

## SOME OBSERVATIONS ON THE QATABANIC EDICT ON HOMICIDE<sup>1</sup>

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An important source for the reconstruction of ancient South Arabian law is the set of juridical inscriptions inscribed on the southern gate of Timnağ. These inscriptions are royal edicts commissioned by a number of powerful Qatabanian kings. These documents deal with juridical issues covering various areas of the law<sup>2</sup> and include an important edict on homicide, the inscription CSAI I, 204 = R 3878. The analysis of this text helps to reconstruct some significant aspects of criminal law in Qataban and also sheds light on the background of its underlying juridical traditions in ancient South Arabia.

### Philological issues

A major problem with CSAI I, 204 = R 3878 is that it is extensively damaged, which makes it very difficult to understand the provisions it contains<sup>3</sup>. Furthermore, the technical language used in this text, as well as in legal documents in general, makes it very difficult to understand the types of legal institutions that are mentioned.

A first fundamental step towards interpreting this text was made by Rhodokanakis<sup>4</sup>, who identified an important provision known as the talion principle. According to Rhodokanakis, the root *hrm* (occurring in line 4) indicates that the punishment for murder was execution. In his interpretation of the problematic term *m̄br* (occurring in lines 6, 8, 13), in certain circumstances the murderer could pay some kind of compensation instead<sup>5</sup>.

This general interpretation of the text was accepted and adopted by Grohmann. In his book *Arabien*, he devotes a chapter to the legal system of ancient South Arabia<sup>6</sup>. Grohmann outlines criminal law as well, although sometimes he is overzealous in his attempt to identify legal details which he reconstructs from the lacunae without any philological evidence. Grohmann makes the important point that there is a parallel between the talion principle (in this particular case, the death penalty) in this Qatabanic

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<sup>2</sup> The author has translated the legal texts from the southern gate of Timnağ in Avanzini 2004, pp. 270-278, 281-284; 293-298, and will be publishing them in a monograph.

<sup>3</sup> This inscription was located on the inner right-hand wall of the southern gate facing the entrance. Only one large fragment, inscribed with part of the last nine lines, is *in situ* today. Three more fragments (R 3902, 140; R 3904, 144 and Sem 701) are preserved in the Kunsthistorisches Museum (Vienna). The inscription can be read from a photograph taken by Bury, published by Pirenne (1956, pl. 34, pp. 273-275), and from a squeeze made by Glaser.

<sup>4</sup> Rhodokanakis 1924.

<sup>5</sup> Rhodokanakis 1924, pp. 16; 18.

<sup>6</sup> Grohmann 1963.

edict on homicide and similar laws in other ancient Near Eastern sources such as the Hammurabi Code and the Old Testament.

However, this interpretation has been largely disregarded by later scholars. Irvine<sup>7</sup> thoroughly re-examined this inscription, making considerable changes to Rhodokanakis' interpretation.

According to Irvine, the root *'rm* indicates that the penalty imposed on the murderer was a ban<sup>8</sup>. He states: “(...) the implication of the ban is that he [the culprit] would be deprived of his civil liberties, that is, he would no longer be able to regard his life as protected by the king. He might then reasonably be expected to seek asylum outside Qatabanian territory. It may be supposed that, theoretically at least, he would flee to escape talion rather than an official death penalty since no explicit provision is made for the latter”<sup>9</sup>. Irvine suggests that the institution of talion is distinct from the official death penalty. Talion was an individual affair, a violent personal revenge, typical of a very ancient society. Consequently the application of the ban was a social development that, in Irvine's words, had the following function: “(...) bloodshed would stop at that point, and anarchy, so much a feature of Beduin society, was averted”<sup>10</sup>. In accordance with this interpretation, Irvine proposed the new rendering “examination”<sup>11</sup> for the term *m'br* mentioned above. This, however, disregards Rhodokanakis' hypothesis of compensation as a legal principle but emphasises instead the importance of some type of judicial procedure.

In the author's opinion, Rhodokanakis' interpretation of the text is preferable to Irvine's. The root *'rm* seems to describe the legal position of the murderer in general. As Ryckmans<sup>12</sup> noted, this root implies the idea of an “anathema”, in the sense of something which is tabooed and thus destined for utter destruction. Accordingly, the new rendering “let (it) be interdicted”<sup>13</sup> can be adopted in an attempt to single out this detail of the text for identifying the legal status of the murderer.

The application of the death penalty for murder was not as exceptional as Irvine's analysis appears to suggest. It was applied for transgressions other than homicide. Inscription C 126 = Ra 42 appears to indicate that the death penalty was applied to lepers found guilty of spreading disease throughout the community<sup>14</sup>. Even animals were liable for misdemeanours and were killed if they ventured into sacred places<sup>15</sup>.

