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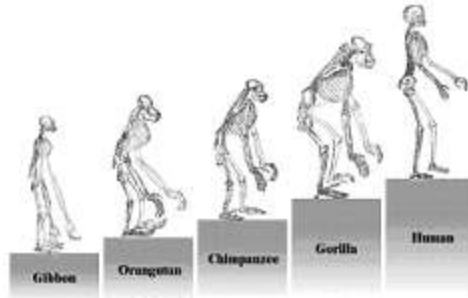
**C0636 – September 27, 2006 – Ex 21:22-25 – Premature Induced
Birth & The Abortion Problem**

VII. The Ordinances Regarding Bodily Injury (21:18-36)

A. Men Injuring Men (21:18-27)

There are four basic cases (vv 18-19, 20, 22, 26) and three secondary cases (vv 21, 23, 27) in this section. We have already studied the first two cases and the first secondary case. Reviewing the first two cases we concluded last week by saying that murdering a man destroys God's image and is therefore punishable by capital punishment. No price can be put on the image of God. The image of God is holy and must not be destroyed. Yet, the OT justly distinguishes between unintentional murder and intentional murder. If unintentional murder or manslaughter occurred then six refuge cities were set apart by God for the murderer to flee to. As long as he remained in the boundaries of his refuge city he was safe. If he left the refuge city he could be killed by an avenger without any consequences. If the high priest died then he was free to return to his property. So, the image of God must be held in high respect. This fact sets the Bible apart from evolutionary worldviews because it alone gives a sound basis for hunting and eating animals but not hunting and eating men. No evolutionist can explain why it is morally right to hunt our ancestors but not our fellow man. Where, how, and on what basis does the evolutionist draw the line?

Scale of Nature Model



Why is eating a human considered immoral (cannibalism) and eating an animal considered moral? Finally, in the NT, John said that Christian hatred is equivalent to murder because hatred is the spirit of a murderer (1 John 3:10-15).

Second, not only did the OT protect the image of God it also protected the rights of parents who represent God. In the case of a rebellious child the Mosaic Law prescribed capital punishment for a child who either struck or cursed his parents. This strict punishment was given because parents are the representatives of God and they have divinely invested authority over the home. To rebel against God's representatives and their authority is subject to the death penalty. Obviously God takes parental authority seriously and considers the family the basic unity of society and not the individual. We also learned that the Mosaic Law did not provide a juvenile delinquent system where children receive lighter sentences than adults who commit the same offense.

In verses 18-21 we have the OT protecting the rights of a slave in the case of bodily injury. If he did not die at the hand of his master then the master would only be required to pay him for missed labor as well as all his medical bills. If he died at his hand it would prove that the master was completely out of control and vengeance would be taken since he murdered the image of God, 'life for life'. However, if the slave died after a couple of days then no vengeance was to be taken because it was clearly unintentional.¹

Exodus 21:22 "If men struggle with each other and strike a woman with child so that she gives birth prematurely, yet there

is no injury, he shall surely be fined as the woman's husband may demand of him, and he shall pay as the judges *decide*.

²³ "But if there is (*any further*) injury, then you shall appoint *as a penalty* life for life,

²⁴ eye for eye, tooth for tooth, hand for hand, foot for foot,

²⁵ burn for burn, wound for wound, bruise for bruise.

If men struggle with each other and strike a woman with child so that she gives birth prematurely, yet there is no injury he shall pay

if there is injury, then you shall appoint *as a penalty* life for life eye for eye, tooth for tooth...

Verses 22-25 describe a street brawl that ends in the striking of a pregnant woman. Because of the premature expulsion of the child due to the strike this passage has come to bear on the question of whether premature induced abortion is right or wrong according to the OT. Now, we must say, from the outset, that this passage is certainly not intended to address that issue but that it may bear on the issue. So, this is one of the most controversial sections in Exodus on par with the hardening of Pharaoh's heart (Exod. 4:21; 7:3, 13, 22; 8:15, 19, 32; 9:7, 12, 34f; 10:1, 20, 27; 11:10; 14:4, 8, 17) and the Lord changing His mind (Exod 32:10-14).

