sandra Jacobs, *The Body as Property: Physical Disfigurement in Biblical Law*, LHBOTS (New York/London: T&T Clark, 2014), 70. See the punishment in Psalm 17: 13-14, which LeMon rightly describes as "a bottled up reservoir of wrath." Joel M. LeMon, "Saying Amen to Violent Psalms: Patterns of Prayer, Belief and Action in the Psalter," in *Soundings in the Theology of Psalms* (Minneapolis: Fortress, 2011), 105.

³⁵ See Leo Zaibert, *Punishment and Retribution*. (Aldershot: Ashgate, 2006), 1-26.

CONCLUSION

To sum up, the question this study asks is: How does the psalmist craft the images of his enemies in the terms of law? Though this study will demonstrate that the answer to this question is a story of parts rather than a whole, the following thesis unifies its trajectory: The psalmist draws from legal norms held widely in the ancient Near East to craft the images of his enemies within a framework of crime and punishment.

CHAPTER 2: LAW

In the process of defining law, one makes three crucial decisions: a decision between substantive or functional criteria for categorizing what can be termed "law;" a decision between ordinary or technical language when communicating words with legal meaning; and a decision between norms or institutions as the location for where law happens. This chapter argues that psalms scholars have consistently adopted particular sides of these decisions that assume a contemporary Western understanding of law, which diverges from the legal understanding of the psalmist. A corrective measure is therefore proposed: a definition of law guided by functional criteria, technical meaning, and the observation of norms, as the most fitting for an encounter with the psalmist's own legal understanding.

INTRODUCTION

Laws and legal systems borrow from, appropriate, and move around cultural expectation. The major methodological issue this study addresses is the way in which psalms scholars have chosen to define law in a manner that fails to accommodate this reality.

In the process of defining law, one makes three crucial decisions: the decision between substantive or functional criteria for categorizing what can be termed “law;” the decision between ordinary or technical language when communicating words with legal meaning; and the decision between norms or institutions as the location for where law happens. In the case of the psalms, scholars have consistently adopted particular sides of these decisions, resulting in a large bibliography on the Psalter that reflects only a partial definition of law. The aim of this chapter is to demonstrate, firstly, how that partiality affects an understanding of law; secondly, why it presents a problem for understanding law in the psalms; and, finally, what this study will do to correct that problem.

THE FIRST CORRECTION:

ADOPT A FUNCTIONAL RATHER THAN SUBSTANTIVE APPROACH TO LAW

It is not uncommon for academics and laypersons alike, when pressed for a definition of law, to describe “The Law,” which refers to an entity held separate from other spheres of cultural life.³⁶ Such an understanding

³⁶ Lawrence Rosen, *Law as Culture: An Invitation* (Princeton: Princeton University Press, 2006), 6.

assumes a “substantive” approach to defining law, which is a fundamental feature of the Western legal system. Generally speaking, a substantive approach holds that for something to be a law it must be part of a legislative system imposed by a sovereign or state-like authority. Any legislative decree, then, is an example of law in this regard. The nuances of this approach are evident in the substantive definitions of law that one finds with Austin, Blackstone, and Weber.³⁷ These definitions show how, in accordance with a substantive approach, a law is identified as an explicit, precise sanction which is empowered by a sovereign through the systematic application of force. Austin, for instance, wrote that a law “may be said to be a rule laid down for the guidance of an intelligent being by an intelligent being having power over him...Laws or rules, properly so called, are species of commands.”³⁸ Blackstone defined English Law as “a rule of civil conduct prescribed by the supreme power in a state, commanding what is right and prohibiting what is wrong.”³⁹ Finally, Weber followed the trajectory of Austin’s and Blackstone’s logic when he wrote that law “exists if it is externally guaranteed by the probability of coercion...by a staff of people holding themselves specially ready for that purpose.”⁴⁰

³⁷ Consider as well, Jean-Jacques Rousseau, *The Social Contract*, trans. Charles Frankel, HLC 1 (New York: Hafner Pub. Co., 1762).

³⁸ John Austin, *Lectures on Jurisprudence, Or, The Philosophy of Positive Law*, 4th ed. (London: John Murray, 1879). P 1. § 1.

³⁹ William Blackstone, *Commentaries on the Laws of England* (London: Cavendish, 2001), Bk. 1.

⁴⁰ Max Weber, *On Law in Economy and Society*, ed. Max Rheinstein, trans. Edward Shils (Cambridge: Harvard University Press, 1954), 5.

The issue with these definitions, and the substantive criteria upon which they are built, is that neither capture the observable law-like power that custom and culture wield in the life of a community. Austin's definition of law as a "species of command," for example, excludes the law that many abide by when seeing a heavily pregnant woman standing in a full train. Someone will surrender their place, though no "command" has been instated for them to do so – certainly not one explicitly prescribed by a supreme power of the state – which omits this whole scenario from Blackstone's criteria. Moreover, surrendering a seat is not enforced by a "staff of people holding themselves specially ready for that purpose," which omits it from Weber's definition as well. Yet, within our cultural milieu, surrendering a seat is an adopted rule that comes with its own coercive consequences if broken, typically in the form of scorn-filled strangers. Thus, contrary to substantive criteria for what defines a law, it is clear that law may happen without explicit sanctions, without a sovereign, and with little precision in place.⁴¹

Defining law with functional criteria encompasses this reality by identifying law through its effects on a society. A good example to demonstrate the difference between the two is to consider how each would contend with the body of 2,000 Nazi anti-Jewish decrees passed between 1933-1945.⁴² According to substantive criteria, these decrees constitute the

⁴¹ Rosen, *Law as Culture*, 23.

⁴² Edith Kurzweil, *Nazi Laws and Jewish Lives: Letters from Vienna* (New Brunswick: Transaction, 2004), 1-24, 151-63.

law that Jews lived by under Hitler's rule. A functional perspective, however, opens the criteria enough to consider the laws that Jews created for themselves in Nazi-occupied Europe. A decree may have banned Jewish children from school, for instance, but a functional approach would argue that in occupied Poland it was clearly a law that Jewish children went to school, given the hundreds of clandestine schools and classes organized inside the ghettos.⁴³ Rather than a species of command, then, law becomes as Cicero defined it: "the distinction between things just and unjust."⁴⁴ Rather than a rule prescribed by the supreme power in a state, it becomes, in Aquinas' words, "an ordinance of reason for the common good."⁴⁵ Substantive criteria limit the identifiable law in this example to the Nazi decrees imposed upon Jewish communities. Functional criteria, by contrast, encompass the communities' response – in this case, resistance – as evidence for law that is truly binding. By looking for what binds, a functional approach sees any element of society as a possible source for law. It may be a social custom, such as surrendering one's seat; or it may be a cultural

⁴³ Susan J. Berger, "A Clandestine Curriculum of Resistance: Hope, Survival, and Determination in the Warsaw Ghetto, 1939-1942" (PhD Dissertation, University of Illinois, 2008), 85.

⁴⁴ Cicero, *De Legibus*, 2.13., trans. Andrew Dyck (Ann Arbor: University of Michigan Press, 2004), 277

⁴⁵ Aquinas, *Summa Theologica*, 2.91.4, trans. Richard J. Regan (Indianapolis: Hackett, 2002), 11; More recently, A.R. Radcliffe-Brown likened the implications of the functional approach to how we understand the organs of a body. We see each organ as having a particular "function" that insures the health of the whole, but the body is not a conglomeration. Such is the case with the institutions of religion, economics, law, agriculture, and education. As Donovan and Anderson put it, these are not parts clumped together into a "culture." They live together to form a single society, and their boundaries "are highly permeable, if they can be said to exist at all." A. R. Radcliffe-Brown, *Structure and Function in Primitive Society: Essays and Addresses* (London: Cohen and West, 1952); James M. Donovan and H. Edwin Anderson, *Anthropology and Law* (New York/Oxford: Berghahn Books, 2005), 181.

expectation, such as attending clandestine Jewish schools in Poland. Thus what binds people into action may very well be a decree; but it can also be – as our examples show – far removed from legislation.

It should be said that the substantive approach to defining law is still the dominant stance taken in Western law schools and legal studies.⁴⁶ Nevertheless, the functional approach has proven especially helpful for legal scholars and legal anthropologists concerned with identifying law in settings which depart from legislative decrees. As Martin Chanock has argued, such an understanding allows scholars to focus on “a set of assumptions, a way of doing things, a repertoire of language, legal forms, and institutional practices” as evidence for law.⁴⁷ Such scholars have located law in the cultural expectations placed on family roles, on the separate genders, and on the way economic status, class status, prejudice and superstition all create law in a community.⁴⁸ Using a functional criterion

⁴⁶ Such an image of the law, as Anderson and Donovan argue, is promoted by the pedagogical methods used in law schools. Students of law are, for one, taught that law is ultimately “nothing but a system of rules” and, secondly, “that the only necessary restraint upon these rules is that they be internally self-consistent.” The consistency of these rules is achieved by an ever-increasing specialization of subject areas that are taught with little if any references to other areas of law. This is why we do not simply have lawyers, but criminal lawyers, intellectual property lawyers, and corporate lawyers. By compartmentalising the professional outcomes of the students, this pedagogical method also “encourages intellectual compartmentalization, allowing a student to gain theoretical knowledge of particular areas of law while discouraging investigation into the dependency of law on culture.” The result is a yearly wave of law graduates gone out into the world to promote a substantive idea of law defined by explicit, precise sanctions and empowered by a sovereign through the systematic application of force. Donovan and Anderson, *Anthropology and Law*, 9; see also Michael Freeman and David Napier, *Law and Anthropology: Current Legal Issues* (New York: Oxford University Press, 2009); Morton J. Horwitz, *The Transformation of American Law, 1870-1960* (Oxford: Oxford University Press, 1992).

⁴⁷ Martin Chanock, *The Making of South African Legal Culture, 1902-1936: Fear, Favour, and Prejudice* (Cambridge; New York: Cambridge University Press, 2001), 23.

⁴⁸ Sally Falk Moore, “Certainties Undone: Fifty Turbulent Years of Legal Anthropology, 1949-

means that these scholars are able to shift their aim from identifying “The Law” to identifying legal culture. Within that shift, a new kind of question arises: *How does law appropriate, borrow from, and move around cultural expectation?* As Chanock argues, once this kind of question is raised it becomes obvious that judicial and legislative contexts are only a part of “the discursive universe of law.”⁴⁹

Legal scholars’ work with functional criteria has tremendously influenced the humanities. This chapter now turns to the manifestations of that influence in ancient Near Eastern legal-historical scholarship as well as the “Law in Literature” movement. Each of the following sections will then propose how the developments in these respective fields provide a template for taking a functional approach to law in the psalms.

The Functional Approach to Ancient Near Eastern Legal History and its Lessons for Defining Law in the Psalms

Early scholarship on ancient Near Eastern law assumed a substantive approach to the subject and as a result, limited its source material to the

1999,” *JRAI* 7 (2001): 95-116; Laura Nader, *The Life of the Law: Anthropological Projects* (Berkeley: University of California Press, 2002); Sally Engle Merry, *Getting Justice and Getting Even: Legal Consciousness Among Working-Class Americans* (Chicago: University of Chicago, 1990); Robert M. Cover, *Narrative, Violence, and the Law: The Essays of Robert Cover* (Ann Arbor: University of Michigan Press, 1995); Ian Ward, *Law, Text, Terror* (Cambridge; New York: Cambridge University Press, 2009); William Ian Miller, *Bloodtaking and Peacemaking: Feud, Law, and Society in Saga Iceland* (Chicago: University of Chicago, 1990); Colin Dayan, *The Law Is a White Dog: How Legal Rituals Make and Unmake Persons* (Princeton: Princeton University, 2011); Michelle Alexander, *The New Jim Crow: Mass Incarceration in the Age of Colorblindness* (New York: The New Press, 2010); Stephen Ellmann, “A Bittersweet Heritage: Learning from The Making of South African Legal Culture,” *Law in Context* 28 (2010): 76-94.

⁴⁹ Chanock, *The Making of South African Legal Culture*, 23.

legal codes decreed by a sovereign. This kind of approach posed two methodological issues. The first was the tendency scholars had toward imposing the structure of their own legal systems – complete with decrees and codes of law – onto that which they observed as “the ancient Near Eastern legal system.” Early German scholars perhaps displayed this problem most blatantly by treating Mesopotamian law codes as an early development of Western law – even occasionally ordering its data according to the paragraphs of the German Civil Law Code.⁵⁰ The major problem was that a substantive approach encouraged scholars to regard law with baseless exceptionalism. Despite the growing recognition of the fundamental difference between the modern West and the ancient Near East in the institutions of religion, art, and family, they continued to maintain that the legal institution was uncannily similar in nature.

A second methodological issue arose from scholars placing a large amount of weight on only one genre of material – the legal codes – to represent the whole of ancient Near Eastern law. To be fair, the legal codes are accounted for in all of the regions and in all three millennia in the ancient Near East. Egypt poses an exception but still has records that suggest a similar tradition of codes.⁵¹ There are ten collections in all – six of

⁵⁰ Norman Yoffee, “Law Courts and the Mediation of Social Conflict in Ancient Mesopotamia,” in *Order, Legitimacy, and Wealth in Ancient States*, ed. Janet Richards and Mary Van Buren (Cambridge: Cambridge University Press, 2000), 47; Paul Koschaker, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis: Königs von Babylon* (Leipzig: Veit, 1917); Paul Koschaker, *Hammurabi’s Gesetz. Übersetzte Urkunden mit Rechtserläuterungen 6* (Leipzig: Pfeiffer, 1923), vii. See also Richard Haase, *Einführung in das Studium keilschriftlicher Rechtsquellen* (Wiesbaden: O. Harrassowitz, 1965), 15–44.

⁵¹ Richard Jasnow, “Egypt: Old Kingdom and First Intermediate Period,” in *AHANEL*, ed.

them Mesopotamian – and they cover a vast amount time and space. From Ur in southern Mesopotamia are the Laws of Ur-Namma (LU),⁵² dating to ca. 2100 B.C.E., and from Isin in the same region are the Laws of Lipit-Ishtar (LL), dating two-hundred years later to ca. 1900 B.C.E. From Eshnunna in northern Mesopotamia are the Laws of Eshnunna (LE), dating to ca. 1770 B.C.E.; and from Babylon hails the most well known codex, the Laws of Hammurabi (LH), dating to ca. 1750 B.C.E.⁵³ Then there are the Hittite Laws (HL) from Anatolia, dating to somewhere between the sixteenth and the twelfth century B.C.E.; the Middle Assyrian Laws (MAL) from Assur which date to ca. 1076 B.C.E., and the Neo-Babylonian Laws (NBL) from Sippar in central Mesopotamia, dating to ca. 700 B.C.E. Finally, the last three sets of legal codes are identified in the Hebrew Bible. There is no consensus on their dates, however the majority of scholarship still places them in the seventh century B.C.E.. These

Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 93-140.

⁵² For this and all other code abbreviations, I follow Martha T. Roth, *Law Collections from Mesopotamia and Asia Minor*, 2nd ed., WAW 6 (Atlanta: Scholars Press, 1997), xiv.

⁵³ Legal historical scholars continue to debate whether LH meets the substantive criteria for being law. While Driver and Miles suggest that LH should be regarded as “a series of amendments and restatements of parts of the law in force,” others such as Finkelstein and Kraus question the practicality of LH, suggesting that it was “merely a literary work or royal apologia that was composed by scribal schools rather than by jurists.” Westbrook proposed the mediating suggestion that “LH and other legal collections were used as reference works by royal judges in deciding difficult legal decisions.” His evidence draws on how the Hittite legal collection (HL), originally part of the royal archives, was not only “recopied over several centuries, but that subsequent copies show not only evidence of an updating of language but also of substantive law.” Wiseman, in response to the claim that the legal codes were not practical, suggests that LH “sought to preserve law and order as a living and continuing tradition for future kings.” G.R. Driver and John C. Miles, *The Babylonian Laws, Ancient Codes and Laws of the Near East* (Oxford: Clarendon, 1952), 1. 45; J. J. Finkelstein, “Ammişaduqa’s Edict and The Babylonian ‘Law Codes,’” *JCS* 15 (1961): 91-104; Fritz Rudolph Kraus, “Ein zentrales Problem des altmesopotamischen Rechtes: Was ist der Codex Hammu-Rabi?,” *Genava*: *bulletin du Musée d’art et d’histoire* 1960; R. Westbrook, “Biblical and Cuneiform Law Codes,” *RBJ* 92 (1985): 255-56; D. J. Wiseman, “The Laws of Hammurabi Again,” *JSS* 7 (1962): 163.

codes include the Covenant Code (CC) in Exodus, the Priestly Codes (PC) in Leviticus and Numbers, and the Deuteronomistic Code (DC) in Deuteronomy.⁵⁴ One may understand, then, why the legal codes would at first appear sufficient for piecing together the history of ancient Near Eastern law.

The problem with depending too much on these codes is that not only are they comparatively small in number against the backdrop of documented ancient Near Eastern material, but, within their number, they are most likely incomplete. Take the Middle Assyrian Laws (MAL) as an example of this problem. They appear at first to place a particular focus on women, which has led some scholars to theorize about the place and importance of women in Middle Assyrian society.⁵⁵ The issue is that this particular collection of legal codes is a unit of harem decrees, which implies

⁵⁴ Arguments from Otto, Jackson, and Schwienhorst-Schönberger represent the three newest directions in the theory of these codes' development. Otto argues that the Covenant Code (CC) first took shape as individual pronouncements in ancient Israelite villages and towns, then were adopted into larger subunits divided by theme. They then took on an expanded shape when merged into larger compositions on homicide, injury, property, and theft. And eventually the composition grew into the composition of laws in the Bible. Eckart Otto, *Wandel der Rechtsbegründungen in der Gesellschaftsgeschichte des antiken Israel: Eine Rechtsgeschichte des "Bundesbuches" Ex XX 22-XXIII 13*. (Leiden: E.J. Brill, 1988); idem, "Town and Rural Countryside in Ancient Israelite Law: Reception and Redaction in Cuneiform and Israelite Law," *JSOT* 57 (1993): 3-22. Jackson presents a similar picture concerning the development of the CC, but presents an alternative origin, arguing that the CC took shape out of self-help law customs that looked similar to that of "wisdom traditions." Bernard S. Jackson, *Wisdom-Laws: A Study of the Mishpatim of Exodus 21:1-22:16* (Oxford: Oxford University Press, 2006). Finally, Schwienhorst-Schönberger takes a literary-critical approach, arguing that the "foundational stratum" of the CC is Exodus 21:12, 18-19, 22, 28-29, 32, 33, 34, 37; 22:3, 9-10, 13. Two redactional expansions then followed. Ludger Schwienhorst-Schönberger, *Das Bundesbuch (Ex 20,22-23,33)*, BZAW 188 (Berlin: Walter de Gruyter, 1990). For a survey of wider arguments, see Walter Houston, *The Pentateuch* (London: SCM, 2013), 42-70; Douglas A. Knight, *Law, Power, and Justice in Ancient Israel* (Louisville: WJK Press, 2011), 9-29

⁵⁵ See for example, Claudio Saporetti, *The Status of Women in the Middle Assyrian Period* (Malibu: Undena Publications, 1979).

that there are whole other units yet to be discovered, that together with this one make up the MAL in total. To base a theory of Middle Assyrian society on this one collection of codes, then, is to work with only a fraction of the story. It is thus a dangerous distortion to assume that the preserved codes alone accurately reflect a society's priorities.

The functional approach in legal studies has provided a helpful template for scholars facing these issues in ancient Near Eastern law. For one thing, identifying law through its effects in an ancient Near Eastern society has opened up a place for the primacy of culture and custom in the story of that society's laws. Thus scholars using this approach frequently address how ancient Near Eastern law borrows from, appropriates, and moves according to its cultural milieu. For example, studies on law in Egypt, Mesopotamia, and the Levant have shown how their geographical location, social alignment of criminals, and cultural expectations about gender, all influence the severity of their punishments.⁵⁶ Others have shown how law manifests in ceremonies and festivals, which in turn has opened a new field of inquiry into the legal dimension of ritual behaviour.⁵⁷ Finally, scholars of ancient Israel specifically have used the functional approach to question

⁵⁶ See, for example, David Lorton, "The Treatment of Criminals in Ancient Egypt: Through the New Kingdom," *JESHO* 20 (1977): 2-64; Elisabeth Meier Tetlow, *Women, Crime, and Punishment in Ancient Law and Society. Volume 1: Ancient Near East* (New York/London: Continuum, 2004); Sue Rollin, "Women and Witchcraft in Ancient Assyria," in *Images of Women in Antiquity*, Rev. ed (London: Routledge, 1993); Natalie M. May, "Decapitation of Statues and Mutilation of the Image's Facial Features," in *A Woman of Valor: Jerusalem Ancient Near Eastern Studies: Festschrift Joan Goodnick Westenholz*, ed. Wayne Horowitz et al. (Madrid: CSIC Press, 2010).

⁵⁷ Meir Malul, *Studies in Mesopotamian Legal Symbolism* (Kevelaer: Butzon & Bercker, 1988).

how the shift from the pre-exilic to post-exilic periods affected the legal status of various figures in Israelite law.⁵⁸

The functional approach has also exploded what scholars consider sources of ancient Near Eastern law. Predictably, shifting the criteria from legislation to anything a community regards as binding, widens the scope of legal sources by a considerable margin. In fact, scholars now look for law in a number of different genres beyond the legal codes, including transactional records, instructions, lexical texts, trial records, and decrees. Each deserve a brief outline, as they also make up the sources of law for the current project.

Firstly, there are transactional records, which will receive some theoretical attention because they represent the largest percentage of ancient Near Eastern material by a fair amount. These records constitute any agreement between two parties, including treaties, contracts, grants, and testaments.⁵⁹ When examining this sort of record as a source of law, one

⁵⁸ Victor H. Matthews, "Entrance Ways and Threshing Floors: Legally Significant Sites in the Ancient Near East," *FH* 19 (1987): 25-40; idem, "Honor and Shame in Gender-Related Legal Situations in the Hebrew Bible," in *Gender and Law in the Hebrew Bible and the Ancient Near East*, ed. Bernard M. Levinson and Tikva Frymer-Kensky, JSOTSup 262 (London/New York: T&T Clark, 2004), 97-112; Christiana van Houten, *The Alien in Israelite Law*, JSOTSup 107 (Sheffield: Sheffield Academic, 1991); D. L. Baker, *Tight Fists or Open Hands?: Wealth and Poverty in Old Testament Law* (Grand Rapids: Eerdmans, 2009).

⁵⁹ A few of the sources used in the present study include: Georg Eisser and Julius Lewy, *Die altassyrischen Rechtsurkunden vom Kültepe*, 4 vols., MVAG 33/35 (Leipzig: Hinrichs, 1930); W. C. Gwaltney, *The Pennsylvania Old Assyrian Texts* (Cincinnati: Hebrew Union College, 1983); Lubor Matouš and Bedřich Hrozný, *Inscriptions cunéiformes du Kultépe* (Prague: Éd. de l'Acad. Tchecoslovaque des Sciences, 1962); Dietz Otto Edzard, *Sumerische Rechtsurkunden des III. Jahrtausends aus der Zeit vor der III. Dynastie von Ur* (München: Bayerischen; Beck in Kommission, 1968); J. N. Strassmaier, *Inschriften von Nabuchodonosor, König von Babylon* (Leipzig: Eduard Pfeiffer, 1889); Leonard Woolley, *Alalakh: An Account of the Excavations at Tell Atchana in the Hatay, 1937-1949* (London: Society of Antiquaries, 1955); Ignace J. Gelb, Piotr Steinkeller, and Robert M. Whiting, *Earliest Land Tenure Systems in the Near East: Ancient Kudurrus* (Chicago: Oriental Institute, 1991); Adam Falkenstein, *Die*

may find several pieces of information because a document like this is a contemporary record of a law in practice. Take, as an example, the Kassite period contracts from Ur that record families selling their children into debt slavery (UET 7, 21, 22, 25). One already knows from these records that they corroborate the evidence from the Laws of Hammurabi (LH 117 -119) that families sold members into slavery not only during but after the fall of the Old Babylonian empire.⁶⁰ A transaction record, though, does not *espouse* laws; rather, it operates within the context of the laws of its time. This excludes it from being “direct evidence of legal norms” but, by the same virtue, the record becomes a window into how people reacted to those norms.⁶¹ In functional terms, then, transactional records are a window into what a private party found “binding.”

Many questions come with this realization. Consider again the Kassite contracts as a useful example. Though they clearly give evidence that debt slavery exists, one cannot know the circumstances that have led to these particular families selling their children. Were they coerced or was it voluntary? Was this a way to survive famine or a way parents dispensed of wayward children? These sources, in other words, could be accounting for law evasion as much as law adherence. Discerning their significance

neusumerischen Gerichtsurkunden (München: Bayerischen, 1956); D. J. Wiseman, *The Vassal-Treaties of Esarhaddon* (London: British School of Archaeology in Iraq, 1958).

⁶⁰ Martha T. Roth, “Mesopotamian Legal Traditions and the Laws of Hammurabi,” *CKLR* 71 (1995): 13-39.

⁶¹ Raymond Westbrook, “Introduction,” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 12.

becomes a matter of discerning how they fit and interact with accompanying records and other sources of law.

One variety of these sources is made up of lexical texts, ancient scribal “dictionaries” that amassed Sumerian words and their Akkadian equivalents according to genre.⁶² This collection of texts is a useful source for law given that one of its genres constitutes terms related to legal matters. A series of lexical texts from the library of Assurbanipal, for example, has proven especially helpful in this regard. There are also instructions, which are mainly Hittite and Middle Assyrian.⁶³ These documents contain directions for royal or administrative personnel on the nature of their duties. Additionally, there are trial records, which seem an obvious source for law but in fact are more complicated to navigate than one might initially think.⁶⁴ Ancient Near Eastern records of this kind may be practical in their intent, but are far more often “academic.” The practical versions are predominantly records of fact concerning parties, verdicts, and other court-related events. The academic versions are scribal schools’ models for court cases. Only one record has been found that documents any discussion of the legal grounds for

⁶² See Volume 1 on *ana ittišu* in Benno Landsberger, Miguel Civil, and Erica Reiner, *Materialien zum sumerischen Lexikon* (Rome: Pontifical Biblical Institute, 1937).

⁶³ The instructions used in this study are from Hans Gustav Güterbock and Theo P. J. van den Hout, *The Hittite Instruction for the Royal Bodyguard* (Chicago, Ill.: Oriental Institute, 1991).

⁶⁴ See, for instance, Cécile Michel, Paul Garelli, *Tablettes paleo-assyriennes de Kültepe* (Paris: De Boccard, 1997); Emin Bilgic, *Ankara Kültepe tabletleri* (Ankara: Turk Tarih Kurumu Basimevi, 1990); D. Arnaud, *Textes syriens de l'âge du Bronze Récent*, AOS 1 (Barcelona, 1991); James Buchanan Nies, *Babylonian Inscriptions in the Collection of James B. Nies* (New Haven: Yale University Press, 1917); G. Contenau, *Tablettes cappadociennes* (Paris: P. Geuthner, 1920); J. N. Strassmaier, *Inschriften von Nabonidus, König von Babylon* (Leipzig: E. Pfeiffer, 1889); J. N. Strassmaier, *Inschriften von Cyrus, König von Babylon* (Leipzig: Eduard Pfeiffer, 1890); D. A. Kennedy, *Cuneiform Texts from Babylonian Tablets in the British Museum* (London: British Museum, 1968).

judgment; thus what one gains from these sources rarely concerns the kind of “crime and punishment” information that, say, a contemporary trial record would provide. They are, however, a valuable source for clarifying legal language and terms within a given syntax.

Finally, there are decrees, issued by the sovereign, his officials, or the local authorities.⁶⁵ Decrees can fall into one of three categories: rules for succession to the throne, royal instructions pertaining to basic household institutions such as the harem or bodyguard, and debts or taxes owed to the sovereign, whether public or private.⁶⁶ Though few in number, decrees have proven especially helpful because they mention such a wide scope of personnel and subjects. Decrees concerning debts and taxes provide the widest range of societal class references, allowing for legal historians to compare this information on social hierarchy with other legal sources.

The picture these sources collectively build has led many scholars to see individual ancient Near Eastern legal systems as part of a wider, common legal culture. “At the very least,” Westbrook argues, “they shared a legal ontology: a way of looking at the law that reflected their view of the world and determined the horizon of the lawmaker.”⁶⁷ If one examines the oldest legal documents that have been uncovered, Westbrook’s assessment is confirmed: even they convey an already matured law system that was

⁶⁵ L. Kataja, *Grants, Decrees and Gifts of the Neo-Assyrian Period* (Helsinki: Helsinki University Press, 1995); Wolfgang Heimpel, *Letters to the King of Mari: A New Translation, with Historical Introduction, Notes, and Commentary* (Winona Lake: Eisenbrauns, 2003).

⁶⁶ Westbrook, “Introduction,” 14.

⁶⁷ Westbrook, “Introduction,” 4.

used previous to its formal documentation. This is why Westbrook states that “the most striking feature in the cuneiform legal material is its static nature.”⁶⁸

In addition to ancient Near Eastern law’s continuity in time is its continuity across region. All regions attested in the legal history of the ancient Near East display a common underlying structure – common to such an extent and in such specific ways that using terms like “comparability” is misleading. What the evidence suggests is continuity.

Significantly, the biblical codes are no exception to this trend. Though some have denied any continuity between the cuneiform law codes and the Covenant Code specifically,⁶⁹ the accumulation of scholarship on parallels has made this position untenable. As Otto has observed, at this point it is very difficult to argue that the laws in Exodus are somehow developed internally to the Israelites when they appear to share so much with extant sources.⁷⁰ Over half of the Covenant Code presents a parallel of some form with extant legal codes. This parallel may be in the form of an identical rule, a similar rule, a distinction made to a rule, or a problem being addressed.⁷¹

⁶⁸ Raymond Westbrook, *Law from the Tigris to the Tiber the Writings of Raymond Westbrook*. Winona Lake: Eisenbrauns, 2009), 1:104; see also Joshua Berman, “The History of Legal Theory and the Study of Biblical Law.” *CBQ* 76, (2014): 19-39

⁶⁹ As a representative argument, see J. Morgenstern, “The Book of the Covenant, Pt. 2,” *HUCA* 7 (1930): 68-70.

⁷⁰ Eckart Otto, “Interdependenzen zwischen Geschichte und Rechtsgeschichte des antiken Israels,” in *Kontinuum und Proprium. Studien zur Sozial- und Rechtsgeschichte des Alten Orients und des Alten Testaments*, OBC 8 (Wiesbaden: Harrassowitz, 1996) 75-93;

⁷¹ Shalom M. Paul, *Studies in the Book of the Covenant in Light of Cuneiform and Biblical Laws*, VTSup 18 (Leiden: Brill, 1970) 43-105.

The continuity in ancient Near Eastern law therefore envelops biblical law into a common legal culture that spans both time and space. That culture then forms a structure from which nuances develop in the individual societies. This has allowed for comparative studies to address a particular legal phenomenon as it develops in time and region, with cursing, debt-slavery, and exile serving as recent examples.⁷²

Any study on law in the psalms should heed three key lessons from the scholarly use of functional criteria to define law in the ancient Near East. The first lesson concerns the baseless exceptionalism that the substantive approach encourages toward law. By widening the scope of possible material when considering the psalmist's legal sources, we can correct the methodological problems of exceptionalism that plagued early studies in ancient Near Eastern law and continue to show up in psalms scholarship. Psalms scholars have typically equated the study of law in the psalms with one of pentateuchal codes in the psalms, either as the psalmist's object of study or as his single legal reference.⁷³ It is untenable, though, for scholars

⁷² Anne Marie Kitz, *Cursed Are You!: The Phenomenology of Cursing in Cuneiform and Hebrew Texts* (Winona Lake: Eisenbrauns, 2013); Gregory C. Chirichigno, *Debt-Slavery in Israel and the Ancient Near East*, 2nd ed., LHBOTS 141 (Sheffield: Sheffield Academic, 2009); Raymond Westbrook and Richard Lewis Jasnow, *Security for Debt in Ancient Near Eastern Law* (Leiden: Brill, 2001); Raymond Westbrook, "Personal Exile in the Ancient Near East," *JAOS* 128 (2008): 317-23.

⁷³ See J. Reindl, "Weisheitliche Bearbeitung von Psalmen," 333-56; Mays, "The Place of the Torah-Psalms in the Psalter," 3-12; Reynolds, *Torah as Teacher: The Exemplary Torah Student in Psalm 119*; Grant, "Torah-Kingship Theme in Psalms 1-2," 41-70; Wenham, *Psalms as Torah: Reading Biblical Song Ethically*; Hubbard, "Dynamistic and Legal Language in Complaint Psalms;" idem, "Dynamistic and Legal Processes in Psalm 7," 267-79; Czander, "'You Are My Witnesses': A Theological Approach to the Laws of Testimony"; Human et al, "Psalm 40 as a Torah Psalm," 133-53; Jacobson, "Psalm 33 and the Creation Rhetoric of a Torah Psalm," 107-20.

to assume that these codes are the sole source of legal themes in the psalms, while simultaneously documenting the influences of extant ancient Near Eastern culture in the Psalter's cultic, royal, and scribal themes. One must at this point consider the legal sphere as an additional realm of shared ideas. The second lesson concerns the distortion that can occur when depending too much on a particular genre for law. In the case of the psalms, this issue is evident in the scholarly focus on Torah. The reality is that there are at most sixteen "Torah Psalms" in the entire Psalter, yet two-thirds of the book uses judicial language.⁷⁴ Taking a functional approach, by identifying law through its effects, can correct this issue of distortion by examining the whole of the Psalter's judicial lexicon against the backdrop of a wider legal culture. Adopting this functional stance, the question to the lamenting psalmist then shifts from *Do your punishments follow the Torah?* to *Do your punishments present a discernible pattern reflected in the wider ancient Near East?* In a bid to answer this question, one is equipped with a considerably wider array of source material with which to work; that is why this study utilizes all of the genres listed above.

A final lesson to heed from ancient Near Eastern legal historical scholarship is that, by looking for law in its effects, we can approach law in the psalms in a much more phenomenological way. That is why the following chapters are organized according to patterns of

⁷⁴ This is the generous estimate in comparison to the most restricted argument for three! William P. Brown, *The Oxford Handbook of the Psalms*, 150.

crime/punishment rather than certain groupings of psalms. The use of the term “pattern” is drawn from theoretical studies of crime and punishment as cross-cultural phenomena. When conducting large-scale comparative studies of law in various cultures, scholars in these fields identify “crime/punishment” patterns emerging along various lines of inquiry.⁷⁵ Those patterns may reveal several legal nuances such as the most commonly attested crimes in a given era or region, the crimes that merit a corporal punishment, or those that merit prison. Patterns also emerge concerning what dictates the severity of a crime and its punishment in any given culture; it may be class, gender, or a particular region or perception of ethnicity. In all cases, the presence of a pattern helps scholars to determine the continuity or discontinuity in the law of a region or era in history.⁷⁶

Building on this concept, the current study considers the psalmist's descriptions of enemies's wrongs – coupled with his calls to punish them – as crimes and punishments to be examined against the patterns of crime and punishment that make up the history of ancient Near Eastern law. The

⁷⁵ Graeme R. Newman, “Introduction,” in *Crime and Punishment around the World* (Santa Barbara: ABC-CLIO, 2010), 1: xxix; David Noel Freedman, *The Nine Commandments: Uncovering the Hidden Pattern of Crime and Punishment in the Hebrew Bible* (New York: Doubleday, 2002); Terance D. Miethe and Hong Lu, *Punishment: A Comparative Historical Perspective* (Cambridge: Cambridge University Press, 2005); Matthew Pate and Laurie A. Gould, *Corporal Punishment Around the World* (Santa Barbara: Praeger, 2012).

⁷⁶ Mitchel P. Roth, *Crime and Punishment: A History of the Criminal Justice System* (Belmont: Wadsworth, 2010), 166; Edwin M. Good, “Capital Punishment and Its Alternatives in Ancient Near Eastern Law,” *Stan. L. Rev.* 19 (1967): 947–77; George Ryley Scott, *The History Of Corporal Punishment: A Survey of Flagellation in Its Historical, Anthropological and Sociological Aspects* (London/New York: Routledge, 2013); Elisabeth Meier Tetlow, *Women, Crime, and Punishment in Ancient Law and Society*. Volume 1: Ancient Near East (New York/London: Continuum, 2004); Graeme R. Newman, *The Punishment Response*, 2nd ed. (New Brunswick/London: Transaction, 2008); Pamela Barmash, *Homicide in the Biblical World* (Cambridge University Press, 2005).

patterns which are present in both the psalms and law make up the subsequent chapters of this study.

The Functional Approach of the “Law in Literature” Movement and its Lessons for Recognizing a Legally Informed Psalmist

In addition to legal histories, scholarship on various literatures in the humanities has utilized the functional approach to make new inquiries into the relationship between literature and law. The best example of this new direction is the “law in literature” movement, which has mined everything from biblical narratives to *The Scarlet Letter* in order to fill out the picture of the legal culture that informs an author’s vision.⁷⁷ The result is a growing recognition that law has often served as “the core” of literary triumphs. In many cases, this is because it serves as a work’s theme, as in Harper Lee’s novel *To Kill a Mockingbird*.⁷⁸ In other works it serves “as their condition of being” – something subtler but still foundational to understanding the work’s intent.⁷⁹ Greek tragedy, from Aeschylus’s *Oresteia* to Sophocles’ *Antigone*, for example, is rooted in the Greek preoccupation with law,⁸⁰

⁷⁷ Austin Sarat, Matthew Anderson, and Cathrine O. Frank, “Introduction: On the Origins and Prospects of the Humanistic Study of Law,” in *Law and the Humanities: An Introduction*, ed. Austin Sarat et al. (Cambridge: Cambridge University Press, 2010), 1-46.

⁷⁸ See Ann Engar, “To Kill a Mockingbird: Fifty Years of Influence on the Legal Profession,” in *Harper Lee’s To Kill Mockingbird: New Essays*, ed. Michael J. Meyer (Plymouth: Scarecrow Press, 2010), 66-80

⁷⁹ Theodore Ziolkowski, *The Mirror of Justice: Literary Reflections of Legal Crises* (Princeton: Princeton University Press, 2003), 5.

⁸⁰ Even the nature of law and literature’s relationship has earned its own bibliography, to which we include Hegel’s *Phenomenology of Spirit*, which returned to *Antigone* for a discussion of divine and human law. Georg Wilhelm Friedrich Hegel, “*Antigone II*,” in *Phenomenology of Spirit*, trans. Arnold V. Miller (Oxford: Oxford University Press, 1977), 456-7.

while Old Norse sagas bear a thousand-year tradition of drawing upon Germanic legal reasoning to tell their tales.⁸¹ Ziolkowski has recently shown how the fruitful remnant of law in literature has seemed to never cease; it underlies Goethe, Kleist, Dickens, Trollope, Dostoevsky, Tolstoy, Kafka, and Camus, to name but a few.⁸² In each of these examples, the authors not only draw upon a legal culture to create their works, but show their readers a view of law that is unavailable in lists of statutes. The authors become sources of legal understanding in their own right.

Rodensky's recent work on the Victorian novel demonstrates how this kind of functional approach to law in literature results in a multi-faceted picture of a legal culture. According to Rodensky, the legal discourse in the Victorian novel reflects a general fracture in the representation and explanation of criminal behaviour in nineteenth century England.⁸³ Tracing the depictions of criminals and villains across the era's novels, she shows how there is a discernible change from focussing on a criminal's "motivating organ" to the "state of mind" as the indicator of guilt.⁸⁴ As it turns out, this change in the era's literature reflects a "newly developing Victorian psychological discourse" in the surrounding legal culture, which had

⁸¹ Edward Monroe Harris, Delfim Ferreira Leão, and P. J. Rhodes, eds., *Law and Drama in Ancient Greece* (London: Duckworth, 2010); Stefan Jurasinski, *Ancient Privileges: Beowulf, Law, and the Making of Germanic Antiquity* (Morgantown: West Virginia University Press, 2011), 1-22; see also Leif Dahlberg, *Visualizing Law and Authority: Essays on Legal Aesthetics*, *Law and Literature* 4. (Berlin; Boston: de Gruyter, 2012).

⁸² Ziolkowski, *The Mirror of Justice*, 4; see also Paul A. Olson, "Poetic Justice in the Miller's Tale," *Modern Language Quarterly* 24 (1963): 227-36.

⁸³ Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford: Oxford University Press, 2003), 3.

⁸⁴ Rodensky, *The Crime in Mind*, 8.

become wholly focussed on the motivations of the mind for explaining crime.⁸⁵ Rodensky shows how the authors's depictions of fictional criminals serve not only as a source of that era's legal understanding, but also as a reflection of its implications.

The biblical narratives have also proven to be a fruitful ground for "law in literature" undertakings. One reason for this is that taking a functional approach carries implications for how scholars have traditionally engaged with the CC and DC as "The Law" of the Bible. Taking such an approach, for example, challenges commonly held views of the relationship between these codes and the biblical narratives. Within a substantive approach, the divine decrees as one finds in the Pentateuch are the only sources in the Bible that fit the criteria for law. They are, after all, a collection of rules enforced by a (supreme) authority. A functional approach, though, is looking for what binds the biblical narratives' characters into action, as further evidence of a legal culture's influence on the text. Bruckner's study on the Abrahamic narrative is a good example, as it presents these stories as a source of law by virtue of the characters' behaviours and choices.⁸⁶

Bruckner observes how the Abraham stories, being part of a pre-Sinai narrative, have rarely been approached for law. Nevertheless, by assuming functional criteria, he argues that there is an "implied imperative" in these

⁸⁵ Rodensky, *The Crime in Mind*, 3.

⁸⁶ James K. Bruckner, *Implied Law in the Abraham Narrative: A Literary and Theological Analysis* (Sheffield: Sheffield Academic, 2001).

stories which should be considered a formal category of law.⁸⁷ The pre-Sinai narratives, then, become conversation partners with Sinai law and the stories which assume it.

Approaches to biblical narratives with functional criteria in mind have also challenged assumptions about the relationship between the *authors* of these narratives and the pentateuchal codes. Consider as an example the stories of the patriarchs' deceptive behaviour. Scholars assuming substantive criteria for law have traditionally struggled with these stories because, when observed against the backdrop of the pentateuchal codes, the patriarchs are veritable criminals.⁸⁸ Using a functional approach, though, Prouser has shown that the patriarchal penchant for lying is based on a cultural rule – rather than a pentateuchal code – which the author clearly regarded as binding. "It was considered acceptable and generally praiseworthy," she explains, "for a weaker party to engage in deceit in order to accomplish his or her goals against a stronger power."⁸⁹ Thus a functional definition of law enables Prouser to accommodate the anthropological reality that there is a legal context for the biblical authors which spans

⁸⁷ Bruckner, *Implied Law*, 76–123.

⁸⁸ Ora Horn Prouser, "The Phenomenology of the Lie in Biblical Narrative" (Ph.D., Jewish Theological Seminary of America, 1991); Michael James Williams, "Lies, Lies, I Tell You! The Deceptions of Genesis," *CTJ* 43 (2008): 9–20; see also A.J. Culp, *Puzzling Portraits: Seeing the Old Testament's Confusing Characters as Ethical Models* (Eugene: Wipf & Stock, 2013); Richard A. Freund, "Lying and Deception in the Biblical and post-Biblical Judaic Tradition," *SJOT* 5 (1991): 45–61; Guy Matalon, "Rebekah's Hoax," *JBQ* 36 (2008): 243–51; David J. Zucker, "The Deceiver Deceived: Rereading Genesis 27," *JBQ* 39 (2011): 46–58.

⁸⁹ Prouser, "Phenomenology," 182–83; idem, "The Truth About Women and Lying," *JSOT* 61 (1994): 15–28. See also Watts' *Reading Law*, which argues that the actual structure of the Pentateuch – large scale stories that introduce lists of laws and close with divine sanctions – utilises a pattern for persuasion common in the ancient world. James W. Watts, *Reading Law: The Rhetorical Shaping of the Pentateuch* (Sheffield: Sheffield Academic, 1999).

beyond the explicit stipulations in the Pentateuch. Moreover, Prouser's work demonstrates the "law in literature" movement's major contribution: establishing that these authors's works are both sources for and reflections on the legal culture of their time.

An approach to the psalmist's relationship to law has much to gain from the "law and literature" movement's contribution, namely, the posture one takes toward the psalmist as an agent in the presentation of legal themes and ideas. Psalms scholars tend to view the psalmist's relation to law as a system of references to Torah study or to pentateuchal codes.⁹⁰ This view does not allow for the possibility that the psalmist might, at times, refer to a law that is absent in the Pentateuch. Moreover, this view denies the psalmist's agency in offering a reflection *on* the legal culture of his time.⁹¹ He might, after all, be presenting a law with which he disagrees, or to which he offers a critique. As the law in literature movement makes plain, a functional approach allows these possibilities to surface in a conversation about the psalmist's use of law because its evidence for law is that which binds the

⁹⁰ See Reindl, "Weisheitliche Bearbeitung von Psalmen," 333-56; Mays, "The Place of the Torah-Psalms in the Psalter," 3-12; Reynolds, *Torah as Teacher*, 1-11; Grant, "Torah-Kingship Theme in Psalms 1-2," 41-70; Wenham, *Psalms as Torah*, 1-23; Hubbard, "Dynamistic and Legal Language in Complaint Psalms," 1-15; Hubbard, "Dynamistic and Legal Processes in Psalm 7," 267-79; Giovanna Raengo Czander, "You Are My Witnesses," 1-14; Human, Steenkamp, Styger, "Psalm 40 as a Torah Psalm," 133-53; Jacobson, "Psalm 33 and the Creation Rhetoric of a Torah Psalm," 107-20; Jürgen Ebach, "Freude an der Tora: Beobachtungen an Psalm 1," *BKe* 55 (2000): 2-5.

⁹¹ Heinzelman has argued that we still retain an ancient suspicion against poesis, or 'making', as an insufficient source for something as "transcendent" as law. A literary representation of law thus "threatens the supposedly transcendent and non-human source of law's authority." One may well imagine why this suspicion would still hold fast with the psalms, given that biblical law is literally presented as based in a transcendent authority. Susan Sage Heinzelman, "Imagining the Law: The Novel," in *Law and the Humanities*, ed. Austin Sarat et al. (New York: Cambridge University Press, 2010), 213.

psalmist into action. The psalmist in this regard not only becomes a source of legal understanding but also someone reflecting on the norms of his own legal culture – a culture that lies beyond the confines of the Pentateuch and even the Hebrew Bible.

**THE SECOND CORRECTION:
ASSUME A TECHNICAL RATHER THAN ORDINARY MEANING FOR LEGAL LANGUAGE**

Traditionally, psalms scholars are attentive to articulating the “technical” and “ordinary” meanings of terms in the psalms. Theoretically speaking, “technical” describes terms defined by their own historical and cultural context. “Ordinary” refers to terms that transcend those contexts and mean generally the same thing to all people at all times. The issue is that the majority of these technical treatments are part of “cult-functional” studies rather than anything to do with law. That being said, a study on law in the psalms may draw from the insights generated by the cult-functional movement, which took initial shape in the work of Sigmund Mowinckel.⁹² Mowinckel argued that a festival cult was the only viable context for understanding the Psalter and presented the psalms as performative parts of a “sacred drama” meant to be acted out for a congregation.⁹³ In his attempt to reconstruct this cultic background for the psalms, he proposed the theory of an autumn New Year Festival, which took as its central theme

⁹² Sigmund Mowinckel, *The Psalms in Israel's Worship*, trans. D. R. Thomas (Oxford: Basil Blackwell, 1962).

