



After the Ten Commandments: The Laws of the Covenant Code

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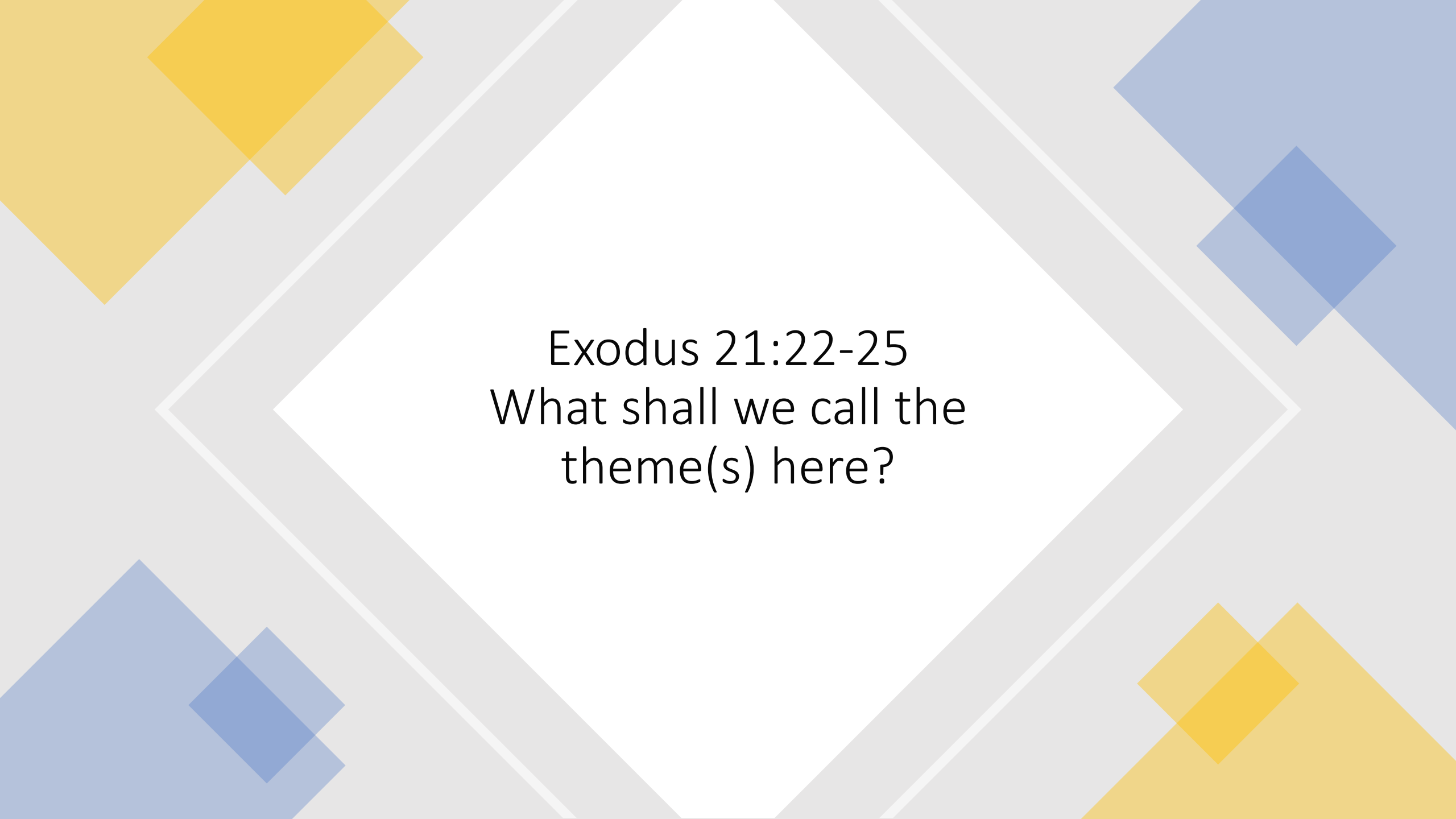
Exodus 21:22-25

וְכִי יִנְצוּ אַנְשִׁים וְנִגְפוּ אִשָּׁה הָרָה
וַיֵּצְאוּ יִלְדֶיהָ וְלֹא יִהְיֶה אֲסוֹן עַנּוֹשׁ
יַעֲנֹשׁ כְּאִשֶּׁר יֵשִׁית עָלָיו בְּעַל הָאִשָּׁה
וְנָתַן בְּפִלְלִים.

When men fight, and one of them pushes a pregnant woman and a miscarriage results, but no other damage ensues, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning.

וְאִם אֲסוֹן יִהְיֶה וְנִתְּתָה נַפְשׁ תַּחַת
נַפְשׁ. עַיִן תַּחַת עַיִן שֵׁן תַּחַת שֵׁן יָד
תַּחַת יָד רֶגֶל תַּחַת רֶגֶל. כְּוִיָּה תַּחַת
כְּוִיָּה פֶצַע תַּחַת פֶּצַע חֲבוּרָה תַּחַת
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But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.



Exodus 21:22-25
What shall we call the
theme(s) here?

Intentional/Unintentional?

וְכִי יִנְצוּ אַנְשֵׁים וְנִגְפוּ אִשָּׁה

רש"י: וכי ינצו אנשים – זה עם זה,
ונתכוון להכות את חברו, והכה את
האשה.

When men fight, and one of them
pushes a woman

Rashi: WHEN MEN FIGHT with
each other, and one intended to
strike the other and inadvertently
struck the woman.



Relevance of this text to
abortion debate?

