

## EXODUS 21:22-23: THE MISCARRIAGE INTERPRETATION AND THE PERSONHOOD OF THE FETUS

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Exodus 21:22-23 (KJV) reads as follows: "If men strive, and hurt a woman with child, so that her fruit depart from her, and yet no mischief follow: he shall be surely punished, according as the woman's husband will lay upon him; and he shall pay as the judges determine. And if any mischief follow, then thou shalt give life for life."

For the past thirty years our nation has ardently debated abortion. With the latest presidential election America has cast her lot, at least for the foreseeable future, with the proabortion position. Similarly many within Christendom believe that the Bible itself supports a proabortion position. To buttress this claim, proabortion advocates consistently cite the example of the miscarried fetus in Exod 21:22 to show that the fetus is not a person. Some have responded that 21:22 does not refer to a miscarriage but to a premature birth, a view that renders the fetus fully human.<sup>1</sup> If, however, the miscarriage view is correct in 21:22—and I believe that it is—what then does this suggest for the personhood of the fetus?

Many who accept the miscarriage interpretation claim that the fetus is not a human being. Thus Shalom Paul asserts: "All of these laws [i.e. the ancient Near Eastern law collections], including that of Exodus, regulate a pecuniary settlement for the loss of the fetus. Though compensation for homicide is a regular feature of cuneiform corpora, the acceptance of a sum of money for the loss of a fetus in Exodus shows that according to biblical law, at least, a fetus is not considered to be a *human being*. Hence, this case does not fall within the law of homicide—else a monetary settlement would be prohibited."<sup>2</sup> Daniel Sinclair advances this position to claim that abortion is not homicide in Biblical law: "But one thing is clear: foeticide did not carry the death penalty, and only the death of the mother entailed the giving of 'a life in place of a life.' . . . In conclusion, it would appear that from both the critical and the historical dogmatic standpoints, the Biblical sanction of foeticide, whether intentional or unintentional, is a pecuniary one. Abortion is not homicide, and the foetus is not an independent life. It

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<sup>1</sup> For a discussion of the premature-birth interpretation see the excursus at the end of the article

<sup>2</sup> S Paul, *Studies in the Book of the Covenant in the Light of Cuneiform and Biblical Law* (Leiden Brill, 1970) 71 (italics mine)

is paternal property, and any loss or damage gives rise to a claim for compensation."<sup>3</sup> Echoing these viewpoints, Graham Spurgeon concurs: "In other words, if you cause the death of the fetus, you merely pay a fine; if you cause the death of the woman, you lose your own life. Thus the Bible clearly shows that a fetus is *not* considered a person. If the fetus were considered to be a person, then the penalty for killing it would be the same as for killing the woman—death. Abortion, then, is *not* murder."<sup>4</sup> Indeed some evangelicals, though not taking the argument to the extreme of Spurgeon's interpretation, agree that the fetus is not a person. Lloyd Kalland states: "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."<sup>5</sup> More recently Dolores Dunnnett affirms the same argument:

As we noted, the Exodus law deals with miscarriage. But it is interesting to note that the destruction of a fetus is penalized far less severely than is the killing of the mother. If the mother dies, then a life is given for her life.

Monetary compensation is demanded in the case of the aborted fetus (v. 22c), whereas the *lex talionis* applies when the mother is killed or harmed in any way. If therefore a miscarriage is involved in this law, our logic helps us conclude that divine law views a fetus as something of a different order than a mother.

We also conclude that when the 'fetus' becomes a 'child'<sup>6</sup> (= is born), and then becomes a girl, and eventually becomes a pregnant woman, then she is more valuable than as a fetus in the womb. A life for life is to be given if she is fatally wounded. So, we conclude, if the fetus were viewed in the Biblical material as an actual human being its destruction would have been punished by death and not a fine. Thus the fetus is considered the property of the parents, while the fine to be levied (in the extra-Biblical parallels) is apparently in correlation to the age of the fetus.<sup>7</sup>

<sup>3</sup> D B Sinclair, "The Legal Basis for the Prohibition on Abortion in Jewish Law," *Israel Law Review* 15/1 (January 1980) 110, 112 Sinclair's assertion that the Bible penalizes intentional feticide with only a fine is simply wrong. The Bible does not directly address the issue. Of course some Bible interpreters, such as Josephus and Philo, believed that the sixth commandment directly applied to intentional feticide.

<sup>4</sup> G Spurgeon, *The Religious Case for Abortion* (ed H Gregory, Asheville Madison and Polk, 1983) 16 (italics his). Spurgeon describes the modern practice of abortion as divinely ordained: "I believe that abortion is sometimes the Christian and humane alternative. I believe that God wants us to bring into this world only the number of children which we can adequately take care of. I believe that God has given us this safe surgical procedure as a gift to hold down the population in a world that is choked with too many people and not enough food, a world that is filled with wretched, unwanted children. I am thankful to God for abortion. Anyone who reads the Bible with an open mind and—more important—an open heart, will see that our Heavenly Father wants quality, not quantity, for His children" (p. 27).

<sup>5</sup> L Kalland, "Fetal Life," *Eternity* (February 1971) 24.

<sup>6</sup> The Hebrew word for fetus in Exod 21:22 is *yeled*, the usual word for "child" in Biblical Hebrew.

<sup>7</sup> D E Dunnnett, "Evangelicals and Abortion," *JETS* 33/2 (June 1990) 217. Dunnnett affirms that a fetus has a right to life if the "fetus is the result of intercourse by consenting parties." She later modifies this by stating a third reason for abortion (in addition to cases of rape/incest and the life of the mother): "when a child will be born with grave physical or mental defects." Dunnnett elaborates: "This is a good example of using the authority given to us by God to control

Simply stated, since the punishment for killing the fetus (a fine) is less than the punishment for killing the mother (death), the fetus is not a human being. Therefore the Bible does not condemn abortion as murder.

Nevertheless this argument, its logic and its implications fail in the broader legal context of the ancient Near East and the covenant code (Exod 20:22–23:33), in the specific context of 21:22, and in the general view of the fetus from both the ancient Near East and the Bible.

