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Punishments in the Torah and Their Rationale

Bruce Wells (Philadelphia)

I. Introduction

What is the purpose of punishment?¹ Why do our modern societies punish individuals when they commit a crime? The answers to these questions are not as apparent as some might think. A great deal of debate still takes place today regarding how to justify the punishments imposed by a legal system, and disagreements on the topic were just as evident in parts of the ancient world.² This article will examine the rationales that underlie the penalties and punishments found in many of the laws of the Pentateuch or Torah.³ I follow the still widely accepted chronological ordering of the pentateuchal codes that assumes the Covenant Code was compiled first, then the Deuteronomistic Code, and finally the Holiness Code, and I will treat them in this order.⁴ The article's main conclusion will be that the law codes or legal collections of the Pentateuch differ significantly when it comes to the rationale behind the penalties they contain. The penalties in the Covenant Code are directed primarily toward reparation; those in the Deuteronomistic Code focus on appeasement of the deity and retribution, with some mention of deterrence; and those in the Holiness Code present a combination of retribution and deterrence as their justification.⁵

The rationales that a society can offer for punishing its members when they violate the rules and norms established by that society fall roughly into two categories: a retributivist rationale and a consequentialist rationale.⁶ Positing only these two categories may well be

1 This paper originally focused on penalties for violations of family law and was entitled "Penalties and Sanctions in Ancient Israelite Family Law." It was presented on 20 February 2014 at the conference, "Zwischen Abschreckung, Vergeltung und Wiedergutmachung – Strafen und Strafantrohungen in Kulturen des Altertums." For this article, I have expanded the investigation to include other areas of law as well. I want to thank Birgit Christiansen for inviting me to participate in the conference and the Center for Advanced Studies at the Ludwig-Maximilians-Universität in Munich for hosting it.

2 For more on current debates, see Tonry 2011; and Brooks 2013. For evidence of these debates in the ancient world, see the comments below on ancient Greece.

3 For the sake of convenience, I use the terms "penalty" and "punishment" interchangeably throughout the article.

4 For an overview of the issues and a cogent argument for this chronological ordering, see Levinson 2006. The main debate has to do with the relative dating of the Deuteronomistic and Holiness Codes. For an extensive argument that the Deuteronomistic Code is earlier, see Stackert 2007; for the opposite view, see Weinfeld 2004.

5 On the Priestly Code, see n. 19 below.

6 See the discussion in Duff 2013. Immanuel Kant is usually considered one of the foremost proponents of the retributivist view, although he does see some value in deterrence (see Rauscher 2012: section 7; see also Kant 1887[1796]: 194–204; see also Pfeifer 2015: 16). Jeremy Bentham is the classical consequentialist (Duff 2013: section 3; he cites Bentham 1907[1789]: chapter XIII.2).

an oversimplification of matters, but they will prove useful throughout this discussion. Retributivist rationales are backward-looking in the sense that they concentrate on the wrong that has been committed and on reacting to that wrong; in general, retributivist rationales say that punishment is justified and even necessary as a *response* to an act in the past.⁷ Different types of retributive actions would include measures such as:

- revenge;
- reparation or compensation; and
- retribution (defined as seeking to give wrongdoers their just deserts).⁸

In contrast, consequentialist rationales look to the future and ground penalties in the goods that will come about as a result of the penalties. In other words, they are interested in the consequential *benefits* of the penalties imposed.⁹ Consequentialist measures are usually thought of as being intended for two main goals:

- rehabilitation; and
- deterrence.

The goal of punishment from a consequentialist point of view is to create a good that did not exist prior to the commission of the wrong. That good might be found in the education or moral improvement of the wrongdoer. Prior to the act, the wrongdoer possessed a moral character that was prone to commit the wrong in question, and a rehabilitative process should result in an improved moral character that the wrongdoer did not possess before committing the wrong. The resulting good might also be found in deterring or preventing others in the community or state from carrying out the same wrong act in the future. When a wrongdoer is punished for committing, say, theft, the level of deterrence with respect to theft is now higher, according to consequentialist reasoning, than it was before the most recent act of theft was committed. Retributivist measures, on the other hand, seek either to restore a set of circumstances that existed prior to the wrongful act (through reparation) or

⁷ Duff 2013: last paragraph in section 4.

⁸ It is important to distinguish what I am calling revenge from what I am calling retribution. Revenge, as I see it, is action that is taken for the purpose of bringing emotional satisfaction to the victim or the victim's family. This could – but does not have to – entail allowing them to inflict the punishment themselves. Retribution, on the other hand, is action that is taken because the wrongdoer deserves to suffer something negative; the focus is on the wrongdoer. If the wrongdoer has gained an advantage over the victim by breaking the law, then the wrongdoer must now be put at a disadvantage in order, at the very least, to balance out the earlier advantage. Often, an action that would count as revenge and one that would count as retribution might look similar or even identical. Still, the motivation behind each action would differ. In his work on ancient Near Eastern law, R. Westbrook distinguished, in the case of serious harms against an individual, between revenge (the physical punishment of the perpetrator) and ransom (payment by the perpetrator in lieu of physical punishment); see Westbrook 2003: 77–79. His use of the term “revenge” is somewhat different from how I am using it in this article. I generally accept the distinction he makes, although I prefer the labels of “full measures” and “partial measures” (see Wells 2005: 63–64).

⁹ Duff 2013: section 3.

to inflict a negative experience upon the wrongdoer that will somehow balance out the negative outcome resulting from the wrong.¹⁰

For the sake of this article, another category, separate from those of the retributive or consequentialist rationales, needs to be introduced. It is a religiously oriented rationale and is, perhaps, best summed up by the notion of the appeasement of the deity. This rationale has both retributivist and consequentialist aspects to it. To begin with, it is backward-looking in the sense that it is interested in making up for a past wrong. Some biblical texts speak of certain wrong acts as leaving a stain on the community that has to be cleansed or purged away, and it is the punishment of the wrongdoer that effects the cleansing. From this perspective, the punishment restores the community to its previous state before the wrong was committed. By purging the stain, the punishment also appeases the deity and prevents the deity from inflicting punishment on the entire community for allowing the evil to go unpunished and the stain to go unpurged.¹¹ From a consequentialist perspective, the religious benefit that results comes with the additional favor that the deity may bestow upon the community for ridding itself of evil and, often, the evildoer. As we will see with Deuteronomy, the biblical texts that speak of appeasement tend to highlight the negative side of appeasement – namely, eliminating the stain of evil and thereby averting the wrath and punishment of the deity. Nevertheless, the beneficial side remains – currying favor with the deity – even if it is only implicit in a number of texts.

