

EXODUS

by

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Chapters 20 - 40



PEETERS - LEUVEN

service;’ the likely meaning is that apparently the slave was not seriously injured (cf. 21:25f.) and can go on with his life as before. Vredenburg and Böhl have underpreted עמד as ‘stand up’ and the time designation as a *terminus postquem*: if the slave has recuperated after a few days (cf. 21:19), no punishment is given because the slave is property. The interpretation, assuming it is grammatically feasible (the accusative of time is used), is not very meaningful. Must the master be punished if for a period of time the slave is unfit for work? At issue is only the question when a master can be held liable for the death of his slave and when not. כספו (Intro. §3.28), likely to be taken as subject (cf. Holzinger).

2.5.5 A pregnant woman as victim of a scuffle (21:22-25)

21:22 *‘But if men get involved in a fight and they strike a woman who is expecting so hard that she miscarriages, but she herself is not fatally injured, then a fine shall be required as high as the husband of the woman imposes upon him (the offender). Thus, he must pay for the miscarriage.*

23 *But if she is fatally injured, then as compensation you are to give life for life;*

24 *(in other cases) an eye as compensation for an eye, a tooth as compensation for a tooth, a hand as compensation for a hand, a foot as compensation for a foot,*

25 *a burn as compensation for a burn, an open wound as compensation for an open wound, a bruise as compensation for a bruise.’*

2.5.5.1 *Bibl.:* J. Bastiaens, “‘Oog voor oog, tand voor tand’: Over vergelding en verzoening (Mt 5,38-39),” in W. Weren et al. (eds.), *Bij de put van Jacob*, Tilburg 1986, 72-97; T. Broer, “Zur Wirkungsgeschichte des Talio-Verbots in der Alten Kirche,” *BN* 66 (1993), 24-31; C. Carmichael, “Biblical Laws of Talion,” *HAR* 9 (1985), 107-26; N.L. Collins, “Notes on the Text of Exodus XXI 22,” *VT* 43 (1993), 289-301; R.N. Congdon, “Exodus 21:22-25 and the Abortion Debate,” *BS* 146 (1989), 132-47; F. Crüsemann, “‘Auge um Auge ...’ (Exod. 21,24f): Zum sozialgeschichtlichen Sinn des Talionsgesetzes im Bundesbuch,” *EvTh* 47 (1987), 411-26; F.J. Dölger, “Das Lebensrecht des ungeborenen Kindes und die Fruchtabtreibung in der Bewertung der heidnischen und christlichen Antike,” *Antike und Christentum* 4 (1934), 1-61; J. Ellington, “Miscarriage or Premature Birth?,” *BiTr* 37 (1986), 334-7; Fishbane*, 92f.; T. Frymer-Kensky, “Tit for Tat: The Principle of Equal Retribution in Near Eastern and Biblical Law,” *BA* 43 (1980), 230-4; R. Fuller, “Exodus 21:22-23: The Miscarriage Interpretation and the Personhood of the Fetus,” *JETS* 37 (1994), 169-84; H.W. House, “Miscarriage or Premature Birth: Additional Thoughts on Exodus 21:22-25,” *WThJ* 41 (1978), 108-23; S. Isser,

“Two Traditions: The Law of Exodus 21:22,23 Revisited,” *CBQ* 52 (1990), 30-45; B.S. Jackson, “The Problem of Exod. XXI 22-5 (*Ius Talionis*),” *VT* 23 (1973), 273-304; H.-W. Jüngling, “‘Auge für Auge, Zahn für Zahn’: Bemerkungen zu Sinn und Geltung der alttestamentlichen Talionsformeln,” *Theologie und Philosophie* 59 (1984), 1-38; S. Lafont, “Ancient Near Eastern Laws: Continuity and Pluralism,” in Levinson (see 2.2.1), 91-118 (pp. 110ff.); J. te Lindert, *Over de status van het menselijk embryo in de joodse en christelijke ethiek*, Diss. Utrecht 1998; S.E. Loewenstamm, “Exodus XXI 22-25,” *VT* 27 (1977), 352-60 (critical review of Jackson’s article); B. Maarsingh, “Het ius talionis en 1 Kgs. 21:19b,” in *Vruchten van de Uithof* (Fs H.A. Brongers), Utrecht 1974, 88-99; Ph.J. Nel, “The Talion Principle in Old Testament Narratives,” *JNSL* 20 (1994), 21-29; Osumi (see 2.2.1), 113ff.; Otto, *Wandel* (see 2.2.1), 24ff.; idem, *Rechtsgeschichte* (see 2.2.1), 135ff.; idem, *Körperverletzungen* (see 2.2.1), 118ff.; idem, “Die Geschichte der Talion im Alten Orient und Israel,” in D.R. Daniels et al. (eds.), *Ernten, was man sät* (Fs K. Koch), Neukirchen-Vluyn 1991, 471-94; idem, “Town and Rural Countryside in Ancient Israelite Law: Reception and Redaction in Cuneiform and Israelite Law,” *JSOT* 57 (1993), 3-22; Schenker (see 2.2.1), 41ff.; Schwienhorst-Schönberger (see 2.2.1), 79ff.; Sick (see 2.2.1), 7f., 48, 154f., 159; J.M. Sprinkle, “The Interpretation of Exodus 21:22-25 (*Lex Talionis*) and Abortion,” *WThJ* 55 (1993), 233-53; K.A. Tångberg, “The Evaluation of the Unborn Life in Israel and the Ancient Middle East,” *SJOT* 1 (1987), 51-65; R. Westbrook, “Lex Talionis and Exodus 21, 22-25,” *RB* 93 (1986), 52-69.

