

**THE LAWS  
OF THE  
BOOK OF THE  
COVENANT**

**Introduction  
and commentary on  
Exodus 20:22 to 23:19**

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## INTRODUCTION<sup>1</sup>

The title “Book of the Covenant” is taken from Exodus 24:7<sup>2</sup> where it refers back to verse three, “the words of the LORD and all the ordinances (*mišpātīm*).” This in turn refers back to the revelation which Moses had received from the LORD when he ascended the mountain for the first time, revelation we find in Exodus 20:22 – 23:33.<sup>3</sup> The book itself is divided into three sections. It begins with a section on the worship of God. At 21:1 we have a title for the next section: “These are the *mišpātīm*.” There follows a lengthy section of judicial laws, beginning with a series of “judgments” or case laws, which most appropriately fall under the rubric “*mišpātīm*,”<sup>4</sup> but also incorporating other kinds of legal formulations. The book concludes at 23:20-33 with a paraenetic section on the angel which will accompany the Israelites to the promised land.

The legal section itself is easily divided into two halves. The first part (21:1 – 22:20) concerns judgments and laws to which penalties are attached.<sup>5</sup> The second (22:21 – 23:19) concerns various laws and admonitions without penalties. It is primarily the first legal section, which concerns us in this introduction. Many liberal scholars argue that the whole legal section must postdate the Sinai encounter with God, among other things, because the laws (e.g. concerning ownership of fields, or the festival calendar) presuppose a settled life in the promised land.<sup>6</sup> It is, however, not difficult to imagine that God at the Sinai desired to give his people a law code, which would be useful in the settled condition of the promised land. More difficult, on the surface, is the nature of the laws themselves. As J. P. Hyatt has correctly observed, the laws seem to be “fragmentary and incomplete, not including by any means all that one would expect to find in a genuine law code.”<sup>7</sup> The “judgments” seem to be specific case studies with little or nothing to connect them. They give the appearance of arising from legal precedent, that is, specific cases that were decided in the past. And yet the biblical text asks us to understand that God gave *this legal code in this form* to Moses for the Israelites.

An appropriate way of understanding these judgments seems to me to entail an understanding of the presuppositions they embody. That the laws imply settlement in the promised land is only a small part of this. They imply much more. I would like to suggest that the judgments imply a court system (we might think of the elders at the gate, or of local or itinerant judges, cf. Exod. 18:13-26; Deut. 16:18-20; 1 Sam. 7:15-17)<sup>8</sup> and certain basic principles of both judicial process and punishment of the guilty.

### *Legal courts*

In the first place, we may consider the presupposition of legal courts. From Exodus 18:13-16 it is clear that Moses was functioning as a judge for disputes among the Israelites. “Statutes” and “laws” of God (v.16, cf. Gen. 26:5) were already known upon which Moses could base his judgments, laws which unfortunately are

<sup>1</sup> An earlier version of this introduction has been published as: “The Book of the Covenant and Elders” in *The Eternal Word Speaks Today* (Wipf & Stock, 2010).

<sup>2</sup> For ease of reference in this article I will use the regular English versification and not the Hebrew, which is sometimes different.

<sup>3</sup> I will not discuss various form critical theories of the make-up of the Book of the Covenant, its dating, and its place in the Book of Exodus. That is a subject apart (for summaries see, e.g., C. Houtman, *Exodus Deel 3*, Commentaar op het Oude Testament (Kampen: J. H. Kok, 1996) 87-106 and B. Childs, *The Book of Exodus* [Philadelphia: Westminster Press, 1974, 452-61). I accept its *prima facie* place in the canon as the revelation which God gave to Moses on the mountain.

<sup>4</sup> On *mišpāt*, see further B. Johnson “*mišpāt*” in *Theological Dictionary of the Old Testament* vol. 9, ed. G. J. Botterweck, H. Ringgren and H.-J. Fabry, transl. D. E. Green (Grand Rapids: Eerdmans, 1998) 86-98, esp. 94-95.

<sup>5</sup> The laws with penal sanctions are mostly case laws with a formal introduction using the Hebrew *ki* (the only other laws in this book to use this introduction are 23:4 and 5). This form occurs 17 times in this section. There are also four exceptions 21:12, 15, 16 and 17. The occurrence of this form enables us to discern where the different laws are separated from each other in this section. Distinguishing the various laws from each other in the ensuing section (without penal sanctions) is more difficult and therefore open to different interpretations. For further distinguishing characteristics between the two legal sections see C. Houtman, *Op. cit.*, 90-91.

<sup>6</sup> For example, B. Childs, *Op. cit.*, 458.

<sup>7</sup> *Exodus*, The New Century Bible Commentary (Grand Rapids, Eerdmans, 1971) 218.

<sup>8</sup> On judges and judicial process in Israel see further R. de Vaux, *Ancient Israel: Its Life and Institutions*, transl. J. McHugh (Grand Rapids: Eerdmans, 1997, first publ. in English 1961) 150-63.

unknown to us. That God chose the form of “case” laws for his revelation on the Sinai further implies a court system. The case laws of the book of the covenant would therefore function to repeat and supplement what was already known of God’s revelation in the area of justice.<sup>9</sup> A court system is also implied by a specific use of the word *’elohim* (“God” / ‘gods’). In Exodus 21:6 and again in 22:8 and 9 the word *’elohim* is used in a way which Jewish tradition as well as many modern scholars have taken to refer to judges.<sup>10</sup> This word, especially when coupled with a singular verb, is rendered as a singular, usually translated “God.” The plural form of the noun may in this case be considered a plural of majesty.<sup>11</sup> When coupled with a plural verb it is translated “gods.” In 22:9 the verb-form coupled with *’elohim* is plural. The context, however, prevents a reference to (pagan) gods. Therefore many interpreters (correctly in my opinion) refer here to the judges who are given a title of majesty.<sup>12</sup> The same use of *’elohim* to refer to judges can be found in Judges 5:8; 1 Samuel 2:25; Psalms 45:6; 58:1;<sup>13</sup> 82:1, 6; and 138:1.

### ***Insufficient evidence requires an oath***

In the second place, we should consider the fact that the need to determine sufficient evidence is presupposed. The question of (in)sufficient evidence is what lies behind the law in Exodus 22:10-11. When someone is given a domestic animal to look after and something happens to it (it dies, is hurt or is driven away), then the safekeeper is to swear on oath that he was not responsible for what happened. The implication is that the safekeeper in such a case is not required to make restitution to the owner. The owner is to be satisfied with the oath, for in the event that the safekeeper is lying the LORD himself will avenge the misuse of his holy name (cf. Lev. 19:11-12<sup>14</sup>). It is evident that the use of the oath is required because there is no further evidence available to actually prove what happened to the animal of the owner. Equally evident is the fact that the owner suspects that the safekeeper is not telling the whole truth. Otherwise he would not have appealed to the judges. It is just this use of the oath in cases of insufficient evidence, which the letter to the Hebrews refers to:

*For men swear by one greater than themselves, and with them an oath given as confirmation is an end of every dispute.* (Hebr. 6:16, NASB, cf. Deut. 6:13; 10:20)

It is clear elsewhere in Scripture that such an oath of purgation (the person taking the oath purges himself, by this procedure, from an aspersion of guilt) was normally to take place in the temple before the LORD himself. We read in 1 Kings 8:31-32, a section from the prayer of Solomon at the dedication of the temple:

*If a man sins against his neighbour and is made to take an oath, and he comes and takes an oath before Thine altar in this house, then hear Thou in heaven and act and judge Thy servants, condemning the*

<sup>9</sup> The striking resemblance of this law code with the *codex Hammurabi* (dating to approximately 1772 BC) as well as the many differences, both in length and in detail, support the idea that such codes of case law long predate the days of Moses. Genesis 26:5 presupposes that Abraham too had such a legal code given to him by God. The common elements between the book of the covenant and other ancient legal codes may, at least partly, be a result of God having given such a legal code to the early patriarchs, a code whose influence later infiltrated the various cultures which grew out of them.

<sup>10</sup> The Septuagint renders *hā’elohim* in Exod. 21:6 as “the court of God” cf. the Peshitta and Targums (C. Houtman, *Op. cit.*, 122).

<sup>11</sup> E. Kautzsch, *Gesenius Hebrew Grammar*, rev. transl. of 28<sup>th</sup> German ed. by A. E. Cowley (Oxford: Clarendon Press, 1985 [corrected ed.]) § 124 g; L. Koehler and W. Baumgartner (eds.), *The Hebrew and Aramaic Lexicon of the Old Testament*, rev. ed. transl. and ed. by M. E. J. Richardson, CDROM ed. (Leiden: Brill, 1994-2000) *s.v.* “’elohim and ’elohim,” B.1 and 2; C. Van der Merwe, J. Naudé, J. Kroeze, *A Biblical Hebrew Reference Grammar*, electronic ed. (Oak Harbor: Logos Research Systems, 1997) 250 (“royal plural”); B. K. Waltke and M. O’Connor, *An Introduction to Biblical Hebrew Syntax* (Winona Lake, Indiana: Eisenbrauns, 1990) 122-23 (“honorific plural”).

<sup>12</sup> There is in this case (with a plural verb) no justification for the rendering “God” (contra e.g. N. M. Sarna, *Exodus*, The JPS Torah Commentary [Philadelphia: Jewish Publication Society, 1991]). The NKJ translates “judges”, which is, of course, an interpretation of the more literal “gods”.

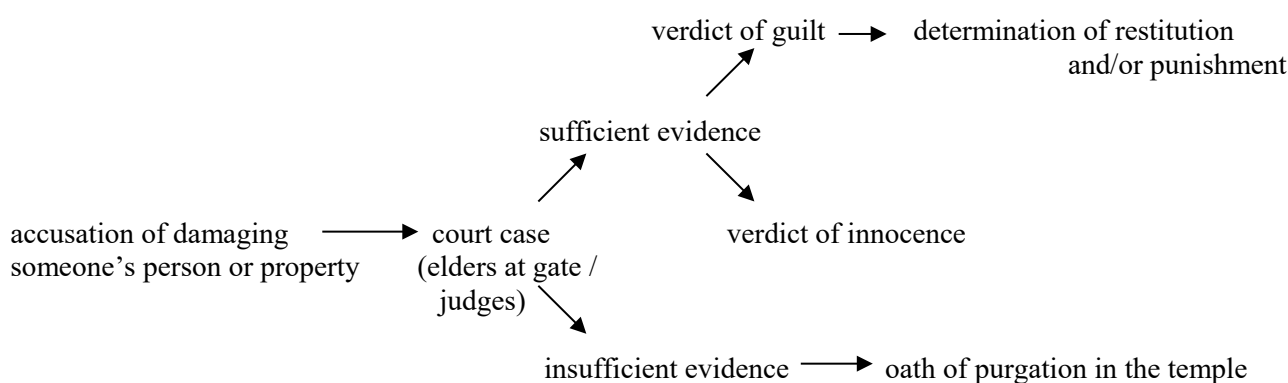
<sup>13</sup> I accept the common emendation of the Massoretic Text’s *’elem* (“silence”) to *’elim* (“gods”).

<sup>14</sup> These two verses in Lev. 19 should be read together as one legal unit (legal units in this part of the law are separated from each other by the concluding phrase “I am the LORD”). As such, false swearing is here directly related to court cases where there is a charge of theft or dealing falsely with one’s neighbour.

wicked by bringing his way on his own head and justifying the righteous by giving him according to his righteousness. (NASB, cf. 2 Chron. 6:22-23)<sup>15</sup>

A specific example of such an oath is provided in Numbers 5:11-31 where a fairly elaborate ritual is used in the case of a husband who suspects his wife of adultery. The wife is brought to the temple and made to undergo an oath of purgation. Standing before the officiating priest with a special grain offering, she accepts a very specific self-imprecating curse with a double “amen” and drinks a special curse-drink.<sup>16</sup> It is unclear whether such a ritual was typical of all oaths of purgation. It would seem that normally such oaths involved non-specific curses. In Exodus 22:10 the phrase “if he has not laid his hand on the property of his neighbour” (literal translation) uses an *’im* (“if”) clause, well-known in oath formulations. The apodosis of such oaths was sometimes vaguely expressed, for example, “May God do so to me, and more also, if ...” (2 Sam. 3:35, NASB, cf. 1 Sam. 3:17), but most often not even expressed with so many words at all.<sup>17</sup>

The use of the oath in cases presenting insufficient evidence enables us to diagram the basic system of justice presupposed by the laws in the Book of the Covenant as follows:



An accusation of one person against another inevitably involves damage to one's person or property (slander is not a criminal offence unless there is such damage).<sup>18</sup> If the judges determine that there is insufficient evidence an oath of purgation is applied (cf. Hebr. 6:16). This means that the accused must take an oath that

<sup>15</sup> Herein lies the background to Prov. 29:24 (literally translated), “Whoever is a partner with a thief hates his own life; he hears a curse, but reveals nothing.” He hates his life because he is allowing God to curse him after he has been adjured to tell the truth.

<sup>16</sup> This law does not, on the surface, seem very attractive. A husband who suspects his wife of adultery, even if he has no evidence, may bring her to the tabernacle and have her undergo this seemingly degrading ritual whereby she asks the LORD to curse her if she is not telling the truth. What is more, the wife has no right to make her husband undergo the same ritual. The most difficult verse is perhaps v.31 “Moreover, the man shall be free from guilt, but that woman shall bear her guilt” (NASB). It is clear that it cannot be the intention to say that men are allowed to commit adultery while women are not! If there was evidence for adultery, then both men and women had the right to appear before the elders at the gate to bring charges. The possible guilt of the man *here*, is the guilt of wrongly being jealous of his wife, accusing her of adultery when she had, in fact, been faithful. If, after completion of this ritual, it becomes clear that the woman is accepted by God, and thus not an adulteress, there is no punishment for the wrongful accusation of her husband. If the woman dared to come before the LORD when she was *guilty* (of adultery), then there is a certain punishment for her — not the death penalty, but physical punishment from the LORD which results in the inability to bear any more children. This fact will have meant that in practice very few *guilty* women would have dared to undergo the ritual. This law will have been used for women who were wrongly accused by their husbands of unfaithfulness and came to the LORD for *justification* of their innocence. This law is therefore given to provide *protection* to a woman when she encounters the social dangers of a jealous husband. It does not tackle the problem (sin) involved with such jealousy itself, but rather of the social danger which such a wife encounters. For this reason a wrongly jealous man is not punished (as an incentive for him to bring his wife to the tabernacle in such an eventuality). And that is why a woman equally jealous of her husband does not have the right to bring him to the tabernacle for such a ritual. *The law concerns the protection of the socially weak in society.* A jealous husband might terrorize his wife (for potential dangers see Exod. 21:10), but a jealous wife was not a danger to her husband in the same way. See further my article “The Jealous Husband” at:

<http://anderson.modelcrafts.eu/articles>

<sup>17</sup> See further Koehler / Baumgartner (eds.), *Op. cit.*, s.v. “*’im*,” 4. The priestly ritual following an unsolved murder in the country also involves an abjuration of innocence (Deut. 21:1-9). Although the text does not specifically use an oath formula, this is probably intended. No apodosis is indicated. This purgation, despite the priestly ritual, occurs not in the temple, but in the countryside where the murder was committed.

he has not harmed his neighbour (or his property) and asks God to punish him if he is lying. The matter is effectively given over into God's hands and the accuser is bound to leave the matter there and take no further action (unless, we may suppose, more evidence should come to light). If there is sufficient evidence for a trial, the judges will pronounce a verdict. We learn in Deuteronomy 17:8-13 that cases too difficult for local courts could be handed over to a central court in the place where God had chosen to reside (which later became Jerusalem).

### *A regulating set of principles*

A third, and perhaps most significant, presupposition which these laws embody is a regulating set of principles for the determination of punishment. Such principles are nowhere enunciated in the laws of Moses which have been handed down to us, but may be discerned by a study of these case laws. The case laws themselves are surely intended to provide examples of special circumstances and exceptions to these general governing principles.

We should remember that it is not the intention of the Book of the Covenant to be a completely new legal system for Israel. It is not a "lawbook" in the modern sense of that word, wherein all possible situations and loopholes need to be covered. With these judgments the Lord concerns himself with supplementing and correcting judicial practice and custom among the Israelites. We saw above that already before the Sinai encounter, Moses could speak of the statutes and laws which God had given for judging the people (Exod. 18:16).

The principles upon which the punishment is determined may be summarised in a relatively simple way. All cases of damage may be placed into one of three categories as follows:

- 1) *Damage inflicted with intent to harm requires restitution and the application of the lex talionis (eye for eye, etc.).*
- 2) *Damage inflicted through negligence requires restitution*
- 3) *Damage inflicted by accident does not require restitution*

The principle of restitution is one which permeates the jurisprudence here. Time and again the issue at stake is whether or not restitution should be granted. Medical expenses and compensation for lost work provide restitution for an injury (21:19). The owner of an uncovered pit is held responsible for domestic animals which fall into it and must make restitution (21:34). A thief must make restitution (22:3), one whose animal grazed another's field (22:5), one whose fire went out of control (22:6), one who borrowed another's animal and it became harmed (22:14). Many other case laws, which do not mention restitution specifically may also be interpreted in this light. For example, a father, who is responsible for guarding his daughter's virginity, is recompensed with a stiff fine when his daughter's virginity is taken by another male (22:16-17).

The case laws show clearly that restitution is generally not required when the damage is caused by accident. An animal given in safekeeping that dies or is hurt or driven away does not require restitution unless it can be proven that the damage was caused by the safekeeper himself (22:10-11). It is likewise implied that inanimate property, which is damaged when given in safekeeping, does not have to be restored. The law in 22:7-8 is only interested in whether or not the safekeeper himself laid his hands on the property. Other case laws provide nuances and exceptions to this general rule of thumb. When a person has borrowed an animal to use for himself, he remains responsible for it and must provide restitution even if it is hurt by accident (22:14). However, the responsibility remains with the owner if he was with the animal at the time (22:15).

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<sup>18</sup> An exception is made in the case of a curse against one's parents (Exod. 21:17, cf. Lev. 20:9). However, we should bear two things in mind respecting this law. Firstly, that invoking a curse involves asking God (or gods) to injure one's parents. Secondly that the verb *k-l-l* (piel) denotes "treating with contempt and humiliating," an example of which is given in Deut. 21:18-21 (see Sarna, *Op. cit.*, 123). It is interesting to note that the prohibition in Exodus 22:28 against cursing judges (*'ēlōhīm*, "God" is probably not intended, for that would be a capital offence, cf. Lev. 24:11-15) or a ruler (*nāšī'*) of the people is located in the second section of laws and therefore does not incur a penal sanction.