Rhodokanakis' rendering of the difficult term *m'br* “Söhne”<sup>16</sup> ‘should be preserved’ as it is supported by new philological data. The verb form *'br* appears in the recently

<sup>7</sup> Irvine 1967, pp. 277-291. This reappraisal was largely accepted by al-Nagīm 2000, pp. 656-659.

<sup>8</sup> Irvine 1967, pp. 280-281.

<sup>9</sup> Irvine 1967, p. 281.

<sup>10</sup> Irvine 1967, p. 281.

<sup>11</sup> Irvine 1967, p. 280; Irvine's rendering is suggested by some parallel uses of the root *gbr* in Arabic.

<sup>12</sup> Ryckmans 1983, esp. pp. 18-19.

<sup>13</sup> Mazzini 2004, esp. p. 282.

<sup>14</sup> According to Beeston's general interpretation of the text (Beeston 1976, esp. pp. 418-419), which still presents many difficulties. A re-examination is needed.

<sup>15</sup> One significant example is the legal document Rob Maš 1; see the discussion on this point in the re-examination of the text by Mazzini 2005a, pp. 95-123.

<sup>16</sup> Rhodokanakis 1924, pp. 16; 18.

translated Sabaic document, FB-Mahram Bilqis 1, where the term is interpreted as “compensation”<sup>17</sup>. A parallel meaning emerges in the Old Testament, in connection with uses of the Hebrew root ‘br<sup>18</sup>, where compensation is the legal principle of commuting the death penalty to a payment. This was a very traditional feature of penal law based on the juridical principle of the talion as a means of punishing the murderer. It was mainly applied to cases of wilful murder, but it could be also applied in other circumstances.

There is further evidence in the edict on homicide that capital punishment was the basic penalty. This is the use of the root *nwḥ*, which refers to a rite of atonement performed by the community, as Irvine<sup>19</sup> has also pointed out. This rite was probably linked to the situation when the murderer was missing. In this case, the principle of collective liability for a transgression committed by one member of a community was put into practice, i.e. the whole tribe was required to take responsibility for the crime<sup>20</sup>.

### Historical context

In the author’s opinion, the identification of the talion principle in this edict, and therefore the application of the death penalty as the punishment for homicide in ancient South Arabia, is a piece of historical information that needs reconsideration. The discussion will now focus on the historical framework in which the talion principle was applied.

The crucial point in the Qatabanic edict on homicide is that the talion system is not a personal issue but one which involves royal authority and all its subjects. This document appears to be an edict issued by the Qatabanian king in agreement with the main political bodies of Qataban as well as with the major tribes of the kingdom. Significantly, all the representatives of these tribes are listed at the end of the inscription, each by personal name. Particular emphasis is given to the Radman tribe (their capital, *W<sup>c</sup>In*, is also mentioned) which played an essential political role in the historical dynamics of the kingdom of Qataban. The text has a prospective characteristic<sup>21</sup> in that its dating is precise (see the use of the formulaic dating pattern) and the law was to be enforced from then on. The fact that the inscription was located on the southern gate of Timna<sup>c</sup> is a further significant feature. According to a traditional custom widespread in the ancient Near East from the second millennium (and even earlier), the principal gates of the town were

<sup>17</sup> Bron – Ryckmans 1999, esp. pp. 164; 166. This interpretation is not accepted by Stein – Multhoff 2008, p. 24 who translate the verb *gbr* “dahingegangen ist”. See their reconsideration of this text on pp. 23–28.

<sup>18</sup> This particular nuance is expressed in Hebrew by the *hiqu’l* form of the verb and some nominal formations the meaning of which is “to forgive, forgiveness”; see Gerleman 1977, pp. 132–139.

<sup>19</sup> Irvine 1967, pp. 282–283. This could be a striking parallel with the Hadramitic text Rb I/84 n. 196a-d+201a-b, 3; see Frantsouzoff 1995, pp. 15–28. This root has also been analysed in the light of North-West Semitic by Mazzini 2005b, esp. p. 230.

<sup>20</sup> In ancient South Arabia this principle is attested in several different contexts; see for instance the inscription Ja 720 in Höfner’s interpretation (Höfner 1967, pp. 106–113). Notice the case of the expiatory Minaic text Shaqab al-Manaṣṣa 19; see in detail Gnoli 1993, esp. pp. 100–112. Parallels can be found in the ancient Near East, as is the case with the provisions given in the Old Testament (Lev. 21).

<sup>21</sup> According to a definition by Westbrook 1986, esp. pp. 217, 220.

symbolically linked with the law as the expression of the royal authority<sup>22</sup>. The southern gate of Timna<sup>c</sup> was probably one of the most outstanding gateways in ancient South Arabia, given its monumentality and the quantity and quality of the legal documents inscribed on its surface.