In terms of the ancient world, all three of these categories played a role in discussions concerning punishment that have survived in the literature from ancient Greece, but I will focus here on discussions concerning the first two mentioned above. In Plato's dialogue *Protagoras*, the character Protagoras lashes out against retributivist motivations as "bestial."¹² Punishment should be meted out only "for the sake of the future."¹³ One future benefit of punishment, according to Protagoras, is deterrence, and the other, more important, benefit is the rehabilitation of wrongdoers. They must be "instructed and corrected until by punishment [they are] reformed."¹⁴ These two benefits return in Plato's later dialogue *Laws*. He argues that penalties should be intended to deter those who feel tempted to break the law and that punishment should be used to "cure" wrongdoers of their disposition to wrongdoing.¹⁵ In other words, the wrongdoing is not what demands punishment; rather, it is the need for the rehabilitation and education of the individual (a need that often comes to light only after the commission of the wrong) that requires society to act. Thucydides presents a speech in Book 3 of his *History of the Peloponnesian War* that takes a different approach. The speech that he attributes to Cleon combines retributivist and consequentialist reasoning; Cleon calls for giving criminals what they deserve, but he also stresses the value

10 Some modern approaches seek to combine aspects of multiple rationales. See the comments on this in Pfeifer 2015: 17–18.

11 See, e.g., Stulman 1992: 49, 52–53; and Barmash 2005: 97–104.

12 Cohen 2005: 173.

13 Cohen 2005: 176.

14 Cohen 2005: 177.

15 Cohen 2005: 187. In *Protagoras*, the conclusion is reached that those individuals who appear incapable of being rehabilitated should be exiled or put to death.

of deterrence.¹⁶ This perspective, which sees value in both retribution (ensuring just deserts) and deterrence, seems to typify more of Greek thinking than the exclusive focus on the future benefits of punishment advocated by Plato.¹⁷

II. The Pentateuchal Codes

When one considers the formal legal collections in the Torah, one does not encounter arguments for or against a particular theory of justifying punishment. Nevertheless, it is possible to infer in large measure the basic principles of punishment by which each code appears to be guided.¹⁸ The three major and self-contained collections – the Covenant Code, the Deuteronomic Code, and the Holiness Code – all include punishments that point to varying underlying motivations.¹⁹ The penalties in the Covenant Code are motivated, for the most part, by the principle of reparation – an effort to restore the equilibrium that had existed prior to the commission of a wrong. The Deuteronomic Code combines retribution and deterrence throughout some of its provisions, but one of the main foci of the rhetoric for which the code is well known has to do with appeasement – that is, restoring social and/or cultic order following an act of wrongdoing in order to satisfy Yahweh, prevent the arousal of his wrath, and ensure his continued favor. The Holiness Code, with its concern for the purity of the land, emphasizes deterrence in its general rhetoric, but its specific laws

16 Cohen 2005: 178–180. According to Thucydides, another orator, Diodotus, responds to Cleon with a speech of his own in which he discredits deterrence as not only being weak but actually being impossible. He points out that people and states are often threatened with death if they engage in certain activities, but they regularly continue to carry out these activities. For deterrence to work, he claims, one must find something that people are more afraid of than death (Cohen 2005: 180–182).

17 See the evidence cited in Cohen 2005: 175 n. 11.

18 I also use the terms “code” and “collection” interchangeably. For more on the problem of terminology for these sections of the Hebrew Bible, see Claassens 2010; and Knight 2011: 12–15.

19 The Covenant Code is usually identified as Exod 20:22–23:33. The Holiness Code comes in Leviticus 17–26, though other parts of Leviticus and Numbers may reflect literary activity by the authors of the Holiness Code. The Deuteronomic Code comes in Deuteronomy 12–26. I will not be discussing the so-called Priestly Code in this article because it is not a distinct literary pericope as the other codes are. For an overview of these codes and the issues they raise, see Wells 2015a.

appear to stress the need for retribution.²⁰ It may certainly be the case that the authors of each collection had an agenda in mind that is not fully revealed through the texts and that the justifications and rationales that appear to underlie the given punishments are being used more to conceal the authors' true intentions and to satisfy the traditionalists within the circles of the elite and influential.²¹ My focus, however, will be on the *apparent* rationales behind the punishments, and I will leave this – perhaps more interesting – question regarding ulterior motives to others for now.

Before the individual collections are examined, an important distinction is worth making. Several decades ago, Dale Patrick²² showed that the casuistic laws of the Torah can be divided into two further categories, and he takes his cue from general legal theory which, he says, “recognizes a distinction between primary and remedial rights.”²³ Thus, his two categories are remedial law and law governing primary rights and duties (primary law).²⁴ The key difference between the two is that the former involves a violation of someone's rights whereas the latter is concerned with “rights and duties [that] exist in themselves prior to any breach of rights.”²⁵ In terms of the casuistic format, the protasis in remedial law describes the violation of rights; the apodosis then prescribes the punishment or compensation or remedy required for that violation. In primary law, on the other hand, the protasis “describes a legal relation ... and the apodosis prescribes the conditions of the relation.”²⁶ This is a helpful distinction that recent discussions of biblical law have often overlooked. In the sections below, I treat both casuistic and apodictic laws, but my focus will be on remedial laws and the punishments or types of compensation set forth in the apodosis of those provisions.

20 Koch (1955) argues that there is no standard principle of retribution (*Vergeltung*) in the Hebrew Bible, even though many have claimed to see one. He examines Proverbs, Psalms, the prophetic books, and the so-called historical books, but he does not deal with the pentateuchal laws. His main point is that most biblical authors believed that Yahweh had built into the fabric of the world, as it were, a principle of act-consequence. According to Koch, what dominates biblical thinking is “eine Auffassung einer schicksalwirkenden Tat” (1955: 22); that is, each deed innately contains its own consequence, whether good or bad. For Koch, it is not as if Yahweh or someone else decides after each act whether to reward or punish the actor. He also points out that there is no word for “punishment” (*Strafe*) in the Hebrew Bible (1955: 29); the reason, in his view, is that no need exists to refer to punishment (or reward) as a separate entity because it is built into each act that requires a punishment (or reward). He adds that “das profane Rechtsdenken” also accepted this principle. I suspect that Koch would take exception to the emphasis that I am placing on the role of retribution in the legal collections. The laws, however, are different from proverbial sayings, poetic prayers, and prophetic utterances. In law, one has a choice of what penalty to attach to a given infraction, and behind every choice lies a rationale. Because retribution (giving wrongdoers what society believes are their just deserts) is a well-established rationale in the ancient world, as well as the modern, it remains a viable category for this discussion.

21 See, e.g., the description of what Levinson calls the “rhetoric of concealment” in biblical law (Levinson 2008: xviii, 48, 92).

22 Patrick 1973. See also his discussion in Patrick 1995: 425–426.

23 Patrick 1973: 181; for support, he cites Lloyd 1964: 312–313.

24 It should be noted that Patrick (1995: 428–432), specifically for the laws in Deuteronomy, has other categories, as well, such as “court rules” and “militia regulations.”