Another special case concerns an ox, not known as dangerous, which gores someone else to death. The owner of the ox is not held responsible for the accident, but the dangerous ox must be killed (21:28).

The last example touches on a series of special cases involving the death of someone. A dead person cannot be restored to the family. It would appear that any thought of *restitution* by monetary recompense is excluded. The sanctions involved when a death has occurred should be viewed as punishment and not a form of restitution. Before we return to this point, however, it is necessary to discuss the general principle for punishment (retribution), which governs the case laws, namely, the *lex talionis*.

### **The Lex Talionis**

The principle is expressed in 21:23-25, “life for life, eye for eye, tooth for tooth,” etc. A simple example of the application of this principle is the punishment normally accorded a thief. He is to pay double what he stole (22:4, 7, 9), that is restitution and a retribution equivalent to the amount he stole.<sup>19</sup> When applied to physical injuries, there is good reason to believe that the principle was generally only literally applied in the case of death. The principle “eye for eye, tooth for tooth” was a legal principle stating the need for a punishment equal to the crime. This principle is found in two other places in God’s law, Leviticus 24:17-20 and Deuteronomy 19:21. Essentially it provides that each sinful deed must receive an equally fitting punishment. In each case it is a principle with a judicial context. For this reason the Lord Jesus turned so sharply against the Pharisees when they abused this principle as an excuse to justify personal revenge (Matt. 5:38-39).<sup>20</sup>

This principle of a just retaliation means that when a victim loses a body part, he may demand (before the judges) that the perpetrator’s same body part be removed as punishment. If your neighbour plucks out your right eye, then, according to God’s law, you may demand from the judge that his right eye also be removed. This is not restitution, it is retribution. The practice may sound somewhat cruel, but we should understand that in reality it seldom appears to have been carried out literally. The fact that the victim *may* demand the perpetrator’s body part gives him bargaining leverage for the *alternative* of allowing the literal vengeance to be commuted into a fine (cf. Josephus, *Ant.* 4.280). In other words, instead of demanding the right eye of the perpetrator, the victim may demand a financial penalty. The victim will of course benefit much more from a fine (which he receives — not the court) than the right eye of the perpetrator. Because it is the victim who gives permission for substitution and who has the right to negotiate the extent of the fine, there is not so much scope for discrimination between rich and poor. If the perpetrator was wealthy, more money could be extracted from him in lieu of a body part, than from a poor man.

### **Substitution of retaliation for a fine**

Although there is no direct legal text in the selection of Mosaic law handed down to us which outlines the substitution of physical retaliation with a monetary fine, there are several examples of this practice. The law in Exodus 21:29-30 provides for commuting a death penalty into a fine. From the book of Proverbs we learn that the same possibility of substitution existed for adultery. The prescribed punishment for adultery is the death penalty (Lev. 20:10; Deut. 22:22). However Proverbs 6:32-35 (cf. 13:7-8) warns us that the plaintiff

<sup>19</sup> The case laws make an exception to this principle only in the case of stolen oxen or sheep which are not recovered.

<sup>20</sup> In the sermon on the Mount Jesus was not occupying himself with writing a new law. His intention was to maintain God’s good moral law in all its details (Matt. 5:17-20)! In Matthew 5 Jesus goes through several commandments and drives their message home into the heart in a hyperbolic fashion (i.e., with intentional exaggeration). In doing this he sets himself against the Rabbinical traditions of his time. A couple of examples should suffice: In v.27 he speaks about adultery. Jesus drives this home when he hyperbolically proposes that if our right eye causes us to sin, we should pluck it out. Even though it is true that it would be better for us to lose one of our body parts than to have our whole body thrown into hell, it is not Jesus’ intention to say that we should literally pluck out our eyes. If that were the case we would all need to blind ourselves. Jesus speaks in hyperbole, but his point is thereby all the more forcefully made. He reaches into our hearts when he states that even looking at a woman lustfully amounts to adultery. This is hyperbole (exaggeration) in the sense that whilst lusting after a woman is adultery in God’s eyes, it has no civil consequences (the court does not punish sins of the heart, and therefore, for example, lusting after a woman cannot be considered a valid ground for divorce). In v.33 Jesus speaks about breaking one’s oath. He speaks hyperbolically when he states that one should not make any oath at all (at the same time criticising the Jewish practice of swearing by the name of things instead of by the name of God). But Jesus himself was later to accept an oath (Matt. 26:63-64, cf. Gal. 1:20; Hebr. 6:13-18 and LD 37 of the Heidelberg Catechism). Jesus reaches into our hearts when he states that our yes should be yes, and our no, no. The same principle of interpretation must be applied to what Jesus says concerning the *lex talionis*.



(the injured marriage partner) in an adultery case could become so angry that he would not even be prepared to consider a fine as substitute for the death penalty. We see here that the right to insist on having the official sentence executed remains with the plaintiff.<sup>21</sup>

*The one who commits adultery with a woman is lacking sense; He who would destroy himself does it. ... For jealousy enrages a man, and he will not spare in the day of vengeance [i.e. at court]. He will not accept any ransom, nor will he be content though you give many gifts [i.e., even if you offer him a fortune as redemption]. (NASB)*

That such substitution was standard legal practice is quite clear from the one case where the LORD forbids it. We read in Numbers 35:31-33:

*Moreover, you shall not take ransom for the life of a murderer who is guilty of death, but he shall surely be put to death. And you shall not take ransom for him who has fled to his city of refuge, that he may return to live in the land before the death of the priest. So you shall not pollute the land in which you are; for blood pollutes the land and no expiation can be made for the land for the blood that is shed on it, except by the blood of him who shed it. (NASB)*

The penalty for murder or manslaughter may not be commuted into a fine, implying that for most other penalties this was an acceptable solution.

At this point, we can return to the question of sanctions when a death has occurred. As stated above, this is always a special case in view of the fact that restitution is impossible. Exodus 21:12-14 (cf. Num. 35) makes it clear that when death is the result of an action which was designed to harm the person, the death penalty applies according to the principle of *talio*. However, Numbers 35, as cited above, makes it clear that in this case the punishment was mandatory and not able to be substituted for a fine. The same quotation also states the reason for this measure, namely that blood pollutes the land and demands an atonement by blood. The wording here recalls Genesis 9:6 where the death penalty is also required for murder. In this text one other important facet is added, namely that man is created in the image of God. The honour of God himself is assaulted when a person is killed. His image is destroyed.

### ***Accidental death***

When death is the result of an accident the law separates two distinct cases. The first instance is that when death is a result of negligence by the owner, as in the case of an unprotected dangerous ox (cf. Deut. 22:8). The governing principles for punishment would demand restitution, but no punishment. However, in this case restitution is not possible. Therefore the owner is made liable to the death penalty, but in this case it is commutable (Exod. 21:29-30).

The second instance is death by accident without negligence. Here the law isolates two possibilities. If the death is an accident caused by the property of the owner (e.g. an ox which unexpectedly gores someone to death) there is no penalty (21:28). However, when the accident is caused by the person himself, he is compelled to flee to a city of refuge until the death of the high priest (Num. 35:9-11). Such provision of sanctuary is presupposed in Exodus 21:14 when it is stated that one who commits murder (death caused after intent to harm) may be removed from the sanctuary of the altar.

### ***Conclusions***

When we further reflect upon the basic principles of punishment in the Book of the Covenant and the way in which the case laws apply them to difficult circumstances, at least two things may strike us. In the first place, nowhere do we find provisions for the cutting off of hands or other body parts as pure punishment (e.g. for theft) as many of the other Ancient Near Eastern legal codes do. In the second place, there is no provision for confinement as a judicial sanction. In fact, the whole principle of rehabilitation, if it was considered a

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<sup>21</sup> This also helps us to understand Joseph's initial reaction to the pregnancy of Mary. He was well within his rights to choose not to press for the death penalty, but to quietly arrange for a divorce instead, Matt. 1:19.

principle at all, remains secondary.<sup>22</sup> Judicial process seeks primarily to provide restitution and an appropriate retribution. The retribution in most cases serves to benefit the victim and satisfy his upright demand that the wrong perpetrated against him be avenged. In this way, the punishments are designed to promote harmony and peaceful relations in society.

There is much to be learned here by elders of the church, especially when their task of promoting the peace in the congregation is taken seriously. They are given a ruling function in Christ's congregations (cf. Acts 20:28; Hebr. 13:17) and may be expected to function as judges in cases of civil disputes (1 Cor. 6:1-11). In that respect the Book of the Covenant, while not in every respect able to be applied today, does provide basic principles of justice from which we may learn. They are principles given to us by the revelation of our God, the same God, who provides reconciliation with himself through the substitutionary punishment of his own Son, Jesus Christ.

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<sup>22</sup> Rehabilitation *may* be considered to be effected through observance of the principle of restitution, but this idea is not made specific in the law.

## OVERVIEW OF THE BOOK OF THE COVENANT

### Worship of God (20:22-26)

#### Laws with penal sanctions — *crimes* (21:1 – 22:20)

##### *human relationships* (21:1 – 22:17)

- term and manumission of slaves (21:1-6)
- treatment of a slave-girl purchased as wife (21:7-11)
- murder and manslaughter (21:12-13)
- no asylum at the altar for a murderer (21:14)
- assault on father or mother (21:15)
- kidnapping (21:16)
- declaring father or mother to be cursed (21:17)
- injury sustained by a freeman during a violent quarrel (21:18-19)
- death of a slave after a beating (21:20-21)
- unintentional assault on a pregnant woman and the *lex talionis* (21:22-25)
- permanent damage to a slave after beating (21:26-27)
- laws concerning a goring ox (21:28-32)
- death of another's animal in one's uncovered pit (21:33-34)
- one's ox kills another man's ox (21:35-36)
- theft of oxen or sheep/goats (22:1-4)
- accidental grazing of another man's field (22:5)
- damage caused by out of control fire (22:6)
- theft of another's inanimate property in one's keeping (22:7-9)
- damage / theft to another's animal in one's keeping (22:10-13)
- damage to another's animal which has been borrowed or hired (22:14-15)
- defilement of a man's virgin daughter (22:16-17)

##### *other relationships* (22:18-20)

- death penalty for a sorceress (22:18)
- death penalty for bestiality (22:19)
- the ban for sacrifice to another god (22:20)

#### Laws without penal sanctions — *sins* (22:21 – 23:19)

- don't oppress a sojourner (22:21)
- don't afflict widows or orphans (22:22-24)
- no interest on loans to the poor (22:25)
- cloak as pledge to be returned before sunset (22:26-27)
- don't declare gods or a ruler to be cursed (22:28)
- payment of first-fruits / first-born not to be delayed (22:29-30)
- don't eat the flesh of an animal torn in the field (22:31)
- don't spread a false report, give false evidence or show partiality in a dispute (23:1-3)
- help your enemy's animal in trouble (23:4-5)
- don't pervert justice or take a bribe or oppress a sojourner (23:6-9)
- 6 years of sowing, 1 year of rest (for the needy) (23:10-11)
- 6 days work, 1 day rest (for animals, slaves, sojourners) (23:12)
- no mention of other gods (23:13)
- 3 annual feasts (23:14-17)
- don't offer blood with leaven, leave fat until the morning (23:18)
- first-fruits to be brought, don't boil kid in mother's milk (23:19)

### Accompanying angel (23:20-33)

## COMMENTARY ON EXODUS 20:22 – 23:19

### WORSHIP OF GOD

#### 20:22-26

These verses must be seen in the context of God's awesome speaking of the 10 commandments at Mt. Sinai. The people had become so afraid that they had asked Moses to ascend the mountain and receive the rest of the Law on their behalf. When Moses returned, the first thing that the LORD wished to reveal to his people was the correct way to approach him. They must not make images of gods to substitute for not wishing to be in his direct presence. We know from Joshua 24:14 that many Israelites served other gods in Egypt alongside the God of their forefather Abraham and so the temptation to worship idols will have been strong, particularly when the God of their forefathers seems so fearful and distant (not allowing images of himself). However, God does allow himself to be approached and when he chooses to make his name remembered in a particular place, they must build an altar to sacrifice to him.

It is to be noted that here (and in Deut. 4:36) God is said to have spoken, not from the mountain, but from the heavens. Throughout Deuteronomy four and five it is also stressed that God spoke from the midst of the fire (that is, the lightning, cf. Deut. 4:12, 15, 33; 5:4, 22, 24, 26). In fact it is never stated that God spoke from the mountain. Exodus 19:20 does, however, state that God came down to the top of the mountain in order to speak privately with Moses there.

The law of the altar has engendered much discussion. It is not the place here to discuss various alternative explanations, suffice to say that Wellhausen attempted to contrast this law with the law in Deuteronomy 12 requiring sacrifice at a central sanctuary. He used it as evidence for the evolution of Israel's religion. This older law, according to Wellhausen, allowed the Israelites to sacrifice upon a multitude of altars. It shows that the high places were perfectly legitimate. Later, in the time of Josiah, the book of Deuteronomy was fabricated with the law of Deuteronomy 12 stating that sacrifice is only legitimate in the central sanctuary. But this law cannot be interpreted to be in contradiction to the notion of a central sanctuary, for the central sanctuary is presupposed in the very same Book of the Covenant (cf. 23:17 and 19).

What is this law referring to? In the first place the law refers to altars which are built at places where the LORD himself causes his name to be remembered. These are *not* private altars. Nor does the law necessarily argue for a multiplicity of altars at the same time. At any time, when the LORD causes his name to be remembered in a particular place, an altar may be built to worship him.<sup>23</sup>

This looks back to the time of the patriarchs and the altars they built at special places where God was leading them, for example, Moriah (Gen.22:2), Beersheba (Gen.26:23-25), Bethel (Gen.35:1), Rephidim (Exod. 17:8, 15). It gives regulations on how to build such altars, also in the future (see e.g., Deut. 27:5-7; Josh. 8:30-31; Jud. 6:25-27).

The sacrifices mentioned here (burnt and peace offerings) are the two basic parts of the normal sacrificial ritual, which therefore involved a minimum of two animals (one as a burnt offering and the other as a peace offering). The sin and guilt offerings mentioned in Leviticus were given for special cases. We probably ought to understand that together with the burnt offering belonged the grain offering, the libation of wine, the addition of salt and so forth. The peace offering was shared with the LORD in that only the fat and the kidneys of that animal were presented on the altar.

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<sup>23</sup> C. van Dam has noted that although high places were condemned in Num. 33:52, they seem to have been tolerated for a time, cf. 1 Sam. 9:11-24; 10:5-6; 1 Kgs. 3:4. Van Dam (unpublished lecture notes, 1988) connects this toleration of high places with the removal of the ark of the covenant from the sanctuary in the time of Eli (1 Sam. 4). It is clear from Ps. 78 that this was God's judgment on the apostasy of Ephraim in whose territory the sanctuary resided at the time (i.e. in Shiloh). The ark remained separate from the tent of meeting until the construction of the temple under the reign of Solomon. It was only after the reunification of the sanctuary and the ark that the high places were once again mentioned with disapproval, e.g. 1 Kgs. 11:7. This suggests that the removal of the ark (i.e. the "glory of Israel," God's presence) also implied that there was no central sanctuary anymore. The concept of a central sanctuary was inextricably bound up with God's special presence there, symbolised in the ark of the covenant.

After the slaughter of the animals, the blood was first splashed against the altar. As explained in Leviticus 17:11, the blood was viewed as the symbol of life and was given by God upon the altar to make atonement for the offerer(s) (cf. Hebr. 9:22; Rom. 3:25). In this way, every sacrifice began with an atonement ritual. Only after the blood ritual for atonement had been dealt with, were the animals skinned and the all the various ingredients placed or tied together on the altar. The sacrifice was then set alight and burned as a symbolic meal for the LORD (cf. Lev. 3:11; Ps. 50). The meat of the peace offering was eaten by the offerers as a sacrificial meal. This law shows that the basic sacrificial procedure outlined in the laws of Moses also existed before the lawgiving at Sinai. The sacrifices mentioned here are clearly expected to be already well-known to the Israelites.

The LORD promises to come and bless the people when they sacrifice to him at the place in which he causes himself to be remembered. Sacrifice, of course, enables communion with the LORD by speaking to him in prayer (prayer could only be offered when accompanied by sacrifice). We learn from Lev. 9:22-24 that the priests came out and pronounced God's blessing upon the people after the blood rites were completed and before the offerings were put to the flame. The blessing therefore signifies reconciliation with God through forgiveness of sins. This in turn means that one may expect God to be his protector and shepherd (i.e. heavenly king) in life.

#### *The Design*

The altar is to have no steps. It is interesting to note that the altar in the vision of Ezekiel (43:17) has steps on the East side. It has been suggested that the altar of burnt offerings for Solomon's temple must have had steps due to its great height (it was four times the size of the altar in the tabernacle, cf. 2 Chron. 4:1).<sup>24</sup> But this regulation does not concern the design of the altar in the tabernacle / temple, rather, as noted above, it concerns memorial altars in special places where the LORD chooses his name to be remembered.

Furthermore, the altar of the tabernacle was designed after the sin of the golden calf and the consequent appointment of Levitical priests instead of the service of (first-born) sons (cf. 24:5 for offerings brought *before* the sin of the golden calf). That this fact may be relevant is clear from the reason given in v.26 for the prohibition on steps. The law seems to presuppose that the pre-Aaronic priest (cf. Exod. 19:22-24) would be wearing some kind of simple linen loincloth which upon the ascent of stairs would expose one's genitals (cf. 2 Sam. 6:14, 20). The priestly clothing later specified for Aaron and his sons would not have engendered this problem. Remember that a discharge of semen or blood from the genitals made one unclean and thus temporarily debarred from worshipping God (see my article *The Laws for Uncleaness in the Pentateuch and NT Baptism* 1.4A). Pagan worship at this time often included cult prostitution.

For an altar built of uncut stones, see Deuteronomy 27:5-6 and Joshua 8:31.

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<sup>24</sup> It is unlikely that Lev. 9:22 indicates that the altar in the tabernacle had steps. It would seem that Aaron stood on top of the altar to give the blessing.

