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# NATURAL LAW, THE *LEX TALIONIS*, AND THE POWER OF THE SWORD

David VanDrunen<sup>†</sup>

## I. INTRODUCTION

The idea of the *lex talionis*—an eye for an eye, a tooth for a tooth—seems to take us back to the murky origins of legal history, to the raw, primitive, and violent impulses of not-yet-fully civilized humanity. The idea evokes the specter of villages filled with one-eyed men consumed by the violent demands of honor cultures and tribal feuds. The *lex talionis* is easily dismissed as unworthy of humane civilization and especially of a legal order historically influenced by Christianity. Jesus himself revoked the *lex talionis* in his Sermon on the Mount and no longer would we imagine that maiming is a fitting way to resolve torts cases.

Yet such a facile dismissal of the so-called law of retribution is both legally and theologically hasty. What if the *lex talionis* is not so much a relic of a barbaric past, but an expression of a perfectly proportionate justice? What if the desire for the *lex talionis* is not a disordered craving for violence, but a virtuous sense of equity, which we are still striving to approximate in our own day? What about the fact that the *lex talionis* played a role in many widely recognized milestones in the positive, progressive development of legal order, such as the Code of Hammurabi and the Twelve Tables of early Roman law? Furthermore, what about the reality that the Bible itself—three times explicitly in the Mosaic law—prescribes the *lex talionis* as fundamental for maintaining justice? Or that most Christians, throughout history, have interpreted Jesus' commands to turn the other cheek and go the extra mile (which accompany his revocation of the law of talion) as impossible to be followed literally and hence in some sense hyperbolic?

In this article I argue that the *lex talionis* remains legally and theologically relevant in binding together two very important ideas: first, that natural law is the standard for civil law, and second, that the civil state (but not the church) wields the power of the sword. The idea that natural law is the standard for civil law and that the state, but not the church, bears the sword are basic and historic convictions of Western Christianity dating back to the medieval church and before. In my own Reformed tradition, these two ideas were widely

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affirmed in distinctive ways for many centuries, though in the past century, the former has been largely forgotten and the significance of the latter commonly underappreciated. In my judgment, Christians ought to affirm both of these ideas today, and with a deliberate sense of why they are important. I argue in this article, therefore, that the *lex talionis*, as a naturally known and biblically affirmed expression of strict, and proportionate justice, provides an important rationale for why natural law ought still to be acknowledged as the standard for civil law; and, for why the state must continue to bear the sword while the church must not. Along the way, all of this may offer important insights on the character of the Christian life.

To accomplish this, I first provide a brief survey of historically Christian, and particularly Reformed, views on natural law and the power of the sword. Then I discuss what the *lex talionis* is and its relation to the natural law. Finally, through consideration of the Sermon on the Mount and other key biblical texts, I present conclusions regarding the character of civil law, civil government, and the church of Jesus Christ.

## II. NATURAL LAW AND THE POWER OF THE SWORD IN HISTORIC CHRISTIANITY

Before exploring the nature and significance of the *lex talionis*, some brief historical background may be helpful. Historically, Western Christian theology generally, and Reformed theology specifically, affirmed both that natural law is the standard for civil law and that the state, but not the church, should wield the sword in defense of justice. I now consider each of these two traditional convictions in turn.

Though affirmation of the concept of natural law goes back much further in Christian history, the work of Thomas Aquinas, in the high Middle Ages, is normally considered the standard account of natural law. Within his broader system of theology, Thomas affirmed the existence of a natural law known to rational creatures as their participation in the eternal law of God's own mind. Thomas stated that human laws should be established as human reason moves from the more general principles of natural law to more concrete, particular determinations, as appropriate for time and place.<sup>1</sup> Human laws not in some sense derived from natural law are not really laws at all, but perversions of the Law.<sup>2</sup> The relation of Thomas' thought, often characterized as realist and intellectualist, to later medieval thought characterized as nominalist and

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1. See ST. THOMAS AQUINAS, *SUMMA THEOLOGICA*, pt. I-II, q. 91, a. 3; pt. I-II, q. 95, a. 2 (Benziger Bros. ed., 1947) (1274), available at <http://www.ccel.org/a/aquinas/summa/FP.html>.

2. *Id.* at pt. I-II, q. 95, a. 2.

voluntarist, is complicated and disputed. Whatever the divergences are among different streams in later medieval theology, however, natural law as the standard for civil law does not seem to be one of them. William of Ockham, for example, often viewed as the preeminent nominalist and voluntarist writer, also grounded civil authority in natural law.<sup>3</sup>

In the Reformation era, Martin Luther maintained this traditional perspective. Though his polemics against reason are familiar to many, Luther, in fact, pointed to natural law as a higher standard of justice that the civil law ought to reflect.<sup>4</sup> John Calvin also affirmed such a view. Rejecting the notion that the judicial law of Moses ought to be enforced in the present day (as did Luther and their medieval predecessors), Calvin pointed to natural law as the basis for civil law.<sup>5</sup> A host of Reformed thinkers of Calvin's day and later continued to teach that natural law, in a flexible way adapted for particular circumstances, should be the standard from which civil laws are promulgated.<sup>6</sup>

Also, dating back to the early reaches of Christian thought is the conviction that the civil state should bear the sword while the church should not. Put another way, the state wields the physical sword for the enforcement of justice while the church wields the sword of the Spirit for the administration of salvation. In the late fifth century, Pope Gelasius I gave famous expression to the idea of "two powers" or "two swords."<sup>7</sup> This basic distinction was a mainstay in medieval theology, though expressed in different ways and with significantly different practical application by papalists and imperialists.<sup>8</sup>

3. See, e.g., WILLIAM OF OCKHAM, *A SHORT DISCOURSE ON TYRANNICAL GOVERNMENT* bk. 2, § 14, § 24; bk. 3, § 8, § 11; bk. 4, § 4, § 9 (John Kilcullen trans., Arthur Stephen McGrade ed., Cambridge Univ. Press 1992) (1346).

4. See, e.g., Martin Luther, *Temporal Authority: To What Extent It Should be Obeyed*, in 45 LUTHER'S WORKS 127-29 (Walther I. Brandt ed., 1962) [hereinafter *Temporal Authority*].

5. See, e.g., JOHN CALVIN, *INSTITUTES OF THE CHRISTIAN RELIGION*, bk. 4, ch. 20, § 16 (1559).

6. See, e.g., Jerome Zanchi, *On the Law in General*, 6 J. OF MARKETS & MORALITY 323, 338-40 (Jeffrey J. Veenstra trans., 2003) (1605); JOHANNES ALTHUSIUS, *POLITICA* 144, 146 (Frederick S. Carney trans. & ed., 1995) (1603); SAMUEL RUTHERFORD, *LEX, REX* 35, 68, 104, 137 (Sprinkle 1982) (1644); 2 FRANCIS TURRETIN, *INSTITUTES OF ELENCTIC THEOLOGY* 167 (George Musgrave Giger trans., James T. Dennison, Jr. ed., P & R Publishing 1992-1997) (1679-85).