⁹³ Mowinckel, *The Psalms in Israel's Worship*, 19.

the enthronement of YHWH.⁹⁴ Essential to Mowinckel's reconstruction was a presentation of the language of the psalms through the lens of a royal cult, an attested part of ancient Near Eastern society.⁹⁵ Such a royal lens gave a place and purpose for "royal psalms."⁹⁶ The proposed importance of that festival led Mowinckel to identify an "enthronement theme" even in psalms that did not mention a king, totalling almost a third of the psalter.⁹⁷

Scholars over the years have voiced concerns with Mowinckel's festival theory and the royal cult hypothesis that stems from it.⁹⁸ Nevertheless, the

⁹⁴ Mowinckel, *The Psalms in Israel's Worship*, 95-120.

⁹⁵ J. J. M. Roberts, "Mowinckel's Enthronement Festival: A Review," in *The Book of Psalms: Composition and Reception*, ed. Peter W. Flint et al., VTSup 99 (Leiden: Brill, 2005), 98; Olivier Hekster and Richard Fowler, "Imagining Kings," in *Imaginary Kings: Royal Images in the Ancient Near East, Greece and Rome*, ed. Olivier Hekster and Richard Fowler (Stuttgart: Steiner, 2005), 9-38.

⁹⁶ Wilson went on to propose the significance of these royal psalms extended the editorial interests for the shaping of the psalter, though his theory has been met with some criticism. Gerald H. Wilson, *The Editing of the Hebrew Psalter*, SBLDS 76 (Chico: Scholars Press, 1985); Gerald H. Wilson, "The Use of Royal Psalms at the 'Seams' of the Hebrew Psalter," *JSOT* 35 (1986): 85-94; Gerald H. Wilson, "King, Messiah, and the Reign of God: Revisiting the Royal Psalms and the Shape of the Psalter," in *The Book of Psalms: Composition and Reception*, ed. Peter W. Flint and Patrick D. Miller, VTSup 99 (Leiden: Brill, 2005), 391-406.

⁹⁷ The psalms celebrating YHWH's kingship are 47, 93, 95 -100 and those Mowinckel initially proposed as sharing the enthronement theme are 8, 15, 24, 29, 33, 46, 48, 50, 66A, 75, 76, 81, 82, 84, 87, 114, 118, 132, 149; though it eventually would total no fewer than 46 psalms. Mowinckel, *The Psalms in Israel's Worship*, 109.

⁹⁸ Watson, following de Vaux, questions the probability that almost a third of the entire psalter belongs to a single celebration. In addition, "there is nothing actually to suggest from biblical evidence either that New Year was an event which was cultically commemorated in Israel, or that [the feast of] 'Tabernacles' included a specifically 'new year' element in the Old Testament Period." After all, the accounts of the Feast, as de Vaux contends, consistently occur in an agrarian context. Clines, among others, questions the three-part move to extend the royal genre beyond those psalms that speak of a king, to associate this genre with one festival, and to assume it is associated with a festival at all. Finally, Petersen has argued that the Akitu festival, on which Mowinckel based most of his theory, is itself a hypothesis that Mowinckel levied on the text from outside evidence. Anton Arens, *Die Psalmen im Gottesdienst des Alten Bundes: Eine Untersuchung zur Vorgeschichte des christlichen Psalmengesanges* (Trier: Paulinus, 1961), 111-52; Roland de Vaux, *Ancient Israel: Its Life and Institutions*, trans. John McHugh (London: Darton, Longman and Todd, 1961), 91, 398-407; Martin J Buss, "The Meaning of 'Cult' and the Interpretation of the Old Testament," *JBR* 32 (1964): 317-25; Allan Rosengren Petersen, *The Royal God: Enthronement Festivals in Ancient Israel and Ugarit?* (Sheffield: Sheffield Academic, 1998), 15-31; David J. A. Clines, *On the Way to the Postmodern: Old Testament Essays, 1967-1998* (Sheffield: Sheffield Academic,

cult-functional contribution which few deny is the technical approach that Mowinckel and his successors adopted when clarifying the meaning of certain words in the psalmist's vocabulary. An example in this regard is directional language, with terms such as "ascend," "come up," and "go down." Scholars have gone to great lengths to technically refine that language in the mind of the modern reader so that when confronted by these words one already knows to shift an "ordinary" register to something more specifically cultic.

Take, for instance, the theories that scholars have proposed for the heading of Psalm 120-134, *שִׁיר הַמַּעֲלוֹת*. The scholarly explanations for *הַמַּעֲלוֹת* are highly technical and contextually bound to the psalmist's cultic milieu, even though the ordinary translation of the term is "steps." Seybold, Crow, and Seidel suggest that, because people "ascended" to Jerusalem and to the sanctuary, the whole phrase should be read as "pilgrimage song."⁹⁹ Allen, following Mowinckel, argues that "procession song" is more appropriate, given that "processions to the sanctuary, unlike pilgrimages, are known to have been accompanied by music and singing."¹⁰⁰ In both

1998), 653; Rebecca S. Watson, *Chaos Uncreated: A Reassessment of the Theme of "Chaos" in the Hebrew Bible*, BZAW 341 (Berlin: de Gruyter, 2005), 34-6.

⁹⁹ Klaus Seybold, *Die Wallfahrtspsalmen: Studien zur Entstehungsgeschichte von Psalm 120-134* (Neukirchen-Vluyn: Neukirchener, 1978), 73; Loren D Crow, *The Songs of Ascents (Psalms 120-134): Their Place in Israelite History and Religion* (Atlanta: Scholars Press, 1996), 157; Hans Seidel, "Wallfahrtslieder," in *Das lebendige Wort: Beiträge zur kirchlichen Verkündigung*: Festschrift Gottfried Voigtzum. Geburtstag. Gottfried Voigt and Karl-Heinrich Bieritz (Berlin: Evangelische Verlagsanstalt, 1982), 38; Thijs Booij, "Psalms 120-136: Songs for a Great Festival," *Bib* 91 (2010): 245.

¹⁰⁰ Leslie C Allen, *Psalms 101-150*, rev. ed., WBC 21 (Nashville: Thomas Nelson, 2002), 194; Mowinckel, *The Psalms in Israel's Worship*, II, 208; Booij, "Psalms 120-136," 246.

theories one can identify significant amount of attention to the technical aspect of the psalmist's language when there is the slightest chance it is cultic. The arguments immediately assume that **הַמַּעֲלוֹת** are not simply the "steps" defined by their utilitarian meaning. Rather, a combination of religious practices and geography defines the meaning of **הַמַּעֲלוֹת**.

The treatment of legal language in the psalms, though, has yet to receive this technical level of attention. In fact, theologians tend to engage with legal concepts in the psalms as ordinary terms, meaning they make little distinction between the psalmist's intent with the term and its use in everyday modern language. A clear example is with readings of the Hebrew word for justice, **מִשְׁפָּט**.

Justice is a term that, in any language, exemplifies the sheer amount of culture that a word can hold. In attempting to decipher its meaning in the literature of another culture, one brings all the deeds, symbols, and iconic representations that give justice its distinct form in one's own mind.¹⁰¹ It is perhaps not surprising then that, when encountering **מִשְׁפָּט**, modern theologians often expect to encounter their own ideal form of justice as an impartial mechanism of the state. That form, to be sure, is ubiquitous in Western culture: a large female, draped in robes, blindfolded, armed with a sword in one hand and scales in the other.¹⁰² The unwillingness to recognize that such "ubiquitousness" is limited to Western modernity, though, is why

¹⁰¹ Rosen, *Law as Culture*, 182.

¹⁰² Christine Haight Farley, "Imagining the Law: Art," in *Law and the Humanities*, ed. Austin Sarat et al. (New York: Cambridge University Press, 2010), 298.

so many thinkers since Schleiermacher have presented the Hebrew Bible as a text replete with vengeance and the New Testament as a text which transcends these lesser forms of retaliation with a Christian emphasis on a justice of forgiveness.¹⁰³ Scholars have shown how that presentation, though, is due to a New Testament justice being more easily reshaped into our already moulded, particular form.¹⁰⁴

The trouble with the Hebrew Bible becomes apparent when that impartial, blindfolded lady in our mind is confronted with the psalmist's ideal of justice: a judge that "rebukes in anger every day" (Ps 7:12).¹⁰⁵ The most telling evidence of how scholars choose to hold onto the conflation of justice with impartiality despite the psalmist's ideal, has to be in their choice to interpret **נִשְׁפָּט** as "vengeance."¹⁰⁶ Vengeance, to be sure, is not the same thing as justice in the English lexicon. To speak of vengeance today is to draw on a concept of Anglo-Norman invention that is wholly defined by

¹⁰³ Klaus Koch, *Um das Prinzip der Vergeltung in Religion und Recht des Alten Testaments*, WF 125 (Darmstadt: Wissenschaftliche Buchgesellschaft, 1972), vii ff; see also Paul Copan, *Is God a Moral Monster?: Making Sense of the Old Testament God*. Grand Rapids: Baker Books, 2011; Dereck Daschke and D. Andrew Kille. *A Cry instead of Justice: The Bible and Cultures of Violence in Psychological Perspective* (New York: T&T Clark, 2010).

¹⁰⁴ John Gwyn Griffiths, *The Divine Verdict: A Study of Divine Judgement in the Ancient Religions*, SHR 52 (Leiden: Brill, 1991), 13-14; Chaya Halberstam, "Biblical Justice: The Passion of the God of Justice," in *Law and the Humanities*, ed. Austin Sarat et al. (New York: Cambridge University Press, 2010), 125-30; Terence E. Fretheim, "God and Violence in the Old Testament," *Word & World* 24 (2004): 18-28.

¹⁰⁵ As Halberstam describes it, what the psalmist and other biblical authors envision is a God who "grieves because the people have rebelled." Therefore, these authors "connect God's retributive judgment with sadness, regret, and disappointment in the failings of his creatures." Halberstam, "Biblical Justice," 129; see also John J. Collins, "The Zeal of Phinehas: The Bible and the Legitimation of Violence," *JBL* 122 (2003): 3-21.

¹⁰⁶ Ababi, "Dieu des vengeances," 467-78; Goodson, "The Psalms of Vengeance;" Hoppe, "Vengeance and Forgiveness," 1-22; Wright, "Violent Vengeance in the Psalms," 16-22; Ward, "Psalm 109: David's Poem of Vengeance," 163-68; Day, *Crying for Justice*, 1-26. To date, Zenger's work is still the most formidable response to "vengeance" readings: Zenger, *A God of Vengeance?*, 1-24.

motives that are “vindictive” rather than just.¹⁰⁷ Such a language assignment on **מִשְׁפָּט**, then, is far from the technical attention we see in the cultic-functional interpretations of **הַמַּעֲלֹת**. The latter are sensitive to fitting the psalmist’s context; interpretations of **מִשְׁפָּט** as “vengeance,” though, are largely concerned to fit one’s own modern context, with no regard for the psalmist’s.¹⁰⁸

Wannenwetsch has also observed how English translations tend to render **מִשְׁפָּט** adjectivally.¹⁰⁹ In Micah 6:8, for example, **מִשְׁפָּט אֲמַעֲשֶׂה** is often rendered “act justly,” though **מִשְׁפָּט** is an absolute noun. As Wannenwetsch argues, the reason this change is a problem goes beyond the Hebrew syntax not “ringing true” to the English ear. Rather, it is a problem because **מִשְׁפָּט** is not an “ordinary” term. As he puts it, in Hebrew this word “is used in an almost stubborn way in the form of an active or verbal noun...justice is something that is present only in the mode of being performed.”¹¹⁰ The result of ignoring or re-interpreting the points at which the Hebrew use of **מִשְׁפָּט** diverges from its ordinary meaning, is the ordinary serving as the only lens to the text. As Hodges explains with regard to

¹⁰⁷ “Vengeance, N., Adv., and Adj.,” OED Online (Oxford University Press), accessed April 9, 2016, <http://www.oed.com/view/Entry/222147>.

¹⁰⁸ In a similar scenario, one may place O’Donovan’s observation of how English translations appropriate the word “rights” in Proverbs 31:8-9 and Jeremiah 5:28, where the Hebrew noun is clearly singular. Oliver O’Donovan, “The Language of Rights and Conceptual History,” *JRE* 37 (2009): 197.

¹⁰⁹ Bernd Wannenwetsch, “But to Do Right... Why the Language of ‘Rights’ Does Not Do Justice to Justice,” *SCE* 23 (2010): 143; see also Christopher B. Ansberry, “What Does Jerusalem Have to Do with Athens? The Moral Vision of the Book of Proverbs and Aristotle’s Nicomachean Ethics.” *HS* 51 (2010): 157-73.

¹¹⁰ Wannenwetsch, “But to Do Right,” 143.

literature generally, this is inevitable unless the reader makes an intentional effort to search out the author's legal term as its own concept, complete with "its myths, history, laws, and hopes for the future."¹¹¹

The issues with interpreting מִשְׁפָּט as an ordinary term demonstrate why approaching not only מִשְׁפָּט but all legal terms in the Psalter as "technical" is crucial for understanding them as the psalmist intended. Attending to the technical meaning of legal terms is especially key to understanding the psalmist's intent when calling for punishment. This is firstly because, on a theoretical level, both the nature and reason for punishment is shaped by a culture's understanding of what constitutes a wrong. As comparative studies in penology have shown, wrongs committed in particular contexts may be regarded as normatively acceptable in some cultures and yet deemed unacceptable acts deserving the most severe judgment in others.¹¹² In the case of the psalms, most of the wrongs for which the psalmist demands a punishment are speech-related: lying, slander, false witnessing, false accusations, and mocking. As with reading מִשְׁפָּט, theologians have tended to regard these terms as familiar enough to assume their ordinary meaning. What results is a task of explaining the

¹¹¹ Hodges has shown, even with our reading of judicial concepts from a century ago, we struggle to recognise that they are grounded in a community's circumstances. Elizabeth Perry Hodges, "The Letter of the Law: Reading Hawthorne and the Law," in *Law and Literature Perspectives*, ed. Bruce L. Rockwood, vol. 9 (New York: Peter Lang, 1996), 155.

¹¹² This may be the case within just a century and in the same nation. Drug offences, for example, "are capital crimes in some historical periods in the United States, England, and China, but not in other time periods." Terance D. Miethe and Hong Lu, *Punishment: A Comparative Historical Perspective* (Cambridge: Cambridge University Press, 2005), 10.

psalmist's violent punishments for those wrongs because they appear horribly disproportionate to the modern reader.

Granted, in a contemporary Western setting, lying and (undeserved) mocking are also "wrongs," but in a hierarchy of criminal acts they are certainly in a bottom category of offences.¹¹³ Thus the psalmist's calls for permanent mutilation of the enemies' faces seem almost impossible as a realistic response. Rather than considering the possibility that the psalmist's terms for his enemies' wrongs actually hold a technical legal meaning, theologians assume the ordinariness of these words and then question why the punishments are so severe for these spoken wrongs. The most common explanation is that the severity of the punishment reflects how severely humiliating the enemies' words must have been.¹¹⁴ In other words, to make sense of the punishments in an ordinary-language framework, theologians must reason that the spoken words are especially heinous. Crucially, this is not because of what the psalmist himself communicates, but because the

¹¹³ In the UK and the US, it is notoriously difficult to prove that spoken wrongs like harassment and cyber-bullying are criminal acts deserving prosecution. It is a similar case with defamatory statements and libel because of the tension these charges have with acts preserving freedom of speech. See Anne S.Y. Cheung, "Tackling Cyber-Bullying from a Children's Rights Perspective," in *Law and Childhood Studies: Current Legal Issues*, ed. Michael Freeman (Oxford: Oxford University Press, 2012), 281-301; Andrew Kenyon, *Defamation: Comparative Law and Practice* (London: UCL Press, 2006), 70-78, 268-69; Paul Tweed, *Privacy and Libel Law: The Clash with Press Freedom* (London: Bloomsbury Professional, 2012).

¹¹⁴ Hunter, *An Introduction*, 6; Keel, *Feinde und Gottesleugner*, 166-76; Kraus, *Theology of the Psalms*, 131; Kraus, *Psalms 1-59*, 26-9, 141; Mays, *Psalms*, 6; McCann, Jr., "The Book of Psalms," 1125; Tesh and Zorn, *Psalms*, 1:104; Schaefer, *Psalms*, 12; Brown, *Seeing the Psalms*, 136-44; Creach, *Violence in Scripture*, 200-2; see also Dharmakkan Dhanaraj, *Theological Significance of the Motif of Enemies in Selected Psalms of Individual Lament*. Glückstadt: J.J. Augustin, 1992.

theologian's own cultural assumptions about lying and mocking *require* this scenario to make sense of the text.

Thus no one is closer to understanding the psalmist's punishments through treating the enemies' wrongs as ordinary terms. Attending to these wrongs and the psalmist's accompanying responses as technical language, though, may reveal what these spoken acts meant in the context of ancient Near Eastern legal culture and, by extension, what the psalmist intended with the punishments he sought as a response.

**THE THIRD CORRECTION:
SEARCH FOR NORMS RATHER THAN INSTITUTIONS**

The final issue with psalms scholarship's working definition of law is the frequent failure to maintain a principled distinction between legal norms and legal institutions. To draw from Homans' definition, a norm is "an idea that can be put in the form of a statement specifying what the members of other men should do, ought to do, are expected to do, under given circumstances."¹¹⁵ Additionally, a norm is apparent when any departure of real behaviour from it is "followed by some punishment."¹¹⁶ The significant point about norms is that they are "ideas about the way things ought to work" and can only be "inferred from the patterns of observable phenomena."¹¹⁷ Institutions arise with the aim to promote the goals of these

¹¹⁵ George C. Homans, *The Human Group* (New York: Routledge, 2013), 123.

¹¹⁶ Homans, *The Human Group*, 123.

¹¹⁷ James M. Donovan, *Legal Anthropology: An Introduction* (Lanham: AltaMira, 2008), 14.

norms. In this regard, an institution, as Sumner once wrote, “holds the concept and furnishes instrumentalities for bringing [a norm] into the world of facts and action.”¹¹⁸ To put it simply, norms are what ought to be, while institutions promote these goals, but it is a mistake to conflate the two.

Rosen has written extensively on the implications of conflating norms and institutions. One of his clearest examples is how often one hears of “Islamic law” as the single foundation for Muslim behaviour.¹¹⁹ He argues that the reason for this is that the language of Islamic law is attached to a sacred institution, as are Jewish, Hindu, and other text-based systems. The issue with this perception, however, is that “Islamic law” looks different in Ethiopia than, say, in Saudi Arabia. The culture and region in which law occurs has an influence on the very foundations of an institution as such, so that in the end one is obliged to talk about infinite institutions. As Rosen explains, this is why it is more accurate to see Islamic law as

a kind of common-law system: Fact-finding and decision-making are pressed down to a range of witnesses, local experts, and textual advisors, while local culture is brought within the ambit of the law through the direct implementation of custom and common practice by these same figures.¹²⁰

Rather than a mechanism for enforcing decisions within an institution, law operates “as a framework for ordered relationships, an orderliness that is

¹¹⁸ William Graham Sumner, *Folkways: A Study of Mores, Manners, Customs and Morals* (New York: Cosimo, 2007), 53.

¹¹⁹ Rosen, *Law as Culture*, 41.

¹²⁰ Rosen, *Law as Culture*, 41.

itself dependent on its attachment to all the other realms of its adherents' lives."¹²¹

Another example is the current place that concepts such as mental illness and bodily ownership have in the decision making process in courts across the UK, Europe, and North America. Ideas such as these are not born within the law, nor can they be attached to a single institution. Rather, they reflect in Rosen's terms, "broader assumptions reinforced across numerous domains, that characterize the culture of which law is a part."¹²² Another legal theorist, Cover, describes a "community of interpretation" that achieves law as "its own *nomos* – narratives, experiences, and visions to which the norm articulated is the right response."¹²³ This is why even judges themselves – arguably the figureheads of legal institutions – will tend to provide a verdict "not in terms of universal or objective sense of right, but 'right' from the community's perspective."¹²⁴

Legal systems borrow from, appropriate, and move around cultural expectation. It is a hasty jump, then, to assume that claims about a legal norm – an idea about what should be – would imply a single legal institution as its source. Yet, this is often the jump scholars have made when examining legal scenes in the psalms. Schmidt, for instance, identified a similar legal scenario in eleven psalms, labelling them the "prayers of the accused" (Pss 3

¹²¹ Rosen, *Law as Culture*, 7.

¹²² Rosen, *Law as Culture*, 6-7.

¹²³ Robert M. Cover, "Foreword: Nomos and Narrative," *HLR* 97 (1983): 42.

¹²⁴ Hodges, "The Letter of the Law," 139.

-5; 7; 17; 26-27; 31; 57; 139; 142).¹²⁵ Significantly, he used those prayers to construct a theory concerning their place in the court described in Deuteronomy and 1 Kings (Deut 17:8-13; 19:16-21; 1 Kgs 8:31-32).¹²⁶ These psalms, he proposed, communicated the plight of the accused who were on remand in the Jerusalem temple while under investigation. Delekat alternatively suggested that these psalms reflected an institution of “asylum” in the Temple, while Beyerlin argued that the sanctuary itself served as the institution where the accused sought refuge while awaiting divine judgment.¹²⁷

Each of these theories paints a portrait of a sacral court in ancient Israel, effectively linking the legal language of these psalms to the Jerusalem temple. In so doing, they equate the ideas conveyed in the “prayers of the accused” with one legal institution. Collectively, this portrait has left a legacy among a generation of psalms scholars, who assume that the legal language in the psalms points to one institutional setting.¹²⁸ As

¹²⁵ Hans Schmidt, *Das Gebet der Angeklagten im Alten Testament*, BZAW 49 (Giessen: A. Töpelmann, 1928), 28-30. See also Alec Basson, “Image Schemata of Containment and Path as Underlying Structures for Core Metaphors in Psalm 142,” *OTE* 21 (2008): 261-72.

¹²⁶ H. Schmidt, *Das Gebet der Angeklagten im Alten Testament*, 28-30.

¹²⁷ Lienhard Delekat, *Asylie und Schutzorakel am Zionheiligtum. Eine Untersuchung zu den privaten Feindpsalmen mit zwei Exkursen* (Leiden: Brill, 1967); Walter Beyerlin, *Die Rettung der Bedrängten in den Feindpsalmen der Einzelnen auf institutionelle Zusammenhänge untersucht*, FRLANT 99 (Göttingen: Vandenhoeck & Ruprecht, 1970); see also Arnold Gamper, *Gott als Richter in Mesopotamien und im Alten Testament* (Innsbruck: Universitätsverlag Wagner, 1966).

¹²⁸ Arnold Albert Anderson, *The Book of Psalms: Introduction and Psalms 1-72*, vol. 1, NCB (Grand Rapids: Eerdmans, 1989), 247; Klaus Seybold, *Introducing the Psalms*, trans. R. Graeme Dunphy (Edinburgh: T&T Clark, 1990), 117, 172; Hans-Joachim Kraus, *Psalms 1-59*, trans. Hilton C. Oswald, CC 1 (Psalmen 1 1961/1978, Minneapolis: Fortress, 1993), 153-58; Frank-Lothar Hossfeld and Erich Zenger, *Psalms 3: A Commentary*, ed. Klaus Baltzer, trans. Linda M Maloney, Hermeneia (Minneapolis: Fortress, 2011).

Gerstenberger, Day, and Schroeder have laid out, though, the psalmist's portrayal of YHWH as judge is too fractured for a single institution to be assumed (Ps 7:9; 26:1; 35:24; 43:1).¹²⁹ For example, in some cases YHWH is a judge who examines the petitioner's righteousness for access to the sanctuary (Pss 26:1; 7:9). In others he is a judge who executes a verdict against enemies (Ps 43:1). There is also the case when YHWH is not a judge at all but still contends with punishing enemies through an entirely different agency (Ps 35:24). The idea that all these psalms would refer to a single institution seems overly ambitious when the judge himself appears to represent at least three institutions from the outset.

In recognizing these different portrayals, scholars have rightly become increasingly wary of reading the psalms as reflecting any particular legal setting. One can, though, still read the psalms in relation to and as a reflection of a wider legal culture. Within the psalms, as this study will demonstrate, there are patterns of legal behaviour that suggest a relationship to legal norms. There is no reason, though, to assume that because there are norms inferred in these texts they must be reconciled with a portrait of a single institution.¹³⁰ That is the jump that Schmidt, Delekat, and Beyerlin did not have to make. The aim should have been (and

¹²⁹ Christoph O. Schroeder, *History, Justice, and the Agency of God: A Hermeneutical and Exegetical Investigation on Isaiah and Psalms*, BibInt 52 (Leiden: Brill, 2001), 109; John Day, "Psalms of Lament," in *Psalms*, OTG 14 (Sheffield: JSOT Press, 1993), 27-30; Erhard Gerstenberger, *Psalms: With an Introduction to Cultic Poetry Part 1*, vol. 1, FOTL 14 (Grand Rapids: Eerdmans, 1988), 14.

¹³⁰ As Malinowski demonstrated, assuming that jump betrays a definition of law that is blind to the fact that a society may have legal norms without a legal institution to advance them Bronislaw Malinowski, *Crime and Custom in Savage Society* (London: Routledge, 1926).

will be in what follows) to reconcile the legal scenarios in the psalms with wider cultural concerns. The present study attends to how the psalmist reflects on, draws from, and speaks for legal norms in his surrounding culture, especially concerning his enemies' crimes and the punishments which are due in response.

CONCLUSION

The following chapters use language that builds on the theoretical approach just outlined. My aim in doing so is to intentionally shift the deep-set notions with which readers encounter a study on "law" and "justice" in a biblical book. Rather than presenting research on "The Psalter and Law," this study steps away from that substantive categorization and adopts a functional presentation of the lamenting psalmist as a participant in a legal culture. That culture is represented by a number of ancient Near Eastern sources in addition to legal codes. Ultimately, I hope to convince readers that the psalmist himself is one of the legal sources one should be consulting when discussing ancient Near Eastern law.

The chapters ahead adopt the language of "patterns" when discussing the psalmist's responses to his enemies' crimes. This is also a functional measure and a nod to legal norms; it is meant to maintain not only that law is defined by its effects, but that those effects create patterns reflecting legal norms. In the case of the psalms concerning enemies, these effects manifest

as patterns of crime and punishment that are identifiable throughout the history of ancient Near Eastern law.

There are additionally very few ordinary-language assumptions in the following chapters. Any crime ascribed to an enemy is treated as a technical term in a legal context. Finally, it should be said that this study refers to the various authors of the psalms as the singular, "psalmist." This use of the singular is not meant to suggest that one author is responsible for all of the psalms. Rather, it is for ease of defining the subject in complex sentences. Moreover, my reference to "the psalmist" much more often than "the psalms" reflects my intent to present this figure as a voice which not only draws from but reflects on his own legal milieu.

CHAPTER 3: THE TALIONIC PATTERN

The talion is a concept derived from the Latin word *talio*, meaning “like for like,” and specifically from the Latin formula *talio esto*- “let there be an equal recompense,” as it is found in the Roman Twelve Tablets. It is the most often used term to describe the “eye for an eye” statements in Exodus 21:23-5, Leviticus 24:20, and Deuteronomy 19:21, and it is the most frequently invoked punishment form in the history of ancient Near Eastern law for the crimes of murder, bodily harm, and false testimony or false accusations in court. This chapter argues that the psalmist’s use of talionic language is best understood within a paradigm of ancient Near Eastern legal culture. When the psalmist uses this language against an enemy, it is for crimes that are historically punished in the “like for like” pattern in the ancient Near East. By recognizing the psalmist’s fidelity to the talionic pattern of crime and punishment as it plays out in a broader legal culture, one is able to recognize the psalmist’s agency in both praising and critiquing the implications of that pattern. This turns out to be most illuminating with regard to Psalm 137, one of the most notorious examples of violence in the Psalter, as well as with regard to the psalmist’s imaginative depiction of false accusers.

INTRODUCTION

Talion is a legal-ethical term whose application and purpose in the Hebrew Bible is the subject of much debate and apologetics. This is a predictable outcome given the exegetical legacy of Jewish and Christian traditions, both of which have rejected the literal reading of “eye for an eye” in varying degrees.¹³¹

Though Philo went so far as to demand “censure” for legislators “who prescribe for malefactors punishments which do *not* resemble the crime,” his successors in the Jewish tradition did not hold the same line (Josephus, *Ant.* 4.280).¹³² Greengus has recently shown how later Jewish interpreters “rejected talion for non-fatal cases and argued against the plain reading of the biblical text, saying that the option of physical retaliation should never be taken literally. Nor could such remedies be made available to an injured victim.”¹³³ In fact, in *A Short History of Jewish Ethics*, Mittleman says that the Mishnah “does not even reference any of the biblical texts which stipulate ‘eye for an eye’ and so on; it simply assumes the norm of compensation rather than retaliation.”¹³⁴ Granted, authorities in the post-Talmudic period

¹³¹ David P. Wright, “Homicide, Talion, Vengeance, and Psycho-Economic Satisfaction in the Covenant Code,” in *Religion and Violence*, ed. David P. Wright and Jonathan Klawans, RRBS (Sheffield: Sheffield Phoenix, 2007), 57-78; William Ian Miller, *Eye for an Eye* (Cambridge: Cambridge University Press, 2006), 20-23; Bradford A. Anderson “Poetic Justice in Obadiah,” *JOT* 35 (2010): 247-55.

¹³² Samuel Greengus, *Laws in the Bible and in Early Rabbinic Collections: The Legal Legacy of the Ancient Near East* (Eugene: Wipf & Stock, 2011), 130-31.

¹³³ Greengus, *Laws in the Bible*, 131.

¹³⁴ Alan Mittleman, *A Short History of Jewish Ethics: Conduct and Character in the Context of Covenant* (Chichester: Wiley-Blackwell, 2012), 71.

would concede that their predecessors seemed to teach contra the biblical text; but, in the case of non-fatal injury, the compensatory system remained and remains a mainstay of Jewish legal application, with the understanding that the fine paid is a “reflection” of the crime.¹³⁵

In the Christian tradition one may begin with Jesus’ commentary on “eye for an eye” in the Sermon on the Mount (Matt 5:38–42). As Barton writes, it has served as the go-to text for a history of Christian portrayals of a dichotomous Bible in which “the Old Testament is seen as focused on the inexorable and cruel retribution, by contrast with New Testament teaching about forgiveness.”¹³⁶ In reaction to this approach, thinkers of both traditions (and none at all) have offered a range of apologetics. A common explanation is that the talion’s purpose in the Bible was “to limit revenge” rather than exact it.¹³⁷ Take, for example, the argument that talion served as a control on the “right of revenge,” which the victim and her family earned in the event of a serious crime such as rape, bodily injury, homicide, or theft.¹³⁸ As Westbrook and Wells explain it, in biblical law the person owed this right is called “the redeemer of blood” (נֹאֵל הַדָּם; Deut 19:6), a title applicable to any member of the extended family. If the victim has no redeemer, then the king can serve as a “surrogate avenger,” an example being found in 2

¹³⁵ Mittleman, *A Short History of Jewish Ethics*, 156–97.

¹³⁶ John Barton, *Ethics in Ancient Israel* (Oxford: Oxford University Press, 2014), 105.

¹³⁷ Raymond Westbrook, *Studies in Biblical and Cuneiform Law*, CRB 26 (Paris: J. Gabalda, 1988), 71.

¹³⁸ Raymond Westbrook and Bruce Wells, *Everyday Law in Biblical Israel: An Introduction* (Louisville: Westminster John Knox, 2009), 74; Pamela Barmash, *Homicide in the Biblical World* (Cambridge: Cambridge University Press, 2005). 154–77.

Samuel, in which David has the killers of Ish-bosheth executed (4:4-12).¹³⁹

The thrust of this argument is that the talion reflected a general attitude in ancient Near Eastern law toward excessive revenge as uncivilized and “a symptom of the breakdown of the rule of law, rather than its application.”¹⁴⁰

One must concede Miller’s point, though, that highlighting a rule’s top limit means also at least acknowledging the possible bottom limit that the talion sets: it is a case of “no less than one eye or one life, either.”¹⁴¹

The talion as it occurs in the Hebrew Bible is also the subject of debate because scholarship currently operates with a wide variation regarding its assumed meaning. On the one hand there is the tendency toward a “general principle of equivalence,” in which scholars assume the talion to mean most any punishment, so long as it is deemed to “fit” the crime.¹⁴² What often surfaces in this approach is the imperative to stretch the meaning of talion into a principle encroaching on right-order. Such an assignment, in turn, negates accusations that the Hebrew Bible has “vengeful” texts, by re-labelling them as “retributive texts” consigned under Torah. The problem with that logic, as Miller has made clear, is that it

¹³⁹ Westbrook and Wells, *Everyday Law*, 74.

¹⁴⁰ Wells points to the words of Lamech in Genesis 4:23-24 as a good example of this attitude, as this man from the “wicked generations” boasts to his wives, “I have killed a man for a wound on me, and a boy for a blow on me. For Cain will be avenged seven times, but Lamech, seventy-seven times.” Westbrook and Wells, *Everyday Law*, 73.

¹⁴¹ Miller, *Eye for an Eye*, 21; See also Wells’ work on “full” and “partial” measures for talion in Bruce Wells, “Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy,” *JBL* 124 (2005): 64-65.

¹⁴² For example, see Mary Douglas, *Leviticus as Literature* (Oxford: Oxford University Press, 2001), 208; Nahum M. Sarna, *The JPS Torah Commentary: Exodus* (Philadelphia: JPS, 1991), 126; In opposition to this approach, see Bernard S. Jackson, *Studies in the Semiotics of Biblical Law* (London: Bloomsbury, 2000), 295-96; Miller, *Eye for an Eye*, 209.

presupposes a need to distinguish between retribution and revenge – a distinction deemed necessary only from Elizabethan tragedy onward. This distinction is untenable in cultures incorporating revenge *into* their legal systems.¹⁴³

Alternatively, scholars drawing from legal theory and theories of justice restrict the meaning of talion to the application of “like for like” with relation to specific crimes. In this case, more appropriately, scholars regard talion as one of a few forms used to meet a more general principle of “perfect fit” which underlies the ancient Near Eastern ideal of justice to be carried out against a crime.¹⁴⁴

This study takes the second approach, highlighting the presence of both particular crimes *and* particular punishments in the psalms, as evidence of a talionic pattern. The versions of this pattern addressed are the death penalty for murder, injury for assault, and the punishment due for false accusation. The first two will be treated in Part One, the last in Part Two.

PART ONE: LIFE FOR LIFE, HARM FOR HARM, AND THE TALIONIC PATTERN

Death penalty for murder is the most pervasive pattern of justice not only in

¹⁴³ Ian Miller, “Clint Eastwood and Equity: Popular Culture’s Theory of Revenge,” in *Law in the Domains of Culture*, ed. Austin Sarat and Thomas R. Kearns (Ann Arbor: University of Michigan Press, 2000), 161–202; cf. Miller, *Eye for an Eye*, 207. Westbrook proposes revenge as a category of talionic punishment available to victims in fact, being defined by a physical penalty; the alternative is then a ransom, defined by a financial penalty. Westbrook, *Studies in Biblical and Cuneiform Law*, 39–88.

¹⁴⁴ Miller, *Eye for an Eye*, 65.

the history of ancient Near Eastern law, but also the history of law in general.¹⁴⁵ One might perceive this pattern as obviously talionic for two reasons. First is the aesthetic product of the law: we are left with one dead person to recompense another dead person. Moreover, our consideration of this law inherits the modern legacy in the West of talionic rhetoric in contemporary discourse to defend or criticize the death penalty.¹⁴⁶ Neither of those reasons, however, are especially convincing after one takes into consideration Westbrook's point about the death penalty in the ancient Near East specifically: unlike today in the West, this penalty was not uniquely assigned to murder, but was also commonly used for crimes that did *not* result in death.¹⁴⁷ One should then question whether death for killing in the ancient Near East was especially talionic.

¹⁴⁵ Rita James Simon and Dagny A. Blaskovich, *A Comparative Analysis of Capital Punishment: Statutes, Policies, Frequencies, and Public Attitudes the World Over* (Lanham: Lexington, 2002), 1-11, 77.

¹⁴⁶ A common criticism of the death penalty is that justice should be more civilized than the murderers it condemns. Apologists for the death penalty suggest its usefulness as a response to homicide because it deters potential offenders from carrying out their murderous ideas. Efforts to determine the death penalty's effect on homicide rates in both the US and the UK have produced wildly inconsistent results. Executions have been found not only to "save large numbers of lives" but also to "increase homicides" within the same decade. Committee on Deterrence and the Death Penalty, *Deterrence and the Death Penalty* (Washington, DC: National Academies Press, 2012), 1; Andrew Von Hirsch, *Criminal Deterrence and Sentence Severity: An Analysis of Recent Research* (Oxford: Hart, 1999). A classic discussion on this issue is H. Wayne House and John H. Yoder, *The Death Penalty Debate* (Dallas: Word, 1991); for more recent discussions see Millard Lind, *The Sound of Sheer Silence and the Killing State: The Death Penalty and the Bible*, SPS 8 (Telford: Cascadia, 2004), 25-53; Anthony Santoro, *Exile and Embrace Contemporary Religious Discourse on the Death Penalty* (Lebanon: Northeastern University Press, 2013), 26-46.

¹⁴⁷ Westbrook, "Introduction," 74. Talion still holds a leading role in why 93 countries sanction the death penalty for crimes that have resulted in death. *Death Penalty Worldwide Database*, accessed 3 June 2015. <http://www.deathpenaltyworldwide.org/>

The talion, for instance, does not help us understand why, in a Mesopotamian treaty between Ebla and Abarsal (ARET XIII 5), blaspheming the king, gods, and country earns the death penalty, but actually killing someone in a fight deserves a fine of fifty sheep (sections 20–28).¹⁴⁸ Another example is the use of the death penalty in the Pentateuch. First there is an issue with identifying which lethal crimes actually deserve “equal recompense.” A death sentence is applicable for murder,¹⁴⁹ but unintentional homicide – a crime still resulting in death – does not stipulate a new dead body in order to make things “just.”¹⁵⁰ Compounding matters is the fact that several offences, many of them non-lethal, do stipulate death as a punishment.¹⁵¹ These include sexual violations,¹⁵² any manner of the “black

¹⁴⁸ Amalia Catagnoti, “Ebla,” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 236.

¹⁴⁹ “Whoever strikes a man mortally will be put to death” (Exod 21:12); “Anyone who kills a human being will be put to death” (Lev 24:17); cf. Num 35:16–21.

¹⁵⁰ “But if he did not lie in wait for him, but God let him fall into his hand, then I will appoint for you a place to which he may flee” (Exod 12:13). On this point see Barton, *Ethics in Ancient Israel*, 200.

¹⁵¹ I do not intend these categories to be taken as anything other than a rhetorical demonstration of the death penalty’s varied application in line with Hendrik van Oyen, *Ethik des Alten Testaments* (Gütersloh: Mohn, 1967), 77.

¹⁵² “And the daughter of any priest, if she profanes herself by whoring, profanes her father; she will be burned with fire” (Lev 21:19); cf. Exod 22:18; Lev 18:6–19, 23, 29, 20:10–18; Deut 22:22–29, 27:20–23. Regarding adultery, the death penalty is a universal response in all the ancient Near Eastern law codes mentioning adultery, but lesser punishments are attested in cases of coercion or doubt attested. McKeating suggests that the lesser punishment of divorce could have been a more common measure than death. See Henry McKeating, “Sanctions Against Adultery in Ancient Israelite Society, with Some Reflections on Methodology in the Study of Old Testament Ethics,” *JSOT* 11 (1979): 57–72; Wells, “Sex, Lies, and Virginal Rape,” 64–65; Samuel E. Loewenstamm, “The Laws of Adultery and Murder in Biblical and Mesopotamian Law,” in *Comparative Studies in Biblical and Ancient Oriental Literatures*, by Samuel E. Loewenstamm, AOAT 204 (Kevelaer: Butzon and Bercker, 1980), 146–53. David Instone-Brewer, *Divorce and Remarriage in the Bible: The Social and Literary Context* (Grand Rapids: Eerdmans, 2002), 9–10. On the death penalty for bestiality, see Thomas B. Dozeman, *Exodus* (Grand Rapids: Eerdmans, 2009), 544. Regarding the death penalty for rape, see Cynthia Edenburg, “Ideology and Social Context of the Deuteronomic Women’s Sex Laws (Deut 22:13–29),” *JBL* 128 (2009): 51. On the roles of gender and social

arts,¹⁵³ failing to observe sacred days and rites,¹⁵⁴ idolatrous or blasphemous behaviour,¹⁵⁵ and usurping or challenging societal positions, including something as seemingly non-lethal as cursing a parent.¹⁵⁶ It is no wonder, then, that Jackson suggests that the death penalty for murder is *not* an example of talion in the Bible.¹⁵⁷ Instead, Jackson argues that one should only apply the term “where non-fatal bodily injuries are involved” and in instances “where the offender is punished by suffering the same fate as he inflicted.”¹⁵⁸

status in sodomy being classified as a crime, see Jerome T Walsh, “Leviticus 18:22 and 20:13: Who Is Doing What to Whom?,” *JBL* 120 (2001): 205–7 and Saul M. Olyan, “And with a Male You Shall Not Lie the Lying down of a Woman’: On the Meaning and Significance of Leviticus 18:22 and 20:13,” *JHS* 5 (1994): 179–206.

¹⁵³ “A man or a woman who is a medium or a necromancer will surely be put to death. They will be stoned with stones; their blood will be upon them” (Lev 20:27); cf. Exod 22:17; Lev 19:31, 20:6; Deut 13:5, 18:10–11, 18:20; 1 Sam 28:3,9. The inclusion of Exod 22:17, “You will not permit a sorceress to live,” follows Van Seters’ argument that it indicates the death penalty when we take it in light of Ezek 18. John Van Seters, *A Law Book for the Diaspora: Revision in the Study of the Covenant Code* (Oxford: Oxford University Press, 2003), 104.

¹⁵⁴ “Six days will work be done, but the seventh day is a Sabbath of solemn rest, holy to YHWH. Whoever does any work on the Sabbath day will be put to death” (Exod 31:15). On Sabbath breaking see Heather A. McKay, *Sabbath and Synagogue: The Question of Sabbath Worship in Ancient Judaism*, RGRW 122 (New York: Brill, 1994), 58–60; Jared C. Calaway, *The Sabbath and the Sanctuary: Access to God in the Letter to the Hebrews and Its Priestly Context*, WUNT 349 (Tübingen: Mohr Siebeck, 2013), 51–3. The remaining offences are generally understood as purity-related, for which an excellent treatment is Susan Haber, “They Shall Purify Themselves”: *Essays on Purity in Early Judaism*, ed. Adele Reinhartz (Atlanta: SBL, 2008). On the relation between purity and morality see Jonathan Klawans, “The Impurity of Immorality in Ancient Judaism,” *JJS* 48 (1997): 1–16; Oyen, *Ethik des Alten Testaments*, 43–45.

¹⁵⁵ “Whoever sacrifices to any god, other than YHWH alone, will be devoted to destruction” (Exod 22:19); cf. Num 25:1–5; Lev 20:1–5, 24:15–16; Deut 13:2–19; 17:2–7.

¹⁵⁶ “And one who curses his father or his mother will surely be put to death” (Exod 21:17). Cf. Num 18:22; Lev 20:8–9; Deut 17:12, 21:18–21, 24:7. Thomas B. Dozeman, *Exodus* (Grand Rapids: Eerdmans, 2009), 532–33; Oyen, *Ethik des Alten Testaments*, 73.

¹⁵⁷ Bernard S. Jackson, “The Problem of Exod 21:22–5,” *VT* 23 (1973): 281 n. 1.

¹⁵⁸ Jackson, “The Problem of Exod 21:22–5” 281 n. 1.

Restricting the talion to Jackson's limits, however, does not make things as neat as one would hope, because there is still a question of why some "non-fatal bodily injuries" are punished in kind, while some are not. Thus, as will be covered in more detail below, even though there is a talionic call for "fracture for fracture," "tooth for tooth," and "eye for eye," neither rape for rape nor sodomy for sodomy are an acceptable extension of this seemingly talionic pattern of "harm for harm" in the Pentateuch. It is a commensurate problem with corporal punishment in the broader ancient Near East, as the penalty of bodily injury is also attested for non-injurious crimes. The Middle Assyrian Laws are a good example. A woman who has assaulted a man will be corporally punished (MAL A 7, 8),¹⁵⁹ but so will someone who has illicitly sold a horse (MAL F 2),¹⁶⁰ stolen clay for brick-making (MAL B 15),¹⁶¹ or falsified accounting records (MAL C+G 11).¹⁶²

All that said, the purpose of Part One is to argue that one cannot wholly dismiss capital punishment for killing and corporal punishment for injury as *un-talionic*, because there are certain features which distinguish a talionic intent from its alternative in sentencing death for killing and harm for

¹⁵⁹ See also Deut 25:11-12: If [two] men, a man and his brother, are fighting together, and the wife of one of them approaches to rescue her husband from his assailant, and she stretches forth her hand and grabs hold of his private parts, you will cut off her hand. You will not have pity (CJB).

¹⁶⁰ Sophie LaFont, "Middle Assyrian Period," in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 552.

¹⁶¹ LaFont, "Middle Assyrian Period," 554; Guillaume Cardascia, *Les lois assyriennes*, LAPO 2 (Paris: Les Éditions du Cerf, 1969), 285.

¹⁶² LaFont, "Middle Assyrian Period," 560.

assault or injury.¹⁶³ My second and more significant purpose is to show that the psalmist uses these features to evoke a talionic pattern when calling on YHWH to punish his enemies.

The Talionic Pattern in Law

The talionic pattern, as it manifests in the legal material, exhibits three key attributes.

MATCHING MEANS OR METHOD

It is hard to refute the talionic quality of a law when it specifies that the means or method by which the criminal will be killed or injured is to mirror the manner in which that criminal killed or injured the victim. There are examples of this overt reference to talion throughout the Mesopotamian material. For example, the Old Babylonian letter of King Rīm-Sîn of Larsa stipulates that, because a criminal murdered a boy by casting him “into the oven,” that murderer too will be thrown “into the kiln” (BIN 7 10).¹⁶⁴ In the Neo-Sumerian LU 3, a man is sentenced to imprisonment specifically for wrongly imprisoning another; Wilcke has suggested this is a concious reference to talion, given the uncommon sentence of imprisonment in other cases.¹⁶⁵ Another example is in a Middle Assyrian punishment for a man who

¹⁶³ Westbrook, “Introduction,” 74; see also Edwin M. Good, “Capital Punishment and Its Alternatives in Ancient Near Eastern Law,” *Stan. L. Rev.* 19 (1967): 947-77.

¹⁶⁴ Marten Stol (trans.), *Letters from Yale*, AbB 9 (Leiden: Brill, 1981), 126-27 no. 197.

¹⁶⁵ Bertrand LaFont and Raymond Westbrook, “Neo-Sumerian Period (Ur III),” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 221; Claus Wilcke, “Der Kodex

sodomizes his comrade, in that the sentence is specified as sodomy rather than as the usual “strikes of the rod” that so many crimes receive in this law collection (MAL A 20). The Pentateuch also conveys this means/method attribute when the talion is intended. In Leviticus 24:20, the adverb כֵּן ties the injury of the victim to the injury of the afflicter:

Lev 24:20	fracture for fracture, eye for eye, tooth for tooth; whatever injury he has given a person, so thus (כֵּן) it will be given to him.	שָׁבַר תַּחַת שָׁבַר עֵין תַּחַת עֵין שֵׁן תַּחַת שֵׁן כַּאֲשֶׁר יַתֵּן וְגַם כַּאֲדָם כֵּן יִנְתֵּן בּוֹ
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Whatever manner the person was hurt, “so thus” it will be given.”¹⁶⁶

Beyond stipulations, Jacobs has pointed out that in the Gilgamesh Epic, statements like, “On him who commits a sin, inflict his crime! On him who commits a wrong, inflict [his] wrongdoing!” (EG XI.iv), indicate that “in ancient Mesopotamia even the gods are bound” by this talionic convention.¹⁶⁷

MATCHING LANGUAGE

Talionic intent is also evident in the effort to match language between the description of a crime and its punishment. This is reflected in Old

Urnamma (CU): Versuch einer Rekonstruktion,” in *Riches Hidden in Secret Places: Ancient Near Eastern Studies in Memory of Thorkild Jacobsen*, ed. Thorkild Jacobsen and I. Tzvi Abusch (Winona Lake: Eisenbrauns, 2002), 311 n. 82.