## LAWS WITH PENAL SANCTIONS

### 21:1-6 (term and manumission of slaves)

This law discusses the term and manumission procedure for Hebrew slaves. Hebrew slaves were not to be permanent (unless of their own free will — see below). The maximum term of slavery was six years after which time the slave had to be set free. The owner was not to require the slave to purchase his freedom after the sixth year of service. He is to be set free without payment (i.e., payment by the slave). His wife (and, by implication, any children) are also not to be withheld. The master is, therefore, not to attempt by such means to compel the slave to remain in his service. Only if the wife of the slave was *given* to him by the master, may he require her and her children to remain. The wife was then an independent slave of the master who had been paid for. If the slave was married upon entry into service, then his wife (and, by implication, children) are not technically property of the master.<sup>25</sup>

Hebrews sold themselves into slavery when there was no possibility of paying off a debt.<sup>26</sup> A judge could also organise the sale of someone unable to pay a fine (cf. Exod. 22:3). The debt then had to be worked off. When the debt had been paid, the slave could go free. We may probably envisage a situation where the man unable to pay his debt could be sold to a third party for a term of service equivalent to the debt owed. The price paid for the slave would go to the creditor and the slave would serve his purchaser for the required term of service.<sup>27</sup> But in cases of grave debt, the LORD places a limit on the number of years service the master may demand. This will have prevented wealthy citizens from loaning huge sums of money or property to high-risk clients. The maximum amount which could ever be recuperated was the equivalent of six years labour.<sup>28</sup>

In Deuteronomy 15:12-18 this aspect of the law is expanded upon and the master is instructed to provide a slave who has served for the maximum of six years with animals from his flock, grain from his threshing floor, and wine from his vat. The ex-slave is to be given a fresh start in society and not just thrown into the gutter. The master is always to remember the compassion of the LORD upon Israel when he set them free from the Egyptian slavery (cf. Exod. 3:21-22).

A Hebrew slave was also given the opportunity of *choosing* to remain with his master permanently. The master is then to bring the slave to *hā-<sup>ʿ</sup>lōhîm*, a word usually translated “God” or “gods” in the Bible, but it can sometimes take the meaning “the judges” (i.e., judges are given the honorific title “gods” because they function in determining right and wrong). In Exodus 22:8 “judges” are certainly meant as *hā-<sup>ʿ</sup>lōhîm* is followed by a plural — not a singular — verb (see further there). The interpretation “judges” should, therefore, probably also be preferred here.<sup>29</sup> The slave is to be brought to the judges who will witness the fact that he voluntarily wishes to become his master’s permanent slave. The master is then to take him home and drive an awl through his ear into the door or doorpost of his house (cf. Deut. 15:17). This symbolises the fact that the slave is henceforth *bound* in obedience to this house (cf. the Hebrew expression “to give ear” meaning “to obey”).

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<sup>25</sup> The provision in Deut. 23:15-16 for allowing a runaway slave safe haven probably refers to foreign slaves fleeing to the military camp of Israel.

<sup>26</sup> The law here concerns the debt-slavery of a male Hebrew. The only law addressing the sale of Hebrew females (Exod. 21:7-11) concerns the sale of one’s daughter to be a wife / concubine (see below). It would seem that it was not the norm for women to be sold into debt-slavery. If a woman was married, then her husband would ultimately be held responsible for any financial transactions. In 2 Kings 4:1 we see a situation where the creditor demands the *children* of a widow. The widow herself does not appear to be threatened with debt-slavery. However, Deut. 15:12 also mentions the possibility that a Hebrew woman might end up in slavery.

<sup>27</sup> This situation is not too far removed from judicial rulings in Western society whereby someone is required to pay off a debt by parting with a certain percentage of his earnings. The idea is that he be left enough money for himself to live by, but be compelled to pay off his debt with any surplus income.

<sup>28</sup> It is interesting to contrast the law code of Hammurabi (§117) which had a maximum of three years for debt-slavery. God’s law takes the problem of indebtedness twice as seriously.

<sup>29</sup> The Septuagint adopts this interpretation.

The slavery laws of Exodus 21 and Deuteronomy 15 are supplemented by the law of Leviticus 25:39-55. The laws of Exodus 21 and Deuteronomy 15 presuppose a form of debt slavery whereby the Hebrew slave has not lost the title to his own land. This is clear from the fact that after six years of service he is provided with animals, grain, and wine. If he had lost claim to his land, this provision would make no sense whatsoever. Leviticus 25 concerns laws related to the preservation of land in the families of Israel, particularly through the institution of the year of Jubilee. The slavery law in this chapter concerns a Hebrew who has become so poor that he is forced to part with his land and thus sell himself into slavery. Debt is here not the problem. The Hebrew envisaged has no means (i.e., land) with which to provide himself an income. We ought not to forget that Israel was very much an agricultural and farming community dependant on the land. The ancient economy had no job market such as modern Western economies. Men worked on their own land, had their own home business, and employed their own sons to work for them. Farmers could use day labourers in season, but such workers were employed on a daily basis and enjoyed no fixed income (cf. Matt. 20:1-15). If extra workers were needed, foreign slaves could be purchased. It was, therefore, catastrophic for a Hebrew to become so poor that he needed to part with all his land. He was then often forced to sell himself into slavery. He did not work to pay off a debt. He worked as a slave because there was no other way for him to survive in the society, that is, until his land could be returned to him in the Jubilee year (once every fifty years). Land in Israel was a part of the inheritance promised by the LORD to his people. It was never to be sold permanently, but only to be leased. Every Jubilee year the land reverted back to the tribes and families to which it originally belonged. A Hebrew living as a slave because he had sold (i.e., leased) his land in poverty was to be released in the year of Jubilee when his land would be returned to him and he would receive a new opportunity for earning his own way in society. The law in Leviticus 25 stresses the fact that a Hebrew in this situation must not be treated harshly. He is to be thought of more as a hired labourer than a slave. Once again the master is to reflect upon the mercy of the LORD when he delivered the Israelites out of the harsh slavery in Egypt.

Elsewhere the LORD warns his people not forget mercy when dealing with problems of debt and debt-slavery (cf. Amos 2:6 and Neh. 5:5 and 8).

An additional note on the terminology used in this law for “master” and for “husband” is warranted. In v.3 the law speaks of the possibility that the slave is the “husband” of a wife. The term used here for “husband” is *baal*, the same word used for the god Baal. It means literally “lord” or “master” but is a common term in the Bible for the husband in a marriage relationship (e.g. Exod. 21:22; Deut. 24:4; 2Sam. 11:26; Prov. 12:4; 31:11, 23, 28; Joel 1:8; cf. Isa. 54:5; Jer. 3:14; 31:32). It is directly related to the verb “to marry” (*baal*) which means literally “to become master of” (see, e.g., Deut. 21:13; 24:1; Isa. 62:5; Mal. 2:11). A wife is thus sometimes called “the mastered one” (*b<sup>e</sup>ulah*, cf. Isa. 54:1; 62:4-5; Gen. 20:3; Deut. 22:22). This marriage terminology reflects the biblical teaching of the man’s headship in marriage (cf. Eph. 5:22-33).

The word for the master of the slave here is *adōn* which also means “lord” and is often used as a title for God (“the Lord God”).<sup>30</sup> Occasionally we find a wife addressing her husband with this honorific title, for example, Genesis 18:12; (cf. Jud. 19:26-27 [used by a concubine]; 1Kgs. 1:17 and Ps. 45:11 [used by the wife of the king]). 1 Peter 3:6 mentions the use of this honorific title by Sarah of Abraham to encourage Christian wives to respect the headship of their husbands.

Finally, we may ask why the LORD chose to begin the list of judgments for his people with laws on slavery! The repetition of this law in Deuteronomy 15 as well as the LORD’s own reference to it by the mouth of the prophet Jeremiah make a direct connection between the deliverance out of the slavery in Egypt and this law. The point is that Israelites are not to be kept as slaves permanently. Slave-owners should reflect upon God’s deliverance of them (or their forefathers) from permanent slavery. The LORD accuses the slave-owners in Jeremiah’s time of neglecting this law and pronounces his judgment as a result (see Jer. 34:8-22).

### **21:7-11 (treatment of a slave-girl purchased as wife)**

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<sup>30</sup> Later Jewish tradition uses slightly different vowels in the spelling of this word when it is used of God in order to make clear the distinction between the divine and human title.

A cursory reading of the this law is likely to conjure up a picture of a wealthy man lusting after a pretty girl on the slave market whom he then purchases as a bed-fellow. Further reflection reveals a totally different picture. The law is indeed placed here because it also has to do with a form of slavery, but the nature of the slavery is quite different. The law treats the purchase of a girl who is to be set aside as a wife, either for the purchaser or for his son.<sup>31</sup> Verse 7 lets us know that this case is different to the preceding. The girl is not free to go after six years “service”, for she is to be a wife. This much is clear both from the following (cf. vs.9-10) as well as from the terminology used. The word for female slave in v.7 (אִמָּה) indicates that the girl is to be a wife either to her master or to another slave.<sup>32</sup> As we shall see, this law should be considered part of the poor-laws in Israel, that is, a law designed to alleviate conditions of poverty.

To understand something of the necessity of this law, we need to remember that at that time it was customary for a wife-to-be to receive a handsome dowry. This customary dowry payment (which itself is not further regulated in God’s law) was not a payment made to the girl’s parents by the suitor, but a payment from the girl’s own parents to the girl herself (cf. 1 Kgs 9:16; Mic. 1:13-14). When the parents receive money from the suitor, this is considered to be the sale of their daughter as a slave-wife, as this law makes clear.<sup>33</sup>

Parents reduced to poverty might “sell” their daughter into marriage, instead of giving her away (cf. Neh. 5:5). It is obvious that this would be a last resort for parents, for their daughter is, in a real sense, demeaned. She no longer has the independent wealth that would be hers by way of a dowry. Furthermore, she has the status of a slave-wife. She, therefore, has no right to divorce her husband-master in a normal way and her husband-master has the ability to divorce her on virtually any grounds (see below). We should, however, also consider the fact that it would be socially demeaning for the husband-master to have as his wife a daughter who had been purchased from a poor family instead of a free girl with independent wealth (via her dowry). This would lead us to consider that the man who purchases a wife in this way, is at least partially motivated by a desire to assist a family reduced to poverty, despite the implications for his own social standing.

The law in question protects the rights of a girl who is sold in this way by her parents. There are three separate legal judgments.

In the first we are introduced to the case where the purchaser has appointed the slave-girl to be his own wife,<sup>34</sup> but she is not “pleasing in his eyes”<sup>35</sup> and he elects to divorce her. In this case she is to be given the right of redemption. Her parents, or other next of kin, may buy her back. She is under no circumstances to be sold to a foreigner whereby she might be taken outside of the covenant community. Her status as a covenant child of God is hereby safeguarded. This probably means that if her next of kin do not wish to redeem her, she may be sold to another Israelite. In this way the purchaser may recuperate something of his costs, but probably not all, since the girl can no longer be used as a wife (she is no longer a virgin) but only as a regular slave. The imposed restrictions are given “since he has dealt treacherously with her”, in other words, he has broken the covenant marriage. The wording makes it clear that while it is possible for him to do this, it is still considered to be morally reprehensible.

A different, and yet in many ways parallel, law in Deuteronomy 21:10-14 concerns the treatment of a slave-girl captured in war who is taken as a wife. In both cases it is clear that the husband-master has the right to

<sup>31</sup> Most translations correctly emend the אָל of the Massoretic text in v.8 to אֵל, a reading already found in the LXX. This reading maintains a parallel word-order in vs.8-9. The Massoretic text would assume that the master-husband desires to sell her off before having designated her either to himself or to his son. This reading, besides loosening the parallel with v.9, begs the question why he would be said to have ‘dealt treacherously against her’.

<sup>32</sup> The term for a non-married female slave is אִמָּה.

<sup>33</sup> 1 Sam. 18:25 should be understood in the light of this law. Saul demeans both his own daughter and David by making him purchase Michal as his wife.

<sup>34</sup> The law in Exod. 21 speaks of her being אָוֶן in his eyes. This word may mean anything from “disagreeable” to “evil”. The parallel law in Deut. 21:14 speaks of a situation in which the man does not “find pleasure” in the girl. This would suggest that Exod. 21:8 be interpreted as “disagreeable”.

<sup>35</sup> Of interest in this respect is Sirach 25:26 which advises the man whose wife will not do his will to “cut her off from his flesh”, that is, to refuse her conjugal relations (the phrase is not divorce terminology).



“divorce” her if she is not “pleasing in his eyes”.<sup>36</sup> However in the case of a girl captured in war who was not paid for, the master-husband may not sell her, but must let her go wherever she pleases. In other words she may choose to return to her homeland or to settle in Israel, which would probably mean that she would need to sell herself back into slavery, but without a marriage. The point is that, having “humbled” her, he may not make a profit from her. Since he got her for free, he may not sell her at all.

The second judgment concerns the situation where the purchaser gives the slave-girl to be a wife for his son. In this case she is to be treated “according to the custom of daughters”. Precisely what this entails is not spelled out. The law would seem to suggest that the master who purchased her must treat her as if she were his own daughter whom he was giving away in marriage. This might mean that he provide her with a dowry and that she be given the status of a free-wife, not that of a slave-wife.

The third judgment concerns the situation where the husband-master of the slave-girl, who was sold by her parents, acquires another wife next to her. This judgment protects the rights of the slave-girl as a wife. Just because she was *purchased*, she is not to be treated any less a wife. Her rights to food, shelter and conjugal relations are to be upheld. If these things are withheld or reduced, then she has the right to walk away from her master-husband. No payment or redemption is required. She may go free and thereby effect a divorce. Her right to conjugal relations should be interpreted as the right to bear children, who would then have a moral responsibility to care for her in times of trouble or in old age. It is important to note that this law presumes that a girl purchased as a wife would be, in the first instance, the only wife of the husband-master. Any notion of concubinage is excluded.

An interesting example of a modified execution of this law is found in the book of Ruth where Naomi, who wishes to give Ruth away in marriage, is not in a position to give her a dowry. She elects to sell the land belonging to her through her deceased husband Elimelech and to “sell” Ruth along with it. Because there is no male heir this sale is permanent and therefore needs to be bought within the clan via a “redeemer.” In this way Ruth, although “sold” into marriage, will be able to raise offspring to inherit the land in the name of Elimelech and his son (Ruth's former husband) Mahlon.

### **21:12-13, 14 (murder and manslaughter, no asylum at the altar for a murderer)**

I have chosen to deal with the following two laws together, for obvious reasons. In fact the restriction of a place of asylum to those guilty of accidental manslaughter was unique to Israel in the ancient world. The existence of places of asylum in and of themselves were commonplace. These were mostly holy places, for example, temples. In Israel it was also permissible to flee to the temple — that much is clear from v.14 where it is stated that a murderer may be taken away from the altar (implying that one who committed manslaughter was safe there, cf. 1 Kgs 1:50ff; 2:28ff; Ps. 27:5). And this is what is unique in God’s law for his people. For in the ancient world (even in the time of the New Testament), someone who had fled to a place of asylum *was always safe no matter what he had done*. The law here makes a distinction between manslaughter and murder.

It may surprise us, however, to learn that God defines the distinction between murder and manslaughter in a slightly different way than many modern nations or even other ancient civilisations. It is clear from this law that anyone who intentionally kills another person (i.e. in an illegal manner<sup>37</sup>) is guilty of murder and warrants the death penalty. But how does God define manslaughter (killing without intent)? The text speaks of someone who did not lie in wait for the other person, but God let him fall into his hand. In Numbers 35:22-24 a couple of examples are given:

*But if he pushed him suddenly without enmity, or hurled anything on him without lying in wait or used a stone that could cause death, and without seeing him dropped it on him, so that he died, though he was*

<sup>36</sup> The grounds for divorce in the case of a slave-wife appear to be very lenient — much more so than for a free wife (cf. Deut. 24:1 which speaks of an “indecent thing”), see my article “Biblical Principles Concerning Divorce”.

<sup>37</sup> Examples of legal killings are warfare, striking a thief caught in the act (Exod. 22:2), or rightful execution of one’s duty as a blood-avenger (see below).

*not his enemy and did not seek his harm, then the congregation shall judge between the manslayer and the avenger of blood, in accordance with these rules. (ESV)*

In such cases the person is cleared of a murder-charge. He may stay in a city of refuge. Manslaughter is, however, here defined in terms of *no intent to harm* and not *no intent to kill*. This is clear from the preceding verses defining murder:

*And if he pushed him out of hatred or hurled something at him, lying in wait, so that he died, or in enmity struck him down with his hand, so that he died, then he who struck the blow shall be put to death. He is a murderer. The avenger of blood shall put the murderer to death when he meets him. (ESV)*

Murder is the killing of a person as a result of premeditated intent to harm. It may not have been one's intent to actually kill the person, but if he dies, then one must pay the penalty, an irrevocable death sentence.<sup>38</sup> This means that if you accidentally kill a person, then the only thing the prosecution needs to prove is *intent to harm*. If you demonstrably hated the person, you could end up in a tight spot.

It is against this background that the Lord Jesus states that feelings of hate towards one's neighbour are in God's eyes tantamount to murder.

*You have heard that it was said to those of old, 'You shall not murder; and whoever murders will be liable to judgment.' But I say to you that everyone who is angry with his brother will be liable to judgment; whoever insults his brother will be liable to the council; and whoever says, 'You fool!' will be liable to the hell of fire. (Matt. 5:21-22, ESV)*

If it was clear that you had killed someone, then evidence that you called him names in hatred may have been enough to convict you of murder in certain circumstances. Jesus states that this in itself is sufficient to warrant God's punishment, for God is interested in the state of the human heart. In God's law, murder is defined in terms of the tragic results of feelings of enmity.

If enmity or intent to harm cannot be proven, then the person who caused the death could flee to a city of refuge. The idea of such areas of asylum is strange to the modern Western mind. And yet we ought to realise that such places of asylum existed in Europe right up until the time of the Reformation, when they were generally abolished.

The biblical system of cities of refuge is worked out in more detail in Numbers 35:9-34; Deuteronomy 4:41-43; 19:1-13 and Joshua 20:1-9. It is only hinted at here in Exodus 21 and the suggestion is made that at least God's sanctuary may function as such a place of asylum. (The law suggests that this was already current practice). The system of cities of refuge was to work as follows: If you had accidentally killed someone, or even if you had committed a murder and yet because of the circumstances wanted a judicial trial, you were to flee to a city of refuge. Six such cities were to be provided in the various regions of Israel. These were Levitical cities and thus places where there was no question of land being bound to any particular family. This was important, because if the judges found that the death was indeed caused by accident, then you would be given a place to live in the city. Here you would have to remain until the death of the high priest. In a Levitical city, a house could be given away without the complications of property rights which would revert in the year of Jubilee (cf. Lev. 25:10).