### I. THE BROADER LEGAL CONTEXT

The law codes and case law from the ancient Near East and the covenant code furnish the broader legal context for understanding Exod 21:22 and for testing the argument that the fetus is not a person. The Sumerian and Hittite laws addressed the loss of the fetus without reference to the health of the mother and simply assessed fines for the loss of the fetus. The Sumerian laws (YBC 2177) determined the fine according to the intent of the assailant, whether he struck the pregnant woman accidentally or deliberately; the Hittite laws, somewhat like the LXX, according to fetal development.<sup>8</sup> The Code of Hammurapi, however, contemplated the loss of both fetus and mother, supplying a closer parallel to the Exodus passage:

If a gentleman has struck the daughter of a gentleman and induced her to miscarry [lit has caused her to cast down that of her womb], he will pay ten shekels of silver for the fetus If that woman has died, they will execute his daughter (209–210)

If in striking the daughter of a commoner he induced her to miscarry, he will pay five shekels of silver. If that woman has died, he will pay thirty shekels of silver (211–212)

If he has struck the slavewoman of a gentleman and induced her to miscarry, he will pay two shekels of silver If that slavewoman has died, he will pay twenty shekels of silver (213–214)

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and rule our lives rather than letting a bad situation develop and ruin several lives To be responsible coworkers with God helps us care for and develop the world God has made for us in the quality of people we can produce to live in this world to glorify him" (pp 224–225) In my opinion God has not given to us this "authority," because such authority belongs to God alone (cf Exod 4 11, Ps 139 13–16) Indeed Dunnett's last statement on her third case may also justify abortion on demand

<sup>8</sup> The Sumerian laws read "If (a man accidentally) buffeted a woman of the free-citizen class and caused her to have a miscarriage, he must pay ten shekels of silver (1) If (a man deliberately) struck a woman of the free-citizen class and caused her to have a miscarriage, he must pay one-third mina of silver (twenty shekels) (2)" J J Finkelstein, *ANET* 525 For other Sumerian laws on miscarriage cf n 15 *infra* The Hittite laws read "If anyone causes a free woman to miscarry—if (it is) the tenth month, he shall give ten shekels of silver, if (it is) the fifth month, he shall give five shekels of silver and pledge his estate as security (17) If anyone causes a slave-woman to miscarry, if (it is) the tenth month, he shall give five shekels of silver (18)" A Goetze, *ANET* 190 Compare the Hittite laws with the LXX "But if two men fight and they should hit a pregnant woman and her child should come out, not being fully formed, he shall be fined as the husband of the woman should require He shall pay what is proper But if the (child) was fully formed, he shall give life for life"

Sections 209–210 are nearly identical to the Exodus passage. If the fetus dies, only a fine is levied; if the free woman dies, the assailant's daughter is executed, not the assailant himself as in Exod 21:22.<sup>9</sup> Sections 211–214 indicate that if the fetus of a commoner or slave was killed, only a fine was exacted. Should, however, the commoner or the slave die, the punishment was only a fine. Did this suggest or imply that the commoner or slave was not a human being? Certainly not. The commoner or slave was as much a person, or human being, as the daughter of the gentleman. In Old Babylonian society, punishments differed according to a person's social or legal status. Moreover these differences in punishments did not suggest differences in personhood. The laws of Hammurapi were simply concerned with legal status, not with personhood.<sup>10</sup> Therefore the argument that the fetus is not a person, merely because the punishments differed for the death of the fetus and for the death of the mother, falters.

Similarly the Middle Assyrian laws contribute to our understanding of the "miscarriage" laws in the ancient Near East and in Exod 21:22:

If a gentleman struck the daughter of a gentleman and he induced her to miscarry [lit. caused her to drop that of her womb], (when) they have proven (the charge against) him and have convicted him he will pay two talents, thirty mina of lead; they will beat him fifty times with sticks; he will perform the labor of the king for one month (21).

(If a gentleman) struck another gentleman's (wife) and induced her to miscarry, they will do to the wife of that gentleman (the assailant), who induced the wife of the gentleman to miscarry, as that gentleman (the assailant) did to her: He will compensate with a life (of another fetus). But if that woman died, they will execute the gentleman. For the fetus he will compensate with a life. And if that husband of the woman does not have a son (and) he struck that woman (so that) she miscarries, they will execute the assailant for the fetus. If the fetus is female, he will compensate with a life (50).

If a gentleman struck (another) gentleman's wife who has a history of miscarriage<sup>11</sup> and he induced her to miscarry, this is a crime: He shall pay two talents of lead (51).

<sup>9</sup> That the assailant's daughter is executed rather than the assailant himself is rather curious to us. But according to Mesopotamian *lex talionis*, the punishment must correspond to the offense. Compare the laws of Hammurapi on another matter: "If a builder constructed a house for a gentleman, but his work he did not strengthen and the house which he built should fall so that he killed the owner of the house, that builder shall be executed (229). If he should kill the son of the owner of the house, then they will execute the son of the builder (230). If he killed the slave of the owner of the house, then slave for slave he will give to the owner of the house (231)." Again, the punishment corresponds to the offense. Furthermore, in the Middle Assyrian laws, if a gentleman induced a miscarriage of another gentleman's wife the assailant's wife is treated similarly. She is forced to miscarry. For exceptions cf. n. 15 *infra*. For certain offenses in Biblical law the Biblical idea of ransom may echo the Mesopotamian form of *lex talionis*. The offender may substitute a fine instead of suffering a physical punishment.

<sup>10</sup> Sections 195–208 of the Code of Hammurapi supply other examples of different punishments for the same crime.

<sup>11</sup> Driver and Miles interpret the disputed clause, "who has a history of miscarriage," as "who does not rear her children." G. R. Driver and J. C. Miles, *The Assyrian Laws* (Oxford Clarendon, 1935) 114 ff.

If a gentleman struck a prostitute and induced her to miscarry, blow for blow they will exact upon him, he will compensate with a life (52)

If the woman herself aborts the fetus, (when) they have proven (the charge against) her and have convicted her they will impale her on stakes, they will not bury her If while aborting the fetus she should die, they will impale her on stakes, they will not bury her If they concealed that woman when she aborted her fetus without informing the king<sup>12</sup> (53) [remainder broken]

Again, these sections differ in punishment for various reasons The Assyrians punished the gentleman who induced a gentleman's daughter to miscarry (21) with a punitive fine, public flogging and royal service For a gentleman's wife (50), however, the Assyrians required life for life If a gentleman's wife had a history of miscarriage (51), the Assyrians, deeming this an extenuating circumstance, commuted the punishment to a mere fine Should a gentleman induce a prostitute to miscarry (52), that gentleman compensated the loss of the fetus with a life (perhaps understood from section 50) In sections 21, 50-52, the status or character of the woman decided the punishment In section 53 the woman's own deed determined the punishment The Assyrians in section 53 condemned a self-induced miscarriage—an abortion—as a capital offense Of course the argument that differences in punishments imply differences in personhood, if carried to its conclusion, would suggest that some fetuses were human and that others were not since the Middle Assyrian laws punished the loss of the fetus sometimes by fines and at other times by execution Moreover an intentionally aborted fetus would be a human being since the penalty was execution Contrary to such futile logic the Middle Assyrian laws, like the laws of Hammurapi, were primarily concerned with legal status, not with personhood So the argument that differences in punishments imply differences in personhood fails again

