

Exodus 21: 22-25 and the Abortion Debate

Robert N. Congdon
Physician
De Soto, Illinois

As a member of the medical community in America, it is with special shame that this writer views the medically sanctioned, continuing slaughter of millions of unborn infants. George F. Will gently stated that "just as prenatal medicine was beginning to produce marvelous life-saving and life-enhancing achievements, Supreme Court justices made it the law of the land that the patients for such medicine have no right to life."¹ The awful paradox is that despite tremendous scientific and technological advances improving the quality of life in the United States, an equally strong advance, the humanistic ethic has undermined the intrinsic value or sanctity of all human life.

Montgomery commented, "While all sins are equal, some sins are more equal than others."² God's wrath, he wrote, seems particularly kindled against certain sinful acts. Uzzah (2 Sam. 6:6-7) or Ananias and Sapphira (Acts 5) are examples. Along with His concern for the welfare of the family and the institution of marriage and for the welfare of the Jews, God seems particularly interested in the welfare of children. Jesus said, "Let the little children come to me, . . . for the kingdom of heaven belongs to such as these" (Matt. 19:14, NIV).

Destruction by the horror of being thrown into the sea with a millstone around the neck is associated with Babylon in Revelation 18:21 and with

¹ George F. Will, "The Case of the Unborn Patient," *Newsweek*, June 22, 1981, p. 92.

² John Warwick Montgomery, "Abortion: Courting Severe Judgment," *Christianity Today*, January 25, 1980, p. 54.

those who do harm to little children in Matthew 18:1-6. A little child--unable to save himself and fully dependent--is, like the Jewish people, one of those weak things of this world chosen by God to "confound the wise." Those who harm them do so at their peril, both in time and in eternity.³

Many biologists, geneticists, and physicians agree that biological life begins at conception.⁴ The Scriptures clearly add to that foundation by teaching that God places value on unborn life a sacred (see for instance Exod. 4:11; Job 10:8-12; Ps. 139:13-16; Jer. 1:5; Matt. 1:18; and Luke 1:39-44). Waltke summarizes an insightful study of the Scriptures relating to the nature of fetal life by concluding that "on both theological and exegetical grounds. . . the body, the life, and the moral faculty of man originate simultaneously at conception."⁵

That the early church fathers recognized this truth is evidenced in the writings of Tertullian, Jerome, Augustine, Clement of Alexandria, and others.⁶ The one who studies Old Testament law is surprised, therefore, in light of such evidence to find a paucity of legal information relating to fetal life. Kline observed, "The most significant thing about abortion legislation in Biblical law is that there is none."⁷ This lack of legislation relating to fetal life in Hebrew law is made even more significant by the finding several ancient Near Eastern codes of law that deal with the subject.⁸ For instance a Middle Assyrian law dated between 1450 B.C. and 1250 B.C. prescribed death by torture in cases of induced abortion. The text reads: "If a woman by her own deed has cast [aborted] that which is within her womb, and a charge has been brought and proved against her, they shall impale her and not bury her. If she dies from casting that which is in her womb, they shall impale her and not bury her."⁹

Does the silence of Old Testament law lead to the conclusion that God condones the practice of abortion? This question assumes

³ Ibid.

⁴ Statement of "Special Judiciary Committee on Separation of Powers," quoted in *Action Line* (CAC newsletter), February 5, 1982, pp. 2-3.

⁵ Bruce K. Waltke, "Reflections from the Old Testament on Abortion," *Journal of the Evangelical Theological Society* 19 (Winter 1976): 3-13.

⁶ John A. Rasmussen, "Abortion: Historical and Biblical Perspectives," *Covenant Theological Quarterly* 43 (January 1979): 19-25; John Ellington, "Miscarriage or Premature Birth?" *Bible Translation* 37 (July 1986): 334-37.

⁷ Meredith G. Kline, "Lex Talionis and the Human Fetus," *Journal of the Evangelical Theological Society* 20 (Summer 1977): 193-201.

⁸ H. Wayne House, "Miscarriage or Premature Birth?" *Westminster Theological Journal* 41 (1978): 108-23; Bruce K. Waltke, "The Old Testament and Birth Control," *Christianity Today*, November 8, 1968, pp. 99-105.