2.5.5.2 The situation 21:22 deals with is similar to the one presented in 21:18: a fight ensued after a dispute got out of hand. 21:18, 19 deals with the question what to do in case one of the men involved in the fight suffered injury. 21:22, 23 describes a different case: the pushing and punching fighters touch a pregnant woman – one of the bystanders or passersby, a woman who tries to intervene (2 Sam. 14:6), or a woman who comes to the aid of her husband (cf. Deut. 25:11) –, knock her over or trample on her; or also: fighter A aims a solid blow at his opponent B, who just manages to get out of the way, so that Mrs. C, who happened to be standing behind B, gets the full brunt and is knocked to the ground; she miscarriages. The possibility is even taken into account that she dies as a result of the incurred wounds or is permanently injured.

For various reasons the case cannot be resolved as in the case of 21:18, 19. The fetus is dead. Medical attention can do nothing to give her back her unborn child. Furthermore, the relation between the people involved is not the same as in 21:18, 19. There it is free men who get into a fight. Here it concerns a woman, that is a person who suddenly becomes a party in a situation she had nothing to do with. Particularly the fact that the victim is a person belonging to someone else is important for the assessment of the case.

By taking up some of the problems the passage presents, I will enfold my view on the stipulation. I note here that the case presented in the passage is not hypothetical. Much more so than in our society, pregnant women were a common street sight. Consequently, the chance of a woman who is not pregnant receiving serious hurt as a result of a brawl between men was relatively smaller.

2.5.5.3 First we look at the problematic term פללים at the end of 21:22. פללים is the plur. of פליל* (21:22; Deut. 32:31; Job 3:11), which occurs only in the plural and is regarded as a derivative of פלל (see *THAT*, II, 427ff.; *TWAT*, VI, 606ff.). The meaning is uncertain and disputed.¹⁴³

An old idea, still having adherents (e.g. Keil, Noth, Cassuto, Te Stroete, Jackson, 277ff.), is that פללים means 'judges/arbiters.' In TO בפללים is translated with ממימר דיניא, 'in accordance with the verdict of the judges' (similarly TPsJ and see *Mek.*, III, 66); in TNf with על פום יינין, 'in accordance with the decision of the judges' (similarly PT^A); in LXX with μετὰ ἀξιώματος, '(judicially) determined;' in Vulg. with *et arbitri iudicarint*, 'and the judges bring in a verdict;' similarly also Pesh. It is presumed that it falls to the judges to assess the fairness of the fine and to prevent the husband from overcharging or to supervise the payment of the compensation. Josephus (*AJ*, IV, 278) holds that a fine had to be paid to the judges and compensation to the spouse. K. Budde, *ZAW* 11 (1891), 106ff., rejects the interpretation 'judges:' it does not agree with the information that the spouse determines the fine; also, in view of the context, it would seem that the preposition ב after נתן can only be a ב praetii (Delitzsch*, 110: read ב); he proposes to read בנפלים (plur., correlative with ילדיה): the offender must give compensation *for the miscarriage*. Budde's suggestion has gained approval from some commentators, including Baentsch, Ehrlich, Beer.

Also others have looked for a fitting interpretation of פללים. Some¹⁴⁴ have linked פלל with the Arabic *falla* (cf. Palache*, 59f.). Though the views of the latter differ considerably on several points, they agree on פללים in 21:22: the פללים are 'the broken ones' = the ילדים of the woman. D.R. Ap-Thomas, *VT* 6 (1956), 231f., however, maintains that 'to break' is not the primary meaning. He feels that פלל and נפל are from the same root with the meaning 'to fall' and that Budde's emendation of the text is necessary; פללים means 'miscarriage.' E.A. Speiser, *JBL* 82 (1963), 301-6, believes that the LXX rendering: 'according to estimate,' aside from the question whether the translation rests on

¹⁴³ Cf. K. Heinen, *Das Gebet im Alten Testament*, Roma 1971, 119, 121f.