25 Patrick 1973: 181.

26 Patrick 1973: 181.

A. The Covenant Code

The Covenant Code takes a decidedly retributivist approach to punishment. The core legal provisions within the Covenant Code are the so-called *Mishpatim* (Exod 21:2–22:16). According to J. Vroom, “the *mišpāṭīm* are built on the legal ideal of restoration and balance in interpersonal relationships.”²⁷ For most of the provisions in the *Mishpatim*, Vroom appears to be correct. A look at the penalties that occur within the *Mishpatim* shows that the overriding concern has to do with reparation. Even for those provisions that appear to promote something other than reparation, the focus is retributivist in the sense that they are backward-looking and seeking to make up for a wrong that has been committed in the past. Within the larger context of the section of Exodus where the *Mishpatim* are placed, of course, these rules are meant to ensure the proper keeping of the covenant with Yahweh. This suggests that, in the view of the *Mishpatim*’s authors, keeping the covenant involves the proper rectification of past wrongs. Very little mention of anything that might be considered consequentialist or forward-looking occurs within the *Mishpatim*.

In terms of remedial law, the *Mishpatim* begin with the so-called the *môt yûmāt* laws.²⁸ These are a series of four laws that deal with capital offenses and specify that the offender “shall surely be put to death” (*môt yûmāt*). The offenses involve murder (Exod 21:12)²⁹, striking (*nkḥ*) one’s father and mother (Exod 21:15), kidnapping a man (Exod 21:16),³⁰ and cursing (*qll*) one’s father and mother (Exod 21:17). These provisions do not make clear the motivation for assigning the death penalty; nevertheless, it is evident that the punishment comes out of a retributivist point of view. The death penalty never effects rehabilitation, and, based on Exod 21:14, one can reasonably conclude that the punishment of death in these cases gives wrongdoers their just deserts. There, the text states that, “if a man intentionally makes plans against his fellow to kill him deceitfully, you shall take him even from my altar for execution.” The previous verse allows for a place to which a person who unintentionally kills another may flee for safety. The implication of v. 14, however, appears to be that punishment for willful homicide is so necessary that even the one place where refuge might be deemed most certain should not be enough to protect a guilty murderer.³¹

It is with the next law in the *Mishpatim* that the focus on reparation begins to rise to the fore. The text of Exod 21:18–19 deals with a case in which two men are fighting (*rīb*); one strikes (*nkḥ*) the other and injures but does not kill him. The remedy is that the one who struck the blow is free (*nqḥ*) from more serious punishments but should pay for the other man’s loss of time and for his healing. The emphasis on reparation and, thus, compensating the victim for what he has suffered here is clear. Had the blow not occurred during the course of a fight, the punishment would likely have been more harsh, and other measures, detailed by subsequent provisions, would have taken effect.

27 Vroom 2012: 39.

28 For a brief legal-historical overview of these laws, see Otto 2012: 236–238. On the possibility that these laws should be considered casuistic laws, even though they do not begin with the conditional particle *kī*, see Weinfeld 1973.

29 Accidental homicide is dealt with in the following verse (Exod 21:13).

30 The victim in question is a “man” (*ʾîš*). This term refers to a male head-of-household. The punishment for kidnapping someone of a lower status (e.g., a woman, a slave) could well have been less harsh.

31 For a discussion of the issues in this text, see Barmash 2005: 76–80.

The following provision, Exod 21:20–21, speaks of a man who strikes (*nkh*) one of his slaves. If the slave dies, the slave “shall surely be avenged” (*nāqōm yināqēm*). Although the exact nature of the punishment to be inflicted on the slave-owner remains unclear, the language points to retributivist reasoning. It is important to note that the use of the root *nqm* (“to avenge”) does not inevitably mean revenge (German *Rache*) as defined earlier in this article. Even when Yahweh is the subject, it can and often does refer to a kind of juridical vengeance, which would fit the category of retribution (imposing just deserts) as explained above.³² In this law, the punishment is necessary for the sake of the victim. Whether this means that the punishment is indeed a type of revenge or, alternatively, legal retribution is difficult to say. The provision continues by stating that, should the slave survive the beating, even for a day or two, then the slave-owner will not receive any punishment because the slave is, literally, “his silver” (*kaspō*), and, one may assume, he may do with the slave – short of killing him – as he wishes.³³

The text of Exod 21:22–25 presents a more complicated scenario, and it is beyond the scope of this paper to treat all of its complexities.³⁴ Still, it belabors the need for reparation. In this case, two men are struggling (a different word from “fighting” in v. 18) and one hits (*ngp*) the pregnant wife of the other and causes her to miscarry. The text states that the one who hit the woman “shall surely be fined” (*‘ānōš yē‘ānēš*) according to what the woman’s husband places (*šūt*) on him” (v. 22). In other words, the perpetrator must make restitution for what he has done by paying a fine in accord with what the husband demands.³⁵ Again, compensating the victim (in this case, the father of the fetus) appears to be the motivating factor for the penalty.

This provision goes on to stress the need for compensation even further. It considers the possibility that the pregnant woman suffers injury (*‘āsōn*) herself in addition to the loss of her fetus.³⁶ Perhaps the blow has caused her death or some other serious injury. The remedy is that “you shall give (*ntn*) a life in place of (*taḥat*) a life” (v. 23). The text then presents its version of the talionic formula: “an eye in place of an eye, a tooth in place of a tooth, a

32 See the literature cited in Kumpmann 2016: 266–267.

33 In all probability, the slaves mentioned in the Mishpatim should be understood as debt-slaves rather than chattel-slaves; see Greengus 2011: 123–126. One possible implication of this view is that, if the slave had been a chattel-slave, then the master could have beaten the slave to death without any legal repercussions.

34 For an overview of the issues, see Jackson 2006: 208–214. Jackson claims that the pregnant mother mentioned in the text gives birth to a live child. I (and many others; see Wright 2009: 176–179) believe that the text describes a miscarriage.

35 The expression in v. 22, *wēnātan bīpīlīm*, is a crux but can be interpreted as meaning that “he (the perpetrator) will pay by (the determination of) judges or mediators” (see the overview in Wright 2009: 180; for an alternative view, which translates the phrase as “before witnesses,” see Otto 1991: 119–121). This would put a limit on what the father of the dead child can demand.

36 I take the term *‘āsōn* to mean harm to the mother; see Knight 2011: 135. Other scholars disagree; see, e.g., Propp 2006: 222–223.

hand in place of a hand, a foot in place of a foot” (v. 24).³⁷ Bernard Jackson has made an important argument that the initial expression (to give “a life in place of a life”) refers to the substitution of persons.³⁸ In other words, the perpetrator has eliminated a member of the victim’s household and is now required to replace that lost member with another individual.³⁹ Others maintain that the expression ultimately denotes a type of payment.⁴⁰ With every other occurrence of the verb *ntn* in an apodosis of a provision within the Mishpatim, it identifies a monetary payment (Exod 21:22, 30, 32). On balance, the evidence favors interpreting all of the expressions as referring to payment or compensation of some sort and not requiring the death or physical mutilation of the perpetrator.⁴¹ If the stipulation “you shall give a life in place of a life” may mean handing over to the victim’s family something that will replace the value of the life taken, then the remaining expressions in the formula are also likely to signal a similar action (payment in these cases) appropriate to the injury suffered. Thus, the use of the talionic formula here highlights the Mishpatim’s general goal of compensating victims and restoring them, to the extent possible, to their status prior to the infliction of harm.