If, however, you fled to such a city for refuge, the elders of that city had to first ascertain that your application was genuine (Josh. 20:4). They would be concerned to avoid having to supply lodging to anyone who happened by. After you were admitted to the city, you would have to await the outcome of a judicial inquiry. In Deuteronomy 19 we learn that it was the task of elders in the region where the killing occurred to investigate the matter. If murder was proved (on the basis of at least two witnesses), you would be removed from the city of refuge and given over to the blood-avenger whose task it was to apply the death penalty.

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<sup>38</sup> In contrast, the code of Hammurabi (a legal code from Babylon dating to around the 18<sup>th</sup> century BC) distinguishes manslaughter and murder in terms of *intent to kill* not *intent to harm* (see *codex Hammurabi* §§ 206-208).

This system which the LORD appointed was, as mentioned above, quite different from that common in the ancient world. Firstly, outside of Israel no one was *given* lodging if he fled to a recognised place of refuge / asylum. You would have to find your own place to stay. Secondly, if you reached a place of asylum in the ancient world you were *guaranteed* safety for as long as you remained there. No judicial process could extract you from that place — even if it was proven that you were guilty of the most horrendous crimes. Anyone could flee to such a place of asylum, no matter what crime he had committed. This will have meant that such cities (outside of Israel) in the ancient world could easily become societies of criminals. Anyone scared of the consequences of his crimes could flee there and be safe. During the Roman Imperium the evils of this system were generally known and often discussed in the Senate at Rome.<sup>39</sup> But they could do little to change the situation. What we don't often realise is the fact that the great city of Ephesus, where Paul worked for two years at preaching the Gospel, was such a place of asylum — a refuge for all manner of criminals!

God's law regulated matters differently in Israel. Firstly, cities of refuge were only to provide refuge for those who had committed manslaughter (without intent to harm). Secondly, if the court of elders found that the accused was guilty of murder, he had to be removed to receive his punishment.

The system of cities of refuge remained in the civilised world, even after the Christianisation of the Roman Empire. God's law also spoke of such cities. At that time the six Levitical cities had all disappeared. In Christian lands, churches were declared to be places of refuge. Most churches in these times owned considerable tracts of land where applicants for refuge could be put to work. But in the course of time this system began to be seriously misused. It was not propagated according to the rules of God's law, but according to what had been the practice in the former Roman Empire. Known criminals were protected by the church from any legal proceedings against them. It was because of this misuse that the principle of using churches as places of refuge was abandoned in the time of the Protestant Reformation. We may ask whether it may not have been better to keep the principle of places of refuge, but to cleanse it of the unbiblical way in which it was maintained.

One question remains: Why was it necessary to live in a city of refuge if you had killed someone by accident? Is this not a serious breach of one's personal freedom? To understand this, we need to pay some attention to the institution of the blood-avenger.

We ought to realise at the outset that the biblical institution of the blood-avenger had nothing to do with vigilante justice. In the first place, the word itself is not very accurately translated for the biblical expression literally means "redeemer of blood." Spilt blood has to be atoned for, and *that* is the concern of God's law. We read in Numbers 35:33 ...

*You shall not pollute the land in which you live, for blood pollutes the land, and no atonement can be made for the land for the blood that is shed in it, except by the blood of the one who shed it. (ESV)*

God's law is not concerned about the personal vengeance of a particular family, but about the setting right of a violent crime which desecrates the land — a land wherein God himself has chosen to live. That spilt blood cries out to the LORD was already clear as far back as Genesis 4:10 where God said to Cain, "The voice of your brother's blood is crying to Me from the ground." God put it to Noah in these terms:

*Whoever sheds the blood of man, by man shall his blood be shed, for God made man in his own image. (Gen. 9:6, ESV)*

Spilt blood cries out to be atoned, and this is the task of the *blood-redeemer*. He must mete out the appropriate penalty for this crime and thus render justice.<sup>40</sup> He must concern himself with God's justice, not private retribution for his family. God appoints as the *blood-redeemer*, the closest adult male in the family of

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<sup>39</sup> The problem had become particularly acute in the reign of Emperor Tiberius (AD 14-37) when such cities with asylum status in the Empire had become havens to all kinds of criminals. Even criminal slaves were safe there.

the deceased. This man must carry out the death sentence in the case of murder, or, in the case of accidental manslaughter, ensure that the guilty party remains in the city of refuge. Even in the case of manslaughter, blood has been shed. The person who has done this is not always completely free of guilt, even if it was just carelessness. He does not have to pay with his life if he moves to a city of refuge. There, he may await the death of the high priest, whose own death will work the necessary atonement to enable him to return to his own land.

We ought to note that the blood-redeemer was not free to choose to let a murderer off the hook. He received a task from the LORD to avenge the spilling of blood. Only by executing the death penalty — after a judicial process — could the anger of God be mollified. The blood-redeemer was not to go hunting after a murderer on his own. He had to await the outcome of the judicial inquiry conducted by the elders of the region where the murder had occurred (Deut. 19). They would hand over the guilty party for execution. He may, of course, organise a search for someone suspected of the crime in order to put him on trial as the accused. But he was not to single-handedly try or execute anyone.

Finally, we ought not to think that the idea that murder desecrates the land is purely an Old Testament concept. In Revelation 6:10 we read of those who had been martyred for the faith. Their souls cry out to the LORD in prayer from under the heavenly altar ...

*“O Sovereign Lord, holy and true, how long before you will judge and avenge our blood on those who dwell on the earth?”* (ESV)

The blood of murder still cries to the LORD for (judicial) vengeance. This is something that we may — and even must — pray to God for. In modern Western society with its countless abortions, the church ought regularly to implore God to avenge the spilt blood in the land. We ought not to be afraid to sing prayers in the psalms crying out to the “God of vengeance” (e.g. Ps. 94).

### **21:15, 17 (assault on father or mother, declaring father or mother to be cursed)**

It is evident from the penalties attached to assaulting or declaring one’s father or mother to be cursed<sup>41</sup> that the LORD takes this very seriously (cf. Lev. 20:9). In the case of the assault, the application of the principle of restitution and *lex talionis* is set aside. When using words (“declaration of accursedness”) there can obviously be no regular application of the principle of restitution and *lex talionis*, as in the case of all other assaults. In fact slander or declaring others cursed, including judges and rulers, does not normally warrant civil punishment. For this reason such cursing is only prohibited in the second section of the book of the covenant, that without penal sanctions (Exod. 22:28).<sup>42</sup>

An exception is made with respect to declaring parents to be cursed. It should also be noted here that (unlike Exod. 22:28) the Piel *participle* is used and not a finite verb form. The Piel participle implies habitual action.<sup>43</sup> The law is not referring to a child who in a fit of emotion suddenly and *uncharacteristically* declares his parents to be cursed, but one who has made such a declaration and lives accordingly.

Violation of the parent relation, whether by assault or cursing is therefore set apart. There is a special relationship with one’s parents which makes these crimes the more heinous. The death penalty is not prescribed for assaulting or cursing one’s neighbour. These sanctions relating to the abuse of one’s parents are also much harsher than the penalties prescribed for similar offences in the surrounding nations, where it was common to have one’s hand chopped off for striking one’s parents.<sup>44</sup> The Lord Jesus confirms the death penalty for this violation of the parent relation in Matthew 15:3-4 ...

<sup>40</sup> On the principles of rendering justice in God’s law, see the introduction and further my article “De Doodstraf in Gods Wet” to be found at: <http://anderson.modelcrafts.eu/artikelen>

<sup>41</sup> The verb קלל piel does not mean ‘to curse’, but ‘to declare to be cursed’.

<sup>42</sup> As mentioned in the introduction, אֱלֹהִים, refers here to the “gods”, i.e. “judges”. Cursing *God* himself is a capital offence, cf. Lev. 24:11-15.

<sup>43</sup> See E. Jenni, *Das hebräische Pi‘el: Syntaktisch-semasiologische Untersuchung einer Verbalform im Alten Testament* (Zürich, EVZ, 1968) 77-87 and esp. 84.

*He answered them, “And why do you break the commandment of God for the sake of your tradition? For God commanded, ‘Honor your father and your mother,’ and, ‘Whoever reviles father or mother must surely die.’ (ESV)*

Why such a harsh penalty? There are a number of reasons why the relation with our parents is very important in the eyes of the LORD. Firstly, our parents are the people who brought us into being — under God’s blessing. In giving us life they were obeying the command of God to fill the earth and rule over it. Our origin lies with them. That life-giving relationship is very special. A number of God’s laws stress the importance of this relationship. Take, for example, the mysterious rule (Exod. 23:19b):

*You shall not boil a young goat in its mother’s milk. (ESV)*

By boiling a kid in the milk of its mother the holy relationship between mother and child is defiled — the relationship between child and the one that gave that child life. Children all too often do not appreciate the difficulty their parents went through in order to bring them into the world, to rear and educate them, not to speak of the pain in childbirth.

But there is also a second reason why this relationship is very special. God gave us as children to our parents. We were entrusted to them. Fathers and mothers must rear their children up in the name of the LORD. They promise this when they baptise them. The LORD is our heavenly Father and he gives our fathers and mothers the task of bringing us up in his holy name. God is thus the person who stands behind our parents in their raising of us. Assault on one’s parents is tantamount to assault on God himself.

A concrete example of someone who deserves the death penalty for despising his parents is given in Deuteronomy 21:18-21.

*If a man has a stubborn and rebellious son who will not obey the voice of his father or the voice of his mother, and, though they discipline him, will not listen to them, then his father and his mother shall take hold of him and bring him out to the elders of his city at the gate of the place where he lives, and they shall say to the elders of his city, ‘This our son is stubborn and rebellious; he will not obey our voice; he is a glutton and a drunkard.’ Then all the men of the city shall stone him to death with stones. So you shall purge the evil from your midst, and all Israel shall hear, and fear. (ESV)*

It is good that this case-law provides us with such a clear example so that we do not misunderstand God’s intention and think that little children who might from time to time say a bad word against their parents should be put to death. Deuteronomy 21 shows us a son who can no longer be held under control by his parents. He is a drunk and a “glutton,” perhaps better translated “contemptuous.”<sup>45</sup> He is stubborn and rebellious. What is more, this fact is assumed to be well-known. The men of the city are to engage in the stoning. In God’s law the *witnesses* to a crime are the one’s who must throw the first stones (Deut. 17:6-7), and in this case the witnesses are clearly the men of the city, not the parents. The parents are the ones who must judge the situation so serious that they bring their son for prosecution. It is an extreme remedy meant for cases where no other discipline will work. The parents must bear witness that they have done their best to discipline their child — all to no avail. Such a child must be removed from the people. Continued uncontrollable rebelliousness cannot be tolerated.

<sup>44</sup> See for example *codex Hammurabi* § 195 which only applies punishment when the father is struck. This law code also uses the *lex talionis* for assaults on one’s neighbour, but applies the principle of the removal of the offending body part to specific cases of familial assault.

<sup>45</sup> The word *וִּלְלוֹן* is not common, but the root goes back to the same origin as *לָלַן*. The translation ‘glutton’ relies on the context of its use here and in Prov. 32:21 and 28:7. The lexicon of L. Koehler, W. Baumgartner *et al* (*The Hebrew and Aramaic lexicon of the Old Testament* [Leiden: E.J. Brill, 1994–2000]) as well as A. Baumann (“לָלַן”, *Theological Dictionary of the Old Testament*, vol. 3, ed. G. J. Botterweck and H. Ringgren, transl. J. T. Willis *et al* [Grand Rapids: Eerdmans, revised ed. 1978] 215) suggest a meaning such as ‘rash’ or ‘contemptuous’.

As noted above, the Lord Jesus cites this law in his discussion with the Pharisees. He places the law concerning someone who has declared his parents accursed next to the fifth commandment requiring honour to parents. He shows hereby that declaring someone to be accursed is the opposite of honouring. In the Hebrew language “to honour” literally means “to give weight to.” And thus “to declare cursed” means literally “to make light.” Such a declaration indicates a loathing of one’s parents. Jesus shows that this commandment applies equally, if not more, to adult children. Scope for aggression against aged parents was all the more present in a society where the aged were often completely dependant upon their children for care, especially if they became weak, sick or senile.

### **21:16 (kidnapping)**

This law is repeated with small variations in Deuteronomy 24:7. Both laws describe a situation wherein someone is kidnapped and go on to give two possibilities (the *waws* should be interpreted as “whether ... or”). Whether the kidnapped person has been sold off, or whether he is still in his possession, the penalty remains the same, namely death.<sup>46</sup> This law thus forms another exception to the principle of reparation plus a penalty based on the *lex talionis*. The LORD has in this way chosen to show that kidnapping is also a particularly serious crime. The reason for the seriousness of this crime is not indicated. In the case of a fellow Hebrew, there is the consideration that he may be sold out of the covenant community. More fundamental is perhaps the idea that autonomous control over the freedom and / or slavery of a free man encroaches upon a territory reserved for God alone. Kidnapping is also mentioned in a list of sins following the order of the fifth to the ninth commandments in 1 Timothy 1:10, where it takes the place of the eighth commandment.

Deuteronomy 24:7 restricts the law to the kidnapping of a fellow Hebrew. This raises the question as to whether Exodus 21 only intends to speak of kidnapping a fellow Hebrew, or whether the kidnapping of *anyone* would warrant the death penalty. Given the general principle that the same law must apply to the Israelite as to the foreigner (cf., for example, Lev. 24:22), it would seem that Exodus 21 intends the death penalty for kidnapping anyone. The restriction in Deuteronomy 24 must then be considered, not as a *limitation* of the law, but a specific warning against kidnapping a fellow Israelite. The tribes of Israel would be well aware that such kidnapping belongs to their history (cf. Gen. 37:25-28; 40:15). Only Joseph’s mercy towards his brothers spared their lives. The Joseph tribes (Ephraim and Manasseh) could justly claim their double portion within the tribal structure of Israel.

The reason why this law against kidnapping is sandwiched between the two laws touching one’s relationship to one’s parents is not immediately clear. Perhaps there is an allusion to the kidnapping and sale of Joseph by his brothers, which was in a manner of speaking a blow against their common father. More likely is that we should see here a group of three laws which all deal with offences which are punished more severely than the *lex talionis* would demand. They are therefore all exceptions to the more general rule. Their ordering would appear to be according to the seriousness of the offence, assault on parents, kidnapping, declaring one’s parents accursed.

### **21:18-19 (injury sustained by a freeman during a violent quarrel)**

As we have seen above, if a free man (or woman) dies as a result of an assault, God’s law counts this as murder and the death penalty is mandatory. The case in vs.18-19 is different. Not only is there assault which does not lead to death, the assault in question is the result of two persons quarrelling, both evidently using violence. Such fighting seems to have been not uncommon (cf. Exod. 2:13; Lev. 24:10). God’s law does not require the judges to ascertain who started the fight and who was right in terms of the quarrel. If someone is injured, the other party must pay for his loss of time (e.g. reparation for lost business, or the costs of another to work in his stead) and for his medical expenses. In other words, there must be reparation for damages, but there is no penalty as such. Those who engage in fighting ought to expect to take the consequences. Damage done while fighting is thus not considered to be accidental, but neither is it considered to be a normal kind of assault, due to the fact that both men were attacking each other. An assault without cause (i.e. where only

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<sup>46</sup> The verb in Deuteronomy translated “mistreats” (NKJV) or “treats him as a slave” (ESV) is only used twice, here and in Deut. 21:14. These translations are based on the interpretation of the Septuagint (which renders עמר hithpael with καταδουλαστεύω). The lexicon of L. Koehler, W. Baumgartner *et al* (*op.cit.*) gives the meaning ‘to trade’ (based on comparative philology).

one party engages in violence) would involve both reparation and a penalty based on the principle of the *lex talionis* (see below). Jesus warns against engaging in violence and teaches us to turn the other cheek when violence is used against us by evil individuals (Matt. 5:39).

### **21:20-21 (death of a slave after a beating)**

A slave does not have the same rights as a free man. Technically, a slave is the property of his master, who is responsible for his food and shelter. Slaves have no real motivation to work except through the threat of discipline and the master has the right to exercise corporal punishment on his slaves.<sup>47</sup> This law (and that of 21:26-27) seeks to place limitations on the effects of such punishment.

If a slave dies as a result of his beating, the death of the slave must be avenged<sup>48</sup> upon his master. Although not explicit, the text clearly implies the death penalty for the master.<sup>49</sup> The law, however, gives the master the benefit of the doubt if the slave is able to stand and dies a day or two later.<sup>50</sup> The slave may then have died from other causes. In the case of an injured slave there is no reparation for loss of time or medical expenses as these are the responsibility of the master in any case. This law will have had the effect of forcing masters to be careful in the kind of punishment meted out to slaves. It would not be worth the risk of even coming close to killing one's slave.

Some commentators have argued that this law only applies to foreign slaves, citing Leviticus 25:44-46 (cf. vs.43 and 53) where the LORD says that Hebrew slaves are not to be ruled over with severity. In context, however, Leviticus may be referring to limitations placed on the length of slavery for Hebrews and the fact that Hebrew slaves cannot be passed on through inheritance. Even *if* there is a reference to the kind of toil to which they may be subjected, this does not amount to a prohibition against disciplining them. The text in Exodus makes no hint that only a certain kind of slave is in view here.

### **21:22-25 (unintentional assault on a pregnant woman and the *lex talionis*)**

Men fighting cause accidental injury to a pregnant woman. Accidental injury would normally not require any restitution. However, when caused by such irresponsible behaviour as fighting, the injury can clearly be attributed to negligence so that restitution (payment for loss of earnings and medical expenses) would be required. It is with these principles as a point of departure that we need to consider this law. It concerns the special case of accidental injury to a pregnant woman. The respect due to a pregnant woman means that fighting men, who come too near her (or who may be confronted with a pregnant woman that tries to break up the fight, cf. Deut. 25:11; 2 Sam. 14:6) will be subject to the *lex talionis* ("eye for eye" etc.) for a penalty payment. That is to say, the case is treated the same as if they intentionally set out to harm the woman.

Crucial to a correct understanding of this law is the interpretation of the nature of the damage done to the child in the woman's womb. Does she experience a miscarriage or a premature birth?<sup>51</sup>

<sup>47</sup> The Hebrew speaks literally of "the rod", implying that a rod belongs to the master's normal equipment (Houtman, *Op. cit.*).

<sup>48</sup> The NASB wrongly reads "punished."

<sup>49</sup> The law is elsewhere explicit that all murder requires the death penalty (see above). If another punishment had been intended this would need to be spelled out. Jewish traditions (Sammaritan Pentateuch, Targums) also argue explicitly for the death penalty. Despite this there are some modern commentators who suggest that a lighter punishment was intended.