As this logic fails under the evidence of the law codes, so it fails under ancient Near Eastern case law In ancient marriage contracts, for instance, the Babylonians occasionally inserted a divorce stipulation, as in CT 48, 51 10-20

Henceforth should Mar-Sippar say to Tabbittum his wife, "You are not my wife," he will pay one mina of silver (10-14)

And should Tabbittum say to Mar-Sippar her husband, "You are not my husband," they will bind her and cast her into the water (15-20)

In other words, if the man divorced his wife, and both were apparently from the same social class, a large fine was levied But if the wife divorced her husband, death by drowning was the punishment Clearly, differences in punishments did not imply differences in personhood The wife was as much a human being or person as the husband The husband and wife merely differed in legal status, not in personhood

<sup>12</sup> The last sentence may be translated "If that woman aborted her fetus and they concealed it (i e the fetus) without informing the king" *AHW* 852a

The broader ancient Near Eastern legal tradition differentiated legal statuses by class, sex, age, and so forth. But these different legal statuses did not imply differences in personhood. Therefore if an individual is fined for a specific crime and another individual is executed for committing the same crime, this did not suggest differences in personhood between the individuals who committed the crime. Nor did differences in punishments, levied for killing one individual as opposed to killing another individual, suggest differences in personhood between the individuals who were killed. They simply differed in legal or social status. The ancient Near Eastern legal tradition, therefore, disproves the argument that differences in punishments imply differences in personhood.

Consistent with the culture and society of the ancient Near East, the Exodus covenant code also refutes the argument that differences in punishments imply differences in personhood by showing various legal statuses, the parade example being the slave. The rights of slaves in the OT, although far superior to other ancient cultures both eastern and western, were not equal to the legal rights of the Israelite citizen.<sup>13</sup> If for instance a slaveowner deliberately beat his slave to death, that slave is avenged. Traditionally interpreted, the slaveowner was executed (Exod 21:20). If, however, the slaveowner beat his slave but without intending to kill or to seriously injure, and if after a day or two the slave dies, then the slaveowner is exempted from punishment. Suppose on the other hand that same slaveowner beat a fellow Israelite and after a day or two that Israelite died. Then the slaveowner was punished. Furthermore suppose a farmer through negligence did not confine his goring ox (21:28–32). If that ox killed someone, the owner might be executed. Yet if the same ox were to kill a slave, only a fine was levied. Doubtless the Hebrews did not consider the slave as nonhuman or as less human than the slaveowner. The slaveowner and slave differed only in legal status. Hence to assume that different punishments imply differences in personhood, even in the OT, is clearly a *non sequitur*. As with the broader ancient Near Eastern law, Biblical law contemplated legal status, not personhood. This was certainly true of slaveowner and slave, and, I believe, true of the fetus in Exod 21:22. Indeed there is more evidence to suggest that the slave was not a person than that the fetus was not, since the slave was explicitly called property (21:21). Nevertheless the slave was a human being. He was property only in a restricted sense: The master could not kill or abuse his slave at will.<sup>14</sup> So to claim that the OT depicts the fetus as nonhuman or less than human merely because of differences in punishments between the mother and the fetus is specious.

<sup>13</sup> In ancient Israel, for example, if a master physically damaged his slave that slave became free (Exod 21:26–27)

<sup>14</sup> Various OT passages suggest the same for the fetus. A person may not murder or abuse a fetus. See the discussion on the general view of the fetus in the Bible and ancient Near East below

## II. THE SPECIFIC LEGAL CONTEXT OF EXOD 21:22

The argument that the fetus is not a human being or a person simply because of Exod 21:22 is also defective, since the passage envisions a negligent, unintentional assault on a pregnant woman, not an intentional assault on the fetus, as in a modern abortion. Two men, not two men and a pregnant woman, are fighting. They (or one of them) accidentally strike a pregnant woman, inducing a miscarriage. The assault was unintentional but negligent; therefore if the woman died the ruling was not manslaughter but negligent homicide. The assailant was executed. But if the mother survived and only the fetus died, Biblical law fined the assailant since the legal standing of the fetus differed from that of the mother.

From the general tenor of ancient Near Eastern and Biblical law, an intentional assault was penalized far more severely than an unintentional assault. Obviously if a man unintentionally killed a man the law ruled that act to be manslaughter. If negligence was involved, as in Exod 21:22 or 21:28-32, the penalty would be more rigorous. If a man intentionally killed a man the judgment would be most severe. Thus the Sumerian laws doubled the fine if a person intentionally assaulted a pregnant woman. The ancient Near Eastern laws on miscarriages, including Exod 21:22, viewed the assault as either an intentional or unintentional assault on the woman, but the laws viewed the same assault as unintentional on the fetus. The Sumerian laws (YBC 2177)<sup>15</sup> explicitly distinguished between the intentional and unintentional assault on the woman. Exodus 21:22 was an unintentional but negligent assault on the woman. The Hittite laws, the Code of Hammurapi, and the Middle Assyrian laws were probably an intentional assault on the woman.<sup>16</sup> Nevertheless there is one notable exception: Section 53 of the Middle Assyrian laws contemplated an intentional assault upon the fetus by the mother, a crime punishable by death. What the punishment would be if someone intentionally struck a pregnant woman for the purpose of destroying the fetus is uncertain, but section 53 of the Middle Assyrian laws may suggest the death penalty as a possible if not probable outcome. Likewise, what penalty the Hebrew lawgiver would have meted out for an intentional assault upon a pregnant woman is not contemplated. But the punishment would be more severe for killing the

<sup>15</sup> A Sumerian law fragment, perhaps part of the Lipit-Ishtar Code, considered only an intentional assault "If a [ ] has beaten the daughter of a free man and she has suffered a miscarriage, he shall pay one-half mina of silver. If she died, that man shall be [put to death]. If a [ ] has beaten the slave-girl of a free man and she has suffered a miscarriage, he shall pay five shekels of silver." M. Civil, "New Sumerian Law Fragments," *Studies Presented to B. Landsberger* (ed. H. G. Güterbock and T. Jacobsen, Chicago: Oriental Institute, 1965) 5-6. The fragment probably reflects an earlier or later legal tradition than the Sumerian laws cited in n. 8 *supra* since the amount of the fines differs.