There are many published articles on this passage and many exegetical details. By way of a sample, in 1969, well-known theologian Bruce Waltke commented on Exod 21:22ff, saying,

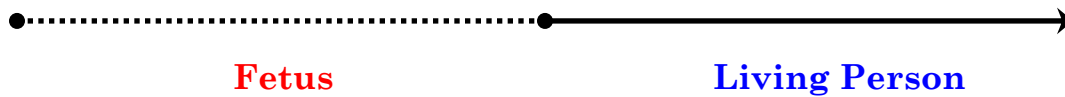
God does not regard the fetus as a soul [Hebrew *nephesh*], no matter how far gestation has progressed. Therefore, the fetus does not come under the protection of the fifth commandment. That He does not so regard the fetus can be demonstrated by noting that God does not impose a death penalty for the destruction of a fetus.ⁱⁱ

However, in this same article Waltke concluded "that while the Old Testament does not equate the fetus with a living person, it places great value upon it."ⁱⁱⁱ

Conception **Biological Life**

Birth

Soul Life



Waltke's view was that the body is derived from the parents at conception and the soul is the direct creation of God at physical birth so that the fetus in the womb is not a full person until it is invested with a soul at birth. Seven years later, in 1976, Waltke published a considerably modified position and concluded, "The fetus is human and therefore to be accorded the same protection to life granted every other human being. Indeed, feticide is murder, an attack against a fellow man who owes his life to God, and a violation of the commandment, "You shall not kill."^{iv} I have article after article that cite this passage to justify either a pro-abortion or anti-abortion position for the Christian.

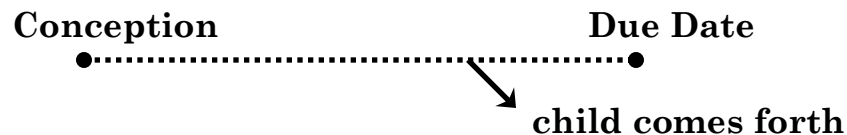
1. To prove that the fetus has soul-life.^v
2. To prove that the fetus does not have soul-life.^{vi}
3. As not bearing on the issue.^{vii}

Does Exod 21:22-25 directly bear on the rightness or wrongness of induced abortions? No. Why not?

- Because when a woman is struck unintentionally and her child comes forth it is different than a woman intentionally walking into an abortion clinic to dispose of an unwanted child!

What this passage is teaching is that the child in the womb has rights and the woman's womb is to be protected for the sake of the child. If the primary emphasis were on the woman then the passage would read, **if men struggle with each other and strike a woman so that she is injured**. But it doesn't tell us what would happen if that were the case. The issue is not just any woman but a woman with child (Heb = *harah*). Therefore, the emphasis is the woman's child. Now, let me set out to prove this to you. Verse 22, **if men struggle with each other**, this is a street brawl, **and strike**, with a weapon of any kind or with fist, **a woman with child**, actually, this is a plural, **children**, the point is, they strike a woman with one or more children in her womb, it may be a son or a daughter or two sons or two daughters, it doesn't matter. What matters is she has a child or children in her womb. So, this is an *unintentional* strike of a pregnant woman who got tangled up in a street brawl with the effect **that she gives birth prematurely**, that is, the

child(ren) *yatsa*, “comes forth”. This is talking about a pre-mature birth, not necessarily a miscarriage. It may be a miscarriage but *yatsa* alone is not definitive on whether this is a miscarriage or not. If the author had wanted to definitively refer to a miscarriage he could have used the Hebrew word *nephel* (Job 3:16; Eccl 6:3; Psalm 58:8). All that can be proved from *yatsa* in verse 22 is that the child was born **prematurely**, that is, the child came out of the womb due to the strike.