7. See, e.g., the English translations of Gelasius's letter to Anastasius and *On the Bond of Anathema*, in BRIAN TIERNEY, *THE CRISIS OF CHURCH & STATE* 13-15 (1964). Gelasius posited that God had entrusted secular power to the state and spiritual power to the church, and that each institution should be subordinate to the other in its respective jurisdiction. *Id.*

8. For an example of an extreme papalist view, see the bull of Boniface VIII, *Unam Sanctam*, in TIERNEY, *supra* note 7, at 188-89. Boniface VIII asserted that *both* swords were originally entrusted to the church, which in turn had delegated the civil sword to the state; a

Again, both Luther and Calvin taught a fundamental distinction between church and state in terms of their different relations to the sword.<sup>9</sup> One of the notable characteristics of the Protestant embrace of this distinction, however, was its articulation in terms of the two kingdoms doctrine. Though Luther is best known for his advocacy of this idea, Calvin and subsequent Reformed thinkers advocated a version of the doctrine as well. For Reformed theologians, the spiritual, redemptive kingdom of Christ finds present institutional expression in the church only. This kingdom is characterized by its refusal to wield the physical sword and its contentment to pursue its work only by means of the spiritual weapons of word and sacrament. Conversely, the mundane civil kingdom finds its institutional expression especially in the state. The state's work is to maintain justice concerning mundane and temporal things and does so by means of the physical sword.<sup>10</sup>

Recently, Protestant thought has come to be highly skeptical of natural law, and recent Reformed thought, more particularly, has rejected or simply ignored the two kingdoms doctrine. In light of this, the idea that natural law is the standard for civil law or that the state (but not the church) bears the sword, as an expression of the two kingdoms doctrine, will seem foreign to many contemporary Protestant readers. There are certainly a great number of matters that would demand consideration if one were to undertake a detailed, constructive defense of these older ideas. In this article, I wish to pursue only one line of defense. The even more foreign notion of the *lex talionis* showcases the wisdom of the older ideas as well as the coherence that these ideas bring to a theologically sound understanding of civil law and civil government, as well as the church's relation to them.

### III. LEX TALIONIS AND NATURAL LAW

Perhaps a crucial point to make at the inception of this section is that the *lex talionis* should not be dismissed as simply a brutal and barbaric expression of a bygone and uncivilized era. At least, that is not how I will be taking it. Research on the *lex talionis* has been a multi-disciplinary affair, with legal historians, Old Testament and New Testament biblical scholars, anthropologists, and sociologists among those with understandable interest in

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famous and detailed imperialist reply to such papalist claims was offered in OCKHAM, *supra* note 3.

9. See, e.g., *Temporal Authority*, *supra* note 4; CALVIN, *supra* note 5, at bk. 4, ch. 11, §§ 3, 8, 16; bk. 4, ch. 20, §§ 10-12.

10. For classic statements of the Reformed two kingdoms doctrine, see CALVIN, *supra* note 5, at bk. 3, chap. 19, § 15; bk. 4, chap. 20, § 1; GEORGE GILLESPIE, AARON'S ROD BLOSSOMING 85-114 (Sprinkle 1985) (1646) (at bk. 2, § 4-7); and 2 TURRETIN, *supra* note 6, at 486-90.

the subject. Many of them, in fact, have come to a conclusion similar to mine. If justice is taken, generally, to be something like “giving to each his due,” then the *lex talionis* seems a rather precise application of that principle. As an aspect of private law (not public law), the *lex talionis* attempts to define retribution or compensation that is perfectly proportional to the harm caused. For example, in a justice system, how will one value the loss of an eye so that equitable measures are taken against one who has caused the loss of another’s eye? What more closely approximates the cost of losing an eye than . . . losing an eye?! As one particularly interesting study of the *lex talionis* recently opined: “Let’s just say that the eye/tooth statement perfectly captures the rule of equivalence, balance, and precision in a stunning way. It holds before us the possibility of getting the measure of value right.”<sup>11</sup>

It is true, of course, that our modern legal systems prescribe monetary compensation for bodily injury. Many reasons exist why such a procedure strikes nearly everyone as exceedingly more satisfactory than the *lex talionis*. From the perspective of the victim, an award of several million dollars seems to benefit a person much more than the mere satisfaction of knowing that the perpetrator is suffering in just the same way that he is. From the perspective of the perpetrator, it probably goes without saying that writing a check is less painful than having one’s eye extracted—especially since it is probably not the perpetrator himself but his insurance company that will write the check. Historically, it seems that in every jurisdiction where the *lex talionis* was prescribed, including ancient Israel, monetary compensation frequently and commonly took the place of literally taking an eye for an eye, until the notion of literal application died out altogether.<sup>12</sup> Yet, a moment’s thought prevents us

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11. WILLIAM IAN MILLER, *EYE FOR AN EYE* 30 (2006).

12. A basic statement of the *lex talionis* in the Twelve Tables of early Roman law illustrates the legal possibility of substituting monetary compensation for literal application: “if anyone has broken another’s limb there shall be retaliation in kind unless he compounds for compensation with him.” *Twelve Tables* § 8.2, available at [http://avalon.law.yale.edu/ancient/twelve\\_tables.asp](http://avalon.law.yale.edu/ancient/twelve_tables.asp) (last visited 4/14/08). The Code of Hammurabi prescribes literal application in some circumstances and monetary compensation in others, depending in significant part on the social standing of the offender and the victim; see 2 G.R. DRIVER & JOHN C. MILES, *THE BABYLONIAN LAWS* 76-79 (1952). Other extant ancient Near Eastern law codes prescribe monetary compensation without any literal statement of the *lex talionis*; see, e.g., REUVAN YARON, *THE LAWS OF ESHNUNNA* 68-71 (2d rev. ed. 1988); HARRY ANGIER HOFFNER, JR., *THE LAWS OF THE HITTITES: A CRITICAL EDITION* 21-28 (1997). Interestingly, there is some debate about the temporal relation of the *lex talionis* and monetary compensation in the evolution of ancient Near Eastern law. While some have predictably believed that monetary compensation reflects a later and more advanced legal practice, others have argued that literal application of the *lex talionis* represented a *later* development; see, e.g., YARON, *supra* at 263-64. See *infra* notes 13-16 and corresponding text for some commentary

from moving to a seemingly enlightened age of monetary compensation too quickly. For the question remains: if we are serious about justice, which demands proportionality and precision, how is a court of law to determine the value of a lost eye or a lost tooth? Consideration of the *lex talionis* may provide useful insight to answer this question. Consider the following exchange:

Assailant: "Victim, how much money would you accept to forgo the satisfaction of seeing your assailant suffer as you are suffering?"

Victim: "Assailant, how much money would you be willing to pay to keep your own eye?"

Somewhere within the answers to these two questions is perhaps the best indication of how a court can value a lost eye in a proportionate, precise, and equitable way. Even where the *lex talionis* is not literally carried out, the theoretical threat of the *lex talionis* can provide a helpful and perhaps even necessary means for doing justice.<sup>13</sup>

In light of such considerations, the idea that the *lex talionis* is simply primitive, violent, and barbaric becomes much less plausible. As many scholars have noted, the *lex talionis*, in the ancient world, was primarily a means to curb violence by prohibiting vigilante justice and disproportionate vengeance. The *lex talionis* limited what could be done to a person who had caused bodily injury to another.<sup>14</sup> It has also been suggested—persuasively to me—that communities governed by the *lex talionis* may well have had *less* one-eyed and missing-toothed persons than those communities not governed by it. In a community where body parts are valued so highly, and their injury punished so severely, people will tend to be much more careful about what they do to others.<sup>15</sup>

Perhaps all of this suggests an initial plausibility to the claim that the *lex talionis* is an integral part of the natural law; or, to put it another way, that the natural law teaches the *lex talionis*. It is remarkable to note how many writers

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on literal application versus monetary compensation in ancient Israelite law.

13. There is much helpful discussion of these matters in MILLER, *supra* note 11, especially in chapter 4.

14. For a succinct statement of this idea, see HANS DIETER BETZ, *THE SERMON ON THE MOUNT: A COMMENTARY ON THE SERMON ON THE MOUNT, INCLUDING THE SERMON ON THE PLAIN* 276 (Adela Y. Collins ed., 1995):

Ancient sources testify that the *talio* principle replaced a primitive system of indiscriminate cycles of blood revenge. . . . The original purpose of the *talio* principle was to limit, or even to eliminate, revenge by revising the underlying concept of justice. Justice was no longer obtained by revenge but by proportionate punishment of the offender or by substitutional compensation.