<sup>16</sup> Since these ancient law collections are not codes in the strict legal sense but only digests of a much larger legal corpus, the Hittites, the Old Babylonians and the Assyrians probably had laws for unintentional assaults on pregnant women. The Hebrews and the Sumerians clearly had laws for an unintentional assault on a pregnant woman, and the Assyrians considered extenuating circumstances that lessened the penalty for inducing a miscarriage.

fetus—perhaps death. If a man intentionally struck a pregnant woman for the purpose of killing the fetus, the punishment would be most severe—probably death. Therefore to claim that the fetus is not a person and that the Bible permits abortion simply on the grounds of an unintentional but negligent assault on the mother and fetus in Exod 21:22 is reckless if not disingenuous.<sup>17</sup>

### III. THE GENERAL VIEW OF THE FETUS IN THE ANCIENT NEAR EAST AND THE BIBLE

Finally, the general view of the fetus in both the ancient Near East and the Bible contradicts the notion that the fetus is not a person. Through various literary forms, prayers and incantations, medical, royal, legal and omen texts, the ancient Near East supplies general information about the fetus and specific evidence for the personhood of the fetus. The literature prominently emphasized the fragility of fetal life and the problem of infant mortality, characterized by H. W. F. Saggs as “a great scourge of ancient Mesopotamia.”<sup>18</sup> Incantations and prayers were offered to the gods to protect fetus and mother from demons: “It rests with you, Marduk, to keep safe and sound . . . , to keep the pregnant woman well, together with the fetus in her womb, to deliver (the child) . . . , (to rescue) him whom the

<sup>17</sup> Scholars have considered Josephus' comments on Exod 21 22 and on abortion an interpretational crux. On the one hand, Josephus held to the traditional Jewish interpretation in *Ant* 4 278 “He that kicks a pregnant woman, so that the woman miscarry, let him be fined by the judges as for having destroyed in the womb (and) having diminished the multitude, and let money be given to the husband of the woman for it (i.e. the fetus)” On the other hand, in *Ap* 2 202 he holds that intentional abortion is murder “The law commands (us) to rear all (of our offspring), and forbids to abort the fetus, neither to destroy (it after birth), but she will appear to be a child killer (*teknoktonos*) if she destroyed a soul and diminished the race” V Ap-  
towitzer claims that these two statements are a “gross contradiction” and that “in the first case a law is reproduced, hence the language of the lawgiver, in the second case a moral valuation is involved, hence the language of the moralist” “Observations on the Criminal Law of the Jews,” *JQR* 15 (1924) 87 n 117 This explanation, however, will not do. Josephus clearly appeals to the law and indicts the one who commits an intentional abortion as a “child killer” (Josephus used the cognate word *teknoktonia* to describe Herod when he murdered his sons *Ant* 16 392, *JW* 1 543) Perhaps he considered the Exodus case as an unintentional assault, although his loose paraphrase of Exod 21 22 does not directly indicate this since he considers intentional abortion as murder. If so, Josephus' views are not contradictory. Indeed they parallel some of the ancient Near Eastern laws. Josephus' statement in *Ap* 2 202 curiously resembles *Did* 2 2 and *Barn* 19 5 “You shall not kill a child by abortion, neither will you kill (the child) after it is born” Could these statements reflect a common axiom of both Jew and Christian concerning abortion in the late first and early second centuries?

<sup>18</sup> H. W. F. Saggs, *The Might that Was Assyria* (London: Sidgwick and Jackson, 1984) 138. Saggs states (p. 138) that most fetuses surviving childbirth died before maturing to adulthood. See now R. Labat, “Fehlgeburt,” *Reallexikon der Assyriologie* (ed. E. Ebeling, B. Meissner, et al., Berlin: Walter de Gruyter, 1957) 32. The fragility of fetal life and of early infancy may suggest why the fetus was given a different legal status than an adult. Since the fetus even under ideal circumstances rarely survived infancy, ancient Near Eastern society—including ancient Israel—did not give the fetus the same legal status as an adult. This did not, however, give anybody the right to willfully destroy the fetus.

Lamashtu [a demon who preys on fetuses and young babies] has seized."<sup>19</sup> In fact the gods were depicted as creating the fetus in the womb: "I am Ashurbanipal, the creation of Ashur and Ninlil . . . , whom (the gods) have chosen to be king and created in the womb of his mother."<sup>20</sup> This idea was not limited to royalty as certain personal names attest: Marduk-aḥḥa-ibni ("Marduk has created a brother"), Beli-ibnianni ("My Lord has created me"), Ilšu-ibnišu ("His God has created him").<sup>21</sup> Similarly a Middle Assyrian medical text describes a pregnant woman having hardship in childbirth: "Bring forth that sealed-up one, a creation of the gods, a creation of man. Let him come out to see the light." As the labor intensifies, the fetus, sensing danger and perhaps even death, cries out: "Now this is chaos! I am surrounded! Reach me!"<sup>22</sup>

Legal texts, especially the Middle Assyrian laws, also furnish evidence for the personhood of the fetus. As discussed earlier, these laws vary the punishment—sometimes a fine, at other times capital punishment—for destroying the fetus according to many factors, most important being the legal or social status of the mother. Section 50 of these laws, however, testifies to the personhood of the fetus: "He shall compensate for her fetus with a life (of another fetus). . . . But if that woman's husband has no son, if someone struck her so that she miscarried, they shall execute the striker; even if the fetus is a girl, he shall compensate with (his own) life." Here, according to the Mesopotamian idea of *lex talionis*, the assailant's wife was induced to miscarry. Therefore the punishment was fetus for fetus. If the victim's family did not have a son, the assailant lost his own life. Of course fetuses and adults differed in legal status. But the fetus has a life, just as the assailant has. In fact the Akkadian word for "life" is *napištu* (Hebrew *nepesh*), which may be translated "person" in this context and in many others.<sup>23</sup> Regardless of differences in legal status between the born and the unborn, they both possessed life or personhood. Furthermore section 53 is the only extant law from the ancient Near East contemplating the willful destruction of the fetus—what our society grimly designates "abortion on demand." The Assyrians, most likely expressing the opinion of the entire ancient Near East, condemned this practice as a capital offense. Why the Assyrians considered it so is not clear. They may have deemed willful abortion as a crime against the state or the father as

<sup>19</sup> E Reiner, *šurpu* (AfO 11, Graz, 1958) 25–26

<sup>20</sup> M Streck, *Assurbanipal* (Leipzig J C Hinrichs, 1916) 2 2

<sup>21</sup> See now CAD B, 88a, 95a, J J Stamm, *Die Akkadische Namengebung* (Leipzig J C Hinrichs, 1939) 139 ff