<sup>50</sup> The NASB/ESV "survives" is literally "stands."

<sup>51</sup> The Septuagint interprets  $\eta\delta\epsilon\ \kappa\alpha\iota\ \tau\omicron\upsilon\tau\omicron\upsilon\sigma\iota\varsigma\ \alpha\upsilon\tau\eta\varsigma$  as  $\mu\eta\ \epsilon\zeta\epsilon\iota\kappa\omicron\nu\iota\sigma\mu\acute{\epsilon}\nu\omicron\nu$  ('not completely formed'). It translates as follows: "If two men fight and strike a pregnant woman and her child comes out and it is not fully formed, he will surely be fined, according as the woman's husband demands he will give (in accordance) with the assessment. But if it was fully formed he will give life for life ..." It is unclear to me whether the Septuagint translators were guessing as to the meaning of *asōn*, or whether they possibly read another text. W. Wevers (*Notes on the Greek Text of Exodus* [Scholars Press, Atlanta, 1990] 333-34) suggests that the translators interpreted the word in terms of a more (hypothetical) literal meaning of 'health', i.e. 'and it was not healthy' (therefore, 'not fully formed'). In any case, the point is that if the foetus was not fully formed, it would be difficult to literally apply the *lex talionis* because the body parts may not be able to be appropriately distinguished. For this reason a fine is imposed in the case of an unformed foetus. There would appear to be a large measure of theorising here on the part of the translators, without much practical experience. It is unclear whether the translators expected an unformed foetus to be still alive. In any case, the possibility that a formed foetus remained alive is certain, because of the application of the *lex talionis* (i.e. the idea that a living child might have one or other damaged limb). Philo interprets the Septuagint here as referring to a premature birth in both cases (*Cong.* 137-

If the text refers to a miscarriage,<sup>52</sup> then the point of the *lex talionis* refers to further injury to the mother. The monetary fine demanded by her husband is in lieu of losing the life of his child (one could hardly speak of “child for child” in such a case). On this interpretation the death of the unborn child is not treated as murder or as manslaughter, but as a form of injury.

If the text refers to a premature birth,<sup>53</sup> then the *lex talionis* refers to any further injury done to either the child or the mother and the monetary fine (which we would expect to be considerably less than in the first interpretation) is for the discomfort afforded the mother.

The text itself only says that the child “comes out,” not that it is dead.<sup>54</sup> Given the respect shown in the rest of the Old Testament for life from the moment of conception which is formed by the LORD (cf. Job 31:15; Ps. 51:5; 139:13-16; Jer. 1:5) the most obvious reading must be a reference to premature birth. This interpretation also makes sense of the phrase “he shall pay as the judges determine” (ESV).<sup>55</sup> In the case of the *lex talionis* the judges mediate, but do not determine the fine, which is a result of the negotiation between the victim and perpetrator(s). That the judges must here determine the fine follows from the judgment that the pregnant woman has been hit resulting in a premature birth, but there is no further harm to mother or child. There is, therefore, no basis for a negotiation based on the *lex talionis*.

As stated above, further damage to either child or mother is to be punished according to the principle of ‘like for like’. This is the principle used when injury is sustained with intent to harm and is applied here when fighting men cause injury to a pregnant woman. There is good reason to believe, however, that the principle was generally only literally applied in the case of death. God specifically forbade the principle of “life for life” to be commuted to a fine (Num. 35:31). But the principle “eye for eye, tooth for tooth, etc.” was a legal principle stating the need for a punishment equal to the crime. See further the discussion of this principle in the introduction.<sup>56</sup>

### **21:26-27 (permanent damage to a slave after beating)**

This law follows immediately upon the mention of the *lex talionis* (‘eye for eye ...’) because it treats an exception to this legal principle. Slaves do not have the right to take their master to court and sue for damages done to their body. However, the law protects slaves in a way that is more far-reaching than a court settlement. It grants them their freedom from the tyranny of a cruel master. Any form of lasting physical injury (eyes and teeth are clearly intended as examples) exacted on the slave is punished by allowing him his freedom.

Although it is not specifically stated here, if the slave is a Hebrew – that is someone sold into slavery because of debt – his freedom not only means that the debt is repaid early, but his master is duty bound to supply him with animals, seed and wine so that he has the opportunity to make a living for himself (Deut.

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<sup>52</sup> As, for example, Josephus, *Ant.* 4.278 interprets it.

<sup>53</sup> As, for example, Philo, *Cong.* 137-38 interprets it.

<sup>54</sup> The Massoretic Text reads the plural “children”, the LXX has “child”.

<sup>55</sup> The translation ‘as the judges determine’ is the traditional interpretation of the phrase בְּפִלְיָיִם (only used here), which goes right back to the interpretation of the Aramaic Targums. The LXX reads μετὰ ἀξιώματος (‘with the assessment’). Scholars who argue that this law concerns a miscarriage and that the payment to the husband is an application of the *lex talionis* for the aborted child have a vested interest in arguing that this traditional interpretation is incorrect.

<sup>56</sup> It is interesting to note that the *lex talionis* (which as a principle was common to all ancient cultures) appears in a very similar formulation in the codex of Hammurabi (§§ 196, 197, 200): “If a man put out the eye of another man, his eye shall be put out. If he break another man's bone, his bone shall be broken. ... If a man knock out the teeth of his equal, his teeth shall be knocked out.” (transl. L. W. King). The principle is quite differently applied however. In the first place it is only applicable to freedmen, not to slaves or others who are in subjection. Secondly, the financial equivalents which can be sought are specified and not left to a bargaining process between plaintiff and the perpetrator. In addition the principle is sometimes even applied in respect of the persons belonging to the perpetrator's household (e.g. if someone strikes and kills the daughter of a citizen, the perpetrator's daughter must be killed! §§ 209-10).



15:12-15). It should be noted that debt-slavery did not force the debtor to sell himself to his creditor. He had the option of selling himself to whomever he chose so that the price of his six-year slave term could be paid to the creditor. If he made a bad choice and sold himself to a person who turned out to be a cruel master, a beating which ruined any body-part would be sufficient to allow him to go free. If the slave were a foreigner, he is set free from what otherwise would have been slavery for life. In this case, the master is not bound to supply him with animals or food, but the law does encourage support for the needy foreigner. It is possible that such a person could not support himself, but he would, at the very least, have the opportunity of selling himself to another master of his own choice.

As with the law in 21:20-21 we see here a further incentive to masters not to abuse their slaves when discipline is exercised. This law is not reflected in any of the other legal codes from the Ancient Near East, where masters had the right to harm their slaves as they wished. Job 31:13-15 warns the reader that God watches over the slave when he files a complaint against his master.

### **21:28-32 (laws concerning a goring ox)**

The Israelites left Egypt with great numbers of livestock (Exod. 12:38). This great blessing of God, however, did require regulation. This law addresses the question of death caused by a domestic animal (*in casu* an ox), that is, an animal owned by someone. If the ox in question kills someone, but there is no question of the owner realising that the animal was dangerous, there is no punishment to the owner. This accords with the basic principle that damage incurred by accident requires no restitution or punishment. The ox itself, however, must be killed and the owner is forbidden to eat it. These stipulations ought not to be viewed as a punishment of the owner, but as punishment for the ox itself. This much is suggested by the stipulated manner of death by stoning, a judicial form of death penalty. The ox is punished in an exemplaric way for destroying a person who was made in the image of God (cf. Gen. 9:5-6).<sup>57</sup> In other words, the point is not that oxen are considered to be culpable moral beings, but that the stoning of the ox for murder ought to be a warning to people of the consequences of taking a human life.

This law may be compared to that for accidental manslaughter. In the case of accidental manslaughter the perpetrator must flee to a city of refuge until the death of the high priest. He is still, in however small a degree, held responsible for the spilling of blood. It is clear that this is not the case when his domestic animal happens to kill someone. The same principle is applied in Western legal systems.

When, however, the owner of the ox ought to have realised that his animal was dangerous (for example, because it had gored other animals) and he had not taken due precautions,<sup>58</sup> he is liable to the death penalty if the ox kills another free person (adult or child, male or female). The death penalty is in lieu of the fact that the normal principle of restitution in the case of damage due to negligence cannot be applied. For this reason the death penalty is not compulsory. (Murder carries a compulsory death penalty because in that case death is a punishment, not a means to provide restitution for the family of the deceased). The accuser (the family of the deceased) may decide to accept a ransom payment in lieu of death. The absolute maximum amount he could ask would be the total asset value of the owner<sup>59</sup> plus seven years wages (the maximum loan, which could be paid through debt slavery). We must assume, however, that the owner had the right to refuse to pay the ransom, in which case he would receive the death penalty.

<sup>57</sup> Later rabbinic tradition also forbade the owner to make use of the skin (see C. Houtman, *Op. cit.*). Houtman himself suggests that the reason the owner is not to eat of it is because the blood of the animal has not been drained. He views stoning not as a disciplinary death penalty, but the normal way of killing an animal that is dangerous. Several comments may be made on this view. In the first place, Houtman neglects to consider why a dangerous animal might not better be killed with a spear or a bow and arrow, just as wild animals were killed. In respect of eating it there are two considerations. Firstly, after death by stoning the blood could still surely be drained. Wild deer and gazelles must have been killed first (e.g. by spear) and only then had their blood drained. In the second place, there is the question as to whether the blood ritual of Leviticus 17 was already in force at this time.

<sup>58</sup> The LXX reads *לֹא שָׁמַר* for *לֹא שָׁמַר*, that is the owner did not *destroy* it.

<sup>59</sup> Only his land would not be included in the asset value as this in fact belonged to the LORD himself.

The death of a slave (male or female) by negligence does not require the death penalty, but the owner of the slave must be compensated with a payment of 30 silver shekels. The prosecutor in the case of the death of a slave is not his immediate family, but his owner. In this instance the law prevents the owner from using a death penalty threat to claim excessive compensation. Compensation for a dead slave killed in this way cannot be compared to compensation for a free person. This provision could be seen as a form of protection for slaves. If the master had the right to sue for a higher compensation, he may have been tempted to put his slaves unnecessarily in danger for their life. Restitution is made according to an average value for the slave. An idea of the value of various slaves can be gained from Leviticus 27:1-7.

|                      |                   |
|----------------------|-------------------|
| Male 20-60 yrs       | 50 silver shekels |
| Female 20-60 yrs     | 30 silver shekels |
| Male 5-20 yrs        | 20 silver shekels |
| Female 5-20 yrs      | 10 silver shekels |
| Male 1 mth – 5 yrs   | 5 silver shekels  |
| Female 1 mth – 5 yrs | 3 silver shekels  |

The table shows that the fine must be considered an average compensation.<sup>60</sup>

The stipulation in verse 31 that the owner of the ox must be punished whether the ox has gored an adult or a child is probably to be considered a warning against a common near Eastern custom. It tended to happen that a man was often punished for something he did against another's children, by having the same thing done to his children.<sup>61</sup> This law specifically forbids that practice by ruling that the owner of the ox (and thus not his own children) must be punished. See also Deuteronomy 24:16.

The principle that failure to take due precaution to protect one's neighbour from danger arising from one's own property makes the owner culpable is also further illustrated in God's law. In Deuteronomy 22:8 we read:

*When you build a new house, you shall make a parapet for your roof, that you may not bring bloodguilt on your house if anyone falls from it.*

In ancient Israel, the flat roofs of houses were used as outdoor patios. This required protection from falling off. The punishment for the death of someone who fell of one's roof, if it had not been protected, would be the same as for an unprotected dangerous ox. In the same way, local by-laws in western society compel citizens to protect dangerous property (e.g. railings around swimming pools, muzzles for dangerous breeds of dogs, use of safety belts for passengers in cars).

### **21:33-34 (death of another's animal in one's uncovered pit)**

The principle here is once again that damage caused to another's property due to one's own negligence ought to be reimbursed. The damaged goods become the property of the perpetrator because in the sense of this law he purchases the dead animal for the price it was worth when it was living. A similar situation arises when one borrows property from another and it becomes damaged while the owner is absent (22:14).

It is interesting to note that the law does not specify who in fact left the pit open, but speaks of "someone" (v.33). In every case it is the responsibility of the "owner" of the pit to make restitution. This implies that the owner is responsible for the activities of his workers, wife or children.

The dead beast, both here and in the next law, becomes the property of the owner of the pit. The skin could be used for leather, the fat could be used various purposes, however the animal could not be eaten. The meat

<sup>60</sup> The *codex Hammurabi* (§§ 250-52) has a similar law involving exactly the same cases in the same order, namely an ox which accidentally kills someone, an ox known to be dangerous which kills someone, and an ox known to be dangerous which kills a slave. The consequences are, however, different. The first case is similar except for the fact that the ox is left alive. In the second and third cases only a specified financial penalty is applied.

<sup>61</sup> For examples of this basic principle see the *Codex Hammurabi* §§ 116, 209-210, 230.

could be sold to a foreigner or given to a resident alien unconcerned with worshipping YHWH (cf. Deut. 14:21).

### 21:35-36 (one's ox kills another man's ox)

The first part of this law provides an exception to the legal principle that accidental damage does not require restitution. In this case the result of the damage is divided between the two parties. It is not immediately clear whether the exception is due to the fact that the accident was not directly caused by the owner himself, or whether the exception is confined to oxen, which were expensive animals essential to the livelihood of their owners. The latter is more probable. This law confines the exception to an ox which causes the death of another ox (other domestic animals were unlikely to cause death to each other). Lesser damage would therefore not have to be compensated. We should bear in mind that the sharing of the expense of the damage in this case helps to prevent a case of accidental damage turning a neighbour over to financial ruin in an economy without accident insurance.

The second part of this law is yet another application of the principle involved in the previous laws. The owner of property (*in casu* an ox) which he knows to be dangerous is responsible for reparation when another's property is damaged by it.

### 22:1-4 (theft of oxen or sheep/goats)

Several principles are at play in this law. The theft of oxen or sheep (or goats<sup>62</sup>) involves a modification of the general penalty for theft as outlined in 22:7 and 9, namely that the thief pay double the value of what he stole. When applied to oxen or sheep/goats this double repayment only applies if the original oxen or sheep/goats are recovered undamaged. If they have been otherwise disposed of the thief must reimburse oxen fivefold and sheep/goats fourfold, cf. 2 Samuel 12:1-6. If he is unable to pay, he may be sold into slavery until the debt is satisfied, that is, the sale price will be commensurate with his debt and thus determine the length of his service in slavery (see on Exod. 21,2 for the maximum service).<sup>63</sup>

The main question here is why oxen and sheep/goats are reimbursed in such large amounts. We note that these animals, in distinction to other domestic beasts, are reckoned by the law of Moses to be clean animals, that is, suitable for sacrifice. A related question is whether donkeys (mentioned only in v.4) are also to be reimbursed in such large numbers. To begin with the second question first, it would seem that the point of mentioning an unclean domestic animal in v.4 is to say that when oxen or sheep/goats are found intact the normal reparation is made, namely twofold. When oxen or sheep/goats (implying the exclusion of other unclean domestic animals) are not recovered, *their* reparation is much higher. If this supposition is correct, then it would appear that the *status* of oxen and sheep/goats as clean domestic animals has to do with the reason for the higher reparation. One could conceivably argue that this increased reparation has to do with the fact that these animals represent one's livelihood, but surely this would also be the case with donkeys. Therefore it may be the case that the higher reparation is related to the fact that oxen and sheep/goats are sacrificial animals and the thief is stealing potential gifts to God.<sup>64</sup> A final question is why the penalty is less (twofold reparation) if the animals are found alive in another person's possession. In this scenario, the owner naturally receives his very own animal(s) back. Houtman adds the consideration that in this case, it is unclear if the person in whose possession the animals are found was actually the thief, or, perhaps someone who found (or even obtained?) the animals and decided to keep them for himself.

<sup>62</sup> The term  $\pi\psi$  is generic for a animal from the flock.

<sup>63</sup> Josephus (*Ant.* 16.3) mistakes the law as if fourfold restitution was the punishment for all theft. Perhaps Zaccheus was under the same general misconception (Luke 19:8). Philo (*Spec. Leg.* 4.2), however, interpreted the law correctly as does the Mishnah (*Baba Kamma* 7:1). The law code of Hammurabi (§8) makes theft a much more serious crime, requiring such large reparations that most thieves will have faced the death penalty. A thief who is caught in the act or who has dug a hole through a wall also faces the death penalty (§§21-22). No distinction is made between livestock or other kinds of property. The law at §8 reads: "If any one steal cattle or sheep, or an ass, or a pig or a goat, if it belong to a god or to the court, the thief shall pay thirtyfold therefor; if they belonged to a freed man of the king he shall pay tenfold; if the thief has nothing with which to pay he shall be put to death." (transl. L. W. King).

<sup>64</sup> A subsidiary question is why the maximum penalty is only applied if the animals were not recovered intact. A thief of persons (i.e. a kidnapper) receives the maximum penalty whether or not the stolen goods were recovered intact (Exod. 21:16). This surely has to do with the fact that kidnapping involves persons made in the image of God.

The second principle concerns how far the owner can go when trying to prevent or catch a thief of oxen or sheep/goats. The law makes it plain that the owner should not set out to kill the thief. Daylight should provide him with enough means to prevent this. During the night the owner is given the benefit of the doubt.<sup>65</sup> If the thief he is trying to catch dies from his blows, there is no bloodguilt. Does this only apply to a thief of oxen or sheep/goats, or does it apply to all thieves? The law does not make this point clear.<sup>66</sup>

### 22:5 (accidental grazing of another man's field)

The text of this law in the Samaritan Pentateuch, Septuagint and Qumran show that the Massoretic text has skipped a line.<sup>67</sup> It should read:

*If a man lets a field or vineyard be grazed and lets his animal loose so that it grazes in another man's field, he will surely pay from his own field according to its increase, and if the whole field is grazed, he shall make restitution from the best of his own field and the best of his own vineyard.*

The principle here is one of restitution and not of penalisation. It would seem therefore that *intent to misuse* another man's field cannot be proven (otherwise it would be tantamount to theft and require double restitution).<sup>68</sup> The question addressed is that of the quality of the crop to be restored by the owner of the animal which got loose. If the animal only grazed part of a field, he is to restore the crop with normal (average) quality goods. If his animal ruined an entire field (increasing his culpability for not realising the problem sooner), he is to restore the damaged crop with the best of his own crop.

In both this case and the next there is a degree of negligence which caused the accidental damage. This is the reason why complete restitution is required, which was not the case with the pure accident of Exodus 21:35 where the damage was shared between the two parties.

