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# **Abortion and the Mosaic Law**

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Perhaps the most crucial question in the abortion debate is when (or even whether) the fetus is to be considered a human being. The answers given range all the way from the moment of conception to the moment of birth. Evidence for a particular position is usually taken from science—such factors as genetic uniqueness, the development of the cardiovascular system, or the presence of brain waves.

Evangelical Christians, however, are interested in a second source of information on this subject, the Bible. The problem is that the biblical teaching directly relevant to the abortion debate is quite scanty. There are a few passages, such as Psalms 139:13–15, Job 3:11, Jeremiah 1:5, and Luke 1:39–44, that are often cited as evidence that God considers the unborn child fully human. This line of evidence has led many Christians to conclude that abortion is the killing of a human being and is therefore wrong, except when resorted to as the lesser of two evils.

Another passage of Scripture to which an appeal is being made more and more in the current debate is Exodus 21:22–25, which reads as follows in the American Standard Version:

And if men strive together, and hurt a woman with child, so that her fruit depart, and yet no harm follow; he shall be surely fined, according as the woman's husband shall lay upon him; and he shall pay as the judges determine. But if any harm follow, then thou shalt give life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burning for burning, wound for wound, stripe for stripe.

A number of evangelicals are among those who think this passage indicates that the Bible makes a distinction between fully human life and the life of the fetus. These verses are taken to mean that a fetus is not considered to be a soul or a fully human person, and that it is therefore of less inherent value than an already born person.

Among those evangelicals who have taken this position is Bruce Waltke. In an influential article published first in *CHRISTIANITY TODAY* and later in the volume *Birth Control and the Christian*, Dr. Waltke says,

A second factor suggesting that abortion was permissible is that God does not regard the fetus as a soul, no matter how far gestation has progressed. The Law plainly exacts: “If a man kills any human life he will be put to death” (Lev. 24:17). But according to Exodus 21:22–24, the destruction of a fetus is not a capital offense. The divine law reads: “When men struggle together and one of them pushes a pregnant woman and she suffers a miscarriage but no other harm happens, he shall be fined according as the woman’s husband may exact from him.... But if harm does ensue, then you shall impose soul for soul....” Clearly then, in contrast to the mother, the fetus is not reckoned as a soul. The money compensation seems to have been imposed not to protect the fetus but rather to compensate the father for his loss [“The Old Testament and Birth Control,” *CHRISTIANITY TODAY*, NOV. 8, 1968].

Another who agrees with this interpretation is Nancy Hardesty, who in *Eternity* quotes Exodus 21:22–25 and then says,

It can be inferred here that the fetus was not considered a human life or “life for life” would have been demanded as it was for the mother’s life or at least a “fetus for a fetus” as was done under Assyrian law [“When Does Life Begin?,” *Eternity*, Feb., 1971].

In the same issue Lloyd Kalland remarks,

According to Ex. 21:22, it is not a capital offense to destroy a fetus. Interpreters who claim that the fetus should be treated as a person, in my opinion, have been unsuccessful in their attempt to square this assumption with the interpretation most faithful to the text.... “While the fetus is a precious organism, it is not yet a complete person [“Fetal Life”].

If this interpretation is correct, the implications for the abortion dilemma are significant indeed. Some might feel justified in appealing to this passage to excuse indiscriminate abortion. But even if this extreme were not reached,

still this interpretation could have a profound influence upon how the principle of the lesser of two evils is applied to the problem.

In the past most Christians have agreed that if the presence of the fetus is a threat to the life of the mother, then the principle of the lesser of two evils would justify aborting it. In other words, while the killing of either the fetus or the mother would be considered wrong since each is a living human being, the killing of the fetus has been considered a less serious wrong than letting the mother die because of its presence. But now, 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 of a pregnancy resulting from rape.