<sup>22</sup> W G Lambert, "A Middle Assyrian Medical Text," *Iraq* 31/1 (Spring 1969) 31–32, lines 47–49, I L Finkel, "The Crescent Fertile," *AfO* 27 (1980) 45 Since the Mesopotamians believed that the gods created and formed the fetus, ancient diviners would examine fetuses—especially those that were miscarried and deformed—for good and bad omens placed there by the gods. Examples "If a woman is pregnant, and her fetus cries—the land will experience misfortune" "If a woman gives birth to (a fetus that resembles) a lion—that city will be seized, its king will be put in fetters" E Leichty, *The Omen Series šummu izbu* (Locust Valley J J Augustin, 1970) 32

<sup>23</sup> CAD N, 1 300b, AHW 738

the Romans did,<sup>24</sup> or as a crime against the gods (since the fetus was their creation), or perhaps as the crime of taking an innocent life.<sup>25</sup> Certainly the answer may be one or all of these reasons, or perhaps some other unknown reason. But they deemed this practice a most serious offense. The Assyrians, to be sure, were a fierce people, their atrocities and barbarisms notorious against both the born and the unborn. Their regard for life was not uniform: They legislated against willful abortion, yet their armies committed unspeakable crimes against their adversaries, including the unborn.<sup>26</sup> Nevertheless the Assyrians, and almost certainly the entire ancient Near East, regarded the fetus as a creation of the gods, a life, a person whose willful destruction was prohibited and punishable by death.

Similarly the Bible, although not directly stating that the fetus is a person, clearly implies this. The Bible considered the fetus to be the creation of God. Psalm 139:13–16; Eccl 11:5 echo the viewpoint of Job 10:8–12: “Your hands have fashioned me; they have made me. / You have engulfed me about altogether. / Remember, now, that you have formed me like clay / and you will return me to dust. / Are you not pouring me out like milk, / and are you curdling me like cheese? / Clothe me with skin and flesh, / and weave me with bones and sinews. / Life and lovingkindness you have given to me, / and your providence has guarded my spirit.”

Moreover Scripture teaches that God had predestined Jeremiah before he was conceived and that God had consecrated and appointed him a prophet while he was still a fetus (Jer 1:5). Likewise in the NT Paul taught that God had predestined him while he was still a fetus (Gal 1:15). Other passages of Scripture such as Pss 51:5; 58:3; Job 15:14 indicate that man’s total depravity begins from conception and from the womb. Certainly if a fetus is deemed a sinner from conception then personhood begins at conception.<sup>27</sup>

Even Exod 21:22, although not directly addressing the personhood of the fetus, may indirectly suggest this by the language describing it. Biblical and post-Biblical Hebrew employed six different words to describe a fetus.<sup>28</sup> Post-

<sup>24</sup> For the Roman view on abortion see M J Gorman, *Abortion and the Early Church* (Downers Grove InterVarsity, 1982) 24–32

<sup>25</sup> How prevalent abortion was in the ancient Near East is difficult to determine since criminal cases were rarely recorded. That abortion was a problem may be inferred by its prohibition in section 53 of the Middle Assyrian laws. Nevertheless it was probably not a widespread problem for various reasons (1) Self-induced abortions were certainly dangerous for the mother, for both medical and legal reasons (2) Adoption, and less frequently child abandonment (CT 15, 6 7–8), were safer alternatives. Apparently in ancient Israel child sacrifice, not abortion, was the problem (Jer 7 30–34, 2 Kgs 21 2–6)

<sup>26</sup> This inconsistency is all too common with humanity. The Assyrians often considered, at least for propaganda, their adversaries as enemies of the gods. Therefore their adversaries deserved whatever atrocities the Assyrians committed against them. Moreover for war and diplomacy the Assyrians intimidated their enemies through such acts. Similarly, in ancient Israel God through the prophets condemned child sacrifice. But many within Israel practiced this abominable crime.

<sup>27</sup> Cf B K Waltke, “Reflections from the Old Testament on Abortion,” *JETS* 19 (1976) 12–13

<sup>28</sup> Other Semitic words for fetus include Aramaic *‘ûl*, along with the same six words used in Hebrew, Syriac *btin*, *‘ûl*, *galma* (Hebrew *golem*), *yahta* (Num 12 12, 1 Cor 15 8), Akkadian *kirsu*

Biblical Hebrew sometimes specified the fetus by *šēpîr* (*Nid.* 3:3), but more commonly by *ʿubbār* (*Yebam.* 7:3-5), whose verbal root occurs once in Biblical Hebrew (Job 21:10), meaning "to impregnate." Similarly post-Biblical Hebrew employed *šālîl* (*Hul.* 7:1; 9:2), whose verbal root occurs once in Biblical Hebrew (Ruth 2:16). Biblical and post-Biblical Hebrew also had recourse to *gōlem*,<sup>29</sup> "wrapping or folding together," to describe a fetus (Ps 139:16; *Pesiq. R.* 23), and *nepel*<sup>30</sup> (Ps 58:9; Eccl 6:3; Job 3:16; *Ohol.* 7:4), a technical term for a stillborn fetus. Finally, Hebrew described the fetus by *yeled*, once in Biblical Hebrew (Exod 21:22) but more commonly in post-Biblical Hebrew.<sup>31</sup> Of course *yeled* was the usual word in Biblical Hebrew for "child."<sup>32</sup> It described newborns (1:18), teenagers,<sup>33</sup> and even middle-aged adults.<sup>34</sup> Thus in Biblical Hebrew three different words described the fetus: *nepel*, *gōlem*, *yeled*. Two of the words, *gōlem* and *nepel*, never designated a living newborn, a child, or a young adult, and therefore did not imply personhood. But *yeled*, at least for Biblical prose, suggested or hinted at the personhood of the fetus since the same term could apply to persons. Hence whereas Exod 21:22 does not directly address the personhood of the fetus, the passage does intimate, by using *yeled* instead of *gōlem* or *nepel*,<sup>35</sup> that the fetus is more than just parental property. It is a *yeled*, a human being, a child, a fetus with personhood.<sup>36</sup>

Various Biblical passages and Exod 21:22, by specifying the fetus as a *yeled*, clearly suggest the personhood of the fetus. Therefore the Christian

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from *hrs* "to break or pinch off" (CAD K, 411, AHW 468a), *nid libbi* "a miscarried fetus" from *nadû* "to throw down" (CAD N, 2 210, AHW 786, cf Hebrew *nepel*), *ša libbiša* "that of her womb" (CAD L, 175, cf esp CT 27, 14 1 46 r24, CT 28, 6b 13, 35, AHW 549a), *kûbu* "premature or stillborn child," "fetus" (CAD K, 487, AHW 498), *izbu* "malformed newborn human or animal," "missgeburt" (CAD I/J, 317 ff, AHW 408), Arabic *ganîn* from *gnn* "to be covered, concealed, hidden" (compare Hebrew *gan* "garden"), *siqt* "miscarried fetus"