The theme of reparation continues in Exod 21:26–27. This provision considers what to do should a slave-owner strike (*nkh*) and destroy (*šht*) the eye (or tooth in v. 27) of his slave. The law relates to the two previous laws (Exod 21:20–21 and 21:22–25) in direct ways. First, it picks up the theme of a slave-owner striking his slave from v. 20; second, it continues the discussion of injury to another’s body parts from v. 24, this time with reference to a slave. The remedy is to allow the slave to go free,⁴² and the text makes clear in these cases the reason for this: “he (the slave-owner) shall release him (the slave) in place of his eye/tooth” (*yěšallēhennū taḥat ʿēnô/šinnô*). The manumission of the slave is compensation for the injury done to him.⁴³

The next law, which consists of several parts, relates to injuries suffered by persons gored by the horns of an ox. In Exod 21:28–32, if an ox gores a person to death, then the ox is to be killed, but the ox’s owner is free (*nkh*) from punishment.⁴⁴ If, however, the ox has been known to gore individuals in the past, presumably without killing them, and then it gores someone to death (because the owner has not kept it under sufficient restraint), then both the ox and its owner are to be put to death. The killing of the oxen in these situations could be seen as a deterrent – as a forward-looking penalty (to prevent these particular oxen

37 For a recent overview of the *lex talionis* in biblical texts, see Otto 2016: 1546–1548; see also the extensive discussion in Jacobs 2014: chapter 3. There are various understandings of the talionic principle. It could, for example, simply express the need for proportionality in punishment and did not automatically mean that the exact same injury inflicted on the victim must be inflicted on the perpetrator. See the comments on this point in Christiansen 2015: 39, 44 n. 50, *passim*; and Schilling 2015: 162–163.

38 As mentioned, Jackson (2006: 208–214) has the fetus in mind, but his argument about the nature of the expression is still valid.

39 See Jackson 2006: 231–233. See also Jacobs 2014: 94–102.

40 See, e.g., Schwienhorst-Schönberger 1990: 127; and Nihan 2013: 136–139.

41 See, e.g., Lafont 1994: 116–117.

42 Again, the slaves in the Covenant Code should be understood as debt-slaves (see n. 33 above).

43 On this passage and the features of it that I have highlighted, see Jackson 2006: 249–253.

44 Scholars disagree as to why the ox must be stoned; for an overview of the issues, see Westbrook 1988: 83–88.

from causing further injuries). But it may also be that the authors of the text believed the oxen were guilty in some sense.⁴⁵ In any case, the penalty imposed on the owner of an ox with a reputation is retributive in nature. One could say that the owner is receiving his just deserts; one could also say that the owner's family or household is suffering a fate equal to that suffered by the victim's family or household: the loss of one of its members. The text of v. 30 allows for the ox's owner to pay a ransom (*koper*) in lieu of suffering the death penalty, and there seems to be no limit to the ransom amount: he will have to pay "according to all that is set (*šît*) upon him." This, too, is a backward-looking penalty that is best described as reparation because the payment, while sparing the owner's life, is also a form of compensation for the victim's family. The last part of this law (v. 32) anticipates that the goring might happen to a slave, and it sets the penalty at a fixed sum of 30 shekels of silver – yet another form of compensation.⁴⁶

This brings us to what is roughly the last 40% of the Mishpatim, a section that treats property offenses (Exod 21:33–22:16). To this point, the remedial laws of the Mishpatim have dealt with offenses to persons, and these have pertained mostly to striking or hitting another person, as well as allowing one's oxen to injure others. The section on property offenses contains nine laws or provisions, several of which have subsections within them. One of the key features that binds together the provisions of this section is the repeated use of the Piel form of the verb *šlm*: "to make whole, good"; "to compensate for." These provisions stress the compensation – in money or in kind – of those whose property has been taken or damaged. The stress on the restorative nature of the penalties in this section could scarcely be more evident. A few examples will suffice to illustrate this. The negligent owner of an uncovered pit into which another's animal falls and injures itself must pay compensation to the animal's owner (Exod 21:33–34). One who allows his animals to graze in another's field or vineyard must compensate the owner of the field or vineyard from the best of his own produce (Exod 22:4). The final provision in the section addresses sexual relations between a man and an unbetrothed virgin daughter of another man (Exod 22:15–16). Where one might expect to find the verb *šlm*, we find instead a form of the verb *mhr*, "to pay bridewealth." The text thereby indicates that the man who had sex with the daughter must compensate her father and marry the young woman. Even if the father should refuse to let him marry his daughter, though, the man must still pay the required compensation. In the same way that injured animals or damaged fields have to be compensated for, likewise, the man who sleeps with an unbetrothed virgin must provide reparations to the father.

One other feature of this section deserves comment. Not all of the penalties in this section set forth simple compensation. In cases where theft is involved, the compensation is set at a multiple of the amount stolen. Thieves who steal cattle and then sell or slaughter them are required to pay the owner five times what they took (Exod 21:37). Should the animals

45 Guilt seems to be assumed for the oxen put to death in §166 of the Hittite Laws.

46 I omitted mention of Exod 21:31. This verse describes in rather obscure terms what to do if a son or a daughter is gored to death. It refers to the implementation of "this rule," but exactly which rule the authors are referring to here is, in my view, unclear. Propp (2006: 236) assumes it means the package of rules regarding oxen that gore adults. For other literature, see Westbrook 1988: 60–61 and Wright 2009: 450 n. 27.

stolen be sheep or goats, the penalty is four times the number of animals taken (Exod 21:37). If a thief still has the animals, of whatever variety, in his possession, then the penalty is set at double what was stolen (Exod 22:3). Doubling the amount of items in question also appears as a penalty in the law concerning bailment. If it should turn out that the bailee misappropriated the goods deposited with him for safekeeping, he must pay twice the amount of those goods to the depositor (Exod 22:6–8).⁴⁷ It is unclear whether these sorts of penalties are meant to serve as deterrents to theft or as retributive (just deserts) punishments. Given the nature of the other penalties in the Mishpatim, it seems reasonable to infer that the penalties involving multiples of things that are stolen serve a retributive function.

The Covenant Code contains no direct indication of a consequentialist rationale but, rather, foregrounds the need for reparation. It also seems to accept retribution or the infliction of just deserts on wrongdoers as an important rationale. At least thirteen of its laws include some aspect of reparation or compensation, and another eight provisions can be interpreted as relying on the rationale of retribution. This picture will change as we move to examine the other biblical codes.