¹⁴⁴ See among others P.A.H. de Boer, *De voorbede in het Oude Testament*, Leiden 1943, 127f., and M.D. Goldman, "The Root pll and its Connotation with Prayer," *Australian Biblical Review* 3 (1953), 1-6.

conjecture or represents an old tradition, contains a correct interpretation of **בפללים**. R. Westbrook, *RB* 93 (1986), 58ff., on the basis of the context, assigns to **פללים** the meaning 'only' and suggests that the end of 21:22 shows that only the wrongdoer is liable for the imposed fine. Reacting to his interpretation, A. Berlin, *RB* 96 (1989), 345-51, has defended the view that **פלל** has the basic meaning of 'accountable, responsible, liable.' She translates **בפללים** as: 'as the culpable party' (p. 347). Otto supposes a relation with Akkadian *pālilum*, 'watchman' ('Wächter').¹⁴⁵

The above survey illustrates the uncertainty with respect to the meaning of **פללים**. The interpretation 'judges' is improbable. The context favours relating **פללים** to the miscarried fetus or its estimated. In any case, it stands to reason that the man who had suffered loss could not just insist on any amount of damages, but was expected to take into account such factors as the stage of development of the fetus and whether he already was father of a son or not.

2.5.5.4 Very important for understanding 21:22, 23 is the interpretation of the term **אָסון**. **אָסון** (Gen. 42:4, 38; 44:29; Exod. 21:22, 23) denotes a fatal accident (*HAL*). Often **אָסון**, apparently in view of 22:24, 25, is taken to have the general meaning of 'injury' (e.g. KöW), incorrectly however (see 2.5.5.9). In the MT it is not explicitly indicated to whom the clause **וְלֹא יִהְיֶה אָסוֹן** relates. To the fetus or to the woman? In TPsJ, where **אָסון** is rendered with **מוֹתָא**, 'dead' (cf. also TO), in 21:22 as well as in 21:23 the clause is related to the woman (cf. Mek., III, 65, 66); idem in the Vulg.: *sed ipsa vixerit*, 'but she remains alive' (21:22); *sin autem mors eius fuerit subsecuta*, 'if however her death follows' (21:23).

By contrast, in the LXX **אָסון** is related to the fetus and translated as (μη) ἐξεικονισμένον, '(not) formed.' The translation implies that the developmental stage of the fetus is determinative for the penalty to which the wrongdoer is liable. If the fetus is still in the embryonic phase, payment of a fine will suffice; if the fetus has a recognizable human form, the offender deserves death (cf. 21:12). Cf. Prijs**, 10f., and see Isser (with an overview of the early history of the interpretation).

In the LXX it is assumed that the fetus is dead after the miscarriage. The incident of 21:22 has also been interpreted as a case of premature birth. So Jackson believes that the ur-version, in his reconstruction, concerned a case of premature birth and that **אָסון** related to the fetus; presumably, expansion of the text turned 'premature birth' into 'miscarriage' and caused **אָסון** to be related to the woman (pp. 292f., 301). Others espouse the view that the current text describes an instance of prematurity; in connection with that, the statements

¹⁴⁵ See Otto (see 2.2.1), *Körperverletzungen*, 120f.; idem (see 2.2.1), "Körperverletzung im hethitischen und israelitischen Recht," 392.

with נֶזֶק have been applied respectively to a situation in which mother and child are not injured (the culprit is fined) and to a situation in which they did sustain injuries (the culprit's penalty is fixed by the talio principle).

It is a view defended by Keil, Cassuto, Durham and others. And in connection with the discussion of the morality of medically induced abortion (in 21:22 abortion is not punishable by death) it has been defended by House, 123 (cf. also Ellington, 337; Kaiser [see 2.2.1], 168ff.), with as conclusion that the passage in no way sanctions abortion. That is correct. The question whether it is right or wrong is not at all at issue in the passage. But as I see it, the passage does not deal with premature birth either. In that case there would be no reason for payment of compensation. If the child is born alive, the woman's husband suffers no loss. The underlying assumption is that the fetus is dead. In antiquity a premature child was the same as a stillborn child. The required fine is compensation for the loss of the child in *statu nascendi* (so explicitly TPsJ; cf. *Mek.*, III, 65).

2.5.5.5 The fact that a fine is allowed is an indication that unintentionally causing a miscarriage, resulting in a stillborn child, was not regarded as manslaughter. The incident only becomes a case of homicide if the mother fails to survive the loss of her child. That is what 21:23 deals with. In short, the law laid down in 21:22 deals with a case in which a woman loses her unborn child but survives herself; 21:23 with a case in which she also loses her life. Should it be inferred from 21:22, 23 that unborn life was considered less valuable than a human being brought into the world? That conclusion is justified. But it should also be remembered that not all human life outside the womb was regarded as of the same value: the life of a slave was valued less than that of a free individual (e.g. 21:28-32 and see Lev. 27:1-8). Here, however, the pertinent question is when homicide is culpable and when it is not (cf. e.g. 21:28, 29).