The majority of commentaries and translations are favorable to the interpretation discussed above. In numerous allusions to this text, the Talmud uniformly sees it as referring to a miscarriage, equivalent to a property loss on the part of the father. The following reference is typical: “If one hurt a woman so that her embryo departed from her, compensation for Depreciation and for Pain should be given to the woman, compensation for the value of the embryo to the husband.” As John Peter Lange sees it, verse 22 refers to a case in which an abortion takes place but no other injury results (*Commentary on the Holy Scriptures*). S. R. Driver sees it as a miscarriage that results in no permanent injury to the mother but is considered as a property loss (*The Book of Exodus*). Among the more recent commentaries, this statement by Leo G. Cox in the *Beacon Bible Commentary* is typical:

Often when men strive, a wife tries to intervene and gets hurt. If the woman was pregnant, and lost her child, the man who hurt her must pay a fine to her husband as required by the judges. Since the death of the child was accidental, the death penalty was not imposed. However, if further harm resulted (23), such as the death of the woman, the death penalty was applicable, unless the slayer could prove his act was unintentional (cf. 13–14) [Beacon Hill, 1969, I, 253].

Similar comments may be found in, for instance, the *Interpreter's Bible* and in the *Broadman, Wesleyan, Wycliffe, and New Bible* commentaries. All agree that verse 22 refers to a miscarriage but

no *other* harm, and that verse 23 discusses what shall be done in case there is further harm, i.e., to the mother.

Most modern translations likewise present verse 22 as a reference to a miscarriage. The Revised Standard Version reads, “When men strive together, and hurt a woman with child, so that there is a miscarriage, and yet no harm follows, the one who hurt her shall be fined, according as the woman’s husband shall lay upon him...” The Berkeley Version says, “If in a quarrel between men a pregnant woman is hit, so that she miscarries, but is not otherwise injured, the offender shall be fined by the woman’s husband with consent of the judges.” (In this version verse 23 begins thus: “But if there is further harm...”) Similar translations appear in the New American Bible, the Jerusalem Bible, the Amplified Bible, the Douay-Rheims, the Moffatt translation, and the Goodspeed translation.

In all these commentaries and translations, as well as in the statements by Waltke and others above, two things are either stated or implied: (1) that verse 22 refers to a miscarriage, the death of the unborn child; and (2) that this supposed death of the fetus is the injury for which the guilty party is only fined, while any injury to the mother is considered to be *further* harm serious enough to invoke the *lex talionis* (eye for eye, tooth for tooth, and so on). Only upon the basis of such an understanding as this could one conclude, as Waltke does in the article previously mentioned, that in the Old Testament “abortion was permissible” because “God does not regard the fetus as a soul, no matter how far gestation has progressed.”

Despite the widespread acceptance of this view of Exodus 21:22–25, this interpretation does not seem to me to be supported by the text itself. This is true particularly of the two points specified in the preceding paragraph. A careful examination of these verses can yield conclusions quite different from these: (1) that verse 22 refers to the premature birth of an otherwise healthy child, and (2) that an injury to the child no less than to the mother called for the application of the *lex talionis*.

*FOR LIGHT*

*Lord of the quasar and the quark*

*And all infinity:*

*I still must crawl my way to thee,*

*As a child, in the dark.*

*Mercy is joined with majesty,*

*We have the Saviour's word;  
Even a candle gleam, I pray,  
In this, my lostness, Lord!  
Or blazon forth that saving Light  
(Beyond astronomy);  
Have pity now, this awesome night,  
Light of the world, on me!*  
HENRY HUBERT HUTTO

There is absolutely no linguistic justification for translating verse 22 to refer to a miscarriage. The clause rendered in both the King James and the American Standard Version “so that her fruit depart” literally reads, “and her children come out” (as the marginal reading in the New American Standard Version indicates). The noun is *yeled*, which is a common word for child or offspring. (The only peculiarity is that it is plural.) The verb is *yatza'*, which has the common meaning of “to go out, to go forth, to come forth.” It is often used to refer to the ordinary birth of children, either as coming forth from the loins of the father (e.g., Gen. 15:4; 46:26; 1 Kings 8:19; Isa. 39:7), or as coming forth from the womb of the mother (Gen. 25:25, 26; 38:28, 29; Job 1:21; 3:11; Eccles. 5:15; Jer. 1:5; 20:18). In the latter instances the reference is to an ordinary birth of a normal child; in no case is the word used to indicate a miscarriage. (In one passage, Numbers 12:12, the word refers to the birth of a stillborn child. But this is a stillbirth, not a miscarriage; also, the concept of stillbirth is communicated not through the verb *yatza'* but through the specific description of the child itself.)