15. See, e.g., MILLER, *supra* note 11, at 54-55.

(most of whom surely have no intention of articulating any particular natural law theory) express, even in passing, how natural or instinctive the *lex talionis* is to human beings, or how Jesus' words in the Sermon on the Mount cut against human nature in some way or another.<sup>16</sup> Perhaps we are embarrassed to admit it, but there is something about the *lex talionis*—whether applied literally or applied indirectly through alternative penalties—that strikes a great many people as appropriate and just.

But all of this is still quite vague. At this point, I turn to make a biblical and theological argument that the *lex talionis* is indeed an intimate part of the natural law—the God-ordained law in creation that all people know even while they, as sinners, tend to suppress it. This argument has several prongs that cumulatively, I believe, offer a strong case for associating natural law to the *lex talionis*.

The first line of argument concerns the biblical account of creation: God's dealings with humanity at the beginning, and the image of God. My own Reformed tradition speaks of God entering into a "covenant of works" at creation with Adam, as representative of the human race. In its most basic features, the idea of a covenant of works reflects common themes of Western Christian theology: God made Adam sinless. God also required of Adam perfect obedience during a time of probation, and promised a reward of everlasting life if Adam successfully sustained the probation and threatened everlasting death if Adam did not. For the sake of space constraints, I will simply assume the truth of this theological perspective.<sup>17</sup> Based upon this perspective, one can see the presence of the *lex talionis* writ large in God's initial dealings with His human creation. God did not deal with Adam in *only* a

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16. See, e.g., Michael Winger, *Hard Sayings*, 115 THE EXPOSITORY TIMES 266 (2004); Walter Wink, *Jesus and the Nonviolent Struggle of Our Time*, 18 LOUVAIN STUDIES 3, 5 (1993); Jan Lambrecht, *The Sayings of Jesus on Nonviolence*, 12 LOUVAIN STUDIES 291, 304 (1987); 1 DRIVER & MILES, *supra* note 12, at 408; Dorothy Jean Weaver, *Transforming Nonresistance: From Lex Talionis to "Do Not Resist the Evil One,"* in THE LOVE OF ENEMY AND NONRETALIATION IN THE NEW TESTAMENT 54-55 (William M. Swartley ed., 1992); MILLER, *supra* note 11, at 7-8, 147, 202. Stoic ideas about benevolence and natural law seem to cut in a different direction, however; see, e.g., the discussion in BETZ, *supra* note 14, at 288.

17. For recent biblical and theological defenses of this doctrine, see, e.g., Bryan D. Estelle, *The Covenant of Works in Moses and Paul*, in COVENANT, JUSTIFICATION, AND PASTORAL MINISTRY: ESSAYS BY THE FACULTY OF WESTMINSTER SEMINARY CALIFORNIA 89-135 (R. Scott Clark ed., 2007); John Bolt, *Why the Covenant of Works Is a Necessary Doctrine: Revisiting the Objections to a Venerable Reformed Doctrine*, in BY FAITH ALONE: ANSWERING THE CHALLENGES TO THE DOCTRINE OF JUSTIFICATION 171-89 (Gary L. Johnson & Guy P. Waters eds., 2006); JOHN V. FESKO, LAST THINGS FIRST: UNLOCKING GENESIS 1-3 WITH THE CHRIST OF ESCHATOLOGY (2007).



legal way, but certainly one aspect of their relationship was legal. God gave his law to Adam. What God demanded in his law was *everything* that Adam had, Adam's *entire* obedience. Accordingly, it took only one sin to break Adam's covenant with God and to bring God's curse upon man. Adam's responsibility was encapsulated in the summary of the law given by Jesus later in Scripture: "Love the Lord your God with all your heart and with all your soul and with all your mind."<sup>18</sup> Adam owed God his whole person. When Adam failed to render his whole self to God, through even one act of disobedience, God demanded of Adam precisely what the *lex talionis* would suggest: his whole self. In fact, God did not allow compensation of money, or anything else, as we, in our wisdom, might think would be more advantageous for him. God threatened to exact the perfect and proportionate punishment for the primal act of law-breaking. Talionic descriptions of the final judgment in Scripture portray the fulfillment of this threat.<sup>19</sup> In addition, as we will explore further, even when God provided Christ's atonement as salvation from this penalty, He took due account of the demands of the *lex talionis*. From this perspective, it is not difficult to perceive, though it is still awe-inspiring to consider, the justice of everlasting punishment.<sup>20</sup>

However, does the most basic and original relationship of God to human beings, whose terms are still felt by all those outside of Christ, tell us something about *human nature*? Again, the perspective of my own Reformed tradition would suggest an affirmative answer. In Reformed theology, the law of the

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18. *Matthew* 22:37. All English translations of Scripture are taken from the New International Version.

19. A fascinating example of this is *Revelation* 18:6-7a, regarding God's eschatological judgment of Babylon: "Give back to her as she has given; pay her back double for what she has done. Mix her a double portion from her own cup. Give her as much torture and grief as the glory and luxury she gave herself." The talionic principle is clearly evident at the beginning and end of this quotation, and it is also evident in the middle phrases if "double" is better translated as "equivalent," which is persuasively argued in Meredith G. Kline, *Double Trouble*, 32 *J. EVANGELICAL THEOLOGICAL SOC'Y* 171, 177 (1989) [hereinafter *Double Trouble*]. My thanks to John Fesko for some helpful observations related to this point.

20. One difficulty in analogizing the *lex talionis* as practiced in human societies with the primeval relationship of God and Adam is that, given the infinite character of God, it is impossible to articulate the sort of "injury" that God received from Adam's disobedience and how the punishment of Adam, a finite creature, could be proportionate to that injury. Nevertheless, the analogy seems apt. In human societies, the *lex talionis* prescribes punishment that is proportionate not only to the injury but also to the obligation (e.g., if A fails to render the obligation to keep B's eye whole, then A must pay with his own eye). Thus, when the covenant of works demands Adam's whole self as obligation and takes from him his whole self as punishment for breaking this obligation, the *lex talionis* principle does indeed seem to be at work.

covenant of works includes not only the commands specially revealed to Adam in *Genesis* chapters one and two, but also the natural law. In other words, the law written upon the human heart made known the basic terms of the covenant of works—of the original divine-human relationship—by nature. There are many good reasons to accept this view, among which is the reality of the image of God.<sup>21</sup> The image of God defines human nature and human obligation. From the beginning, it concerned moral character: holiness, righteousness, and knowledge.<sup>22</sup> God revealed himself in *Genesis* chapters one and two as a God who works, by exercising dominion over the world in creating and shaping it, and then rests. And when God made human beings He made them to be working creatures,<sup>23</sup> and (presumably) also resting creatures. The Fourth Commandment further confirms this idea through an appeal to the image of God as the reason why we should both work and rest.<sup>24</sup> This pattern of work and rest reflects the basic obligation of the covenant of works: work during a time of probation, followed by a reward of rest. Thus, the fact that Adam was created in the image of God by nature suggests that Adam possessed inherent knowledge of the basic obligations of the covenant of works, which in turn suggests that the *lex talionis* principle at work in the primal divine-human relationship was not unknown to Adam even by nature.