¹⁶⁶ Tikva Frymer-Kensky, “Israel,” in *AHANEL*, ed. Raymond Westbrook, vol. 2, HOS 72 (Leiden: Brill, 2003), 1033, 1040.

¹⁶⁷ Jacobs, *The Body as Property*, 80-81.

Babylonian laws such as LH 196, in which “if an *awīlu* should blind the eye of another *awīlu* of his own rank, they will blind his eye.”¹⁶⁸ Similar efforts to match language are evident in LH 200 with tooth matching tooth, in LH 197 with bone matching bone, and in the Pentateuch with a series of matching language in the CC:

Exod 21:23	But if there is harm, then you will pay life for life,	וְאִם־אָסוֹן יִהְיֶה וְנָתַתָּה נַפְשׁ תַּחַת נַפֶּשׁ :
Exod 21:24	eye for eye, tooth for tooth, hand for hand, foot for foot,	עֵינַיִם תַּחַת עֵינַיִם שֵׁן תַּחַת שֵׁן יָד תַּחַת יָד רֶגֶל תַּחַת רֶגֶל :
Exod 21:25	burn for burn, wound for wound, stripe for stripe.	כְּנֹיֵה תַחַת כְּנֹיֵה פָצַע תַּחַת פָּצַע חַבּוּרָה תַחַת חַבּוּרָה :

In these verses as well as Leviticus 24:20 (above), there is the formulaic “eye for eye” (עֵינַיִם תַּחַת עֵינַיִם), “tooth for tooth” (שֵׁן תַּחַת שֵׁן; cf. Deut 19:21). Recalling the broken bone in LH 197, there is also “fracture for fracture” (שִׁבְרַת תַּחַת שִׁבְרַת) in Leviticus 24:20. Finally, in Exodus 21:23 there is “life for life” (תַּחַת נַפְשׁ נַפֶּשׁ), which proves instrumental in distinguishing death penalty for murder from the same penalty meted out for blasphemy.¹⁶⁹

¹⁶⁸ The LH differentiates three principle classes of persons in Babylonian society: The *awīlu* was a free person and could be a man, woman, or minor. Scholars assume that, unless otherwise specified, those defined in the LH by their various professions belonged to the *awīlu* class. The *muškēnu* was a commoner, inferior to the *awīlu* in terms of rights and privileges. Finally, there was the *wardu* and the *amtu* – the male and female slave – who belonged to either a free person, a commoner, or to the palace. Roth, *Law Collections*, 72.

¹⁶⁹ Bock, building on Gerstenberger and Noth, argues that blaspheming is a form of “verbal murder,” thus maintaining its punishment as talionic. Darrell L. Bock, *Blasphemy and Exaltation in Judaism and the Final Examination of Jesus: A Philological-Historical Study of the Key Jewish Themes Impacting Mark 14:61-64*, WUNT 106 (Tübingen: Mohr Siebeck, 1998), 37; Erhard Gerstenberger and Martin Noth, *Das dritte Buch Mose: Leviticus*, AT 6 (Göttingen:

TERMS OF PAYMENT

A final distinguishing effect of the talionic pattern is how it is often framed in the terms of “payment,” highlighting the talion’s distinctive judgement on the victim’s worth as perceived by a society. The Middle Assyrian material is illuminating in this regard. In MAL A 52, a man who has struck a prostitute and caused her to miscarry is to be financially assessed “blow for blow” (*miḥṣī kī miḥṣī*); but this is intended to measure what financially constitutes a “full payment of a life.”¹⁷⁰ MAL A 50 goes on to specify that the life of an aborted son is worth far more than his female counterpart; this is made plain by the assailant being executed (making a payment of life) for the former and in the case of the latter making a financial payment only.¹⁷¹ The language of payment is also present in the biblical material. Returning to Leviticus 24, v 21 calls for a payment (שלם) of life for life, placed in parallel with a summons of capital punishment for killing:

Lev 24:21	And one who strikes down an animal will pay for it. And one who strikes down a person will be put to death.	וּמִכָּה בְּהֵמָה יִשְׁלַמְנָה וּמִכָּה אָדָם יוּמָת
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The other language of payment associated with “life for life” in the biblical material uses a form of the root נתן, as one finds in Exodus 21:22-23.

Vandenhoeck & Ruprecht, 1993), 330.

¹⁷⁰ Roth, *Law Collections*, 174; LaFont, “Middle Assyrian Period,” 558.

¹⁷¹ Roth, *Law Collections*, 173-74.

Exod 21:22 When men strive together and hit a pregnant woman, so that her children come out, but there is no harm, the one who hit her will surely be fined, as the woman's husband will impose on him, and he will pay as the judges determine.

וְכִי־יִנְצְוּ אַנְשִׁים וְנִגְפוּ
אִשָּׁה הָרָה וַיֵּצְאוּ יְלָדֶיהָ
וְלֹא יִהְיֶה אֶסְוִן
עָנֹשׁ יַעֲנֶשׁ
בְּאִשֶּׁר יִשִּׁית עָלָיו בְּעַל
הָאִשָּׁה וְנָתַן בַּפְּלָלִים:

Exod 21:23 But if there is harm, then you will pay life for life.

וְאִם־אֶסְוִן יִהְיֶה
וְנָתַתָּה נַפְשׁ תַּחַת נַפְשׁ:

The key talionic phrases in this passage revolve around what the men will “give” concerning the consequence of their unfortunate actions. That נתן functions as a term of payment in addition to its meaning of “give,” is evident in its parallel use. If “no harm follows,” the attacker must “give” (נָתַן) a payment of a fine (יַעֲנֶשׁ). If there is harm, though, the attacker must “give” (a payment of) his life (וְנָתַתָּה נַפְשׁ תַּחַת נַפְשׁ).¹⁷²

The Talionic Pattern in the Psalms

If one is to locate the psalmist's use of the talionic pattern, it is best to begin with the attributes just covered. This is because, like the laws, the psalmist calls for death or harm in response to different kinds of crimes, some of which do not reflect a “like for like” pattern of talion. The contention here is

¹⁷²Whether the “harm” refers to the woman or the child is answered by two traditions of interpretation. Its referral to the woman's death is held by the Vulgate, Targum Onqelos, Josephus, and rabbinic literature and, as such, parallels the laws LL d-e, LH 209-4, and MAL A 50. That the harm refers to the child is held in the LXX, Vetus Latina, and Philo and, as such, follows a similar distinction made in HL 17-18. See Stanley J. Isser, “Two Traditions: The Law of Exodus 21:22-23 Revisited,” *CBQ* 52 (1990): 30-45; Assnat Bartor, “The Representation of Speech in the Casuistic Laws of the Pentateuch: The Phenomenon of Combined Discourse,” *JBL* 126 (2007): 242-43.

that the psalmist draws on the same talionic pattern just described. He not only utilizes features particular to that pattern, but knows them well enough to bend them into his own images in order to offer his own understanding of this pattern of crime and punishment as it occurs in his legal culture.

MATCHING MEANS OR METHOD

The means/method attribute is identifiable through the psalmist's use of כָּ, "like," to invoke the talionic pattern concerning crimes that result in his harm. A good place to start is Psalm 28, an individual complaint:

Ps 28:3	Do not drag me off with the wicked, or with the workers of evil, who speak peace with their neighbours but have evil in their hearts. ¹⁷³	אֶל-תִּמְשְׁכֵנִי עִם-רָשָׁעִים וְעִם-פְּעֹלֵי אָוֶן הַבְּרִי שְׁלוֹם עִם-רֵעֵיהֶם וְרָעָה בְּלִבָּם
Ps 28:4	Give to them like their work and like the evil of their deeds; give to them like the work of their hands; render to them their recompense.	תֵּן-לָהֶם כַּפְּעֵלָם וּכְרָע מַעַלְלֵיהֶם כַּמַּעֲשֵׂה יְדֵיהֶם תֵּן לָהֶם הַשָּׁב גְּמוּלָם לָהֶם

The crimes of the enemy are clearly actions of some harmful nature.

Gerstenberger reasons that "here we catch a glimpse of typical small-group tensions that may lead to sickness and ostracism."¹⁷⁴ Though the psalmist does not specify the punishment directly, there is a specified call for a response that is "like" the acts which have been committed.

¹⁷³ LXX has apparently worked from a different and longer text than the extant Hebrew manuscripts with this verse, as it adds the longer, "do not drag my soul away" along with "do not kill me."

¹⁷⁴ Gerstenberger, *Psalms*, 1:129.

It is key at this point to address the common translation of כְּ as “according to” in the psalms that follow (as well as the one above). This translation is arguably due to scholars focussing on the theological dimension of the phrases at hand, but doing so while assuming a judgement-according-to-works motif that is prevalent in both Jewish and Christian traditions.¹⁷⁵ Interpreters, notably, use “according to” when describing YHWH’s behaviour, rather than humanity’s. This is at work in translations of Psalm 18:

Ps 18:25 So YHWH has rewarded me
according to my righteousness,
according to the cleanness of my
hands in his sight.¹⁷⁶

וַיִּשְׁבַּח יְהוָה לִי
כְּצַדִּיקִי כְּכֹר יְדֵי
לִנְגַד עֵינָיו

There is also: “according to your great power” (כְּגִדְלֹךָ זְרוּעֶיךָ; 79:11); “according to your steadfast love” (כְּחַסְדֶּךָ; 109:26); “according to your word” (כְּאִמְרֹתֶיךָ; 119:58); and, “according to his excellent greatness” (גִּדְלוֹ; כְּרֹב; 150:2).¹⁷⁷ In these examples the psalmist wishes to convey a Lord that is superior and worth one’s worship. The use of “according to” in translations of YHWH’s response to human behaviour, though, leads to the presumption that the only thing these verses are conveying is a vague sort of “fairness.”

¹⁷⁵ Kyoung-Shik Kim, *“God Will Judge Each One According to Works”: Judgment According to Works and Psalm 62 in Early Judaism and the New Testament*, BZNW 178 (Berlin: de Gruyter, 2010).

¹⁷⁶ This translation is ESV, but “according to” is attested widely. Some Hebrew manuscripts have suggested כְּבוֹד “honour,” but the MT’s use of a parallel preposition makes the reading of it more tenable than excluding it from here.

¹⁷⁷ See also Psalm 62:13: “For you will render to a man according to/like his work.” On this designation, see Erhard Gerstenberger, *Psalms. Part 2, and Lamentations*, vol. 2, FOTL 15 (Grand Rapids: Eerdmans, 2001), 527.

Unfortunately, this may lead to confusion when it comes to the nature of justice. Consider, for instance, how much more consistent the depiction of YHWH's justice is in Psalm 103:6-13 once "according to" is replaced with "like" or "as." The shift in translation clarifies how the psalmist is drawing on the means/methods feature of the talionic pattern:

Ps 103:6	YHWH makes righteousness and justice for all who are oppressed	עֲשֵׂה צְדָקוֹת יְהוָה וּמִשְׁפָּטִים לְכָל־עֹשׂוֹקִים:
Ps 103:7	He makes his ways known to Moses, his deeds to the sons of Israel	יִזְרִיעַ דְּרָכָיו לְמֹשֶׁה לְבָנֵי יִשְׂרָאֵל עַל־לוֹתֵיו:
Ps 103:8	Compassionate and gracious YHWH is slow to anger and great in lovingkindness.	רַחֵם וְתַנּוּן יְהוָה אֲרֵךְ אַפַּיִם וְרַב־חַסֵּד:
Ps 103:9	He does not perpetually accuse, nor does he always keep after (us). ¹⁷⁸	לֹא־לִנְצַח יִרִיב וְלֹא לְעוֹלָם יִטּוֹר:
Ps 103:10	He does not act like our sins (כְּחַטָּאֵינוּ) to us, nor repay us like our iniquities (כְּעֹנְוֹתֵינוּ).	לֹא כְחַטָּאֵינוּ עֲשֵׂה לָנוּ וְלֹא כְעֹנְוֹתֵינוּ גַּמְלַל עָלֵינוּ:
Ps 103:11	For as (כְּגִבְהַ) the heavens are high above the earth, his lovingkindness has prevailed ¹⁷⁹ over those who fear him;	כִּי כְגִבְהַ שָּׁמַיִם עַל־הָאָרֶץ גָּבַר חַסְדּוֹ עַל־יִרְאַיוֹ:
Ps 103:12	as far as (כְּרֹחֵק) the east is from the west, so far he has distanced our	כְּרֹחֵק מִזְרַח מִמְּצַרֵּב הָרְחֵיק מִלְּפָנָיו אֶת־פְּשָׁעֵינוּ:

¹⁷⁸ Scholars have typically translated the verb נָטַר in relation to "anger." G.R. Driver argued that this root was related to the Akkadian *nadaru* ("be angry"), but such an interchange between consonants has no real precedent. G.R. Driver, "Studies in the Vocabulary of the Old Testament. 3." *JTS* 32 (1931): 361–66. The typical reason for using "anger" is the assumption that נָטַר parallels אָךְ in the previous verse. I have rendered it "keep" to cohere more closely with the Hebrew on the basis that it works in parallel with 9a: Just as YHWH does not always accuse, he also does not "keep after" his people in a dogged way.

¹⁷⁹ Cf. Ps 117:2

transgressions from us.
 Ps 103:13 Like a father has compassion (כָּרַחַם) for his sons, so YHWH has had compassion for those who fear him. כָּרַחַם אָב עַל-בָּנָיו רַחֵם יְהוָה עַל-יִרְאַיוֹ:

What makes YHWH compassionate is his unwillingness to deal with Israel *in the likeness* of their behaviour, not his unwillingness to respond according to it. The psalmist thus praises the fact that YHWH does not behave like Israel at all: instead of responding like Israel who sins and is iniquitous, YHWH responds like a compassionate father. In fact, for the psalmist, YHWH responding “accordingly” might very well be defined by his mimicry of this father. One attending to the judgement-according-to-works motif might contest that v 12 grounds the meaning of this passage in the realm of the theological. My contention is not to dismiss the theological dimension, but to stress that this dimension is not divorced from the technical language of a legal culture. In fact, Gregory and Cross have shown how the term רָחַק (v 12), meaning “to be distant,” takes on a variety of legal senses in ancient Near Eastern literature, largely centring around “the legal idea of ceasing litigation and relinquishing claims.”¹⁸⁰ This is why keeping “like” in mind is fundamental to acknowledging the legal and theological dimension of this text.

¹⁸⁰ Bradley C. Gregory, “The Legal Background of the Metaphor for Forgiveness in Psalm Ciii 12,” *VT* 56 (2006): 550; Frank Moore Cross, “A Papyrus Recording a Divine Legal Decision and the Root Rhq in Biblical and Near Eastern Legal Usage,” in *Texts, Temples and Traditions*, ed. Michael V. Fox (Winona Lake: Eisenbrauns, 1996), 311-20; see also Alejandro F. Botta, “RHQ in the Bible, a Re-Evaluation,” *Bib* 87 (2006): 418-20.

MATCHING LANGUAGE

The psalmist also uses matching language between the enemy's actions and YHWH's response to express the "like for like" nature of the justice sought for crimes causing harm and death. In Psalm 6, for instance, it is a case of terror (בהל) for terror (בהל):

Ps 6:3	Show favour to me, YHWH, for I am feeble; heal me, YHWH, for my bones are terrified.	תַּגְּנִי יְהוָה כִּי אֲמַלְל אֲנִי רַפְּאֵנִי יְהוָה כִּי נִבְהַלְתִּי עַצְמוֹתַי:
Ps 6:4	My life also is stricken with much terror (נִבְהַלְתָּ מְאֹד). But you, YHWH – how long?	וְנַפְשִׁי נִבְהַלְתָּ מְאֹד וְאַתָּה יְהוָה עַד-מִתֵּי:
Ps 6:8	My eye has wasted away from my grief; it grows weak with all my foes.	עֵשָׂשָׁה מִכַּעַס עֵינֵי עֵתְקָהּ בְּכָל-צוֹרְרָי:
Ps 6:9	Depart from me, all workers of evil, for YHWH has heard the sound of my weeping.	סוּרוּ מִמֶּנִּי כָל-פְּעֻלֵי אָוֶן כִּי-שָׁמַע יְהוָה קוֹל בְּכִי:
Ps 6:10	YHWH has heard my plea; YHWH accepts my prayer.	שָׁמַע יְהוָה תְּחִנָּתִי יְהוָה תִּפְּלֵתִי יִקְחַ:
Ps 6:11	All my enemies will be ashamed and stricken with much terror (וַיִּבְהַלְתֵּם מְאֹד) they will turn back and be put to shame in a moment.	וַיִּבְשׂוּ וַיִּבְהַלְתֵּם מְאֹד כָּל-אֹיְבֵי אֲשֶׁר יָשְׁבוּ וַיִּבְשׂוּ רַגְעַ:

In vv 3-4 the psalmist pleads with YHWH to "show favour" because his life is "stricken with much terror."¹⁸¹ In vv 8-11 it becomes clear that the ones responsible for the psalmist's grief are his "foes" and that the punishment the psalmist has asked for is specific: that all of these enemies will be struck

¹⁸¹ Antonius Kuckhoff, *Psalm 6 und die Bitten im Psalter: Ein paradigmatisches Bitt- und Klagegebet im Horizont des Gesamtalters*, BBB 160 (Bonn: Bonn University, 2011), 193.

in the same manner as him – with terror.

In Psalm 35 it is pursuit (רדף) for pursuit (רדף) :

Ps 35:3	Draw the spear and javelin against my pursuers (רדפני) ! Say to my soul, "I am your salvation!"	וְהִרְקֵן חֲנִית וְסֹגֵר לְקַבֵּאת רֹדְפֵי אִמּוֹר לְנַפְשִׁי יִשְׁעֲתֶךָ אֱנִי :
Ps 35:4	Let them be put to shame and dishonour who seek after my life! Let them be turned back and disappointed who devise evil against me!	וּבָשׁוּ וַיִּפְלְמוּ מִבְּקִשְׁשִׁי נַפְשִׁי יִסְגּוּ אַחֲזֹר וַיִּחְפְּרוּ אֲשֶׁר־בִּי רַעֲתִי :
Ps 35:5	Let them be like chaff before the wind, with the angel of YHWH driving them away!	יִהְיוּ כְּמִיץ לְפָנֵי-רוּחַ וּמִלְאָךְ יִתְנֶה דוֹחָהּ :
Ps 35:6	Let their way be dark and slippery, with the angel of YHWH pursuing them (רדפם)!	יִהְיֶה-דַרְכָּם תִּשְׁךָ וּחֲלָקְלוֹת וּמִלְאָךְ יִהְיֶה רֹדְפָם :

Vv 3-5 introduce the psalmist's "pursuers" who "seek after" his life.

Accordingly in v 6 the psalmist writes that the pursuers should *be pursued*

by an angel of YHWH.

To these examples one may also add Psalm 143:

Ps 143:3	For the enemy has pursued my life; he has crushed my life to the ground; he has made me dwell in darkness like those long dead.	כִּי רָדַף אֹיֵב אֶנְפְשִׁי דָּבַא לְאַרְצֵי חַיְתִּי הוֹשִׁיבֵנִי בְּמַחְשְׁפִים כְּמַתֵּי עוֹלָם :
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Here the psalmist's depictions of dwelling in a grave-like abode with "those long dead," convey the enemy's crime as injurious with the intent to murder.

The response prayed for in v 12 is once again an effort to match things up, calling for the death of the enemy:

Ps 143:12	And in your steadfast love you will destroy my enemies, and you will cause all the adversaries of my life to perish, for I am your servant	וּבְחֶסֶדְךָ תַצְמִיחַ אֹיְבֵי וְהָאֲבֵרֹתַי כָּל־צָרָרֵי נַפְשִׁי כִּי אֲנִי עַבְדְּךָ :
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Finally, there is Psalm 18. As a hymn rather than a complaint, this psalm aesthetically evokes something closer to the Pentateuch in its summons for “like for like” through the vehicle of matching language – this time with retributive as well and beneficent actions.

Ps 18:26	With the loyal you show yourself loyal; with the blameless man you show yourself blameless;	עִם־חֹסֵד תִּתְחַסֵּד עִם־גִּבּוֹר תִּלְמִיִּם תִּתְמַקֵּם :
Ps 18:27	with the purified you show yourself pure; and with the crooked you show yourself perverse.	עִם־נָקִיר תִּתְבַּרֵּר וְעִם־עֲלִישׁ תִּתְפַּתֵּל :

This brings us to Psalm 109:5, in which the psalmist shows a strong familiarity with the features of the talionic pattern in relation to injurious crime.

Ps 109:5	So they reward me evil for good, and hatred for my love.	וַיְשִׁימוּ עָלַי רָעָה תַחַת טוֹבָה וַשְׂנְאָה תַחַת אַהֲבָתִי :
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Here the psalmist does not just match language to convey talion, but distorts it to convey an *anti-talion*, drawing on the formulaic “X for X” phrases in order to describe an enemy as the epitome of injustice: one who offers “hatred for love.” Notice the use of תַחַת, as one finds in the Pentateuch.

TERMS OF PAYMENT

The psalmist draws on the payment feature of the talionic pattern through his use of the roots **גמל**, **שוב**, **נתן**, and, most often, **שלם**. Significantly, the latter two are the terms in the Pentateuch that reference a specifically talionic response for murder or harm. In many cases the payment feature falls in with other talionic attributes in the same psalm. Psalm 18, which is already using **ק** in a manner to express “like for like,” also employs the language of payment with **גמל** and **שוב**

Ps 18:21	YHWH rewarded me like my righteousness; like the cleanness of my hands he returned to me.	יְגַמְלֵנִי יְהוָה כְּצִדְקָי כְּבָר יָדָי יָשׁוּב לִי
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It is a similar case with **שלם** in Psalm 62:13, in which YHWH “pays” a man “like his work” (**תְּשַׁלֵּם לְאִישׁ כְּמַעֲשָׂהוּ**). Finally, there is Psalm 28:4, which uses the language of **נתן** and **גמל** to call upon YHWH for a talionic response:

Ps 28:4	Give to them like their work and like the evil of their deeds; give to them like the work of their hands; render them their due reward.	תֵּן לָהֶם כְּפַעֲלָם וּכְרָעַ מַעַלְלֵיהֶם כְּמַעֲשֵׂה יְדֵיהֶם תֵּן לָהֶם הָשׁוּב גְּמוּלָם לָהֶם :
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There are also times when payment language is the only talionic feature in the psalmist’s response to his enemies. In being so, it helps us to unpack the exchange between the crime of the enemy and the punishment called for by the psalmist. Take the life-for-life example of Psalm 54:5-7:

Ps 54:5	For strangers have risen against me; ruthless men seek my life; they do not set God before themselves. Selah	כִּי זָרִים אֶקְמוּ עָלַי וְעֲרִיצִים בִּקְשׁוּ נַפְשִׁי לֹא שָׂמוּ אֱלֹהִים לְנִגְדָם סֵלָה :
Ps 54:6	Behold, God is my helper; YHWH is the upholder of my life.	הִנֵּה אֱלֹהִים עֵזֶר לִי אֲדֹנָי בְּסִמְכֵי נַפְשִׁי :
Ps 54:7	He will return (יָשׁוּב) the evil to my enemies; in your faithfulness destroy them.	וְיָשׁוּב הָרַע לְשֹׂרְרֵי בְּאִמְתּוּךָ הַצְּמִיתָם :

Here the crime is that of the ruthless (עֲרִיצִים) who have risen up against the psalmist and sought his life (בִּקְשׁוּ נַפְשִׁי). The punishment called for is that YHWH return (יָשׁוּב) the evil of the foes back to them, naming their destruction (הַצְּמִיתָם) as the payment.

Similar to the “hatred for love” phrase above, the psalmist also uses payment language that is intentionally distorted to describe an enemy’s behaviour as especially unjust. Consider, for example, how the psalmist uses the language of payment in 38:21 and 35:12, in which the enemies are those who repay evil for good (וּמְשַׁלְּמֵי רָעָה תַּחַת טוֹבָה). If one is skeptical of just a single reference, then add to it Psalm 7:4-6:

Ps 7:4	YHWH my God, if I have done this, if there is wrong in my hands,	יְהוָה אֱלֹהֵי אִם־עָשִׂיתִי זֹאת אִם־יָשַׁעְרָל בְּכַפִּי :
Ps 7:5	if I have repaid my friend with evil or plundered my enemy without cause,	אִם־גָּמַלְתִּי שׁוֹלְמֵי רָע וְאִם־לָצָה צוּרְרֵי רִיקָם :

Ps 7:6	let the enemy pursue my soul and overtake it, and let him trample my life to the ground and lay my glory in the dust. Selah	יִרְדֹּף אוֹיֵב אֶנְפְּשִׁי וַיִּשָּׁג וַיִּרְמָס לְאַרְצִי חַיִּי וַיִּכְבֹּדֵי אֶלְעָפָר יִשְׁכַּן סֵלָה :
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Basson, following Janowski and Hubbard, argue that this so-called “oath of cleansing” was meant to defend someone from enemy accusations.¹⁸² The psalmist claims that if he were to actually commit “this” (זֹאת) sort of anti-talion – “repaid my friend with evil” – then YHWH will be welcome to annihilate the psalmist for such a distortion.

Attending to payment language as an indicator of talion also allows us to identify the specifically talionic nature of the notorious vv 8–9 in Psalm 137.

Ps 137:8	O daughter of Babylon, doomed to be destroyed, blessed will be the one who repays to you with what you have done to us!	בֵּת-בָּבֶל הַשְׂרוּדָה אֲשֶׁרִי שִׁישְׁלֶם-לָךְ אֶת-גְּמוּלָךְ שֶׁנִּמְלַתְ לָנוּב :
Ps 137:9	Blessed is the one who seizes and shatters your children against the rock!	אֲשֶׁרִי אֲשִׁיחִז וְנִפֵּץ אֶת-עַלְלֶיךָ אֶל-הַסֵּלֶע :

Many scholars have already identified this psalm and its call for the violent death of Babylon’s babies as talionic.¹⁸³ The arguments, though, are very

¹⁸² Alec Basson, *Divine Metaphors in Selected Hebrew Psalms of Lamentation*, FAT (Tübingen: Mohr Siebeck, 2006), 69–70 n. 42; Bernd Janowski, *Die rettende Gerechtigkeit*, B TAT 2 (Neukirchen-Vluyn: Neukirchener, 1999), 101; Hubbard, “Dynamistic and Legal Processes in Psalm 7,” 268; see also Franz Josef Backhaus, “JHWH, mein Gott, rette mich!/: Menschliche Gewalt und göttliche Gerechtigkeit in Psalm 7.” *BK 66* (2011): 155–56.

¹⁸³ See Shimon Bar-Efrat, “Love of Zion: A Literary Interpretation of Psalm 137,” in *Tehillah Le-Moshe: Biblical and Judaic Studies Festschrift Moshe Greenberg*, ed. Moshe Greenberg et al. (Winona Lake: Eisenbrauns, 1997), 3–11; Jutta Hausmann, “Heilige Texte und Gewalt: Annäherung an das Thema am Beispiel von Psalm 137.” *With Wisdom as a Robe: Qumran and Other Jewish Studies in Honour of Ida Fröhlich*, ed. Károly Dániel Dobos and Miklós

much in appeal to the “sense” or “principle” of talion in the phrase “blessed will be the one who repays to you with what you have done to us,” with what Babylon has done being the massacre of children. The psalmist, though, has not just appealed to a general principle through that payment language; rather, he has appealed to a more specific Babylonian practice of vicarious punishment.

Vicarious punishment, as the term may imply, is best understood in the language of degrees of separation. The crimes dealt with thus far have invoked a talionic justice carried out in “first degrees” of separation, meaning that the punishment, in mimicking the perpetrator’s action, is carried out directly on the perpetrator’s own person. Vicarious talion continues to mimic that action, but does so vicariously, meaning that the punishment is carried out in the next degree of removal from the culprit. As a first example, consider the Laws of Hammurabi:

- LH 229 If a builder constructs a house for a man but does not make his work sound, and the house that he constructs collapses and causes the death of the householder, that builder will be killed.
- LH 230 If it should cause the death of a son of the householder, they will kill the son of that builder.

LH 229 is talionic in the “first degree” of separation, holding that the death of the victim calls for the same on the part of the killer.¹⁸⁴ The rule

Köszeghy, HBM 21 (Sheffield: Sheffield Phoenix, 2009).

¹⁸⁴Cf. Deut 22:8: “When you build a new house, you will make a parapet for your roof, that you may not bring the guilt of blood upon your house (וְלֹא־תָשִׂים דָּמִים בְּבֵיתְךָ), if anyone should fall from it.”

subsequently extends by a degree of separation. The son who dies defines the loss that the killer will face – never mind that the son was not involved!¹⁸⁵

It is important to keep in mind here that in Babylonian law the execution of vicarious punishment (and, for that matter, talion) appears to have only applied when the offender and victim were of citizen class. The clearest example of this is LH 209-214, addressing the death of either a pregnant woman or her fetus on account of an attacker. There are three classes named in these laws, all subject to the same awful crime. The punishment for the attacker, however, ranges from a fine of 20 shekels for killing a slave-class woman (with 2 shekels due if the woman lives but miscarries), to an increased fine of 30 shekels for a commoner-class woman (with 5 shekels due for miscarriage), to the death penalty for the attacker's own daughter, if he is so unlucky to have made a woman of the *awīlu* class his victim.¹⁸⁶ Gender, age, and relationship also play a role in how and whether a talionic punishment is carried out.¹⁸⁷

All of this builds a context for how one reads the psalmist's call to punish in Psalm 137. The talion called for in this case – in which the psalmist's children have been massacred – takes the form of vicarious punishment, as attested in the *Babylonian* society to which the psalmist

¹⁸⁵ Compare MAL A 55, in which a man who forcibly seizes and rapes a maiden who is residing in her father's house is not himself raped as a punishment, but the father of the maiden will take the rapist's wife "and hand her over to be raped." Roth, *Law Collections*, 174-75.

¹⁸⁶ See n. 168 for the definition of this class in relation to the others in Babylonian society.

¹⁸⁷ Roth, *Law Collections*, 173-74; Tetlow, *Women, Crime, and Punishment*, 70-72.

directs his words. Questions which arise from the legal material above are as follows: First, does the psalmist call for a punishment dependent on citizen status because he is entitled to that recognition in his surroundings, or because he is not? There is no definitive answer, but it is illuminating to think of the implications of this call for justice in each scenario. Second, could this be the psalmist's own critique on vicarious punishment itself? Though putting too much on the Laws of Hammurabi is of course a risky practice, Jacobs is right to say that they are unique with regard to their attestation in the ancient Near East.¹⁸⁸ The idea that vicarious punishment would be realized in Neo-Babylonian society is therefore at least possible. Moreover, vicarious punishment appears to be a controversial issue and one that the Pentateuch takes up, which implies that it was alive and well in the biblical milieu.¹⁸⁹ With this in mind, one might consider the possibility that the psalmist is calling for justice in a subversive way, saying the true talion in this instance would be to inflict the law by which the assailants live.

**PART TWO: MURDEROUS, DECEITFUL MEN:
TALION AND FALSE ACCUSATION**

Having addressed the version of the talionic pattern that arises from a criminal attempt on a person's life through physical violence, this chapter now turns to the version that arises when that attempt on a life is done so through false accusation. The driving principle is that a false accusation for a

¹⁸⁸ Jacobs, *The Body as Property*, 75.

¹⁸⁹ E.g., Deut 22:8.

capital crime deserves the death that would have happened had the accusation been believed. Talion in this instance is a deterrent for false accusation but also accomplishes a “like for like” justice with regard to the criminal’s intent.

To understand why false accusation would carry a talionic punishment, one must recognize how fundamental witness testimony was for bringing about justice in ancient Near Eastern culture. One may begin with the fact that the term “witness” is attested in documents from every kingdom in the ancient Near East since the second millennium and in Mesopotamia and Egypt since the third. Among those attestations, there are several kinds of evidence indicating the significance of witness testimony.

The Significance of Witness Testimony in the Ancient Near East

There is the common requirement of producing witnesses in many realms of legal life, of which one finds good examples in Old Kingdom and New Kingdom Egypt, Emar, the Old Assyrian period, and in the Hebrew Bible. The authenticity of a legal document in Old Kingdom Egypt, for example, was to be verified by three witnesses confirming that they were present when it was written. The failure to present those witnesses in turn meant losing any claims in a case (P. Berlin 9010). From the New Kingdom, there is the Legal Text of Mes, in which a plaintiff’s land claim is only verified when witnesses are brought in to declare that he is descended from the original

owner.¹⁹⁰ In Emar witnesses appear across a range of transactions, including slave contracts, real estate sales, and silver loans.¹⁹¹

Old Assyrian material shows that witnesses played an important part in commerce as well, given that most transactions took place in front of witnesses (*maḥar*), typically numbering at least three (EL 245:38, 286, 293:7; EL POAT 9).¹⁹² In judicial matters, there were even witnesses *for* the witnesses, literally called “those who heard their mouth,” who would accompany witnesses who testified under oath and then seal the envelopes containing the depositions (EL 243; ICK 2 152). Given the integral role that witnesses played in the Old Assyrian judicial process, it was a priority for those headed to trial to secure (*dannunum*) their witnesses, making sure they would turn up (*elā’um*) and testify. There are even records of people being granted three months to a year to look for (*amārum*, *še’ā’um*) and produce their witnesses (Kt n/k 41322; TPK 1 189; EL 293; Kbo 9 27). The other side of this is that no surprise witnesses were allowed in the Old Assyrian process. Rather, parties had to mention the specific names (*šībē zakārum*) of those whom they intended to produce (TPK 1 189; EL 250; AKT 1 74).¹⁹³

¹⁹⁰ Richard Jasnow, “Egypt: New Kingdom,” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 311.

¹⁹¹ Gary Beckman, “Three Tablets from the Vicinity of Emar,” *JCS* 40 (1988): 61–68.

¹⁹² Klaas R. Veenhof, “Old Assyrian Period,” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 444.

¹⁹³ Veenhof, “Old Assyrian Period,” 434–35.

The Pentateuch shows the importance of witnesses in a few ways. Two or more witnesses, for one thing, were not only required to sentence someone to death but were also the ones who led the execution, being the “first against him to put him to death, and the hands of the rest of the people thereafter” (Deut 17:6–7; 19:15).¹⁹⁴ It is also telling that the subject of witness testimony is the ninth element in the Decalogue, in which Israel is prohibited from answering falsely when in this position (Exod 20:16; Deut 5:20).¹⁹⁵ The longevity of a witness’ fundamental role in Israel’s judicial arena is evident by the reference to witness testimony in the CC, the oldest of the pentateuchal codes.¹⁹⁶

Third and second millennium Mesopotamian material offers another kind of evidence concerning the witness’s importance, which was the apparent willingness to overlook a person’s lower – or even slave – class status in order to produce a witness testimony. The implication is that these people of otherwise low social standing were transformed by their “witness status” (for the moment) due to the high place these judicial processes assigned their testimony. Sargonic slaves, for instance, could witness a contract (SRU 62 iv), while Neo-Sumerian slaves could give evidence under oath concerning things unrelated to their status (NG 126).¹⁹⁷ Although slave

¹⁹⁴ See Frymer-Kensky, “Israel,” 995.

¹⁹⁵ Note that in Exod 20:16, the word for false is **שָׁקֵר** whereas in Deut 5:20 it is **שָׁוֵא**. Frymer-Kensky, “Israel,” 995.

¹⁹⁶ Bruce Wells, *The Law of Testimony in the Pentateuchal Codes*, BZABR 4 (Wiesbaden: Harrassowitz, 2004), 137.

¹⁹⁷ LaFont and Westbrook, “Neo-Sumerian Period (Ur III),” 194–95.

witnesses are not attested in Old Babylonian documents, it appears that female witnesses are and, crucially, they could challenge the testimony of a male counterpart. An example is a case in which the female witness is called to verify a groom's claim against his bride but ends up refuting him and verifying the bride's accusations against him (B/E 6/2 58).¹⁹⁸ Neo-Babylonian material shows a return of slaves to witness positions, though it should be said that those attested are slaves of the palace, as in the case when two slaves of a future king, Neriglissar, serve as witnesses to a contract (Nbk. 31).¹⁹⁹

A third kind of indicator for the primacy of witness testimony is in the apparent preference courts held for it in comparison to other forms of evidence. This is found in both Late Bronze Age Emar and the Old Assyrian period. In Emar, despite the confidence with which contracts claim that the document itself will defeat any future challenges to its terms, court records attest that even when a tablet is produced as evidence, the court preferred the testimony of the witnesses over the document (Emar 28, 212, 252; TBR 47, 84).²⁰⁰ In Old Assyrian material this appears to be so much the case that, even when a written deposition was lost, it was sufficient for the witnesses to

¹⁹⁸ Ignacio M. Rowe, "Alalakh, Ugarit, and Canaan," in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 373.

¹⁹⁹ Joachim Oelsner, Bruce Wells, and Cornelia Wunsch, "Neo-Babylonian Period," in *AHANEL*, ed. Raymond Westbrook, vol. 2, HOS 72 (Leiden: Brill, 2003), 930.

²⁰⁰ Raymond Westbrook, "Emar and Vicinity," in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 662; D. Arnaud, *Recherches au pays d'Aštata: Emar VI: les textes sumériens et accadiens* (Paris, 1985), D. Arnaud, *Textes syriens de l'âge du Bronze Récent*, AOS 1 (Barcelona, 1991).

simply write down what they remembered – as long as they arrived at a single testimony (Kt 92/k 195; BIN 4 70:17f).²⁰¹ In another document the testimony is so fundamental that if only a small number of the planned witnesses were available, the court still accepted their testimonies as a representation of the whole (TC 3 76). Finally, in the Old Assyrian material there is evidence that, in the case that witnesses could not physically appear in court, their written depositions could be couriered overland (EL 252:26, 332:50; KKS 5:18).²⁰²

A final indicator is the weight that swearing an oath carried for verification of a true testimony. This suggests an awareness of the power wielded by witnesses and thus the necessity for some kind of check, in the form of divine threat, to maintain the integrity of the person wielding that power. Examples of this abound; what follows is a representative survey. Oaths have played a significant role throughout the history of ancient Egypt, to begin; a good example is the Old Kingdom document, P. Berlin 9010. In it, three witnesses are required to verify a legal document by swearing an oath.²⁰³ From Mesopotamia there is Neo-Sumerian material in which the oath is so integral to the veracity of a testimony that if a witness refused to take it, it meant the loss of the case (LU 29; NG 126; cf. NATN 571).²⁰⁴ One

²⁰¹ Veenhof, "Old Assyrian Period," 444.

²⁰² Klaas R. Veenhof, "Private Summons and Arbitration among the Old Assyrian Traders," *MECCJ* 5 (1991): 450-59.

²⁰³ For the New Kingdom, see O. Petrie 67 and The Strike Papyrus. Jasnow, "Egypt: New Kingdom"; see also Richard Jasnow, "Egypt: Third Intermediate Period," in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 795.

²⁰⁴ Roth, *Law Collections*, 20; Tetlow, *Women, Crime, and Punishment*, 13.

finds the other side of this scenario in the Old Babylonian material: if the oath was taken, even hearsay was allowed. An example is TCL 11 245:20-28, which tells us "A. swore: 'I heard B. (the accused)'s brother C. say "The piece of cloth which B. is wearing was stripped from the body (statue) of Nin-Marki."²⁰⁵ With regard to the Old Babylonian period Westbrook has shown that the oath was so effective in checking witness veracity that "the imposition of the oath very frequently triggered a compromise settlement between the parties."²⁰⁶ Finally, in Anatolia and the Levant, the Hittite Laws show that in court proceedings a plaintiff could order a witness or even a defendant to take an oath "before the face of god" after a testimony is given (HL 75).²⁰⁷

In the Pentateuch oath taking appears in the form of "standing before YHWH," as evidenced in Deuteronomy 19:17:

Deut 19:17	then both parties to the dispute will appear before YHWH, before the priests and the judges who are in office in those days.	וְעָמְדוּ שְׁנֵי־הָאֲנָשִׁים אֲשֶׁר־לָהֶם הָרִיב לְפָנֵי יְהוָה לְפָנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים אֲשֶׁר יִהְיוּ בַיָּמִים הָהֵם:
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The purpose of the oath is to settle the matters at stake in vv 16-20, namely, a witness being accused as malicious (עֲדֵר־הַמָּס). As Frymer-Kensky explains,

²⁰⁵ Rowe, "Alalakh, Ugarit, and Canaan," 373.

²⁰⁶ Rowe, "Alalakh, Ugarit, and Canaan," 375 (citing WO 8/2 (1976) 160-61; CT 4 47a = AfO 15, 37). See also UET 6 402.

²⁰⁷ Richard Haas, "The Hittite Kingdom," in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 631. The Emar archive includes Emar 33, 252, 28, 212, and 257, ASJ 14:43, 12:11; in the Ugarit archive there is RS 20.239, 20.22.

"standing before YHWH may involve submitting parts of the question to God in an ordeal-like or oracular procedure, in which one party is immediately designated the perjurer."²⁰⁸ Again, the power a witness can wield is checked by the potentially disastrous consequences of the divine having been lied to or lied on behalf of.

With witness testimony bearing this much weight, a false accusation for a capital crime would amount to attempted murder. The imposition of the death penalty for false accusation, then, is both an extension of the life-for-life logic and also a deterrent which maintains the integrity of a witness-focussed judicial process.

One point of clarification is helpful before moving forward. As Wells has shown, it is important to delineate between false testimony in general and false accusation specifically.²⁰⁹ The former refers to all forms of falsehood in the judicial process, whether that be an initially false accusation, a false testimony on the part of the accused, a secondary witness perjuring herself, or a witness simply choosing to not step forward while knowing important information.²¹⁰ Though each of these will play some part in this chapter, the first one – false accusation – is the focus, because it is most relevant to the psalms.

208 Frymer-Kensky, "Israel," 997.

²⁰⁹ Wells, *The Law of Testimony in the Pentateuchal Codes*, 133-34.

²¹⁰ Wells, *The Law of Testimony in the Pentateuchal Codes*, 133-34.

False Accusation and the Talionic Pattern

There are three kinds of legal material which give evidence of false accusation's inclusion in the talionic pattern of crime and punishment. The first is casuistic law, which forbids false accusation with a talionic warning. Explicit warnings against making a false accusation are far reaching in ancient Near Eastern material. In the Egyptian Old Kingdom, for example, The Inscription of Pepiankhheriyeb condemns false accusations with the implication that there would be consequences for the accuser (cf. Urk. 1, 223, 12-16).²¹¹ It is specifically in the Old Babylonian material and the Pentateuch, however, that the warnings are explicitly talionic. The Laws of Lipit-Ishtar, for instance, state that,

LL 17 If a man, without grounds(?) accuses another man of a matter of which he had no knowledge, and that man does not prove it, he will bear the penalty of the matter for which he made the accusation.²¹²

The same talionic pattern unfolds to a greater extent in LH 1, 3, and 4:

LH 1 If a man accuses another man and charges him with homicide but cannot bring proof against him, his accuser will be killed.

LH 3 If a man comes forward to give false testimony in a case but cannot bring evidence for his accusation, if that case involves a capital offence, that man will be killed.

LH 4

²¹¹ Richard Jasnow, "Egypt: Old Kingdom and First Intermediate Period," 130. See also the New Kingdom O. Cairo 25556, where the 4 witnesses concerning blasphemy against the king apparently withdraw their initial statement and are punished with one hundred blows.

²¹² Roth, *Law Collections*, 29.

In LH 1, there is a direct link between making a baseless accusation of a capital crime and being executed as a punishment. The language shifts in 3-4 to giving false testimony – false because the accuser “cannot bring evidence for his accusation.” Here too “if that case involves a capital offence, that man will be killed.” A final related law is that involving the ever significant matter of producing a witness to prove one’s case. LH 13 addresses the consequences for a person who cannot produce a witness in six months, stating that the man who cannot do so is “a liar” who will “be assessed the penalty for that case.”²¹⁴

In the Pentateuch, Deuteronomy 19:16-21 addresses false accusation:

Deut 19:16	If a malicious witness rises against another to accuse the other falsely,	כִּי־יָקוּם עַד־חֲמוֹס בְּאִישׁ לְעֵנֹת בּוֹ סָרָה:
Deut 19:17	then both parties to the dispute will appear before YHWH and before the priests and the judges who are in office in those days.	וְעַמְדוּ שְׁנֵי־הָאֲנָשִׁים אֲשֶׁר־לָתֵם תְּרִיב לִפְנֵי יְהוָה לִפְנֵי הַכֹּהֲנִים וְהַשֹּׁפְטִים אֲשֶׁר יִהְיוּ בַיָּמִים הַהֵם:
Deut 19:18	The judges will investigate thoroughly, and if the witness is a false witness that has accused the other falsely,	וְדָרְשׁוּ הַשֹּׁפְטִים הַיָּטִב וְהַנָּה עַד־שֶׁקֶר הָעֵד שֶׁקֶר עָנָה בְּאִחִיו:
Deut 19:19	then you will do to the witness as the witness intended to do to the other person. Thus you will purge the evil from your midst.	וַעֲשִׂיתֶם לּוֹ כַּאֲשֶׁר זָמַם לַעֲשׂוֹת לְאִחִיו וּבַעֲרַתָּ הָרָע מִקִּרְבְּךָ:
Deut 19:20	The rest of the people will hear and fear and will never again commit any such evil among you.	וְהַנִּשְׁאָרִים יִשְׁמְעוּ וַיִּירָאוּ וְלֹא־יִסְפוּ לַעֲשׂוֹת עוֹד כַּדָּבָר הָרָע הַזֶּה בְּקִרְבְּךָ:
Deut 19:21	Your eye will not pity; it will be life for life, eye for eye, tooth	וְלֹא תַחֲמוֹס עֵינֶיךָ נֶפֶשׁ בְּנֶפֶשׁ עַיִן בְּעַיִן שֵׁן בְּשֵׁן יָד

²¹³ Roth, *Law Collections*, 81-2.

²¹⁴ Roth, *Law Collections*, 84.

for tooth, hand for hand, foot
for foot.

בַּיָּד רִגְלֵי בְּרִגְלֵי:

There are a few particularly significant expressions in this passage. The first is the term “malicious witness” (עֵד־הַמָּס) which, as Wells explains, “refers to a witness who has evil intentions.”²¹⁵ In other words, the literal reference to הַמָּס, “violence,” in this term does not refer to a witness acting violently but the intent with which the witness acts – “hence, the translation ‘malicious’.”²¹⁶ The second expression, “to accuse the other falsely” (לְעֵנוֹת בּוֹ סָרְהָ), is the means by which this malicious intent is carried forth. There is also the expression relating to talionic penalty in v 19: “you will do to the witness as the witness intended to do to the other person.” It is helpful here to note that this law refers to false accusation, but not to false testimony in general. As Wells has argued, though the biblical law warns against all kinds of false testimony, when it comes to punishment false accusation is the only crime dealt with in a talionic manner.²¹⁷ Leviticus 5:20-26, for example, deals with false testimony on the part of the accused, the punishment for which involves a small fine and a sacrificial offering. Nowhere is there mention of talionic punishment.

The second kind of evidence linking false accusation to a talionic punishment is found in Neo-Sumerian and Neo-Babylonian trial records. In the case of the former, there is RA 71, a record of a son who is found to have

²¹⁵ Wells, *The Law of Testimony in the Pentateuchal Codes*, 145.

²¹⁶ Wells, *The Law of Testimony in the Pentateuchal Codes*, 145.