B. The Deuteronomic Code

When one moves into the Deuteronomic and Holiness Codes, one encounters substantially more – than in the Mishpatim – rhetoric and exhortative prose attached to the laws and interwoven throughout each code's respective provisions. Some of this rhetoric includes direct statements about the rationales and intentions for the penalties attached to the laws. When one examines the laws themselves, however, one can find penalties that are more naturally derived from a distinctly different rationale from that advanced by the exhortations. This tension may be most pronounced within the Holiness Code but is also apparent in the Deuteronomic Code.⁴⁸ The authors of each may have wanted to convey a combination of rationales, and both types of rationales need to be taken into account. In the following discussion of these codes, it will be necessary at times to draw this distinction between the specific provisions and the rhetorical material embedded within them.

Many of the laws in the Deuteronomic Code (D) fall into the category of primary law and, thus, contain no accompanying penalties, but there are a sufficient number of remedial laws that allow us a significant glimpse into the thinking of D's authors on the nature of punishment. It is here that one begins to encounter a combination of retributivist and consequentialist rationales. This combination appears immediately in D's first remedial law, which concerns religious apostasy.

Deuteronomy 13 contains three laws that deal with apostasy and incitement to apostasy by a prophet, a family member, and the inhabitants of a city, respectively. The death penalty is prescribed in all three instances, but the rationale given in each case is slightly

47 This text likely has a complex compositional history; see Otto 1988 and 1996.

48 In the Deuteronomic Code, some of the rhetoric may well have been added later. See, e.g., the comments in Otto 2016: 1228 on the so-called *bi-artā*-formula ("you shall purge the evil from your midst").

different. The prophet (in Deut 13:2–6) is to be put to death “because he spoke treason (*sārā*) against Yahweh your god” (13:6); the text then includes an additional motivation: “in this way you will purge the evil from your midst” (13:6).⁴⁹ The initial rationale is retributivist in that the focus of the punishment is on the past wrong and, it seems safe to assume, on giving the apostate prophet his just deserts.⁵⁰ The second rationale is more ambiguous, but the rationale given for the punishment of an apostate city points to the concept of appeasement as underlying this expression. In Deut 13:16–18, the Israelites are commanded to put all of the inhabitants of an apostate city to death and to burn all of the possessions found therein.⁵¹ The purpose of these actions, according to v. 18, is to ensure that Yahweh will “turn back from the severity of his anger, show mercy to you, be compassionate toward you, and multiply you.” The destruction of the city removes the evil that has aroused Yahweh’s wrath, and it evokes mercy, compassion, and blessing from him. It is because of texts such as this that I suggested at the beginning of the article the need to posit a third rationale for justifying punishment – namely, appeasement of the deity. Executing apostates placates the deity, who, in the absence of community action, will punish not only the wrongdoers but, potentially, everyone else as well.⁵² These two laws (Deut 13:2–6; 13:13–18) thus combine retribution (just deserts) and appeasement. The law about the apostate family member in Deut 13:7–12, on the other hand, combines the imposition of just deserts with deterrence. The apostate is to be executed “because he sought to pull you away (*ndh*) from Yahweh your god” (v. 11) but also in order that “all Israel will hear and fear and never again act according to this type of evil in your midst” (v. 12). This last expression shows up several times in D’s provisions and declares that the implementation of punishment will serve as a general deterrent to the community at large.⁵³

49 On the connection of this expression to a so-called “purity theology” (*Reinheitstheologie*), which I see as compatible with my comments below on the function of this expression, see Otto 2016: 1256–1257.

50 Both Knierim (1999) and Kumpmann (2016: 261) claim that there is a difference between the legal act of punishing (*strafen*) and the act of retribution (*Vergeltung*). The former is imposed by a judicial authority, while the latter is carried out by a private party. Previously (see n. 8), I distinguished between revenge (*Rache*) and retribution (*Vergeltung*), but I do not accept the specific distinction made by Knierim and Kumpmann, unless, by *Vergeltung*, they mean essentially the same thing as *Rache*. The difference of opinion on this matter may stem from a different understanding regarding the role of the victim or the victim’s family in the judicial process. I follow the view outlined in Westbrook 2003: 77–79. Allowing a wronged party to retaliate against a perpetrator could be part of the legal process and sanctioned by judges. Such retaliation would count as retribution as opposed to revenge in my view. The purpose was to give the perpetrator what he or she deserved and thereby offset or balance out the wrong that had been committed.

51 The language used here in Deuteronomy 13 is reminiscent of language found in a variety of treaties from the ancient Near East; see Koch 2008: 108–170. For the most recent argument (contra Koch) that much of Deuteronomy 13 (as well as Deuteronomy 28) is drawn directly from the vassal treaties of the Assyrian king Esarhaddon, see Otto 2016: 1238–1256, *passim*.

52 On the role of the term *-rm* (“to ban, devote, exterminate”) in this text, see Otto 2016: 1264–1265.

53 Otto 2016: 1262–1263.

In Deuteronomy 13, therefore, we see the three main rationales – just deserts, appeasement, and deterrence – that underlie the penalties in D’s other remedial laws as well.⁵⁴

The next remedial laws in D do not appear until chapters 17 and 18. The first remedial law in Deuteronomy 17 also concerns apostasy.⁵⁵ The text of Deut 17:2–7 considers the possibility that a man or a woman will break the covenant with Yahweh by practicing the worship of other gods, and it stipulates death by stoning as the punishment for such action. The following provision in Deut 17:8–13 refers to matters that are too difficult for local courts to adjudicate. In these cases, the priests and “the judge” (v. 9), who presumably presided over the court at the central shrine,⁵⁶ are to decide the matter, and the person who does not obey their ruling is to be put to death.⁵⁷ The death penalty in both cases would seem to imply retribution, but the rhetoric attached to the laws suggests that the authors had additional rationales in mind as well. In the first case, the execution of the apostates allows the community to “purge the evil” from its midst. In the second case, the same language of purging the evil occurs along with the additional rationale of ensuring that “all the people shall hear and fear and not act rebelliously any more” (v. 13). In these cases, it seems that retribution is implicit in the penalties themselves, but it is the notion of appeasement that is spelled out in the rhetoric of both laws; the rhetoric attached to the second law also includes the rationale of deterrence. In Deut 18:20, the death penalty is set forth for a prophet (*nābīʿ*) who speaks wrongly in the name of Yahweh or who speaks in the names of other gods. The text provides no statement concerning the penalty’s rationale, but retribution looks to be implicit in the penalty once again.

Two more remedial laws come in Deuteronomy 19. The first covers intentional homicide (Deut 19:11–13) and, as one might expect, sets forth the death penalty for those convicted thereof. At first glance, this may seem to derive from a retributivist motivation, but the rhetoric attached to the penalty, as in previous cases, points to appeasement for justification. The murderer should be put to death so that “you will purge the innocent blood from Israel and it will go well with you” (v. 13). The penalty serves to appease the deity, for the slaying of the killer in some manner wipes away the blood of the victim, which, if left unaddressed, will rouse Yahweh’s wrath; it also benefits the community at large.⁵⁸ The second law treats the matter of false accusation (Deut 19:16–21). It states that whatever harm the false accuser had attempted to bring upon the accused should be inflicted on the false accuser instead.⁵⁹ If the accusation had concerned a capital offense, then the false accuser could be executed; if it concerned a theft, the accuser could be fined the same amount that the accused was in jeopardy of having to pay. The text then adds its own ver-

54 Stulman (1992: 49) claims that the punishments in Deuteronomy 13 have three aims: “(1) to avert the communication of their guilt to the state ..., (2) to propitiate the deity, and (3) to deter others from engaging in such acts.” I would place his first two items under the category of appeasement; the third, of course, is deterrence. He does not include retribution as I do.