Observing that the image of God is also certainly a judicial reality further bolsters this claim. The God of the first and second chapters of *Genesis* is a royal-judicial figure, who brings a world into existence,<sup>25</sup> imposes upon it its various responsibilities,<sup>26</sup> pronounces judgment upon its original state,<sup>27</sup> and then pronounces judgment upon its failure to carry out its responsibilities.<sup>28</sup> So too Adam, the image of God, had a royal-judicial office. He was called to rule over creation,<sup>29</sup> to name the animals,<sup>30</sup> and to expel the evil intruder from the

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21. For a more detailed theological defense of this view summarized here, and for supporting bibliographic information, see David VanDrunen, *Natural Law and the Works Principle Under Adam and Moses*, in *THE LAW IS NOT OF FAITH: ESSAYS ON WORKS AND GRACE IN THE MOSAIC COVENANT* (Bryan D. Estelle, John V. Fesko & David VanDrunen eds., 2009) [hereinafter *Works Principle*].

22. *Ephesians* 4:24.

23. Per the dominion mandate in *Genesis* 1:26, 28.

24. “For in six days the LORD made the heavens and the earth, the sea, and all that is in them, but he rested on the seventh day. Therefore the LORD blessed the Sabbath day and made it holy.” *Exodus* 20:11.

25. *Genesis* 1:1.

26. *Genesis* 1:11, 17-18, 22.

27. *Genesis* 1:10, 12, 18, 21, 31.

28. *Genesis* 3:14-19.

29. *Genesis* 1:26, 28.

holy Garden.<sup>31</sup> Even after the fall, two of the first references to the image of God concern human judicial capacities.<sup>32</sup> Both the obligation and the judgment entailed in the law were apparently inherent to human nature as image-bearing. Since the *lex talionis* was the law imposed and acted upon by the divine judge, it seems compelling to conclude, even from this initial evidence, that the law resident in the heart of the human, as the image-bearing judge, was also the *lex talionis*. If this is the case, perhaps it helps to answer one of the initial hesitations one might feel about affirming that the *lex talionis* is natural in a good sense. Can a natural desire for retribution, for paying back, be a good thing? One reason for our uneasiness is surely that we are taught from a young age that playing the vigilante is wrong. Retribution, or dealing out justice, is a job for the judge, not for individuals to take into their own hands. This seems fair enough—as far as it goes. Surely, it is proper to establish and respect impartial procedures for determining justice from an impartial perspective, and hence our suspicion about vigilante justice. But, if each one of us bears the image of God, then each one of us is by nature of great worth and by nature a judge.

When someone injures us, there is something righteous about understanding that the act is unjust and desiring that the act of injustice be rectified. If an eye for an eye and a tooth for a tooth is an expression of exact, proportionate justice, then image-bearers of God rightly desire to see that justice achieved. The concept of the image of God, as a judicial reality, helps us to understand why certain natural affinities toward the *lex talionis* may be driven by what is good within us, even if that good is corrupted by the selfishness and violence that sin engenders.

These reflections about natural law and the *lex talionis*, based upon the opening chapters of Scripture, find confirmation in *Genesis* chapter nine. This chapter, in many ways, is crucial to understand civil life in a fallen world. It is important to note that in God's covenant with Noah no promises of salvation are given and no distinctive people of God are set apart from others. God gave *all* people—indeed, all living creatures—promises and commands about civil life in the world.<sup>33</sup> Particularly pertinent for present purposes is *Genesis*

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30. *Genesis* 2:19-20.

31. *Genesis* 2:15.

32. *Genesis* 3:22; 9:6.

33. *Genesis* 9:9-10, 12, 15-17. Along these lines, some (though certainly not all) Reformed theologians have interpreted this Noahic covenant as a covenant of *common grace*, in distinction from the covenant of grace revealed elsewhere in which God promised salvation to his distinctive, chosen people through the atoning work of Jesus Christ. Some examples of significant Reformed theologians who interpret the Noahic covenant as a covenant of common

chapter nine, verse six, where the image of God and the *lex talionis* are explicitly connected: "Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man."<sup>34</sup>

Surely, it is not insignificant that this basic statement of civil justice for the post-diluvian world takes the shape of the *lex talionis*: blood for blood, that is, life for life. I offer a few observations about this verse. First, clearly it is prescriptive rather than descriptive. Second, and closely related to the first, it seems highly probable to me that the appeal to the image of God here is to be interpreted in a way different from the usual understanding. Given the preceding discussion about the judicially-charged nature of the image of God, *Genesis* chapter nine, verse six likely appeals to the image, not in order to explain why murder is such a serious crime (true as that may be), but in order to explain why it is *by man* that the murderer's blood shall be shed. *Another human being* is going to wreak the vengeance and to wield the sword of justice. How can this be? Because human beings are image-bearers, hence holding a judicial office, they are therefore capable, and even called, to right the wrongs that disorder society.<sup>35</sup> Third, the form of justice that these image-bearers are to implement follows the talionic model. Human beings were originally created sinless and without the need for a legal system of retaliatory justice. Yet, relating to God in covenant, under the talionic threat of everlasting punishment, they are commissioned to accommodate that talionic principle in a post-fall world in which sin has necessitated a legal system of retaliatory justice if society is to survive.

Perhaps we may put it in the following way. At creation, the law was defined in terms of the relationship of Adam and God. Adam owed to God his *whole self* and would have to pay with his *whole self* if he disobeyed—the *lex talionis* writ large. When God delayed final execution of that punishment and permitted the survival of human society for a time, that society's law was defined, not in terms of man and God, but of man and man. No human being owed to any other human being her *whole self*. What positive duties any human being owes to another human being in this fallen world are difficult to

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grace include 2 HERMAN WITSIUS, *THE ECONOMY OF THE COVENANTS BETWEEN GOD AND MAN: COMPREHENDING A COMPLETE BODY OF DIVINITY* 239 (William Crookshank trans., P&R Publishing 1990) (1677); 4 WILHELMUS À BRAKEL, *THE CHRISTIAN'S REASONABLE SERVICE* 384 (Bartel Elshout trans., Soli Deo Gloria Publications 1992-95) (1700); ABRAHAM KUYPER, *DE GEMEENE GRATIE* 11-100 (J. H. Kok trans. 1945) (1902-04); 3 HERMAN BAVINCK, *REFORMED DOGMATICS* 218-19 (John Bolt ed., John Vriend trans., 2003) (1895-1901); MEREDITH G. KLINE, *KINGDOM PROLOGUE: GENESIS FOUNDATIONS FOR A COVENANTAL WORLDVIEW* 164, 244-46 (2000).

34. *Genesis* 9:6.

35. For a defense of this view, see KLINE, *supra* note 33, at 252-53.

determine. Every human being, at least, has negative duties toward every other person: duties not to harm or not to kill. When one of these duties is breached, the harm that person A does to person B must be visited back upon A. It is not *whole self* for *whole self*, but it is eye for eye, tooth for tooth, blood for blood—the *lex talionis* writ small, we might say. Here in *Genesis* chapter nine, verse six, as a mandate for future legal existence in a fallen world, the basic image-of-God, natural principle of the *lex talionis* writ large is accommodated to the very different circumstances of intra-human justice.<sup>36</sup> Just as the creational covenant of works proclaimed the law, with judgment to follow, so the Noahic social arrangement proclaimed the law, with judgment to follow.

If the preceding interpretation of *Genesis* chapters one, two, and nine is accurate, then surely we would expect to see the *lex talionis* at work in post-diluvian human society. In addition, as already noted, this is what we find. The widespread adoption of the *lex talionis* in ancient human legal systems is, of course, not *proof* that the *lex talionis* belongs to the natural law, but it does offer *evidence* that it is—corroborating evidence that the conclusions drawn above from *Genesis* are on target.