²¹⁷ See Exod 23:1-3.

falsely accused his father for a capital crime and is subsequently punished by death.²¹⁸ In the case of the latter, Wells has recently shown how a few of the records in the Neo-Babylonian material “may signal a pattern generally followed by the courts when confronted with false testimony;” that pattern is a talionic response.²¹⁹ Nbn 13, for instance, is a trial record of a woman’s lawsuit against the man to whom she sold a slave three years earlier, claiming he never paid her the 35 shekels of silver they had agreed upon. The record states that after her three sons testified that the man did in fact pay her, “the judges ruled against [her] for 35 shekels of silver, as much as her claim was.”²²⁰ Wells points to something commensurate in Cyr 332, a dispute record written eight years into the reign of Cyrus. Here a woman is contesting another man’s ownership of a slave that was once hers. It is stated that, in response, the accused provides documents of transactions involving the slave; those are convincing enough for the judge to rule in his favour. The woman is then fined, for the same amount that the man apparently paid for the slave in the first place: 110 shekels. So in this case the talionic point of reference is what the man would have had to pay to buy

²¹⁸ LaFont and Westbrook, “Neo-Sumerian Period (Ur III),” 221; Bertrand LaFont, “Les textes judiciaires sumériens,” in *Rendre la justice en Mésopotamie: Archives judiciaires du Proche-Orient ancien*, ed. Francis Joannès (Saint-Denis: Vincennes University Press, 2000), 35-68; Martha T. Roth, “Appendix: A Reassessment of RA 71 (1977) 125ff,” *AfO* 31 (1984): 9-14; Tetlow, *Women, Crime, and Punishment*, 62.

²¹⁹ Wells, *The Law of Testimony in the Pentateuchal Codes*, 150.

²²⁰ Wells, *The Law of Testimony in the Pentateuchal Codes*, 151; Oelsner, Wells, and Wunsch, “Neo-Babylonian Period,” 965; W. G. Lambert, “Nebuchadnezzar King of Justice,” *Iraq* 27 (1965): 1-11.

another slave had the woman's claim been successful.²²¹ The third record, YOS 6 225, deals with two men who are trying to avoid a talionic penalty by proving to the court the veracity of their accusation against another man. In the end they prove to be successful. Fourth and finally, there is TCL 12 122, a record that demonstrates the nuances in what is or is not considered a false accusation worthy of talionic punishment. In this case there is a lawsuit in which a slave woman is suing for her freedom, claiming that her mistress has manumitted her, bringing as evidence a tablet (contract?) and witnesses. The issue which becomes her obstacle is that it turns out she was indeed manumitted, but only after she "had been assigned as a pledge to a creditor." The prior agreement of her pledge is decided to hold precedence. However, the judge does not punish this slave woman as if she had brought this accusation against her slaveholder with *malicious* intent. It appears the judge believes that she did it in good faith; there is no punishment brought upon her for bringing her owner to court.²²²

In addition to casuistic laws and records, biblical narratives also serve as sources for understanding how false accusation was regarded in ancient Near Eastern legal culture. An example is 1 Kings 21:8-14, which tells a story of how false accusation, if successful, is a form of murder and should be punished as such. In the story, Jezebel brings a trumped-up charge of treason against Naboth.

²²¹ Wells, *The Law of Testimony in the Pentateuchal Codes*, 152-3; but also see Shalom E. Holtz, *Neo-Babylonian Court Procedure*, CM 38 (Leiden: Brill, 2009), 65.

²²² Wells, *The Law of Testimony in the Pentateuchal Codes*, 154.

- 1 Kgs 21:8 So she wrote letters in Ahab's name and sealed them with his seal, and she sent the letters to the elders and the leaders who lived with Naboth in his city.
- 1 Kgs 21:9 And she wrote in the letters, "Proclaim a fast, and set Naboth at the head of the people.
- 1 Kgs 21:10 And set two worthless men opposite him, and let them bring a charge against him, saying, 'You have cursed God and the king.' Then take him out and stone him to death."
- 1 Kgs 21:11 And the men of his city, the elders and the leaders who lived in his city, did as Jezebel had sent word to them. As it was written in the letters that she had sent to them,
- 1 Kgs 21:12 they proclaimed a fast and set Naboth at the head of the people.
- 1 Kgs 21:13 And the two worthless men came in and sat opposite him. And the worthless men brought a charge against Naboth in the presence of the people, saying, "Naboth cursed God and the king." So they took him outside the city and stoned him to death with stones.
- 1 Kgs 21:14 Then they sent to Jezebel, saying, "Naboth has been stoned; he is dead."
- וַתִּכְתֹּב סִפְרִים בְּשֵׁם
אֲחָאָב וַתְּחַתֵּם בְּחַתְמוֹ
וַתִּשְׁלַח הַסִּפְרִים אֶל־הַזְּקֵנִים
וְאֶל־הַחֹרִים אֲשֶׁר בְּעִירוֹ
הַיֹּשְׁבִים אֶת־נָבוֹת׃
וַתִּכְתֹּב בַּסִּפְרִים לֵאמֹר
קְרְאוּ־צוֹם וְהוֹשִׁיבוּ
אֶת־נָבוֹת בְּרֹאשׁ הָעָם׃
וְהוֹשִׁיבוּ שְׁנַיִם אָנָשִׁים
בְּנִי־בְלִיעַל נִגְדוֹ וְיַעֲרֶהוּ
לֵאמֹר בְּרַכְתָּ אֱלֹהִים וּמַלְךְ
וְהוֹצִיאָהוּ וְסִקְלֶהוּ וְיָמָת׃
וַיַּעֲשׂוּ אָנָשִׁי עִירוֹ הַזְּקֵנִים
וְהַחֹרִים אֲשֶׁר הַיֹּשְׁבִים
בְּעִירוֹ כַּאֲשֶׁר שְׁלָחָה אֵלֵיהֶם
אֵיזֶבֶל כַּאֲשֶׁר כָּתוּב
בַּסִּפְרִים אֲשֶׁר שְׁלָחָה
אֵלֵיהֶם׃
קְרְאוּ צוֹם וְהוֹשִׁיבוּ
אֶת־נָבוֹת בְּרֹאשׁ הָעָם׃
וַיָּבֹאוּ שְׁנֵי הָאָנָשִׁים
בְּנִי־בְלִיעַל וַיִּשְׁבּוּ נִגְדוֹ
וְיַעֲרֶהוּ אָנָשִׁי הַבְּלִיעַל
אֶת־נָבוֹת נִגְדַת הָעֵדָם לֵאמֹר
בְּרַךְ נָבוֹת אֱלֹהִים וּמַלְךְ
וַיִּבְאֵהוּ מִחוּץ לְעִיר
וַיִּסְקְלֶהוּ בְּאֲבָנִים וַיָּמָת׃
וַיִּשְׁלַחוּ אֶל־אֵיזֶבֶל
לֵאמֹר סִקַּל נָבוֹת וַיָּמָת׃

The author tells us the crime is a capital one in two ways. Firstly, it is assumed that treason is a capital crime because the whole reason Jezebel accuses Naboth of it is so Ahab can have his vineyard, which could only happen as a result of Naboth's death. The second indication is that the

charge is phrased similarly to the prohibition in Exodus 22:27: “Naboth cursed God and the king.”²²³ The punishment for such a crime is stoning. In the story, Jezebel is successful; Naboth is found guilty and executed, his land forfeited to the king. Once one follows the story to its completion, though, Jezebel and Ahab each meet a violent end (1 Kgs 22:34; 2 Kgs 9:30). It is significant that false accusation is instrumental in shaping the fate of some of the most loathed characters in the Hebrew Bible. Given both Ahab and Jezebel’s reputation in the biblical narratives, the crime’s relation to them may suggest it was as detested as they were.

The Psalmist’s Call for Talion

The psalmist’s understanding of the talion’s implication for false accusers centres around his recognition that, if justice prevails, the accusation is the instrument of the enemy’s downfall. Recalling this study’s functional view of the psalmist as a source of legal understanding and reflection, the imagery to come is not a “kind” of talion in the way that Douglas classifies Jezebel’s death as a talionic principle of “equal retaliation.”²²⁴ The psalmist does not reflect an abstract principle, but reflects *on* the implications of talion with regard to certain crimes or, more specifically, certain criminals.

A good place to start is with the psalmist’s use of נפל in Psalm 27. As a punishment for the threat “breathed out” (וַיִּפְתֹּחַ הַקִּיָּס) by “false witnesses”

²²³ Exod 22:27: “You will not revile God, nor curse a ruler of your people.”

²²⁴ Douglas, *Leviticus as Literature*, 214.

(עֲדֵי־שָׂקֶר), the psalmist requests that “it is they, my foes and enemies, who stumble and fall” (צָרִי וְאֵיבֵי לִי הִמָּוֶה כְּשָׁלוֹ וְנָפְלוּ) as a result of their attacks, rather than himself (Ps 27:2,12). To unpack how this language of “falling” is specifically associated with talionic punishment in the psalms, one may turn to the psalmist’s use of fallen-hunter imagery to describe not only those who accuse falsely, but also other crimes that are typically punished within the talionic pattern in ancient Near Eastern law. This imagery takes shape in two ways:

FALLING INTO PITS

Firstly, the psalmist portrays false accusers and murderers as hunters who fall into pits that they have made or dug for the psalmist. One example occurs in Psalm 7. Commonly identified as an individual lament, Psalm 7 is more precisely seen by Craigie and Tate as “an innocent man’s prayer for protection in the face of the false accusations of enemies,” which include some “act of treachery.”²²⁵ The hunter element of this psalm comes into play with descriptions of the enemies as lions in pursuit of the psalmist, their prey:

Ps 7:2	YHWH my God, in you do I take refuge; save me from all my pursuers and deliver me,	יִתְּנָה אֱלֹהֵי בְּרַחֲמֵי הוֹשִׁיעֵנִי מִכָּל־הָרָפִי וְהַצִּילֵנִי:
Ps 7:3	lest like a lion they tear my soul apart, rending it in pieces, with none to	פֶּן־יִטְרֹף כְּאַרְיֵה נַפְשִׁי פֶּרֶק וְאֵין מִצִּיל:

²²⁵ Peter C. Craigie and Marvin E. Tate, *Psalms 1-50*, 2nd ed., WBC 19 (Waco: Word, 2004), 99.

deliver.

Psalm 57:5 introduces enemies as lions as well: “man-eaters whose teeth are spears and arrows, and whose tongues are sharp swords.”²²⁶ Much work has been done on the lion as the epitome of the predator image in the ancient Near East generally and in the Hebrew Bible specifically.²²⁷ In the case of the psalms, Brown has highlighted that the lion is the most common species referenced in relation to enemies; one reason for this is “its rapacious reputation” as a predator in the psalmist’s milieu.²²⁸ Drawing a connection to the graphic ivory relief from the palace of Ashurnasirpal II that depicts a lion devouring a boy, Brown reasons that the lion, whose “predatory strength was well known among the ancients...makes an eminently evocative metaphor for the psalmist’s enemies and their abusive use of power.”²²⁹

It is these terrifying hunters which the psalmist describes as digging a pit for his “fall” in both Psalm 7:16 and 57:7:

Ps 7:16	He makes a pit, digging it out, and falls into the trap that he has made.	בּוֹר כָּרַח וַיַּחַפְרֵהוּ וַיִּפֹּל בְּשַׁחַת יַפְעָלוֹ:
Ps 57:7	They set a net for my steps; my soul was bowed down. They dug a pit before me, but they have fallen in its midst. Selah	רָשָׁת׃ אֲהַכִּינּוּ לְפַעְמֵי כָּפַר נַפְשִׁי כָּרוּ לְפָנַי שִׁיחָה נָפְלוּ בְּתוֹכָהּ סֵלָה

²²⁶ Marvin E Tate, *Psalms 51-100*, WBC 20 (Nashville: Thomas Nelson, 2000), 73.

²²⁷ For a survey see Katharine J. Dell, “The Use of Animal Imagery in the Psalms and Wisdom Literature of Ancient Israel,” *SJT* 53 (2000): 275-91.

²²⁸ Brown, *Seeing the Psalms*, 137.

²²⁹ Brown, *Seeing the Psalms*, 136.

The word for pit in 7:16, **בֹּר**, is not the typical term for the hole dug by hunters for trapping an animal, but a term most often used to describe a water cistern.²³⁰ It is crucial, though, to recognize that **בֹּר** is also a known term in the Psalter for a grave. In Psalm 28:1; 88:5; and 143:7, for example, the psalmists cries out not to be counted “with those who go down to the pit” (**עִם־יֹרְדֵי בֹר**).²³¹ In Psalm 30:4, the pit is the fate from which the psalmist has been restored, paralleled with Sheol.²³² Finally, the psalmist of 40:3 is restored “from the pit of destruction” (**מִבֹּר שְׂאוֹן**). Keel notes that the use of **בֹּר** to describe a destination may not not simply allude to death, but to a specific manner of death, as “it is apparent that empty cisterns were not infrequently used as prisons.”²³³ If one also attends to the use of **בֹּר** in Genesis 40:15 and 41:14, it becomes clear that actual prisons, “where captives were left to rot, were holes as dark as cisterns.”²³⁴ Cisterns thus resembled graves in that they were impossible to escape by virtue of dropping “precipitously from above,” and also filled at the bottom with thick sediment as a natural effect of collecting rainwater.²³⁵ The result is the “miry

²³⁰ Brian Doyle, “Words with Teeth and Childbearing Men: Metaphors in Psalm 7,” in *Psalms and Liturgy*, ed. Dirk J. Human and Cas J. A. Vos, LHBOTS 410 (London: T&T Clark, 2004), 53.

²³¹ Johannes Schnocks, “Metaphern für Leben und Tod in den Psalmen 23 und 88,” in *Metaphors in the Psalms*, ed. Pierre van Hecke and Antje Labahn, BETL 231 (Leuven: Peeters, 2010), 235-49.

²³² Ps 30:4: “YHWH, you have brought up my soul from Sheol; you restored me to life from among those who go down to the pit.”

²³³ Keel, *The Symbolism of the Biblical World*, 69.

²³⁴ Gen 40:15: “For I was indeed stolen out of the land of the Hebrews, and here also I have done nothing that they should put me into the **בֹּר**.” Gen 41:14: “Then Pharaoh sent and called Joseph, and they quickly brought him out of the **בֹּר**.” Keel, *The Symbolism of the Biblical World*, 69.

²³⁵ Keel, *The Symbolism of the Biblical World*, 70.

bog" (מִטְּיַט הַיְּוֹן) from which YHWH restores the psalmist (Ps 40:3).²³⁶

Coming back to 7:16, the psalmist draws this connection between a cistern prison and a grave to describe the talionic punishment due to his pursuers because they have likely accused him of a capital crime.

In the case of Psalm 57:7, the portrayal of hunters with reference to a pit is less ambiguous. Firstly, the term for pit is not בּוֹר but שִׁיקָה, the normal term denoting a hunting trap. Secondly, the imagery of the pit is accompanied by that of a hunting net (רֶשֶׁת). The psalmist goes on to underline, however, that even though they both "set a net for my feet" and "dig a pit in front of me," it is the enemies who have fallen.²³⁷

In Psalm 9:14, 16, there is a different form of the same theme:

Ps 9:14	Show favour to me, YHWH! See my affliction from those who hate me, O you who lift me up from the gates of death	חֲנֻנֵי יְהוָה רָאָה עָנְוִי מִשְׁנְאָי מְרוֹמְמֵי מִשְׁעָרֵי מוֹת
Ps 9:16	The nations have sunk in the pit that they made; in the net that they hid, their own foot has been caught.	טָבְעוּ גוֹיִם בְּשִׁחַת עָשׂוּ בְּרֶשֶׁת־זוֹ טָמְנוּ נִלְכְּדָה רַגְלָם

Here the fallen hunters are the nations (גוֹיִם), who have sunk (טָבְעוּ) into their own netted hunting trap. These nations' crimes, as one discovers in v 14, include affliction severe enough for the psalmist to be at "the gates of

²³⁶ Cf. Jer 38:6: "So they took Jeremiah and cast him into the cistern of Malchiah, the king's son, which was in the court of the guard, letting Jeremiah down by ropes. And there was no water in the cistern, but only mud, and Jeremiah sank in the mud."

²³⁷ Tate, *Psalms 51-100*, 73.

death.” There is similar imagery in Psalm 35:7-8:

Ps 35:7	For without cause they hid their net for my life; a pit they dug to entrap me.	כִּי־חַנָּם טָמְנוּ־לִי שְׁחַת רְשָׁתָם חָנָם חָפְרוּ לְנַפְשִׁי :
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Ps 35:8	Let ruin come upon him unawares, and let the net that he hid enmesh him; he will indeed fall into ruin! ²³⁸	תְּבוֹאָהוּ שׂוֹאָה לְאֵי־דָרַע וְרִשְׁתּוֹ אֲשֶׁר־טָמְנוּ תִלְכְּדוּ בְּשׂוֹאָה יִפֹּל־בָּהּ :
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Basson, following Hossfeld and Zenger, points to the enemy's fall as a “boomerang effect” with regard to the hunter's metaphorical intent, recognizing it as an application of “*lex talionis*.”²³⁹ The legal outcomes of the enemies' crimes affirm this assessment. In v 11 the psalmist says that these hunters are “malicious witnesses” who have arisen and who “ask me what I do not know” (לֹא־יָדַעְתִּי יִשְׁאַלֻּנִי). Having already covered the legal connotations of the malicious witness (עֵדֵי הַחָמָס), one might also take notice of the verb being used for “ask,” שָׁאל. According to Gaster, שָׁאל has a meaning commensurate with the Akkadian *ša[] ālūn* that it “has here the technical sense of questioning a witness in a court of law.”²⁴⁰

Finally, there are yet more fallen hunters in Psalm 141, who appear to have also committed crimes demanding talionic punishment. The psalmist

²³⁸ Trans. Craigie and Tate, *Psalms 1-50*, 283.

²³⁹ Basson points out that the psalmist “structures his wish for annihilation of the foes in such a way that it forms a chiasm.” Basson, *Divine Metaphors*, 143; cf. Frank-Lothar Hossfeld and Erich Zenger, *Psalmen* (Freiburg im Breisgau: Herder, 2000), 220.

²⁴⁰ Theodor Herzl Gaster, “Short Notes,” *VT* 4 (1954): 73.

presents them as falling into their own nets, while he “passes through” (v 10).²⁴¹

WEAPONS TURNING SELF-WARD

In addition to cisterns and lion pits, another way the psalmist uses fallen-hunter imagery is by depicting enemies’ deadly weapons turning self-ward. In this case it appears the psalmist is predominantly concerned with the talionic fate for false accusers, which is evident in two ways. The first is the way the weapons themselves are described in correlation to the enemy’s mouth. In fact, it is not too much to say that, for the psalmist, the entire anatomy of the mouth is synonymous with an armoury.²⁴² The tongue is likened to a sharp sword (57:5), the teeth are spears and arrows (57:5), and the throat is an open grave (5:10).²⁴³ When one animates that imagery, the true crimes of the enemies come to the fore. Those who “gnash their teeth” are “the wicked who plot against the righteous” (37:12, cf. 35:15–16, 112:9–10). The enemies who “set traps” are the ones who “mutter deceptions all day long” (38:13).²⁴⁴ The ones who “draw their swords” and “bend their bows” (37:14) are those who “scheme” and “plot” (37:12). It is with this

²⁴¹ Ps 141:10: “Let the wicked fall into their nets while I pass by safely.” But also see Marco Settembrini, “The Snares Laid for the Faithful Lips: Hellenistic Apostasy in Psalm 141,” in *Composition of the Book of Psalms*, ed. Erich Zenger (Leuven: Peeters, 2010), 711–22.

²⁴² On this see Joshua Berman, “The ‘sword of Mouths’ (Jud. lii 16; Ps. Cxlix 6; Prov. V 4): A Metaphor and Its Ancient Near Eastern Context,” *VT* 52 (2002): 291–303.

²⁴³ Cf. Jer 9:7: “Their tongue is a slaughtering arrow, it speaks deceitfully; with his mouth each speaks peace to his neighbour, but in his heart he plans an ambush for him.”

²⁴⁴ Craigie and Tate, *Psalms 1–50*, 300.

imagery in mind that one sees the full talionic aesthetic that the psalmist wishes to convey in 37:15:

Ps 37:15	their sword will enter their own heart, and their bows will be broken.	תָּרָבָם תָּבוֹא בְּלִבָּם וְקִשְׁוֹתֵיהֶם תִּשְׁבְּרָנָה
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The psalmist's attention to the talionic quality of the punishment is further evident in his attention to the weapons: they are destroyed or used in a manner that distinguishes each from the other, underlining the "like for like" feature in his call for the enemies' end. Keeping this imagery in mind serves as a helpful tool in unpacking a puzzling verse in Psalm 64. Much in line with the language already covered, here the enemies "whet their tongues like swords" and "string (their bows) for arrows of poison words" (v 4).²⁴⁵ In v 9a the psalmist calls for the punishment due to his enemies, but the phrasing in MT is difficult: וַיִּכְשִׁילֵהוּ עַל־יְמוֹ לְשׁוֹנָם. This means something close to, "And they caused him to stumble, their tongue over them." Barré amends וַיִּכְשִׁילֵהוּ to וַיְהוּ כְשִׁילֵהוּ, which he then translates as, "And may Yahwe(h)/Yahu make (them) trip (and fall) on their own (sword-) tongue."²⁴⁶ Although other interpretations also convey the reflexive nature of this punishment,²⁴⁷ Barré's reading in particular captures the psalmist's intent in using לְשׁוֹנָם in the context of the hunters' crimes: to represent the tongue as

²⁴⁵ Tate, *Psalms 51-100*, 130.

²⁴⁶ Michael L. Barré, "A Proposal on the Crux of Psalm Lxiv 9a," *VT* 46 (1996): 115.

²⁴⁷ For example, "Their own tongue brought them to ruin" in Weiser, *The Psalms*, 456; "By their tongue they bring him (God) down upon themselves" in J. H. Eaton, *Psalms: Introduction and Commentary*, TBC (London: SCM, 1967), 163; "Surely they will ruin themselves with their tongues" in Tate, *Psalms 51-100*, 130.

a sword the enemies will fall on. This is consistent with imagery attested in three other passages in the Hebrew Bible “where the tongue is explicitly likened to a sword” (Ps 57:5; Prov 22:18; Hos 7:16).²⁴⁸ This leads Barré to affirm it as “an excellent example of *lex talionis*. They sharpened their tongues as swords to kill others (v 4), so now the psalmist prays that YHWH cause them to perish by making them fall on these very ‘weapons’.”²⁴⁹ Barré, however, labels this passage talionic solely based on the imagery of this verse, which assumes an abstract justice, with only half of the pattern – the punishment – taken into consideration. The key element that affirms the talionic pattern is that the crime in vv 4-5 is a creative figuring of false accusation in which the psalmist describes a scene of being unjustly ambushed by his foes: The enemies’ arrows are “bitter words” (דְּבַר מָר) which they “shoot from hiding places,” a figurative expression for casting blame on the psalmist, who describes himself as “the blameless” (תָּם).²⁵⁰

²⁴⁸ Ps 57:4: “whose tongues are sharp swords” (וּלְשׁוֹנֵם תְּהָרֵב תְּהָרָה); Prov 12:18: “rash words are like sword thrusts, but the tongue of the wise brings healing” (תְּהָרֵב וּלְשׁוֹן תְּכַמְנִים מְרַפֵּא); Hos 7:16: “their princes will fall by the sword because of the insolence of their tongue” (וַיִּפְּלוּ בַתְּהָרֵב שְׂרִייהֶם מִנֹּעֵם לְשׁוֹנֵם זֶה לְעֵינֵם). Barré, “A Proposal on the Crux of Psalm Lxiv 9a,” 117.

²⁴⁹ Barré, “A Proposal on the Crux of Psalm Lxiv 9a,” 118.

²⁵⁰ Cf. Psalm 59:13 “(For) the sins of their mouths (and) the words of their lips let them be snared by their arrogance (and) for the curses and lies that they utter.” The enemies who will be thus caught are those whose “swords come from their lips” (59:8). See Brian Doyle, “God as a Dog: Metaphorical Allusions in Psalm 59.” In *Metaphor in the Hebrew Bible*, ed. Pierre van Hecke, BETL 187 (Leuven: Peeters, 2005), 41-53.

CONCLUSION

If the argument that the psalmist's use of talion occurs in reference to a pattern of particular crimes and their punishments is convincing, there remain some questions. For one thing, we are left to ask the extent to which this kind of fidelity to the talionic pattern of crime and punishment is present in other poetry of the Bible. In Proverbs 26:27-28, for example, "He who digs a pit will fall into it and whoever rolls a stone, it will roll back on him. A lying tongue hates those crushed by it; smooth speech throws one down." Each reference to talion in this book appears to show a similar fidelity to what was present in the psalms.

The psalmist's use of the talionic pattern also presents a challenge to the idea that, because the Pentateuch does not explicitly account for acts of bodily mutilation, ancient Israel regarded talion as a strictly compensatory system. If one adopts the functional perspective championed by this study, thereby widening the field of what constitutes sources of law, then one must contend with the psalmist, who does call for corporal retaliation. Moreover, the psalmist never speaks of or even alludes to money. If compensation were the only means of talion in ancient Israel, why is the psalmist so attentive to the explicitly physical response which defines the talionic pattern for these crimes?

CHAPTER 4: THE SHAMING PATTERN

With regard to the Psalter, scholars have typically approached the topic of shame as one of the psalmist's common emotions. This chapter argues that the psalmist is actually most concerned to show how shame functions as both a criminal act and sanctioned punishment in his legal milieu: the punishment for crimes that *caused* shame was *to shame* the perpetrator. In this way, the shaming pattern of crime and punishment evokes a talionic logic in its "shame for shame" presentation. That being said, this pattern also displays its own distinctive features, the most obvious being a dependence on a given community's perception of social status through the cues of clothing, profession, and hierarchy within relationships. The psalmist's petition for YHWH to shame his enemies draws on the shaming pattern, as two of his enemies' crimes – slander and reproach – are key offences among shame-inducing crimes attested in ancient Near Eastern law. By drawing on both the pattern and its attributes, the psalmist he tells us what it means to be a victim of the crimes, to suffer the immediate, shame-inducing fallout of them, and to seek after the only justice that could repair the damage they caused in an ancient Near Eastern legal culture.

INTRODUCTION

The psalmist calls for the shaming of his enemies in several psalms, including Pss 22; 25; 31; 35; 70; 71; and 85. Legally speaking, scholarly approaches to these calls are attentive to their technical legal meaning, and offer a strong critique of scholarship which has assumed shame to be ordinary in meaning.²⁵¹ These approaches lack, however, the other two aspects outlined in this study's approach to defining law. Those include, firstly, prioritizing the adoption of functional rather than substantive criteria, not only to identify the legal patterns in the psalmist's language but to read the psalmist as a source of legal understanding. Secondly, they include a focus on broad legal norms, rather than particular legal institutions, as the context for the psalmist's ideas about his enemies and the manner with

²⁵¹ Martin Klopfenstein, *Scham und Schande nach dem Alten Testament: Eine begriffsgeschichtliche Untersuchung zu den hebräischen Wurzeln bōš, klm und hpr* (Zürich: Theologischer Verlag, 1972); Yael Avrahami, "BWSH in the Psalms: Shame or Disappointment?," *JSOT* 34 (2010): 295-313; T. M. Lemos, "Shame and Mutilation of Enemies in the Hebrew Bible," *JBL* 125 (2006): 225-41; Johanna Stiebert, "Shame and the Body in Psalms and Lamentations of the Hebrew Bible and in Thanksgiving Hymns from Qumran," *OTE* 20 (2007): 798-829; M. Weinfeld, "Kābôd," *TDOT*, n.d.; C. Dohmen, "Kābēd," *TDOT*, n.d.; S. Wagner, "Klm; Kelimmâ; Kelimmûṭ," *TDOT*, n.d.; H. Seebas, "Bosh; Bûshāh; Bōsheth; Mebhûshîm," *TDOT*, n.d.; Lyn Bechtel Huber, "The Biblical Experience of Shame/Shaming: The Social Experience of Shame/Shaming in Biblical Israel in Relation to Its Use as Religious Metaphor" (Ph.D., Drew University, 1983).

which they should be dealt. Studies to date have yet to approach the psalmist's call for the shaming of his enemies with all of these aspects in mind.

Consider Olley's short study on בּוֹשׁ.²⁵² It focusses on the word's "forensic" meaning alongside the Old Assyrian cognates *bâšu*, "to come to shame," and *buššu*, "to put to shame." Olley shows how both Assyrian attestations are technically legal, with *bâšu* relating to "the inability to pay creditors at some relevant occasion," and *buššu* relating to scenarios "where it may be proved that a person's statement is incorrect."²⁵³ In fact, with the Assyrian material, Olley assumes functional criteria, citing several sources extant to legal codes to flesh out his argument about the meaning of these shame-words. He even adopts a norms-oriented hypothesis, linking the legal use of the Assyrian words to common behaviours rather than specific institutions. Once his study reaches the *psalmist's* use of בּוֹשׁ, though, it takes a discernible turn toward substantive – and therefore exceptionalist – assumptions concerning the relation of this word to law. In contrast to his assumptions with the Old Assyrian terms, Olley assumes not only that the psalmist's single source of legal knowledge is the pentateuchal codes, but that the use of בּוֹשׁ in those codes linked to a "public court" institution.²⁵⁴

²⁵² John W. Olley, "Forensic Connotation of Bôš," *VT* 26 (1976): 230-34

²⁵³ Olley, "Forensic Connotation of Bôš," 232.

²⁵⁴ Olley, "Forensic Connotation of Bôš," 232-33.

Other studies have made commensurate exceptions. Klopfenstein, for instance, argues that בּוֹשׁ-language in the psalms should certainly be understood as legal, yet he isolates its meaning as a “theologized” legal language distinct to the divine court.²⁵⁵ The result is a logic that keeps the word technical in meaning, but far removed from pragmatic legal patterns in the wider ancient Near East.²⁵⁶ Though Avrahami is critical of Klopfenstein’s theologized approach, his recent study on בּוֹשׁ still isolates the psalmist from the wider ancient Near East by omitting any reference to extant legal material when analyzing the word’s technical legal meaning.²⁵⁷ Bechtel-Huber’s work would at first appear to correct this kind of exceptionalism given its approach to shame in the psalms as part of a broader legal culture.²⁵⁸ A closer examination of its comparative sources, however, reveals a far more conceptual than functional definition of law being used. The cultural references for understanding ancient Near Eastern uses of shame, for example, include the Navaho, Hopi, Kwakiutl of Vancouver Island, as well as China and Japan.²⁵⁹ Finally, though Stiebert’s work critiques this aspect of Bechtel-Huber’s approach, her focus on shame

²⁵⁵ Klopfenstein, *Scham und Schande nach dem Alten Testament*, 87-88, 209.

²⁵⁶ Klopfenstein, *Scham und Schande nach dem Alten Testament*, 87-88, 209.

²⁵⁷ Avrahami, “BWSH in the Psalms,” 300.

²⁵⁸ Huber, “The Biblical Experience of Shame/shaming,” 248-55.

²⁵⁹ Huber, “The Biblical Experience of Shame/shaming,” 248-55.; Johanna Stiebert, *The Construction of Shame in the Hebrew Bible: The Prophetic Contribution*, JSOTSup 346 (Sheffield: Sheffield Academic, 2002), 52-53; Timothy S. Laniak, *Shame and Honor in the Book of Esther* (Atlanta: Scholars Press, 1998), 29, 51.

in the psalms is purposefully limited in scope to the hymns from Qumran as a comparison.²⁶⁰

All of these works contribute to a rigorous technical approach to the legal meaning of shame in the psalms, but they tend to fall short in different ways when we take into consideration a more comprehensive definition of law. This chapter builds on the technical legal meanings that these works have established. It does so, however, in the context of a functional approach that questions the psalmist's relation to wider legal norms in the ancient Near East. The argument in what follows is that the psalmist draws on a particular pattern of crime and punishment that centred on shame: how shame functioned as both a criminal act and sanctioned punishment in ancient Near Eastern legal culture. In his use and manipulations of this pattern's features, the psalmist offers a reflection on what it means to be shamed through certain crimes, to suffer the immediate fallout of those crimes, and to seek a sanctioned, shame-inducing punishment as a response.

PART ONE: "SHAME FOR SHAME" AS A PATTERN

To understand how shame functioned both as a criminal act and as a sanctioned punishment, one must recognize the fundamental role that social status played in maintaining law and order in the ancient Near East.²⁶¹

²⁶⁰ Stiebert, "Shame and the Body," 52-53.

²⁶¹ David Daube, "The Culture of Deuteronomy," *Orita* 3 (1969): 27-52; Michael Herzfeld, "Honour and Shame: Problems in the Comparative Analysis of Moral Systems," *Man, New*

Olyan has shown how social status ordered ancient Near Eastern communities, turning every relationship between two people into that between an inferior and a superior.²⁶² The difference between the two was maintained by the inferior person's public acknowledgment of the other's superiority through an act anthropologists call "bestowing honour."²⁶³

The expectation that an inferior would bestow honour on a superior was integral to a functioning legal culture. Contracts from Emar, for example, record debtors accepting their creditors' support as a bestowal of honour on the latter figure.²⁶⁴ A debtor refusing to do so was not only tantamount to declaring the contract void (RE 10, 13), but was also seen as

Series, 15 (1980): 339-51; Lyn M Bechtel, "Shame as a Sanction of Social Control in Biblical Israel: Judicial, Political, and Social Shaming," *JSOT* 49 (1991): 47-76; Lyn M Bechtel, "The Perception of Shame within the Divine-Human Relationship in Biblical Israel," in *Uncovering Ancient Stones*, ed. H. Neil Richardson and Lewis M Hopfe (Winona Lake: Eisenbrauns, 1994), 79-92; N.R. Bowen, "Damage and Healing: Shame and Honour in the Old Testament," *Koinonia* 3 (1991): 29-39; John K. Chance, "The Anthropology of Honor and Shame: Culture, Values, and Practice," *Semeia* 68 (1994): 139-51; Saul M Olyan, "Honor, Shame, and Covenant Relations in Ancient Israel and Its Environment," *JBL* 115 (1996): 201-18; T. R Hobbs, "Reflections on Honor, Shame, and Covenant Relations," *JBL* 116 (1997): 501-3; Phil J. Botha, "Shame and the Social Setting of Psalm 119," *OTE* 12 (1999): 389-400; Phil J. Botha, "Honour and Shame as Keys to the Interpretation of Malachi," *OTE* 14 (2001): 392-403; Jacqueline E. Lapsley, "Shame and Self-Knowledge: The Positive Role of Shame in Ezekiel's View of the Moral Self," in *The Book of Ezekiel: Theological and Anthropological Perspectives*, ed. Margaret S Odell and John T Strong, *SBLSymS* 9 (Atlanta, GA: SBL, 2000), 143-73; Johanna Stiebert, *The Construction of Shame in the Hebrew Bible: The Prophetic Contribution*, *JSOTSup* 346 (Sheffield: Sheffield Academic, 2002); Matthews, "Honor and Shame in Gender-Related Legal Situations," 97-112; Lemos, "Shame and Mutilation of Enemies," 225-41; Johanna Stiebert, "Shame and the Body," *OTE* 20 (2007): 798-829; Sandra Jacobs, *The Body as Property*, 1-11.

²⁶² Olyan, "Honor, Shame, and Covenant Relations," 204.

²⁶³ See Carol Delaney, "Seeds of Honor, Fields of Shame," in *Honor And Shame And The Unity Of The Mediterranean*, ed. David D. Gilmore, *AAAP* 22 (Washington, DC: American Anthropological Association, 1987), 35-48; and from the same volume, David D. Gilmore, "Introduction: The Shame of Dishonor," 2-21; Benjamin Kilborne, "Fields of Shame: Anthropologists Abroad." *Ethos* 20 (1992): 230-53; Barry O'Neill, *Honor, Symbols, and War* (Ann Arbor: University of Michigan Press, 2001).

²⁶⁴ Westbrook, "Emar and Vicinity," 673.

insulting to the creditor's reputation.²⁶⁵ Emar documents also attest that adult sons were to bestow "honour" (*palāḥu*) to their parents (Emar 256); failing to do so would mean disinheritance (TBR 78; Emar 30).²⁶⁶ The Pentateuch attests to children owing honour to parents,²⁶⁷ as well as the young owing honour to the elderly.²⁶⁸ It also contains a law concerning a bridegroom's honour vis-à-vis that of his bride and her family (Deut 22:13-21).²⁶⁹ Botha has shown how, across the biblical genres, one finds the specific expectation that worshippers owe honour (כבוד) to YHWH.²⁷⁰ Both the Mari archives and Ugaritic texts convey similar expectations concerning worshippers and their deities (ARM 2.77.14; KTU 1.17.20,30). Ugaritic and Babylonian material even extend the expectation of honour bestowal to the inner-dynamics of the divine realm, as they attest to inferior deities owing honour to their divine superiors (KTU 1.3 III 10; VI 19-20; 1.4 IV 26; VIII 28-29; *Enuma Elish* 4.3).²⁷¹ Everyone, it appears, owed honour to someone

²⁶⁵ For RE 10, 13 in contract-making, see p. 175.

²⁶⁶ For Emar 30 in contract-making, see p. 175.

²⁶⁷ Exod 20:1; Deut 5:16, 21:18-21; Ezek 22:7.

²⁶⁸ Lev 19:32. Isa 3:5; Lam 5:12.

²⁶⁹ Gary Beckman, "Family Values on the Middle Euphrates," in *New Horizons in the Study of Ancient Syria*, ed. Mark W. Chavalas and John L. Hayes, BMes 25 (Malibu: Undena, 1992), 61-68; Raymond Westbrook, "Emar and Vicinity," 671; Anselm C Hagedorn, "Guarding the Parents' Honour – Deuteronomy 21.18-21," *JSOT* 88 (2000): 101-21.

²⁷⁰ Exod 20:12; Deut 5:16; Hag 1:8; Mal 1:6; Ps 131. Phil J. Botha, "The 'Enthronement Psalms': A Claim to the World-Wide Honour of Yahweh," *OTE* 11 (1998): 24-39; Phil J Botha, "To Honour Yahweh in the Face of Adversity: A Socio-Critical Analysis of Psalm 131," *Skrif En Kerk* 19 (1998): 525-33; Phil J. Botha, "The Honour of the Righteous Will Be Restored," *OTE* 15 (2002): 320-34; Botha, "Honour and Shame as Keys to the Interpretation of Malachi," 392; David A Glatt-Gilad, "Yahweh's Honor at Stake: A Divine Conundrum," *JSOT* 26 (2002): 63-74.

²⁷¹ Cf. Ps 29:1-2: "Ascribe to YHWH, sons of God, ascribe to YHWH glory and strength. Ascribe to YHWH the glory due his name; bow before the LORD in the splendour of holiness."

else. Even the king was someone's inferior, given that deities were included in this system of relationships.

Thus the act of bestowing honour served as a means of social control in that each inferior's act of public deference to a superior reinforced the hierarchical framework of the given society. As the examples above suggest, these acts ranged from the deference a child showed before a parent, to the prostrated position a worshipper took in front of a deity's image or dwelling.

When an inferior refused to do this, though, the superior was publicly *dishonoured*, and this turned the order of the relationship on its head, with the superior shamed into inferior status. Such an act of dishonour was considered criminal because it threatened an entire social order when parents, gods, masters, and patriarchs lost their superior position.²⁷² The only way to undo the damage that these shame-inducing crimes inflicted on a hierarchically structured society was to restore the criminals back into their original inferior position. That kind of justice was only achieved through sanctioned, shame-inducing punishments.²⁷³

Sanctioned shaming appears to undo the damage of criminal shaming in three crucial ways. First, as Matthews explains, shame was similar to honour, in that it served as a means of social control. Thus, it too could

²⁷² The recognition of that threat is probably most evident in various official's defences. Take for example one of Egypt's Old Kingdom biographies, where the architect Nekhebu defends himself by stating, "I have never reduced anyone to servitude!" (Sixth Dynasty, Urk. 1, 217, lines 3-5). See also, "I have never reduced your daughters to servitude!" (Urk. 1, 77, line 4). Antonio Loprieno, "Slaves," in *The Egyptians*, ed. Sergio Donadoni, trans. R. Bianchi (Chicago: University of Chicago Press, 1997), 194.

²⁷³ Victor H. Matthews, "Honor and Shame in Gender-Related Legal Situations," 98; Bechtel, "Shame as a Sanction of Social Control," 53.

impose “legal measures and procedures” that would repress undesirable behaviour.²⁷⁴ Second, shame preserved “social cohesion” by creating “social distance between deviant members and the group.”²⁷⁵ The third function, and likely the most crucial for correcting the damage created by criminal shaming, is that it worked as a “means of dominating others and manipulating social status.”²⁷⁶ In other words, sanctioned shaming restored the order in relationships by allowing the wrongfully placed inferior to shame their way back to a superior status.

The shaming pattern of crime and punishment as it manifests in ancient Near Eastern law, then, is talionic at its root: shame was the punishment for shame. That being said, “shame for shame” cannot be wholly subsumed under the talionic pattern because, unlike the talion, shame is wholly dependent on what Lemos describes as “the observing other.”²⁷⁷ For shame to function as a punishment, an entire community of observing others must know to shift their perception of and behaviour toward the culprit. Thus the shaming pattern does not simply exhibit a talionic logic; it also exhibits a concern for social control. The attributes of the shaming pattern, therefore, centre on aspects of social participation. The next section turns to outline how this manifests in ancient Near Eastern law.

²⁷⁴ Matthews, “Honor and Shame in Gender-Related Legal Situations,” 98.

²⁷⁵ Bechtel, “Shame as a Sanction of Social Control,” 53.

²⁷⁶ Bechtel, “Shame as a Sanction of Social Control,” 53.

²⁷⁷ Lemos, “Shame and Mutilation of Enemies,” 203.

It then addresses how the psalmist uses the shaming pattern, with all of its socially-centred features, to call for the punishment of enemies.

The Shaming Pattern in Law

The shaming pattern centres on responding to a criminal act in a way intended to sabotage a victim's social standing. The current section will focus on a certain crime that fell into this category, namely, the act of insubordination, or overt rebellion on behalf of an "inferior" in any given relationship. As will become evident, such an act was regarded as shaming the superior and therefore punished with a shaming response.

Being rooted in a talionic logic, there are instances in which the shaming pattern exhibits talionic features. Matching language as well as matching means/method, for example, are evident in an Emar document, RAE 257, in which the punishment for a man who has wrongfully kept a slave is made to be a slave himself.²⁷⁸ The means/method feature is also evident in the Middle Assyrian material. In MAL A 40, a prostitute commits the crime of covering her head, an outward symbol distinctive of wives, concubines, and virgins. For the crime of presuming a status other than her own, her head is covered again: this time with hot pitch.²⁷⁹ Finally, in the Hebrew Bible, matching language characterizes YHWH's speech in 1 Samuel 2:30:

1 Sam. 2:30 Therefore YHWH, the God of לָכֵן נִאֲמַרְיָהוּהָ אֱלֹהֵי

²⁷⁸ Cf. p. 124. Westbrook, "Emar and Vicinity," 688.

²⁷⁹ See full text on p. 115. Roth, *Law Collections*, 168.

Israel, declared: "I promised that your house and the house of your father should go in and out before me forever," but now YHWH declares: "Far be it from me, for those who honour me I will honour, and as for those who despise me they will be diminished."

יִשְׂרָאֵל אָמַר אֶמְרָתִי
בֵּיתְךָ וּבֵית אָבִיךָ
יִתְהַלְּכוּ לְפָנַי
עַד-עוֹלָם וְעַתָּה
נֶאֱמַר-יְהוָה חָלִילָה
לִּי כִּי-מִכְבְּדֵי אֶכְבֵּד
וּבְנֵי יִקְלֹוּ:

Here one can see the intentional repeat of language: those who honour (כבד) YHWH will receive honour (כבד). There is also an intentional matching of "methods": those who despise YHWH (בוזה), they will be diminished (קלל). As Olyan argues,

...this verse illustrates perfectly the ideal expectations of reciprocal honor: to repay honor is the appropriate response to the one who bestows honor; likewise, to return humiliation is the goal of one who is diminished or despised by a treaty partner.²⁸⁰

Olyan's choice to use the term "repay" in his own description is fitting; it is characteristic language of the talionic pattern and indicative of the inherent logic informing the text. The talionic quality of these punishments, though, is enveloped into a more prominent shaming pattern of crime and punishment. As will become apparent, these allusions to talion are better understood as part of the shaming pattern's features, which revolve around social participation.

²⁸⁰ Olyan, "Honor, Shame, and Covenant Relations," 205-6.

CHANGING THE CRIMINAL'S APPEARANCE

To punish someone by shaming them depends entirely on a community shifting its perception and subsequent treatment of the criminal to that which was expected for his or her new, lower status. Anthropologists have long observed that many cultures distinguish the status of persons through body marking: by lacerating, shaving, tattooing, or circumcising them.²⁸¹ Some call all of these markings "mutilation" but, if one follows Lemos, then this word should only apply to "a negatively constructed somatic alteration."²⁸² This is helpful because it distinguishes these negative kinds of markings from alterations of the body that may be revered.

Mutilations are the kinds of alterations which affected "an actual status change" on the victim's body, resulting in his or her newfound association with a lower status group.²⁸³ For example, in the Isin/Larsa document, *Ana ittishu* VII.A.1-6, a son who repudiates his mother is to have "half his head shaved."²⁸⁴ This kind of change in appearance was significant in Mesopotamian contexts because a partially shorn head was a common designation of a slave. There is evidence of this in Old Babylonian attestations of an "*abbuttu* lock," which, on an otherwise shorn head, was a lock of hair that marked a slave's status (LH 146, 226-27; LE 51-52; CAD

²⁸¹ Raymond Firth, *Symbols Public and Private* (Ithaca: Cornell University Press, 1973), 288-98; Anthony Synnott, *The Body Social: Symbolism, Self, and Society* (London; New York: Routledge, 1993), 127; Jacobs, *The Body as Property*, 1-11.

²⁸² Lemos, "Shame and Mutilation of Enemies," 226.

²⁸³ Lemos, "Shame and Mutilation of Enemies," 226.

²⁸⁴ Tetlow, *Women, Crime, and Punishment*, 34; Driver and Miles, *The Babylonian Laws*, 2:308-11.

5.130). When the slave was freed, the lock was cut as well.²⁸⁵ To shave half the head, then, would blur the visible separation between the appearance of slavery and freedom.

A shame-inducing change in appearance is also in MAL 40:

MAL A 40 A prostitute will not be veiled, her head will be bare. Whoever sees a veiled prostitute will seize her, secure witnesses, and bring her to the palace entrance. They will not take away her jewellery, but he who has seized her takes her clothing; they will strike her 50 blows with rods; they will pour hot pitch over her head...Slave women should not be veiled, and he who should see a veiled slave woman will seize her and bring her to the palace entrance; they will cut off her ears; he who seizes her will take her clothing.²⁸⁶

With regard to the prostitute's punishment, the reason for the hot tar was not only to "match" her crime in some form but to also ensure she would have to shave her head, thus rendering her slave-like. As for the slave woman, her total loss of ears follows the particular logic of the shaming pattern, which is to lower the status of the criminal. A slave was already living within the lowest social group in her society, designated by a shorn head. The only shame-inducing punishment available was one which stripped her status as a human, removing parts of her head to indicate her more acute shame. In addition to being "veiled" in hot pitch and losing ears, both women are also subject to being stripped of their clothing, a shame-

²⁸⁵ Saul M Olyan, "What Do Shaving Rites Accomplish and What Do They Signal in Biblical Ritual Contexts," *JBL* 117 (1998): 613.

²⁸⁶ Roth, *Law Collections*, 168.

inducing act widely attested throughout the ancient Near East.²⁸⁷

The crime of adultery also commonly invoked a shame-inducing change in appearance as punishment for the adulterer. An Old Babylonian trial record, for example, concerns a husband having caught his wife and her lover in the bedroom (IM 28051). The woman is made to pay divorce money, but the explicit intent to shame her is apparent in the punishment inflicted on her body and face: her pudenda is shaved “as a prostitute” and her nose is bored with a stick.²⁸⁸ This record, Westbrook and Otto argue, is indicative of actions taken by ancient Near Eastern husbands who “sent their wives away” to shame and humiliate them.²⁸⁹ Exile included stripping her naked, mutilating her face and shaving her genitalia; all of these would have been an assault upon the wife’s physical appearance. They were therefore an assault upon the physical representation of her social standing to observing others. By shaming her husband through the act of adultery, she was “stripped” of her honour – by all that represented her honour – in return.

