

QS 3 Q 2:178 – 179

2.178 O believers, retaliation for the slain is ordained upon you:

A free man for a free man, a slave for a slave, a female for a female.

But if a brother is forgiven by another regarding what is ordained, then gracious pardon must be offered, and seemly deliverance of payment made. This is an act of leniency from your Lord and a mercy. Whoever aggresses thereafter, painful torment awaits him.

2.179 The prospect of retaliation saves lives, O you who are possessed of minds – perhaps you will fear God.

2.178 O les croyants! On vous a prescrit le talion au sujet des tués: homme libre pour homme libre, esclave pour esclave, femme pour femme. Mais celui à qui son frère aura pardonné en quelque façon doit faire face à une requête convenable et doit payer des dommages de bonne grâce. Ceci est un allègement de la part de votre Seigneur, et une miséricorde. Donc, quiconque après cela transgresse, aura un châtement douloureux.

2.179 C'est dans le talion que vous aurez la préservation de la vie, ô vous doués d'intelligence, ainsi atteindrez-vous la piété.

سورة البقرة
يَا أَيُّهَا الَّذِينَ آمَنُوا كُتِبَ عَلَيْكُمُ الْقِصَاصُ فِي الْقَتْلَى الْحُرُّ بِالْحُرِّ وَالْعَبْدُ بِالْعَبْدِ وَالْأُنثَى بِالْأُنثَى فَمَنْ عُفِيَ لَهُ مِنْ أَخِيهِ شَيْءٌ فَاتَّبِعْ بِالْمَعْرُوفِ وَأَدَاءُ إِلَيْهِ بِإِحْسَانٍ ذَلِكَ تَخْفِيفٌ مِنْ رَبِّكُمْ وَرَحْمَةٌ فَمَنِ اعْتَدَى بَعْدَ ذَلِكَ فَلَهُ عَذَابٌ أَلِيمٌ (178) وَلَكُمْ فِي الْقِصَاصِ حَيَاةٌ يَا أُولِي الْأَلْبَابِ لَعَلَّكُمْ تَتَّقُونَ (179)

Dye

L'arrière-plan biblique et évangélique de la *lex talionis* est bien connu (Exod 21:24, Lev 24:17–22, Deut 19:21, Matt 5:38–42). Ce passage s'insère dans un ensemble plus large de règles adressées aux croyants (*yā-ayyuhā allaḍīna āmanū*, cf. vv. 172, 183). Le Coran choisit ici, comme souvent, une voie médiane : la règle antérieure est rappelée – elle n'est donc pas abolie, car il convient de juger selon ce qu'Allāh a fait descendre (Q 5:45), mais elle est allégée, ou admet des exceptions, qui peuvent être encouragées. Le v. 178 et Q 5:45 paraissent complémentaires. Tous deux sont relatifs à la règle du talion, et aux cas où elle peut être suspendue : le premier insiste sur l'attitude que doit adopter le coupable si la famille de la victime accorde son pardon, alors que le second encourage la victime à accorder son pardon. Cela revient *in fine* à une combinaison d'attitudes rabbinique et chrétienne. Cette stratégie permet de se distinguer des juifs et des chrétiens et de proposer une voie susceptible de leur paraître attrayante.

Le v. 178 soulève cependant une difficulté sérieuse, comme l'a bien vu Stefanidis. Selon une certaine lecture, il permet, en représailles au meurtre d'un homme libre (d'une femme, d'un esclave) de tuer un homme libre (une femme, un esclave) qui ne soit pas le meurtrier. Une telle règle (qui pourrait être implicitement condamnée par Q 17:33) serait peu conforme à la *lex talionis* biblique, que le Coran est pourtant censé suivre. Je suis donc tenté d'interpréter le texte autrement, et d'y voir une allusion au principe de compensation (qui est précisément la manière dont la *lex talionis* était comprise à l'époque) : les dommages sont proportionnés au statut social de la

victime, et ils doivent être payés de bonne grâce (v. 179 : par exemple, c'est le coupable, et non une tierce personne, qui doit s'acquitter de la dette).

Plus généralement, le fait que ce verset glose des passages bibliques (rédigés dans le cadre d'une organisation sociale bien particulière) et que les catégories sociales invoquées (*hurr*, 'abd, *untā*) soient extrêmement répandues (et pas qu'en Arabie) à l'époque où est composé le Coran rend hasardeuse toute tentative de tirer des conclusions précises, à partir de ce texte, sur l'organisation sociale de la communauté à laquelle la prédication coranique s'adresse.

Grodzki

Looking at this verse with a more unconventional approach, we could perhaps have, first, a reminiscence of Exod 21:12, then listing (in the same order): free man Exod 21:18–19, slave Exod 21: 20–21, (pregnant) woman Ex 21:22–23. If we followed logically, we could perhaps then have the atonement of an unsolved murder (Deut 21 4–6) which should be solved perhaps by breaking the heifer's neck (Hebrew 'arafa).