One notable example of the presence of the *lex talionis* in ancient law is the famous Code of Hammurabi, originating from Babylon before the law of Moses; this code prescribed that “if a man has put out the eye of a free man, they shall put out his eye,” that “if he breaks the bone of a (free) man, they shall break his bone,” and that “if a man knocks out the tooth of a (free) man equal (in rank) to him(self), they shall knock out his tooth.”<sup>37</sup> Many centuries later, in the first extant evidence of written Roman law, the Twelve Tables stated that “if anyone has broken another’s limb there shall be retaliation in kind unless he compounds for compensation with him.”<sup>38</sup> Evidence of the *lex talionis* also exists, not only from the second millennium B.C. ancient Near East and first millennium B.C. Rome, but even into the second millennium A.D. in Anglo-Saxon, Old Norse, and Icelandic legal cultures.<sup>39</sup> Again, it may be tempting to dismiss all of this as the product of an uncivilized age, yet those acquainted

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36. Drawing a similar conclusion is Kline, in the final sentence of *Double Trouble*: Clearly articulated in Biblical law, the talion principle of eye for eye and life for life is foundational to the temporal, human administration of justice as prescribed by God in Scripture for both the common-grace state and the Israelite theocracy as well as in the direct execution of judgment by the Lord himself.

*Double Trouble*, *supra* note 19, at 179.

37. See 2 DRIVER & MILES, *supra* note 12, at 77.

38. *Twelve Tables*, *supra* note 12, at § 8.2.

39. See MILLER, *supra* note 11, for interaction with these latter sources at some length. In regard to my reference to the second millennium ancient Near East, I am not seeking to take a definitive position on the precise dating of the Code of Hammurabi.

with, for example, the cultural accomplishments of ancient Babylon or the brilliant sagas of the early Icelanders may beg to differ. Certainly, this is remarkable evidence of a cross-cultural, trans-historical legal practice that rings true to something noble in human nature.

The three statements of the *lex talionis* in the Mosaic law of the Old Testament add, at least, additional weighty evidence to this conclusion, as well as decisive evidence for those convinced of the authority of Scripture. The law of Moses—the law of God—incorporates this and many other legal rules of other ancient Near Eastern cultures, albeit with modifications, into its own set of laws.<sup>40</sup> Some scholarly debate exists concerning the extent to which there was intent to carry out the *lex talionis* literally. Further debate exists whether it was, in fact, carried out literally or in terms of monetary compensation through Old Testament history and into the time of Christ.<sup>41</sup> However literally it was applied, the rule was clearly stated, and biblical religion adds its witness to the idea, that there is something fundamentally just about the *lex talionis*.

One could pursue numerous issues related to the Old Testament *lex talionis*, but a couple of related matters seem especially pertinent for present purposes. One significant matter to note is that the *lex talionis*, though generally a matter of private law in other cultures and in the books of *Exodus* and *Leviticus*,<sup>42</sup> but it becomes an essential aspect of public law in *Deuteronomy*.<sup>43</sup> Here, the *lex talionis* is prescribed for the one who testifies falsely against another person accused of a crime. The false witness is punished as the one wrongly accused would have been punished if found guilty. The stated purpose of punishing this

40. This phenomenon has triggered various scholarly debates about the relationship of the Mosaic law to other ancient Near Eastern legal codes. One interesting recent exchange concerns the striking similarities between the so-called Covenant Collection of *Exodus* 20:23-23:19 and the earlier laws of Hammurabi and what sort of dependence the former may have had upon the latter; see David P. Wright, *The Laws of Hammurabi as Source for the Covenant Collection*, 10 MAARAV 11-87 (2003); Bruce Wells, *The Covenant Code and Near Eastern Legal Traditions: A Response to David P. Wright*, 13 MAARAV 85 (2006). Among older scholars of the Hebrew Bible, see relevant discussions in 1 GERHARD VON RAD, OLD TESTAMENT THEOLOGY 30-33 (D.M.G. Stalker trans., 1962); SHALOM M. PAUL, STUDIES IN THE BOOK OF THE COVENANT IN THE LIGHT OF CUNEIFORM AND BIBLICAL LAW 77 (1970).

41. Among those arguing for a non-literal application of the Old Testament *lex talionis* in Israelite law, see Meredith G. Kline, *Lex Talionis and the Human Fetus*, 20 J. EVANGELICAL THEOLOGICAL SOC'Y 197 (1977); and ROLAND DE VAUX, O.P., ANCIENT ISRAEL: ITS LIFE AND INSTITUTIONS 149-50 (John McHugh trans., McGraw Hill 1961) (1958-60). A strong counter-argument for the literal application and practice of the Old Testament *lex talionis* is offered in JAMES F. DAVIS, LEX TALIONIS IN EARLY JUDAISM AND THE EXHORTATION OF JESUS IN MATTHEW 5:38-42 (2005).

42. *Exodus* 21:23-25; *Leviticus* 24:18-21.

43. *Deuteronomy* 19:21.

evil was to purge it from Israel and instill fear in the rest of the people in order to deter future acts of the same offense in the future.

Thus, the *lex talionis* is tied up with Israel's identity as a nation.<sup>44</sup> The significance of this fact will become more evident below, but a few elucidating comments are relevant here. In entering into a covenant with Israel at Sinai, God did something he had not done previously with Abraham and the patriarchs or in the future with his New Testament church. Namely, He organized His covenant people as a *nation*, as a *theocracy* in which his people were made holy and separate from the world in all areas of life, whether religious or mundane, ecclesiastical or civil. The fact that the Mosaic covenant had a civil aspect that was not present in either the Abrahamic or the new covenants suggests one good reason why the Mosaic covenant alone legislates the *lex talionis*: this covenant, alone, was concerned with enforcing civil order.

The civil laws of Israel, like those of nations neighboring Israel, echoed the creational covenant of works: prescribing law with judgment to follow. In the creational covenant of works there was no mercy, only justice. Also, in *Genesis* chapter nine, verse six, we read only of justice and not of mercy. In many places in the Mosaic covenant, mercy is evident, but not when it comes to the *lex talionis*. As Moses wrote, "*Show no pity: life for life, eye for eye, tooth for tooth, hand for hand, foot for foot.*"<sup>45</sup> In this sense, the Old Testament *lex talionis* resides and makes sense in a context very much like that of all the other nations. Nevertheless, Israel was also unique, and its possession of the *lex talionis* was part of this uniqueness. Israel did not just echo the original covenant of works, like so many other nations did, with the talionic principle in its legal system reminding all people of the sense of justice without mercy that natural law keeps alive in every human breast. Israel's law played a very specific and special role in redemptive history. The law aroused Israel's people to a sense of sin and divine judgment in intense ways,<sup>46</sup> yet with an ultimate purpose, not of leaving God's people in despair, but of leading them to Christ—Christ would one day come himself "under the law" in order to satisfy all of the law's just demands.<sup>47</sup> Christ would do so without any mercy shown to him.<sup>48</sup>

Thus far, I have made a brief argument for the idea that the *lex talionis* is a principle of natural law that expresses a core principle of strict and proportional

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44. See Weaver, *supra* note 16, at 45-47.

45. *Deuteronomy* 19:21 (emphasis added).

46. See generally *Romans* 7.

47. *Galatians* 4:4.

48. See generally *Galatians* 3-4. For further elaboration and defense of this point, see again *Works Principle*, *supra* note 21.

justice. This justice is established in the creational covenant of works and is embedded in human nature through the image of God, enunciated in civil terms in the Bible as the model for justice in a fallen world,<sup>49</sup> and the *lex talionis* is expressed in a variety of ancient legal systems spread over time and in many cultures. The *lex talionis* is prescribed in a strict and pitiless form in the Old Testament covenant with Moses.<sup>50</sup> The pieces fit together in some remarkable and compelling ways. It is only at this point that truly interesting and difficult questions emerge for the Christian. The natural law and the Law of Moses may well prescribe the *lex talionis*—but Jesus did not.