²⁸⁷ LaFont, “Middle Assyrian Period,” 553. From the same period, AfO 17 (1954–56) 283:31 stipulates that “they will pierce the harem woman’s nose” as punishment for challenging another woman. Jo Ann Hackett and John Huehnergard, “On Breaking Teeth,” *HTR* 77, no. 3–4 (1984): 267.

²⁸⁸ This record is unusual in that it provides such detail. The husband actually ties both the wife and her lover to a bed and brings them to court that way. Samuel Greengus, “A Textbook Case of Adultery in Ancient Mesopotamia,” *HUCA* 40/41 (1969): 33–44; Martha T. Roth, “The Slave and the Scoundrel CBS 10467, a Sumerian Morality Tale?,” *JAOS* 103 (1983): 275–82.

²⁸⁹ Westbrook, “Adultery in Ancient Near Eastern Law,” 558–63; Eckart Otto, *Gottes Recht als Menschenrecht: Rechts- und literaturhistorische Studien zum Deuteronomium* (Wiesbaden: Harrassowitz, 2002), 258–59; but see also Daniel I. Block, “‘You Shall Not Covet Your Neighbor’s Wife’: A Study in Deuteronomic Domestic Ideology,” *JETS* 53 (2010): 449–74. But also see Shamma Friedmann, “The Case of the Woman with Two Husbands in Talmudic and Ancient Near Eastern Law,” *Israel Law Review* 15 (1980): 530.

The Pentateuch also shows a concern to change the appearance of a criminal as a shame-inducing punishment. For instance, in Deuteronomy 25:5-10, a brother is faced with the choice of carrying out an obligation to marry his late brother's widow or of publicly refusing it:

- | | | |
|------------|--|--|
| Deut 25:5 | If brothers dwell together, and one of them dies and has no son, the wife of the dead man will not be married outside the family to a stranger. Her husband's brother will go in to her and take her as his wife and perform the duty of a husband's brother to her. | כִּי־יֵשְׁבוּ אַחִים יַחְדָּו
וַיָּמָת אֶחָד מֵהֶם
וְבֵן אֵינְלֹו לְאִתְּהֵינָהּ
אִשְׁת־הַמָּת תַּחֲוֹצָה לְאִישׁ
זָר יִבְמָהּ וְבָא עָלֶיהָ
וְלָקַחְתָּהּ לוֹ לְאִשָּׁה וַיִּבְמָהּ׃ |
| Deut 25:6 | And the first son whom she bears will succeed to the name of his dead brother, that his name may not be blotted out of Israel. | וְהָיָה הַבְּכוֹר אֲשֶׁר
תֵּלֵד יִקְרָם עַל־שֵׁם אָחִיו
הַמָּת וְלֹא־יִמְחָה
שְׁמוֹ מִיִּשְׂרָאֵל׃ |
| Deut 25:7 | And if the man does not wish to take his brother's wife, then his brother's wife will go up to the gate to the elders and say, "My husband's brother refuses to perpetuate his brother's name in Israel; he will not perform the duty of a husband's brother to me." | וְאִם־לֹא יִחַפֵּץ הָאִישׁ
לְקַחְתָּ אֶת־יְבִמְתּוֹ
וְעָלְתָהּ יְבִמְתּוֹ הַשַּׁעֲרָה
אֶל־הַזְּקֵנִים וְאָמְרָה
מֵאִין יְבָמִי לְהַקְיִם
לְאָחִיו שֵׁם בְּיִשְׂרָאֵל
לֹא אָבָה יְבָמִי׃ |
| Deut 25:8 | Then the elders of his city will call him and speak to him, and if he persists, saying, "I do not wish to take her," | וְקָרְאוּ־לוֹ זְקֵנֵי־עִירוֹ
וְדַבְּרוּ אֵלָיו וְעָמַד
וְאָמַר לֹא חָפְצָתִי
לְקַחְתָּהּ׃ |
| Deut 25:9 | then his brother's wife will go up to him in the presence of the elders and pull his sandal off his foot and spit in his face. And she will answer and say, "So will it be done to the man who does not build up his brother's house." | וַנִּגְשָׁה יְבִמְתּוֹ אֵלָיו
לְעֵינֵי הַזְּקֵנִים וְחָלְצָה
נַעֲלָו מֵעַל רַגְלוֹ וַיִּרְקַה
בְּפָנָיו וְעָנְתָהּ וְאָמְרָה
כַּכָּה יַעֲשֶׂה לְאִישׁ אֲשֶׁר
לֹא־יְבַנֶּה אֶת־בַּיִת אָחִיו |
| Deut 25:10 | And the name of his house will be called in Israel, "The house of him who had his sandal pulled off." | וַנִּקְרָא שְׁמוֹ בְּיִשְׂרָאֵל
בַּיִת חָלוּץ הַנָּעֵל׃ ׀ |

In the event of his refusal, part of the man's punishment is that the widow

will spit in his face (וַיִּרְקֵה בְּפָנָיו) in front of anyone to witness it at the city gate (v 9). Such behaviour even today suggests that humiliation is the end goal. Spitting in the face as a shame-inducing act is also attested in Numbers 12:14 in which, as a result of her father spitting in her face (בְּפָנֶיהָ) וַיִּרְקֵה, Miriam is “shamed (תִּפְּלֵם) for seven days.”

In addition to spitting, Isaiah 50:6 suggests that beard alteration constituted a shame-inducing change in appearance:

Is. 50:6	I gave my back to those who strike, and my cheeks to those who pull out the beard; ²⁹⁰ I hid not my face from disgrace and spitting.	גִּוִי נָתַתִּי לַמַּכִּים וּלְחָנִי לַמְרַטִים פָּנִי לֹא הִסְתַּרְתִּי מִכְּבֹלְמוֹת וָרֶק :
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This account of abuse during exile demonstrates how the author registers these acts as shaming upon him. Giving one’s cheeks over to “those who make smooth” (לְמַרְטִים) is equated with both social disgrace (כְּבֹלְמוֹהָ) and literal spittle (רֶק). In a similar vein:

2 Sam. 10:4	So Hanun took David’s servants and shaved off half the beard of each and cut off their garments in the middle, at their hips, and sent them away.	וַיִּקַּח חֲנָנוֹן אֶת־עַבְדֵי דָּוִד וַיִּגְלַח אֶת־חֲצֵי זָקָנָם וַיִּכְרֹת אֶת־מִדְּוֵיהֶם בְּחֻצֵי עַרְשֵׁתוֹתֵיהֶם וַיִּשְׁלַחם :
2 Sam. 10:5	When it was told David, he sent to meet them, for the men were greatly ashamed. And the king said, “Remain at	וַיִּגְדּוּ לְדָוִד וַיִּשְׁלַח לְקִרְאתָם כִּי־הָיוּ הָאֲנָשִׁים נִכְלָמִים מְאֹד וַיֹּאמֶר

²⁹⁰ Lit. “those who make smooth.”

Jericho until your beards have grown and then return.”

הַמְּלֶכֶת שָׁבוּ בִּירְחוֹ עַד-יִצְמַח
זְקָנְכֶם וְשָׁבְתֶם :

Hanun has retaliated for David’s supposed intent “to turn” (וְלִהְפָּכָה) the city of the Ammonites into his own city (v 3). V 5 makes it clear that the intention in shaving the servants’ faces and exposing their bottom half was to humiliate them: “the men were greatly shamed” (נִכְלְּמִים מְאֹד). If there is any question that their shame is directly related to the assault on their appearance, it is assuaged by David’s advice to “remain at Jericho until your beards have grown” (v 5). As Lemos has discussed, there is much material evidence to suggest that “it was normative for ancient Near Eastern men, including Israelites, to wear full beards.”²⁹¹ The text itself affirms this; there is no option for the men to return clean shaven and have all be well. Lemos, Stone, and McCarter argue that the partial shaving of the beard would signal “a lowering of status by removing that which visibly separates one status group from another, that is, men from women.”²⁹² Recalling the separation that shaving created between citizens and slaves in Mesopotamian contexts, these servants might also have risked their social standing had they arrived in their city appearing slave-like.

²⁹¹ Lemos, “Shame and Mutilation of Enemies,” 233.

²⁹² Lemos, “Shame and Mutilation of Enemies,” 233; Ken Stone, *Sex, Honor, and Power in the Deuteronomistic History*, JSOTSup 234 (Sheffield: Sheffield Academic, 1996), 122–23; P. Kyle McCarter, *II Samuel: A New Translation with Introduction and Commentary*, AB 9 (New York: Doubleday, 1984), 270.

Finally, there is an account in 1 Samuel 10:27b–11:11 which, in Lemos' words, "deals with the trouble stirred up by Naḥash the Ammonite."²⁹³ The trouble in question is his gouging out the right eyes of those in the tribes of Gad and Reuben (10:27). Naḥash makes the shame-inducing function of the punishment explicit, when he announces to the tribes that he will be "boring out all of your right eyes (כָּל-עֵינַיִם יִמְיִין) לְכַם (בְּנִקְוֹר), so that I may bring disgrace (תִּרְפָּה) upon Israel" (11:2).²⁹⁴ Though drastic and certainly permanent, his action coheres with a shaming pattern of crime and punishment by affecting his victim's change in appearance.

CARRYING OUT THE PUNISHMENT PUBLICLY

Anthropologists have long highlighted the public dimension of shame,²⁹⁵ thus it should be no surprise that one of the defining features of the shaming pattern in ancient Near eastern legal culture is the public nature of the punishment.²⁹⁶ This manifests in two broad categories of public humiliation. The first is an initial retaliation in front of observers. If one returns to the Mesopotamian material, this is evident in the Old Babylonian CT 45 18:14–16: in addition to shaving the slanderer's head and boring his

²⁹³ Lemos, "Shame and Mutilation of Enemies," 229.

²⁹⁴ Robert Alter, *The David Story: A Translation with Commentary of 1 and 2 Samuel* (New York: W.W. Norton, 1999), 50.

²⁹⁵ Delaney, "Seeds of Honor, Fields of Shame," 35–48; Gilmore, "Introduction: The Shame of Dishonor," 2–21; Kilborne, "Fields of Shame: Anthropologists Abroad," 230–53.

²⁹⁶ Olyan, "Honor, Shame, and Covenant Relations," 207–8.

nose, the punishers "stretched out his arms and led him around the city."²⁹⁷

From Alalakh, in AT 11 a woman whose claim is rejected as slanderous is struck by the accused as her punishment.²⁹⁸ As Malul argues, this is presumably to shame her in front of the court or public.²⁹⁹

Flogging is a punishment that reflects more than one of the features of the shaming pattern. With regard to appearance, flogging accomplished the physical effect of leaving welts on the criminal's person. In addition the actual act of flogging itself was designed to be public and therefore humiliating. In the Old Babylonian LH 127, for example, a man is to be flogged "before the judges" for dishonouring another man's wife.³⁰⁰ There is also LH 202:

LH 202 If an *awīlu* should strike the cheek of an *awīlu* who is of status higher than his own, he will be flogged in the public assembly with 60 stripes of an ox whip.³⁰¹

In addition to flogging's public – and therefore shaming – nature, this text also brings up an interesting element in flogging punishments: the occasional limit set on the specific number of stripes due. Another example of this occurs in Deuteronomy 25:2-3:

²⁹⁷ Cf. pp. 148, 155. Westbrook, "Old Babylonian Period," 423.

²⁹⁸ For the nature of the claim, see p. 149.

²⁹⁹ Meir Malul, *Studies in Mesopotamian Legal Symbolism* (Neukirchen-Vluyn: Neukirchener Verlag, 1988), 432.

³⁰⁰ See text in full on p. 147, cf. 155. Westbrook, "Old Babylonian Period," 424; Jackson, *A Comparison*, 227.

³⁰¹ Roth, *Law Collections*, 121.

- Deut 25:2 then if the guilty man deserves to be beaten, the judge will cause him to fall and be beaten in his presence with a number of stripes in proportion to his wickedness.
- Deut 25:3 Forty stripes may be given him, but not more, lest, if one should go on to beat him with more stripes than these, your brother be degraded in your sight.

וְהָיָה אִם־בֵּן הַפֹּת הַרְשָׁע
וְהַפִּילֹוּ הַשֹּׁפֵט וְהַכָּהוּ
לְפָנָיו כְּכִי רִשְׁעָתוֹ בְּמִסְפָּר

אַרְבָּעִים יִכְנוּ לֹא יִסֶּיף
כִּי־יִסֶּיף לְהַכֹּתוֹ עַל־אַלְהֵי
מִכָּה רַבָּה וְנִקְלָה
אֲחִיךָ לְעֵינֶיךָ :

The limit on stripes was of course set in part for survival, given that someone could be flogged to death. As the Deuteronomy text makes clear, it was also set in relation to the crime. From the perspective of a shame-inducing punishment, however, one has to ask if there was a particular number of stripes necessary in order to *be shamed*. In other words, was there a version of flogging that did not bring shame on the recipient because the number of stripes was too low? Koschaker's work on flogging affirms the biblical imagery; he shows that the criminal was often stripped naked and made to lay down in a prostrate position to receive the beating.³⁰² This is crucial; if one follows Keel, the prostrate position alone was a form of humiliation, by virtue of making the person physically closer to the ground than the person inflicting the punishment and the crowd observing the whole spectacle.³⁰³

To be stripped naked and flogged intensified the shame which was already occurring by virtue of the criminal's posture.

³⁰² Paul Koschaker, *Rechtsvergleichende Studien zur Gesetzgebung Hammurapis: Königs von Babylon* (Leipzig: Veit, 1917), 207-10; Matthew W. Stolper, *Entrepreneurs and Empire: The Murašû Archive, the Murašû Firm, and Persian Rule in Babylonia*, Nederlands Historisch-Archaeologisch Instituut Te Istanbul 54 (Leiden: Nederlands Instituut voor het Nabije Oosten, 1985), no. 91; Wells, "Sex, Lies, and Virginal Rape," 57.

³⁰³ Keel, *The Symbolism of the Biblical World*, 76, 308.

The public element of sanctioned shaming is also evident in the Pentateuch. Returning to the case of the man and his brother's widow in Deuteronomy 25:5-10,³⁰⁴ it is clear in vv 9-10 that an integral part of the shamefulness of the brother's punishment is its public nature. The widow is not to just spit in the brother's face, but do so before "the eyes of the elders." She is also to "withdraw his sandal from his foot" (וְהִלְצָה נַעֲלָיו מֵעַל רַגְלוֹ). Scholars typically assume this act is meant to induce the brother's shame by virtue of its association with being spat in the face. Bechtel-Huber and Carmichael add that the act of seizing the brother's sandal from his foot may have "symbolized the removal of his Levirate privilege of having sexual intercourse and producing an heir."³⁰⁵ This is based on the wide biblical attestation of "feet" serving as a euphemism for the penis.³⁰⁶ Thus, in addition to spitting in his face, the widow symbolically assaults her brother-in-law's genitalia.

This case also reflects another kind of public humiliation, which is when criminals are forced to live in a manner that is beneath their original

³⁰⁴ See full text on p. 117-18.

³⁰⁵ Bechtel, "Shame as a Sanction of Social Control," 60; C. Carmichael, *Women, Law, and the Genesis Traditions* (Edinburgh: Edinburgh University Press, 1979), 65-73. Following Bader's work on Judith, it may also be the case that the shame is brought on by a woman – rather than a man – pulling the sandal off in the first place. As Bader has argued with relation to Judith 13-14, it seems the greatest shame in Holofernes having his head cut off is not that it was done with his own sword, but rather that "YHWH has struck him down by the hand of a female" (13:15). This is later affirmed by Holofernes' steward, in his exclamation that "One Hebrew woman has brought shame on the house of King Nebuchadnezzar!" Mary Anna Bader, *Tracing the Evidence: Dinah in Post-Hebrew Bible Literature* (New York: Peter Lang, 2008), 115-134

³⁰⁶ Jdg 3:24; 1 Sam 24:3; 2 Kgs 18:27; Isa 7:20; Ezek 16:25; and, if we follow Bechtel-Huber, Exod 4:25; Deut 28:57; Isa 6:2

social standing. In v 10, the brother's house takes on the new label, defined by a shameful act. As a result, it undergoes a shift in existence in the eyes of his community. The new label was one "that would remain with the family in the form of a perpetually shameful reputation."³⁰⁷ Said another way, because the brother refuses to perpetuate his brother's name through an heir, his name will evermore be ruined in the community.³⁰⁸

Documents from Egypt and Emar also attest to criminals being forced to live the life of those in a lower social status. From Egypt there are the Nauri and Horemheb Decrees, in which a king's official is stripped of his status and made to work in the crops as a cultivator because of his insubordination.³⁰⁹ This punishment makes the official work outside his social status, because he challenged the king's superiority by refusing to carry out a royal order.³¹⁰ From Emar, there is RAE 257, concerning the man who stole and kept a slave. This criminal act was not just about taking a slave that was not his; it was also about taking on a status as "slave owner" that was not his. For adopting a status undeserved, the criminal's punishment was to live the life of a slave, serving the owner from whom he stole.³¹¹

³⁰⁷ Bechtel, "Shame as a Sanction of Social Control," 61.

³⁰⁸ As Bechtel-Huber puts it, the whole sanction displays "the importance of public humiliation and public opinion as a means of social control." Bechtel, "Shame as a Sanction of Social Control," 57.

³⁰⁹ Abd al-Muhsin Bakir and Abd el Mohsen Bakir, *Slavery in Pharaonic Egypt*, Vol. 18. (Cairo: The French Institute of Oriental Archaeology, 1952).

³¹⁰ Jasnow, "Egypt: New Kingdom," 342; Katary, *Land Tenure in the Ramesside Period*, 186; S. Allam, "Quenebete et administration autonome en Égypte Pharaonique." *RIDA* 43 (1995): 58-59.

³¹¹ Cf. p. 112. Westbrook, "Emar and Vicinity," 688.

To bring all of these examples of changing appearances and public punishments into a summary: a person lost their superior status in any given relationship hierarchy by being challenged by an inferior in front of watchful eyes. Likewise, that person could only regain their superiority in the public arena. A crime which publicly damaged the reputation of the victim required a punishment that restored the relationship hierarchy by damaging the reputation of the perpetrator to an equivalent degree. The attributes of the shaming pattern of crime and punishment are built on this reality. Though the pattern assumes a kind of talionic logic, it is distinct from the talionic pattern by virtue of incorporating an observing community into how it achieves justice. The psalmist knows and accepts this distinction, offering his own legal understanding and reflection on what it means to seek out justice to repair the damage caused by shame-inducing crimes.

The Shaming Pattern in the Psalms

Treatments of shame in the psalms have traditionally focussed on the psalmist's depictions of his own suffering, a good example being scholarly engagements with Psalm 69. Kraus, for instance, points to the shameful elements of the psalmist's suffering by drawing the reader's attention to the "peculiar mark of cruelty" in vv 20-22, in which the enemies offer the psalmist the antithesis of hospitality:³¹²

³¹² Kraus, *Psalms 60-150*, 63; cf. T.R. Hobbs, "Hospitality in the First Testament and the 'Teleological Fallacy,'" *JSOT* 95 (2001): 3-30.

Ps 69:20	You know my reproach, and my shame and my dishonour; my foes are all known to you.	אַתָּה יְדַעַתְּ תְּרַפְתִּי וּבִשְׁתִּי וּכְלִמָּתִי וְגִדְדִי כָּל־צוֹרְרָי: ³¹³
Ps 69:21	Reproach has broken my heart, so that I am in despair. I waited for pity, but there was none, and for comforters, but I found none.	תְּרַפָּה שִׁבְרָה לִבִּי וְאַנּוּשָׁה וְאַמְנָה לְנִיד וְאַיִן אֶל־מְנַחֲמִים וְלֹא מְצֵאתִי: ³¹⁴
Ps 69:22	They put poison in my food, and for my thirst they gave me vinegar to drink.	וַיִּתְּנוּ בְּבִרוֹתַי רָאֵשׁ וְלִצְמָאִי יִשְׁקֶנּוּ חֶמְצִין: ³¹⁵

The social norms of hospitality, as Kraus outlines, are rooted in the idea that one bestowed honour on a guest through offering one's home and food.

Citing 2 Samuel 3:35; 12:17, he explained that

it was customary to refresh with a meal, a "bread of comfort," those who were in great sorrow. But to the petitioner, who is under threat of death, "poison" and "vinegar" are given – nourishment which does not assuage agony but increases it.³¹³

Though Kraus acknowledges that the shameful state of the psalmist is due to a violation in social custom, he does not explore the legal implications that the psalmist may be trying to describe. The focus is instead on the psalmist as a sufferer. In a similar way, Brown has also explored the psalmist's portrayal of his shame in Psalm 69, drawing attention to the way that the psalmist describes his insufferable life as being the result of his enemies' treatment: he has "sunk" into "deep waters," where the shame brought on by their treatment of him is "swallowing him up" (69:1-4).³¹⁴

³¹³Kraus, *Psalms 60-150*, 63; cf. Hedwig Jahnow, *Das hebräische Leichenlied im Rahmen der Völkerdichtung*, (Giessen: A. Töpelmann, 1923), 31-43.

³¹⁴William P. Brown, *Seeing the Psalms*, 113-14; see also Leslie C. Allen, "The Value of

What is lacking in Brown's treatment as well is the recognition that shame is more than simply an emotion that the psalmist feels, or even a social state in which he is trapped. Rather, shame in the psalms is part of a defined pattern, informed by legal culture. The psalmist reflects on the implications of shame-inducing crimes and their corresponding shame-inducing punishments with particular reference to his enemies, all while drawing from the features of the shaming pattern.

CHANGING THE CRIMINAL'S APPEARANCE

The psalmist draws upon the shaming pattern's "change in appearance" response with his use of clothing imagery. On the one hand, he uses clothing to describe his own shameful state which results from his enemies' crimes. Disgrace, for instance, "covers" the psalmist's face in Psalm 69:8. On the other hand, he uses it to describe the punishment beset upon his enemies, in an effort to correct the damage done by their crimes. YHWH is thus called upon the "cover" or "clothe" his enemies "with shame" (Ps 89:46; 132:18).

Psalm 35 is interesting because the psalmist not only identifies shame as both a crime and a punishment, but also conveys it as integral to a proper relationship with YHWH. He does this by presenting himself as having adopted the humiliating posture of sackcloth and fasting, as a penitential

Rhetorical Criticism in Psalm 69," *JBL* 105 (1986): 577-98.

effort on behalf of his friends. Crucially, he presents this through a focus on outward appearance that characterizes shame-related law.

Ps 35:13	But I, when they were sick – I wore sackcloth; I afflicted myself with fasting; I prayed with head bowed on my chest.	וְאֲנִי בַחֲלוֹתָם לְבוּשֵׁי שֵׁק עָנִיתִי בְצוּם נַפְשִׁי וְתַפְלְתִּי עַל־חֵיקִי תָשׁוּב:
Ps 35:14	I went about as though I grieved for my friend or my brother; as one who laments his mother, I bowed down in mourning.	כְּרַע־כַּאֲחַי לִי הִתְהַלַּכְתִּי כְּאֶבְל־אִם קָרַר שִׁחוֹתִי:

Here the psalmist is clothed in a temporary inferiority by virtue of wearing sackcloth (לְבוּשֵׁי שֵׁק; cf. Pss 30:11; 35:13; 69:11). Sackcloth, as is clear from its other attestations in the Bible, is an outward symbol of humility that the penitent takes on while mourning and, on occasion, in petitionary prayer. In Isaiah 58:5, for example, wearing a sackcloth is associated with a person humbling himself (עֲנָה), with bowing down the head, and – most importantly – with a display of inferiority directed toward YHWH. A helpful analogy might be found in how the English notion of humility reflects a similar kind of social status, with its degree of positivity or negativity related to whether the inferior's status is socially "correct." To be voluntarily lowly, then, is wholly different than being humiliated by another. The psalmist's first presentation of himself in Psalm 35 is in this state of voluntary lowliness – but, importantly – lowliness vis-à-vis YHWH. His taking on a humiliating change in appearance is used deliberately to petition YHWH's help by

showing how he is aware of his own position in this relationship.³¹⁵ This change in the psalmist's appearance is accompanied by additional language that indicates an emphasis on a lower standing: through fasting he is also humiliated (ענה) and in prayer he is bowed down (שחח; v 14). Significantly, the word שחח is used not only for a humble, prayerful posture, but also for the humiliating posture forced upon defeated enemies.³¹⁶ Thus even in the presentation of humble prayer, debasement before a superior is present.

It is only after presenting himself as postured low and dressed in sackcloth that the psalmist presents his enemies' criminal actions:

Ps 35:15	But at my stumbling they rejoiced and gathered; they gathered together against me; wretches whom I did not know tore at me without ceasing;	וּבְצִלְעֵי שְׂמֹחֵי וְנֹאֲסָפִי נֹאֲסָפִי עָלַי גְּבוֹיִם וְלֹא יָדַעְתִּי קָרְעוּ וְלֹא-יָדָעוּ
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In the psalmist's outward state of humiliation toward YHWH, his enemies tear (קרע) at the very clothing which signals his humble posture, thereby not only forcing him lower, beyond his voluntary debasement, but lower for their sake rather than YHWH's. In other words, they steal the superior role of the YHWH-psalmist relationship by shaming the psalmist.³¹⁷ The result of

³¹⁵ On this point with Proverbs, see John P. Dickson and Brian S. Rosner. "Humility as a Social Virtue in the Hebrew Bible?" *VT* 54 (2004): 459-79.

³¹⁶ Is. 60:14: "The sons of those who afflicted you will come bending low to you, and all who despised you will bow down at your feet; they will call you the City of YHWH, the Zion of the Holy One of Israel."

³¹⁷ This verb, "tear," (קרע) indicates their action intends to shame him; the same inflection of קרע (Qal perf 3cp) is only elsewhere used in relation to tearing garments as a humiliating act (cf. Num 14:6; 2 Sam 3:31; Jer 36:24; Joel 2:13).

changing the psalmist's appearance through torn clothing "is that of utter marginalization."³¹⁸

In response to his enemies' act, the psalmist calls for a punishment that evokes the same change in appearance, as is characteristic of the sanctioned, shame-inducing punishments for such crimes in the legal material. Thus:

Ps 35:26	Let them be put to shame and disappointed altogether who rejoice at my calamity! Let them wear (לְבָשׁוּ) shame (בִּשְׁתָּה) and disgrace (וּבְלִמָּה) ³¹⁹ the ones who magnify themselves against me!	יִבְשׁוּ וַיִּחְפְּרוּ וַיִּחְדְּרוּ שְׂמֹחֵי רָעָתִי יִלְבְּשׁוּ-בִּשְׁתָּה וּבְלִמָּה תִמְגְּדוּ-לִי עַלִּי :
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The psalmist juxtaposes the current superiority of his enemies with the shaming-inducing punishment that will bring them low once more. Crucially, it is a shame they will "wear" outwardly, as he did. It is also worth noting here the order of events directly following this verse, as they present a communal response:

Ps 35:27	Let those who delight in my righteousness shout for joy and be glad and say evermore, "Great is YHWH, who delights in the welfare of his servant!"	יִרְנוּ וַיִּשְׂמְחוּ תִפְצְצֵי צְדִיקִי וַיֵּאמְרוּ תְּמִיד יִגְדַּל יְהוָה הַתְּפִיץ שְׁלוֹם עַבְדּוֹ :
Ps 35:28	Then my tongue shall tell of your righteousness and of your praise all the day long.	וּלְשׁוֹנִי תִהְיֶה צְדִיקֶךָ כָּל-הַיּוֹם תְּהַלְּלֶךָ :

³¹⁸ Gerstenberger, Psalms, 1:151. See Job 19:13-19; 30:9-15; Pss 22:8; 38:12; 55:13-15, 21-22; 88:9, 19.

³¹⁹ Cf. Job 8:22: "Those who hate you will wear shame (לְבָשׁוּ-בִּשְׁתָּה), and the tent of the wicked will be no more."

It is only after the enemies are clothed in shame that the community delights in the welfare (שְׁלוֹם) of the psalmist. Furthermore, it is only after the community acknowledges the psalmist's restored שְׁלוֹם that he then speaks of YHWH's righteousness in having restored him. This order of response – first the community's and then the psalmist's – reveals the extent to which the shaming pattern of crime and punishment depends on communal participation. Thus the psalmist's words of praise are not just an end to the psalm, but confirm that the community has once again shifted their behaviour toward him and his enemies; this time, it is in a manner that coheres with his שְׁלוֹם.³²⁰

In Psalm 109, the psalmist also expresses his shame through depictions of clothing. The presentation here, however, is admittedly more complex:

Ps 109:17	He loved to curse; let curses come upon him! He did not delight in blessing; may it be far from him!	וַיֵּאָהֵב קָלְלָהּ וַתְּבוֹאֶהוּ וְלֹא־חָפֵץ בְּבִרְכָּהּ וַתִּרְתַּק מִמֶּנּוּ:
Ps 109:18	He clothed himself with cursing as his coat (מִדָּר); and it entered into his body like water, like oil into his bones!	וַיִּלְבַּשׁ קָלְלָהּ כְּמִדָּר וַתִּבֵּא כַּמַּיִם בְּקִרְבּוֹ וְכַשֶּׁמֶן בְּעֲצְמוֹתָיו:
Ps 109:19	May it be like a garment (בְּגָד) that he wraps (עָטָה) around him, like a belt (מִזְוָה) that he	תִּחְיֶלּוּ כְּבִגְד יְעָטָה וְלִמְזוֹת תִּמְנִיד וַתִּגְרָתָּ:

³²⁰This communal cue may also be read as an indicator of this psalm's function in ancient liturgical practice. Kutsch and Seybold visualize it as a prayer service for the suffering individual, where these recitations of the speaker and the community are played out in a ritual that restores the sufferer to a circle of family and friends. Gerstenberger, *Psalms*, 1:153; Ernst Kutsch, "'Trauerbräuche' und 'Selbstminderungsriten' im Alten Testament," *ThSt(B)* 78 (1965): 25–42; Klaus Seybold, *Das Gebet des Kranken im Alten Testament*, BWANT 99 (Stuttgart: Kohlhammer, 1973).

puts on every day!

Scholars typically concentrate on one of two questions with these verses: their subject/speaker and their relation to curse material. The most tenable and accepted theory with regard to the first issue is that, in these verses, the psalmist is quoting what his enemies have said about him; thus he refers to himself in third person. As Zenger reasons, the psalmist “holds up this quotation before God in some sense as proof of his or her distress and this necessity that YHWH put an end to this business.”³²¹ Following Zenger’s logic, the Masoretic pointing of the verbs in v 18 as converted imperfects, makes sense conveying the simple past tense. In this reading, the psalmist presents the enemies’ statements as a narrative of past events as opposed to the jussive “May it enter his body.” As such, Kitz argues that “their words actually constitute an accusation”:³²² the psalmist is so adoring of curses that he “clothes himself” with them.

With regard to the second issue, scholars such as Kitz have tried to find a performative parallel in extant material to the language in v 18, focussing mainly on its relation to oath rituals.³²³ However, the psalmist frames his enemies’ claims inside the primary complaint that their words

³²¹ Erich Zenger, *A God of Vengeance?: Understanding the Psalms of Divine Wrath*, 1st ed. (Louisville: Westminster John Knox, 1996), 59; see also Thijs Booij, “Psalm 109:6-19 as a Quotation: A Review of the Evidence,” in *Give Ear to My Words: Psalms and Other Poetry in and Around the Hebrew Bible*, ed. Janet Dyk and Nico Adriaan van Uchelen (Amsterdam: Societas Hebraica Amstelodamensis, 1996), 91-106.

³²² Kitz, “Effective Simile and Effective Act,” 445-46.

³²³ Kitz, “Effective Simile and Effective Act,” 445; Anne Marie Kitz, “An Oath, Its Curse and Anointing Ritual,” *JAOS* 124 (2004): n. 34.

have sabotaged his social standing. As a result of their claims, the psalmist is socially sabotaged, not magically maligned:

Ps 109:22	For I am poor and needy, and my heart is stricken ³²⁴ within me	כִּי־עָנִי וְאֶבְיֹֹן אָנֹכִי : וְלִפִּי תִלְלַל בְּקִרְבִּי :
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Though curse plays a part here, ultimately the psalmist's use of curse language is to convey *how* he was shamed.³²⁵ The psalmist's choice to describe himself as oppressed and poor supports this point:

as a rule, [that phrase] indicates social exploitation and marginalization, not demonic or magic persecution...The [psalmist] is the object of public fear and contempt (v 25); he feels the uselessness of his (rehabilitative) fasting (v 24) and the physical effects of being shunned.³²⁶

Brueggemann even reasons that the "curse" in this context is "likely...the practice of policy toward the poor which causes economic ruin."³²⁷ The psalmist's choice to combine curse language with the imagery of clothing underlines his intent to describe his enemies' claims as shame-inducing. In the context of an ancient Near Eastern legal culture, the psalmist knows what will occur if his community believes his enemies' claims: he will be shamed and rejected. This is expressed through the imagery of his clothing: he will wear this shame as a garment (בְּגָד) that he wraps (עָטָה) around him,

³²⁴ See Menahem Zevi Kaddari, "CHLL 'Bore', 'Pierce': Note on Ps 109:22," *VT* 13 (1963): 486-89.

³²⁵ On curses see Ch. 3, Pt. 1.

³²⁶ Gerstenberger, *Psalms*, 2:261.

³²⁷ Brueggemann, *The Psalms and the Life of Faith*, 146; see also Norbert Lohfink, "Drei Arten, von Armut Zu Sprechen: Zu Psalm 109," *Theologie Und Philosophie* 72 (1997): 321-36.

like a belt (מִזוּחַ) that he puts on every day. In other words, it is as though the community will see a change in his appearance and treat him differently.

Still drawing on the shaming pattern, the psalmist then presents this particular manifestation of shame as the punishment due to his enemies:³²⁸

Ps 109:20	This is the punishment (פְּעֻלָּה) ³²⁹ of my adversaries (שֹׂטְנִים) from YHWH, of those who speak evil against my life!	זֹאת פְּעֻלַּת שֹׂטְנֵי מֵאֵת יְהוָה וְהַדְּבָרִים רָעֵי עַל-נַפְשִׁי:
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V 21 adds to the shaming pattern by appealing to YHWH's reputation in order to bring about justice.

Ps 109:21	But you, YHWH my Lord, deal with me for the sake of your name; deliver me because your lovingkindness is good!	וְאַתָּה! יְהוָה אֱלֹהֵי עֲשֵׂה-אֵתִי לְמַעַן שִׁמְךָ כִּי-טוֹב חַסְדְּךָ הַצִּילָנִי
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As Allen puts it, "Yahweh's honor is at stake."³³⁰

Finally in v 29, the psalmist underlines the nature of the punishment he sought in v 20:

Ps 109:29	May my accusers be clothed	יְלַבְּשׁוּ שׂוֹטְנֵי כְלָמָה
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³²⁸ Allen, *Psalms 101-150*, 105.

³²⁹ Punishment follows this use of the word in Isa 65:7. Kraus omits "from Yahweh" based on his rendering of פְּעֻלָּה as "work." Hans-Joachim Kraus, *Psalms 60-150*, trans. Hilton C. Oswald, 1st Fortress Press, CC 1 (Psalmen 2 1961/1978, Minneapolis, Minn.: Fortress, 1989), 337. Booij follows a similar rendering with "Such is the work of those agitating before YHWH." Thijs Booij, "Psalm 109:6-19 as a Quotation: A Review of the Evidence," in *Give Ear to My Words: Psalms and Other Poetry in and Around the Hebrew Bible*, ed. Janet Dyk and Nico Adriaan van Uchelen (Amsterdam: Societas Hebraica Amstelodamensis, 1996), 100-101.

³³⁰ Allen, *Psalms 101-150*, 105; cf. David A. Glatt-Gilad, "Yahweh's Honor at Stake: A Divine Conundrum," *JSOT* 26 (2002): 63-74.

with disgrace, may they be covered like a robe in shame! וַיַּעֲטוּ כַמְעִיל בְּשָׂהֶם :

Thus clothing plays an integral part in the psalmist's presentation of the shaming pattern in Psalm 109. Through clothing, the psalmist calls for a change in his enemies' appearance, as part of their punishment, as part of their disgrace.³³¹ The psalmist also plays on the talionic response of matching language to underline his "shame for shame" logic. Thus:

"clothed" (לְבָשׁ; וַיַּעֲטוּהָ) for "clothed" (וַיַּעֲטוּ; וַיַּלְבְּשׁוּ); Ps 109:18,29).³³²

In Psalm 71, clothing serves as an expression for a shame-inducing punishment only. After beginning the psalm with the petition of v 1b, "let me never be put to shame" (אַל-אֶבְיֹשָׁה לְעוֹלָם), the psalmist's punishment for those who "seek his ruin" is to "clothe" them in disgrace:

Ps 71:13 May my adversaries be put to shame, וַיִּבְשׂוּ וַיִּקְלוּ שְׂמֹנֵי נַפְשִׁי
finished; may they be wrapped (with) וַיַּעֲטוּ חֲרָפָה וַיִּלְמְנוּ
reproach and disgrace, those who מִבְּקִשֵׁי רַעְתִּי :
seek my hurt.

³³¹ "Small wonder that in confrontation with the adversaries the suppliant intimates again that they are doing damage by magic: they curse (v 28a), an they are to "wear" their own wicked machinations (v 29)." Gerstenberger, *Psalms*, 2:261.

³³² See also 40:13-16, it is בּוֹשׂ for בּוֹשָׁה. The psalmist recounts the enemies' "shaming" (v 16) and the punishment response is that they are "frustrated and disgraced" and that they "fall back in shame." Psalm 15 also uses the anti-talion imagery, by highlighting the ideal of honour as well as the behaviours that are its antithesis. Here the person who may "sojourn" on YHWH's mountain in vs 1 is not only one who "does what is right" (v 2) but who does not "take up a taunt (וַיִּרְפֹּד) toward his neighbour" (v 3).

In 89:46, clothing also expresses a shame-inducing punishment, to describe the loss of honour incurred by a military defeat (cf. Isa 23:9; Nah 3:10; Lam 1:8):

Ps 89:46	You have cut short the days of his youth; you have covered him with shame.	הַקְצַרְתָּ יָמַי עַל־וַיָּמִי עָלְיוֹ בּוֹשָׁה סִלָּה: הַעֲשִׂיתָ
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As Tate argues, “the highest of the kings of the earth in the divine scheme of things (v 28) has not been sustained in battle and has been thrown down to the dirt (v 45).”³³³ The shame incurred is due to the extreme shift from superior to inferior status. Crucially, it is still conveyed through outward appearance: YHWH has “covered” (עֲטָה) the fallen ruler “with shame” (שָׁהַ).³³⁴

In a similarly royal framework, the shaming pattern of crime and punishment is evident in Psalm 132:18. Psalm 132 is a messianic hymn with strong affinities to the Davidic tradition.³³⁵ In it the psalmist juxtaposes the superiority of a Davidic king and the inferiority of his enemies by using clothing imagery:

Ps 132:18	His enemies I will clothe with shame, but on him his crown will shine.”	אֹיְבָיו אֶלְבִּישׁ בֹּשֶׁת וְעָלְיוֹ יִצְיָץ נֹרָא:
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³³³ Tate, *Psalms 51-100*, 428.

³³⁴ Accordingly, for honour gained by military victory, see Exod 14:4, 17-18; 2 Kgs 14:10.

³³⁵ Thijs Booij, “Psalms 120-136: Songs for a Great Festival,” *Bib* 91 (2010): 241-55.

This contrastive set of clothing metaphors, as Hossfeld and Zenger argue, “underscore the powerful exercise of office by the restored Davidic kingship, while enemies are clothed (by YHWH!) with shame and disempowerment, on the head of the Davidic king the glowing royal diadem will shine.”³³⁶ The order of these contrasting metaphors is also pertinent; it reveals the psalmist’s awareness of the shaming pattern’s causal structure, as it manifests in ancient Near Eastern law. Just as a shamed victim’s restoration into society depends on the shame-inducing punishment of a criminal counterpart, here in the psalm it is only after the enemies are clothed in shame that the kingship is restored.

Also significant is how other attestations of the phrase “I will clothe” present YHWH as the clothier and relate his act of clothing to that of inducing either shame or honour. In Isaiah, for instance, YHWH announces, “I will clothe (אֶלְבִּישׁ) the heavens with blackness and make sackcloth their covering” (וְיָשַׁק אֲשֵׁרִם כְּסוּתָתָם; Is 50: 3). In Ezekiel, the phrase appears as part of a scene in which YHWH elevates the status of Jerusalem from a discarded savage to wife and consort. Crucially, the change in her status is synonymous with a change in appearance: “I clothed you also with embroidered cloth and shod you with fine leather. I wrapped you in fine linen and covered you with silk” (Ezek 16:10). In Psalm 132, he announces “I will clothe” the priests of the restored Davidic kingdom “with salvation (יִשְׁעֵי

³³⁶ Hossfeld and Zenger, *Psalms* 3, 466.

וְזָכַרְנִיהָ אֱלֹהִים (132:16). Thus the God who clothes even the heavens is the one to whom the psalmist calls to restore his powerful enemies to their place.

The psalmist also uses clothing to depict his own shameful status, as a consequence of his enemies' crimes. In Psalm 69:8, for example, the psalmist blames his fidelity to YHWH as the reason for his social humiliation and depicts his shameful state as a form of covering:

Ps 69:8 For it is for your sake that I have כִּי־עָלִיב נִשְׂאֲתִי חֲרָפָה
 taken reproach, that disgrace has כִּסְתָה כָּלִמְנָה פָּנָי:
 covered my face.

When used in relation to a person, **כסה** conveys issues with social status and shame-inducing actions. It is the word often used to describe covering nakedness, such as when Shem and Japheth cover Noah (Gen 9:23).³³⁷ It is also a key word for shifts in the social standing of women, whether downward, as when Tamar covers her face to portray herself as a prostitute (Gen 38:14, 15; cf. Gen 24:65), or upward, as when Israel, depicted as a woman, is covered in silk (Ezek 16:10). **כסה** is also used to describe when leprous disease "covers all the skin" (Lev 13:12,13), and it is often placed in conjunction with wearing sackcloth, shaving one's head, and bearing shame (**בושה**) on the face.³³⁸ Finally, it is often paired with dishonour, being put to

³³⁷ Cf. Isa 58:7; Ezek 16:8; 18:7; Hos 2:9.

³³⁸ Cf. Ezek 7:18; 12:6, 12; 1 Kgs 1:1; 2 Kgs 19:1-2; Isa 31:1; Obad 10; Jonah 3:6, 8.

shame, and bearing reproach.³³⁹ In Psalm 69, כָּסָה falls in line with these examples; the psalmist uses it to express the change in outward appearance that induces a shameful state.

CARRYING OUT THE PUNISHMENT PUBLICLY

The psalmist draws upon the public punishment attribute of the shaming pattern through his use of eye-related imagery and depictions of being “seen.” To be sure, the connection between shame and the public observation of punishment is not unique to the Psalter. As Lemos has shown, the book of Ezekiel is full of references to the punishment of Jerusalem being “performed before the eyes of others.”³⁴⁰ The psalmist does something unique with his eye imagery, however, in that he uses it to depict the whole experience of the shaming pattern, for himself and for his enemies.

In Psalm 35, the psalmist depicts his tormenters as not only rejoicing over him but also “winking the eye”:

Ps 35:19

Let not my enemies rejoice
over me wrongfully, or those
who hate me without cause
wink the eye.

אֶל־יִשְׁמְחוּ־לִי אֹיְבֵי שֹׁקֵר
שִׁנְאֵי הַנֶּפֶשׁ יִקְרְצוּ־עֵינַי׃

Kotzé argues that “winking the eye” refers to pressing together the eyes and

³³⁹ Cf. Jer 3:25; Jer 51:15; Isa 59:6; Mic 7:10.

³⁴⁰ Ezek 16:27, 52, 54, 61, 63; 20:41, 44; 36:21-23. Lemos, “Shame and Mutilation of Enemies,” 239-40.

hence to glaring or gazing at the psalmist.³⁴¹ He also argues that the alternative meaning of the verb קרַב as “stinging” in Semitic languages suggests that “the ‘gazing’ referred to was understood as a biting or stinging” and that this should be connected to ancient Near Eastern beliefs concerning the “evil eye.”³⁴² Whether this gaze is the “evil eye” or not, a gaze which stings is an understandable expression in a legal culture where a person’s loss of status is a painful – even stinging – public experience.

The enemies’ eyes in Psalm 17 also serve as the focus of their shame-inducing crime. In this instance instead of winking the eye, these enemies set their eyes to pitch the psalmist to the ground:³⁴³

Ps 17:10	They close their hearts with fat; ³⁴⁴ with their mouths they speak with pride.	חֲלָב לִבָּמוֹ סָגְרוּ פִּימוֹ דִּבְרוּ בְּגִאוֹת :
Ps 17:11	They have run me down, now they have surrounded me they set their eyes to pitch me to the ground. ³⁴⁵	אֲשֶׁרִינוּ עֲתָה סָבְבוּנִי עֵינֵיהֶם אֲשִׁיתוּ לְנִטּוֹת בְּאַרְצִי :

³⁴¹ Zacharias Kotzé, “QRŞ YN as Conceptual Metaphor for the Evil Eye in Psalm 35,19,” in *Metaphors in the Psalms*, ed. Pierre van Hecke and Antje Labahn, BETL 231 (Leuven: Peeters, 2010), 135–39.

³⁴² Kotzé, “QRŞ YN as Conceptual Metaphor,” 136.

³⁴³ See Régine Hunziker-Rodewald, “Ne me quitte plus des yeux! A propos du langage figuratif en Psaume 17,8.” *Revue d’Histoire et de Philosophie Religieuses* 89 (2009): 129–46.

³⁴⁴ For 10a I follow BHS in emending חֲלָבָמוֹ סָגְרוּ (they have closed their fat) to חֲלָב לִבָּמוֹ סָגְרוּ (they have closed their hearts with fat). Following Basson, Craigie, Tate, and Kwakkel, both expressions convey the enemies’ rebellious behaviour. Craigie and Tate actually translate the phrase as such: “They have become rebellious.” Alec Basson, “Hide Me in the Shadow of Your Wings”: An Image-Schematic Notion in Psalm 17:8b, *JSem* 14 (2005): 99; Kwakkel, *According to My Righteousness*, 70.

³⁴⁵ 11a is difficult. Following the Cairo Geniza, Targum, LXX and the Syriac, the initial word in the MT is to be read as אֲשֶׁרִינוּ whereas the third word is likely to be read as סָבְבוּנִי (“surround me”). Then with the Syriac, לְנִטּוֹת (to stretch out) is read with a 1cs suffix, rendering it “to pitch me.” See Craigie and Tate, *Psalms 1–50*, 161; Basson, “Hide Me in the Shadow of Your Wings,” 99; Kwakkel, *According to My Righteousness*, 70.