From 21:22 one must conclude that causing a miscarriage resulting in the birth of a stillborn child cannot be called manslaughter. There is only manslaughter if a viable child is killed (cf. *Mek.*, III, 63). The act is regarded as one in which the woman's husband incurs damage. He has suffered the loss of a member of his family. That requires some kind of compensation. If the woman dies, it is a case of manslaughter and 'a life for a life' is to be given (21:23). Does this mean that in that case the stipulation of 21:12 is to be applied and the culprit must be executed? That is often thought to be the case (so explicitly TPsJ; cf. *Mek.*, III, 67; Josephus, *AJ*, IV, 278). In that case, could he perhaps offer the excuse that he did not wilfully commit murder? (21:13).

Important to bear in mind is that 21:12-14 talks about homicide of a free *man*; here it concerns the death of a free married *woman*, that is of a person who belongs to someone else, her husband. He incurs serious loss through the loss of his wife. So one might consider whether 'life for life' could possibly

mean that the life of the wife of the offender is to be given in lieu of the life of the wife of the man who lost her (cf. CH §210). To the culprit is done what he did to the other, and his family is being diminished like that of the man whose wife was killed. Is it assumed that, in addition, the offender also has to give compensation for the loss of the (unborn) child (cf. MAL A §50)? According to rabbinic exegesis such is not the intent (*Mek.*, III, 63, 66). That exegesis, however, is based on the assumption that the assailant must himself pay for his deed with his life. Furthermore, the talio principle is applicable in the case of the woman, but as a rule not in the case of the fetus.

21:22, 23 describes the situation of a *pregnant* woman who becomes the victim of a fight. The question can be asked: what is to be done if the victim is a non-pregnant woman? It has been proposed that in that case, depending on the nature of the outcome, the stipulations of 21:12 and 21:18, 19 are operative (Cassuto). The context leads one to believe that it is more likely that in such cases the talio principle is applicable (cf. 21:24, 25) (see 2.5.5.7). 21:12-14, 18, 19 contain typical, male-focused stipulations, which are applicable when in a situation like that of 21:22 a man from among the bystanders gets hit. In such cases the man immediately becomes a participant.

2.5.5.6 The relationship of 21:22, 23 to 21:12-14 and 21:18, 19 deserves another look. For determining the relation between the passages, use is sometimes made of the descriptions ‘intentionally’ and unintentionally,’ with or without premeditation. So Schwienhorst-Schönberger, 102f., 106, 115f., 121, maintains that 21:22, 23, in distinction from 21:12, 14 and 21:18, is about injuring a person without intent (cf. e.g. Jacob, Cassuto). He takes issue with Paul, who believes that the talio principle is applicable in cases where there is intent (pp. 67f., 74), contending that 21:22,23 is not to be equated with regulations from Israel’s ‘Umwelt’ concerning a pregnant woman who is the victim of an accidental miscarriage (see 2.5.5.11). Presumably these regulations are about the woman who is the victim of wilful mistreatment.

Schenker, 41f., on the other hand, emphasizes that, though the blow did not land on the person for whom it was intended, it is nevertheless to be characterized as intentional, and that at least one can speak of ‘*teilweiser oder obliquier Absicht.*’ In my judgment, the question with or without intent is not raised in 21:22-25 and not relevant for evaluating the passage; not because in the given situation it is hard to find out whether intent is involved, but because the focus is solely on the *damage* that has been done and on how to make amends. As indicated, the woman is entirely looked at in terms of her belonging to the husband.¹⁴⁶

2.5.5.7 In 21:23-25 retaliation is demanded in accordance with the *lex*

¹⁴⁶ See further Houtman**, *Bundesbuch*, 162.

talionis, the 'tit for tat' principle, paying someone back in his own coin. Is 'life for life,' 'eye for eye' etc. meant to be taken literally? According to Josephus (*AJ*, IV, 278, 280), in case of the death of the woman the one who killed her had to be put to death, but in case of injuries a financial settlement between the parties involved was also allowed. According to rabbinic interpretation, 'eye for eye' etc. refers to giving recompense for the value of the eye (cf. TPsJ). Moot is the question whether 'life for life' can also mean that pecuniary compensation could be given (cf. *Mek.*, III, 67; Rashi). Jacob, 657ff., maintains that only the last interpretation is the original meaning of the passage.

Also several recent interpreters believe that 21:23-25 is not to be taken literally, but deals with compensation for the value of the life that was lost (cf. 21:30), the eye etc. (see e.g. Jüngling, 36; Westbrook, *RB* 93 [1986], 66; Sarna, 185ff.; Schwienhorst-Schönberger, 100f.). Another view is held by Crüsemann and Schenker, 48ff. They maintain that 21:23 refers to the execution of the offender. Crüsemann regards 21:24, 25 as an expansion of the text, the fruit of social criticism, directed at misuse of casuistic legal stipulations in the covenant book, and coming from the 8th century. In those days, when powerful individuals often used their wealth to resolve disputes in their favour or influence the course of justice, the injunctions in 21:24, 25 served to promote equality before the law of the wealthy and the prominent and those of inferior rank. Application of the 'eye for an eye' etc. principle meant that the rich could no longer use their money to force settlements in their favour and it has a preventive effect (p. 426).