#### IV. THE *LEX TALIONIS* AND THE SERMON ON THE MOUNT

In the Sermon on the Mount, Jesus famously said:

You have heard that it was said, “Eye for eye, and tooth for tooth.” But I tell you, Do not resist an evil person. If someone strikes you on the right cheek, turn to him the other also. And if someone wants to sue you and take your tunic, let him have your cloak as well. If someone forces you to go one mile, go with him two miles. Give to the one who asks you, and do not turn away from the one who wants to borrow from you.<sup>51</sup>

The difficulties that these verses have caused Christian readers are practically innumerable. Jesus’ words seem straightforward and concrete enough, but even a little reflection provokes significant questions. Is Jesus abrogating a central principle of the Mosaic Law in a sermon in which he is explaining the fulfillment rather than the abolition of the law?<sup>52</sup> Does Jesus really intend for me to give up my clothes to the point of nakedness, or give up the food I have purchased for my children, simply upon the demand of any troublemaker? And how do these words comport with, for example, Paul’s words in the epistle to the *Romans*,<sup>53</sup> which speaks of the state and governing authorities in positive terms as something divinely ordained; yet also in very talionic-friendly terms as bearing the sword as an εκδικος—as an avenger unto wrath toward the one who

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49. *Genesis* 9:6.

50. By this point I hope that it is clear that the position for which I argue is not the same as that of Klaus Koch, *Is There a Doctrine of Retribution in the Old Testament?*, in *THEODICY IN THE OLD TESTAMENT* 57-87 (James L. Crenshaw ed., 1983), who argues that, in the Old Testament, consequences for one’s conduct are built-in to nature itself and thus in some sense automatic. My thanks to Bryan Estelle for alerting me to this source.

51. *Matthew* 5:38-42.

52. *Matthew* 5:17.

53. *Romans* 13:1-7.



does evil?

Such questions have spawned a vast range of interpretations of these verses through the history of the Christian church. For some, they are to be taken literally by all Christians, so as to demand a withdrawal from political and legal affairs. For others, they are to be taken literally by all Christians, but as highly political and even revolutionary non-violent counter-tactics for overcoming evil.<sup>54</sup> For still others, they are to be taken literally by some Christians, those devoted to a higher righteousness.<sup>55</sup> For others, they are to be taken literally by all Christians, but only in regard to their private lives and their own self-defense, not in regard to the loving defense of other people, for which they may still use force.<sup>56</sup> For still others, they are not to be taken literally, but as hyperbolic and exaggerated for rhetorical effect, for the purpose of commending a general attitude of deference and love.<sup>57</sup> Given the range of views, any attempt to simplify them into a couple of categories may be hazardous. This tendency, however, does seem to exist either to accommodate *Romans* chapter thirteen to *Matthew* chapter five or vice versa. In other words, either the sword-wielding state is acknowledged, insofar as *Matthew* chapter five allows (at times meaning that some positive function for the state is granted, but Christians are disallowed from participating in it), or Jesus' words are obeyed, to the extent that *Romans* thirteen allows (often meaning that patience and love are to be shown to evil-doers within the broader constraints of the demand for social order).

The Reformed tradition, as well as most other Protestant traditions, has undoubtedly moved toward the latter position. Calvin, as Luther before him, had a high view of civil authority and a considerable fear of anarchy. The attitude of these Reformers seems appropriately summarized by the *Belgic Confession* (Article Thirty-Six), which states, "[W]e detest the error of the

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54. For various statements of this position, see JOHN HOWARD YODER, *THE POLITICS OF JESUS: VICIT AGNUS NOSTER* (1972); RICHARD B. HAYS, *THE MORAL VISION OF THE NEW TESTAMENT: COMMUNITY, CROSS, NEW CREATION; A CONTEMPORARY INTRODUCTION TO NEW TESTAMENT ETHICS* 317-46 (1996); GLEN H. STASSEN AND DAVID P. GUSHEE, *KINGDOM ETHICS: FOLLOWING JESUS IN CONTEMPORARY CONTEXT* 132-40 (2003); Wink, *supra* note 16, at 3-20; Weaver, *supra* note 16, at 56; see also BETZ, *supra* note 14, at 289-93.

55. This is the position commonly associated with medieval Christianity, against which Luther and other Reformers polemicized.

56. See, e.g., *Temporal Authority*, *supra* note 4, at 92-93; and Luther's Sermons on the Sermon on the Mount, in 21 LUTHER'S WORKS 3-294 (Jaroslav Pelikan ed., 1956). Similar sentiments appear in 33A DONALD A. HAGNER, *WORD BIBLICAL COMMENTARY* 131-32 (1993); D.A. CARSON, *THE SERMON ON THE MOUNT: AN EVANGELICAL EXPOSITION OF MATTHEW 5-7*, at 49-52 (1978).

57. This sort of position is defended, e.g., in Lambrecht, *supra* note 16, at 297-300.

Anabaptists.” The Anabaptists, of course, represented a competing tendency to subordinate *Romans* chapter thirteen to *Matthew* chapter five.<sup>58</sup> Thus, Reformed Christianity has generally either limited Jesus’ words to their private lives, or interpreted them as hyperbolic, or both.

One cannot sweep the interpretive difficulties, in which the Sermon on the Mount enmeshes us, neatly under the rug. Nevertheless, perhaps a few frequently overlooked insights are available by looking at this text in light of both the legal and theological import of the *lex talionis*, on the one hand, and the oft-forgotten resources of historic Reformed social thought on the other hand. In addition, these insights may perhaps bring us a small step closer to understanding and putting into practice the Christian life in a way that refuses to choose one set of biblical passages over another.

At this point, an initial consideration of the communal and social aspect of Jesus’ teaching bears emphasis.<sup>59</sup> *Matthew* chapter five, verse thirty-eight begins, as elsewhere in this chapter, with, “You (*plural*) have heard that it was said . . . .”<sup>60</sup> Who was Jesus speaking to? Earlier, *Matthew* explains that Jesus, upon seeing the crowds, went up on the mountainside and when *his disciples* came to him he taught *them*.<sup>61</sup> Furthermore, Jesus addresses his disciples, not as a loose band of followers, but as citizens of *his kingdom*. Shortly before *Matthew* records the Sermon on the Mount, he relates that Jesus began to preach that the kingdom of heaven is near,<sup>62</sup> followed immediately by his calling of the first disciples,<sup>63</sup> followed immediately by the statement that Jesus was preaching the good news of the kingdom throughout Galilee.<sup>64</sup> The Beatitudes, with which he begins the Sermon, proclaims the characteristics of those to whom the kingdom of heaven belongs. Though the Beatitudes begin in the third person, they end in the second person: blessed are *you* and great is *your* reward in heaven.<sup>65</sup> “*You*,” he says, “are the salt of the earth and the light of the world.”<sup>66</sup> Here, Jesus is teaching his disciples as citizens and heirs of his kingdom, about a kingdom that is, by definition, heavenly. He also teaches of

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58. Article 6 of the *Schleitheim Confession* offers an example of the Anabaptist position rejected by the Belgic Confession. It refuses to allow Christians to serve as magistrates or to bear the sword even in the administration of civil justice; see 2 CREEDS AND CONFESSIONS OF FAITH IN THE CHRISTIAN TRADITION 699-701 (Jaroslav Pelikan & Valerie Hotchkiss eds., 2003).

59. On this point, see again Weaver, *supra* note 16, at 51.

60. *Matthew* 5:38.

61. *Matthew* 5:1-2.

62. *Matthew* 4:17.

63. *Matthew* 4:18-22.

64. *Matthew* 4:23.

65. *Matthew* 5:11-12 (emphasis added).