The LXX confirms this interpretation because it uses *exerchomai* for *yatsa*, which clearly means “to come out” “to go forth”. In this case the child is going forth from the womb. The translations I found that wrongly translate it “miscarriage” or something to that effect are: The New American Standard (1977), The Bible in Basic English (1949, 1964), The Douay-Rheims American Edition (1899), The New English Bible (1970), The Moffatt Bible (1935), Good News Bible (1976), The New American Bible, New Jerusalem Bible, The New Revised Standard Version (1989), Revised Standard Version (1952), JPS Tanakh (1985). So, if you have any of these versions or another that translates this “miscarriage” or something to that effect such as “lose the child” then you will need to mark it out and replace it with “gives birth prematurely”. Let me show you a few examples of these Bible translations so you can see how their exegesis is colored by the concept that a fetus in the womb is not soul life and therefore if it is miscarried the penalty is not ‘life for life’ but a mere fine. (On the issue of Direct Creation vs Traducianism this author has held both views at various times. At present I am undecided as so many issues are involved. However, the results of the exegesis of this passage points toward Traducianism or some other undefined model).

If men, while fighting, do damage to a woman with child, causing the loss of the child, but no other evil comes to her, the man will have to make payment up to the amount fixed by her husband, in agreement with the decision of the judges. **The Bible in Basic English**

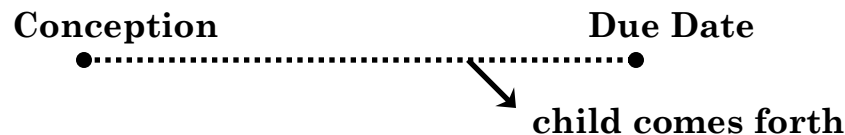
If men quarrel, and one strike a woman with child and she miscarry indeed, but live herself: he shall be answerable for so much damage as

the woman's husband shall require, and as arbiters shall award.

Douay-Rheims American Edition

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*. **The New American Standard (1977)**

All these translations are actually arbitrary interpretations (and I stress they are arbitrary) which clearly teach that the fetus is not a living soul because if it were a living soul then its loss would require 'life for life' but it's not because only a fine is required in this verse. However, the Hebrew text is not definitive on whether the child is miscarried or not, it simply says the child came forth from the womb prematurely, that is, sometime before the mothers due date. Likely it would be a miscarriage if it was earlier than 7 months but if it was after 7 months it would likely survive.



The second thing we have to deal with is the **injury, mischief, or harm** at the end of verse 22. Does it refer to an **injury** to the child only, the mother only or either? All the translations we just mentioned assume that the **injury, mischief or harm** that follows the miscarriage refers solely to the mother since the fetus was miscarried. In other words, if the child was miscarried and yet no injury happened to the mother then a fine was imposed for the fetus.

However, it seems to me that if *yatsa* does not mean "miscarriage" but premature birth, which is certainly the case, then the injury or harm mentioned here must at the very least refer to the nearest antecedent, which is the **child** that came forth prematurely. The **injury, harm, or mischief** cannot solely refer to the mother. The case involves a mother with child not simply any woman. If the child came forth prematurely the **child** could be at any stage of development in the womb (from conception to 9 months).



child comes forth

If the **child** had developed past seven months when this happened it could probably survive. If it was less than seven months survival would be slim and this would constitute injury to the **child** as well as to the mother (emotional anguish).

If the **child** alone is in view in verse 22 then it means that the **child** was born prematurely and survived without **injury**. In such a case a fine was required as decided by the woman's husband and the courts. However, while this is true it does not seem to be all that is intended. It seems better to view both the mother and child as being inspected for **injuries** after the premature birth.^{viii} If no **injury** to either occurred, that is, mom and baby turned out okay, then a fine was paid as decided by the woman's husband and the courts because of the danger caused by the striker. The child(ren) in the womb must be protected.

I take it that *if* the premature birth did result in a miscarriage then it would **injure** at least the child and this would put the case in the category of verse 23. However, in verse 22 we are considering the case where neither the mother nor the child is injured. Where no **injury** resulted a fine is required of the striker.