Even more provocative are the psalmist's depictions of the eyes of YHWH. The psalmist uses YHWH's gaze to convey his own despair in realizing that YHWH observes the psalmist's mistreatment in the public arena along with his community. More to the point, YHWH knows the psalmist is innocent, yet continues to look on with everyone else. In Psalm 35, for example, the psalmist accuses YHWH of taking part in his own wrongful public humiliation by doing nothing to avert the crimes taking place. He does this first by asking, "How long will you look on?" (כַּמָּה תִּרְאֶה; אֲדֹנָי; v 17), then stating emphatically:

Ps 35:22	You have seen, YHWH; be not silent! YHWH, be not far from me!	רְאִיתָהּ יְהוָה אֶל-תִּתְרַשׁ אֲדֹנָי אֶל-תִּרְתַּק מִמֶּנִּי:
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The psalmist also depicts YHWH as an observer of his enemies' shame-inducing crimes in Psalm 17, as he exclaims,

Ps 17:2	From your presence let my vindication come! Let your eyes behold the right!	מִלְּפָנֶיךָ מִשְׁפָּטֵי יִצְחָק אֵינִי יָד תִּחַזְּקֵנִי מִיֹּשְׁרִים:
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The psalmist then pleads for YHWH to guard him from these enemies as he would "the apple" of his "eye" (Ps 17:8-9).³⁴⁶ In both examples, the psalmist depicts YHWH as a complicit observer who witnesses the psalmist's loss of status by virtue of his enemies' treatment. In fact, in Psalm 35:22, the psalmist associates YHWH's behaviour with the rejection and distance that

³⁴⁶ Lit. "Guard me as little one of (the) daughter of (the) eye" (שְׁמֵרֵנִי כְּאִישׁוֹן בֵּת-עֵינַן)

characterize being shamed; he pleads for YHWH to “be not silent” and “be not far.”³⁴⁷

The psalmist also uses eye imagery to call for the shaming of his enemies. In the last verse of Psalm 17, for example, he uses an eye-related image to describe a hopeful future, when his honour is restored. He declares to YHWH, “I shall behold your face in righteousness” (אֶתְנֶה פָּנֶיךָ אֲנִי בְצִדְקָה; v 15). The psalmist depicts a time beyond his present shamed status, when he will be so exalted above his enemies that he sees the face of YHWH. As with the previous psalms, his awareness of the shaming pattern’s causal structure is evident; before this final depiction of himself gazing at YHWH in a restored state of honour, one finds the language of v 13:

Ps 17:13	Arise, YHWH! Confront him, subdue him! Deliver my soul from the wicked by your sword	קוּמָה יְהוָה קְדַמָּה פָּנָיו הַכְרִיעֵהוּ פְלָטָה נַפְשִׁי מִרְשָׁע תִּרְבֵּד
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It is only *after* YHWH rises against the psalmist’s enemies, confronts them face to face, and – most crucially – subdues them, that the psalmist can proclaim his own restored position. This suggests that a final state of restored honour – with eyes looking up – would be impossible without YHWH’s shame-inducing intervention. Psalm 40:13 reiterates this, using eye imagery to do it:

³⁴⁷ But also see Brian Doyle, “Where Is God When You Need Him Most? The Divine Metaphor of Absence and Presence as a Binding Element in the Composition of the Book of Psalms,” in *Composition of the Book of Psalms*, ed. Erich Zenger, BETL 238 (Leuven/Paris: Peeters, 2010), 377–90; Kathrin Liess, “Von der Gottesferne zur Gottesnähe: Zur Todes- und Lebensmetaphorik in den Psalmen,” in *Metaphors in the Psalms*, ed. Pierre van Hecke and Antje Labahn, BETL 231 (Leuven: Peeters, 2010), 167–95.

Ps 40:13	For evils have encompassed me beyond number; my iniquities have overtaken me, and I can no longer look up; ³⁴⁸ they are more than the hairs of my head; my heart fails me.	כִּי אֶפְפוּ-עָלַי רָעוֹת עַד-אֵין מִסֶּפֶר הַשִּׁנּוּנֵי עֲוֹנֹתִי וְלֹא-יִכְלְתִי לְרֹאֹת עֲצָמוֹ מִשְׁעָרוֹת רֹאשִׁי וְלִבִּי עֹבְרָנִי :
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Kraus' translation of "I can no longer look up" captures the spirit of the psalmist's intent in depicting himself as an outcast from society and provides a strong contrast to the restored figure in Psalm 17.³⁴⁹ Rather than his eyes being lifted skyward, they are here unable to look beyond the ground.

Eyes are the vehicle for punishment in Psalm 18:28 as well:

Ps 18:28	For you deliver an afflicted people, but exalting eyes you bring low. ³⁵⁰	כִּי-אַתָּה עִם-עֵינֵי תוֹשִׁיעַ וְעֵינַיִם רְמוֹת תִּשְׁפִּיל :
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Form-critically, this psalm is a royal victory hymn, "a testimony about the deity cast in the third person which emphasizes the deliverance and eminence he has conferred on his king."³⁵¹ In this context, the implications of

³⁴⁸ Kraus, *Psalms 1-59*, 422; v 13 begins either the complaint part of this psalm or the so-called Psalm 40B for those scholars who argue these two halves were once separate compositions. In either case the shift is regarded as abrupt and for those who see this psalm as two prayers, the **וַי** which heads this descriptive complaint is a redactional insertion meant to bring the two original psalms together. But I agree with Crüsemann that "it is impossible to understand [40A] without 40B." His reasoning aligns with Gerstenerger's that Psalm 40 is "a true, but more complete, example of the genre complaint of the individual, the thrust of which is petition for one who is suffering or who is outcast from society." Frank Crüsemann, *Studien zur formgeschichte von hymnus und danklied in Israel*, WMANT 32 (Neukirchen: Neukirchener, 1969), 262; Gerstenberger, *Psalms*, 1:173.

³⁴⁹ Kraus, *Psalms 1-59*, 422.

³⁵⁰ Cf. 2 Sam 22:28: "You save a humble people, but your eyes are on the haughty to bring them down."

³⁵¹ J Kenneth Kuntz, "Psalm 18: A Rhetorical-Critical Analysis," *JSOT* 26 (1983): 3.

bringing down the eyes of haughty enemies is in direct contrast to the exaltation of the king as “head of the nations” (לְרֹאשׁ גּוֹיִם עַם; v 44). In the final verses of this psalm the shamed enemies and an exalted king are all presented under the moniker of justice having been achieved. The enemies with haughty eyes are now cast out “like the mire of the streets”.³⁵²

Ps 18:47	the God who gave me vengeance and subdued peoples under me,	הָאֵל הַנּוֹתֵן נִקְמוֹת לִי וַיִּדְבֹּר עַמִּים תְּהַתִּי :
Ps 18:48	who delivered me from my enemies; yes, you exalted me above those who rose against me; you rescued me from the man of violence.	מִפְּלֹטֵי מְאֹיְבֵי אֶרְמוֹן־קָמִי הִרֹמְמָנִי מֵאִישׁ חָזָם תִּצִּילֵנִי :

Once superior enemies are subdued into inferior positions. The imagery of their eyes looking down depicts this shift in superior/inferior relations between the king, the God who restored him, and the enemies they now share.

Finally, the psalmist also conveys the implications of shame-inducing punishments through depictions of his own directional gaze. The last verse of Psalm 54, for example, ends with an image of the psalmist looking on his enemies in triumph:

³⁵² This phrase is only ever associated with being shamed in the Bible. See 2 Sam 22:43 and especially Mic 7:10: “Then my enemy will see, and shame will cover her who said to me, ‘Where is YHWH your God?’ My eyes will look upon her; now she will be trampled down like the mire of the streets.”

Ps 54:9	For he has delivered me from every trouble, and my eye has looked at my enemies.	כִּי מִכָּל-צָרָה הִצִּילָנִי וּבְאֵיבֵי רָאֲתָה עֵינַי:
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The crime the psalmist accuses his enemies of committing in v 5c affirms his desire for their punishment to bring on their shame. These enemies “have not put God before them” (לֹא שָׂמוּ אֱלֹהִים לְנִגְדָם) – clearly an act of insubordination on their part. As Tate puts it, “Yahweh does not have his proper place with these people.”³⁵³ Accordingly, the psalmist depicts them as “ruthless” (עָרִיצִים) characters whom YHWH must stop for the sake of his name (54:3). Again, the order of events follow the causal logic of the shaming pattern:

Ps 54:7	He will return the evil to my enemies; with your truth put an end to them.	יָשׁוּב הָרַע לְשׂוֹרְרָי בְּאֵמֶתְךָ הַצְּמִיתָם:
Ps 54:8	With a freewill offering I will sacrifice to you; I will give thanks to your name, YHWH, for it is good.	בְּנִדְבָה אֶזְבַּחַתְּךָ לֶחֶד אֹדָה שְׁמֹךָ יְהוָה כִּי-טוֹב:
Ps 54:9	For he has delivered me from every trouble, my eye has looked in triumph on my enemies.	כִּי מִכָּל-צָרָה הִצִּילָנִי וּבְאֵיבֵי רָאֲתָה עֵינַי:

The psalmist depicts himself as gazing triumphantly upon his enemies, but it is also evident that the psalmist knows that this victorious end is only possible within a certain order of events: His enemies’s tyranny is first dispelled with “truth” (v 7). He then acknowledges the right inferior/superior relationship between himself and YHWH, giving thanks to the very name (or

³⁵³Tate, *Psalms 51-100*, 48.

honour) which YHWH was implored to protect in the beginning of the psalm (v 8). Finally, the psalmist makes the causative statement that it is *because* (כי) YHWH has delivered him that he can triumphantly look on his enemies, having regained his right place (v 9).

To summarize, the psalmist uses the attributes of the shaming pattern to depict his enemies as perpetrators of shame-inducing crimes. The next part turns to the shaming pattern in relation to slander specifically, as both the psalmist and the legal material show particular concern for the implication of this crime on its victims. It seems for both the psalmist and his surrounding legal culture, the shame-inducing act of slandering another demanded a swift and equally shame-inducing response.

**PART TWO: THOSE WHO SEEK MY RUIN:
SLANDER AND THE SHAMING PATTERN**

For the sake of defining terms, slander is a type of false accusation in which the accuser's specific intent is to sabotage another's social standing by accusing him or her of a shameful act. Ancient Near Eastern laws do not typically use a specific word for "slander" to delineate it from other kinds of false accusation, but they still offer various kinds of evidence when this specific crime appears to be the primary concern at hand. Westbrook argues that the judges in Old Babylonian trial records likely mean "slanderers" when they designate criminals as those who bring a claim

“without knowing.”³⁵⁴ He reasons that the phrase captures the irresponsible aspects of a slanderer accusing another “without good grounds” (CT 45 18:14-16).³⁵⁵ Frymer-Kensky takes a similar approach to LH 127 and 132:

- LH 127 If a man causes a finger to be pointed in accusation against an *ugbaltu* or against a man’s wife but cannot bring proof, they will flog that man before the judges and they will shave off half of his hair.
- LH 132 If a man’s wife should have a finger pointed against her in accusation involving another male, although she has not been seized lying with another male, she will submit to the divine River Ordeal for her husband.³⁵⁶

Frymer-Kensky argues that the phrase “the finger is pointed” specifies the explicitly public element of the accusations and thus the related issue of being publicly shamed if unable to prove one’s innocence.³⁵⁷ Finkelstein affirms this reading, arguing that “the pointed finger” was a gesture signalling when a woman was accused of adultery, which in an ancient Near Eastern context would bring shame on the wife as well as her husband.³⁵⁸ To falsely accuse a woman of adultery is therefore slander because of the social ramifications of the accusation. The Middle Assyrian Laws, for example, demonstrate the social havoc these kinds of accusations would cause.³⁵⁹

³⁵⁴ Westbrook, “Old Babylonian Period,” 423.

³⁵⁵ Cf. pp. 118-20, 153-55. Westbrook, “Old Babylonian Period,” 423.

³⁵⁶ Cf. 118-29, 153-55. Roth, *Law Collections*, 105-6

³⁵⁷ Frymer-Kensky, “The Strange Case,” 17, n 11. Roth, *Law Collections*, 105; Samuel A. Jackson, *A Comparison of Ancient Near Eastern Law Collections Prior to the First Millennium Bc* (Piscataway: Gorgias, 2008), 227.

³⁵⁸ J. J. Finkelstein, “Sex Offenses in Sumerian Laws,” *JAOS* 86 (1966): 366-69; Raymond Westbrook, “Adultery in Ancient Near Eastern Law,” *RB* 97 (1990): 570-76.

³⁵⁹ One has to point out, though, that stating “Everyone has sex with your wife” (MAL 18) or

- MAL 18 If a man says to his comrade, either in private or in a public quarrel, "Everyone has sex with your wife," and further, "I can prove the charges," but he is unable to prove the charges and does not prove the charges, they will strike that man 40 blows with rods; he will perform the king's service for one full month; they will cut off his hair; moreover, he will pay 3,600 shekels of lead.³⁶⁰
- MAL 19 If a man furtively spreads rumours about his comrade, saying, "Everyone sodomizes him," or in a quarrel in public says to him, "Everyone sodomizes you," and further, "I can prove the charges against you," but he is unable to prove the charges and does not prove the charges, they will strike that man 50 blows with rods; he will perform the king's service for one full month; they will cut off his hair; moreover, he will pay 3,600 shekels of lead.³⁶¹

A difference to note in these two laws is the qualification each makes concerning the setting of the crime. For an accusation concerning a wife, it is criminal if said either publicly or privately; but when it is concerning a man, there is no mention of the private arena. The difference is that, the husband makes up part of the public arena in relation to the wife because his knowledge of her adultery is as damaging to her reputation as a wider audience knowing. For the man, this does not appear to be the case; the accusation must be furtively spread or said in public to constitute a threat to the man's honour.

"Everyone sodomizes him" (MAL 19) would likely wreak some form of social-havoc in any context. Jackson, *A Comparison*, 228; Sophie LaFont, "Middle Assyrian Period," 556.

³⁶⁰ Roth, *Law Collections*, 159.

³⁶¹ Roth, *Law Collections*, 159; Jackson, *A Comparison*, 228; Sophie LaFont, "Middle Assyrian Period," 556.

The Late Bronze Age material out of Anatolia and the Levant presents a picture of the slanderer in different terms. From Alalakh, the litigation document AT 11 concerns the disposition of property after a person's death. It appears in this case that the stakes are quite high, given that the accused is none other than Yarim-Lim, ruler of Alalakh following his father's death. The accusation, brought by his own sister, is that her father "had assigned the town under dispute as a share to her (and not him)."³⁶² Yarim-Lim is able to prove that his sister had brought the claim with malicious intent, given that had she succeeded he would have been stripped of the town and thereby stripped of the particular status associated with his claim on it.³⁶³ Slander is also a clear concern in a Ugaritic text which records the accused party's outburst that the real crime at hand is their having been accused in the presence of a king (EA 252:14; 286:6).³⁶⁴

With regard to the Pentateuch, scholars argue that the primary concern in Deuteronomy 22:13-17 is also slander. This is so widely accepted that the text, though never using the typical words for slander (רָגַל; רָבָה), is commonly referred to as "the case of the slandered bride":³⁶⁵

³⁶² Ignacio M. Rowe, "Alalakh, Ugarit, and Canaan," in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 700.

³⁶³ For her punishment, see p. 120. Rowe, "Alalakh, Ugarit, and Canaan," 697, 699.

³⁶⁴ Rowe, "Alalakh, Ugarit, and Canaan," 740.

³⁶⁵ Bruce Wells, "Sex, Lies, and Virginal Rape: The Slandered Bride and False Accusation in Deuteronomy," *JBL* 124 (2005): 41; William W. Hallo, "The Slandered Bride," in *Festschrift Leo Oppenheim, June 7, 1964* (Chicago: Oriental Institute of the University of Chicago, 1964), 101-2; Tikva Frymer-Kensky, "Virginity in the Bible." *JSOT* 262 (1998): 79, 95; Cynthia Edenburg, "Ideology and Social Context of the Deuteronomistic Women's Sex Laws (Deut 22:13-29)." *JBL* 128 (2009): 43-60.

- Deut 22:13 If any man takes a wife and goes in to her and then hates her
 Deut 22:14 and accuses her of misconduct and brings a bad name upon her, saying, "I took this woman, and when I came near her, I did not find in her evidence of virginity,"
 Deut 22:15 then the father of the young woman and her mother will take and bring out the evidence of her virginity to the elders of the city in the gate.
 Deut 22:16 And the father of the young woman will say to the elders, "I gave my daughter to this man to marry, and he hates her;
 Deut 22:17 and behold, he has accused her of misconduct, saying, 'I did not find in your daughter evidence of virginity.' And yet this is the evidence of my daughter's virginity." And they will spread the cloak before the elders of the city.
- כִּי־יִקַּח אִישׁ אִשָּׁה
 וַיָּבֹא אֵלֶיהָ וַיִּשְׂנְאֶהָ׃
 וְשָׁם לָהּ עָלִילַת דְּבָרִים
 וְהוֹצִיא עָלֶיהָ שֵׁם רָע וְאָמַר
 אֶת־הָאִשָּׁה הַזֹּאת לָקַחְתִּי
 וְאֶקְרַב אֵלֶיהָ וְלֹא־מָצָאתִי
 לָהּ בְּתוּלִים׃
 וְלָקַח אָבִי הַנְּעֹר וְאִמָּהּ
 וְהוֹצִיאוּ אֶת־בְּתוּלַי הַנְּעֹר
 אֶל־זִקְנֵי הָעִיר הַשְּׂעָרָה׃
 וְאָמַר אָבִי הַנְּעֹר אֶל־הַזִּקְנִים
 אֶת־בְּתִי נָתַתִּי לְאִישׁ
 הַזֶּה לְאִשָּׁה וַיִּשְׂנְאֶהָ׃
 וְהִנֵּה־הוּא שָׁם עָלִילַת דְּבָרִים
 לְאָמֹר לֹא־מָצָאתִי לְבַתְּךָ
 בְּתוּלִים וְאֵלֶּה בְּתוּלַי בְּתִי
 וּפְרָשׁוּ הַשִּׁמְלָה לִפְנֵי
 זִקְנֵי הָעִיר׃

Wells and others have pointed to the phrase "makes up charges against her and defames her" as the author's signal that the issue at stake here is slander; the bride is said to be defamed as a result of the accusation.³⁶⁶ Levinson argues that the accusation, "I found that she was not a virgin," is clearly slanderous when read within its socio-cultural setting, given the shameful ramifications it would bring not only for the bride but her entire family.³⁶⁷

³⁶⁶ Wells, "Sex, Lies, and Virginal Rape," 41; Hallo, "The Slandered Bride," 101-2; Frymer-Kensky, "Virginity in the Bible," 79, 95.

³⁶⁷ Levinson also suggests that in this case slander could have served a financial purpose for the husband given that, if he were to merely request a divorce on the grounds of being displeased with his bride, the divorce would be granted but with the caveat that the man provide financial support (Deut 24:1): "In contrast, the slander, 'I found that she was not a virgin,' would entail the refund of the bride-price and payment of a penalty for breach of

Wells argues that the case of the slandered bride in Deuteronomy reflects a talionic logic, his reason being that “the punishments are a remarkable mirror image of the man’s original intentions.”³⁶⁸ This talionic logic specifically manifests in a “shame for shame” pattern, evident in the penalty issued to the husband in the event that the parents can exonerate their daughter:

Deut 22:18	Then the elders of that city will take the man and whip him,	וְלָקְחוּ זֶקְנֵי הָעִיר־הַהוּא אֶת־הָאִישׁ וַיִּסְרוּ אֹתוֹ׃ וְעָנְשׂוּ אֹתוֹ מֵאָה כֶּסֶף וְנָתְנוּ לְאָבִי הַנְּעוּדָה כִּי הוֹצִיא שָׁם לֵעַ עַל בְּתוּלַת יִשְׂרָאֵל וְלֹד־תְּהִיָּה לְאִשָּׁה לֹא־יִוָּכַל לְשַׁלְּחָהּ כָּל־יָמֶיהָ׃
Deut 22:19	and they will fine him a hundred shekels of silver and give them to the father of the young woman, because he has brought a bad name upon a virgin of Israel. And she will be his wife. He may not divorce her all his days.	וְאִם־אֵמֶת הִזֵּה הַדָּבָר הַזֶּה לֹא־נִמְצְאוּ בְּתוּלִים לַנְּעוּר׃ וְהוֹצִיאוּ אֶת־הַנְּעוּרָה אֶל־פֶּתַח בַּיִת־אָבִיהָ וּסְקָלוּהָ אַנְשֵׁי עִירָהּ בְּאֲבָנִים וּמָתָה כִּי־עָשְׂתָה נִבְלָה בְּיִשְׂרָאֵל לְזָנוּת בַּיִת אָבִיהָ וּבְעֵרַתָּ הָרָע מִקִּרְבְּךָ׃
Deut 22:20	But if the thing is true, that evidence of virginity was not found in the young woman,	
Deut 22:21	then they will bring out the young woman to the door of her father’s house, and the men of her city will stone her to death with stones, because she has done an outrageous thing in Israel by whoring in her father’s house. So you will purge the evil from your midst.	

contract.” Bernard M. Levinson, “Deuteronomy,” in *The New Oxford Annotated Bible, NRSV with Apocrypha*, ed. Michael David Coogan et al. (Oxford: Oxford University Press, 2007), 416–17. Scholars are not agreed on the precise details of what “evidence” would condemn or exonerate the bride from such a slanderous claim. The longest held view is that the case revolves around “bloodstained sheets” that would result from a ruptured hymen. These would serve as a sign of the bride’s virginity, something the husband would claim he did not find. But, as Levinson rightly points out, there is little evidence to support the assumptions that intercourse would cause a hymen to rupture so greatly that there would be blood on the bedsheets or that it would be held up in public display as evidence.; Eugene H Merrill, *Deuteronomy*, NAC (Nashville: Broadman and Holman, 1994), 302–3; T Frymer-Kensky, “Virginity in the Bible,” 79–80, 93.

³⁶⁸ Wells, “Sex, Lies, and Virginal Rape,” 62.

One may rightly question how this punishment alludes to a talionic logic. After all, if the husband had been successful the bride would die by stoning, whereas he endures a non-lethal flogging coupled with a fine.³⁶⁹ Wells, however, has argued that the character of talion is evident in the sense that “the same three penalties – humiliation, money, and divorce – that the lying husband intended to inflict on the other party turn up in the punishments that he suffers as a false accuser.”³⁷⁰ If one attends to the features of the shaming pattern, along with a few cultural details, this appears to be tenable. First, there is the matter of humiliation. As Wells explains, the stoning of the bride is not the only punishment she would have endured. Recall the shame-inducing actions covered earlier with regard to a wife found guilty of adultery: a husband might send her away, but not before possibly stripping her naked, mutilating her face, or shaving her genitalia. Had the husband in this passage succeeded in his aims,

it is likely that he would have been able to inflict one of these shaming actions upon her. This would have humiliated not only his former wife but also her family, and in particular her father, who had allowed her virginity to be violated while she was under his supervision.³⁷¹

Thus, in place of his wife and her father being publicly humiliated, the husband is subject to humiliation in the form of public flogging.

³⁶⁹ Levinson, “Deuteronomy,” 417.

³⁷⁰ Wells, “Sex, Lies, and Virginal Rape,” 62.

³⁷¹ Cf. p. 114-16. Wells, “Sex, Lies, and Virginal Rape,” 62.

Then there is the matter of money and the denial of divorce. The financial penalty of one hundred shekels of silver is “the exact amount the man would have received if his charges had been believed.”³⁷² With regard to divorce, one must keep in mind that the man’s actions would have forced the bride’s father to care for a shamed daughter indefinitely. To punish the denial of divorce, then, means that the husband experiences the same; he must “bring her back into his household and be permanently responsible for her support.”³⁷³

Wells is right that talionic logic informs the punishments in the Deuteronomy case, but the attributes of the shaming pattern also play a major role in the identification and execution of those punishments. The concern to publicly punish, for example, is apparent in the father’s public recounting of the scandalous charges against his daughter (vv 16-17). Matthews, in fact, suggests that the father’s statement could be understood as putting the husband’s wrong on display to all, through a “shaming speech” about his behaviour.³⁷⁴ Then there is the fact that he will be publicly flogged. This punishment, as mentioned previously,³⁷⁵ entails two of the shaming pattern’s features: public punishment and a concern to change the appearance of the criminal, so that the surrounding community is cued to change its perception of him. In addition to being publicly shamed with

³⁷²Wells, “Sex, Lies, and Virginal Rape,” 63.

³⁷³Wells, “Sex, Lies, and Virginal Rape,” 63.

³⁷⁴Matthews, “Honor and Shame in Gender-Related Legal Situations,” 111-12.

³⁷⁵See p. 120-23.

speech, the slanderer's appearance will change both temporarily (in his near naked state for flogging) and permanently (from his resulting stripes).

The attributes of the shaming pattern also appear in the Old Babylonian texts LH 127 and CT 45 18:14-16, both of which concern slander. In LH 127, the man who slanders another's wife is both flogged and made to wear half-shorn hair, both punishments specifically meant to shame their recipient.³⁷⁶ In CT 45 18:14-16, the punishment for making an accusation "without knowing" is to change the appearance of the perpetrator by boring a hole "through [the] nose."³⁷⁷ Finally, a broken tablet from the Old Babylonian period records that the punishment for two women who "gave false evidence" was that "...they touched their cheek with...they tore off their headdresses."³⁷⁸ Though incomplete, the record is clear enough that a change in appearance of these women is the aim.

MAL A 18-19 also attest to the features of the shaming pattern. Not only do they call for the public punishment of striking with rods, but they also publicly punish the perpetrators by having them live a life of penal servitude for a month. They also call for a change in appearance, mandating that the criminal's hair be shaved.³⁷⁹

³⁷⁶ See text in full on p. 147, cf. 121.

³⁷⁷ Cf. pp. 118-20, 146-48. Jackson, *A Comparison*, 227.

³⁷⁸ Marten Stol, "Ein Prozessurkunde über Falsches Zeugnis," in *Marchands, Diplomates et Empereurs*, ed. Dominique Charpin and Francis Joannès (Paris: ERC, 1985), 333-39.

³⁷⁹ Full text on p. 148. Jackson, *A Comparison*, 228; LaFont, "Middle Assyrian Period," 556.

The Psalmist's Call for Shame

Commentaries have long acknowledged that a major figure-type in the Psalter is the slanderous enemy whose words bring misery to the psalmist. They tend, however, to focus solely on the psalmist's subjective experience of slander as a cruel act. Keel, for example, highlights the psalmist's tendency to describe the slanderous enemy as a "massive and overwhelming multitude," arguing that this is his way of magnifying his alienated existence as a result of his enemy's cruelty.³⁸⁰ In a related argument, Seidel and Bovati have reasoned that the psalmist highlights the small number or even total absence of his defenders when he describes himself as overwhelmed by a slanderous majority. Such a contrasting picture "gives a better understanding of the repeated mention of the isolation and loneliness of the supplicant in the lamentation psalms."³⁸¹

The question is whether the psalmist regards slander as something more than just as a cruel act. Does he actually see slander as a *criminal* act to be punished in a way that is consistent with other shame-inducing crimes in the history of ancient Near Eastern law? This appears to be the case in four psalms (Pss 71; 101; 35; 109).

Consider, first, the following verses from Psalm 71:

³⁸⁰ Keel, *Feinde und Gottesleugner*, 206-9; see also Hans Seidel, *Das Erlebnis der Einsamkeit im Alten Testament: Eine Untersuchung zum Menschenbild des Alten Testaments*. TArb 29. (Berlin: Evangelische Verlagsanstalt, 1969), 181.

³⁸¹ Hans Seidel, *Das Erlebnis der Einsamkeit im Alten Testament: Eine Untersuchung zum Menschenbild des Alten Testaments*, TArb 29 (Berlin: Evangelische Verlagsanstalt, 1969), 21-39; Pietro Bovati, *Re-Establishing Justice: Legal Terms, Concepts and Procedures in the Hebrew Bible*, trans. Michael J. Smith, JSOTSup 105 (Sheffield: Sheffield Academic, 1994), 286.

Ps 71:10	For my enemies speak concerning me; those who watch for my life consult together	כִּי־אֹמְרוּ אוֹיְבֵי לִי וְשִׁמְרֵי נַפְשִׁי נוֹעְצֵוּ יַחְדָּו: ³⁸²
Ps 71:11	and say, "God has forsaken him; pursue and seize him, for there is none to deliver him."	לְאֹמֵר אֱלֹהִים עָזָבוּ רַדְפוּ וְהַתְּפֹשׂוּהוּ כִּי־אֵין מַצִּיל: ³⁸³
Ps 71:12	O God, be not far from me; O my God, make haste to help me!	אֱלֹהִים אַל־תִּרְחַק מִמֶּנִּי אֱלֹהֵי לְעֹזְרֹתַי הִישָׁעָה:
Ps 71:13	May my accusers ³⁸² be put to shame and consumed; with scorn and disgrace may they be covered who seek my ruin.	יִבְשׂוּ יִכְלוּ שִׁטְנֵי נַפְשִׁי יֵעָטוּ תִרְפָּה וְכִלְמָה מִזְבְּקֵי רָעַתִּי:

The first matter to address is how the psalmist depicts his enemies' accusations as criminal. Bovati, following Fohrer and Wanke, argues that the participle *שִׁטְנֵי* (v 13) suggests that the psalmist intends for his enemies to be understood in a strictly legal sense. The noun form of *שִׁטְן*, in addition to its attestation in military contexts, "is significant in the legal field" of meaning, as it typically indicates an accusation in a judicial setting.³⁸³ When the form shifts to *שִׁטְנָה*, as it does in Ezra 4:6, its meaning is a written accusation. More crucially, the participle form in Psalm 71:13 is only attested elsewhere in a legal sense – as are the other forms of the verb (Pss 38:21; 109:4, 20, 29). It is clear, then, that the psalmist wishes to portray his enemies' accusations as a criminal act, using their distinctively legal labelling to do so.

³⁸² Bovati, *Re-Establishing Justice*, 297; Georg Fohrer, *Das Buch Hiob*, KAT 16 (Gütersloh: Gütersloher Verlagshaus G. Mohn, 1963), 82-83.

³⁸³ 2 Sam 19:23; Ps 109:6; Zech 3:1-2; Job 1:6-9, 12; 2:1-4, 6-7.

The next matter to address is the punishment which the psalmist calls for in response to his enemies' accusations. Surprisingly, this does not reflect the typically strict talionic sense that one finds with other scenarios involving accusation. For instance, though these enemies have accused the psalmist and even caused him harm in their actions, he gives no indication of a concern to enact a "like for like" punishment with regard to that harm. There is neither matching language nor even loosely matching methods of crime and punishment. Instead, the psalmist emphatically calls for his enemies be subject to a shame-inducing punishment, calling for a change in their appearance to depict it. Rather than calling for YHWH to "seek their harm" (בקש רעה), the psalmist calls for YHWH to shame them by wrapping them in reproach and disgrace (יעטו חרפה וכלמה). By naming a punishment specifically meant to induce shame, the psalmist communicates the true nature of his enemies' crimes: slanderous accusations that caused his social harm. The punishment is his only recourse to regain his lost status in his community.³⁸⁴

The slanderous enemies in Psalm 101 are also depicted as criminals. In this case, the psalmist uses a shame-inducing punishment specifically in order to demonstrate the king's commitment to justice:

³⁸⁴Tate, *Psalms 51-100*, 209; Mitchell Dahood, *Psalms*, AB 16-18 (Garden City, N.Y.: Doubleday, 1965), 2.174.

Ps 101:5	Whoever slanders his neighbour secretly I will destroy. Whoever has haughty eyes and a spacious heart I will not endure.	מְלוֹשְׁנֵי בִסְתֵר אֶרְעֶהוּ אוֹתוֹ אֶצְמִית גְּבוּה־עֵינָיִם וְרִתֵּב לִבָּב אֹתוֹ לֹא אוֹכֵל : וְרִתֵּב לִבָּב אֹתוֹ לֹא אוֹכֵל :
Ps 101:6	I will look with favour on the faithful in the land, that they may dwell with me; he who walks in the way that is blameless will minister to me.	עֵינַי בְּנֹאֲמְרֵי אֶרֶץ לְשֶׁבֶת עֲמֹרֵי הַלָּד בְּדַרְדָּר תָּמִים הוּא יִשְׁרָתֵנִי : בְּדַרְדָּר תָּמִים הוּא יִשְׁרָתֵנִי :
Ps 101:7	No one who practices deceit will dwell in my house; no one who utters lies will continue before my eyes.	לֹא יֵשֵׁב בְּקִרְבִּי בֵּיתִי עֹשֶׂה רַמְיָה דְבַר שְׁקָרִים לֹא יִפְּוֹן לְנִגְדִי עֵינַי : לֹא יִפְּוֹן לְנִגְדִי עֵינַי :
Ps 101:8	Morning by morning I will destroy all the wicked in the land, cutting off all the evildoers from the city of YHWH.	לְבִקְרִים אֶצְמִית כָּל־רְשָׁעֵי־אֶרֶץ לְהַכְרִית מְעִיר־יְהוָה כָּל־פְּעֻלֵי אָוֶן : כָּל־רְשָׁעֵי־אֶרֶץ לְהַכְרִית מְעִיר־יְהוָה כָּל־פְּעֻלֵי אָוֶן :

Kraus describes this psalm as “a king’s vow of loyalty,” suggesting that the purpose of v 5 is to present the ruler “as a judge of thoughts and inclinations,” specifically of “secret sins.”³⁸⁵ The word “sin,” though, does not capture the decidedly criminal nature of slander as conveyed in the expression **בִּסְתֵר**, which one finds in Deuteronomy, 2 Samuel, and Job as a reference to hidden crime specifically.³⁸⁶ There is also the matter of the psalmist framing the slanderous behaviour inside the civic location of “YHWH’s city” in v 8, which as Fritz has shown is in itself a legally tinted designation.³⁸⁷ Finally there is the king’s declaration of his commitment to

³⁸⁵ Kraus, *Psalms 60-150*, 279.

³⁸⁶ Deut 13:7; 27:15, 24; 2 Sam 12:12; Job 13:10; 31:27. See Bovati, *Re-Establishing Justice*, 274 n. 47.

³⁸⁷ Volkmar Fritz, *The City in Ancient Israel*. BS 29 (Sheffield : Sheffield Academic, 1995), 121-35

an honourable house (vv 6-8). He has sought to exclude those who are not equally honourable.³⁸⁸ These judicially framed promises are analogous to the Nauri and Horemheb Decrees, in which the king disallows an official access to the royal palace, forcing him to work as a cultivator outside.³⁸⁹ Likewise with the psalmist's king: no one who brings shame on the administration will "dwell" in his house. The psalmist therefore intertwines the king's commitment to justice with the causal nature of the shaming pattern in a hierarchical legal culture. For the psalmist it is clear that the king's honour is synonymous with shaming those that slander and have haughty eyes. They are the ones who threaten the social hierarchy. The psalmist also understands that the longevity of the king's house depends on the faithful and the blameless. They are the ones who maintain the social hierarchy by bestowing honour where it is expected.

Psalm 35 has already been established as shame-oriented in its use of eye imagery,³⁹⁰ but it also reveals the psalmist's understanding of slander as a criminal act. A legal context weaves through the entire psalm, with royal, military overtones.³⁹¹ As Craigie and Tate have argued, slander is evident in

³⁸⁸ Andrew Mein, "Psalm 101 and the Ethics of Kingship," in *Ethical and Unethical in the Old Testament: God and Humans in Dialogue*, ed. Katharine J. Dell. LHBOTS 528. (New York: T&T Clark, 2010), 56-70.

³⁸⁹ Cf. p. 121-23. Jasnow, "Egypt: New Kingdom," 342; Katary, *Land Tenure in the Ramesside Period*, 186.

³⁹⁰ See pp. 137-40.

³⁹¹ To hold those contexts together, Eaton was right to expand the legal setting of this psalm beyond the substantive assumption of a simple courtroom and rather toward the international machinations of a king under the threat of war from foreign enemies. J. H. Eaton, *Kingship and the Psalms*, SBT 32 (London: SCM, 1976), 41-2.

this psalm by virtue of what is creating the threat, namely, enemies “using as an excuse for war certain purported violations of a treaty agreement.”³⁹² One gathers from the king’s petition (vv 11-18) that the accusations of violating the treaty are a slanderous lie by those who “hate [him] without cause” (35:19). That the psalmist regards this slander as having shamed him is apparent from his labelling it as such:

Ps 35:4	Let them be put to shame and dishonour who seek after my life! Let them be turned back and disappointed who devise evil against me!	יְבֹשׁוּ וַיִּכְלְמוּ מִבְּקֵשׁ נַפְשִׁי יִסְגּוּ אַחֲזֵר וַיִּתְפָּרוּ אֲשֶׁר רָעֵתִי :
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Note that those who seek after his life are not to receive the same exact treatment for punishment; the psalmist clearly strays from the characteristic features of the talionic pattern. Rather, they are to be shamed and dishonoured, punishments that point to the psalmist’s primary concern to restore the king’s own honour, a concern only made necessary by a crime that threatens it through shame.

A final example is Psalm 109, which Allen and others argue is set in a “religious court;” as the psalmist depicts himself on trial before priestly judges “as representatives of Yahweh.”³⁹³ That his enemies are slanderers and that slander is a crime is most evident in vv 3, 6-12:

³⁹² Craigie and Tate, *Psalms 1-50*, 286-87.

³⁹³ Allen, *Psalms 101-150*, 100.

Ps 109:3	They encircle me with words of hate, and attack me without cause.	וְדַבְּרֵי שִׁנְאָה סָבְבוּנִי וַיִּלְחָמוּנִי בְּתוֹנִים:
Ps 109:6	Appoint a wicked man against him; let an accuser stand at his right hand.	הַפְּקֹד עָלָיו רָשָׁע וְשֹׁטֵן יַעֲמֹד עַל־יְמִינוֹ:
Ps 109:7	When he is tried, let him come forth guilty; let his prayer be counted as sin!	בְּהִשָּׁפְטוֹ יֵצֵא רָשָׁע וְתַפְּלוֹתָיו תִּהְיֶינָה לְחַטָּאָה:
Ps 109:8	May his days be few; may another take his office!	יְהוּי־יָמָיו מְעַטִּים פָּקְדוֹתָיו יִקַּח אֲחֵר:
Ps 109:9	May his children be fatherless and his wife a widow!	יְהוּי־בָנָיו יְתוּמִים וְאִשְׁתּוֹ אֶלְמָנָה:
Ps 109:10	May his children wander about and beg, seeking food far from the ruins they inhabit!	וְנֹעַ וְנֹעַו בָּנָיו וְשָׂאוּ וְדַרְשׁוּ מִתְּרוֹבוֹתֵיהֶם:
Ps 109:11	May the creditor seize all that he has; may strangers plunder the fruits of his toil!	יִנְקֹשׁ נוֹשֵׂה לְכָל־אֲשֶׁר־לוֹ וַיִּבְזּוּ זָרִים יְגִיעוּ:
Ps 109:12	Let there be none to extend kindness to him, nor any to pity his fatherless children!	אֶל־יִהְיֶה־לוֹ מִשֶּׁדֶּךָ חֶסֶד וְאֶל־יִתֵּן אֲחֻנָּן לִיתוּמָיו:

In vv 6-7, the psalmist describes his enemies' plan to persecute him through the courts. That the crime is specifically slanderous, is clear from the curses that the enemies expect the verdict will bring upon the psalmist. In v 8, he will be shamed by losing his status. In vv 9-10, the implications of his loss in position reach his family. Finally, in vv 11-12, the social and economic ramifications are described. It is clear from these examples that the psalmist is aware of the threat that slander poses to its victim.

CONCLUSION

As was the case with the talionic pattern, the psalmist's use of features such as change in appearance and public punishment to convey that his enemies have criminally shamed him, has certain implications. Firstly, one must ask if other biblical texts using this kind of imagery are also drawing on a shaming pattern of crime and punishment. Job, for example, may be read as a legally-informed text, given its constant references to change in appearance, the observing other, manipulations of social status, and a God who sees Job's mistreatment but seemingly looks on.³⁹⁴ These are all images in the psalms which draw upon a specific legal language of shame, suggesting that this may also be the case with Job.

It is also worth highlighting how the psalmist seems to choose language that is conspicuously legal to depict his enemies' shame-inducing crimes (e.g., Pss 71:13; 101:5). This is significant because it challenges the idea that the psalms present an example of shame as it was inflicted "informally by ordinary folk in the midst of everyday life."³⁹⁵ The psalmist's depictions of shame in a legal tenor may be evidence of communities enacting their own sanctioned and local law, depending on the social context of the respective psalms.

The psalmist's use of clothing in relation to shame also raises questions about the underlying social symbolism of clothing in the biblical

³⁹⁴ E.g., Job 12:3; 12:2; 16:10; 19:4-5.

³⁹⁵ Contra Bechtel, "Shame as a Sanction of Social Control," 70.

texts and the wider ancient Near East. Take for instance, the psalmist's presentation of himself in sackcloth to demonstrate a humiliating change in appearance. This was meant to invoke YHWH's help by showing how the psalmist was aware of his own position in the YHWH-psalmist relationship. The relationship between clothing and shame raises possibilities about texts which mention clothing and how these depictions relate to legal-cultural perceptions of the clothes-wearer.

Secondly, there is the matter of the psalmist using eye-related imagery to indicate not only a person's status in an inferior/superior relationship, but to present YHWH as one of the observing others when someone is wrongfully shamed. The phrase that the psalmist uses in Psalm 35:22, "You have seen, Lord," with its implicit appeal for YHWH to intervene, also occurs in Lamentations (1:9, 11, 20; 2:20; 3:50; 3:59), suggesting that we may also be meant to read these occurrences as cases of a supplicant enduring a shaming crime.

There are also implications for how scholarship on emotions in the Bible attends to the psalmist's presentation of shame as a criminal and sanctioned matter. On the one hand, scholars need to be diligent in distinguishing the emotion of shame from that of guilt when reading these psalms. This is because the psalmist has reflected what psychologists have also established: these two emotions stimulate distinctly different fears. Guilt is the emotion which arises when transgressing a prohibition or boundary

that one has internalized or accepted as a given.³⁹⁶ For instance, one feels guilty if, after attempting to sneak a home-made cappuccino into a theatre that had a “no-drinks” policy, the drink spilt down the front of one’s trousers. The fear in that instance directly relates to a knowledge of the “no-drinks” boundary; it is a fear of not only having been found out but maybe being kicked out! Thus the fear which guilt stimulates is that of punishment.

The emotion of shame, however, relates not only to the failure to live up to a community ideal but also regret for going against the ideal, which in turn relates to a person’s acceptance in a community.³⁹⁷ Staying with the cappuccino scenario, shame is the feeling that would arise in the event that the spilt drink led people to believe one had an “accident,” not a cappuccino. The fear in that instance directly relates to knowledge of a community ideal: that adults only use the toilet in the toilet. Shame does not stimulate fear of punishment but of a community’s contempt – a fear that by our actions, we “risk rejection and exclusion (or the unwanted attention likely to foster such attitudes).”³⁹⁸

³⁹⁶ June P. Tangney and Ronda L. Dearing, *Shame and Guilt* (New York: Guilford Press, 2002), 10-25.

³⁹⁷ Julien A. Deonna, Raffaele Rodogno, and Fabrice Teroni, *In Defense of Shame: The Faces of an Emotion* (Oxford; New York: Oxford University Press, 2012), 70; Janice Lindsay-Hartz, Joseph de Rivera, and Michael Mascolo, “Differentiating Guilt and Shame and Their Effects on Motivation,” in *Self-Conscious Emotions: The Psychology of Shame, Guilt, Embarrassment, and Pride*, ed. June Price Tangney and Kurt W. Fischer (New York: Guilford Press, 1995), 274-300.

³⁹⁸ Deonna, Rodogno, and Teroni, *In Defense of Shame*, 63.

Bechtel-Huber has noted the strong guilt-orientation that many theologians exhibit in their understanding of shame in the psalms.³⁹⁹ As a result, they fail to make the distinction between feelings of shame, which are intrinsically linked to the importance of communal belonging, and feelings of guilt, which are intrinsically related to sin.⁴⁰⁰

In recent years, some scholars have made efforts to establish this distinction in the psalms, by challenging the common interpretation that the psalmist's reflections on suffering signal that he feels guilt. Brueggemann and Bellinger for example, argue that these reflections "cannot be contained in a simple taxonomy of suffering as punishment for sin."⁴⁰¹ Lindström adds that suffering may be understood "on grounds other than guilt."⁴⁰²

This chapter adds a new dimension to these efforts in its suggestion that the psalmist sees YHWH as an observer of the shame brought on by the enemies' crimes. The link between YHWH and the psalmist's experience of shame is a powerful connection to make, especially if we take into

³⁹⁹ Huber, "The Biblical Experience of Shame/shaming," 203; Bechtel, "Shame as a Sanction of Social Control," 49; see also Avrahami, "BWSH in the Psalms," 297 n.9.

⁴⁰⁰ Wilson, for instance, argues that the Hebrew terms reflecting the concept of shame "make no attempt to distinguish undeserved shame from justified guilt." Gerald H. Wilson, *Psalms, Volume 1* (Grand Rapids: Zondervan, 2014), 37. See also Cottrill, *Language, Power, and Identity*, 70. The failure to make this distinction is largely a product of the Reformation because it was then that the west shifted toward a "guilt-oriented" theology, emphasising self-responsibility and the individual conscience as a guide for good behaviour. Gerhart Piers and Milton B. Singer, *Shame and Guilt: A Psychoanalytic and a Cultural Study* (New York: Norton, 1971), 1-6; Stiebert, "Shame and the Body," 51-2; Ilona N. Rashkow, "Psychology and the Hebrew Bible, Read through the Lenses of Freud and Lacan," in *Psychological Hermeneutics for Biblical Themes and Text*, ed. J. Harold Ellens (Bloomsbury, 2012), 235-56.

⁴⁰¹ Walter Brueggemann and William H. Bellinger, *Psalms*, NCBC (New York: Cambridge University Press, 2014), 302; see also Bellinger, *Psalms: Reading and Studying the Book of Praises*. Peabody: Hendrickson Publishers, 1990.

⁴⁰² Fredrik Lindström, *Suffering and Sin: Interpretations of Illness in the Individual Complaint Psalms* (Almqvist and Wiksell, 1994), 341-43.

consideration the specific fears that shame generates. As noted, shame is not about fearing punishment; it is about fearing rejection. The psalmist's fear of the latter is more comprehensive than has been assumed; he fears the threat of his community's rejection, but – crucially – he places YHWH at the centre of that community. It is a provocative image with which to wrestle: the one agent that is powerful enough to redeem the psalmist from shame may also be participating in his shame by virtue of the distance and silence he offers, alongside the rest of the community.

CHAPTER 5: THE SEAT-OF-THE-CRIME PATTERN

Scholars have traditionally approached the psalmist's preoccupation with harming his enemies' mouths as part of a complex, metaphorical fantasy conveying the hurtful nature of their speech. This chapter argues that the psalmist is drawing specifically upon a seat-of-the-crime pattern, identifiable throughout the history of ancient Near Eastern law for the crimes of contract breaking and illegal cursing. The Seat of the Crime is a conceptual understanding of the body which perceives a single body part as responsible for and representative of certain criminal acts. Punishing the seat of the crime is the practice of mutilating, inflicting pain upon, or even removing that particular part of the body. As was the case with the shaming pattern, seat-of-the-crime conveys a talionic logic at its root, but also displays its own features, as it shifts from "eye for an eye" to "eye for eye-motivated crime." The most prominent feature is the pattern's dependence on a specific anthropological perception of the body, which is necessary in order to see the punishment as "fitting" in the first place. The psalmist draws upon this pattern to offer us his own legal understanding on the primacy of keeping one's "word."

INTRODUCTION

At this point it should be evident that the spoken word carried considerable power in ancient Near Eastern legal culture, so spoken crimes were

regarded as a severe threat to society and punished accordingly. As discussed in Chapter Three, the spoken witness testimony held such primacy in court proceedings that a false accusation for a capital crime was treated as attempted murder. In Chapter Four, the manner in which people spoke to each other was so central to maintaining social order that speaking slanderously or with reproach was treated as an attempt to implode the existing social hierarchy. This chapter addresses another manifestation of the spoken word's power in legal culture: the contract-making procedures that informed several realms of ancient Near Eastern life.