⁹ Cited by Waltke, "The Old Testament and Birth Control," p. 99.

greater significance in light of fact that such an eminent scholar as Waltke proposed such thinking.¹⁰ The "argument from silence that he proposed has been aptly dealt with by Scott¹¹ and Crawley.¹² In light of their comment Waltke was humble enough to retract his earlier conclusions.¹³

The silence of Old Testament law referring to feticide does not mean God is unconcerned about fetus. Rather, it should lead one to examine the entire weight of scriptural evidence relating to fetal status. Crawley writes that the omission of feticide is "one indication, among many, of the intense regard felt by the Jewish people for parenthood and the future of their race."¹⁴ Kline states, "It was so unthinkable that an Israelite woman should desire an abortion that there was no need to mention offense in the criminal code."¹⁵

There is, however, one passage in Old Testament Law that mentions the human fetus. The first of three Old Testament *lex talionis* (law of retribution) passages is Exodus 21:22-25: "And if men struggle with each other and strike a woman with child so that she has a miscarriage, yet there is no further injury, he shall surely be fined as the woman's husband may demand of him; and he shall pay as the judges decide. But if there is any further injury, then you shall appoint as a penalty life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise."

Differences in interpretation of this law have alternately led to both acceptance and rejection abortion by evangelicals.

If it can be established from Exodus 21:22-25 that the unborn fetus is qualitatively inferior to fully human life, then the Bible-believing Christian must give serious consideration to the contention that there are several circumstances that may be greater evils than abortion, such as mental disorder in the mother, the probability that the child will be born malformed, or the trauma pregnancy resulting from rape.¹⁶

This article examines Exodus 21:22-25 from historical, legal, medical, and textual (linguistic) points of view to seek to reach conclusion on its meaning, and to answer the question, Does the Old Testament law condone abortion?

¹⁰ Ibid., p. 100.

¹¹ Graham Scott, "Abortion and the Incarnation," *Journal of the Evangelical Theological Society* 17 (Winter 1974):

¹² *Encyclopedia of Religion and Ethics* (1914), s.v. "Feticide," by A. E. Crawley, 6:

¹³ Waltke, "Reflections from the Old Testament on Abortion," p. 3, note.

¹⁴ *Encyclopedia of Religion and Ethics*, 6:55.

¹⁵ Kline, "Lex Talionis and the Human Fetus," p. 193.

¹⁶ Jack Cottrell, "Abortion and the Law," *Christianity Today*, March 16, 1973, p. 7.

The Context

The Book of the Covenant (Exod. 20:22-23:33) contains regulations concerned with fairness and justice in human relationships. Its laws deal specifically with issues such as treatment of slaves, theft and repayment, sexual mores, crimes of violence, and religious practice. While the Ten Commandments (Exod. 20:2-17) summarize the relationship of the covenant God to His people and relationships between His people, the Book of the Covenant amplifies this covenant law.

The passage in question is found in a series of laws concerned with cases of criminal negligence. These are *casuistic* laws (case laws) and as such are designed to answer particular legal questions. *Apodictic* laws on the other hand are designed to state universal truths (e.g., "Thou shalt not kill"). Exodus 21:18-19 deals with injury inflicted during a quarrel. Verses 20-21 concern punishment of slaves and manslaughter. Following the recitation of the *lex talionis* (vv. 22-25), then, are laws on specific injuries to slaves (vv. 26-27) and injuries inflicted by a goring ox (vv. 28-32). At first glance there seems little to relate these laws to one another. But their "casuistic" nature and the placement of the *lex talionis* in their midst does give them some affiliation.

The "law of retribution" is a well-documented legal formula of ancient Near Eastern legal codes. It is cited in the Mesopotamian law codes of Eshnunna (ca. 2000 B.C.), Lipit-Ishtar (ca. 1860 B.C.), and Hammurabi (1700 B.C.).¹⁷ In its literal application, exact retribution for the injury (or death) incurred was to be applied to the offender. That the law of talion did not always or even primarily require literal application, but merely application of its principle, has been accepted by numerous scholars.¹⁸ Fisher notes the following:

Even in prebiblical times, the principle of monetary substitution (payment of claims and damages) was gradually replacing literal, physical retribution. The code of Eshnunna, for example, states that "If a man bites the nose of another man and severs it, he shall pay one mina of silver. For an eye, one mina; for a tooth one-half mina; for a slap in the face ten shekels of silver."¹⁹

Examination of the two other biblical *lex talionis* texts concurs with the idea that literal interpretation is not mandated. In

¹⁷ Eugene Fisher, "Lex Talionis in the Bible and Rabbinic Tradition," *Journal of Ecumenical Studies* (Summer 1982): 582-87.

¹⁸ Floyd E. Schneider, "Penology in the Mosaic Law" (ThM thesis, Western Conservative Baptist Seminary, May 1978), pp. 7-12; Kline, "Lex Talionis and the Human Fetus," pp. 196-97; Fisher, "Lex Talionis in the Bible and Rabbinic Tradition," pp. 584-85.

¹⁹ Fisher, "Lex Talionis in the Bible and Rabbinic Tradition," pp. 584-85.

Leviticus 24:18 the "life-for-life" principle is applied to the situation in which an animal's life is taken, and this is interpreted three verses later by the statement that "the one who kills an animal shall make it good."