The edict on homicide reflects a particular historical phase of the kingdom of Qataban. During this phase, the kings of Qataban extended their power over a very large area of ancient South Arabia and exercised political control over the tribes of the region. A substantial part of Qatabanic legal documentation dating to this historical phase seems to reflect a policy of alliance with the tribes of the kingdom. Royal authority was powerful and for a certain period Qataban had a strongly centralised state. This is evident from the agreement between the kings of Qataban and the *'rby 'm d-Lbḥ* tribe<sup>23</sup>, reported in a group of edicts that were also displayed on the southern gate. This suggests that the penal law was of crucial importance for the royal power of Qataban.

It has been observed<sup>24</sup> that ancient South Arabian documentation rarely provides us with full-scale laws. Most of the available documents are edicts intended to settle concrete problems. Territorial concession is one of the most typical examples<sup>25</sup>. The edict on homicide, by contrast, can be considered a full-scale law because it translates the traditional principle of the talion into terms of general legislation valid for one and all. This principle, as we have seen, contains legal substance but it only acquires the authority of legislation through an official codification such as by the royal power through the homicide edict. This mechanism might also be confirmed by a legal model, supported by many scholars<sup>26</sup>, where penalties against homicide based on the talion principle, a very severe form of punishment, tend to become official legislation within historical contexts where the royal power has created a strong centralised state. Historically, this phenomenon is explained by the need of official power to wield authority over society. Penal law was used by the central power as a strong deterrent against crime and served to protect and control a society. By contrast, a broader use of many forms of compensation was more frequently applied in societies where the central power was not so influential<sup>27</sup>. It is probable that the edict on homicide reflects the establishment of penal law in Qatabanian society, a fact which has significant historical implications. Penal law can only be established by a strongly centralised state.

The idea of a centralised Qatabanian state under royal power seems to suit perfectly the broader reconstruction of the historical period in which the edict was issued<sup>28</sup>. The establishment of criminal law is a way of affirming the central authority of the state under royal control. The participation in this legal agreement by the various members of the

<sup>22</sup> See Mazzoni 1997, pp. 307-338. Note that (at the beginning of the first millennium) some gates of certain North Syrian towns were even decorated with themes celebrating the king.

<sup>23</sup> Rhodokanakis 1919; Beeston 1971; Pirenne 1991; see also the recent re-examination by Mazzini in Avanzini 2004, pp. 270-277.

<sup>24</sup> Korotayev 1994.

<sup>25</sup> Mazzini 2004, pp. 185-198.

<sup>26</sup> Otto 1991, pp. 101-130; Yaron 1988, esp. pp. 262-264.

<sup>27</sup> However, this point remains controversial and requires further investigation, especially in connection with ancient South Arabian sources, which have never been thoroughly examined.

<sup>28</sup> See the general historical reconstruction by Avanzini 2004, esp. p. 27.

kingdom can be interpreted as a sort of “tribal consensus” between those who support the establishment of penal law.

### Conclusions

The talion is a legal principle which has a very long history. This edict demonstrates the deep and far-reaching roots that link ancient South Arabia and the Near East. One outstanding example of criminal law in the ancient Near East is an archaic legal document from Ebla, ARET XIII 5<sup>29</sup>. In this text, dating from the twenty-fourth century B.C.E., certain provisions based on the talion principle can be found. Centuries later, talion as a juridical principle concerning the regulation of homicide was incorporated into the criminal law of the Arabs, in particular the *qisāṣ* and the *diyya*. Given this fact, we should reflect on the relevance of ancient South Arabian legal tradition on the formation of Islamic law.

The codification of the homicide edict helps us to reconstruct a specific historical moment of the kingdom of Qataban. The royal authority needed to establish a state that was powerful and centralised, and to create general rules and a collective identity. This edict on homicide was codified as a result of the integration of the various tribal and political realities into a centralised state and the need for legislation to control them. These were two of the most important developments which characterised the height of the Qatabanian kingdom. As we know, this effort was short-lived. Only a few centuries later, Radman (mentioned in the inscription) became a powerful enemy of Qataban and contributed to its disappearance from the historical map of ancient Yemen.

Ancient South Arabian legal documentation still holds unexpected secrets and awaits a systematic review from an historical and philological approach<sup>30</sup>.

<sup>29</sup> See the recent treatment by Fronzaroli 2002.

<sup>30</sup> The only general outline of the ancient South Arabian legal system is by Grohmann and was written in 1963. This book was actually written before the Second World War, but it was published in 1963 because the original manuscript was lost during the war (Prof. W.W. Müller, pers. comm.).

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