Also in my view, 21:23-25 is to be taken in the literal sense. However, it seems to me that 21:22, 23 and 21:24, 25 are not just loosely connected, as thought by Crüsemann, but 21:23-25 applies specifically to the woman. For retaliation it is not the life, the eye etc. of the offender that is demanded, but the life etc. of his wife. The same idealism that governs 21:26, 27 – mistreatment of a slave, male or female, is cause for giving them their freedom – also governs 21:23-25: extreme caution is required where it concerns the life and the corporal well-being of the wife of a fellow countryman. One who violates that rule is going to feel the consequences in the loss or maiming of his own wife. So the equilibrium between the parties is restored. The regulation is especially in the nature of a preventative (cf. Deut. 19:20), addressing the attack on a man's most precious possession, the woman, the one who could give him offspring.

The *lex talionis* is also stated in Lev. 24:18-20; Deut. 19:21. To what extent it was really applied we do not know. Certain is that the talio principle played a significant role in interpersonal relationships (4:23; 12:29; Judg. 1:6f.; 15:10f.; 1 Sam. 15:33; 1 Kgs. 21:19; 2 Kgs. 10:24; Ezek. 16:59; Obad. 15f.;

Hab. 2:8; Job 2:4)¹⁴⁷ and that in a dispute money is/was often used to avoid the threat of the talio (cf. 1 Kgs. 20:39). In the Sermon on the Mount Jesus sought to break through the (indeed) just, but also barbarian repayment of evil with evil (Matt. 5:38, 39; cf. also Koran 5:45).¹⁴⁸

2.5.5.8 21:23-25 presents us with the question concerning the place of the *lex talionis* in the unfolding of law.¹⁴⁹ The term *talio* is from Roman law in which it stood for satisfaction for inflicted permanent injury to the body; that requires recompense, equal to the inflicted hurt. However, seeking a financial settlement is also possible. It was held that the *lex talionis* was designed as an answer to the practice of unrestrained vengeance: for wounding someone the offender is not put to death (Gen. 4:23, 24), but repaid 'in equal coin.' That, it was thought, restrained and humanized acts of vengeance. The following step in the history of the unfolding of the law was the introduction of the possibility to pay a sum of money to the disadvantaged party.

This construction rests on the assumption that the *lex talionis* is primitive in nature. Because the older laws in the ancient Near East (for an overview see Jüngling, 6ff.) do contain the possibility of repayment in money, but not the *lex talionis*, while the *lex talionis* does occur in the younger CH (see §§196-201, where it is limited to the *awilum*, the free citizen), it has been argued that its introduction is to be regarded as an innovation. Supposedly, 'an eye for an eye' and 'a tooth for a tooth' was a fairer punishment for inflicted bodily harm than the always somewhat arbitrary compensation in money. Moreover, the talio would advance equal justice for all: the rich and powerful would be deterred from mistreating the weaker members of society, if harming another person cannot be recompensed with money.

Whether the *lex talionis* in CH is something really new is open to argument. Jüngling, 14, considers it a remnant of archaic laws. To what extent the talio, as described in 21:23-25, was really practiced we cannot say, due to the scarcity of sufficient data. What is clear is that, aside from wilful homicide (see 21:12-14) – capital punishment for murder is not talio in the strict sense of the term (see above) –, the covenant book shows a strong preference for settling damage by indemnification, often with something resembling talio (see in particular 21:33-22:16). To that can be added that maiming as a form of punishment is not prominent in the OT (cf. Deut. 25:12 and see also Prov. 30:17).¹⁵⁰ See beside it e.g. CH §§192-195, 218, 226, 253; MAL §§4, 5, 8, 9

¹⁴⁷ Cf. N.A. Schuman, *Gelijk om gelijk: Verslag en balans van een discussie over goddelijke vergelding in het Oude Testament*, Amsterdam 1993.

¹⁴⁸ Cf. G.M. Zerbe, *Non-Retaliatio in Early Jewish and New Testament Texts*, Sheffield 1993.

¹⁴⁹ See esp. Jüngling, 10ff., and e.g. Otto, "Geschichte der Talion," 107ff.; idem (see 2.2.1), *Ethik*, S. 73ff.; Paul, 75ff.; Yaron (see 2.2.1), 26ff.

¹⁵⁰ Cf. P.E. Wilson, "Deuteronomy XXV 11-12—One for the Books," *VT* 47 (1997), 220-35.

and see *RLA*, VI, 173-8. All in all, there is reason to have a closer look at the place and function of 21:23-25.