Likewise in Deuteronomy 19:5-21, which speaks of judging false witness, there is "not a simple literal equivalence between the terms of the talion penalty clause and all the variety of cases which a false witness might figure."²⁰

The application of the law talion in Exodus 21 is similarly nonliteral. The kinds of injuries listed in the talion formula (e.g., a burn) are not ones likely to occur in a situation where two men struggle with each other and inadvertently strike a pregnant woman. Furthermore the immediate context refers to the situation in which men quarrel and injury is inflicted (vv. 18-19). Instead of the expected "wound for wound" formula, monetary compensation is mandated. Similarly the passage that follows (vv. 26-27) mandates decidedly nontalionic judgment: a slave's freedom for traumatic loss of eye or tooth.

Clearly then the *lex talionis* formula provides for exact justice, not for exact retribution. The punishment must be commensurate with the crime, neither too excessive nor too lenient. One might postulate on this basis that the penalty "life for life" might be amended in the case of some cases as well. Certainly the "ransom" allowed in the case of the negligent owner of a goring ox (v. 30) would seem at first glance to fit such a proposition. However, owner's negligence is taken into account here. Keil and Delitzsch note, "As this guilt, however, had not been incurred through an intentional crime, but had arisen simply from carelessness, he was allowed to redeem his forfeited life by payment of expiation money."²¹ And the homicide was not committed personally, with murderous *intent*, and therefore fell outside the restriction of Numbers 35:31-32, which allowed no ransom in such situation.

In the case of premeditated murder, even the altar of Yahweh could not protect the offender from the death penalty (Exod. 21:14). The application of *lex talionis* in Leviticus 24:17-21 makes it clear that while "life for life" may only require compensation if the death of an animal is involved, it most certainly requires capital punishment if a man is killed. Likewise the "cities of refuge" (Num. 35:9-21) were for those who had committed unintentional man-

²⁰ Kline, "Lex Talionis and the Human Fetus," p. 197.

²¹ C. F. Keil and F. Delitzsch, "Exodus," in *The Pentateuch*, 3 vols., trans. James Martin, *Commentary on the Old Testament* (Grand Rapids: Wm. B. Eerdmans Publishing Co., 1949), 2:135.

slaughter. One guilty of premeditated murder had absolutely no recourse. "You shall not take ransom for the life of a murderer who is guilty of death, but he shall surely be put to death" (Num. 35:31). If the guilty one fled to a city of refuge, the Law stated that "the elders of his city shall send and take him from there and deliver him into the hand of the avenger of blood, that he may die" (Deut. 19:12).

Every crime except for premeditated murder could be remedied by restitution of some sort. Even manslaughter could be remedied this way, if the motives of the perpetrator were not culpable.

As seen, *lex talionis* in Leviticus 24 applies the "life-for-life" formula to the situation of intentional manslaughter. Its application in the Deuteronomy 19:21 context is likewise to a situation where intentional manslaughter occurs (vv. 11-13) or is intended by false testimony (v. 19). While many have ascribed the *lex talionis* passage in question (Exod. 21) to an event of unpremeditated injury,²² it would seem evident from the biblical context of *lex talionis* usages that an intentional event is being judged. A study of talionic law in Babylonian and Islamic contexts similarly reveals its application only in cases of intentional homicide and injury.²³

In an excellent discussion of the intentional nature of this crime, Layton analyzes the use of the Hebrew verb **נָצַח** in Exodus 21:22.²⁴ The use of **נָצַח** implies a premeditated, physical struggle. This clarifies the enigma of a talionic punishment for the mortal injury in this text. Only in light of intentionality does the use of *lex talionis* make sense. Only in such a light can one understand the lack of any provision for the perpetrator's protection in a city of refuge.

The Case

The law in Exodus 21:22-25 is formulated in a twice-repeated "if . . . then" fashion. The "if" part of each conditional statement, referred to as the protasis, speaks of the legal situation. The "then" part, known as the apodosis, speaks of the legal consequence.²⁵ The difference between the first statement (v. 22) and the second statement (vv. 23-25) revolves around the word **יָסוּף**, translated "injury."

²² John M. Frame, "Abortion from a Biblical Perspective," in *Thou Shalt Not Kill*, ed. Richard L. Ganz (New Rochelle, NY: Arlington House, 1978), p. 52; J. Carl Laney, "The Abortion Epidemic: America's Silent Holocaust," *Bibliotheca Sacra* 139 (October-December 1982): 348; R. Alan Cole, *Exodus* (Downers Grove, IL: InterVarsity Press, 1973), p.169.

²³ Scott Layton, "An Exegesis of Exodus 21:22-25 in the Light of Ancient Near Eastern Law" (ThM thesis, Dallas Theological Seminary, 1979), p. 46.

²⁴ *Ibid.*, pp. 12-13.