55 On the question of whether this law originally belonged with the material in chapter 13 or that of chapter 17, see Levinson 1997: 98–137.

56 Patrick 1985: 118–119.

57 For a legal-historical analysis of these texts, see Wells 2004: 85–103.

58 Barmash 2005: 95. For a discussion of the legal issues at stake in this text, including who decides whether the homicide was intentional or not, see Barmash 2005: 22–36. Cf. Gertz 1994: 117–140.

59 See Jacobs 2014: 121–127.

sion of the talionic formula: “life for (*bē*) life, eye for eye, tooth for tooth, hand for hand, foot for foot” (v. 21). All of this implies retribution, but the law also includes the expression about purging evil (v. 19) and that of having all others “hear and fear” and refrain from committing this wrong. Again, we have the rhetoric of the law championing appeasement and deterrence.⁶⁰ The Covenant Code had employed the talionic formula for the purposes of promoting reparation and the idea that victims of assault should be compensated for the value of what they lost due to injury. Here, D’s authors invoke the formula for distinctly different reasons. False accusers, they say, should be punished in this way in order to placate the deity and to ensure future compliance.

Most of the remaining remedial laws in D pertain to what may be called family law. The first (Deut 21:18–21) concerns a “stubborn and rebellious son” who will not obey his father and mother. In all likelihood, the son is fully grown and has been shirking his responsibility to provide for his parents, thereby putting their lives at risk.⁶¹ The penalty for the son is death. Yet again, the rationale given is the combination of appeasement and deterrence: “You will purge the evil from your midst, and all Israel will hear and fear” (v. 21). In Deuteronomy 22:13–21, a newly married man claims to have discovered that his bride was not a virgin on their wedding night.⁶² If the claim is false, the man is flogged, forced to pay 100 shekels to the father of the bride, and required to stay married to his bride (so as to provide for her) for the rest of his life (vv. 18–19). The reason given is that “he brought an evil name upon a virgin of Israel” (v. 19). Thus, the rationale in this case seems to be retributivist and suggests the need to ensure that the man received his just deserts. If the man’s claim about his bride is true, however, then she is to be stoned at the door of her father’s house, and this penalty is given the justification of appeasement – “you will (thereby) purge the evil from your midst” – even though one might well wonder if a retributivist motivation was involved as well. The next two laws have to do with adultery. The first addresses adultery with a fully married woman (Deut 22:22); the second with a woman who is betrothed to be married (Deut 22:23–27). In both cases, the death penalty is specified for the male paramour and the woman,⁶³ and both include the appeasement-clause about purging away the evil.

After these comes a provision with a number of similarities to the law in the Covenant Code about a man who has sexual relations with an unbetrothed virgin. While the latter speaks of the man enticing the woman, the text of Deut 22:28–29 describes the man “seizing” (*tps*) the woman and lying with her. The first part of D’s law largely follows the wording and structure of Exod 22:15–16.⁶⁴ Like the law in Exodus, D’s provision forces the

60 Otto (2016: 1544–1545) also sees these two rationales in this text.

61 Knight 2011: 195; Benjamin 2015: 136–137.

62 For an overview of some of the difficulties in this text and the scholarly attempts to solve them, see Rothstein 2015.

63 The text addresses the issue of a woman who appears not to consent in vv. 25–27. Her life is spared, but the man who has sex with her is put to death. For a discussion of the issues related to sexual relations and the role of a woman’s consent, see Kawashima 2011.

64 Exod 22:15 begins: “If a man seduces a virgin who is not betrothed and lies with her.” The beginning of Deut 22:28 contains only a few additions: “If a man finds a virgin young woman who is not betrothed and seizes her and lies with her.” For rules from ancient Greece that bear similarities to these biblical laws, see Hagedorn 2004: 255–267.

man involved to pay the father of the young woman a sum of money, and it says that he should marry her. Unlike the Covenant Code, D specifically eliminates the option of divorce and, with language similar to that of the law in Deut 22:13–21 discussed above, requires the man to remain married to her for the rest of his life. One other aspect of the D law stands in contrast to the Covenant Code's provision. D omits any mention of the right of the father – a right preserved in the Covenant Code – to refuse the marriage between his daughter and the man. There has been a great deal of scholarly debate over the reason for this omission.⁶⁵ One might have expected that, of the two possible scenarios, it is the case of forced sex rather than enticement that would have allowed the father the right of refusal. As argued above, the Mishpatim of the Covenant Code concentrate on reparation and the restoration of what was lost. As long as the father is compensated for the virginity of his daughter,⁶⁶ the Mishpatim's authors appear to be satisfied. This is not the case in D. To allow the father to refuse the marriage would be to let the wrongdoer avoid a responsibility that D's authors evidently believe he should now be obligated to fulfill. While the law includes a financial payment to the father for the violation of his daughter, the motive behind this penalty appears to have more to do with punishing the man than compensating the father. The rationale attached to the law – “on account of the fact (*taḥat ʿāšer*) that he violated her” – points to this conclusion. Like the law in Deut 21:13–21, one can see here a retributivist focus on giving the man his just deserts.⁶⁷

The Deuteronomistic Code provides us with only two more laws that are remedial in nature. The text of Deut 24:7 designates death as the penalty for one who kidnaps another and enslaves or sells the captive. It concludes with the clause about purging the evil and, thus, opts for the appeasement rationale in its rhetoric. Finally, in Deut 25:11–12, if a wife seeks to aid her husband in a fight with another man and grabs hold of the other man's genitals, she is to have her hand cut off. This is plainly a retributivist punishment that seeks to secure just deserts for the woman.⁶⁸

In sum, the remedial laws of the Deuteronomistic Code tend largely to favor appeasement as a rationale for punishment. Of the fifteen laws examined (taking Deut 22:13–19 and 22:20–21 as separate laws), eleven appeal in some form to appeasement. All of these eleven entail the death penalty. The law against false accusation in Deut 19:16–21 may be somewhat exceptional in that it also allows for lesser penalties, should the accusation in question have involved a wrong other than a capital offense. The rationales of retribution and deterrence occur with about equal frequency. Deterrence never appears by itself and is attached most often to appeasement.

65 See the discussion, with other literature, in Pressler 1993: 37–39.

66 The consent of the daughter is immaterial for the authors of the Covenant Code; the injury is to the father and, thus, the compensation goes to him as well. See Anderson 2004: 40–41.