2.5.5.9 מִסֵּן denotes (see 2.5.5.4), I believe, a fatal accident. This position is based on what I perceive to be the relationship of 21:22, 23 to 21:24, 25.

21:23 goes well with 21:22: it deals with the possibility that the woman succumbs to the wounds incurred in the scuffle. Following up on 21:23, 21:24, 25 cites a list of types of injuries, not all of which fit the depicted situation (e.g. 'burn'). The fact that several wounds are listed, including light ones ('a tooth'), has occasioned the rendering 'further and other injuries' for מִסֵּן (in 21:22: besides the miscarriage). See e.g. NV; NEB: 'Wherever hurt is done, ...'

מִסֵּן is a disputed term. R. Westbrook, *RB* 93 (1986), 56f., even believes that hurt caused by an unknown perpetrator is meant. This view is rejected by Osumi, 113f., and Schwienhorst-Schönberger, 89ff., 117f.; the latter believes that מִסֵּן can denote fatal as well as non-fatal injury. Similarly also Schenker (see 2.2.1), 43. That is not likely in light of the use of the term in Genesis (cf. E. Otto, *JSOT* 57 [1993], 15).

The view has been defended that 21:23-25 originally came after 21:19 and that the talio rule really pertained to the struggling men in case they incurred blows, not to the pregnant woman who became the unwilling victim of a brawl. However, as a wound, 'burn' does not go with a scuffle between men either. Besides, talio is no adequate punishment if both are to blame, as if often the case with a fight. 21:23-25 goes with 21:22. 21:23 is connected to 21:22.

21:22, 23 leaves yet another question unanswered: what should be done in case the woman has suffered injuries? In answer to that question, and following up on the formula of 21:23b, a existing stereotype series is cited. One might consider whether 21:23-25 is a later addition, expansion of 21:22, or whether 21:24, 25 is a later addition, expansion of 21:22, 23 (on the problem see Schwienhorst-Schönberger, 80ff., 116ff.). No matter, it will not do to excise 21:24, 25 from the extant text, linked as it is with 21:26,27. Also there eye and tooth are example, but not in a talio regulation. As to 21:23-25, I believe one should keep in mind that in the covenant book the talio rule is not given as a general rule, but specifically applied to the woman injured in a brawl, that is, to a person belonging to someone else, her husband.

2.5.5.10 Though the question of the legitimacy of abortion is not at issue in Exod. 21, in the course of time the passage has regularly been used in judging abortus provocatus. The rendering in LXX has played a role in the discussion of the question, in what phase of the gestation period the embryo can be regarded as a human being. From the OT one cannot say how abortion by a woman's own act was viewed. The laws from the ancient Near East, aside from MAL §53, always deal with miscarriage due to an accident. In antiquity, generally speaking, abortus provocatus was morally condemned. In the Christian church, abortus provocatus was considered murder, a sin for which one

goes to hell.¹⁵¹

2.5.5.11 In the laws of Israel neighbouring countries, involuntary miscarriage due to a blow from another person is repeatedly dealt with. But these laws do not contain a concrete example, such as in 21:22 (a fight). The question whether the woman was hit intentionally or unintentionally is not considered. The only exception is two Sumerian stipulations in which a different compensation is prescribed for (unintentional) hitting and (intentional) striking (§§1-2; *ANET*, 525b). As a rule, the stipulations prescribe payment of a specifically mentioned amount (but see *MAL A* §§50, 52), the size of which depends on the woman's societal status (in the covenant book only the pregnant free woman is mentioned; the female slave is not in the picture). Compensation is higher for a free woman who suffers a miscarriage than for a woman who is a slave (see *LI III* 2'-13; *CH* §§209-214; *MAL A* §§21, 50-52; *HL* §§17-18). In *MAL A* §21, besides the fine, the additional penalty is cited: fifty lashes (cf. also §52) and a month of forced labour for the king.

In *HL* §§17-18, the age of the fetus is the basis for determining the size of the compensation. Compensation for a full term baby is twice as high as for a half term fetus. Also the case of a woman who died as a result of the miscarriage is taken up. *CH* only exacts 'life for life' where it concerns the life of the wife of a citizen (§210; cf. §230). For women of lesser status payment of a sum of money is sufficient (*YOS I* 28 [§§212, 214]). In §210 not the life of the perpetrator is demanded, but that of his daughter (vicarious punishment). *LI III* 7'-8,' by contrast, prescribes the death of the assailant. Such is also the case in *MAL A* §50. Additionally, it also prescribes the death of the assailant if the husband of the woman involved does not have a son. If the fetus turns out to be a girl, payment for damages is enough. *Abortus provocatus* comes up in *MAL A* §53. The sanctions are severe. The woman, also if she died as a consequence of the induced abortion, is to be impaled on a stake and she may not be buried.¹⁵²

21:22 21:22 is similarly introduced as 21:18. Also here *LXX* has 'two men;' cf. also *Pesh.* and see Collins, 299f. נִצָּח niph., see 2:13. נָגַף (see 7:27), there is no reason, as done by Daube*, 108, to think of an intentional attack. אִשָּׁה (*Introd.* §3.2.3), the reference is to the wife of a free Israelite (see end 21:22). הָרָה, see 2:2.