²⁵ Kline, "Lex Talionis and the Human Fetus," p. 193.

The first statement speaks to the situation where there is no **יִסּוּף** and a fine is mandated. The second statement speaks to a situation involving **יִסּוּף** and the *lex talionis* is applied.

The protasis in verse 22 sets forth the situation where men are fighting (most likely two men) with intent to cause injury. Unfortunately for all involved, a pregnant woman gets in the way of a blow and is struck. Whether she is an innocent bystander or the wife of one of the assailants is not clear from the text and is inconsequential to the outcome. What is of significance is what happens to the woman. After she is struck, "her children go out" (**יָצְאוּ יְלָדֶיהָ**). Because the understanding of this phrase is critical to a correct understanding of this passage, it bears close evaluation. Is this a case of premature live birth or of miscarriage?

The term **יָלֵד** is the common Hebrew word for child or offspring. Why the plural form is used here is unclear. Keil and Delitzsch suggest that it is used in an indefinite sense, to indicate that there might be more than one child in the mother's womb.²⁶ Kline proposes that the use of the plural is "peculiarly appropriate to an aborted fetus, especially at an earlier, more amorphous embryonic stage."²⁷ House suggests that it is employed grammatically to indicate "natural products in an unnatural condition."²⁸

While **יָלֵד** elsewhere always means "living child" or one capable of living outside the womb (Gen. 44:20; Isa. 9:6), the adopting of the plural in this case is a significant modifier indicating the unnatural state of affairs. But that the circumstances were unnatural does not adequately answer the controversial question of whether the baby "came out" alive or dead.

Many recent interpreters have concluded that the use of the verb **יָצָא** ("to go or come out") indicates nothing other than the birth of a living child.²⁹ This conclusion is based on two key points: the Old Testament usage of **יָצָא**, and the availability of a specific term for miscarriage which was not employed. As for the latter, the Hebrew word for miscarriage is **לַפְּטוּלָה**. This term is used frequently throughout the Old Testament (Gen. 31:38; Exod. 23:26; Hos. 9:14; 2 Kings 2:19; etc.) referring to the miscarriages of women, of animals, and of non-productive land. As for **יָצָא** it is utilized in reference to the normal births of Jacob and Esau (Gen. 25:25-26), Perez and Zerah (Gen. 38:27-30), and Jeremiah (Jer. 1:5; 20:18). When Job lamented about his own

²⁶ Keil and Delitzsch, "Exodus," p. 135.

²⁷ Kline, "Lex Talionis and the Human Fetus," p. 193.

²⁸ House, "Miscarriage or Premature Birth?" p. 114.

²⁹ Ellington, "Miscarriage or Premature Birth?" p. 337.

birth, he used this word (Job 3:11; 10:18). It has been purported that in every case where **לָּוּ** is used in the context of childbirth it refers to a live birth except in Numbers 12:12. This verse is clearly speaking of a stillbirth, but Cottrell is correct in noting that it is not the verb that communicates the concept of death.³⁰ In this verse the subject is not **לָּוּ**, "child," but **מָוֶת**, "something dead."³¹

While **לָּוּ** normally refers to ordinary childbirth, it is a neutral term and may denote anything that "comes out" of the mother's womb.³² In Numbers 12:12 it refers to a nonviable fetus. In Job 3:11 it is used to describe neither an ordinary delivery nor a stillbirth, but a difficult delivery with resulting perinatal death of the infant,³³ an all-too-common occurrence even today in areas that have inadequate obstetric care.

The word **לָּוּ** as used in Exodus 21:22 may refer to other than a live birth. Kline concludes that "it is not demonstrable either that this language in itself must be understood with reference to a miscarriage or that it cannot be so understood."³⁴ He astutely notes that even those who allege that this must refer to a live birth take it to refer to a miscarriage when they come to the second conditional statement (v. 23). For here they relate the (possibly) fatal injury to both mother *and* child.³⁵ (To maintain that **לָּוּ** must indicate a living child proves difficult at this same point, for a deadly injury to both would obviously result in a miscarriage or stillbirth.) This writer feels that the weight of evidence favors an interpretation of **לָּוּ** in Exodus 21:22 as "miscarriage" and not "live birth." This conclusion is based on the following textual, historical, and ancient Near Eastern legal evidence and on medical evidence.

The Evidence

First, as already noted, the textual evidence does not mandate an interpretation of "live birth." In fact the Mishnah in its commentary on this Exodus 21 passage (Baba Kamma 5:4) uses this precise phrase "unequivocally in the sense of miscarriage."³⁶

³⁰ Cottrell, "Abortion and the Mosaic Law," p. 8.

³¹ Ellington, "Miscarriage or Premature Birth?" p. 336.

³² Layton, "An Exegesis of Exodus 21:22-25 in the Light of Ancient Near Eastern Law," p. 20.