67 Weinfeld (1972: 285) argues that, for D's authors, the rights of the daughter have been violated and that the financial interests of the father are irrelevant in D. In contrast, Pressler (1993: 36–40) claims that D describes a violation of the father's rights. I find Pressler's arguments more convincing but would stress the emphasis in D on retribution rather than reparation.

68 Jacobs (2014: 164–178) discusses this text at length and refers to its punishment as “instrumental talion”; the instrument used to commit the infraction (the woman's hand) is the object of the punishment.

Apart from the remedial laws, the Deuteronomic Code contains a text that discusses the proportionality of punishments (Deut 25:1–3). According to this provision, if someone is convicted and will be beaten (*nkh*) as part of his or her punishment, he or she should be beaten in the presence of a judge and in proportion to (*kēdē*) the offense. The text adds that no one should be beaten with more than forty lashes to prevent the person from being “dishonored” (*qlh*). The significance of the limit of forty and the way in which proportionality should be figured are open to question. It is probably safe to conclude, however, that the authors of this provision had in mind penalties for the sake of giving a convicted perpetrator his or her just deserts. D’s other two rationales, appeasement and deterrence, are most often accomplished in D by means of the death penalty.⁶⁹

C. The Holiness Code

We now come to the Holiness Code (H). Like the Deuteronomic Code, it reflects a combination of rationales for the penalties it contains. A number of its provisions contain penalties that seem to derive from a “just deserts” rationale, but an understanding of the overall perspective of H’s authors strongly suggests that they believed that the dominant goal for the penalties in their provisions was deterrence. The priestly authors of H are concerned with the possibility that “the land” (*hā’āreš*) will become “unclean” (*tm’*) through the commission of sin.⁷⁰ According to Lev 18:26–28, the people of Israel are to obey the rules from Yahweh so that “the land will not vomit you out for your having made it unclean just as it vomited out the nations before you” (18:28).⁷¹ Moreover, H does not provide for any method to reduce the amount of uncleanness that has built up in the land. It seems to be the case that, according to H, the land acquires uncleanness when wrongful acts are committed and, once the land reaches a saturation point, severe punishment will descend upon the people.⁷² The rules are in place, therefore, to show the people how to avoid causing this sort of uncleanness, and it stands to reason that the punishment of those who break these rules will motivate others to shun any such rule-breaking themselves. Still, when certain provisions are read entirely on their own, their penalties and even some of the rhetoric around those penalties suggest that rationales other than deterrence may also be at work.

Before considering specific provisions within H, another important point about the nature of H is necessary. The priestly authors of H were concerned mostly with how acts of wrongdoing could be considered offenses against Yahweh. For a number of such acts, the authors seem to assume that Yahweh himself will inflict the necessary punishment, and this is often described as the perpetrator being “cut off from among his people” (e.g., Lev 20:5,

69 Macchi (2012) suggests that D’s authors may have known of punishments that continued even after a criminal had been put to death. These would include beating and otherwise mutilating the corpse of the deceased. He argues that the law in Deut 21:22–23 was meant to stop this; it put “une limite à la logique vindicative qui voudrait faire payer le prix des fautes et des souffrances par delà la frontière de la mort” (2012: 84).

70 Some scholars refer to this as “moral defilement”; see Klawans 2001: 152–153.

71 See Strawn 2012. On the priority in H of the holiness of the land, see Joosten 1996: 176–180; and Milgrom 2000: 2185.

72 Hundley 2011: 178–179.

18). Exactly what it means to be “cut off” in this way is not entirely clear.⁷³ For other offenses, H’s authors speak of the wrongdoers having to “bear guilt” (*‘āwôn nāšā*); usually it is one male wrongdoer about whom it is said that he will have to “bear his guilt” (e.g., Lev 17:16; 20:17). I have argued elsewhere that this expression in priestly texts, including the Holiness Code, often refers to guilt and liability that the priestly authors are not interested in managing.⁷⁴ The guilt will affect only the wrongdoer, not the larger community, and the liability that the wrongdoer bears will be dealt with by an authority, probably a civil authority, other than the priestly authority that these authors wanted to establish. All of this is to say that the discussion below will not examine texts that refer to either of these two consequences – being “cut off” or being forced to bear one’s guilt. Because the nature of the penalties to be imposed in these cases is unclear, it is difficult to assess the rationale behind them.

Once texts with the above two expressions are excluded, the Holiness Code is left with only a handful of remedial laws. The first comes in Lev 19:20–22 and concerns a man who has sexual relations “with a woman (*‘iššā*) who is a slave (*šiphā*).” It is important to note that the text does not call her simply a slave but a “woman.” This means that the woman would ordinarily have had free status but currently finds herself held as a debt-slave.⁷⁵ The text also qualifies her as “designated (*nehērepet*) to a man,” probably meaning that she is betrothed. The man who has sex with her may well be her current master, but the text does not spell this out. It does, though, explicitly state that the man and the woman should not be put to death because the woman was not a free person at the time. This shows that the authors assumed, as did D’s authors, that a man who had sex with a (free) betrothed woman could be executed.⁷⁶ Unlike D, however, H does not distinguish between a betrothed woman who consents to sex and one who does not. It seems extremely unlikely that a woman who is both betrothed and a debt-slave would consent or that she would be in a position to ward off her master’s or another man’s advances. Thus, we are dealing here with what would be called, from a modern perspective, an act of rape. But the forcible nature of the sex does not appear to have influenced H’s authors. The penalty that they impose on the man does not come across as any more harsh than it would have been for him had the text clearly signaled the woman’s consent. The man must bring a ram as an *‘āšām*-offering and sacrifice it to Yahweh in the “tent of meeting.” Scholars often refer to this type of offering as a reparation offering because it seems to be used to compensate Yahweh for a wrong against him or the cultic system in general.⁷⁷ If this is right, then the penalty here does indeed have a compensatory or restorative function, but, when compensation is made to the deity, the notion of appeasement is much more apt. Thus, this law, taken on its own discloses a penalty motivated by appeasement of the deity.

A collection of remedial laws occurs in Leviticus 20, which is portrayed as a speech from Yahweh to Moses. The first provision lays down the death penalty for anyone who

73 For discussion of this phrase, see Milgrom 2004: 65–67; and Lang 2015: 132–134.

74 Wells 2012.

75 The indication in the text that she has not yet been redeemed (*lō’ nipdātā*) confirms her status as a debt-slave. A chattel-slave could not be the object of redemption.

76 Westbrook 1990: 565–566.

77 See the overview of this offering in Milgrom 1976; see also Hundley 2011: 145.

“gives” (*ntn*) any of his “seed” (*zeraʿ*, probably meaning children) to *mōlek* (Lev 20:2).⁷⁸ Yahweh then says that he will “set my face against that man and cut him off from among his people because he gave of his seed to *mōlek* and thereby made my sanctuary unclean and profaned my holy name” (Lev 20:3). H’s authors are depicting Yahweh as wanting either to retaliate against the person or to give him his just deserts. The latter seems more likely in light of the concern in H for maintaining holiness within the community; that is, the profanation of Yahweh’s holy shrine and holy name cannot be allowed to go unpunished.