There is arguably no more ubiquitous symbol for a binding agreement in contemporary culture than a signed contract. It is for this reason that the current chapter unfolds in a different manner to those preceding. After all, one must first convince a contemporary reader of what the mouth has to do with contracts before attempting to prove that the psalmist's mouth-focussed punishments draw on a pattern of justice for contractual crimes. What follows will first establish the connection between contracts and the mouth in ancient Near Eastern legal culture. The argument will then turn to how that connection is related to the phenomenon of cursing and, finally, will establish which Psalms display the same understanding of contracts and cursing as that found in the legal material.

**PART ONE: SPEECH ACTS THAT BIND:
CONTRACTS AND CURSING IN ANCIENT NEAR EASTERN LEGAL CULTURE**

There is solid evidence throughout the history of ancient Near Eastern law that the contract was an oral transaction. Westbrook argues, in fact, that with the exception of the very end of the first millennium, “written” contracts in the ancient Near East did not have an autonomous role in creating legal obligations.⁴⁰³ The thousands of ancient Near Eastern written documents called contracts are an “aide-mémoire” for actual agreements taking place through speech acts, ceremonies, and oaths being pledged.⁴⁰⁴

The Contract: An Oral Transaction

There are several ways these written documents make it evident that the contract was defined and enforced by speech acts. To begin, they contain explicit citations of speech acts taking place as part of the contract proceedings. The Early Dynastic *Lú-pà.d* statue (ELTS 21), the earliest contract on record, includes phrases such as “he said these words,” along with “he gave payment,” as a record of what took place.⁴⁰⁵ Old Assyrian documents operate in a similar manner, in that they account for sales of real estate and slaves with records of an oral statement followed by a payment (TPK 1 157-60).⁴⁰⁶ From the material of Egypt’s Third Intermediate period,

⁴⁰³ Raymond Westbrook, “Introduction,” 13; Westbrook and Wells, *Everyday Law in Biblical Israel*, 108.

⁴⁰⁴ Claus Wilcke, “Early Dynastic and Sargonic Period,” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 165.

⁴⁰⁵ Wilcke, “Early Dynastic and Sargonic Period,” 168.

⁴⁰⁶ S. Bayram and K. R. Veenhof, “Unpublished Kültepe Texts on Real Estate,” *Jaarbericht Ex*

both P. Louvre E 7856 and 7852 document leases for land by beginning with the statements such as “It is we who have said to you,” underscoring the primacy of the oral agreement taking place.⁴⁰⁷ Demotic period contracts continue in this vein, using “to say/speak’ (*ḏd*)” at the beginning of their records.⁴⁰⁸

No contract records survive from ancient Israel, nor does the Bible contain contractual documents, but the Pentateuch refers to contractual obligations and alludes to contractual themes in a manner that assumes their oral nature.⁴⁰⁹ Deuteronomy 32’s Song of Moses, for example, incorporates a pivotal speech act into part of its suzerain-vassal treaty structure.⁴¹⁰ Craigie has suggested that the contractual structure of the Song of Moses helped it function as a witness to the covenant between YHWH and his people, reminding them “of the implications of a breach of the covenant” (cf. vv 19, 21, 28).⁴¹¹ The Song also clearly served to assure the

Oriente Lux 32 (1993): 89-100; K. Hecker, “Zur Beurkundung von kauf und verkauf im AA,” *WO* 11 (1980): 64-75; Klaas R. Veenhof, “Old Assyrian Period,” 461.

⁴⁰⁷ K. Donker van Heel, “Papyrus Louvre E 7856 Verso and Recto: Leasing Land in the Reign of Taharka,” *RdE* 49 (1998): 91-102; idem, “Papyrus Louvre E 7852. A Land Lease Form the Reign of Taharka,” *RdE* 48 (1997): 92; Richard Jasnow, “Egypt: Third Intermediate Period,” 810.

⁴⁰⁸ Joseph Manning, “Demotic Law,” in AHANEL, ed. Raymond Westbrook, vol. 2, HOS 72 (Leiden: Brill, 2003), 824.

⁴⁰⁹ Frymer-Kensky, “Israel,” 1020-27. For Rothenbusch’s argument that the CC’s similarities to extant legal sources was due to its originally oral nature, see Ralf Rothenbusch, *Die kasuistische Rechtssammlung im “Bundesbuch” (Ex 21,2-11.18-22,16)*, AOAT 259. Münster: Ugarit-Verlag, 2000.

⁴¹⁰ G. Ernest Wright, “The Lawsuit of God: A Form-Critical Study of Deuteronomy 32,” in *Israel’s Prophetic Heritage: Festschrift James Muilenburg*, ed. Bernhard W Anderson and Walter J Harrelson (New York: Harper and Brothers, 1962), 40-43; Hans Jochen Boecker, *Redeformen des rechtslebens im Alten Testament*, 2nd ed. WMANT 14 (Neukirchen: Neukirchener, 1970).

⁴¹¹ Peter C. Craigie, *The Book of Deuteronomy* (Grand Rapids: Eerdmans, 1976), 374.

people of their promises, as vv 36–43 remind them of YHWH’s personal commitment to the contract’s terms. Crucially, that assurance is communicated through the citation of a speech act, in which YHWH says, “I lift up my hand to heaven *and say*” (Deut 32:40).⁴¹²

The psalmist also conveys his assumption of the contract as an oral transaction, citing speech acts or pointing to the mouth as pivotal to the integrity of the covenant between YHWH and his people. In Psalm 89:35, for example, the psalmist assumes the covenant’s spoken nature on the part of YHWH by ascribing to him the words, “I will not profane my covenant and not change what went forth from my lips.”⁴¹³ As for the mortal side of that covenant, the psalmist also assumes a spoken act. This is evident in Psalm 50:16, in which YHWH asks the wicked what right they have to “carry my covenant upon your mouth (עַל־פִּיךָ).”⁴¹⁴

A second form of evidence for a contract being an oral transaction in the ancient Near East is the collection of directives they often contain. These

⁴¹² I should clarify here that the significance in this phrase for the purposes of this study is its mention of YHWH’s speech act. Though Seely has suggested that YHWH’s lifted hand is evidence of his making a divine oath, Strine has outlined numerous problems with interpreting Deut 32:40 in this way. His most convincing point concerns all the other functions the divine hand seems to serve in the surrounding text. In his words, “it is odd that after using the hand to deal death and to heal that the next line changes it into a sign that accompanies the speech-act of swearing, only for it to immediately return as a weapon in the following line.” David Rolph Seely, “The Raised hand of God as an Oath Gesture,” in *Fortunate the Eyes that See: Festschrift David Noel Freedman*, ed. Astrid B. Beck (Grand Rapids: Eerdmans, 1995), 419; C. A. Strine, *Sworn Enemies: The Divine Oath, the Book of Ezekiel, and the Polemics of Exile*, BZAW 436 (Berlin/Boston: de Gruyter, 2013), 75.

⁴¹³ Frederick H. Cryer, *Divination in Ancient Israel and Its Near Eastern Environment: A Socio-Historical Investigation*, JSOTSup 142 (Sheffield: Sheffield Academic, 1994), 315.

⁴¹⁴ Theodor Seidl, “Who Stands behind the ׀׀׀ in Psalm 50:16A? The Ethical Testimony of Psalm 50:16–22,” in *Psalmody and Poetry in Old Testament Ethics*, ed. Dirk J. Human, LHBOTS 572 (New York: T&T Clark, 2012), 77.

directives instruct the parties to say formulaic phrases aloud as key parts of the contract proceedings. It appears that these phrases, once spoken, effectively bound the contracted parties to one another. La Font has drawn attention to this element in Neo-Sumerian betrothal contracts, which include a variety of directives, such as “I will marry X daughter of Y” (NG 15:4-6, 16:4-6) or “I am your son-in-law.”⁴¹⁵ In some, fathers speak phrases to each other: “May my son be your son-in-law” (NG 18:8-10), “May my child X marry your child Y,” and “May your child X marry my child Y.”⁴¹⁶ Adoption contracts have directives as well. In the Old Babylonian laws, for instance, a man speaks the words “My children” to become the children’s father and they the heirs of his property (LH 170-171).⁴¹⁷

Affirming the contractual importance of the spoken word, the inverse of these declarations threatened to unbind adoption contracts. In LH 192-193, for example, a child’s vocal challenges such as “you are *not* my father,” or “you are *not* my mother,” are regarded as a genuine threat to an adoption contract’s integrity.⁴¹⁸ In LH 160-161, the statements “I will *not* give my daughter to you” and “You will *not* marry my daughter” are all a father needs to say or do in order to halt an announced engagement between his

⁴¹⁵ Claus Wilcke, “Familiengründung im alten Babylonien,” in *Geschlechtsreife und Legitimation zur Zeugung*, ed. E.W. Müller (Munich: Karl Alber Freiburg, 1984), 246.

⁴¹⁶ Bertrand LaFont and Raymond Westbrook, “Neo-Sumerian Period (Ur III),” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 202; Wilcke, “Familiengründung im alten Babylonien,” 245 n. 46.

⁴¹⁷ Roth, *Law Collections*, 113-14.

⁴¹⁸ Roth, *Law Collections*, 120.

daughter and a future son-in-law.⁴¹⁹ It is a similar case in Emar, where the statement “I will *not* honour (you)” serves as the formal declaration for ending not only adoption contracts but also commercial contracts between inferiors and superiors (EMAR 30; RE 10, 13).⁴²⁰

The third form of evidence brings up an important issue with regard to an oral – rather than written – contract: What enforces it if not a signature on a document? If the document is just a record of the protocols or ceremony taking place, what deterred people from simply destroying the record and denying it ever happened? There are two sides to this answer. First, these documents commonly attest to the procedure taking place in front of witnesses.⁴²¹ As argued in Chapter Three, witnesses could sabotage any attempt to deny that a contract proceeding had taken place, because of the power that witnesses’ words carried in ancient Near Eastern legal culture.⁴²² By invoking the parties’ fear of being “found out,” the witnesses’ presence at contract proceedings acted as an enforcer, deterring parties from making a false claim against the agreement later on.

The second and more immediate force in the contract procedure is the inclusion of a spoken oath. Though Chapter Three already touched on

⁴¹⁹ Roth, *Law Collections*, 111-12.

⁴²⁰ For the use of honour in these documents, see p. 109. Raymond Westbrook, “Emar and Vicinity,” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 673.

⁴²¹ Wilcke, “Early Dynastic and Sargonic Period,” 169; Veenhof, “Old Assyrian Period,” 461; Jasnow, “Egypt: Third Intermediate Period,” 810; Manning, “Demotic Law,” 824.

⁴²² For this in detail, see pp. 80-87.

the oath as an effective deterrent for lying in a court proceeding,⁴²³ it is in the context of contract-making that ancient Near Eastern legal culture reveals the extent to which it depended on the oath. Whether the participants were kings or commoners, the contracts for a country or a goat, the common denominator of all contractual procedures was each party swearing aloud that they would not default on the agreement.⁴²⁴

Consider, for example, the standard procedures of a treaty, as outlined from a Mari letter (ARM 26/2 404).⁴²⁵ In this letter an official recounts a treaty between the rulers Atamrum of Andarig and Ashkur-Addu of Karana. The recorded procedure contains the following stages:

(1) Sent an envoy to invite; (2) sent back an envoy to accompany; (3) discussion of the treaty and its terms took place. (4) Each party then stated his formal terms as demands to the other party. (5) A sacrificial animal is slaughtered, providing the blood for a ritual intended to symbolize the new bond. (6) Exchange of oaths by the god(s) (*nīš ilim/ilāni*), which involved reference to the terms exchanged under (d), and in presence of divine statues or symbols brought for this purpose. (7) Festive conclusion, which included a drinking ceremony and exchange of gifts.⁴²⁶

In this sequence of stages, the climax runs from the animal sacrifice to the exchange of gifts. The purpose of the sacrifice is ultimately to provide the blood for the ritual accompanying the oath. Crucially, though, the festival

⁴²³ See pp. 83-85.

⁴²⁴ "...the conclusion of international agreements was basically a grander version of any formal agreement concluded by oath." Carlo Eide Jesper, "International Law in the Second Millennium: Middle Bronze Age," in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 747-48.

⁴²⁵ Jesper, "International Law," 747-48.

⁴²⁶ Jesper, "International Law," 748.

can only happen after the oaths have been spoken by the parties. It is the oath that serves as the enforcing moment. Other treaty procedures suggest the same central role for the oaths between the parties. As Jesper puts it, “there is little doubt...that all Great Powers of the Late Bronze Age followed similar procedures.”⁴²⁷ The Hittites even used the words “binding” (*išhiul*) and “oath” (*lingais*) to refer to a treaty.⁴²⁸

Beyond treaties, La Font and Westbrook argue that Neo-Sumerian marriage contracts also depended on oaths, given that “at least one of the parties took a promissory oath” after stating their formulaic phrases (NG 14, 15–16).⁴²⁹ These oaths are predictably less stately than those between two kings, but this variety demonstrates why the oath became so ubiquitous for contract procedures. An oath might concern matters of economic exchange on an international scale; but it could also accommodate marriage contracts, with newlyweds swearing to “not to enter the house of another” (NRVN 5).⁴³⁰

Oppenheim has also shown how the oath enforced three late Kassite period contracts from Ur, which record families selling their children into debt slavery.⁴³¹ As an oral transaction before witnesses, the families swear

⁴²⁷ Jesper, “International Law,” 759.

⁴²⁸ He also notes the equivalent Akkadian terms in use at Hattuša: *rikiltu* (or *riksu*) and *mamītu*. Gary Beckman, “International Law in the Second Millennium: Late Bronze Age,” in *AHANEL*, ed. Raymond Westbrook, vol. 1, HOS 72 (Leiden: Brill, 2003), 759–60; see also D. Arnaud, “La Syrie du Moyen-Euphrate sous le protectorat hittite: contrats de droit privé.” *AO 5/2* (1987): 211–41.

⁴²⁹ Phrases on p. 172. LaFont and Westbrook, “Neo-Sumerian Period (Ur III),” 201.

⁴³⁰ Wilcke, “Familiengründung im alten Babylonien,” 246.

⁴³¹ A. Leo Oppenheim, *Ancient Mesopotamia: Portrait of a Dead Civilization* (Chicago);

that “they will have no appeal. At any time in the future, whoever among the brothers, children, family, or kin claims the boy, they will deal with him (the claimant)” (UET 7, 21, 22, 25).⁴³² Finally, Jasnow argues that the typical commencement of Egyptian oaths with imperative statements like “to bind” (*ʿrq*) and “to live” (*ʿnh*), indicates that their announcement instigated the oath’s binding power.⁴³³

If the binding force for a contract was the oath, then what was it about the nature of the oath that compelled its speakers to fear it? The answer is the curse. An oath’s content was mainly composed of curses that were self-directed and believed to be imminent if the speaker violated the terms of the contract.⁴³⁴ To answer more accurately, then, a belief about the efficacy of these curses was the foundational force which bound a person to an oral contract’s terms. As such it merits exploration.

The Curse: a Societal Good

Gevirtz defines a curse as “the deliberate, considered expression of a wish that evil befall another.”⁴³⁵ The material just covered adds a qualifier, namely, that the curse may wish for evil but could not have been regarded

London: University of Chicago Press, 1964), 338.

⁴³² Oppenheim, *Ancient Mesopotamia*, 338; Jo Ann Hackett and John Huehnergard, “On Breaking Teeth,” *HTR* 77 (1984): 265.

⁴³³ Richard Jasnow, “Egypt: New Kingdom,” 313.

⁴³⁴ H. G. L. Peels, *The Vengeance of God: The Meaning of the Root NQM and the Function of the NQM-Texts in the Context of Divine Revelation in the Old Testament* (Leiden; New York: E.J. Brill, 1995), 237.

⁴³⁵ Stanley Gevirtz, “West-Semitic Curses and the Problem of the Origins of Hebrew Law,” *VT* 11 (1961): 140.

as evil in and of itself, given its fundamental role in maintaining a society's binding arrangements.

Crucial to understanding this nuance is recognizing two facts about cursing. The first is that an effective curse, no matter its purpose, is magnificently horrible. Its vitriol, in other words, is not the basis upon which to judge whether it was "good" or "evil." Rather, the issue is what the curse was meant to accomplish as a result of its utterance. As part of oaths and other related aspects of legal culture, curses accomplished societal goods: In addition to their function in compelling contracted parties to "keep their word," they are also attested as means to combat vandalism and theft, having been recorded on boundary stones, tombs, and statues. Crawford's work, for example, suggests that a curse inscribed on a tomb was a last resort, meant to deter criminals from robbing the grave.⁴³⁶ Fensham reasons that a similar function for curses on boundary stones was due to the belief that the curses, once spoken against any potential transgressor, would come about "directly after the transgression."⁴³⁷

Fensham and others have argued that this was understood as a "magical process."⁴³⁸ It is far more accurate to say that curses draw upon a combination of regard for a deity's agency and regard for a speech act's

⁴³⁶ Timothy G Crawford, *Blessing and Curse in Syro-Palestinian Inscriptions of the Iron Age* (New York: Peter Lang, 1992), 97.

⁴³⁷ F. Charles Fensham, "Common Trends in Curses of the Near Eastern Treaties and Kudurrus-Inscriptions Compared with Maledictions of Amos and Isaiah," *ZAW* 75 (1963): 158; see also Ignace J. Gelb, Piotr Steinkeller, and Robert M Whiting, *Earliest Land Tenure Systems in the Near East: Ancient Kudurrus* (Chicago: Oriental Institute of the University of Chicago, 1991).

⁴³⁸ Fensham, "Common Trends in Curses," 158.

power as it is informed by a surrounding legal culture. As Kitz's recent work explains: when a person uttered a curse, it only had power in so far as the "divine world [gave] its consent and [allowed] the curses to have impact."⁴³⁹ In this regard, then, "deities always have the final word."⁴⁴⁰ Kitz's language of "word" demonstrates the point; the speech act of cursing was no less pivotal than other speech acts in the rest of ancient Near Eastern legal culture. Take, for example, the suzerain-vassal treaties of Esarhaddon that appeal to the god Aššur as "the one who decrees" and then call for him to "decree an evil and unpleasant fate" (SAA 2.6.414).⁴⁴¹ It is evident that the curse depends on divine agency for it to be threatening at all.⁴⁴² It is also evident that the speech-act is the focal point for the curse, given the repeated mention of the curse's nature as a spoken decree. In fact, in the very next line in the treaty it reads "May Mullissu, his beloved wife, make the utterance of his mouth evil, may she not intercede for you" (SAA 2.6.417).

The Hebrew Bible also contains a good example. In Judges 17:1-2, Micah's mother is said to have "uttered a curse" upon the thief who took 1,100 pieces of silver from her. The problem, as Micah soon tells his mother, is that *he* is the thief. Immediately after Micah confesses his guilt, his mother cries out, "blessed be my son by YHWH!" What the mother's outburst

⁴³⁹ Anne Marie Kitz, *Cursed Are You!: The Phenomenology of Cursing in Cuneiform and Hebrew Texts* (Winona Lake: Eisenbrauns, 2013), 153.

⁴⁴⁰ Kitz, *Cursed Are You!*, 153.

⁴⁴¹ D. J. Wiseman, *The Vassal-Treaties of Esarhaddon* (London: British School of Archaeology in Iraq, 1958), 60, 78.

⁴⁴² John N. Day, "The Imprecatory Psalms and Christian Ethics" (PhD Dissertation, Dallas Theological Seminary, 2001), 65-66.

demonstrates is the belief that she can reverse or neutralize her earlier curse by uttering its opposite – a blessing. Blank argues that the syntax of the mother’s blessing, a passive construction, implies an understanding that these words were inherently powerful, and scholars following Blank have read this as a belief in the curse’s autonomous power.⁴⁴³

The power of these words is not autonomous, but consequential in a very legal sense. As established in the previous pages, the speech act in the ancient Near East was both legally and socially pivotal. It defined what a social group thought of a member and it was the primary element that secured contracts for matters as important as international treaties and an adoption. If Kitz is right that all curses are “petitions to the divine world,”⁴⁴⁴ then Micah’s mother changed her curse to a blessing not to petition YHWH to do the second rather than the first, but rather to spare her the community’s scorn in the realization she had cursed her own son. “Blessed be” was her way of saying, “I was wrong to speak these words against my child.”

There are, of course, many curses in the Bible that make YHWH’s agency explicit (e.g., Gen 3; 12; Lev 26; Num 22-24; Deut 28). Even when this is the case, though, it does not discount the possibility that speech acts’ legal primacy underlay the logic in these texts. In these examples of YHWH’s explicit agency, the author still presents the speech-act as the focal point of

⁴⁴³ Sheldon Blank, “The Curse, Blasphemy, the Spell, and the Oath,” *HUCA* 23 (1950): 91-94.

⁴⁴⁴ Kitz, *Cursed Are You!*, 3.

the curse. Consider the story of Balaam and Balak in Numbers 22–24. Day holds that Balaam’s question, “How can I curse when God has not cursed?” (Num 23:8) gives evidence that “apart from [YHWH’s] will, no curse is effected.”⁴⁴⁵ What Day does not acknowledge, however, is that the entire framework of the Balaam and Balak story assumes that a curse could never be enacted without being spoken – regardless of who the speaker is. The speech-act is a central element to the whole episode: YHWH does not just tell Balaam what to say, but rather “puts a word in his mouth” and says, “Return to Balak, and thus shall you speak” (23:16). Day is right to argue that YHWH, “in his sovereignty...can transmute cursing into blessing and blessing into cursing.”⁴⁴⁶ Still, it must also be acknowledged that the biblical authors present the speech act as the means by which YHWH does this very thing (cf. Gen 3:13–17; 12:1; Lev 25:1–27:1; Deut 28:1). The authors are drawing on the assumption that curses, as speech acts, have consequences for all parties once spoken – because of the foundational role that speech acts play in their legal milieu.

Conclusion:

Contract-making in the ancient Near East was not only understood as a spoken event, but was enforced both by the threat of a spoken witness testimony and by the spoken curses of an oath. The implication of this kind

⁴⁴⁵ Day, “The Imprecatory Psalms and Christian Ethics,” 83.

⁴⁴⁶ Day, “The Imprecatory Psalms and Christian Ethics,” 83; cf. Deut 23:6.

of structure – one wholly built on speech acts, both for making and enforcing contractual agreements – is that the people living in this milieu assigned a tremendous power to the spoken word.⁴⁴⁷

This kind of power would require a legal culture that could contend with the criminal application and abuse of that power. Two kinds of crime fall into this category. The first is creating a contract through a speech act with another party and then breaking or wilfully ignoring its terms. The second is speaking a curse outside of the parameters of its legal application in oaths. The next part turns to the pattern of crime and punishment to which these kinds of crimes belonged in ancient Near Eastern law. What follows will then demonstrate how the psalmist evokes the features of that pattern to shape our vision of his enemies as covenant-breakers and cursers against society.

**PART TWO: CONTRACT BREAKERS, ILLEGAL CURSERS:
THE SEAT-OF-THE-CRIME PATTERN IN LAW AND THE PSALMS**

The most common punishments attested for contract breaking and illegal cursing convey a logic identifiable as seat-of-the-crime justice. The “Seat of the Crime” refers to a representational understanding of the body that identifies a single body part as the motivating organ or “seat” of a specific

⁴⁴⁷ For more on this in extant examples, see Yossi Feintuch, “The Folly of Impetuous Speech: Four Biblical Incidents.” *JBQ* 34 (2006): 16-19; Russell Jay Hendel, “Numbers: The Lawbook on Speech Morality,” *JBQ* 39 (2011): 74-82.

criminal behaviour. From European legal memory, one could include in this category the English practice of tearing the heart from the body of a convicted traitor⁴⁴⁸ or amputating the right hand of a person caught coining false money.⁴⁴⁹ There was also a French practice of cutting out the tongues of Huguenots for the charge of blasphemy and a German and Swiss practice of removing the kidney of a criminal found to have a “wicked disposition.”⁴⁵⁰ Punishing the seat of the crime is the practice of mutilating, inflicting pain upon, or removing the particular part of the body regarded as both responsible for and representative of that crime.

The seat-of-the-crime Pattern in Law

As was the case with the shaming pattern, a seat-of-the-crime pattern of crime and punishment also conveys talionic logic at its root. This is why Sandra Jacobs uses the categorical term “instrumental talion” to describe this correspondence between crime and punishment in the Pentateuch, reasoning that the punishment “describes an injury of the body part responsible for initiating or activating the crime.”⁴⁵¹ Yael Shemesh’s exploration of talionic reasoning for organ-specific punishment also

⁴⁴⁸ John Stow, *The Survey of London* (London; New York: Dutton, 1912); Ian Ward, *Law, Text, Terror* (Cambridge; New York: Cambridge University Press, 2009), 51.

⁴⁴⁹ Martin Allen, “Mints and Money in Norman England,” in *Anglo-Norman Studies 34: Proceedings of the Battle Conference 2011*, ed. David Bates (Woolbridge: Boydell Press, 2012), 9.

⁴⁵⁰ James Hastings Nichols, *Corporate Worship in the Reformed Tradition* (1968; Eugene: Wipf & Stock, 2014), 39; Hans Von Hentig, *Punishment; Its Origin, Purpose and Psychology* (Montclair: Patterson Smith, 1973), 98.

⁴⁵¹ Jacobs, *The Body as Property*, 71.

includes several of the texts that are covered in what follows.⁴⁵² Significantly, however, Jacobs concedes that even if these punishments “were conceived as a form of talionic mutilation,” they are not talionic in the “finite or ‘strict sense’ terms” of like-for-like.⁴⁵³ Shemesh makes a similar concession, calling such punishments talionic but grouping them under their own category, “punishing the offending organ.”⁴⁵⁴

Jacobs and Shemesh’s concessions reflect a clear shift from the talionic pattern of “eye for an eye” to a pattern of “eye for eye-motivated crime.” This new pattern of crime and punishment may draw upon talionic logic, but it is uniquely informed by an anthropological perception of the criminal body as possessing parts responsible for its crimes. This is what gives the seat-of-the-crime pattern its own attributes and concerns in carrying out justice. The history of ancient Near Eastern law shows how a seat-of-the-crime response was regarded as the most fitting justice for criminal abuse of the speech-powers integral to contract-making. Thus, in cases when contracts are broken or wilfully ignored and in cases of someone illegally speaking a curse, the mouth is overwhelmingly the focus of punishment.

⁴⁵² Yael Shemesh, “Punishment of the Offending Organ in Biblical Literature,” *VT* 55 (2005): 343.

⁴⁵³ Jacobs, *The Body as Property*, 71; This is counter to Jackson, who argues that “punishments involving the part of the offender’s body most directly concerned with the offence (as Deut 25:12)” should not be considered as talion. Bernard S. Jackson, “The Problem of Exod 21:22-5,” *VT* 23 (1973): 281 n. 1.

⁴⁵⁴ Shemesh, “Punishment,” 343.

LOCATING THE CRIME AND THE PUNISHMENT IN THE SAME SPACE

The first feature of the seat-of-the-crime pattern is the apparent concern to locate both the crime and the punishment in the same part of the criminal's body. Presumably this is to underline the punishment's fitting nature. With regard to contract breaking specifically, this crime/punishment bodily location manifests in a variety of ways. One example is the penalty clause in a Sargonic slave purchase record, which describes a seller's act of fraudulently detaining a slave as "putting deceit in her mouth." The punishment is then announced as mouth mutilation (SRU 43).⁴⁵⁵ Another example is a record from the Egyptian Third Intermediate period, in which a woman swears that if she "speaks against" her own work contract, her "tongue will be cut off."⁴⁵⁶

The pattern of first locating the crime in the mouth and then punishing that location is helpful in understanding why two similar crimes in the Old Babylonian Laws of Hammurabi merit different punishments:

- | | |
|--------|---|
| LH 192 | If a child of a courtier or the child of a <i>sekretu</i> should say to the father who raised him or to the mother who raised him, "you are not my father," or "You are not my mother," they will cut out his tongue. |
| LH 193 | If the child of a courtier or the child of a <i>sekretu</i> identifies with his father's house and repudiates the father who raised him or the mother who raised him and departs from his father's house, they will pluck out his eye |

⁴⁵⁵ Joachim Krecher, "Neue sumerische Rechtsurkunden des 3. Jahrtausends," *ZA* 63 (1973): 188-92.

⁴⁵⁶ Jaroslav Černý, *Parchemin du Louvre no. A F 1577* (Cairo: Institut français d'archéologie orientale, 1934), 234; Jasnow, "Egypt: Third Intermediate Period," 805.

Both laws pertain to an adoptive child challenging his parents. Yet the respective punishments are focussed on different parts of the body. The significant difference is that LH 192 quotes the child's speech act as the crime. In fact, it makes a direct reference to the contractual element of his relationship with his adoptive parents by citing his perversion of those specific words.⁴⁵⁷ It is not a fair comparison, then, to look at LH 192 as simply a law pertaining to children's behaviour with their parents, as many scholars do. What is evident is the extent to which this law is concerned with presenting the child's speech act as a threat to the integrity of his own adoption contract, which had likely been struck by positive versions of these statements.

The crime/punishment bodily location is also made explicit in records that call for a physical representation of the contract to be the instrument which punishes the mouth, effectively identifying the seat and punishing it in one efficient sweep. For example, an Emar tablet concerning the sale of land stipulates in its penalty clause that "if they contest, this tablet will break their teeth." Hackett and Huehnergard suggest that this is a conscious reference to the mouth as the criminal seat.⁴⁵⁸

⁴⁵⁷ Cf. pp. 172-3.

⁴⁵⁸ A more common phrase used in similar documents is: "if they (or whoever) contests the will, this tablet will defeat them." Hackett and Huehnergard, "On Breaking Teeth," 264-5; cf. John Huehnergard, "Five Tablets from the Vicinity of Emar," *RA* 77 (1983): 11-43.

Corresponding examples may be found throughout the Mesopotamian material, with the physical representation of the contract often serving as a nail or peg. Since the Early Dynastic period there is evidence that records of the sale of property were attached to the wall of a building with a nail or peg as an announcement of the agreement.⁴⁵⁹ The penalty clauses in a number of such records refer to the nail or peg as the instrument which would then be used on or fixed into the mouth of the person that breaches the agreement. For example, an Early Dynastic contract for a sale of real estate stipulates that anyone who tried to take the property would have the peg driven through their mouth.⁴⁶⁰ Recall the Sargonic document SRU 43, concerning a woman's fraudulent confinement of a slave. It stipulates that this perpetrator, having "put deceit in her mouth,"⁴⁶¹ will have "a wooden nail...driven into her mouth/teeth" as punishment.⁴⁶²

Elsewhere, Middle Babylonian contracts from Ur prescribe driving a metal peg into the mouth of those who raise claims against the contract.⁴⁶³

⁴⁵⁹ ELTS 21 mentions a driving a nail in the wall and spreading oil near it. As Wilcke explains, the meaning of the nail and oil "seems to be the protection of the purchaser from any attempt by the seller's side to contest the concluded contract. Driving the nail evokes an analogous punishment....Anointing the nail and its place in the wall makes them sacred." Wilcke, "Early Dynastic and Sargonic Period," 168-69.

⁴⁶⁰ Wilcke, "Early Dynastic and Sargonic Period," 169.

⁴⁶¹ Krecher, "Neue sumerische Rechtsurkunden des 3. Jahrtausends," 188-92; M. Müller, "Ursprung und Bedeutung einer sumerisch-akkadischen Vertragsstrafe," *AoF* 6 (1979): 263-67.

⁴⁶² Burkhardt Kienast, "Verzichtsklausel und Eviktionsgarantie in den ältesten sumerischen Kaufurkunden," *ZA* 72 (1982): 28-41; D.O. Edzard, "Zum sumerischen eid," in *Sumerological studies in honor of Thorkild Jacobsen*, ed. S. Lieberman, AS 20 (Chicago: Oriental Institute, 1976), 63-98; Hackett and Huehnergard, "On Breaking Teeth," 271-72.

⁴⁶³ Kathryn Slanski, "Middle Babylonian Period," in *AHANEL*, ed. Raymond Westbrook, vol. 1,

In Babylonian Kassite contracts, one of the penalties for breaching the agreement is “fixing” (*retu*) a copper nail (*sikkatu*) in the criminal’s mouth (UET 7, 21, 22, 25).⁴⁶⁴ Finally, Nuzi documents stipulate that the penalty for breach of contract is a copper nail being “struck” or “driven” (*mahasu*) into the mouth (HSS 13 20:18; JEN 79:10; WO 9 23:11, 15; TCL 9 14:12).⁴⁶⁵

HALTING THE BODY PART’S FUNCTION

The second feature of a seat-of-the-crime pattern is a concern to halt the offending organ’s function altogether, either by mutilation or by amputation. The intention here was to prevent a repeat crime by damaging or destroying the seat from which it came.

For contractual and curse-related crimes, this halting feature manifests in two general expressions: crushing the mouth with a blunt object or filling it with an unpleasant substance. In the former category an Early Dynastic law states that a woman who speaks a curse against a man will have her mouth “closed with a brick” (FAOS 5/1 Ukg. 6 iii 14-17).⁴⁶⁶ Legal culture seems to have been far more creative with the latter. There is, for instance, the following Neo-Sumerian contract clause: “If a slave woman curses someone acting with the authority of her mistress, they will scour her mouth with one

HOS 72 (Leiden: Brill, 2003), 509.

⁴⁶⁴ For these contracts in theory, see p. 22; for their use of an oath, see p. 176: Hackett and Huehnergard, “On Breaking Teeth,” 265.

⁴⁶⁵ Hackett and Huehnergard, “On Breaking Teeth,” 264, 267.

⁴⁶⁶ Elisabeth Meier Tetlow, *Women, Crime, and Punishment in Ancient Law and Society. Volume 1: Ancient Near East* (New York/London: Continuum, 2004), 9-10; Wilcke, “Early Dynastic and Sargonic Period,” 157.

silā of salt" (LU 25). Old Babylonian contracts from Alalakh and Middle Babylonian contracts from Ur call for filling the mouth of a contract breaker with "lead" or "molten metal."⁴⁶⁷ Similarly, Kassite contracts state that, as punishment for a man's breach in agreement, "they will pour (?) 1 mina of (hot) tin (and) 1 mina of (hot) lead in his mouth." (UET 7).⁴⁶⁸ In the same text is an effort to stop the mouth by "stuffing" it with "1 mina of (goat) hair (and) 1 mina of wool" (UET 7).⁴⁶⁹

Like the Kassite contracts, Neo-Assyrian transactions concerning houses, land, and slaves direct penalties toward stopping up the mouth by stuffing it, though it appears that consuming noxious substances was also an option. In one case, the penalty is to "eat a mina of wool just sheared from a sheep and drink a bucket of tanner's paste" in the event one violates a contract's terms.⁴⁷⁰ Stopping of the mouth by eating is also a typical penalty included in the treaties of this period. In one case a king requires a vassal to eat asphalt and drink donkey urine for breaching a vassalage treaty (SAA 2.4).

Another version of halting the function of the mouth was to remove the tongue, effectively stopping the criminal from speaking again. Take for instance, the previously-mentioned LH 192, in which a child has verbally

⁴⁶⁷ Slanski, "Middle Babylonian Period," 509; Hackett and Huehnergard, "On Breaking Teeth," 265-66.

⁴⁶⁸ For UET 7, see pp. 176, 188. Hackett and Huehnergard, "On Breaking Teeth," 266.

⁴⁶⁹ Hackett and Huehnergard, "On Breaking Teeth," 266.

⁴⁷⁰ Tetlow, *Women, Crime, and Punishment*, 166; Karen Radner, *Die neuassyrischen Privatrechtsurkunden als Quelle für Mensch und Umwelt*, SAAS 6 (Helsinki: The Neo-Assyrian Text Corpus Project, 1997), 190.

challenged his adoptive parents.⁴⁷¹ The penalty for this child is a loss of his tongue, ensuring that those words (or any words!) are never spoken again and consequently, that the adoption contract is never again contested. To the question of why such severity, Jacobs has suggests that the child's words were regarded as a dangerous threat to social order because they challenged "the normative authority of parents."⁴⁷² If one takes into consideration that the parents are courtiers (*girseqîm*) of the king, it is likely that their employ also informed the danger that the child's insubordination posed.

As for illegal cursing, Abusch argues that destroying the mouth of a culprit by removing the tongue was crucial for deterrence and the protection of the community. In the *Maqlû*, for example, the punishment for the "witch" who has (illegally) cursed a victim is to "tear out" her tongue (*Maqlû* 7.96-105; cf. 2.216; 3.92; 8.102).⁴⁷³ As Abusch argues, this not only avenges the plaintiff for harm caused by the curse but also protects "from future harm, since the witch is now rendered powerless and unable to initiate harmful actions."⁴⁷⁴ Similarly in VAT 35:1-3, the victim deprives his

⁴⁷¹ Full on p. 185; cf. p. 172-73.

⁴⁷² Jacobs, *The Body as Property*, 140.

⁴⁷³ Tzvi Abusch, *The Magical Ceremony Maqlû: A Critical Edition* (Leiden: Brill, 2016), 301, 308, 353, 362; cf. idem, *Mesopotamian Witchcraft: Toward a History and Understanding of Babylonian Witchcraft Beliefs and Literature* (Leiden; Boston: Brill/Styx, 2002), 189; see also Walter Farber, "Witchcraft, Magic, and Divination in Ancient Mesopotamia," in *Civilizations of the Ancient Near East* (Peabody: Hendrickson, 2000), 24-36.

⁴⁷⁴ Tzvi Abusch, *Babylonian Witchcraft Literature: Case Studies* (Atlanta: Scholars Press, 1987), 109-110; See also Abusch, "A Case for Comparison: The Demonic Image of the Witch in Standard Babylonian Literature: The Reworking of Popular Conceptions by Learned Exorcists," in *Religion, Science, and Magic: In Concert and in Conflict*, ed. Jacob Neusner et al. (New York: Oxford University Press, 1989), 27-58;

attacker of power by tearing out his tongue, thereby preventing any further risk of attack.⁴⁷⁵

A final point to make with regard to the seat-of-the-crime pattern is that the scarring and mutilation that would occur as a result of these punishments is telling of how the community saw the crimes that merited such a response. In the case of a contract-breaker, for example, Jacobs is right to point out that “the resultant mutilation would, of course, mark the seller as a scoff.”⁴⁷⁶ Indeed, in the case of cursing, the prevention of a repeat offence would in part come from the community identifying the scars as a symbol of the previous crime, likely choosing to be wary of taking these unfortunate persons at their word. The concern to scar the criminal again underlines the power of the speech act in the ancient Near East; a veritable “beware” sign, in the form of mutilation, hung around the necks of those who had abused that power.

The Psalmist and the seat-of-the-crime Pattern

The psalmist makes ample use of the seat-of-the-crime pattern as it is employed in response to the crimes of contract breaking and illegal cursing throughout the history of ancient Near Eastern law. Though examples

⁴⁷⁵ “Having seized your mouth and dried out your tongue, (and) having (then) seized your hands (and) placed a *qu* into your mouth, I have now held your mouth open (and) torn out your tongue...” Abusch, *Babylonian Witchcraft Literature*, 110; See also Abusch, “An Early Form of the Witchcraft Ritual Maqlû and the Origin of a Babylonian Magical Ceremony,” in *Lingering Over Words: Festschrift William L. Moran*, ed. I. Tzvi Abusch et al., HSS 37 (Atlanta: Scholars Press, 1990), 1-57.

⁴⁷⁶ Jacobs, *The Body as Property*, 150.

abound, the scope of mouth-focussed examples in what follows is limited to the psalms which present all three of the elements necessary for identifying a seat-of-the-crime pattern in the contract and cursing framework. These include: first, locating the crime in the criminal's mouth; second, defining that crime as specifically contract or curse related; and third, punishing the mouth for it. There are, of course, many more instances of mouth imagery than what is covered below. The aim here though, is to provide evidence of an entire pattern of crime and punishment: one that locates a certain crime and a certain punishment in a single place on the body for a certain reason. This pattern is apparent in five psalms: Pss 3; 12; 31; 58; 63.

LOCATING THE CRIME

The psalmist locates his enemies' crimes in their mouths through two ways. The first involves highlighting the oral nature of the enemies' words; the second involves focussing in on the physical nature of the enemies' mouths.

The psalmist highlights the oral nature of the enemies' words as central to their crimes in three ways. The first is to quote verbatim what "they say," to draw attention to their crimes as speech acts. There is Psalm 3's claim, for instance, that:⁴⁷⁷

⁴⁷⁷ Hermann Gunkel and Joachim Begrich, *Introduction to Psalms* (Macon: Mercer University Press, 1998), 199-200; Othmar Keel, *Feinde und Gottesleugner*, 166-76; Gerstenberger, *Psalms*, 1:51.

Ps 3:3 Many are saying to my soul,
 "There is no victory for him in
 God" Selah.⁴⁷⁸

רבים אמרים לנפשי
 אין ישועתה לו
 באלהים סלה

Craigie and Tate suggest that the use of the phrase "to my soul" (לנפשי) implies that "the critical words which follow immediately reflect upon [the psalmist's] most essential being, namely his relationship with God."⁴⁷⁹ This is pertinent to this study for a few reasons. In the rest of the Hebrew Bible this relationship with YHWH is typically defined by a covenant – a contract – and by its terms for fidelity. By virtue of that covenant being the most essential element of the psalmist's self-understanding, the enemies' verbal challenge becomes the most essential crime in this psalm. Thus they may rise against the psalmist (3:2), outnumber him (3:7), and have him completely surrounded (3:7), but this verbal challenge is the single offence "to my soul."⁴⁸⁰

The enemies are quoted in Psalm 12; they are,

Ps 12:5 those who have said, "By our
 tongue we will prevail; our lips
 are with us; who is our master?"

אשר אמרו ללשוננו נגביר
 שפתינו אהנו מי אדון לנו

Jacobson's work on direct discourse in the Psalter argues that the psalmist

⁴⁷⁸ The Syriac renders לַי בְּאֱלֹהִים as "for you in your God," possibly to underscore the boldness of the affront to the psalmist.

⁴⁷⁹ Craigie and Tate, *Psalms 1-50*, 70.

⁴⁸⁰ See Pss 11:1 and 35:3, which also associate the phrase "to my soul" with the covenant relationship, as well as include a quoted speech act: "In YHWH I take refuge; how can you say to my soul, 'Flee like a bird to your mountain'" (Ps 11:1); "Draw the spear and javelin against my pursuers! Say to my soul, "I am your salvation!" (35:3).

quotes his enemies' words as a means to communicate their primacy as the worst offence among others in the psalm. This quotation in 12:5 is "the culmination of the they-complaint" in vv 3-4 and also marks "the turning point" in the psalm: it is only after the enemies "say" this statement that YHWH intervenes.⁴⁸¹ Finally, echoing Craigie and Tate's assessment of Psalm 3, Jacobson reasons that the nature of this quotation's assertion – that YHWH has no power over these enemies – captures the "central theological problem of the psalm: Which reality and whose speech is stronger?"⁴⁸² The reality to which Jacobson refers is the psalmist's self-understanding as a covenant partner with YHWH; the test of words concerns whether the psalmist believes that YHWH will remain faithful to his covenant promises when the enemies' words give every indication he has been silent.

Another way the psalmist highlights the oral nature of the enemies' crimes is by describing the auditory quality of their speech acts. In other words, he describes their words as something he can hear. This is apparent in Psalm 31:14, in which the psalmist "hears the bad report (רָבִיחַ) of many."⁴⁸³

⁴⁸¹ Rolf A. Jacobson, *"Many Are Saying": The Function of Direct Discourse in the Hebrew Psalter* (London/New York: T&T Clark, 2004), 31; cf. G. T. M. Prinsloo, "Man's Word – God's Word: A Theology of Antithesis in Psalm 12," *ZAW* 110 (1998): 390-402.

⁴⁸² Jacobson, *Many Are Saying*, 31; Patrick D Miller, "Yálpíach in Psalm 12:6," *VT* 29 (1979): 499; see also Susanne Gillmayr-Bucher, "Meine Zunge - ein Griffel eines geschichteten Schreibers": Der kommunikative Aspekt der Körpermetaphern in den Psalmen in *Metaphor in the Hebrew Bible*, ed. Pierre van Hecke, BETL 187 (Leuven: Peeters, 2005), 197-213.

⁴⁸³ Though several translations render רָבִיחַ as "whispering," the attestations of this word in the rest of the Bible underline the likelier possibility that the psalmist is hearing an evil or bad report of some kind. See Jer. 20:10: "For I hear the bad report of many. Terror is all around! 'Denounce him! Let us denounce him!' say all my close friends, watching for my fall. 'Perhaps he will be deceived; then we can overcome him and take our revenge on him.'" Cf.

The psalmist also captures the oral nature of his enemies' crimes by framing them with דבר, "to speak." In Psalm 63 and 31, the psalmist groups דבר with שקר: the enemies are "the ones who speak a lie" (דוֹבְרֵי־שָׁקֶר; 63:12) and have "lying lips which speak" (שִׁפְתֵי הַדְּבָרוֹת) שקר; 31:19; cf. Isa 59:3). Of all the Hebrew words evoking the concept of falsehood, שקר most explicitly defines the deceptive speech associated with the contractual terms of YHWH's covenant with his people. It is the word used for swearing false oaths in YHWH's name,⁴⁸⁴ for lying scribes who are in charge of interpreting the terms of the covenant with YHWH,⁴⁸⁵ and for false prophets who lead people away from that covenant.⁴⁸⁶ The result of misinterpreting שקר as truth is described as making "a covenant with death."⁴⁸⁷ The psalmist's use of this word with דבר underscores the context of the enemies' lies as covenant – and therefore contract – related.⁴⁸⁸

Gen 37:2; Num 13:32; 14:37; Ezek 36:3; Prov 25:10.

⁴⁸⁴ Lev 5:22, 24; 19:12; Jer 5:2; 7:9; Zech 5:4; 8:17; Mal. 3:5.

⁴⁸⁵ Jer 8:8; see also the preachers and teachers in Mic. 2:11; 6:12.

⁴⁸⁶ 1 Kgs 22:22-23; 2 Chr 18:21-22; Isa. 9:15; Jer 5:31; 6:13; 7:4, 8; 8:10; 9:3; 13:25; 14:14; 20:6; 23:14, 25, 26, 32; 27:10, 14-16; 28:15; 29:9, 21, 23, 31; 37:14; 40:16; 43:2; Zech 10:2; 13:3; see Thomas B. Dozeman, "The Way of the Man of God from Judah: True and False Prophecy in the Pre-Deuteronomiac Legend of 1 Kings 13," *CBQ* 44 (1982): 379-93; but also see Matthijs J de Jong, "The Fallacy of 'True and False' in Prophecy Illustrated by Jer 28:8-9," *JHebScri* 12 (2012): 1-29.

⁴⁸⁷ Isa 59:13; Jer 3:10; 10:14; 51:17; Hab 2:18.

⁴⁸⁸ For more on the use of שקר, see Ora Horn Prouser, "The Phenomenology of the Lie in Biblical Narrative," 1-17; James Todd Hibbard, "True and False Prophecy: Jeremiah's Revision of Deuteronomy," *JSOT* 35 (2011): 339-58; Werner H. Schmidt, "Über die Propheten': Streit um das rechte Wort. Jer 23,9-32," in *Geschichte Israels und deuteronomistisches Geschichtsdenken: Festschrift Winfried Thiel*, ed. Winfried Thiel, Peter Mommer, and Scherer Andreas, AOAT 380 (Münster: Ugarit, 2010), 241-58; Anthony Osuji, "True and False Prophecy in Jer 26-29 (MT): Thematic and Lexical Landmarks," *ETL* 82 (2006): 437-52; M. A Klopfenstein, *Die Lüge nach dem Alten Testament* (Zurich: Gotthelf Verlag, 1964).

In Psalm 12 the psalmist groups דַּבֵּר with שׁוֹא: thus the enemies are those who “speak vanity, each man with his neighbour” (יִדְבְּרוּ אִישׁ אֶת־רֵעֵהוּ) שׁוֹא; 12:3; cf. 41:7; 144:8,11). The word שׁוֹא draws on a different aspect of a false speech act than that of שִׁקֵּר, though its use within a contractual context is still widely attested. Often translated as “vanity,” שׁוֹא is the word used most often to convey a speech act that is void of meaning, carried out with little regard for one’s own words. Thus it is the key word in the covenant and decalogue prohibition against using YHWH’s name “in vain.”⁴⁸⁹ Moreover, it describes “empty” oaths, taken when making a covenant and not intending to keep it (Hos 10:4),⁴⁹⁰ and is a typical word to describe the gods and idols to which Israel strays.⁴⁹¹ It is a concept that resonates with a covenantal understanding of community life.