### 22:6 (damage caused by out of control fire)

The point here is that damage caused by the *accidental* spread of fire ought to be fully recompensed. Obviously crops set on fire deliberately would be a separate matter (cf. Judg. 15:5; 2 Sam. 14:30). Nevertheless, the inability to control a fire which one has started implies some degree of negligence.<sup>69</sup>

### 22:7-9 (theft of another's inanimate property in one's keeping)

The property concerned in this case law has not been borrowed. It was given for safekeeping. Therefore if it has genuinely been stolen, there is no reason for the person who kept it to recompense the owner. He was only doing him a favour in the first place.<sup>70</sup> A thief if caught must pay the normal fine of double the value of what was stolen. This is a simple application of the *lex talionis*, namely, what he stole from another is taken away from him.<sup>71</sup> It is not immediately clear from the text whether the penalty is paid to the original owner

<sup>65</sup> Daylight ("if the sun has risen") is contrasted with "digging through" (often translated simply as "breaking-in"), the standard way of breaking and entering in ancient times, that is, digging through a wall. This was an activity associated with a break-in at night.

<sup>66</sup> Jeremiah 2:34 alludes to this law and presupposes that such thieves would be poor people. In Jeremiah God is blaming the Israelites for murdering the poor even when they were not breaking in at night.

<sup>67</sup> Between אָהָר and מִיָּטָב read יַבְעַר כָּל הַשְּׂדֵה וְאִם כָּל הַשְּׂדֵה יִבְעַר. The Samaritan Pentateuch reads יַבְעַר for יַבְעַר (against LXX, which is surely correct). The Qumran evidence is fragmentary, but shows clearly that the additional text was present. See J. E. Sanderson, *An Exodus Scroll from Qumran: 4QpaleoExod<sup>m</sup>* (Atlanta, Scholars Press, 1986) 76-77.

<sup>68</sup> Houtman (*Op. cit.*) suggests a scenario whereby a farmer whose crop has been harvested allows his animals to freely graze the land, however they wander over to a neighbour whose crop has not been harvested.

<sup>69</sup> The last clause of the verse ought to be translated: 'he who caused the burning of the damaged objects shall surely make restitution'. The object of the *Hiphil* בִּעַר ('to cause to be burning') regularly denotes that which is burned. The noun בִּעְרָה is a *hapax legomenon* in the Old Testament, but is parallel to גְּנֻבָה ('that which is stolen') and אֲבֵדָה ('that which is lost') in the same chapter. See E. Jenni, *Das hebräische Pi'el: Syntaktisch-semasiologische Untersuchung einer Verbalform im Alten Testament* (Zürich, EVZ, 1968) 81.

<sup>70</sup> The *Codex Hammurabi*, in contrast, requires the safekeeper to recompense the stolen goods (§ 125). The consequent risk involved in storing another's goods would no doubt inhibit people from doing this as a mere favour.

<sup>71</sup> The *Codex Hammurabi*, in contrast, allows one who catches a thief in the act to kill him there and then (§§ 21-22).

or the safekeeper from whose house it was taken. It is surely the latter for he is the one who has to take the trouble to find the thief and endures the stress related to the theft. This supposition is confirmed by the following law where we read that if a theft has definitely been established (that is, the thief is found), then the safekeeper should pay restitution to the owner. This implies that the safekeeper himself is able to claim the restitution and penalty from the thief.

If the thief is not found the judges may investigate the possibility that the safekeeper has secretly stolen the goods. Verse 9 makes it clear that such an investigation only proceeds when the owner of the goods accuses the safekeeper of having stolen his property.

Several matters are of interest here. First there is the term *ʿlōhîm* used in both v.8 and v.9. This word, especially when coupled with a singular verb, is usually translated “God”. The plural form of the noun is in this case an example of the plural of majesty. When coupled with a plural verb it is translated “gods.” In v.9 the verb form coupled with *ʿlōhîm* is plural. The context, however, prevents a reference to (pagan) gods. Therefore most interpreters (correctly, in my opinion) refer here to the judges who are given a title of majesty. The same use of *ʿlōhîm* to refer to judges can be found in Exodus 21:6 (see above); 22:28; Judges 5:8; 1 Samuel 2:25 and Psalms 45:6; 58:1 (accepting the common emendation to MT); 82:1, 6; and 138:1.

In the second place, if the judges determine that the safekeeper *had* stolen the property, he is treated as a thief and must recompense double. However, the law makes it clear that even in the case of an ox or sheep he only needs to pay double. He is therefore not to be treated as a thief of (potential) sacrificial animals would be treated (see 22:1-4).

### **22:10-13 (damage / theft to another’s animal in one’s keeping)**

Whilst the previous law dealt with inanimate goods given to someone for safekeeping, this law deals with the safekeeping of animals. In broad outline the same principle applies, that if the animal was damaged or driven away (i.e. stolen) and no blame attaches to the person who was looking after it, then no restitution is required. An oath may be required from the safekeeper to establish that no guilt rests with him (similarly, in the previous law, although that was not made specific, cf. Hebr. 6:16 and consult the introduction for more details on the use of this kind of oath). The implication is of course that if the safekeeper had been negligent, he would have to make restitution. If he can provide the evidence of an animal torn by wild beasts, no oath is required (v.13, cf. Amos 3:12). These legal principles were obviously quite old, given that Jacob complains that Laban did not respect them (Gen. 31:39).

A difficulty arises with v.12. Why should the safekeeper pay restitution if the animal was stolen from him? And what is the difference between the “theft” in this verse, which requires restitution and the “driving away” from the previous verse, which does not require restitution? Two solutions are possible, both of which go back to ancient times.

Some interpreters argue that the safekeeping of an animal, because of the work involved, must have always been recompensed. In other words, that an animal would only be looked after for a fee, which places extra responsibility with the safekeeper and makes him responsible if the animal is stolen. On this interpretation v.12 is concerned with theft by an individual, which ought to have been preventable and v.11 concerns the activity of rustling for which the safekeeper cannot be held responsible. While possible, this solution does not really convince in the end. Nothing is said in the law about safekeeping for a fee and the context (coming right after the previous law on the safekeeping of inanimate goods) suggests that no fee or self-interest on the part of the safekeeper is present. In the second place, there is the question why the safekeeper would only be held responsible for theft, and not for an attack by a wild animal (“torn to shreds”) etc.?

The second solution, which I believe to be the correct interpretation, would see this law as parallel to the previous law, dealing now with animate property. The point of v.12, on this interpretation is that when theft has definitely been established, the safekeeper should make restitution. The use of the absolute infinitive for the “theft” here should not be overlooked. We translate: “If it has certainly been stolen from him ...”, in other words if the thief has been caught and paid his penalty to the safekeeper (as in the previous law), then

the safekeeper ought to provide restitution for the animal. The safekeeper would be able to keep the penalty payment for the theft (double for a donkey, 4 or 5 times for a sheep or ox).<sup>72</sup>

It is interesting to note that the law for reparation sacrifices (cf. Lev. 6:1-7; Num. 5:5-8) provides regulations for those who have sworn a false oath in such cases as these laws. If a false oath has come to light a full restitution must be made with a penalty payment of 20%. The extra penalty (paid to the owner of the property) is given for the added sin of transgressing against God's holy name. Only after payment of the restitution and penalty may the priest accept the reparation offering and grant forgiveness in God's name.

### **22:14-15 (damage to another's animal which has been borrowed or hired)**

The previous two laws concerned property given for safekeeping. The safekeeper was doing the owner of the property a favour. In this case it is the owner of the property who is doing a favour to another person. His property has been borrowed so that the borrower can make use of it. Any damage to the property must be recompensed, unless the owner was also with it at the time of the damage. In the latter case the owner remains responsible for the use of his own property. If the property was not borrowed, but hired, then there is no requirement of restitution as the risk of damage was calculated in the hire. Presumably damage through gross negligence or deliberate misuse would be a different story. Although not mentioned specifically, the kinds of damage which may incur to the property show that an animal is in view.

The Septuagint interprets the last phrase concerned with hire differently than most translations. Although the "hired thing" is normally interpreted as the animal, it is here the hired day-labourer. In this case the point is that if a day-labourer has borrowed an animal from his employer in order to do his work, then any damage to the animal will be docked from his pay. On this interpretation we are left in the dark as to what would happen if the animal was worth more than his day's wage.

### **22:16-17 (defilement of a man's virgin daughter)**

This law is paralleled in Deuteronomy 22:28-29 as follows:

*Exodus 22:16-17. If a man seduces a virgin who is not betrothed, and lies with her, he shall give the marriage present for her, and make her his wife. If her father utterly refuses to give her to him, he shall pay money equivalent to the marriage present for virgins.*

*Deut. 22:28-29. If a man meets a virgin who is not betrothed, and seizes her and lies with her, and they are found, then the man who lay with her shall give to the father of the young woman fifty shekels of silver, and she shall be his wife, because he has violated her; he may not put her away all his days.*

Both of these laws speak about sex before marriage with a virgin girl. They show us that pre-marital indulgence in these privileges, reserved by our Lord for the bond of marriage, involves the obligation to marry. A boy and a girl who have become physically one are morally *obliged* to marry, regardless of whether the girl has become pregnant. God has restricted physical unity to marriage. A fine is to be paid to the father of the girl, namely 50 shekels of silver. This fine is called "the marriage present" in Exodus 22, but the translation can be confusing for it might appear that a dowry is meant. That is not the case.

It certainly was, and is, an Eastern custom for a dowry to be paid when a daughter is given away in marriage. We learn from the Bible that this was also the practice in Israel.<sup>73</sup> But, and this is particularly noteworthy, God's law says nothing about this practice at all. Dowries are nowhere regulated in the Bible. The only thing we read in this regard is that when there has been sexual intercourse before marriage a fine of 50 shekels of silver must be paid to the father of the girl. The term used (מִנְהָרָה) is found only three times in Scripture: here in this law, in Genesis 34:12 of the fine Hamor offers to pay after his son raped Jacob's daughter, and 1 Samuel 18:25 of the payment Saul requires of David for marrying his daughter. This last usage suggests that the payment made is related to the purchase of a slave-girl to be one's wife (see the commentary at Exod.

<sup>72</sup> As the previous law makes clear, if the safekeeper is found guilty of misappropriating the animal, his penalty would be a double recompense, regardless of the kind of animal.

<sup>73</sup> See, for example, 1 Kgs 9:16 and Mic. 1:13-14 for the custom of paying a dowry to the girl.

21:7-11). By stealing the girl's virginity he has – as it were – taken the girl to be his wife. He must therefore make a bridal payment (קֶדֶשׁ). But in this case the payment takes the form of a punishment both in the amount due, and in the fact that the father is at liberty to take the money and keep his daughter from marrying him as well.

When we consider that the average annual salary for a labourer in Moses' time was ten silver shekels, we may conclude that such a fine was roughly equivalent to five years wages!<sup>74</sup> If such an amount could not be raised the only solution would be debt-slavery. If we compare the value given to various sexes and ages in Leviticus 27:1-7, then we can see that 50 shekels is an amount far and above the working value of the girl concerned.

|                      |                   |
|----------------------|-------------------|
| Male 20-60 yrs       | 50 silver shekels |
| Female 20-60 yrs     | 30 silver shekels |
| Male 5-20 yrs        | 20 silver shekels |
| Female 5-20 yrs      | 10 silver shekels |
| Male 1 mth – 5 yrs   | 5 silver shekels  |
| Female 1 mth – 5 yrs | 3 silver shekels  |

The payment was a punishment. In this way we can see that this sin was not small in God's eyes. Stealing the gifts of marriage in advance has clear consequences (cf. 1 Cor. 6:18-20).

Along with the requirement to marry in these circumstances, the law also provides a safety rule. This requirement is not etched in stone. The father of the girl (as head of the family) has the right to refuse permission for such a marriage.<sup>75</sup> This is for the girl's own protection and would surely inevitably be the case if the boy was accused of rape. Even if there is no suggestion of rape, when such a sin occurs it is often the case that the boy and girl are deeply in love (or at least infatuated with each other). But love can be blind. It is possible that the boy is not at all suited for the girl. This is something that the father of the girl should ascertain. Sex before marriage does not automatically lead to a forced marriage. However, we must remember that the participants have stolen in advance what rightly belongs only to marriage. Whether or not the marriage goes ahead, the fine must still be paid (cf. Gen. 34, esp. v.12 for a practical example).

The Bible speaks from the position that a father gives his daughter away to her husband. It is important that the father grant permission for his daughter to marry. Christian tradition still has the practice of a young man asking permission from the father of his fiancée to take her hand in marriage. This is not just a polite, laudable practice, but a tradition with a Biblical foundation. It is not necessarily wrong for a boy and a girl to get to know one another before they marry, but the permission to marry given by the parents of the girl remains a Biblical requirement. For this reason it is also appropriate to ask the father of a girl for permission to court her. Such a request shows recognition of the fact that the girl being courted is not to be treated as a free agent. She remains under the authority of her parents. Maltreatment of her, whether or not she instigates anything, is sin against her parents. The Bible clearly speaks (with reference to the father) of *giving in marriage* (if a woman were to marry for a second time she would do so independently, 1 Cor. 7:39). Through the formation of a new marriage-bond the authority of the parents comes to a definitive end. The wording of Genesis 2:24 is quite illustrative at this point:

*Therefore a man shall leave his father and his mother and hold fast to his wife, and they shall become one flesh.* (ESV)

<sup>74</sup> See R. de Vaux, *Ancient Israel: Its Life and Institutions* (second ed., Darton, Longman & Todd; London, 1965) 76. This comparison can only give a relative impression of the size of the fine. The position of a labourer in Old Testament society cannot be identified with that of today. The amount of the fine was also the equivalent value of a healthy mature man between the ages of 20 and 60 years, cf. Lev. 27:3.

<sup>75</sup> It is not my intention to suggest that the mother has no role to play (see Prov. 6:20). In our society it would be normal (and also good) that parents discuss these matters together. The father, as head, will provide leadership and bear the final responsibility (just as Adam — not Eve — had to bear the final responsibility for the fall into sin).

The book of Genesis steps outside of the narrative for a moment and draws a conclusion for the reader. It is significant that we are told that the ‘man’ leaves his parents to cleave to his wife. We are not told that the girl leaves her parents. In fact, in biblical terms, she does not *leave* them, but she is *given* by them to her new husband.<sup>76</sup>

All of this shows that when sex has occurred before marriage, the boy has certain responsibilities over against the father of the girl. It is the father's duty to give his daughter away in marriage, regardless of her age. The sin must also be humbly confessed to the father.<sup>77</sup> The seriousness of the sin is expressed by the size of the fine. If the father consents to the obligation to marry, the girl, whose virginity has definitively been lost, becomes his responsibility and under his care.

Yet one more consequence follows for the newly married couple. Where sexual intercourse has occurred before marriage, the Lord ordains that the couple may never divorce. Such a marriage may never be annulled. Herein a certain protection is again afforded to the girl. She may never be abandoned. Her husband will always be responsible for her well-being, even if they should come upon difficult times in which it is necessary to separate. He will, as long as he lives, be responsible for her protection and support.

### **22:18 (death penalty for a sorceress)**

Sorcery carries a mandatory death penalty. It is an extreme form of public idolatry which, by its very nature, induces others to follow. Although it is clear from the law that there were also male practitioners of sorcery, it would appear that the most danger came from women (see further Lev. 19:31; 20:6, 27; Deut. 18:9-14; 1 Sam. 28; 2 Kgs 9:21-26; Isa. 47:9; Jer. 27:8-11; Mic. 5:10-15; Nah. 3:1-4; Mal. 3:5).

Certain other capital crimes should probably also be considered as requiring a mandatory death penalty. When we take into account the fact that it was left to the accuser (or plaintiff) to choose for a substitutionary fine or not, we may conclude that where there is no direct plaintiff the prescribed punishment must be executed. This would certainly be the case for crimes in which God himself is the plaintiff, that is, crimes which are clearly committed against God such as public blasphemy (Lev. 24:10ff; cf. Heid.Cat. Q/A 100) and working on the Sabbath (Exod. 31:15).

### **22:19 (death penalty for bestiality)**

Another mandatory death penalty (there being no opportunity for the accuser to bargain for a fine) is provided for sex with an animal. This law applies to both male and female transgressors (cf. Lev. 18:23; 20:16 and Deut. 27:21). Interestingly, Leviticus 20:16 (concerning a woman with a male animal) requires the death of both the person and the animal.

### **22:20 (the ban for sacrifice to another god)**

Sacrifice is an act of worship and in Israel the only permissible worship was that dedicated to Yahweh, the covenant God. It is important to understand that sacrifice was the only acceptable way of actually *communicating* with God. In other words, sacrifice made it possible to speak with God in prayer. Later, the morning and evening sacrifices in the tabernacle / temple would enable Israelites not physically present to pray to God by extending their hands towards the sanctuary at these times of sacrifice (cf. 1 Kgs 8:44-50). At this time however, an altar needed to be built and a personal animals sacrificed to enable prayer to God. Sacrifice was also more than just provision for communicating with God. It was the gifting of sacrificial animals bred domestically within the promised land. Because this promised land was Yahweh's land, animals dedicated to sacrifice within this land were considered to be his *property* and thus “holy”.

<sup>76</sup> Circumstances can become complicated if parents irresponsibly refuse permission to marry. In such cases it may be possible to appeal to the consistory who should judge whether the parents are sinning in their refusal (for example, if they want their daughter only to marry into money).

<sup>77</sup> Although Deut. 22:28 speaks of two people who are “found” out, the Lord expects us, if we have genuine repentance for our sin, to come forward and confess it. Repentance involves humbly accepting the punishment and consequences of our sins. Any attempt to hide our sins in order to circumvent our biblical responsibilities shows a lack of repentance and effectively blocks any private prayer for forgiveness.



The law is spoken to those who desire to communicate with Yahweh. Foreigners, who did not worship Yahweh, were not compelled to convert. They could continue living in Israel as long as they did not openly worship a foreign god.

This final law from the penal code provides for the most serious punishment of all, placement under the ban.<sup>78</sup> The ban was the punishment enacted when God's property (ritually designated "holy") was stolen. In the case described by this law, all sacrificial animals within the holy land are to be considered his property and therefore may not be given to another deity.<sup>79</sup>

The history of Achan in Joshua 7 shows how this punishment was to be exacted. The person and all his belongings, including wife and children, were to be killed and then burned with fire. That which is put under the ban becomes a whole burnt offering to the LORD (cf. Deut. 13:15-17). In this way, that which belongs to the LORD may not be taken from him and given to another god. He claims it back for himself as a burnt offering. The ban may be viewed as precursor of the punishment to be meted out upon the whole sinful world (which ultimately belongs to him, the creator) upon the last day when the earth and its works will be burnt up (cf. 2 Pet. 3:10-13). Leviticus 27:28-29 makes clear that the ban is a mandatory penalty which does not allow for redemption.