66. *Matthew* 5:13-14 (emphasis added).

the age to come, while at the same time he breaks forth into the midst of human history with his own appearance and the establishment of a new holy community.

These considerations indicate that even though Luther was brilliantly insightful in expounding the Sermon on the Mount, his key claim that Christians are to obey Christ's words quite literally concerning their personal and private lives but also be willing to take up the sword in their public lives, in defense of others, is not quite correct. Jesus' teaching is not aimed primarily at the private lives of individual Christians, but is aimed at the social and communal reality contained in *his kingdom*.<sup>67</sup> This, then, begs an especially crucial question: what is his kingdom? The traditional Reformed answer is that Christ's kingdom is essentially an eschatological reality. His kingdom will be realized fully on the last day, but that this kingdom is revealed and experienced inchoately here and now in the church—and in the church *only*. That this is indeed the historic Reformed view, as provided through its doctrine of the *two kingdoms*, I have defended at considerable length elsewhere.<sup>68</sup> For the sake of brevity, I will not construct a biblical defense of the identification of the kingdom with the church, I simply note that the New Testament does not provide a single example of the kingdom of heaven being identified with any other social, this-worldly institution.

The historic Reformed two kingdoms doctrine allows us to take both the Sermon on the Mount and *Romans* chapter thirteen seriously—and even literally—in ways that, in my judgment, a mono-kingdom theology simply cannot. In other words, the doctrine provides a theology in which Christ's redemptive kingdom is identified with all spheres and institutions of human life. In the Sermon on the Mount, Jesus prohibited the *lex talionis* in his church. The church is to be a peaceful, non-retaliatory community. The church is not the enforcer of civil justice and, therefore, it does not bear the sword. Jesus' words specify, not so much what we as private and individual Christians are to do, but what we *as the church* are to do and to be. Jesus did not intend, however, his words to offer instruction for the state or its life. Jesus does not

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67. For comments relevant to this point, see also ROBERT A. GUELICH, *THE SERMON ON THE MOUNT: A FOUNDATION FOR UNDERSTANDING* 224 (1982).

68. See David VanDrunen, *The Two Kingdoms: A Reassessment of the Transformationist Calvin*, 40 CALVIN THEOLOGICAL J. 248 (2005): 248-266; David VanDrunen, *The Two Kingdoms Doctrine and the Relationship of Church and State in the Early Reformed Tradition*, 49 J. OF CHURCH AND STATE 743 (2007); David VanDrunen, *Abraham Kuyper and the Reformed Natural Law and Two Kingdoms Traditions*, 42 CALVIN THEOLOGICAL J. 283 (2007); and generally, DAVID VANDRUNEN, *NATURAL LAW AND THE TWO KINGDOMS: A STUDY IN THE DEVELOPMENT OF REFORMED SOCIAL THOUGHT* (forthcoming).

strip the sword from the state or deprive the state of its talionic orientation. Indeed, by implication, Jesus does not prohibit Christians, insofar as they live in the earthly kingdom and rightly take on civil responsibilities, from participating in the lifestyle of that kingdom, which includes the enforcement of the talionic standard of justice. *Matthew* five and *Romans* thirteen do not contradict each other and one does not need to be embraced at the expense of the other. They both establish the *modus operandi* of two different institutions, belonging to two distinct kingdoms. I do not wish to run roughshod over the many practical and applicatory questions that this leaves for Christians in their daily lives, but here at least, I hope to provide a solid exegetical and theological foundation framework for addressing such questions. In distinction from medieval Catholicism, the Sermon on the Mount is for all Christians. In distinction from Luther, it defines the lifestyle of a community, not the lifestyle of private individuals. In distinction from Anabaptists and later Mennonite traditions, it prescribes ecclesiastical responsibilities only, not civil responsibilities. Furthermore, in distinction even from some common Reformed tendencies, it constrains us from resorting too quickly to hyperbole, for in a very literal sense, the church is to be a peaceful, non-violent, non-sword-bearing, and non-retaliatory community.<sup>69</sup>

At this point, a brief comment may be in order to stress the serious difficulties that the Sermon on the Mount raises for the mainstream of recent Reformed theology. The Reformed community as of late has rejected, or at least forgotten, the two kingdoms doctrine in favor of a mono-kingdom approach to the Christian's engagement with culture.<sup>70</sup> By insisting that the redemptive kingdom of Christ extends to all spheres of life, including the state, the neo-Calvinist approach has, at least implicitly, brought civil government within the ambit of the Sermon on the Mount. The difficulty is patent. If the

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69. How would this view be practically applied if someone broke into my house one night? May I defend myself and resist the intruder? I do not have a dogmatic answer to this difficult question of application and I invite other writers to weigh in on it. A suggestion that I offer is that it depends on the reason for the intrusion. Has the intruder come to harm me because I am a Christian, a member of Christ's church, or because he wishes to steal my television? If I am being persecuted for my identity as a citizen of Christ's kingdom, then the Sermon on the Mount may teach that resistance is improper. But if I am being robbed simply as a random person who owns a desirable piece of property, then perhaps the Sermon on the Mount has little to say and I am free to exercise self-defense.

70. Among popular articulations of this perspective in recent years, see ALBERT M. WOLTERS, *CREATION REGAINED: BIBLICAL BASICS FOR A REFORMATIONAL WORLDVIEW* (2d ed. 2005); CRAIG G. BARTHOLOMEW & MICHAEL W. GOHEEN, *THE DRAMA OF SCRIPTURE: FINDING OUR PLACE IN THE BIBLICAL STORY* (2004); CORNELIUS PLANTINGA JR., *ENGAGING GOD'S WORLD: A CHRISTIAN VISION OF FAITH, LEARNING, AND LIVING* (2002).

*lex talionis* has no place in Christ's kingdom, and the kingdom of Christ penetrates the state, what is left of the state? Where there is no *lex talionis* surely there is no more sword, no more avenging of the wrongdoer. If a mono-kingdom position is embraced, then a consistent non-violent or pacifist position seems necessary. This, of course, is not a position that most neo-Calvinists have adopted. The contemporary heirs of the radical reformation at least have the virtue of consistency at this point, though consistency comes at the price of accounting insufficiently for *Romans* thirteen.

#### V. THE *LEX TALIONIS*, THE GOSPEL, AND THE ETHIC OF THE CHURCH

The Reformed two kingdoms doctrine, together with an understanding of the *lex talionis* as a natural law principle of strict and proportionate justice, provides a theologically coherent framework for interpreting the Sermon on the Mount in a way that neither subordinates it to nor elevates it above *Romans* thirteen. This framework describes the lifestyle of the church as peaceful, non-sword-wielding, and hence non-retaliatory. While the *lex talionis* does account generally for many important matters, it also raises some other difficult questions. For example, if the church does not live by the *lex talionis*, does it cease to live by the natural law—even though Christians remain human beings and are being renewed as image-bearers of God? As an extension of that question, we might also wonder whether, if the church does not live by the *lex talionis*, that basic expression of justice, does the church somehow pursue an ethic devoid of justice—despite the fact that her God is a God of justice and righteousness?