³³ Ibid., p. 38, n. 35.

³⁴ Kline, "*Lex Talionis* and the Human Fetus," p. 198.

³⁵ Ibid.

³⁶ Layton, "An Exegesis of Exodus 21:22-25 in the Light of Ancient Near Eastern Law," p.22.

Second, the historical exegesis of the passage has universally given it the meaning of miscarriage. Waltke quite conclusively makes this point, citing a long list of ancient scholars.³⁷

Third, a comparison with five ancient Near Eastern law codes in similar case law formulations reveal that all of them refer to miscarriage and not to premature birth.³⁸ As Layton comments,

These laws cannot be ignored, for virtually all Old Testament exegetes acknowledge the value of them in illuminating the meaning of the legal portions of the text. It would seem incredible for Exodus 21:22 to deal with premature birth while the other five legal collections deal with miscarriage.³⁹

Fourth, of particular interest to to this writer is the medical data that speaks to the viability of infants delivered prematurely after a traumatic incident.

Studies show that trauma of all types occurs in five to ten percent of all pregnancies.⁴⁰ In the early gestational period the uterus is, protected by the bones of the mother's pelvis and is fairly immune to trauma. In the second and third trimesters of pregnancy the enlarging uterus becomes more and more vulnerable. For this reason penetrating abdominal wounds have a high fetal mortality as pregnancy progresses. The situation described in Exodus, however, appears to indicate blunt injury and not the penetrating variety (a stab wound is not inferred).

Contrary to popular opinion, blunt abdominal trauma that is not severe usually causes no problem to the fetus, well-protected as it is within the uterus and amniotic "shock-absorber."⁴¹ Well over two-thirds of blunt trauma in pregnancy in the Western world happens in the course of motor vehicle accidents or physical assault. And even in the high-energy impact of the former, "despite its prominence. . . the uterus and contents stay intact most of the time."⁴²

Thus it seems fair to assume that the blow delivered in the biblical case was significant. Kline builds a convincing argument for

³⁷ Bruce K. Waltke, "Letter to the Editor," *Christianity Today*, January 3, 1969, p. 302.

³⁸ Layton, "An Exegesis of Exodus 21:22-25 in the Light of Ancient Near Eastern Law," p. 18.

³⁹ Ibid.

⁴⁰ Michael Katz, "Maternal Trauma during Pregnancy," in *Maternal-Fetal Medicine*, ed. Robert K. Creasy and Robert Reshick (Philadelphia: W. B. Saunders, 1984), p. 773.

⁴¹ J. Pritchard, P. MacDonald, and N. Gant, "Injuries and Malformations of the Fetus, and Newborn Infant," in *Williams Obstetrics*, 17th ed. (Norwalk, CT: Appleton, Century, Crofts, 1985), p. 797.

⁴² Katz, "Maternal Trauma during Pregnancy," p. 777.

such an understanding of the verb ךָּלַף ("to strike") based on its use in other scriptural texts.⁴³

The most common reason for fetal demise in such cases is the death of the mother with secondary death of the unborn child.⁴⁴ Kline's suggestion that the mother dies from the blow but the baby lives⁴⁵ is medically nonsensical: a cesarean section might save the baby's life if it were performed within five minutes of the mother's death. If the mother survives and the child is born (in the biblical case), this raises the question of the status of the baby which "comes out" prematurely.

First, it is important to note that injury to the fetus *in utero* may be direct or indirect. Direct injury is rare, mainly occurring late in pregnancy when the head is deep in the pelvis and major trauma causes fetal skull fracture. A recent review of the obstetric literature revealed only 19 such reported cases.⁴⁶ The outcome was almost universally fetal demise, except when cesarean section was performed. There is no report of that particular surgical procedure having been performed in the ancient Near East.

Indirect injury to the fetus occurs when there is disruption of the oxygen supply coming through the umbilical cord. Rarely trauma may result in uterine rupture with grave consequences for mother and infant without immediate surgical intervention. Such event occurs in less than one percent of trauma.⁴⁷ More commonly, in six percent of blunt trauma during pregnancy there is an overt disruption of the normal connection between the placenta and the uterus.⁴⁸ Fetal mortality in such cases, given the best obstetric and neonatal care available in the United States, is 34 percent.⁴⁹ Another reference cites 30 to 68 percent fetal mortality.⁵⁰ Without intravenous methods of fluid therapy for the mother and surgical intervention, it is obvious that the fetal outcome in the vast majority of these cases would be death. Timms states that "following uterine rupture or significant

⁴³ Kline, "*Lex Talionis* and the Human Fetus," p. 198.

⁴⁴ Katz, "Maternal Trauma during Pregnancy," p. 777.

⁴⁵ Kline, "*Lex Talionis* and the Human Fetus," pp. 198-200.