This law raises the question as to the supposed leniency towards those Israelites who were sacrificing animals to goat demons in the wilderness (Lev. 17:7). There is insufficient information to say much about this, but it is probable that God gave the warning and change in sacrificial law concerning this matter because he knew what was going on. The perpetrators themselves will have done this secretly and may have escaped notice, and thus prosecution.

In Deuteronomy 13 and 17:2-5 stoning is stipulated as the manner of punishment for an individual Israelite who serves or entices others to serve other gods. The ban only applies when God's property is stolen. Deuteronomy 13:15-17 does mention the ban with regard to the possibility that an entire city publicly engages in idolatry. Clearly the law presumes that when a city has gone over to the service of another god (or gods), sacrifices will have taken place.

The inhabitants of Canaan were to be eradicated and placed under the ban because the LORD had claimed that land for himself as holy and therefore all those guilty of idolatry within its territories were to be prosecuted according to this law (cf. Exod. 34:12-16; Deut. 20:16-18). They had stolen God's land.

The ban (Hebrew *cherem*) was translated in the Septuagint as ἀνάθεμα, a term which in normal Greek would refer to a votive offering, but among the Jews came to refer to the "ban". According to rabbinical sources, the synagogues came to use the concept of placing someone under the "ban" (*cherem*) for the most severe form of excommunication.<sup>80</sup> A person who had been placed 'under the ban' had to be shunned more completely than someone who had been placed under temporary ostracism (a penalty imposed up to a maximum of 60 days). A person under the ban was not admitted to schooling and one was not to have economic profit from him (no business dealings). The sources are silent with respect to the length of the ban and the possibility of lifting it. It is, however, probable that such a ban was for an undetermined length of time, but that upon repentance it could be lifted.

The apostle Paul (using the term ἀνάθεμα) places the Judaisers, who preached a Gospel of works, under the ban in Galatians 1:8-9. In the same letter he distinguishes the ban from the concept of curse (κατάρα) — a prayer that God punish someone (see Gal. 3:10). Generally speaking, those who do not love the Lord Jesus are also to be placed under the ban (1 Cor. 16:22), a sentence tantamount, in this period, to excommunication

<sup>78</sup> The NKJV describes the consequences of the ban with its translation "shall be utterly destroyed", but omits reference to the technical terminology used.

<sup>79</sup> It is interesting to compare the *codex Hammurabi* in this respect. Stealing from a god is punished by the requirement to pay back what was stolen thirtyfold.

<sup>80</sup> See "Der Synagogenbann" in H. L. Strack; P. Billerbeck, *Kommentar zum Neuen Testament aus Talmud und Midrasch*, 6 vols (München: C.H.Beck, 1926-1961) vol.4.1 pp.293-333.

(cf. Rom. 9:3). In 1 Corinthians 12:3 Paul seems to allude to the fact that the Corinthian Jews had placed Jesus under the ban.

## LAWS WITHOUT PENAL SANCTIONS

### **22:21 (don't oppress a sojourner)**

This law is more or less repeated at 23:9. It is also found at Leviticus 19:33-34 with the same motivation and the additional command to love the sojourner as oneself. The law is also reflected in Deuteronomy 10:18-19 (showing love to the sojourner by giving him food and clothing); 24:17 and 27:19 (no perversion of justice for a sojourner). Malachi 3:5 speaks of the Lord being a witness against those who turn aside the sojourner.

A 'sojourner' (גֵּר) was a person who had left his own village or city, usually because of war, famine or some other calamity and settled in another place where he had limited citizen's rights. We might today call him a 'refugee'. It ought to be remembered that no sojourner could own permanent land in Israel as the land belonged to the various families and reverted back at the year of Jubilee. However, this does not mean that a sojourner could not rent land for a specified period.

It is quite obvious that a sojourner was an easy target for oppression. The Israelites are therefore reminded that they were once in the same precarious position. It would seem to be implied that they ought not to engage in the same sin of oppression as the Egyptians did when pressing them into slavery.

### **22:22-24 (don't afflict widows or orphans)**

If sojourners, having limited rights in society, were the most vulnerable, widows and orphans were not far behind. The story of the widow in 2 Kings 4:1 who was in danger of losing her sons as slaves to creditors would not have been all that unusual. The kind of concern which other laws applied to the poor in general would apply particularly to widows and orphans (cf. Deut. 5:9, a warning to ensure the release of debts in the seventh year, Deut. 24:15 paying wages on the day of work done).

The point of the law is that widows and orphans were often not able to find justice through the legal system. God here promises that he, as the great King, will ensure that their justice is served – and his justice may turn out worse for the offender than that of a human court. The afflicted who have no recourse to justice in an earthly court may appeal to him directly in prayer. The cry of the poor who are oppressed is mentioned by Elihu in Job 34:28. A good example of the kind of prayer for vengeance from the widow or orphan which is implied by this law may be found in Psalm 109.

### **22:25 (no interest on loans to the poor)**

The point of this law is that loans made to the poor ought not to be viewed as commercial contracts. More literally, when a person lends money to the poor, he is not to be as 'one lending on a contractual basis' (נִשְׁעָה). No interest is to be exacted. In 2 Kings 4:1-7 we have an example of a violation of this law in the Northern kingdom. The widow cries out to Elisha because the 'person lending on a contractual basis' (נִשְׁעָה) is coming to take away her sons as slaves, the clear implication being that she cannot afford to repay either the loan or the interest charged (or both). The narrative of Nehemiah 5 shows that such a law was important in times of famine. Poor people needed an interest free loan to tie them over until the next harvest.

### **22:26-27 (cloak as pledge to be returned before sunset)**

This continues the concern of the previous law. A pledge is taken when a debt is not repaid. If, however, a cloak needs to be taken as pledge (presuming that the debtor has no other valuable possession) then it must be returned before sunset so that he does not suffer from the cold or even die of exposure. The clear assumption is that if you need to take a cloak as a pledge, the debtor must be extremely desperate. The Septuagint even goes so far as to interpret the passage as meaning that the debtor will have to walk around naked during the day! Indeed, the law does specifically state that this cloak covers his 'skin'. Perhaps, indeed, we are to imagine the man working during the day with only a loincloth around his waist. The motivation given at the end, that God is merciful, naturally implies that an Israelite in his dealings with his neighbour ought to reflect God's mercy (cf. Luke 6:36).

This law provides a final opportunity for a poor man in debt to be given time to pay it off before he is sold into debt-slavery. In Deuteronomy 24:17 it is flatly forbidden for a creditor to take a widow's garment as a pledge.

### **22:28 (don't declare gods or a ruler to be cursed<sup>81</sup>)**

Although many Bible translations consider the text here to be referring to 'God' and not to 'gods', such a translation makes little sense. Already in the introduction in the section on 'Legal Courts' I have referred to the common use of the term *'elōhîm* (אֱלֹהִים, 'gods') as an honorary title for 'judges'. When the term is coupled with a plural verb this is invariably the case. When the term is used with a singular verb, it is a plural of majesty used for 'God'. In this verse there is no finite verb showing us exactly how the term is meant to be taken. Context is therefore determinative. Given that judges are a form of ruler and that the declaration of accursedness here does not warrant a civil penalty, judges are clearly meant.<sup>82</sup> Declaring God himself to be cursed would ultimately require the death penalty (Lev. 24:11-15, cf. 1 Kings 21:1-16).<sup>83</sup> The reason that declaring judges or rulers to be cursed is not punished by the civil courts is the fact that the principles of restitution and *lex talionis* (equitable retribution) cannot easily be applied to words. Defamation is therefore not punished. God's law does not go into detail about the possibility of financial consequences as a result of the defamation of a person relating to his work or business. The principles of restitution and *lex talionis* could, however, be applied in such a situation.

Ecclesiastes 10:20 reminds us that God's laws should never be treated as if they only refer to external activities. If we are told not to curse judges or rulers, then this also applies to the thoughts of our hearts. Ecclesiastes says:

*Do not declare the king cursed, even in your thought;  
Do not declare the rich cursed, even in your bedroom;  
For a bird of the air may carry your voice,  
And a bird in flight may tell the matter.*

The apostle Paul would seem to have contravened this command when he called the functioning high priest a "whitewashed wall" (Acts 23:3). He more or less apologises by quoting this verse and stating that he did not realise that Ananias was high priest. Some expositors have suggested that Paul did not recognise the man due to poor eyesight or because he had been away overseas, but this could hardly have been the case. The high priest would have been both clear from his physical position in the courtroom and his clothing. It is possible that Paul is hinting at the fact that the high priests in Jerusalem, ever since Onias III (who reigned as high priest until 174 BC), were no longer legitimate.<sup>84</sup>

### **22:29-30 (payment of first-fruits / first-born not to be delayed)**

The laws given here are brief and provide no details. First-fruits and first-born are to be paid and there is to be no delay. The concern is to remind the reader to be prompt and willing in his obedience. The law implies that the custom of giving first-fruits to the Lord was well-known and that the rituals and procedures did not need to be specified. In fact, directly after the Exodus the implications of the tenth plague for the giving of

<sup>81</sup> Although English translations often render the verb קלל *piel* as 'to curse', it literally refers to declaring someone to be cursed. The verb 'to curse' is ארר.

<sup>82</sup> See also the explanation at 21:15, 17 (cursing one's parents does incur a civil penalty). The Septuagint translates correctly 'gods' here. The Aramaic targums clearly understand the reference to be to judges. Josephus (*Ant.* 4.207; *contra Ap.* 2.237) and Philo (*Vita Mos.* 2.205; *Quaest. In Ex.* 2.5-6) understand the reference to be to heathen gods! This would seem to have been a popular understanding of the text among Jews of the time.

<sup>83</sup> This is clearly the ruling in Lev. 24, although that same passage also shows that up until that point there was no clear legal precedent, apart from the suggestive wording of the third commandment. In Lev. 24 we are told that "boring through" God's name is punishable by death. The case in point is clearly that of a curse made against YHWH.

<sup>84</sup> After the Maccabean revolt the Hasmonean priests, who were not of a high-priestly lineage, had taken upon themselves the high priesthood. This illegitimate high-priestly succession was sorely felt by the Jews. The Zadokite successor Onias IV founded in protest a new temple in Leontopolis, Egypt, appealing to the fulfilment of the prophecy in Isaiah 19. Almost certainly it is also the demise of the Zadokite high-priesthood in Jerusalem that led the Qumran community to separate themselves and repudiate the Jerusalem temple. The Pharisees were also highly critical of the Hasmonean high priests.

first-born were spelled out to the people (Exod. 13:11-16<sup>85</sup>). The story of Abraham's potential sacrifice of Isaac shows that the principle goes right back to the patriarchs (Gen. 22) and even the beginning of mankind, given that Abel too is said to have brought the first-fruits of his flock to the Lord (Gen. 4:4).

Although the term "first-fruits" is not specifically mentioned here, the context makes it clear that this is what is meant. Literally the law states: "You shall not delay your harvest and your juices".<sup>86</sup> The requirement for paying first-fruits from the land is made specific in Exodus 23:19 (= 34:26; see also Num. 15:18-21 and compare 2Kgs 4:42). In Numbers 18:12-18 we are told that these first-fruits, which are dedicated to the Lord, may be consumed by the priests in God's temple (cf. Deut. 18:4). The laws make it clear that a tribute of first-fruits was to be made from harvested grain, oil and wine ("juices") and also (after entry into the promised land) from the fleece of the first-shearing of sheep (Deut. 18:4). A sheaf from the first-fruits was to be brought to the temple on the first Sunday after the beginning of the harvest. Exactly seven weeks later, on the day of Pentecost, the first-fruit offerings were to be brought. The prescribed first-fruit offerings were not large. For grain this amounted to one sheaf immediately after the beginning of the harvest and two baked bread-loaves at Pentecost (as well as the stipulated sacrifices).<sup>87</sup> The point was that every land-owner had to acknowledge that his harvest and increase came from the Lord. He was, after all, working God's land, for which reason land in Israel could not be sold or given away.

First-born male domesticated animals and humans were to be dedicated to the Lord as well (cf. Exod. 34:19-20). Before the sin with the golden calf, there is every indication that first-born males were dedicated as priests (cf. 1 Sam. 1:11). It was only as a result of that sin, and the aftermath when only the Levites stood by Moses for the Lord, that the Lord agreed to take the Levites as his personnel (Exod. 32).<sup>88</sup> Numbers three describes how the first-born sons of the people were substituted for the Levites. Those who did not have a Levite to substitute for them had to pay a redemption price of five temple shekels.

First-born animals or humans were only acceptable to God after they had been with their mother for seven days. For this reason circumcision occurred on the eighth day and animals had to be given to God on the eighth day (Gen. 17:12; Exod. 22:19). While Israel was encamped at Mt. Sinai, this was certainly possible, although the law of Leviticus 22:27 already modifies this provision by stating that the animal is acceptable for sacrifice from the eighth day onward. Numbers 18:11-19 explains further that all first-fruits, whether of grain, wine, oil or animal were to be available for consumption in the sanctuary by the priests. It also explains that while first-born males from clean animals were to be sacrificed, first-born males from unclean animals were to be redeemed, as were the first-born sons. Exodus 34:20 had already stipulated that the first-born of donkeys had to be either redeemed with a lamb, or have their neck broken.<sup>89</sup> In Deuteronomy 15:19-22 the law was further modified, taking account of the new situation in the promised land with one central sanctuary, which was no longer so close by to everybody. First-born animals now had to be brought to the sanctuary at one of the feasts within a year of their birth where they might be eaten by the worshippers. Deuteronomy explains, however, that if there is a defect this dedication is cancelled and the animal may be eaten outside the sanctuary. First-born male animals were never to be worked or sheared. In the case of first-born humans dedicated to God, we see Samuel being brought to the temple only after the period of weaning (1 Sam. 1:22).

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<sup>85</sup> This legal text gives the law as it applied in the promised land. Given that it speaks of the redemption of first-born sons, the law clarifies to the reader (presumed to be in the promised land) what the law means for him now. The transition from first-born sons dedicated to God to first-born sons being redeemed only actually occurred at Mt. Sinai (see below).

<sup>86</sup> The nouns used here are actually very rare in these senses in Hebrew. The text refers more literally to "your fullness and your tears". For discussion and the tradition of interpretation see commentaries. Later Hebrew and Aramaic take the terms as they are generally given in translations and interpreted here.

<sup>87</sup> For more information see my article: "The Three Great Feasts in the Worship of Israel".

<sup>88</sup> See further my article "The Effect of the Sin of the Golden Calf".

<sup>89</sup> An unclean animal could not be sacrificed, but the act of breaking its neck made it a gift to the Lord, cf. David's libation of water, 2 Sam. 23:15-16. Numbers 18:15-16 gives the option of redeeming the first-born of unclean animals (one month after birth) for 5 silver shekels, presumably the equivalent value of a lamb. Interestingly, this is the same amount required to redeem a first-born son (Num. 3:47).

Jesus Christ, being the first-born son of Joseph and Mary, had to be redeemed in the temple (cf. Luke 2:23). Jesus, himself, although of the tribe of Judah later became high-priest according to the order of Melchizedek, following the prophecy of Psalm 110 (discussed *in extenso* in the letter to the Hebrews). His high-priesthood, however, applies not to the earthly, but to the heavenly sanctuary. Jesus is also considered to be the first-born Son of God himself (Col. 1:15) as well as the first-born from the dead (Col. 1:18; Rev. 1:5). The letter to the Hebrews characterises believers in Jesus Christ as “first-born”, that is, priests serving God before the heavenly sanctuary in which Jesus Christ ministers (Hebr. 12:22-24).

### **22:31 (don't eat the flesh of an animal torn in the field)**

This law specifically ties the command not to eat the meat of an animal torn by beasts to the holiness of the Israelites. In other words, we are once again dealing with a commandment related to ritual purity. In Exodus 19:6 God had already called the Israelites “a kingdom of priests and a holy nation”. ‘Holiness’ in this sense was the ritual status given to priests as property of God.<sup>90</sup> Although at this point in Israel’s history it was still the case that first-born sons were to be dedicated to God as priests (see above), nevertheless in a limited sense the status of holiness was made to apply to every single Israelite, male and female. The command not to eat the flesh of an animal torn in the field is a case in point. In fact, it was specifically forbidden for priests and – as a holy nation – all Israelites to eat any animal that had not been appropriately slaughtered (cf. Lev. 7:24; 17:15-16; Ezek. 4:14; 44:31). Eating such meat made one ritually unclean and therefore unfit to appear before God.<sup>91</sup> It required ritual purification by washing one’s clothes and bathing in ‘living’ water and waiting until evening before he was ritually clean again.<sup>92</sup> God expected all uncleanness, whether caused by sin or non-avoidable duties or acts, to be purified. Israel was his people by covenant and their holy status had to be maintained.

It is interesting that, although the Book of the Covenant mentions various ritual regulations, it does not discuss the concept of uncleanness or the matter of purification rituals. Nevertheless, the fact that this law is motivated by the command to be (ritually) ‘holy’, presupposes that the Israelites were already familiar with the concepts of ritual purity.

The meat of an animal torn in the field may be thrown “to the dog”. The presumption appears to be that such an animal would have been attacked in the field where the shepherd with his dog was tending the flock. The attacked animal was not completely devoured, perhaps because the dog prevented that. In any case, the dog may profit from the misadventure.<sup>93</sup> The clear implication is that the meat is unfit for human consumption. At first glance this seems to contradict the law of Deuteronomy 14:21.

*You shall not eat anything that has died naturally. You may give it to the sojourner who is within your towns, that he may eat it, or you may sell it to a foreigner. For you are a people holy to the LORD your God. (ESV)*

Here the same ritual motivation of being ‘holy’ to God is applied to animals that have ‘died naturally’. Actually the phrase “anything that has died naturally” refers literally to a ‘carcass’ (הֵלֵבֶּטֶר). Such a carcass, however, is not thrown to dogs, but given as meat to a resident alien or sold to a foreigner.<sup>94</sup> It is clear, however, that animals that had already been torn by a wild beast were to be considered a separate category. Already in Leviticus 17:15 they are listed separately, next to carcasses. What this means, is that, although

<sup>90</sup> See my article “The Laws for Uncleanness in the Pentateuch and NT Baptism” § 1.2.