What does אָסוֹן mean?

אבן עזרא:

Ibn Ezra [offering the standard Jewish interpretation]

ולא יהיה אסון – לאשה.

And there is no אָסוֹן: to the woman.

ענוש יענש – בעבור הילדים שיצאו ומתו.

He shall be fined: because of the miscarriage.

Code of Hammurabi (c. 1700 BCE)

209. If a man has struck a free woman with child, and has caused her to miscarry, he shall pay ten shekels for her miscarriage

210. If that woman die, his daughter shall be killed.

211. If by a blow he has caused a plebian's daughter to have a miscarriage, he shall pay five shekels of silver.

212. If that woman has died, he shall pay one-half mina of silver.

213. If he struck a freeman's female slave and has caused her to have a miscarriage, he shall pay two shekels of silver.

214. If that female slave has died, he shall pay one-third mina of silver.

Rashi on the status of the fetus (Sanhedrin 72b)

דכל זמן שלא יצא לאויר העולם לאו
נפש הוא וניתן להורגו ולהציל את אמו

As long as the fetus has not come out of the womb, **it is not a נפש**, and it can be killed to save the life of the mother.

סנהדרין פ ב: עובר ירך אמו

Common Talmudic principle: The fetus is [tantamount to] the thigh of the mother.

Rambam,
Laws of
Physical
Injuries 5:1

אסור לאדם
לחבול בין בעצמו
בין בחבירו.

People are not
allowed to cause
injury, neither to
themselves nor to
others.

Rabbi Shneur Zalman of Liadi (1745-1812)

שולחן ערוך הרב (בין אדם לחברו פרק ד)

אסור להכות את חברו אפילו הוא נותן
לו רשות, כי אין לאדם רשות על גופו
כלל.

[שוע"ר הל' נזקי גוף ונפש ס"ד.
ומטעם זה אסור לו לאדם להכות את
עצמו ולא לצערו בשום צער]

It is forbidden for one person to
strike another, even with the
permission of the other person,
since people do not have control
of their own bodies at all.

[For this reason, it is also
forbidden to harm oneself or even
to cause pain to oneself.]



Other understandings

Septuagint

Now if two men fight and strike a pregnant woman **and her child comes forth not fully formed**, he shall be punished with a fine.

According as the husband of the woman might impose, he shall pay with judicial assessment. But **if it is fully formed**, he shall pay life for life.

Philo, The Special Laws 3:108-109

But if anyone has a contest with a woman who is pregnant, and strike her a blow on her belly, and she miscarry, if the child which was conceived within her is still unfashioned and unformed, he shall be punished by a fine, both for the assault which he committed and also because he has prevented nature, who was fashioning and preparing that most excellent of all creatures, a human being, from bringing him into existence. But if the child which was conceived had assumed a distinct Shape in all its parts, having received all its proper connective and distinctive qualities, he shall die; for such a creature as that is a man, whom he has slain while still in the workshop of nature . . .

Josephus, Antiquities 4:8:33

He that kicks a woman with child, so that the woman miscarry, let him pay a fine in money, as the judges shall determine, as having diminished the multitude by the destruction of what was in her womb; and let money also be given the woman's husband by him that kicked her; but if she die of the stroke, let him also be put to death.

What does וַיֵּצֵאוּ יְלֵדֵיהֶם
mean?

James K. Hoffmeier,
“Abortion in Old
Testament Law” (1987)

The conservative Christian position

The translation “miscarriage” in Exodus 21:22 by many well-known English Bible translations is misleading, if not incorrect. . . . We assume that the blow to the pregnant woman led to a premature birth. Nothing in the text requires us to think that the fetus is born dead.

Exodus 21:22-25

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עָנוּשׁ יַעֲנֹשׁ כְּאֲשֶׁר יִשִּׁית עָלָיו
בְּעַל הָאִשָּׁה וְנָתַן בְּפָלְאִים.

וְאִם אָסוֹן יִהְיֶה וְנִתְתָּה נֶפֶשׁ תַּחַת
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When men fight, and one of them pushes a pregnant woman **and the offspring come out [prematurely], if no other damage ensues**, the one responsible shall be fined according as the woman's husband may exact from him, the payment to be based on reckoning.

But if other damage ensues, the penalty shall be life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.

Judah Hadasi (Karaite; 12th century)

ואם אסון יהיה מנגיפתם,
בה או בילדיה, הם בכלל
לא תרצח בתורת א-להיך

And if there is an ןיוא from their fighting, either to the woman or to her offspring, this falls under “You shall not kill” in the Torah.

Aaron ben Elijah the Karaite (1328-1369)

ולא יהיה אסון – בין לאשה
בין לילדים. ענוש יענוש –
מפני שסבב צער לאשה.

“And there is no אָסוֹן”: neither to the woman nor to the offspring. “He shall be fined”: for the suffering that he caused to the woman.

Cassuto (1883-1951)

Commentary on Exodus

ויצאו ילדיה מחמת הנגיפה . . . ולא
יהיה אסון, כלומר שלא תמות האשה
ולא ימותו הילדים, עונש יענש הנוגף
עונש ממון כאשר ישית עליו, יטיל
עליו, בעל האשה, לפי מידת הנזק
ולפי התנאים המיוחדים של התאונה,

“Her children emerge” because of
the pushing . . . “and there is no
אָסוֹן,” in other words neither the
woman nor the offspring die, then
the one who pushed her will be
fined a monetary amount
imposed on him by the woman’s
husband commensurate with the
amount of damages and the
specific conditions of the accident.