וַיֵּצֵא (Introd. §3.24.1), *Sam.Pent.*: וַיֵּצֵא, sing. with as subject וְלִדָּה, 'her

¹⁵¹ For extensive information on the evaluation of abortion in antiquity and the Christian church, see Dölger and also *HDA*, I, 121ff.; Stol*, 13ff.; Stricker*, III, 267ff.

¹⁵² See further (also for bodily maiming more in general) Otto, *Körpervverletzungen* (see 2.2.1), 25ff.; idem, *JSOT* 57 (1993), 7ff.; Paul, 70ff.; Yaron (see 2.2.1), 286ff.; Westbrook (see 2.2.1), 40, 61ff.

child' (cf. Collins, 296); also in ancient versions, the striking plural ילדיה (see 1:15) is translated as a sing. (see LXX, Vulg., Pesh., the targums); in the Pesh. the men are subject: they cause the miscarriage; in the Vulg. one of the men: 'and (someone) causes a miscarriage;' the plur. expresses the vague nature of the matter (cf. KöSynt §264c; Joüon §136j; Schwienhorst-Schönberger, 96ff.).

Schenker's view, 43f., that ויצאו ילדה refers to a miscarriage resulting in childlessness is unfounded. Fensham suggests that אסון in 21:21 denotes injury, as a result of which the woman is no longer able to bear children. The question whether the woman is still fertile is not at issue. That could only be determined in the course of time anyway, and absolute certainty would require sophisticated medical knowledge. Collins, 294, suggests to read ולו, 'to him' (the fetus), instead of ולא ענוש יענוש imperf. abs. qal + inf. niph. (Joüon §176m; Brockelman §93; Waltke-O'Connor §35.2.1d) of ענוש (OT 8×), 'impose a fine' (cf. Deut. 22:19; 2 Chr. 36:3). Collins, 297f., proposes to read: ענוש באשר יענוש, 'a fine on whoever will be punished.' שית, see 7:23. בעל (see 21:3), Ehrlich: the husband is grammatical subject, but not actually; the judge sets the damages, taking into account the man's societal rank (for a rich person the loss is greater than for a poor person).

21:23 ונתתה, Ehrlich proposes to read ונתן (cf. LXX, Pesh., Vulg. and see 21:19, 32); the 2nd pers. sing. occurs more often, however (21:2, 13, 14; 22:17, 20 etc.). Moot is the question, who is the addressed person. In my opinion, it is the Israelite whose interests are at stake; here that can only be the man who mortally wounded the woman. If the statement is related to the judges (Jacob, Cassuto) or the local authorities, one is obligated to understand נתן as 'to apply' (viz. of the principle 'life for life'), or one must accept Westbrook's entirely different interpretation: 21:22, 23 refers to the situation that the perpetrator is unknown and the local authority is obligated to pay for the loss (*RB* 93 [1986], 65; cf. Schwienhorst-Schönberger, 87, 99, 107ff., 122ff.). 'life,' see Introd. §3.51.1. תחת, see Williams §352; Waltke-O'Connor §11.2.15b.

21:24 'eye,' see Introd. §3.38. שן (OT ca. 55×; Exod. 21:24[2×], 27[3×]), 'tooth;' see Dhorme*, 87f.; *HAL* s.v. In 21:27 'tooth' stands for 'teeth;' the teeth are damaged. 'hand,' see Introd. §3.21.1. רגל see 3:5.

21:25 In 21:25 three different terms are used for wounds, all of which no doubt are meant as illustrations. Their meaning can only approximately be determined. בִּיגָה (Sam.Pent.: מכוה; cf. Lev. 13:24) is a hapax legomenon: 'Brandmal' (SS, *KBL*, *HAL*), but possibly also 'Brandwunde' (KöW; cf. e.g. LV, CV) or 'burn' (WV; cf. Ges-B). פצע (OT 8× OT) and תבוכה (OT 7×) also occur in Gen. 4:23; Isa. 1:6; Prov. 20:30 in combination with each other.

פצע denotes a wound caused by striking (cf. 1 Kgs. 20:37; Cant. 5:7); uncertain is whether it refers to an open wound (Dasberg) or a bruise (*KBL*: 'Quetschwunde'); חבירה is further qualified as 'stripe' (cf. Ges-B, KōW, *HAL*) and as 'welt' (*KBL*: 'Quetschwunde, (bunte) Beule'); cf. also SS: 'Beule, Strieme.' Probably all seven terms in 21:24, 25 denote permanent crippling, which do not heal over the course of time (cf. Schenker, 48).