<sup>29</sup> Hebrew and late Akkadian (*gulênu* "a garment," CAD G, 127, AHW 296b) derived this root from Aramaic. The versions translate the word in Ps 139 16 as follows Vg, *informem*, LXX, *akatergaston*, Peshitta, *pûr'ânâ* (cf R P Smith, *A Compendious Syriac Dictionary* [Oxford Clarendon, 1902] 439), Targum, *gōšmî*, Arabic, *ā'dā'* (cf H Wehr-J M Cowan, *A Dictionary of Modern Written Arabic* [Ithaca Spoken Languages Services, 1976] 619)

<sup>30</sup> The versions translate this word as follows Vg, *abortivum*, LXX, *ektrōma* (1 Cor 15 8, Num 12 12, Job 3 16, Eccl 6 3), Peshitta, *yahtā* (Smith, *Syriac Dictionary* 191), Targum, *šālîl* or *niflā'*, Arabic, *siqt* (Wehr-Cowan, *Dictionary* 415) Compare Akkadian *nid libbi* (CAD N, 2 210, AHW 786)

<sup>31</sup> Mishnaic Hebrew, at least for reasons of ceremonial purity, designates the fetus as a *wālād* after 41 days See n 37 *infra* (*Nid* 3 2, 7)

<sup>32</sup> In Biblical Hebrew poetry *yeled* may even refer to the offspring of animals (Job 38 41, 39 3, Isa 11 7)

<sup>33</sup> Ishmael was at least 14 years old when the Scriptures referred to him as a *yeled* (Gen 21 15, cf 16 16, 21 5), and Joseph was at least 17 years old (37 30, cf v 2)

<sup>34</sup> Rehoboam began his rule over Judah at the age of 41 (2 Chr 12 13) Just before his reign he rejected the counsel of the elders and received advice from young men (*yēlādîm*), described as Rehoboam's contemporaries and peers (10 8, 10, 14) Thus Biblical Hebrew designates adults about 41 years of age as *yēlādîm* (I wish to thank S Paul for first directing me to this passage)

<sup>35</sup> The author of course could have employed a circumlocution, as in Akkadian (*ša libbiša*), to avoid *yeled* with its implications of personhood

<sup>36</sup> In the NT the Greek word *brepheos*, like *yeled* in the OT, is used of both fetuses and children (Luke 1 41, 44, 2 12, 16, Acts 7 19) V R Gordon, "Abortion and the New Testament," *Abortion: A Christian Understanding and Response* (ed J K Hoffmeier, Grand Rapids Baker, 1987) 80 ff

must decry and denounce abortion on demand in the strongest language. Psalm 139:16 states: "You are concerned with my fetal state, and in your book are written all the days that have been ordained, even before the days had been." This verse of course applies not only to the day of our birth but also to the day of our death. When man has usurped God's authority by determining who may or may not live, or who is worthy or not worthy to live, the inevitable result has been political tyranny and divine judgment.

#### IV. CONCLUSION

Exodus 21:22 does not indicate that the Bible values the fetus as less than human or as nonhuman. The argument that different punishments imply differences in personhood fails, root and branch, both in the larger ancient Near Eastern legal context generally and in the Bible specifically. In fact Exod 21:22 contemplates only an unintentional, negligent assault on a pregnant woman, not an intentional assault on the fetus. Thus to postulate from this passage that abortion on demand is acceptable under Biblical law is irresponsible and unconscionable. Moreover the literature of the ancient Near East, including the Bible, portrays the fetus as a life that cannot be willfully destroyed. Even Exod 21:22 may suggest the personhood of the fetus by referring to the fetus as a *yeled*. Furthermore, other Biblical passages more clearly indicate that the fetus is more than a lump of tissue. It is God's work, a life under his watchful eye and providential care.

#### V. EXCURSUS ON THE PREMATURE-BIRTH INTERPRETATION

For the past thirty years most evangelicals have argued that Exod 21:22 does not refer to a miscarriage but to a premature birth.<sup>37</sup> These evangeli-

<sup>37</sup> The RSV supplies an example of the miscarriage view "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." The NIV, on the other hand, follows the premature-birth view "If men who are fighting hit a pregnant woman and she gives birth prematurely but there is no serious injury, the offender must be fined." Ellington concludes that if a translation selects one of the interpretations the translators should furnish a note recognizing the possibility of the other "Miscarriage or Premature Birth?", *BT* 37/3 (1986) 334-337. The NIV supplies such a note, the RSV does not. Those who accept the premature-birth view include J Calvin, *Commentary on the Four Last Books of Moses* (Grand Rapids Baker, 1979) 3:41 ff., C F Keil and F Delitzsch, "Exodus," *Commentary on the Old Testament* (Grand Rapids Eerdmans, n.d.) 1:135, U Casuto, *Commentary on the Book of Exodus* (Jerusalem Magnes, 1967) 275, J W Cottrell, "Abortion and the Mosaic Law," *Christianity Today*, 17/13 (March 16, 1973) 602-605, H W House, "Miscarriage or Premature Birth Additional Thoughts on Exodus 21:22-25," *WTJ* 41 (Fall 1978) 108-123, W C Kaiser, *Toward Old Testament Ethics* (Grand Rapids Zondervan, 1983) 102-104, 168-172, G L Archer, *Encyclopaedia of Bible Difficulties* (Grand Rapids Zondervan, 1982) 247-249, J K Hoffmeier, "Abortion and the Old Testament Law," *Abortion* (ed Hoffmeier) 57 ff., R du Preez, "The Status of the Fetus in Mosaic Law," *Journal of the Adventist Theological Society* 1/2 (1990) 5-21. Adherents of this view often claim that the traditional interpretation, the miscarriage view, renders the fetus nonhuman. Du Preez (pp 16-17) states "This passage [Exod 21:22] is thus seen to differentiate between fetus and mother, treating only

cals have offered the following points as evidence: (1) Biblical Hebrew has a technical word for “miscarriage” (*šākōl*). If the author had intended to write about a miscarriage, he would have most likely used this word. Since, however, the author chose *yāsā*<sup>2</sup>, a word usually found with normal births, he probably envisioned a premature birth induced by the assault. Jack Cottrell affirms: “There is absolutely no linguistic justification for translating v. 22 to refer to a miscarriage.”<sup>38</sup> (2) Biblical Hebrew has a technical word for “miscarried fetus” (*nepel*). Since the author chose *yeled*, he probably had live children—or at least the possibility of live children—in view. Again, this suggests a premature birth.<sup>39</sup> (3) Hebrew *ʿāsōn* (“harm, damage”) is indefinite, and therefore should apply equally to both mother and