⁴⁶ Noelle Bowdler, "Fetal Skull Fracture and Brain Injury after a Maternal Automobile Accident," *Journal of Reproductive Medicine* 32 (May 1987): 376

⁴⁷ Katz, "Maternal Trauma during Pregnancy," pp. 777-78.

⁴⁸ *Ibid.*

⁴⁹ Pritchard, MacDonald, and Gant, "Injuries and Malformation of the Fetus and Newborn Infant," pp. 396-97.

⁵⁰ M. Rick Timms, "Blunt and Penetrating Trauma during Pregnancy: Four Cases," *Journal of the Medical Association of Georgia* 74 (March 1983): 159-160.

placental separation, rapid exploration [surgically] and fetal delivery provide the only chance for fetal survival."⁵¹

Less severe abdominal trauma may result in smaller disruptions of the placenta from the uterus, and less catastrophic outcomes. It is unknown how often an occult (self-limiting) placental separation takes place in these situations, but it may be the cause of common complaints such as "increased uterine activity" or slight cramping. Most of these cases progress to a normal outcome. In an excellent study of trauma in pregnancy Crosby suggests that if fetal oxygenation is impaired, labor or fetal death will occur within 48 hours.⁵²

Premature labor is a serious problem after trauma and is aggressively treated in appropriate cases these days with medication to stop uterine contractions. The lungs of the developing infant are not ready for life outside the womb until 33 to 34 weeks gestation (out of 40 weeks in a "full-term" pregnancy). In a nonhospital setting, the mortality rate of these infants is very high.

There are only a few instances, in a nontechnological era, in which blunt trauma serious enough to cause abortion of the fetus would result in a viable birth. If medical data has anything to say about Exodus 21:22, it indicates that the overwhelming probability for such a situation is an outcome of trauma-induced abortion with fetal demise.

The first conditional statement (Exod. 21:22) concludes with the pivotal phrase "yet there is no יִסָּד ." This word יִסָּד is used only three other times in the Old Testament. All three occurrences are in the story of Joseph (Gen. 42:4, 38; 44:29) and describe a severe or deadly type of injury. Jackson, among others, has concluded that this passage must also be relating a mortal injury.⁵³ But the evidence is not decisive. House comments in response:

Jackson should be tempered a little in his understanding of *ason* in view of the rarity of the word. He surely demonstrates that the word refers to severe or even fatal injury, but the text in Exodus, the only other section of the Old Testament using the word, could allow for *ason* to be applied to a lesser injury.⁵⁴

Since the infant has miscarried due to the blow, the "no injury" statement must apply to the mother. Occasionally a woman in such a

⁵¹ Ibid., p. 161.

⁵² W. M. Crosby, "Trauma during Pregnancy: Maternal and Fetal Injury," *Obstetrical and Gynecologic Survey* 29 (1974): 683.

⁵³ Bernard S. Jackson, "The Problem of Exodus XXI 22-25," *Vetus Testamentum* 23 (July 1973): 274-75.

⁵⁴ House, "Miscarriage or Premature Birth?" p. 120.

circumstance would experience minimal external injury, but the placental disruption would nevertheless result in fetal death and miscarriage.

Some maintain that **יִסָּף** must apply to both mother and child,⁵⁵ particularly to the child because of the grammatical structure of the sentence.⁵⁶ Others are equally convinced that the mother alone is referred to by **יִסָּף**.⁵⁷ The linguistic evidence is equivocal, and in light of the evidence illuminating one's understanding of the rest of the protasis, it becomes evident that "no **יִסָּף**" applies to the mother.

The Judgment

The apodosis of the first conditional statement (Exod. 21:22) gives the judgment to be rendered in such a case: A pregnant woman is struck inadvertently, in the course of a physical struggle in which men are intending to injure one another, and as a result of the abdominal blow she suffers a miscarriage. In such a case the perpetrator is to be fined as the woman's husband may demand of him, and "he shall pay as the judges decide."

The word "fine" has also been interpreted variously. Kline has expressed his opinion that the Hebrew word here, **שָׁנַף** might carry the more general meaning of "punishment" in any form.⁵⁸ Taking that interpretation, he builds a case for the understanding that this punishment would often be death or a "ransom" to be paid in place of death. His conclusion is appealing:

It will appear that even if it were granted that the first penalty has reference to a miscarriage and the second penalty to has suffered by the woman, as the dominant interpretation suggests, it would still not follow that the penalty for the destruction of the fetus was different in kind or even in degree from the penalty for harming the woman.⁵⁹

However, the evidence is less than compelling for accepting such an understanding of the word **שָׁנַף**. In its other Old Testament applications it is used to denote the imposing of a monetary fine (Deut. 22:19; 2 Chron. 36:3). The noun also usually speaks of a monetary

⁵⁵ Frame, "Abortion from a Biblical Perspective," p. 55; House, "Miscarriage or Premature Birth?" p. 8.

