Retributivists frequently cite laws of talion to buttress their theory of punishment: the theory that it is right to punish criminal acts.¹ The sentence prescribed in Deut. xxv 11-12 is one of the most severe legal judgements in the Old Testament, and I shall refer to it as the law of the immodest woman. But does the law give the retributivists the ammunition they are seeking? Except for the law of talion cited in Deut. xix 21; Exod. xxi 24, and Lev. xxiv 19-20, it is the only law prescribing mutilation in the Old Testament. The law of the immodest woman follows:

If men get into a fight with one another, and the wife of one intervenes to rescue her husband from the grip of his opponent by reaching out and seizing his genitals, you shall cut off her hand; show no pity.²

Although some ancient law codes of the Near East routinely prescribed corporal punishment, this is an exceptional rule in the law of ancient Israel.³ Why would the Deuteronomist (D) record such a severe law? J.A. Thompson suggests that it has no connection with the preceding laws. While Peter C. Craigie⁴ sees this law as an extension of the *lex talionis*, he regards it as one more in a group of miscellaneous...

¹ Here I refer to someone who embraces a theory of retributive punishment as a retributivist. In his essay, “The Paradox of Punishment”, Alan H. Goldman described the retributivist’s thesis as follows: “if we are to justify punishment of particular wrongdoers or lawbreakers, that is, if we are to show why they cannot legitimately complain of injustice done to them by the imposition of punishment, we must argue that they have lost or forfeited their legitimate demands that others honor all their formerly held rights” (Punishment [Princeton, 1995], p. 31).
² Unless stated otherwise quotations shall be taken from the *New Revised Standard Version*.
laws. Craigie also seems to detect no injustice in the law and says, “the law illustrates, in general terms, that the end does not justify the means” (p. 315). And C.F. Keil suggests that the law is issued as a safeguard against the abuse of freedom that women gain through the law of levirate marriage that immediately precedes this law.⁵ So, in his view, the law is issued to keep women in a subordinate role. None of these views seems to offer a satisfactory rationale for the codification of this law at this juncture.

At first glance modern readers may detect a hint of chauvinism in the law. Appended to the sentence is the peculiar statement “show no pity”.⁶ Reading Deut. xxv 1-3 leaves one doubly puzzled by this sentence. In verse 3 one reads that a sentence of corporeal punishment for a male must be tempered with regard for the dignity of the criminal. It says, “Forty lashes may be given but not more; if more lashes than these are given, your neighbor will be degraded in your sight”. Even a charitable reader of these two laws would be struck by the apparent inconsistency: in one instance leniency toward a male offender is extended, and in a later instance leniency toward a female offender is withheld.

Dale Patrick says, “This last chapter of the legal code proper is loosely knit together by the theme of shame”.⁷ In contrast, I see this law as part of a set of well-crafted, shame-based sanctions in the context of other shame-based legislation. Viewing them as a set may give us a richer understanding of these sanctions. Also, the idea that they are loosely knit together may fail to take into account the historical incidents that prompted D to collect this group of shame-based sanctions.

To attempt to understand the law of the immodest woman solely from the perspective of a guilt-based legal system is to generate unnecessary inconsistencies in the law code and to present the law as an overly severe sanction. Ethical questions are raised when a reader sees Deut. xxv 1-3, a law that safeguards the dignity of a male, in juxtaposition to Deut. xxv 11-12, a law that appears to sacrifice the reputation of a woman. I explore that problem below.

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⁶ Cf. the *Authorized Version*, which reflects the reference to the (public) eye, ‘eyes: “thine eye shall not pity her”.