In summary, verse 22 is saying that a woman got caught up in a street brawl, got struck unintentionally and her child came forth before the due date but both mother and child were not injured. In such a case a fine is exacted because of the dangerous situation caused by the striker. The **woman's husband** would **demand** a **fine** that would be settled before the **judges** who would enforce the penalty. However, a secondary case deals with the case where injury does result and the penalty for that is prescribed.

Verse 23 **But if there is (any further) injury**, stop there and strike out the words **any further** or **further** if they are in your text. These words are not in the Hebrew text and, once again, cause confusion. NIV says "But if there is serious injury" which is wrong because it implies that verse 22 was talking about a *minor injury* when in fact it was talking about *no injury*. NAS of 1977 and 1995 say "But if there is *any further injury*" which again, assumes that verse 22 discussed some injury but it actually discusses no injury at all. In

verse 22 mother and baby are fine after a premature birth. All the translations I mentioned above fall into the same trap because they assume that *yatsa* means “miscarriage” but it only means “to go forth” referring to a “premature birth. These translations assume a miscarriage occurred in verse 22 and to that more injury was added in verse 23 but that is not what the Hebrew text reads. In other words, what each of these translations assumes is that the mother with child was struck and the child was miscarried and then, on top of that injury, some further injury happened to the mother, such as the loss of her eye, tooth or she was bruised. All of these translations are assuming that the child in the womb is not soul life because only a fine is required for the child. That simply can't be sustained from the Hebrew text. That is completely arbitrary as Keil & Delitzsch note in their commentary. So, you have to mark out the words ***any further*** (NAS) or ***serious injury*** (NIV) to understand the passage. Verse 22 describes what happens if there is no injury to either mother or child (you might write that in the margin). Verse 23 deals with what happens if there is any injury to either mother or child (you might write that in the margin). So, you have to read it without the words ***any further***. They are not in the original Hebrew text. So, verse 23 should read this way, **But if there is injury then you shall appoint as a penalty, life for life.** Okay, so if any injury occurs then *Lex Talionis* is implemented, that is, the ‘Law of Retaliation’ which has its most complete form here in verses 23-25. If any injury occurs to mother or child then there will be a ‘life for life, eye for eye, tooth for tooth’ penalty due the striker

Now, we must understand the retaliation text, **life for life,** ²⁴ **eye for eye, tooth for tooth, hand for hand, foot for foot,** ²⁵ **burn for burn, wound for wound, bruise for bruise.** This is what is called *lex talionis* or “the law of retaliation”. According to Numbers 35:31ff a ransom could be accepted for all injuries except for murder, whether intentional or unintentional (read). The reason given for why a ransom could not substitute in the case of murder is because blood defiles the land and God dwells in the land. This text teaches that in all cases where no one dies, taking a ransom (money) in place of physical **injury** is permitted. What they would do is go to court and decide how much, for example, an eye was worth, and the striker could pay that amount rather than having his eye removed. But, if blood was spilled, the image of God was destroyed, and no ransom could be taken, even in the case of an unintentional murder. So, ransom was acceptable for anything short of murder. Therefore, putting all the facts together, the retaliation text here is a

common formula meaning “measure for measure”. Thus, if **injury** occurred to either the mother or child then the following procedures would be followed:

1. **Mother and/or Child Injured.** The injuries of the mother and/or child would be examined. The striker would be required to pay for each injury. For example, if he destroyed the woman’s eye and bruised the child then he would be sentenced to be blinded and have his own eye blinded. To avoid these physical punishments he is permitted to pay a ransom for the eye and bruise as decided by the judges.
2. **Mother and Child Unintentionally Killed.** Under the law unintentional murderers were assigned to one of the refuge cities (Exod 21:12-14; Numb 35:10-15). What then about the child? Three options. First, maybe the striker would pay a fine. Second, maybe he would owe nothing further. Third, maybe he would be capitally punished.
3. **Child Unintentionally Dies *Before* Exiting the Womb.**^{ix} If it could be proved that the death was due to the striker then this text is teaching that in the case of a miscarriage then verse 23 is enacted, the miscarriage is an injury. If the child did not have soul life in the womb then it is impossible to exact a measure for measure judgment for a fetus on the striker.^x I do not see how only a fine could be exacted for a miscarriage because a fine was exacted for no injury in verse 22. What then could the penalty be for a miscarriage? It must be *lex talionis*, “measure for measure”^{xi} and under the law unintentional murderers were assigned to one of the refuge cities. That seems to be what God intended. God seems to see a miscarriage due to the result of a street brawl as “murder”.
4. **Child Unintentionally Dies *After* Exiting the Womb.** This assumes the child was born alive. So, the pregnancy would have progressed to at least the 7th month. Since this would be categorized as an unintentional murder then the slayer would be assigned to one of the refuge cities. If a kinsman found him outside of his city of refuge he could kill him without any consequence (Numb 35:26-27).
5. **Mother and Child Intentionally Killed.** If it could be proven that the striker willfully murdered the woman with child in the midst of the street brawl then it would be his **life** for her **life**, a capital offense. Such a case would be extremely rare. What then about the child? Certainly the striker once dead cannot die a second time for the child. This is simply not addressed in the Mosaic Law.

PRINCIPLE: Protection of the womb.

Okay, let's stop here and see if there are any questions on this very difficult text. It's difficulty lies in the grammatical construction in verse 22 and sorting through the English texts which arbitrarily translate *yatsa* as miscarriage and consider the harm or injury or mischief to refer solely to the woman.

ⁱ Verse 21 describes a secondary case, if the slave...survives a day or two then no vengeance shall be taken, for he is his property. In other words, If the slave survives a day or two it will prove that the master unintentionally killed him. His loss will be the slave who is his property. He will no longer prosper financially by the hand of his slave. Whether the master would then need to flee to one of the refuge cities is not mentioned here.

ⁱⁱ Christian Medical Society, *Birth Control and the Christian*, 10.

ⁱⁱⁱ *Ibid*, 12-13.

^{iv} Bruce Waltke in *Reflections from the Old Testament on Abortion*, (JETS 19:1 (Winter 1976)), 13.

^v H. Wayne House, *Miscarriage or Premature Birth, Additional Thoughts on Exodus 21:22-25*, (WTJ 41:1 (Fall 1978)), 108-123.

^{vi} Bruce Waltke in *Birth Control and the Christian*, 5-24. This author changed his view later in an article called *Reflections from the Old Testament on Abortion*, (JETS 19:1 (Winter 1976)), 3-13.

^{vii} Robert B. Thieme, *The Origin of Human Life*, 46.

^{viii} Keil & Delitzsch, *Commentary on the Old Testament, Vol 1*. also see H. Wayne House, *Miscarriage or Premature Birth, Additional Thoughts on Exodus 21:22-25*, (WTJ 41:1 (Fall 1978)), 108-123.

^{ix} If it could be proven that the death was the result of the striker then two scenarios are possible. If soul life begins at conception then this is classified as unintentional murder and the slayer must be assigned to one of the six refuge cities. If a kinsman found him outside of his refuge city he could kill him without any consequences (Numb 35:26-27). If soul life begins at physical birth then the child never took its first breath and became a living soul and thus, this could not be an unintentional murder. If this is the case then payment would be made for the injury incurred by the parent's injury/loss (Exod 21:22). The traditional Jewish view is that soul life begins at birth and not conception so the latter would probably have taken place under Jewish Law.

^x The passage seems to be dealing with physical injury to the body but prescribes 'life for life, eye for eye, etc...' which indicates that if there is a body there is 'life'. The only question then is "What constitutes a body?" Is it a zygote, 2 cells, 4 cells, 8 cells, 64 cells, 128 cells? When does it become a body. Logically it must be at conception. While many only say the zygote has potential life we must all admit that its failure to reach full life (assuming it takes place at physical birth) is because of sin which is not a physical property. Besides, David said he was conceived in sin (Ps 51:5).

^{xi} If *lex talionis* was not implemented for a miscarriage then how much would the striker pay for two eyes, two ears, a nose a mouth, two hands, two feet, two arms, two legs? The list could go on and on. Certainly a miscarried child has these things or they are in development.

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