Lastly, there is the coupling of דַּבֵּר with כֹּזֵב in Psalm 58, in which the psalmist’s enemies, “the wicked,” are said to “err from the womb, speaking lies” (תָּעוּ מִבֶּטֶן דִּבְרֵי כֹזֵב) 58:4). There are only 23 other attestations of כֹּזֵב in the Hebrew Bible; the majority of these describe the divinations of false prophets.⁴⁹² Thus, this word captures oral fabrication on a cosmological level. Some even treat it in the realm of witchcraft.⁴⁹³ In contractual terms, to

⁴⁸⁹ See Exod 20:7; Deut 5:11; Ps 139:20; Thomas B. Dozeman, *Exodus* (Grand Rapids: Eerdmans, 2009), 488.

⁴⁹⁰ See Hos. 10:4; on empty cries to God: Job 35:13.

⁴⁹¹ See Jer 18:15; Jon 2:9; Zech 10:2; Ps 31:7; on vain offerings to God Isa. 1:13.

⁴⁹² See Is 28:15, 17; Ezek 13:6–9, 19; 21:34; 22:28; Hos 12:2; Mic 2:11; Zeph 3:13; Pss 4:3; 5:7; 40:5; 58:4; 62:5, 10; 116:11; Prov 19:22; 30:8; Dan 11:27.

⁴⁹³ Joseph Blenkinsopp, *Ezekiel* (Louisville: WJK Press, 2012), 68–69.

lie in this sense is to present a reality that is wholly contradictory to one grounded in the covenant that YHWH has set. This is why, rather than YHWH, **כֹּזֵב** is a “refuge” for those who “have made a covenant with death” in Isaiah 28:15, 17. To speak this kind of lie challenges authority and, as becomes apparent in Ezekiel, threatens to undo whole communities.⁴⁹⁴

Finally, the psalmist locates his enemies’ crimes in their mouths by drawing attention to the mouth’s anatomy. In Psalms 12 and 31 the psalmist focusses on his enemies’ lips, the source of “pernicious” flattery (**שִׁפְתַי הִלְקוּת**) in 12:4⁴⁹⁵ and of lying (**שִׁפְתַי שָׁקַר**) in 31:19.⁴⁹⁶ In Psalm 12, in fact, the enemies locate their own crimes in this space when they say “our lips are with us” (12:5). In Psalms 12 and 31 the psalmist also focuses on the tongue of his enemies. It is a source of strife (**רִיב**) in 31:21 and, along with their lips, the only weapon the enemies need “to prevail” in 12:5 (cf. Pss 120:2; 140:4).⁴⁹⁷

⁴⁹⁴ Ezek 13:6-9, 19; 21:34; 22:28.

⁴⁹⁵ My rendering of **הִלְקוּת** as pernicious is from Dahood, who ties it to the Ugaritic cognate *hlq* (to perish). Others have translated it simply as “flattery,” arguing that this is a more sensible connection to the speech act being described. If this study has made anything clear thus far, it is that a speech act may certainly be regarded as lethal in an ancient Near Eastern legal culture. I shall return to this point in the next section. Mitchell Dahood, *Psalms*, AB 16-18 (Garden City: Doubleday, 1965), 1:73.

⁴⁹⁶ See Prov 18:18; 12:22.

⁴⁹⁷ Alec Basson, “‘You Are My Rock and Fortress.’ Refuge Metaphors in Psalm 31: A Perspective from Cognitive Metaphor Theory.” *ActTh* 25 (2005): 1-17; see also Jerome FD Creach, *Yahweh as Refuge and the Editing of the Hebrew Psalter*, JSOTSup 217 (Sheffield: Sheffield Academic, 1996); Dieter Eichhorn, *Gott als Fels, Burg und Zuflucht. Eine Untersuchung zum Gebet des Mittlers in den Psalmen* (Bern; Frankfurt: Peter Lang, 1972); Christine de Vos, “Es gibt mehr felsen in Israel,” in *Metaphors in the Psalms*, eds. Pierre van Hecke and Antje Labahn, BETL 231 (Leuven: Peeters, 2010), 1-11.

DEFINING THE CRIME

Having located the crime in the enemy's mouth, the second element of the pattern is to convey that these oral, mouth-based crimes are contract or curse related. The psalmist communicates this by placing his enemies' speech acts in contrast to other speech acts which draw on contract and oath-making phrases. Significantly, these contrasting speech acts typically express the honour and reward entailed in contract keeping and oath keeping.⁴⁹⁸ In placing his enemies in opposition to this ideal, the psalmist presents them as contract breakers and illegal cursers.

In Psalms 31 and 63 the psalmist juxtaposes his enemies' crimes with his own use of "you are my" and "my God" language, alluding to the formulaic phrases of adoption contracts.⁴⁹⁹ Vorländer argues that these phrases are intended to renew the commitment on the part of the speaker by restating the speech acts associated with contract making.⁵⁰⁰ Albertz argues that the Hebrew syntax in the phrase, "you are my God"⁵⁰¹ lends support to such a theory, given that the pronoun "you" is often constructed emphatically (e.g., אֲלֵי אֱתָהּ).⁵⁰² This is meant to stress the commitment on

⁴⁹⁸ For a related discussion, see Alejandro F. Botta, "The Function of the Polarity between the Pious and the Enemies in Psalm 119," *OTE* 5 (1992): 252-63.

⁴⁹⁹ For those phrases, see pp. 174-5, 187. Cf. Pss 25:5; 31:4-5; 40:18; 43:2; 71:3; 91:9; 119:114; 143:10; Hermann Vorländer, *Mein Gott: Die Vorstellungen vom persönlichen Gott im Alten Orient und im Alten Testament* (Kevelaer: Butzon and Bercker, 1975), 245-280; Rainer Albertz, *Persönliche Frömmigkeit und offizielle Religion: Religionsinterner Pluralismus in Israel u. Babylon* (Atlanta: SBL, 2005), 32-37; Gerstenberger, *Psalms*, 1:90.

⁵⁰⁰ Vorländer, *Mein Gott*, 245-46.

⁵⁰¹ Pss 22:11; 31:15; 63:2; 71:3, 7; 140:7.

⁵⁰² Albertz, *Persönliche Frömmigkeit*, 32-37; Vorländer, *Mein Gott*, 268-69.

the part of the speaker to YHWH in particular (“you”). Eissfeldt has also argued that the invocations אֱלֹהֵי (my God) and אֱלֹהֵי (my God) draw on adoption phrases specifically related to deities, which “verbally designate the god to whom supplicants wished to attach themselves exclusively.”⁵⁰³ Building on this work, Gerstenberger suggests that “You are my Lord” in Psalm 16:2 and “You are my son” in Psalm 2:7b should be read as allusions to adoption contract proceedings.⁵⁰⁴

In Psalm 31, the psalmist quickly follows the crimes he can hear with his own contrasting speech act (“you are my God”):

Ps 31:14	For I hear the bad report of many – terror all around! ⁵⁰⁵ – as they scheme together against me, as they plot to take my life.	כִּי שָׁמַעְתִּי דְבַת רַבִּים מְגֹזֵר מִסָּבִיב בְּהוֹסְדָם יַחַד עָלַי לְקַחַת נַפְשִׁי זָמְמוּ
Ps 31:15	But I trust in you, YHWH; I say, “You are my God”	וְאָנֹכִי עֲלֶיךָ בָטַחְתִּי יְהוָה אָמַרְתִּי אֱלֹהֵי אֲתָהּ

The psalmist manages to affirm his own trust in his covenantal relationship with YHWH while also condemning his adversaries.⁵⁰⁶

One finds something similar in the contrasting speech acts of Psalm 63:12:

Ps 63:12	But the king will rejoice in God; all who swear by him will exult	וְהַמֶּלֶךְ יִשְׂמַח בְּאֱלֹהִים וְיִתְהַלָּל כָּל־הַנִּשְׁבָּע בּוֹ
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⁵⁰³ Otto Eissfeldt, “Mein Gott’ im Alten Testament,” ZAW 61 (1948): 3; Vorländer, *Mein Gott*, 273-76; Albertz, *Persönliche Frömmigkeit*, 32-37.

⁵⁰⁴ Gerstenberger, *Psalms*, 1:46-47, 90.

⁵⁰⁵ Cf. Jer 6:25; 20:10; 46:5; 49:29.

⁵⁰⁶ Gerstenberger, *Psalms*, 1:166.

for the mouths of liars will be
stopped

כִּי יִסְכַּר פִּי דוֹבְרֵי-שָׁקֶר

In contrast to the liars' mouths are those who "swear by him," a phrase at first vague in its object: is it the king or YHWH? Given the invocation of Psalm 63, the answer is YHWH; like Psalm 31, Psalm 63 uses the adoption formula "you are my God" (וְאֱלֹהִים אֱלֹהֵי אֶתְהָה; 63:2), to make explicit by whom he swears.⁵⁰⁷

In Psalms 3 and 12 the psalmist constructs a juxtaposition between the contract-keeper and the contract-breakers by presenting YHWH himself as the former. Even more, the psalmist demonstrates a functioning covenant relationship with YHWH *in spite* of the enemies who doubt its legitimacy.⁵⁰⁸

In Psalm 3:

Ps 3:4	But you, YHWH, are a shield ⁵⁰⁹ about me, my glory, and the lifter of my head.	וְאֶתְהָה יְהוָה מָגֵן בְּעַדִּי כְבוֹדִי וּמְרִים רֹאשִׁי
Ps 3:5	I cried aloud to YHWH, and he answered me from his holy hill. Selah	קוֹלִי אֶל-יְהוָה אֶקְרָא וַיַּעֲנֵנִי מִמֶּהָר קִדְשׁוֹ סֵלָה
Ps 3:6	I laid down and slept; I woke again, for YHWH sustained me.	אֲנִי שָׁכַבְתִּי וְאִישָׁנָה הִקְיָצוּתִי כִּי יְהוָה יְסַמְכֵנִי
Ps 3:7	I will not be afraid of the	לֹא-אֵירָא מִרְבָּבוֹת

⁵⁰⁷ Aubrey R. Johnson, *The Cultic Prophet and Israel's Psalmody* (Cardiff: University of Wales Press, 1979), 281 n. 2.

⁵⁰⁸ Though lacking a punishment aspect, there is something similar in Ps 144, with enemies "whose mouths speak lies and whose oaths are false" (144:8,11). As far as contractual themes go, the mention of an oath leads the reader's eye in that direction; to affirm it we read in "Happy are the people who remain with YHWH, their God" (v 15b; cf. 33:12; 84:5-6; 146:5). This, as Gerstenberger has argued, must be understood in relation to the five blessings that precede it (vv 12-14). They are a vision of the community's reward for heeding the statutes of YHWH (cf. Deut 28:3-6). Vv 4-5 are especially pertinent, as they evoke the blessings (fertility and wealth) mentioned in Psalm 144. As Gerstenberger observes, "in stark contrast, curses may befall those people who do not remain faithful to Yahweh." Erhard Gerstenberger, *Psalms*, 2:431; see also D. L. Baker, *Tight Fists or Open Hands?: Wealth and Poverty in Old Testament Law* (Grand Rapids: Eerdmans, 2009), 96, 105.

⁵⁰⁹ O. Loretz, "Psalmenstudien III," *UF* 6 (1974): 177-78.

multitudes of people who have set themselves against me all around. עַם אֲשֶׁר סָבִיב שָׁתוּ עָלַי

Having answered the cries of a king (3:5) from his holy mountain, YHWH proves he is faithful, a shield about the king and the lifter of his head (3:4) in the face of “multitudes of people who have set themselves against” the psalmist (3:7). The psalmist’s claims of confidence prove his own faithfulness too, assuring YHWH that he “will not be afraid” of those multitudes. Counter to the words of the enemies, that “there is no victory for him in God” (3:3), the psalmist affirms his confidence in his covenant through direct appeal to his God: “To YHWH is the victory, upon your people is your blessing. Selah” (3:9).

In Psalm 12, YHWH once again is the contract-keeper, whose words are juxtaposed with the enemies who “speak falsehood” (12:3) and say, “With our tongue we will prevail, our lips are with us; who is master over us?” (12:5). The contrasting statement that immediately follows puts the psalmist’s understanding of the enemies’ crimes into focus:

Ps 12:6	“Because the poor are plundered, because the needy groan, I will now arise,” says YHWH; “I will place him in the safety. I will shine forth for him.” ⁵¹⁰	מִשֵּׁד עֲנִיִּים מֵאַנְקַת אֲבִיוֹנִים עֲתָה אֶקּוּם יֹאמֶר יְהוָה אֲשִׁית בְּיָשׁוּעַ יְפִיתָ לוֹ
Ps 12:7	The words of YHWH are clean words, like silver refined in a furnace on the ground, purified	אֲמֵרוֹת יְהוָה אֲמֵרוֹת טְהוֹרוֹת כְּסֶרֶף צָרוּף בְּעִלְיָל

⁵¹⁰ The MT’s יְפִיתָ (lit., he will puff for it) is difficult. My translation follows Craigie and Tate’s emendation, which follows the Greek and the Syriac. Craigie and Tate, *Psalms 1-50*, 136.

	seven times.	לְאָרֶץ מְזֻקָּק שִׁבְעָתַיִם
Ps 12:8	You, YHWH, will keep them; you will guard us from this generation forever.	אֲתֵּהְיֶה תִּשְׁמָרֵם תִּצְרֶנִּי מִן־הַדּוֹר זֶה לְעוֹלָם

By describing the words of YHWH as silver which has been purified seven times, the psalmist distinguishes the enemies as those whose words are not clean or pure. Klopfenstein has suggested that the enemies' "cunning, slick, lips" (שִׁפְתַי הַלִּקוֹת; vv 3-4), which send the psalmist calling on YHWH for help, characterize those who defiantly curse.⁵¹¹ The statement that YHWH is one who "keeps" his words points directly at those who have not, either by abandoning the covenant or, if Klopfenstein's reading is correct, abusing the power of curses. The enemies' own words suggest an important point: a curse uttered outside a contractual – and therefore, legal – setting is most easily presented as criminal by its violation of contractual boundaries.

The psalmist also presents YHWH as a contract-keeper and his enemies as the opposite in Psalm 58, but there are a couple of matters with which to contend in order to fully appreciate the psalmist's intent. First is the matter of whom the psalmist is condemning. In the opening verses, the psalmist launches a pair of rhetorical questions at his counterparts, the ones who are born "speaking lies" (v 4):

Ps 58:2	Do you indeed decree what is right, you אֱלֹהִים? Do you judge the children of man uprightly?	הֲאִמְנֵם אֱלֹהִים צָדִיק תִּדְבְּרוּן מִיִּשְׁרָיִם תִּשְׁפֹּטוּ בְּנֵי אָדָם
Ps 58:3	No, in your hearts you devise	אֶרְבֵּב בְּלִב עוֹלֹת תִּפְעֲלוּן

⁵¹¹ Klopfenstein, *Die Lüge nach dem Alten Testament*, 315-20.

wrongs; your hands deal out
violence on earth.

בְּאֶרֶץ חַמָּס
יְדִיכֶם תִּפְלֹסוּן

Though it is typically made to read “gods” in v 2, Kuntz has pointed out that אֱלֹהִים may also “denote human authorities on whom God-given power has been conferred.”⁵¹² The corrupt world order which is commonly identified, then, may be understood as closer to home, within the psalmist’s community. The questions posed to the enemies by the psalmist “are intended to expose the evil deeds of powerful community leaders whose corrupt governance has found them mocking basic human justice.”⁵¹³

Following this indictment is the psalmist’s invocation of YHWH, asking him to bring seven curses on these oppressors. Only after these curses does he finally put forth a speech act, placed in the mouth of אָדָם, that stands in direct contrast with the lies of his enemies:

Ps 58:12 Humankind will say, “Surely there is a reward for the righteous; surely there is a God who judges on earth.”

וַיֹּאמֶר אָדָם אֲדֹ-פָרִי
לְצַדִּיק אֵךְ יִשְׁאֲלֵהֶם
שִׁפְטִים בְּאֶרֶץ

Jacobson suggests that this quotation, similar to those in Psalms 35, 40, 70, and 52, develops the argument present in the psalms that “once God judges the wicked, the psalmist promises, people will acknowledge that

⁵¹² J. Kenneth Kuntz, “Growling Dogs and Thirsty Deer”: Uses of Animal Imagery in Psalmic Rhetoric,” in *My Words Are Lovely: Studies in the Rhetoric of the Psalms*, ed. Robert L. Foster and David M. (Jr). Howard, LHBOTS 467 (New York/London: T&T Clark, 2008), 56.

⁵¹³ Kuntz, “Growling Dogs and Thirsty Deer,” 56.

there is both a reward for righteousness and a God who judges on earth.”⁵¹⁴

Jacobson reasons that this is based on the logic that “God should act in order to receive praise.”⁵¹⁵ A better way to describe this logic is as contractual. As a contractual speech act, this statement highlights the crimes of the leaders whom the psalmist identifies with pointed rhetoric at the beginning of the psalm: they have broken away from what they agreed to do when God appointed them leaders of his people. The psalmist therefore calls for this crime to be punished at its seat.

LOCATING THE PUNISHMENT

Having located the contractual crimes of his enemies in their mouths through various means, the psalmist then follows with calls for punishments directed toward the same space, thereby finally invoking the seat-of-the-crime pattern. In Psalm 3:7, the psalmist calls for YHWH to “break the teeth” of those whom he quoted as saying “there is no victory” in him (3:3):

Ps 3:8	Arise, YHWH! Cause my victory, O my God! For you strike all my enemies on the cheek; ⁵¹⁶ you break the teeth of the wicked.	קוּמָה יְהוָה הוֹשִׁיעֵנִי אֱלֹהֵי כִּי־הִכִּיתָ אֶת־כָּל־אֹיְבֵי לְחֵי שָׂנֵי רְשָׁעִים שִׁבְרָתָ
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Similarly in Psalm 58:7, the call is to “smash the teeth in their mouth” – the same mouth that had “spoken lies” a few verses previous:

⁵¹⁴ Jacobson, *Many Are Saying*, 139.

⁵¹⁵ Jacobson, *Many Are Saying*, 139.

⁵¹⁶ Cf. 1 Kgs 22:24; Job 16:10; Lam 3:30.

Ps 58:7	O God, break the teeth in their mouths; tear out the fangs of the young lions, YHWH!	אֱלֹהִים הִרְס־שִׁנֵּימוֹ בְּפִימוֹ מִלְתָּעוֹת כְּפִירִים נִתְץ יְהוָה
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In Psalm 31:19, the psalmist calls for YHWH to:

Ps 31:19	Let the lying lips be mute, which speak insolently against the righteous in pride and contempt.	תִּאֲלַמְנָה שִׁפְתֵי שָׁקֶר הַדְּבָרוֹת עַל־צַדִּיק עֲתֶק בְּגִאֲוָה וְבוֹז
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Finally, in Psalm 63, one finds the psalmist's description of a time when "the king will rejoice in God and all who swear by him will exult" – which will only be "when the mouth of liars is stopped" (כִּי יִסְכַּר פִּי דוֹבְרֵי־שָׁקֶר; 63:12).

Each of these examples effectively completes the concern to locate the punishment in the same place as the crime originated, as is characteristic of the seat-of-the-crime pattern. Additionally, these examples serve as evidence of the other attribute of this pattern's legal manifestation, in that they halt the mouth's ability to function.

HALTING THE BODY PART'S FUNCTION

This second attribute truly reveals the logic of this pattern of crime and punishment, because the reason behind destroying the seat is to protect the community from a repeat crime. In each of the psalms covered in this chapter, the psalmist displays this logic, albeit through different expressions and means. Significantly, the psalmist also conveys to the reader the nature

of the enemies' real crimes through this pattern of crime and punishment in which he frames them. To begin, Psalm 3:

Ps 3:8	Arise, YHWH! Cause my victory, O my God! For you strike all my enemies on the cheek; you break the teeth of the wicked.	קוּמָה יְהוָה הוֹשִׁיעֵנִי אֱלֹהֵי כִּי־הִכִּיתָ אֶת־כָּל־אֹיְבֵי לְחֵי שְׁנֵי רָשָׁעִים שִׁבַּרְתָּ
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Nahum Sarna argues that the punishment of breaking teeth must have a greater purpose in this psalm. As he reasons,

anyone surrounded by an overwhelming mass of enemy troops, and in danger of being annihilated, would surely pray for something more drastic and decisive than that the foe receive a slap on the cheek and some broken teeth.⁵¹⁷

The problem, as Sarna observes, is how inadequate this punishment is in response to the grim scenario in the rest of the psalm. He reasons that this punishment is therefore meant to convey the result it achieves in contractual matters: a criminal rendered "impotent, ineffective and powerless to do harm."⁵¹⁸ A point to add is that the punishment's other purpose is to tell the reader that, though the enemies may be a multitude overwhelming the supplicant, their true crime is making a claim against the covenant between

⁵¹⁷ Nahum M. Sarna, "Legal Terminology in Psalm 3:8," in *"Sha"arei Talmon': Studies in the Bible, Qumran, and the Ancient Near East: Festschrift Shemaryahu Talmon*, ed. Michael A. Fishbane, Emanuel Tov, and Weston W. Fields (Winona Lake: Eisenbrauns, 1992), 175.

⁵¹⁸ Sarna, "Legal Terminology in Psalm 3:8," 178.

YHWH and the psalmist, by saying “there is no victory for him in God” (3:3).

In halting the seat of his enemies’ true crime, the psalmist has called for the most fitting of punishments. To be sure, breaking teeth does halt the function of the mouth for a while, which in turn prevents the crime from happening again in the immediate future. As Craigie and Tate put it, “mouths cluttered with shattered teeth could no longer voice their enmity.”

⁵¹⁹ The longer-term deterrence, though, is the visible mutilation that will always be on display any time the criminal speaks.

Psalm 58 also calls for the enemies’ teeth to be broken. Again, as Sarna argued with Psalm 3, this is meant to render the enemies impotent. In this case their impotence is depicted as lions having lost their weapons.

Ps 58:7	O God, break the teeth in their mouths; tear out the fangs of the young lions, YHWH!	אֱלֹהִים הִרְסֵם-שִׁנֵּימוֹ בְּפִימוֹ מִלְּקַעוֹת כְּפִירִים נִתֵץ יְהוָה
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Though this study has not yet referred to redactional theories as support for arguments about the psalmist’s use of legal patterns, Seybold’s argument concerning this psalm is compelling when placed against the backdrop of the pattern at hand. Seybold has argued that vv 4, 6, 7, and 11 are the product of a secondary redaction that reinterprets a judgement speech against divine beings into one against wicked leaders.⁵²⁰ If one examines those added verses, they make up most of the elements that bind this psalm

⁵¹⁹ Craigie and Tate, *Psalms 1-50*, 75.

⁵²⁰ Klaus Seybold, “Psalm 58: ein Lösungsversuch.” *VT* 30 (1980): 53-66.

to a seat-of-the-crime pattern.

Ps 58:4	The wicked are estranged from the womb; they go astray from birth, speaking lies.	זָרוּ רְשָׁעִים מִרֶחֶם תָּעוּ מִבֶּטֶן דְּבָרֵי כָזָב
Ps 58:6	so that it does not hear the voice of charmers or of the cunning enchanter.	אֲשֶׁר לֹא־יִשְׁמַע לְקוֹל מְלַחְשִׁים חוֹבְרֵי תַבְרִים מִחֶכְמָם
Ps 58:7	O God, break the teeth in their mouths; tear out the fangs of the young lions, YHWH!	אֱלֹהִים הִרְסֵם־שִׁנֵּימוֹ בְּפִימוֹ מִלְתָּעוֹת כַּפִּירִים נִתֵּן יְהוָה
Ps 58:11	The righteous will rejoice when he sees the vengeance; he will bathe his feet in the blood of the wicked.	וְיִשְׂמַח צְדִיק כִּי־תָוָה נָקָם פְּעָמָיו וְרַחֵץ בַּדָּם הַרְשָׁע

Though Seybold makes a convincing argument about the redactional process of how this psalm was interpreted, his assessment of the additions is less so, as he contends that they create a series of “absurdities” in the text, reflecting out of control emotions and “the lack of a wisdom quality.”⁵²¹ Contra Seybold, these additions reflect a seat-of-the-crime pattern in which the wicked leaders are *made* to stop by virtue of breaking their teeth. That the call to break their teeth introduces the series of curses that follow is also telling; the psalmist presents these criminals first and foremost as those who have gained their power through false speech acts.⁵²²

Psalm’s 12’s call to cut off both the lips and the tongue of the enemies indicates a few things with regard to how the psalmist understood the seat-of-the-crime pattern’s implications.

⁵²¹ Seybold, “Psalm 58,” 59.

⁵²² Tate, *Psalms 51-100*, 86.

Ps 12:3	Everyone utters lies to his neighbour; with flattering lips and a double heart they speak.	שׁוֹא יִדְבְּרוּ אִישׁ אֶת־רֵעֵהוּ שְׂפַת חֲלָקוֹת בְּלֵב וְלֵב יִדְבְּרוּ
Ps 12:4	May YHWH cut off all flattering lips, the tongue that makes great boasts	יִכָּרֵת יְהוָה כָּל־שִׁפְתָי חֲלָקוֹת לְשׁוֹן מְדַבֶּרֶת גְּדִלוֹת

Firstly, to lose either of these anatomical parts of the mouth would result in permanent and debilitating mutilation. Consequently, the prevention of repeat crimes no longer depends on community members being warned by the criminal's scars. Rather the danger is removed in totality. The question is why their teeth are not smashed as with the enemies in Psalm 3. Why are they mutilated beyond all hope of delivering a functioning speech act ever again? A possible answer is that these enemies pose a greater danger because of their proven ability to deceive and curse without being caught. This is affirmed by the language the psalmist uses to plead for YHWH's help. He does not just want justice, but be in "safety" (12:6) and "guarded" (12:8).

In Psalm 31, the punishment focusses on the lips as well:

Ps 31:19	Let the lying lips be mute, which speak insolently against the righteous in pride and contempt.	תֵּאֱלָמְנָה שִׁפְתַי שָׁקֵר הוֹדְבוֹת עַל־צַדִּיק עֲתָק בְּגִאֲוָה וּבִז
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Craigie and Tate have reasoned that, by calling for lying lips to "be mute" (תֵּאֱלָמְנָה), the psalmist "is in effect praying for [his enemies'] demise and return into the silence of Sheol (v 18)."⁵²³ The other occurrences of this word

⁵²³ Craigie and Tate, *Psalms 1-50*, 262.

in the Hebrew Bible, though, typically point to some aspect of the mouth's anatomy, not merely silence. The other two occurrence in the Psalms, for instance, are both in Psalm 39. In v 3 the psalmist says "I was mute (נִאֲלַמְתִּי) and silent" (דוּמְיָה), distinguishing the two from each other. And in v 10 it becomes clear what mute refers to when the psalmist writes:

Ps 39:10	I am mute; I do not open my mouth, for it is you who have done it.	נִאֲלַמְתִּי לֹא אֶפְתַּח־פִּי כִּי אַתָּה עָשִׂיתָ
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The punitive side of being made mute is apparent in Ezekiel 3:26, where being mute is the result of YHWH making "your tongue cling to the roof of your mouth" (וּלְשׁוֹנְךָ אֶדְבִיק אֶל־חַכְךָ) on account of being "a rebellious house" (בֵּית קָרְי).⁵²⁴ This supports the argument that, in Psalm 31 the call for lying lips to "be mute" is a specific reference to the physical act of "making mute," thereby preventing the repeat of the enemies' crimes.

In Psalm 31 there is again an apparent decision on the psalmist's part to call for a permanent halt to his enemies' ability to speak; again one might ask why. The likely answer lies in how the psalmist has ordered his account of physical and social distress (vv 10-13) right before the claim to "hear" the bad report of his enemies (v 14):

Ps 31:10	Be gracious to me, YHWH, for I am in distress; my eye is wasted from grief; my soul and my body also.	תְּנֻנִי יְהוָה כִּי צָר־לִי עָשָׂשָׂה בְּכַעַס עֵינִי נַפְשִׁי וּבָטְנִי
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⁵²⁴ Cf. Ezek 3:27, "I will open your mouth"

Ps 31:11	For my life is spent with sorrow, and my years with sighing; my strength fails because of my iniquity, and my bones waste away.	כִּי כָלוּ בְּיָגוֹן חַיִּי וּשְׁנוֹתַי בְּאַנְחָה כְּשֶׁל בְּעוֹנֵי כַחֲזִי וְעַצְמוֹ עָשָׂשׁוּ
Ps 31:12	Because of all my adversaries I have become a reproach, especially to my neighbours, and an object of dread to my acquaintances; those who see me in the street flee from me.	מִכָּל-צָרָרֵי תִיִּיתִי תִרְפָּה וְלִשְׂכֵנִי מֵאֵד וּפְחַד לְמִדְעֵי רְאִי בַחֲוֶץ נִדְרֹו מִמֶּנִּי
Ps 31:13	I have been forgotten like one who is dead; I have become like a broken vessel.	נִשְׁכַּחְתִּי כְּמַת מֵלֵב תִּיִּיתִי כְּכֵלִי אֶבֶד
Ps 31:14	For I hear the bad report of many – terror all around! – as they scheme together against me, as they plot to take my life.	כִּי שָׁמַעְתִּי דְּבַת רַבִּים מְגוֹר מִסָּבִיב בְּהִנְסָדָם וַיַּחַד עָלַי לְקַחַת נַפְשִׁי זָמְמוּ

As Craigie and Tate have suggested, the whole of vv 10-13 may be subsumed under v 14: v 14 begins with **כִּי שָׁמַעְתִּי**, which would indicate a causative understanding for the distress in vv 10-13. V 14 thus “provides the explanation for the foregoing description of distress, all of which stems from the scheming multitudes who are the enemies of the psalmist.”⁵²⁵ The call for the seat of their crime to be made mute (v 19) then, is a call to halt both the enemies’s ability to speak and, by extension, to halt the psalmist’s distress.

Finally, Psalm 63’s appeal to halt the function of the enemies’ criminal seat takes the form of a call for their mouths to be “shut-up”:

Ps 63:12	But the king will rejoice in God; all who swear by him will exult for the mouths of	וְתִמְלֹךְ יִשְׂמַח בְּאֱלֹהִים וְתִהְלֵל כָּל-הַנִּשְׁבָּע בּוֹ כִּי יִסְכַּר פִּי דוֹבְרֵי-שָׁקֶר
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⁵²⁵ Craigie and Tate, *Psalms 1-50*, 261.

liars will be shut-up

The halting feature in this punishment appears with the psalmist's use of the verb סָכַר, used in Genesis 8:2 for shutting the fountains of the deep and the windows of heaven. The psalmist did not opt for the common term סָגַר, which is used to mean "to shut" with reference to far more subjects than cosmic floods. The choice may be intentional on the psalmist's part, if we consider the possibility that the psalmist is trying to express the magnitude of his enemies crimes. To put it plainly, if he wanted to present their lies as especially threatening, then surely his better choice of word is the one powerful enough to describe halting the waters of chaos rather than its alternative, used to describe shutting a door.⁵²⁶

CONCLUSION

There are a few implications of the claim that the psalmist uses the seat-of-the-crime pattern to communicate the idea that the real crimes of his enemies are ultimately contractually based.

The psalmist's use and manipulation of a seat-of-the-crime pattern challenges the idea that all mouth-focused punishments in the psalms should be grouped under the same talionic heading. The psalmist distinguishes between the levels of danger he perceives a criminal to pose

⁵²⁶Tate, *Psalms 51-100*, 124.

to his community. In some cases scars appear to be enough to warn a community of a criminal's past. In others the psalmist does not want to take that risk. He thus calls for a punishment that halts the criminal's mouth in totality, as was exemplified in Psalm 12. From a functional perspective which sees the psalmist as a source of legal understanding, this delineation suggests that the psalmist reflected a differentiation of spoken crimes on a scale of perceived gravity.⁵²⁷ Future investigations might explore if this scale is consistent with other presentations of spoken crimes in the Bible.

This chapter has also raised the possibility that contract breaking in the psalmist's community was punished with facial mutilation. This is a striking insight for the merits of a functional understanding of law insofar as there are no attestations of mouth-related punishment for contract breaking in the pentateuchal codes. Yet the psalmist shows a strong coherence to this pattern of crime and punishment as it plays out in extant ancient Near Eastern sources.⁵²⁸ A functional approach to legal culture suggests that, despite this absence, the psalmist serves as a legitimate window into the legal norms in his surroundings. One may balk at this suggestion, reasoning that the psalmist's references are merely rhetorical. If that is the case, though, it is remarkable that the psalmist is so precise, calling for a punishment that fits his enemies' crimes in a manner that does not overstep

⁵²⁷ Or as Kahan would call it, a scale of disgust: Dan M. Kahan, "The Anatomy of Disgust in Criminal Law." *Michigan Law Review* 96 (1998): 1621-57.

⁵²⁸ But also see, Benjamin Foreman, "Strike the Tongue: Silencing the Prophet in Jeremiah 18:18b," *VT* 59 (2009): 653-57.

that which is attested in the wider ancient Near Eastern material. If this is but rhetoric, it seems more likely that the psalmist would call for punishments that far exceeded the norm in order to make his point.

This chapter also highlights a tension between the continuity and discontinuity a modern reader may experience concerning the logic of seat-of-the-crime punishments in ancient law. To a modern reader, identifying a seat-of-the-crime logic in the ancient Near Eastern world is at times almost easy. There is, for example, the long-recognized precedent of amputating a thief's hand, as is found in the Alalakh treaty between Niqmepa and Ir-teshub (Alalakh Tab. 2).⁵²⁹ In it, the mayor and five elders are charged as thieves for keeping a runaway slave in their town and as a punishment lose their hands.⁵³⁰ There are also seat-of-the-crime punishments involving hands which have not stolen, whose logic is still identifiable to most readers. In the Laws of Hammurabi, for instance, the logic is clear enough when a surgeon loses a hand for an ill-fated operation (LH 218, 226), a barber loses his hand for cutting off the slave haircut without permission (LH 184), or a son loses his hand for striking his father (LH 195). The same may be said for the Middle Assyrian Laws concerning the amputation of a woman's finger for grabbing and wounding a man's testicles (MAL A 8).⁵³¹ Though arguably severe, the logic is still evident when a man loses a finger for making an

⁵²⁹ D. J. Wiseman, *The Alalakh Tablets* (London: British Institute of Archaeology at Ankara, 1953), 26-31 and Pls. I-III. <http://etana.org/etact/search/rss?subject=%22Treaties%22>

⁵³⁰ Wiseman, *The Alalakh Tablets*, § 5 – ll. 21-31.

⁵³¹ Cf. Shemesh, "Punishment of the Offending Organ," 352.

obscene gesture toward a woman (MAL A 9). Finally, in the Pentateuch, scholars rarely miss the seat-of-the-crime logic informing Deuteronomy 25:11-12:

When men fight with one another, and the wife of the one draws near to rescue her husband from the hand of him who is beating him, and puts out her hand and seizes him by the private parts, then you will cut off her hand; your eye will have no pity.⁵³²

Though we still recognize the logic of some seat-of-the-crime punishments, this chapter has shown that the psalmist's presentation of spoken crimes and their punishments betrays our disconnect with his overall perception of the criminal body. I would suggest that the key to regaining our understanding of that perception is to know when and why we lost it.

One could argue that this disconnect to the criminal body in the psalms started to take place in the nineteenth century. In her legal history of the Victorian novel, Rodensky argues that legal discourse of that era displays a discernible change from focussing on a criminal's "motivating organ" to a criminal's "state of mind" as the seat of a crime.⁵³³ She suggests the reason for such a shift was the "newly developing Victorian psychological discourse"⁵³⁴ in law, in which "determining whether or not a defendant had

⁵³² As Shemesh has written, though strains of interpretation following the Babylonian Talmud have argued that this law in reality calls for a monetary penalty, "the admonitory 'your eye shall have no pity' makes sense only if we are dealing with a harsh and unusual sanction of the amputation of a limb." Shemesh, "Punishment of the Offending Organ," 350-51.

⁵³³ Lisa Rodensky, *The Crime in Mind: Criminal Responsibility and the Victorian Novel* (Oxford; New York: Oxford University Press, 2003), 8.

⁵³⁴ Rodensky, *The Crime in Mind*, 8. If we are to follow Charles Taylor, this fracturing may be located within a broader movement toward the modern notion of "inwardness" as the

committed a crime meant...judging an external and an internal element."⁵³⁵

The key aspect here is that the "internal element" predominantly refers in Western legal discourse to the motivations of the mind, from this point onward. Thus the "heart of a traitor" and all the less-known representative organ-seats of criminal activity that were once commonplace in the Western legal system, faded into the background. With them went a conceptual understanding of the body that served Western legal culture for centuries. With the emergence of psychological discourse, the question of what drives a criminal to commit a crime was reopened for consideration and, with it, the fundamental understanding of the role that criminals' bodies play in representing the story of their crimes to the public.

Two hundred years later, we inherit the legacy of this Victorian shift. With the exception of the occasional child having a naughty mouth washed with soap, we have lost a sensitivity to the understanding of the body that drives the seat-of-the-crime logic in the psalms. As Wilcox explains it, we are instead at the intersection of assumptions about what "motivates an offender" and what motivates the brain, both of which have taken hold of academic and public discourse about crime and punishment to such an extent that the emerging discipline of our time, criminology, makes such an intersection "its *raison d'être*."⁵³⁶ In fact, it is far more accurate to say that the

psyche, which had been increasingly appearing across the spectrum of Western culture.; Charles Taylor, *Sources of the Self: The Making of the Modern Identity* (Cambridge: Cambridge University Press, 1992).

⁵³⁵Rodensky, *The Crime in Mind*, 3.

⁵³⁶Pamela Wilcox, Kenneth C. Land, and Scott A. Hunt, *Criminal Circumstance: A Dynamic*

subject at hand in contemporary discourse is not the criminal but the criminal mind, with questions centring around what external or internal factors contribute to its state.⁵³⁷

Such a shift has often dictated how Western scholars perceive and judge the punishment forms of legal cultures other than their own. The psalmist's legal culture is no exception, especially given the lack of any obvious analog in the Western legal system for his face-focussed, retaliatory violence as justice for spoken crimes. The action of "breaking teeth," "slapping faces," and "stopping tongues," would themselves be regarded as crimes in the contemporary court. It is no wonder, then, that the most frequent way that biblical scholars and theologians have approached the psalmist's preoccupation with harming his enemies' mouths has been to put the psalmist in the criminal role, with his calls for punishment constituting his criminal behaviour. What surfaces in these exegetical and theological discussions, then, are inquiries into the psalmist's "state of mind."⁵³⁸

Multi-Contextual Criminal Opportunity Theory (New York: de Gruyter, 2003), 53.

⁵³⁷ Wilcox, Land, and Hunt, *Criminal Circumstance*, 53

⁵³⁸ Brueggemann, following Lewis, proposes the apologist argument that the imagery conveys a vengeance is allowed by YHWH because it is carried out in the psalmist's imagination rather than in real life. Brueggemann, *The Psalms and the Life of Faith*, 159; idem., *The Message of the Psalms: A Theological Commentary* (Minneapolis: Augsburg, 1984); idem., *Abiding Astonishment: Psalms, Modernity, and the Making of History* (Louisville: WJK Press, 1991); C. S. Lewis, *Reflections on the Psalms* (London: G. Bles, 1958); See also Daniel J. Harrington, *Why Do We Suffer?: A Scriptural Approach to the Human Condition* (Franklin: Rowman & Littlefield, 2000), 11; Denise Dombkowski Hopkins, *Journey Through the Psalms* (St. Louis: Chalice, 2002), 88; Emily K. Arndt, *Demanding Our Attention: The Hebrew Bible as a Source for Christian Ethics* (Grand Rapids: Eerdmans, 2011); Erich Zenger, *A God of Vengeance?: Understanding the Psalms of Divine Wrath*, 1st ed. (Louisville, Ky.: Westminster John Knox Press, 1996).

My reason for including this short genealogy of thought is to critique these kinds of interactions with the psalmist. Unless exegetes and theologians bracket their deep assumptions about the "criminal mind," there is little hope in understanding the "criminal body" assumptions that undergird many psalms. Without attending to this ancient presentation of the enemies' bodies as part of the story of their crimes, then the psalmist will always be the criminal on trial for his violent ideas and the court setting will always be ours.

CHAPTER 6: CONCLUSION

The question this study has asked is, How does the psalmist craft the images of his enemies in the terms of law? In the process of answering, three major theses have been addressed.

THE ENEMY: CRAFTED IN THE IMAGE OF CRIME AND PUNISHMENT

The first thesis revolved around the observation that the lamenting psalmist tends to follow up his descriptions of the enemies' wrongs with specific punishments. As this study argued, the psalmist's muse for that wrong/punishment exchange is his own legal culture, evident in his use of certain patterns of crime and punishment that permeate the legal documents of the wider ancient Near East. Chapter Three showed how the psalmist's use of talionic language with reference to his enemies happens only when their behaviour is consistent with crimes punished in the "like for like" pattern elsewhere throughout ancient Near Eastern legal history. In fact, the psalmist utilizes specific features of talionic punishments, as witnessed by a panoply of ancient Near Eastern laws. These include efforts to match the means or method of his punishments with his enemies' crimes; to match the exact language of the punitive act with the act of his enemies; and, finally, to frame his calls for physical retaliation in the terms of payment.

Chapter Four demonstrated that the psalmist's description of his enemies as slanderers and as "those who reproach" is framed in a legal-cultural understanding of shame as a sanctioned – and necessary – form of punishment for these crimes. In his response to slanderers and reproachers, the psalmist uses key attributes of shame-inducing punishments from his wider legal culture in order to portray the justice he seeks in return. This was made clear from his references to shame as inflicted through a change in appearance and through a public forum for the punishment. Finally, Chapter Five showed how the psalmist's mouth-focussed punishments assume the nature of contract-making and breaking in ancient Near Eastern law. After establishing the primacy of orality in contract procedure, Chapter Five made clear that the psalmist uses mouth-directed mutilation to blame his enemies for violating contractual terms, either with YHWH or within the community. Once again, the psalmist describes his desired punishments with the attributes of the seat-of-the-crime punishments in the legal material. These include locating his enemies' crimes in their seat (the mouth) before summoning a punishment to the same space; and halting the seat's function altogether. More importantly, the wrongs for which he invokes a seat-of-the-crime response are consistently in line with crimes treated this way in wider ancient Near Eastern legal culture.

**THE PSALMIST'S CALL TO PUNISH:
BORN IN AN EXTERNAL REALITY, REFLECTING LEGAL NORMS**

Another thesis of this study was that the psalmist's violent punishments reflect legal norms in an external reality. This was proposed in direct response to the persistent scholarly assumption that the punishments invoked in these psalms are internally born of the psalmists' fantasies, as well as being confined to that realm. What became clear is that the psalmist not only draws on legal-cultural punishment norms but in fact depends on their normative status in order to convey to his readers the nature of his enemies' crimes. As this study sought to demonstrate, the connection between the psalmist and the history of ancient Near Eastern law is built on the psalmist's use of patterns of crime and punishment that are identifiable throughout that history. The patterns discussed in this study were labeled talion, shame, and seat of the crime. By utilizing these patterns, the psalmist is able to add an important dimension to the enemy images he is crafting. These are not just faceless enemies doing terrible wrongs to him; they are illegal cursers, slanderers, and contract breakers.

THE LAW: EXISTING BEYOND THE BIBLE

My claim that the psalmist's punishments reflect legal norms in an external reality brought on the third and final part of this study's thesis: the reality in question is the ancient Near Eastern legal milieu of which biblical law is a part. Thus, the legal analogies and precedent to which this study appealed

for the psalmist's punishment imagery, came from territory well beyond the confines of the Hebrew Bible. This played out in two crucial ways. Firstly, it was in showing that there was a discernible continuity in the legal-cultural handling of certain crimes throughout the ancient Near East. This was only possible to demonstrate by first correcting the definition of "law" with which psalms scholars have hitherto worked. As Chapter Two observed, in the process of defining law, psalms scholars have made three crucial decisions: the decision between substantive or functional criteria for categorizing what can be termed "law;" the decision between ordinary or technical language when communicating words with legal meaning; and the decision between norms or institutions as the location for where law happens. Psalms scholars were shown to have consistently adopted particular sides of these definitions in a way that coheres with a contemporary Western understanding of law but diverges from that of the psalmist. Chapter Two then proposed that a definition of law guided by functional criteria, technical meaning, and the observation of norms, was the most fitting for an encounter with the psalmist's own legal understanding. Taking this approach allowed this study to present the lamenting psalmist as a participant in a legal culture. That culture, in turn, is represented by a wide range of ancient Near Eastern source material, such as transactional records, lexical texts, instructions, trial records, decrees, narratives, and rituals, in addition to the legal codes proper.

LOOKING AHEAD

As each of the chapter's conclusions suggested, there is work to be done in the wake of this study. On the one hand, there are a number of identifiable patterns in both the psalms and ancient Near Eastern legal material that this study could not pursue because of the limited scope of the project. These include the patterns of crime and punishment centred around banishment, as well as those associated with debt-slavery. These remain to be explored.

On the other hand, there is the matter of testing the presence of the patterns I was able to address, in biblical literature that is outside the Psalter. How do the prophets' oracles against the nations, for example, compare to the shaming, seat-of-the-crime, and talionic patterns in the legal material just covered? How might the mouth-oriented narratives, in which prophets are called to speak on YHWH's behalf, be illuminated from this legal perspective? The shaming pattern should also be explored in the book of Job, given its constant references to change in appearance, the observing other, and manipulations of social status.

The psalmist's use of clothing in relation to shame also raises questions about the underlying social symbolism of clothing in biblical texts. Take for instance, the psalmist's presentation of himself in sackcloth. He demonstrates a humiliating change in appearance as part of a petition for YHWH's help, by showing how he is aware of his own position in the YHWH-psalmist relationship. The relationship between clothing and shame raises

questions about the significance of clothing in the biblical texts and especially how that relates to legal-cultural perceptions of the clothes-wearer. There is also the psalmist's use of eye-related imagery, not only to indicate a person's given status in an inferior/superior relationship, but to remind YHWH that he is one of the observing others when someone is wrongfully shamed. The phrase that the psalmist uses in Psalm 35:22, "You have seen, Lord" is one which deserves further examination, as it occurs in various inflections in Lamentations (1:9, 11, 20: 2:20; 3:50; 3:59). These cases may also need to be read as a suppliant enduring a shame-inducing crime.

LAST THOUGHTS

My ultimate aim in this project was to make it impossible to read the psalmist's calls for punishment without taking into consideration his own legal culture. I attempted to demonstrate that the connection we have to the psalmist's logic as contemporary readers is not as much of a lacuna as one first might assume. The seeds of the logic that defines the talionic, shaming, and seat-of-the-crime patterns are still very much in Western scholars' social consciousness – even to some degree our legal-cultural one. My hope is that this study has at least prompted a recognition that the theological discussion concerning the violent psalmist does not have to be limited to how we "contend" with him. Rather, we might start by discussing what we

share with this figure. We too are beholden to a legal culture, which both defines what we see as crimes and the justice we are allowed to seek for such offences. If this study has made anything evident, it is that the psalmist is aware of this tension – offers reflection on it, even. In light of that shared awareness between ourselves and the psalmist, we might strive to meet him on his own “field of pain and death,” where Cover so famously described the interpretation of law taking place.⁵³⁹ In this way we may be able to identify the profundity in his calls for justice, even if they manifest in bloodied and beaten foes.

⁵³⁹ Robert Cover, “Violence and the Word,” *YLJ* 95 (1985): 1601.

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