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the mother as a human being. Thus, because the fetus is not considered fully human, abortion is a permissible practice and is not to be equated with murder.” Cf. the statement of Kaiser (p. 171): “But the penalty clause is another source of misunderstanding, for some interpret Case A (i.e., the death of the fetuses) as necessitating only a pecuniary penalty while Case B (i.e., the death of the mother) calls for the *talion* principle. This would seem, then, to suggest to some that the fetus of Case A is less than human!” Of course the entire thrust of the preceding essay has sought to dispel this notion. Representatives of the miscarriage view include Waltke, “Reflections,” as well as traditional rabbinic sources. For comment on the legal status of the fetus in the latter cf. Aptowitz, “Observations,” D. Feldman, *Birth Control in Jewish Law* (New York: New York University, 1968), Sinclair, “Legal Basis,” S. Isser, “Two Traditions: The Law of Exodus 21:22–23,” *CBQ* 52 (1990) 30–45, J. Kleinman, “Abortion in the Talmud,” *Cincinnati Judaica Review* 1 (1990) 10–16, who states that the Talmud “tells us that abortion may be performed where there is a significant threat to the physical or mental health of the woman, but it is silent about non-therapeutic abortions” (pp. 15–16). For early-Church views on abortion see B. Honings, “Abortion,” *The Encyclopedia of the Early Church* (ed. A. Di Berardino, Cambridge: James Clarke, 1992) 1:2, Gorman, *Abortion* 47–73. The ancient versions are unanimous for the miscarriage view. The Peshitta, *Tg. Onqelos* (which interestingly translates the Hebrew word for “harm” [*ʿāsōn*] as “death” [*mōtā*]), and Samaritan Pentateuch and its Targum, although they can be interpreted according to the premature-birth view, undoubtedly understood the passage as a miscarriage since there is no evidence that the premature-birth view even existed then. The Vg and the Arabic clearly follow the miscarriage view as does the LXX (see n. 8 *supra*), which applies the “harm” to the fetus and varies the punishment according to fetal development. Aptowitz believes that the LXX is reflecting Greek influence (“Observations” 88). But the LXX may in fact be echoing Palestinian viewpoints. Cf. *Nid.* 3:2: “And the wise men say, ‘Every (miscarried fetus) that does not have the form of a man, it is not (considered for matters of ceremonial cleanness) an offspring (*wālād*)’,” 3:7: “Rabbi Ishmael says, ‘(If she miscarries) on the forty-first day, she will remain (unclean as) for a male (child) and menstruation, but (if she miscarries) on the eighty-first day, she will remain (unclean as) for a male or a female (child) and menstruation, since the male (foetus) is completely formed on the forty-first day while the female (foetus) is fully formed on the eighty-first day.’ But the wise men say, ‘The formation of the male and female (foetus) is the same, both are fully formed on the forty-first day.’” P. Blackman, *Mishnayoth* (Gateshead: Judaica, 1990) 6:11 n. 1: “The embryo (*wālād*) does not become perfect before the completion of the forty-first day.”

<sup>38</sup> Cottrell, “Abortion” 604; Kaiser (*Toward* 170); House (“Miscarriage” 110) and du Preez (“Status” 12–13) all agree with Cottrell. In fact Kaiser concludes that translations and commentators holding the miscarriage view “are all in gross error.” Concerning the word *šākōl*, Kaiser states: “In fact, Hebrew does have a word for miscarriage that is not used in Exodus 21:22–25, namely *šākōl*, ‘to be bereaved (of children), or to be childless.’” Similarly House writes: “Had Moses intended to convey the idea of ‘miscarriage,’ he certainly would have used the Hebrew word for miscarriage, *šākōl*” (p. 111).

<sup>39</sup> House (“Miscarriage” 114) also finds evidence of a premature birth in the plural *yēlādēhā*: “The use of *yēlādēhā* may be a plural ‘to indicate natural products in an unnatural condition,’ giving

fetus. Again, had the author intended to limit this word he could have inserted *lāh* to clarify that the harm referred only to the mother and not to the fetus.<sup>40</sup> (4) Although recognizing analogues between ancient Near Eastern literature and the Bible, adherents of the premature-birth view suggest that in Exod 21:22 the ancient Near Eastern legal tradition adds little or nothing to the understanding of the passage.<sup>41</sup>

The first three points are actually one argument: the technical language argument. If Exod 21:22 refers to a miscarriage, why does the author employ such general language? Why not use more precise, technical terms? An author of course chooses a given word over another for his own reasons, leaving the interpreter only to speculate about the author's decision. In Exod 21:22 the author chose *yāsā*<sup>3</sup>, a general term, meaning "to go/come out." It specified normal births (Job 1:21; Jer 1:5) and a miscarriage (or perhaps a stillbirth, Num 12:12).<sup>42</sup> There are, however, no passages in the HB where *yāsā*<sup>3</sup> clearly refers to a premature birth. Interestingly, the laws of Hammurapi and the Middle Assyrian laws described the miscarriage in general terms (*nadū*, "to cast down"; *salā'u*, "to cast, to drop").<sup>43</sup> Hebrew *šākōl* (like its cognates in Arabic, Ugaritic, Aramaic and Syriac), on the other hand, means "to bereave the loss of a child." Although *šākōl* is used in the context of miscarriages (or stillbirths, or perhaps even infant deaths) the word does not mean "to miscarry" or "miscarriage."<sup>44</sup> In Exod 21:22 the as-

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added evidence for a premature birth being involved [sic] in the text." This argument, I believe, is without merit. That *yēlādēhā* is a plural noun does not favor the premature-birth view over the miscarriage view.

<sup>40</sup> House ("Miscarriage" 120) maintains that *ʿāsōn* may refer not only to "severe or even fatal injury" but also to "a lesser injury."

<sup>41</sup> House ("Miscarriage" 117) dismisses the ancient Near Eastern evidence "since the passage [Exod 21:22] does not deal with abortion, but premature birth." Kaiser (*Toward* 103) merely states "We cannot agree that these laws [i.e. ancient Near Eastern laws] are the proper background for this law." Du Preez ("Status" 11) asserts "While these ancient codes should be [sic] not be ignored totally or discarded, it is obvious that it is more accurate hermeneutically to compare scripture with scripture than to depend on extra-Biblical sources. This is especially true in connection with the passage being studied because this entire legal section, Exodus 20:22-23:33, is represented as words spoken directly by God to Moses."