2.5.6 Mistreatment of a male or female slave resulting in permanent injuries (21:26, 27)

21:26 *'But when someone strikes the eye of his male or female slave, destroying his eyesight, then he shall let him go free as compensation for the eye.'*

27 *Even if he knocks out the tooth of his male or female slave, he shall let him go free as compensation for the tooth.'*

Again (cf. 21:2-11, 20, 21) the treatment of slaves is brought up. As in 21:20, 21, the regulation applies to both male and female slaves and the subject is that of mistreatment. This time ill-treatment resulting in permanent injury. Who are these slaves? The same ideas as with respect to 21:20, 21 are defended. Also here male and female slave are in TPsJ specifically characterized as non-Israelite by the adjective 'Canaanite' (cf. *Mek.*, III, 170; Rashi and see 2.4.11). Also here they are regarded, for example by Westbrook (see 2.2.1), 101, and Schwienhorst-Schönberger (see 2.2.1), 48, 61ff., 74ff., as Israelite debtor slaves. As I see it, here too there is no reason to think exclusively of foreign slaves.

The underlying assumption is that a master may forcefully discipline his slaves, but should stay away from brutality (see 2.5.4). If he should turn to that, he forfeits the property rights to the slave. According to Westbrook, 101, and Schwienhorst-Schönberger, 75, 78, who believe that the slave here is a debtor slave residing in the house of the creditor, letting the slave go free implies that the creditor forfeits his claim on the debt.

21:26, 27 are formulated as a follow-up on 21:23-25. Note the use of חתך (see 21:23) and of the terms 'eye' and 'tooth.' Why are these parts of the body mentioned and no other? Likely because a slave was often punished by hitting him in the face or across the mouth, which could easily result in eye damage or the loss of a tooth. Likely though, the blind eye and the knocked-out tooth are also used as examples of the harm that could be done (cf. *Mek.*, III, 70ff.; Rashi; Ibn Ezra, somewhat differently T. Abusch, *HR* 26 [1986], 146f.), denoting respectively permanent grave bodily injury and permanent light bodily injury. The purport of 21:26, 27 is therefore: in all cases of *visible* permanent bodily injury a slave is to be set free.

As an aside: invisible grave injury resulted in death (21:20,21) or was

followed by gradual recuperation. Arms and legs, limbs needed by the slave for working, would not soon be struck. By hitting those, the master would harm himself.

Talio (21:23-25) only applies to the free citizen, not to a slave (cf. e.g. Schenker [see 2.2.1], 59ff., and see CH §§196-203). The slave belongs to the master, who may punish him, but is not allowed to abuse the slave. Even if the injury stemming from a beating should be relatively light, the master runs the risk of harming himself, punishing himself, because the price he has to pay is the setting free of the slave. His assets are diminished to the tune of the price of the slave.

21:26, 27 are without parallel in the codes of the ancient Near East. These do deal, however, with compensation that has to be given for visible bodily harm inflicted on someone else's (property) slave (CH §199; HL §§8, 12, 14, 16; cf. Cardinelli [see 2.4.1], 69ff., 129ff.; Paul [see 2.2.1], 78).

21:26 וְכִי etc., see 21:20; an object with which to strike is not mentioned; apparently striking with the bare hand or the fist is what is meant. In the LXX the terms οἰκέτης and θεράπων (domestic slaves) are used to describe the slaves; in 21:20, on the other hand, the more general terms παῖς and παιδίσκη (see also 21:32). עֵין, see Introd. §3.38. שָׁחַת (see 8:20), meant is that the blow causes blindness; so explicitly LXX, TPsJ (cf. *Mek.*, III, 70); cf. also Vulg.: *et luscus eos fecerit*, 'and makes him one-eyed;' but for another view see Pesh.: *wnsrhyh*, 'and he wounds it.' For blindness see 4:11. לַחֲפֹשִׁי, see 21:2. יִשְׁלַחֲנוּ (Introd. §3.49.2), the suffix, like the suffix of the following עֵינוּ, refers back to the male slave, but also refers to the female slave. In the LXX, here and in 21:27, it is rendered *ad sensum* respectively with the use of αὐτοῦς and αὐτῶν (cf. also Vulg.).

21:27 וְאִם (Introd. §3.4.1) is used after וְכִי to introduce an unusual situation. In this case not one in which the regulation introduced with וְכִי is not valid, but a situation in which it is also to be carried out. נָפַל hiph., see 15:16. 21:27b is constructed parallel to 21:26b; 21:27a not entirely parallel to 21:26a; mentally to be supplied is: 'if someone hits so hard as to knock out the tooth (out of the mouth).'

2.5.7 Fatal injury caused by a goring ox (21:28-32)

21:28 *'And when an ox gores a man or a woman to death, the ox must be stoned. Its flesh may not eaten and the owner of the ox is not liable.'*

29 *But if the ox was known to have gored in the past and it had been brought to its owner's attention, but he refused to restrain it, in that case, if it*