The sense of justice in H requires severe punishment for this sort of severe infraction, and it is this sentiment that sets the tone for the rest of the chapter. The next remedial law recalls a provision from the Covenant Code and stipulates death for a man who curses his father and mother (Lev 20:9). This is followed by a set of laws (Lev 20:10–16) that treat a variety of sexual infractions for which the death penalty is assigned: sex with another man’s wife, sex with the wife of one’s father, sex with one’s daughter-in-law, sex with another male, marrying both a woman and her mother, and bestiality.⁷⁹ H’s authors use specific evaluative terms to describe several of these acts: “perversion” (*tebel*), “abomination” (*tōʿēbā*), and “wickedness” (*zimmā*). These specific laws concentrate on the past wrong and on punishing the wrongdoers for having committed a grave offense. Here too, then, we have penalties with a focus on ensuring just deserts for violators of Yahweh’s rules. The last set of remedial laws in Leviticus 20 addresses other sexual acts: marrying and having sex with one’s sister, sex with a woman during her menstrual period, sex with one’s aunt, sex with the wife of one’s uncle, and marrying the wife of one’s (presumably dead) brother. The penalties listed for these violations include being “cut off,” bearing one’s guilt, and dying childless. The last penalty is imposed for having sex with the wife of one’s uncle and for marrying the wife of one’s brother; yet again, this is a penalty that returns to the wrongdoers a negative consequence for the wrong they have committed. Intriguingly, though, the conclusion to all of Leviticus 20 includes the statement that the people should obey all of Yahweh’s rules so that “the land ... will not vomit you out” (Lev 20:22), another indication that the overall strategy of H’s authors centers on deterrence.

Two miscellaneous remedial laws occur prior to H’s last main section of such law. They appear in Lev 20:27, which prescribes death by stoning for a medium (*ʿōb*) or a necromancer (*yiddēʿōnī*), and in Lev 21:9, which says that any daughter of a priest who acts as a prostitute should be burned to death. These also seem to be laws that, when read individually without reference to H’s broader context, incorporate “just deserts” penalties.

The final section of remedial law in H comes in Lev 24:16–21 in another speech of Yahweh to Moses.⁸⁰ The first rule is that anyone who curses the name of Yahweh shall be executed. The next is that anyone who murders another person shall be executed. At this point, the text takes a surprising turn and speaks of the killing of an animal. The remedy in such a case is for the one who killed the animal to compensate the owner of the animal (the

78 The term *mōlek* probably refers to a type of sacrifice rather than to a deity; see Dewrell 2012: 80–84.

79 Leviticus 18 lists most of the same sexual infractions contained in Leviticus 20, but it does not provide any penalties for them. On the relationship between these two chapters and the sexual behavior they sanction, see Greengus 2011: 11–34.

80 On the nature of this law as part of a priestly novella, see Chavel 2014: 67–80.

root *šlm* is used as it was in the second half of the Covenant Code). The text goes on to contrast that rule with a rule about injury to a human: “If a man gives a wound to his fellow, just as he did, so shall it be done to him: fracture in place of fracture, eye in place of eye, tooth in place of tooth; just as he gave a wound to a person, so shall it be given to him” (Lev 24:19–20). The law concludes with a reiteration of the earlier statements that one who kills an animal should pay compensation and one who kills a person should be put to death.⁸¹ In this text, H’s authors go out of their way to stress the point that those who physically harm another deserve to have the same harm inflicted on them.⁸² Their intent seems to be to eliminate the option of paying compensation for an injury. By incorporating statements about animals, a sharp contrast is drawn: injured and killed animals can be paid for, but harm to humans must be dealt with retributively. The emphasis on just deserts could hardly be more clear.

When taken on their own, the individual remedial laws in H disclose penalties that have more to do with retribution and giving wrongdoers what they deserve than with any other rationale. At least thirteen of the laws examined (many of them from the list of sexual laws in Leviticus 20) are fairly clear in this regard. Only one remedial law in H is associated with the rationale of appeasement (Lev 19:20–22, where a man who sleeps with a betrothed woman in debt-slavery must bring a reparation-offering to Yahweh), and only one promotes the idea of reparation or compensation (the law in Lev 24:18 about paying for the life of an animal that one has killed). As I have stressed throughout this discussion, however, much of the rhetoric surrounding the laws points to deterrence as the authors’ principal rationale. How to resolve this tension – or even if it is necessary to resolve it – remains unclear, and it may be the case that, like many modern societies, H’s authors believed that a combination of rationales would be most effective or, at least, they saw no inherent problems in such a combination.⁸³

III. Conclusion

An examination of the remedial laws in the three discrete law codes in the Pentateuch reveals an emphasis on reparation in the Covenant Code, an emphasis on appeasement of the deity in the Deuteronomic Code, and an emphasis on both just deserts and deterrence in the Holiness Code. With respect to H, the focus on just deserts comes through in an inspection of the individual laws, but the rhetoric surrounding them speaks mainly of deterrence for the sake of preventing the land from becoming unclean through the commission of wrongs against Yahweh. There are occasions within the Covenant and Deuteronomic Codes where penalties are set forth that seek to give wrongdoers their just deserts, but these are comparatively few. In addition, D speaks of deterrence at times, as well, and even concocts a particular formula (“hear and fear”) to promote the idea of deterrence. Still, each code seems to have a dominant rationale that differs from the others.

81 The literary structure of the text is manifestly chiasmic; see Milgrom 2000: 2129.

82 For further explanation, see Wells 2015b: 261–263.

83 The blessings for obeying Yahweh and the punishments for disobeying him that come in Leviticus 26 are not legal consequences as such and are, therefore, not examined in this article.

Interestingly enough, nothing about the penalties in the remedial laws in these three codes suggests that their purpose was the rehabilitation of the offender. The Hebrew Bible does indeed contain rhetoric that speaks of rehabilitation, but this rhetoric mostly occurs outside the legal collections and relates to the corporate rehabilitation of the people of Israel rather than that of an individual. The very end of the Holiness Code, in Lev 26:40–42, may speak of some measure of rehabilitation when it mentions confession on the part of the people after having suffered for their disobedience and, as a result, Yahweh's remembering his covenant with them. But this is directed at the people as a corporate entity and does not have to do with the treatment of individuals within legal provisions on which this article has focused. Another possible reference to rehabilitation comes in Deuteronomy 30, where it speaks of the people turning back to Yahweh when they are living in a foreign nation. The text says that Yahweh will be merciful to them and restore them to their homeland. Again, though, the focal point is collective Israel. Rehabilitation seems not to have figured into the penalties set forth in the law codes. In short, like many of our modern societies today, the authors of the biblical codes were open to multiple rationales for the punishments attached to their provisions and were not at all opposed to combining retributivist and consequentialist measures when they believed that it was beneficial to do so.

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