<sup>42</sup> Job 3:11 may furnish another context where *yāsā*<sup>3</sup> means "to miscarry." Certainly Cottrell's statement that "there is absolutely no linguistic justification for translating verse 22 to refer to a miscarriage" is wide of the mark. The "linguistic justification" for translating *yāsā*<sup>3</sup> as a miscarriage is the context in both Exod 21:22 and Num 12:12. More accurately, there is absolutely no "linguistic justification" for translating Exod 21:22, or any other passage in the HB, to refer to a premature birth.

<sup>43</sup> Akkadian, Hebrew, Aramaic and Arabic frequently employ terms such as "to fall, to thrown down, to drop" to describe a miscarriage, cf. n. 28 *supra*.

<sup>44</sup> BDB 1013 defines *šākōl* as "cause barrenness, shew barrenness, or abortion, miscarrying." The references cited to sustain these definitions (2 Kgs 2:11, Exod 23:26, Gen 31:38, Job 21:10, Hos 9:14) may refer to a miscarriage (or a stillbirth, or an infant death), but the word does not mean "miscarry." For instance Job 21:10b reads "Her cows give birth, and they do not bereave the loss of their offspring." Similarly Hos 9:14 reads "Give to them, Lord, what you will give. Give to them wombs that cause bereavement for the loss of a child." Parents may bereave (*šākōl*) the loss of older children (Gen 43:14) or fetuses (Hos 9:14). Only context decides whether *šākōl* refers to a miscarried fetus, a stillborn child, or a death of any child. But *šākōl* does not mean "miscarry."

sailant is guilty of inducing the children (fetuses) to come out of the womb (a miscarriage, I believe), not of causing a mother “to bereave the loss of her child.” Why Moses chose *yeled* instead of *nepel* is more difficult to determine. Perhaps he desired a more euphemistic term, and he may have chosen *yeled*, at least indirectly, to indicate the personhood of the fetus. Similarly the laws of Hammurapi and the Middle Assyrian laws employed a euphemistic circumlocution, *ša libbiša*, “that of her womb,” instead of the technical words for fetus (*izbu*, *kūbu*) or *nid libbi*, a miscarried fetus. Why Moses did not further define *ʿāsōn* by adding *lāh* or *lāhem* (*lām*) is uncertain. Perhaps he simply did not deem it necessary.

Although the “technical language argument” may, at first glance, seem to support the premature-birth view, upon further reflection the general language of Exod 21:22 actually favors the miscarriage interpretation. In fact the language is so general that there must have been a broader, cultural context to prevent doubt as to the law’s intent. The ancient Near Eastern analogues all supply that broader context. Indeed, in all Biblical and ancient Near Eastern legal literature and in almost all the general literature<sup>45</sup> there are no references to premature births.<sup>46</sup> It simply was not directly addressed. Therefore if Moses were introducing a new, unique law, previously unknown (at least from the sources we now possess) to the general society and culture, concerning a premature birth, he would have avoided ambiguity and misunderstanding by using precise language, especially if similar laws from the broader society, such as laws concerning miscarriage, might confuse the issue. Moses, on the contrary, by using general language in Exod 21:22, most likely intended his readers to understand this law according to the broader context of society. Therefore he considered it unnecessary to insert *lāh* after *ʿāsōn* (or to write *nepel* instead of *yeled*) since that society and culture understood to whom the *ʿāsōn* applied. Moreover the ancient Near Eastern law codes also employed general, non-technical language. Thus the general language of Exod 21:22 actually supports the miscarriage interpretation rather than the premature-birth interpretation.

The interpretational history of Exod 21:22 also favors the miscarriage view. The miscarriage interpretation, despite its general language that could have misled later interpreters, held unanimous consent from the LXX to Martin Luther—some 1800 years. John Calvin was the first to

<sup>45</sup> Premature births were no doubt a serious problem during this time, and most premature babies did not survive. The only references to premature births in Mesopotamian literature are in a few magical/medical texts (and perhaps indirectly in some omen texts) that supply incantations to prevent premature births. W. Farber, *Schlaf, Kindchen, Schaf!* (Winona Lake: Eisenbrauns, 1989) 4.

<sup>46</sup> CAD K, 487, furnishes the following definitions for the entry *kūbu*: “(1) premature or stillborn child, monstrous shape, (2) a demon.” CAD supplies only one text to substantiate the meaning “premature” (CT 23, 10 16 *kīma kūbu lā šizib ummišu*, “as the *kūbu* which does not suck the milk of his mother”). But there are no compelling reasons, contextual or otherwise, to translate *kūbu* as “premature child.” Von Soden (AHW 217b) better renders the passage “as the fetus who does not suck the milk of his mother.” The context seems to demand the CAD’s other definition “stillborn child” or, perhaps better, “stillborn fetus.”

suggest the premature-birth view. He was later followed by nineteenth-century German scholars such as Keil, Geiger and Dillmann. Yet none of these scholars had the complete picture. The ancient Near Eastern evidence was still underground. We cannot of course say whether this evidence would have changed their position. Nevertheless they probably would have reexamined their opinions. Since the 1970s, the decade of the *Roe v. Wade* decision, the premature-birth view has captured most of evangelicalism.<sup>47</sup> But notwithstanding the recent ascendancy of the premature-birth interpretation, at least among evangelicals, the miscarriage interpretation has the most impressive interpretational history and the securest exegetical foundation.<sup>48</sup>

<sup>47</sup> Nonevangelical scholarship has also proposed variations of the premature-birth interpretation, cf B S Jackson, "The Problem of Exod XXI 22-5 (Ius Talionis)," *VT* 23/3 (1973) 273-304, J Weingreen, "The Concepts of Retaliation and Compensation in Biblical Law," *Proceedings of the Royal Irish Academy* 76 (February 1976) 1-11 Jackson emends, interpolates, redacts and mangles the text for his peculiar interpretations His arguments have been carefully rebutted by S E Loewenstamm, "Exodus XXI 22-25," *VT* 27/3 (1977) 352-360 Weingreen believes that Exod 21 22 refers only to harm of the fetuses and not to harm of the mother and that if the fetuses are killed only monetary compensation is required, as in the Hittite laws Most nonevangelical scholars, however, have retained the miscarriage view

<sup>48</sup> I wish to thank Samuel Greengus, Steve Andrews, Mark Mangano, Ron Tolley, John Reynolds and Donna Fuller for their insightful suggestions and comments Of course the viewpoints expressed and any mistakes in the article are solely mine