A few considerations may provide basic answers to such questions. First, there is, indeed, an important sense in which the church, being no longer under the *lex talionis*, is no longer under the law of nature. This does not mean that the basic moral substance of the natural law no longer binds the Christian, because it does. But it must not be forgotten that the natural law and its talionic principle reflect the creational covenant of works, which, as discussed above, proclaims the law in anticipation of judgment. The civil state after the fall, as described in both *Genesis* and *Romans*,<sup>71</sup> bound by the natural law with its talionic principle, continues to echo the covenant of works in setting forth law, with judgment to follow. Nevertheless, the church is the community of the justified, that is, the church is the community of those upon whom judgment has already been passed, through Jesus Christ. The Protestant doctrine holds justification to be a definitive, accomplished, and immutable judgment for believers, based upon Christ's work. This does not, by any means, make the

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71. *Genesis* 9:6; *Romans* 13:1-7.

moral life irrelevant but it does change its character radically. Sanctification follows upon justification, and follows upon it necessarily. It is the *justified* person, the person upon whom judgment has already been rendered in Christ, who is brought into conformity to God's will by the Holy Spirit. Christians live in gratitude for favorable judgment rendered, not in order to secure a favorable judgment by their own works. In this extremely meaningful sense, the church, as the community of the justified, can by no means be under the natural law as natural law, or under the *lex talionis* with its constant threat of judgment. The *lex talionis* is the principle under which the state must continue to operate, but not the church.<sup>72</sup>

But, despite the absence of the *lex talionis*, it should also be noted that the transformed ethic of the church is not one in which justice is laid aside. For one thing, this transformed ethic is made possible only because of Christ's work, which constituted the perfect fulfillment of the justice of God. Jesus bore the full curse of the law<sup>73</sup> and fulfilled all of its demands.<sup>74</sup> Thus, the church's ethic, although far from being oblivious to justice, presupposes its perfect accomplishment. Another look at the *Gospel of Matthew* may contribute an important element to this consideration.<sup>75</sup> The *prima facie* reading of this text is that the *lex talionis* is done away with in the ethic of the church. In a sense, this is clearly true, but in another sense is it really quite that simple? It seems, in fact, that the disciples of Christ are commanded, not to ignore the *lex talionis*, but to turn it 180 degrees. According to the *lex talionis*, the one who slaps on the cheek should be slapped on the cheek. The harm done to the offended should be borne by the offender. In *Matthew* five, however, Christ does not command the Christians to ignore the retribution. He commands them to bear it themselves. The Christian who is struck on the cheek should not ignore it but should turn the other cheek to receive a second strike. The *lex*

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72. One question that arises at this point is the matter of church discipline, as described in *Matthew* 18:15-17 and 1 *Corinthians* 5. Judicial procedures and even the language of "judgment" are used to describe how the church is to handle those who have committed serious sins for which they are unrepentant. A few matters seem worthy of note. First, whatever the nature of this discipline, it is not sword-bearing, but an exclusion from the fellowship of believers. Second, as is evident in both passages mentioned above, the goal of this discipline is repentance and restoration. Thus mercy, not strict justice, is its animating principle. And third, perhaps this discipline could properly be described not so much as the pronouncement of strict justice against the evil-doer but rather as the outward recognition of what is evidently inwardly true, namely, that a person who acts in such a way is in truth not a "brother." 1 *Corinthians* 5:11.

73. *Galatians* 3:13.

74. *John* 17:4; *Romans* 5:18-19.

75. See *Matthew* 5:38-42.

*talionis* specifies that a second but equal harm should be administered to even out the first harm. The Christian's behavior specified in *Matthew* five provides for this second but equal harm—but here the second equalizing harm is suffered, again, by the offended and not the offender. Justice is still accomplished, but only because the offended party bears the punishment vicariously.<sup>76</sup>

It sounds wonderfully like the gospel itself. The originally offended party (God), in justice should have returned a proportionate penalty upon the offending party (human beings). God did not do so to his people, but not because he ignored the talionic principle. Instead, a proportionate penalty was indeed borne—but the penalty was borne by the offended party, God himself, in the person of his Son.<sup>77</sup> God turned the other cheek, as it were, and endured the sword. He allowed himself to be injured twice. Penalty was exacted and justice was accomplished. Therefore, Christ teaches his disciples that their ethic as a church, justified in him, is to resemble the *lex talionis*, not as administered by the state according to the strict justice of the natural law, but as administered by God in Christ according to his infinite mercy, which satisfies justice along the way.<sup>78</sup> The church's ethic, according to the image of God, not

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76. This point seems recognized and stated helpfully in Winger's *Hard Sayings*: "The principle of proportionate retribution, carefully noted in Matthew, is up-ended: in each of the examples the injured person neatly doubles the injury received, as though following the rule but supplying himself the eye that is to be given for the eye, the tooth for the tooth. The calculation is the same; the price is paid; but the retribution—the thesis and point of the commandment—is cancelled out. Judicial process is acknowledged, yet ignored. . . ." Winger, *supra* note 16, at 272.

77. Miller, though not writing as a Christian theologian, makes a similar point as he observes Christian teaching; see MILLER, *supra* note 11: "In what came to be the dominant theory of the Incarnation, miserable judgment-proof fallen mankind could not make proper amends to God, so God had to become a perfect man (and hence suitable for sacrifice), one of sufficient worth to square the account, by paying himself to Himself. The sacrifice of Christ is merely another manifestation of the talion: God for God, who is also a partible sacrificial lamb who is then also the object of worship." *Id.* at 38. "In the Christian view, the Old Law is opposed to mercy and as such it offered no hope for sinful man's redemption. . . . Mercy, though, did not come for free in the Christian tradition. It was funded by Christ's sacrifice. The Old Law still set the rules of the game, and by its demands for repayment the treasury of mercy was funded." *Id.* at 84.

78. It is along these lines that I believe a more specific answer could be given to the question that has not been directly addressed in this essay: is Jesus abolishing the *lex talionis* in the Sermon on the Mount or showing its fulfillment? Jesus is abolishing the *lex talionis* in his church, and not simply combating a Jewish misreading of the Old Testament law for the sake of showing the profundity of the requirements of the law, in contrast with what he does in regard to other Old Testament commandments addressed earlier in *Matthew* 5. But this abolition can only be understood properly if one also understands the differences between the nature of Old

in creation but in redemption, commends suffering an injury twice rather than paying back harm for harm. Surely, the church may never bear the sword or pursue retaliatory justice. That work belongs to the state, and what a perversion it is when the church tries to participate, directly or indirectly, in that work. The church, pursuing the sacrificial love of its Lord, lives by a different rule.

## VI. CONCLUSION

This article has argued that the *lex talionis*, rather than a brutal, grotesque practice of an uncivilized age, is better seen as a basic expression of natural law and an expression of strict and proportionate justice. Very likely, we would not like to see it implemented—at least not often. But as a threat just below the surface and as a guiding principle, the *lex talionis* remains the God-ordained standard for the state.

Christians, in their civil capacities, need feel no remorse about supporting the state in this work. Jesus ordained a different standard for his church. He ordained a standard fitting for his justified people. The church, his kingdom on earth, bears no sword and administers no retaliation. The church proclaims the gospel and lives an ethic of self-sacrificial love that mysteriously portrays the gospel that it preaches. The sword still has its place in the enforcement of talionic justice and this is important to affirm. The church asserts itself into this work, however, only at the peril of its own identity.

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Testament Israel and the New Testament church (alongside of their similarities), in that part of the purpose of the former (but not the latter) was to enforce strict justice for the purpose of binding all people under sin and thus serving as a pedagogue unto Christ. Once Christ had come and established his new covenant community, this pedagogical function was no longer applicable. See *Galatians* 3:19-25. For a defense of the idea that Jesus really was abolishing the Old Testament law at this point, presented in a way largely compatible with the argument made in this essay, see JOHN PIPER, "LOVE YOUR ENEMIES": JESUS' LOVE COMMAND IN THE SYNOPTIC GOSPELS & THE EARLY CHRISTIAN PARAENESIS 89-98 (1980). Among treatments that see Jesus combating Jewish misunderstanding of the Old Testament law or showing a way to keep the intent of the law, sentiments with which I disagree, see, e.g., BETZ, *supra* note 14, at 282-84; Carson, *supra* note 56, at 49-52.