<sup>91</sup> It should be noted that while the eating of unclean animals was forbidden and sinful, such eating did not make a person ritually unclean. Merely touching the carcass of an unclean animal would, however, make one unclean. It is the eating (not the touching) of the carcass of an animal (clean or unclean) that had not been appropriately slaughtered that made one ritually unclean and in need of purification.

<sup>92</sup> See *The Laws for Uncleanness in the Pentateuch and NT Baptism* § 1.4a.

<sup>93</sup> Dogs were already used by the Israelites in Egypt (cf. Exod. 11:10). For watchdogs over the flock in Israel cf. Isa. 56:10-11; Job 30:1.

<sup>94</sup> The resident alien / sojourner (i.e. a refugee with limited rights in the society) may benefit without charge as charity. The foreign trader must buy the meat. Deuteronomy is obviously thinking of a resident alien who is not concerned with the laws of purity and thus a person who is not a worshipper of YHWH.

neither carcasses nor animals torn by beasts are to be eaten by Israelites, carcasses may be eaten by people in Israel who are not YHWH worshippers.

### **23:1-3 (don't spread a false report, give false evidence or show partiality in a dispute)**

These three verses belong together and as such should probably be understood as having primary reference to a courtroom setting. Verse 1 can be taken to refer to the influence which an individual may have over the many, while verse 2 reckons with the influence that many may have over an individual.

It is, at first sight, unclear whether verse 1 is referring to the spreading or to the acceptance of a vain report. The Hebrew verb נשא could mean either to spread or, as the LXX understands it, to receive. In the latter sense, the law would be speaking to a judge, but this does not accord so well with the context of these verses, which refer to bearing false witness. Houtman points to Exodus 20:7 (“You shall not lift up the name of the Lord your God in vain”) and argues that “lifting up a vain report” should in fact refer to speaking a vain report.<sup>95</sup> The text is therefore not explicitly forbidding rumour-mongering (as Lev. 19:16 in fact does). The two clauses of verse one should therefore be viewed as parallel to each other. When one speaks a vain/false report, he is acting as a false witness.<sup>96</sup>

A concrete example of such a false report taken to court can be found in Deuteronomy 22:13-19 where a girl is wrongly accused, after marriage, of not having been a virgin. An historical example can be found in 1 Kings 21 (Naboth).

As suggested above, verse two speaks of the influence of the many over an individual. Once again the two clauses are parallel to each other. Even if most people pervert justice by twisting the facts, one must dare to stand firm upon the truth, trusting in the God of truth.<sup>97</sup>

A final way of perverting justice is mentioned in verse 3, namely unjustly wreaking vengeance on the wealthy by showing partiality to the poor in his dispute. A similar warning is given in Leviticus 19:15.<sup>98</sup>

It is noteworthy that these warnings are given without mention of penal sanctions and included in this non-penal section of the law-code. In fact, penal sanctions were introduced for bearing false witness only some 40 years later, when Moses promulgated the law-code of Deuteronomy (see Deut. 19:15-21). At this time, the *lex talionis* (see the introduction) was applied not only to victims who had been physically maimed, but also to false witnesses, who by their testimony were condemning others to wrongful punishment.

### **23:4-5 (help your enemy's animal in trouble)**

Two practical examples of loving one's enemy are now provided (cf. Matt. 5:43-44 and also Prov. 24:17-18). The law thus stimulates caring for the property of others, even when they may be personal enemies.<sup>99</sup> The situation envisaged here is quite different from the sort of enemy loathed in the psalms, who is clearly an enemy of God himself (cf. Ps. 139:19-22).

<sup>95</sup> *Op. cit.*

<sup>96</sup> The phrase עד חמס (lit. “witness of violence”) is the regular way of expressing a false witness, see Deut. 19:16 (see parallel in v.18 עד שקר) and Ps. 35:11.

<sup>97</sup> The LXX adds “justice” at the end of the verse, which in Hebrew leaves “to pervert” without an object. Sarna takes רבים to refer to “mighty men” in an attempt to connect this verse, by means of contrast, to the poor of v.3. The attempt remains unconvincing.

<sup>98</sup> Some scholars have proposed emending גדל to גדל, which would speak of the “great” man instead of the “poor” man. The LXX, however, does read “poor” and the same point is made in Lev. 19:15. There is therefore no need to emend the text.

<sup>99</sup> J. I. Durham (*Exodus* [Dallas: Word, 1998] v.3, p. 331) states appropriately: “The point at issue in these two verses is not so much a humane attitude toward a lost or improperly laden animal as it is a refusal to take advantage of another's misfortunes because he happens to be an enemy. The loose animal is usually enjoying himself, and the animal that lies down under a poorly arranged load is protecting himself. The one at risk here is the owner, who may lose a valuable animal altogether or have to unload and reload an animal in an insecure spot and without help.”

Moses gives a more detailed variation on these laws in Deuteronomy 22:1-4. There, however, the emphasis is on how the property is to be cared for, whatever animal – or even clothing – is lost and found by someone else. In Exodus the emphasis is on the fact that such care *also* applies to one's personal enemy.

### **23:6-9 (don't pervert justice or take a bribe or oppress a stranger)**

While 23:1-3 warned against perverting justice from the point of view of a witness, the following law is addressed to the elders in the gate or judges. They are to ensure that justice is fair and righteous. The poor are described as "their poor", given that they are entirely in the hands of the judges and have no other recourse or backup. They are not to wrongly condemn an innocent person to death (cf. the case of Naboth in 1 Kings 21).

The third clause of verse 7 can be understood in various ways. In the Massoretic text it reads: "for I will not justify the wicked". If the 'wicked' is understood as a wicked judge, then God is promising to punish judges who contravene this law. As already noted above (see the introduction), judges render justice in the name of God and therefore receive the honorary title of 'gods'. God himself, however, will call them to account for their conduct (cf. Psalm 82).

It is, however, also possible to understand the words "I will not justify the wicked" as a reference to overly zealous judges who are concerned that a possibly guilty party may escape punishment. For this reason, they may knowingly admit false evidence to secure a conviction of someone whom they are convinced is guilty. God would then be saying that judges ought not to be scared of not punishing possibly guilty people due to insufficient evidence. He himself will not justify the wicked.

Finally, the Septuagint has preserved a quite different reading which has led a number of interpreters to suggest that the Massoretic text has been corrupted. It reads: "and you will not justify the ungodly for the sake of gifts". This gives the second and third clauses of the verse an appropriate balance between not wrongly condemning the innocent or justifying the ungodly.<sup>100</sup>

The judges are expressly forbidden to receive 'gifts', a problem that seems to have been quite prevalent (cf. Deut. 27:25; 1 Sam. 8:3; Isa. 1:23; 5:23; 33:15; Ezek. 22:12; Amos 5:12; Mic. 7:3; Ps. 15:5; 26:10).<sup>101</sup> God himself is elsewhere described as a judge who takes no gifts (Deut. 10:17; 2 Chron. 19:7).

The law here adds that judges also need to ensure that the justice due to a sojourner (i.e. a 'refugee', see the explanation at 22:21) is not perverted (cf. Deut. 1:16; 24:17; 27:19; Mal. 3:5).

A similar law is given in Deuteronomy 16:19 which adds a warning against partiality.

### **23:10-11 (6 years of sowing, 1 year of rest (for the needy))**

The law of the sabbath year is further explained in Leviticus 25:1-7, 18-22. The land was not to be sown, but to lie fallow. Grapes, olives and other fruit were not to be harvested. Although this law obviously created the advantage that the soil received an opportunity to rejuvenate, this fact is not mentioned. The law is given as an extension to the principle of a sabbath dedicated to the LORD. In that sense, by observing the sabbath year, the Israelites were to acknowledge that God was the owner of the land. In a sense that no other country could claim, the land of Israel was considered to be temple land. For this reason land could not be bought or sold. It was made available by the LORD to his people for farming.<sup>102</sup>

It should be noted that this sabbath year did not apply to the flocks and herds, which could continue to be used for milk, meat, leather and sacrifice. The law allows for the poor to eat from whatever would grow on the land during the sabbath year. Often this fact has led expositors to suggest that the law forms part of the social regulations for care of the poor in Israel. This is, however, rather far-fetched. Allowing the poor to eat from the land once every seven years would hardly alleviate poverty. What it does do, is compensate the poor for the fact that in a sabbath year no day-labourers would be employed for harvesting. We are not told

<sup>100</sup> MT reads: *כי לא אצדיק רשע בשוחד* while the LXX presupposes: *ולא תצדיק רשע בשוחד* and assumes haplography of *שוחד*. The use of the Hiphil of *צדק* (and not of Piel) shows that a judicial pronouncement is meant, see E. Jenni, *Das hebräische Pi'el: Syntaktisch-semasiologische Untersuchung einer Verbalform im Alten Testament* (Zürich: EVZ, 1968).

<sup>101</sup> The Hebrew word used denotes a 'gift' (*שְׁחָדָה*), which, depending on the context, may be interpreted as a 'bride'.

<sup>102</sup> See further my article 'The Use of God's Law' §§ 1-2.



how the harvest feasts of Pentecost and Booths are to be celebrated in the sabbath year. Deuteronomy 31:10 makes it plain that they were, however, still to be celebrated. Presumably the feasting was to be provided from the storehouses. The LORD had promised that if they observed the sabbath year, the harvest of the sixth year would be extra abundant (cf. Lev. 25:18-22) It is also obvious that there would be no income for the sanctuary in the form of tithes in the sabbath year, except by way of the additions to flocks and herds.

Some 38 years later, just before the Israelites were to enter the promised land, Moses in Deuteronomy 15:1-11 added a new dimension to the sabbath year. At the Feast of Booths in that year (Deut. 31:10) a release of debts was to be proclaimed. The word used for this ‘release’ is formed from the word used in Exodus 23 to have the land ‘lie fallow’ in the seventh year.<sup>103</sup>

There are no civil penalties imposed for disregard of the law of the sabbath year. However, Leviticus 26:34-35 (cf. 2 Chron. 36:21) does warn that non observance will eventually be punished by exile for the number of years which the sabbath year is not observed by the nation. As it turns out, Israel did not observance this commandment and for this reason the nation served 70 years in exile. The covenant of those who had returned from exile made under the governor Nehemiah in 445 BC contained the stipulation that the sabbath year would be observed (Neh. 10:31b). Historical sources demonstrate that indeed the post-exilic community continued to observe the sabbath year for centuries thereafter.<sup>104</sup>

### **23:12 (6 days work, 1 day rest (for animals, slaves, strangers))**

Only one aspect of the sabbath day is mentioned here in this law, namely that of ensuring that the work-animals (oxen and donkeys) and workers (male children of maid-servants) and sojourners (i.e. refugees) are provided the opportunity to rest on the sabbath day.<sup>105</sup> The fourth commandment in the law is invariably addressed to the heads of households. It is their responsibility to ensure that the household is provided with sabbath rest. It is for this reason that this law has no civil penalties. A slave is not punished for working on the sabbath since he has no choice. Free persons who work on the sabbath day are liable to the death penalty, but that aspect is not addressed in this law (cf. Exod. 31:12-17).

### **23:13 (no mention of other gods)**

The word ‘and’ separating the admonition to pay attention to all God’s words and the command not to mention other gods binds these two elements of the verse together. They serve to particularly underline the command given here. But what is the practical import of not ‘mentioning’ other gods? The verb used (זכר Hiph.) literally refers to ‘causing remembrance’, but it is used in the sense of ‘mentioning’ or ‘making known’. In Psalm 16:4 David’s promises not to take up the names of other gods upon his lips in the context of pagan worship (drink offerings of blood), but the terminology is quite different to Exodus 23 and there is no direct connection to this law. Closer in wording is what God says in Hosea 2:16-17 (Heb. vs.18-19), namely that he will remove the names of the Baals from Israel’s mouth and they will no longer ‘be remembered’ (זכר Niph.) by their name (similarly Zech. 13:2). These parallels may suggest that the intent of the law is to prohibit the worship of other gods. There is, however, another possibility. If the worship of YHWH alone is assumed, then it may be that this law is forbidding naming other gods when contracts or covenants are sealed (cf. Josh. 23:7 This would effectively prohibit covenants with non-Israelites).

### **23:14-17 (3 annual feasts)**

The three compulsory feasts to YHWH are now briefly outlined. The commandment for all the males to appear is repeated several times in the law (Exod. 23:17; 34:23-24; Deut. 16:16, cf. 2 Chron. 8:13).<sup>106</sup> This

<sup>103</sup> The verb is מטה ‘to let loose’, ‘let drop’. Exodus 23:11 commands that the land ‘be let loose’, in other words left alone and not harvested. Deuteronomy 15:1 introduces a law of שָׁמַט, ‘letting loose’ and explains this in verse 2 in relation to a release of debts.

<sup>104</sup> See Jos. *Ant.* 11.343 (time of Alexander the Great); 1 Macc. 6:49, 53 (cf. Jos. *Ant.* 12.378, time of the Maccabean revolt); Jos. *Ant.* 13.234 (cf. *BJ* 1.60, 135-34 BC); *Ant.* 14.202 (44 BC); *Ant.* 475 (ca. 38-37 BC).

<sup>105</sup> In Leviticus 23:3 a different aspect of the weekly sabbath day is mentioned, namely the fact that it requires “a holy assembly” and is to be celebrated “in all your dwelling places”, probably referring to all the villages, towns or cities.

<sup>106</sup> The wording of these commands is that the males ‘see the face of the Lord YHWH’, which is an expression for appearing in his temple. Given that this way of expressing the matter is common in the law, the text of 23:15 and 17 are usually emended to

requirement, however, does not prevent women, children, slaves or sojourners from attending the feasts (cf. 1 Sam. 1:3-4). Such attendance of at least all the adult male citizens in Jerusalem simultaneously three times a year does involve taking definite risks, given that properties all over Israel would be left quite vulnerable to attack and plundering. For this reason God adds in Exodus 34:24 that he will personally provide protection at these times. Attendance at the feasts is a demonstration of trust in God.

The first feast in the calendar is that in ‘the month of Abib’ (lit. ‘the month of the ears of corn’), that is, March / April. Passover is not mentioned, only the ensuing seven day festival of unleavened bread, which is directly tied to the exodus from Egypt. It is possible that Passover is understood to be subsumed in this feast.<sup>107</sup>

A final clause commanding those attending the feast not to come empty-handed is added. In Deuteronomy 16:16 this clause (which appears several times in the law) applies to all three feasts. It is probably mentioned here, given that the other two feasts by their nature as harvest feasts require one to bring specific offerings. Here, the law emphasises that even at the feast of unleavened bread one ought to bring gifts to God.

The second feast in the calendar is the feast of ingathering (קציר), further defined as the first-fruits of what has been sown. The feast, otherwise known as ‘Pentecost’ is celebrated for one day.

The third feast is that of the harvest (קצוץ) towards the end of the year.

For a more detailed discussion of these three feasts see my article ‘The three great feasts in the worship of Israel’.

### **23:18 (don’t offer blood with leaven, leave fat until the morning)**

Sacrifices were generally a mixture of items tied upon an altar and set alight. A regular set of sacrifices included an animal for a whole burnt offering, a grain offering, the fat and kidneys of the animal used for a peace offering as well as a libation of wine and a sprinkling of salt. The blood of the animals to be used was splashed against the foot of the altar. The point of the first part of this law is that the bread-cakes used for a grain offering that is offered on the altar may not contain leaven (cf. Lev. 2:11-12; Exod. 34:25).<sup>108</sup>

Leaven was old dough which had become sour and thus appropriate material for fermentation. The traditional Jewish explanation for the prohibition of leaven with sacrifices is confirmed by the apostle Paul in 1 Corinthians 5:6-8, namely, that the old fermenting dough represents the rottenness of sin. Paul’s explanation is specifically applied to the unleavened bread eaten together with the passover lamb.

The fat (חֵלֵב) of any kind of animal appropriate for sacrifice was considered to be the choicest part and therefore reserved for the LORD.<sup>109</sup> No Israelite was to eat it upon pain of immediate ‘cutting off’ (cf. Lev. 7:23-25). The fat (and therefore the sacrifice as a whole) was to be offered up on the same day that the animal was slain.

Jewish tradition connects both the laws in this verse with the feast of passover. There is, however, no justification for this in the context.

### **23:19 (first-fruits to be brought, don’t boil kid in mother’s milk)**

The law of the first-fruits has been discussed above at the exposition of 22:29.

conform (as they stand, they make no grammatical sense). In v.15 the verb ירא is pointed Qal as also יראה in v.17. In addition the אל in v.17 is emended to את. The census at the time of the law counted adult males from the age of twenty and upwards. We may presume, in accordance with later tradition (cf. Jub. 49:17), that all males twenty and older were expected to attend the feasts.

<sup>107</sup> The wording of v.15 is virtually identical to that in 34:18, excepting the final clause which is found in 34:20c.

<sup>108</sup> Loaves of bread with leaven were used as wave offerings at Pentecost (Lev. 23:17) and viewed as first-fruits. The peace offering for thanksgiving (with its accompanying grain offerings of unleavened bread) were provided with leavened loaves of bread for the use of the priest (Lev. 7:13-14; Am. 4:5).

<sup>109</sup> For this reason the word ‘fat’ in Hebrew is also used metaphorically for ‘the choicest / best’.

The following requirement (repeated in Exod. 34:26 and Deut. 14:21) that a kid not be boiled in its mother's milk has engendered much debate. It functions as the basis of the orthodox Jewish separation of milk and meat in the kitchen. It is, however, highly unlikely that this is the intention of the law for it is much more specific than that. Some interpreters have suggested that the law must have its background in some pagan ritual. The problem is that no pagan ritual is known involving boiling a kid in its mother's milk.

It ought to be noted that boiling meat was the most common method of preparation (cf. Judg 6:19). In fact, apart from the Passover Lamb, all sacrificial meat was to be boiled. We are not told what the meat was boiled in, but this law would suggest that it was quite common to boil meat in milk. This had the advantage that unpleasant odours and flavours were significantly diminished.<sup>110</sup>

What this law is then saying is that a kid (כִּידָּ, that is the young of either sheep or goat), if it is to be boiled in milk, must not be boiled in the milk of its mother. Given that there is nothing unsanitary or ritually unclean with doing this, we must conclude that the law is concerned about protecting the parent-child relationship. We may compare the laws against slaughtering cattle on the same day as their young and capturing a mother bird along with her fledglings or her eggs, and also the requirement that newborn cattle remain with their mothers at least a week before they may be sacrificed (cf. Exod. 22:30; Lev. 22:27–28; Deut. 22:6–7).

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<sup>110</sup> Israelites also used water, cf. Exod. 12:9.