Another reason for thinking that Exodus 21:22 refers to a premature birth and not to a miscarriage is that there is a Hebrew word, *shachol*, that specifically refers to the event of miscarriage. (In some cases it means “to be bereaved.”) This word is used in Exodus 23:26 and Hosea 9:14, where it refers to miscarriage among human beings. In Genesis 31:38 and Job 21:10 it refers to animals, and in Second Kings 2:19, 21 and Malachi 3:11 it refers to land and plants that do not produce mature fruit.

Thus there seems to be no warrant for interpreting Exodus 21:22 to mean “the destruction of a fetus” (Waltke). The expression used is indicative of nothing more than the birth of a child. The irregularity of the situation is the fact that the birth is prematurely and maliciously induced.

The second point I wish to defend is, as stated above, that any injury to the child no less than to the mother would demand the application of the *lex talionis*. This is, of course, contrary to the popular understanding, in which verse 22 refers to a case in which the fetus is killed but no *other* harm ensues, the death of the fetus being considered a minor injury that deserves to be penalized only by a fine. According to this view, then, verse 23 would be talking about some *further* harm of a much more serious nature, i.e., an injury to the mother herself. Only if the mother received injury would “an eye for an eye” be required, or “a life for a life.”

But it must be insisted that the text itself makes no distinction between any harm done to the child and any harm done to the mother. This is simply not the point of contrast in the passage. What is being contrasted is a situation in which harm comes to neither mother nor child, and a situation in which either one or the other is harmed. In the former situation, the premature birth of the infant is not considered to be harm at all. The text specifically says that if the woman is struck so that her children come out, “and there not be harm,” then the adversary shall be fined. The fine presumably is imposed because of the danger to which mother and child are exposed and the parents’ distress in connection with the unnaturally premature birth.

The illusion that the birth of the child is in itself harm or injury (even to the point of death) is created by the addition of the word *other* or *further*, either in verse 22 or in verse 23. As Waltke has translated verse 22, the woman “suffers a miscarriage but no other harm happens.” The New American Bible says that she “suffers a miscarriage, but no further injury.” (Moffatt, Good-speed, the Amplified Bible, and the New American Standard Version are similar to the NAB, although the NASV properly italicizes the word *further*.) The addition of *other* or *further* implies that some harm has already been done, namely, the alleged miscarriage; this is then judged to be relatively insignificant in that it draws only a fine. But the original text contains no such word as *other* or *further*. It clearly and simply says that this first contingency is a case in which no harm occurs. Even though the child is born prematurely, it is unharmed. The text will permit no other understanding.

Only in verse 23 is the possibility of harm introduced, and it reads literally, “and if harm occurs.” The text does not say that this is *further* harm, nor that

it applies only to the mother. It makes absolutely no distinction between the mother and the child.

Clearly, then, the interpretation of this passage that is most faithful to the text is that which distinguishes between a premature birth that harms neither the mother nor the child and a premature birth in which one or the other is injured or even dies. In the latter case the life of the fetus is valued just as highly as the life of the mother, and the *lex talionis* principle applies to both. There is absolutely no warrant for concluding, as Waltke does in the article previously mentioned, that in this passage “in contrast to the mother, the fetus is not reckoned as a soul.” Thus “the weight of scholarly opinion,” to which Waltke appeals (CHRISTIANITY TODAY, “Eutychus and His Kin,” Jan. 3, 1969), is outweighed by the text itself.

This conclusion about Exodus 21:22–25 will by no means settle the abortion issue. One might grant the validity of this interpretation and still in good Christian conscience be in favor of more liberal abortion practices. One might argue, for instance, that this section of the law is not intended to say anything about a non-viable fetus, and that it is therefore irrelevant to the main part of the argument. Yet at the very least, if this view of Exodus 21:22–25 is correct, then one can no longer find here a biblical justification for liberalizing abortion laws. And if it cannot be found here, then it can be found nowhere in Scripture, for there does not seem to be any other passage to which any serious appeal has been or can be made for this purpose.