⁵⁶ Kline, "*Lex Talionis* and the Human Fetus," p. 199.

⁵⁷ Waltke, cited by House, "Miscarriage or Premature Birth?" p. 117; Kenneth Kitchen, cited by Layton, "An Exegesis of Exodus 21:22-25 in the Light of Ancient Near Eastern Law," p. 27.

⁵⁸ Kline, "*Lex Talionis* and the Human Fetus," pp. 194-95.

⁵⁹ *Ibid.*, p. 194.

penalty.⁶⁰ There are other Hebrew terms, furthermore, which might have been better used to imply physical retribution (e.g., נָקָם "vengeance").

This fine was to be limited and enforced by "judges," as most interpreters have understood the final phrase. House quotes Morgenstern on this point:

It goes without saying, of course, that his law never contemplated that the husband could demand of the offending party any sum of money or any other compensation that he might desire, for then there could well be no limit to what he might claim. Some method of regulation of the demand of the husband, so that it might be kept within reasonable limits, was absolutely indispensable; and just this must have been provided for in the last two words of the sentence.⁶¹

Frame expresses discomfort with the idea that a mere fine should be sufficient compensation for, the loss of an unborn Hebrew child.⁶² While other ancient Near Eastern law codes required such, pecuniary compensation in similar circumstances, it seems incongruous that the Scriptures should present the fetus so clearly as fully human life (as noted earlier) and yet allow a fine here instead of life-for-life retribution.

Some have suggested the casuistic nature of the law sheds some light on this enigma.⁶³ Casuistic law as designed to meet the needs of a particular case. The guilty party, though judged for an intentional crime by *lex talionis* in the case of the woman, did not strike her abdomen with murderous intent toward the fetus. Therefore in this case the legal decision was not the normal judgment for manslaughter or murder, but a fine. This would fall into the same class as the nearby case law involving the negligent ox-owner (Exod. 21:28-30). His goring ox was a repeat offender and finally gored someone to death. The ox was killed while the owner, though guilty, got off in some instances with a monetary settlement (a "ransom").

One problem with this argument is that the same, "intentionality" that made the offenders liable for the death of the mother should also have made the liable for the death of the fetus, if both were of equal status.

Perhaps it is more accurate to suggest that the Old Testament Law placed different value on different lives. The lives of slaves

⁶⁰ *Theological Wordbook of the Old Testament* 1981), s.v. "נָקָם" by Ronald B. Allen, 2:685-86.

⁶¹ Morgenstern, cited by House, "Miscarriage or Premature Birth; p. 122,

⁶² Frame, "Abortion from a Biblical Perspective," p. 56.

⁶³ Ronald B. Allen, *Abortion: When Does Life Begin?* (Portland, OR: Multnomah Press, 1984), pp. 12-13.

and aliens were repeatedly given a valuation less than, that of Hebrew citizens. For instance in the preceding case (Exod. 21:20) a slave beaten to death by his master. Instead of the phrase "he shall be put to death," as would have been the ruling for murder, the man was to be "punished" or "avenged." Some suggest that this meant he must be put to death, but this interpretation is doubtful. The next verse is more blunt: "If, however, [the slave] survives a day or two, no vengeance shall be taken; for he is his property" (v. 21).

Allen writes that since a fine was paid for the life of the slave--certainly a human being--in the same way the paying of a fine for the life of the fetus does not indicate a life that was less than fully human.⁶⁴ He states, "The less severe penal relates more to the circumstances of the crime than of the kind of life that was lost."⁶⁵ While agreeing with the truth of the former statement this writer feels that the logic is reversed in the latter. The circumstances (while of significance) are of less importance, not more. The kind of life lost--though without doubt fully human is of greater importance than the circumstances.

In the case of the goring ox circumstances are exactly the same for three different groups of fully human persons: Hebrew adults, Hebrew children, and slaves. The murderous ox is slaughtered in each case, indicating its blood-guiltiness in the taking of human life. But the culpable owner is in danger of losing his life only if the ox gored to death a free Hebrew person. The slave's life is simply exchanged for 30 shekels. Without question, the kind of life that was lost determines the difference in the severity of the penalty.

The punishment for illicit intercourse with a female slave presents the same scenario: The circumstances of the crime are identical, but the kind of person molested makes a difference when it comes to assigning a penalty. As Leviticus 19:20 states, "Now if a man lies carnally with a woman who is a slave acquired for another man, but who has in no way been redeemed, nor given her freedom, there shall be punishment; they shall not, however, be put to death, because she was not free."