Pregill

Initially, it seems unclear whether the penalty of retaliation (*qiṣāṣ*) for murder being simultaneously reiterated and ameliorated here is the Biblical *lex talionis* (Exod 21:23–25, Lev 24:19–20, Deut 19:21) or merely a tribal custom. The specific reference to this penalty being “prescribed for you” (*kutiba 'alaykum*) certainly implies a scripturalist context. Moreover, *tahfif*, alleviation, is characteristically associated with the trope of the lightening the burden of the Law imposed on Israel, and the theme is much developed in later Islamic exegesis and jurisprudence (see Maghen 2006). The strong discursive link to ancient Christian understandings of Israel and the Law here – epitomized by the *Didascalia Apostolorum* – is undeniable, though the theme of the amelioration of especially severe prescriptions or prohibitions of Biblical law is also found in rabbinic discourse, esp. the halakhic midrashim.

Here, the Qur'ān is not so much “borrowing” from precursors per se but rather rehearsing their particular modes of engagement with the Pentateuch. The parallel passage at Q 5:43–45 explicitly identifies the law of *qiṣāṣ* with the Biblical *lex talionis* and terms its voluntary remission by the aggrieved party *taṣadduq*. Why is remission merely recommended in these passages and not formally legislated? The most interesting precedent is found in Matthew 5:38: the Law is acknowledged as binding, but merit accrues to the one who willingly forgoes the retaliation to which they are legally entitled.

Stefanidis

Although the Qur'ānic notion of *qiṣāṣ* certainly draws on the Biblical talion, as Q 5:45 explicitly acknowledges, it should be noted that this passage departs in significant

ways from the Biblical application of retaliation. Here, it is the social body of the group understood as being constituted primarily of free men, slaves and women, which provides the basis for the assessment of just retaliation, rather than the individual's body parts (such the eye and the tooth mentioned in Lev 24:19). Only tribal conceptions of individuality, social solidarity and collective moral responsibility explain why v. 178 seems to tolerate the taking of a life other than that of the slayer in response to murder. Retaliation here is not primarily a means to punish the perpetrator but a way to preserve the balance of power among different groups within a social system of segmentation. It is an important passage that can help us identify the type of society in which the Qur'an emerged.

Winitzer

It may be of interest to note that the reworking of the *lex talionis* here continues a long tradition, since in its own thinking on this point the Bible builds on and refashions precursors in law collections from the ancient Near East, especially the best-known case from Hammurabi, whose law collection was taught to pupils in Babylonia for over a millennium after it was first composed. For a recent word on the Biblical building on the Mesopotamian law collection traditions, in particular Hammurabi's, see Wright 2009; but cf. Wells 2006.

Zellentin

The Biblical *lex talionis*, the laws of retribution, as formulated esp. in Exod 21:18–35, Lev 24:17–21 and Deut 19:21, oscillate between mandating a quid pro quo exchange either physically (life for life) or through monetary compensation. The rabbinic tradition reflects both views, but clearly decides in favour of the latter option from early on (see e.g., *Mishna Bava Qamma* 8.1). Christian tradition, based on Matt 5:38–42, glosses over the idea of monetary compensation (“You have heard that it was said, ‘An eye for an eye and a tooth for a tooth.’”..) and exhorts its audience to forego retribution entirely (... “but I say to you, do not resist an evildoer”). The Qur'an combines aspects of the rabbinic and the Christian attitude, reflecting its notion of the continuity of the Torah and the Gospel (see e.g. Q 2:136 and my comments on QS 31 and 34).

In the passage at hand and elsewhere (Q 4:92–93, Q 5:45, Q 17:33–35, and Q 25:63–72), the Qur'an holds fast to the Biblical mandate that one can decide to kill the killer, limiting this right to the heirs of the victim. In line with the rabbinic view, it then emphasizes the option of the heir of the slain person to accept monetary retribution instead. Unlike the rabbis, however, and more akin to the Matthean exhortation, the Qur'an portrays the option to accept the compensation *as* a divine *rahma*, “mercy” (v. 178). Its legal hermeneutics may be closest related to, without being commensurate with, the Judaeo-Christian tradition, as exemplified in a passage of Ptolemy's “Letter to Flora” (quoted by Epiphanius in his *Panarion* 33.5.3,

see also my commentary on QS 5); Gobillot (2009:9) intriguingly points to anti-Manichean debates about the laws of retribution in the Hebrew Bible and in the Gospel, such as *Acta Archelai* 31 and 40). Ptolemy comments on the *leges talionis* that “in any case this commandment was and is just, though owing to the frailty of its recipients it was given in violation of the pure law. But it does not fit with the nature and goodness of the Father at all.” The Qur’ān, like Ptolemy, combines the legislation of the Torah and the Gospel on the *leges talionis*, but unlike Ptolemy, it does not see the Torah’s law as incompatible with God’s character, and therefore continues to allow the heirs of the slain person to revenge the death (without excess!). Yet the Qur’ān also encourages them to forgive it—in this sense does the Qur’ān state that there is “life in retribution” (Q 2:179), allowing us crisply to perceive how the text adapts Judaeo-Christian law into its specific Arabian and monistic legal context (see also my comments on QS 18).