Furthermore as recorded in Leviticus 27, the Lord gave Moses instructions for redeeming persons or items dedicated (enslaved) to the Lord by rash vows. In this passage a monetary value is assigned to individuals. While elsewhere the slave's life is valued at 30 shekels, here an adult Hebrew male is worth 50 shekels. The valuation of a Hebrew female was 30 shekels. Those either younger or older received a smaller valuation. For instance male children

⁶⁴ Ibid., p. 12.

⁶⁵ Ibid.

from one month of age up to five years were given a substitutionary worth of five shekels, and female in the same age-group were valued at three shekels (Lev. 27:6). The priest would assign a redemption price for a person too poor to pay at the usual rate (v. 8).

The God of the Hebrews places high priority and value on all human life. It must be understood that "the moral nature of the Mosaic Law far surpassed the paganism of the other ancient Near Eastern law codes."⁶⁶ The rights of slaves and others of inferior status were guarded carefully. But incongruous as it may seem, God chose to place a higher value on some lives than others. God chose Israel to be His own special people, and in so doing "chose against" the alien. God chose to value the life of a free Hebrew adult more highly than that of a slave. In the situation where lives were being vowed to the Lord, He placed a lesser value on women than men, on young children than adults. This should help one understand how in Exodus 21:22 the life of the fully human fetus might receive a monetary valuation instead of the life-for-life edict.

The Conclusion

The second conditional statement (Exod. 21:23-25) is now easily understood. If a pregnant woman were violently struck by men fighting together and she subsequently miscarried but suffered no personal injury, a fine was imposed on the guilty individual. If there were any נִדְּוֶה (grave injury) to the woman, then the *lex talionis* applied. If she died, as would frequently occur in such a circumstance, life for life was the penalty. For a lesser injury, the punishment was to be in measure, commensurate with the damage done.

It has been shown that the unborn fetus was regarded as fully human life from the time of conception. However, the valuation placed on the unborn was less than that placed on a Hebrew adult or child. Analogously in the context of the passage a lesser value given to the slave. Does this mean, as Cottrell has stated, that there may be rationale for "therapeutic" abortion? Might there be circumstances in which the endangered psycho-social health of the mother or the probability of fetal malformation would be greater evils than abortion?

Based on this review of pertinent Scripture, the writer does not believe so. As Frame has written, "Doubtless the unborn child, like the slave, had a lesser status in Israelite society than other persons. It cannot be demonstrated, however, that this lesser status was a

⁶⁶ Schneider, "Penology in the Mosaic Law," p. 60.

status of nonpersonhood. And that is the point at issue."⁶⁷ Fetal life is fully human life. The only circumstance that presents a greater "evil" than abortion (and thus would weigh in favor of abortion based on the lesser status of the fetus) is the unusual situation where the gestation presents a life-threatening danger to the mother (one of greater status). Fortunately such an occurrence is exceedingly rare these days, except in the form of ectopic pregnancy.

Jones feels this very situation is the downfall of the principle of "fetal inviolability," and thus he postulates a number of situations in which abortion might not be the greatest evil.⁶⁸ But his position, has been shown, is not the biblical one. Opting to sacrifice one life in order to save another from death is entirely different from destroying one life in order to save another from distress or discomfort.

It is worth noting that this casuistic law was written to meet the needs of a particular set of events. Those events were wholly different from the events that today lead to an elective abortion. In the latter situation, it is the mother herself who willingly submits to aggression against the human life within her. As Allen has written:

On no account, then, may this text in the Law of Moses be used as a rationale for abortion on demand as practiced today. The circumstances are too different to be compared. How can we compare the accidental miscarriage of a woman caught up in a street brawl to the decision of a woman today to go to one of the clinics that specializes in the purposeful termination of life? There simply is no parallel in the Bible, nor does there seem to be any biblical justification for the current practice of abortion in our culture.⁶⁹

In any interpretation Exodus 21:22-25 treats the destruction of the unborn child as an unjust and illegal action. Frame is correct in stating that "it is perverse indeed to attempt to justify abortion by reference to a passage that condemns precisely the sort of destruction performed by the abortionist."⁷⁰ May the truth of Scripture touch people's hearts today and give them renewed motivation to love life as God does and to honor the weak of this world as He honors them.

⁶⁷ Frame, "Abortion from a Biblical Perspective," p. 53.

⁶⁸ D. Gareth Jones, "Abortion--An Exercise in Biomedical Ethics," paper presented to the American Scientific Affiliation Conference, n.d., p. 22.

⁶⁹ Allen, *Abortion: When Does Life Begin?* pp. 13-14.

⁷⁰ Frame, "Abortion from a Biblical Perspective," p. 52.

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Dallas Theological Seminary
3909 Swiss Ave.
Dallas, TX 75204
www.dts.edu

Please report any errors to Ted Hildebrandt at: thildebrandt@gordon.edu