

Studies in Exodus No. 25

Exodus 21:12-32

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Review

After considering the “Ten Words,” which we have said are a summary or epitome of the covenant that God made with Israel at Sinai, we have descended into the specific stipulations of the covenant. These are not given in the form of absolute commandments, what in biblical scholarship are referred to as *apodictic laws*, that is, general and absolute laws such as “You shall not murder” or “You shall not commit adultery.” Rather, the covenantal stipulations typically have the form of case laws, rules bearing on various hypothetical situations, *cases* as they are called in law. They apply the fundamental principles of the Ten Commandments to the thousand and one sets of circumstances that we face in life. Interestingly, they are still called “cases” today. The lawyer works on a particular “case.” We began those stipulations with a set of laws bearing on various situations regarding slaves.

Now we move to personal injury laws. Isn't it an interesting demonstration of the perpetual relevance of the Mosaic Law that we have an enormous body of personal injury law still today and lawyers who specialize in personal injury cases? We'll see, as we read, how our body of law compares with that given to Moses by Yahweh at Sinai.

Text Comment

- v.12 This first section concerns blows that might kill a man, whether or not there was any intention to kill. The laws that follow are clearly intended to establish the principle of the sanctity of human life and so the seriousness of offenses by which life is taken. [Cassuto, 269] What follows is a working out not only of the sixth commandment but of the fundamental principle first articulated in Gen. 9:6: “Whoever sheds the blood of man, by man shall his blood be shed; for in the image of God has God made man.”
- v.13 “God lets it happen...” is a reminder that in the sovereign God's universe, there is no such thing as an *accident*, not ultimately. It is not improper to use the term, with respect to events in life that are unintentional from our viewpoint, but nothing happens in this world that is not the will of our Father in Heaven. In any case, the life of the slayer is also sacred and should not be taken if he took his fellow's life unintentionally. In the Code of Hammurapi, for example, even the one who caused death unintentionally was to be put to death. Here the Law of God can be thought to be more lenient, but it is really simply more just.

The place to flee will first be the altar, as indicated in the next verse, and, eventually, when Israel is finally in the Promised Land, the designated Cities of Refuge (which we will read about in Numbers and Deuteronomy). But even much later, in the days of Solomon, we read of Joab fleeing to the temple and taking hold of the horns of the altar in hopes of finding sanctuary there when Solomon found him guilty of conspiracy (1

- Kings 2:28). Still, it is important to remember that there was no police force in Israel. In these early days justice was dispensed much more informally and the potential for abuse was great (as it is today, come to think of it!).
- v.14 As we recognize today, malice aforethought is the crucial feature of first degree murder, the murder that carries the most severe sentence. Here, as so often, the Law of God distinguishes justice from vengeance and imposes strict limits on blood lust.
- v.15 This command is paired with that in v. 17. In the Code of Hammurapi the sentence for this crime is that the offender have his hands cut off. Here the Law of God would be thought more severe or strict. In any case, God's Law takes its own way through the labyrinth of human crime and its proper punishment.
- v.16 As we said last time, kidnapping men in order to sell them as slaves is absolutely forbidden. It was, however, a practice common in the ancient Near East. It was perhaps the easiest way to make real money. Joseph's brothers did this, you remember. The prophets condemn some of Israel's neighbors for just this crime (Amos 1:6-10; Joel 3:6). In the case of an Israelite, who belonged to the Lord, this amounted to stealing from God. "Still has him when he's caught..." is the ancient equivalent of a large and unexplained bank balance that is used to prove the crime. Such statements remind us of the concern in God's Law that guilt be *proved* and not simply surmised.
- v.17 Remember, these laws are to be read in context. We are not talking about a disrespectful ten year old. We are talking about a serious and intentional violation of the most sacred bonds of human life and the family relationships that lay then and lie today at the bottom of all stable, happy, and life-giving human society. We are also talking about objective and violent attacks on parents. In the ANE cursing one's parents represented probably some objective form of repudiation. [Durham, 323]
- v.18 The situation envisaged is clearly one in which a fight breaks out, not one in which there was malice aforethought.
- v.19 The Law of God is always interested in the guilty being made to make the injury good, to pay restitution. This was, of course, a day before hospitals – there was no doctor to care for the injured patient – and before insurance companies that would provide compensation for loss of income. So workers' compensation and health benefits must be paid by the one who did the harm. Still today it remains true that if men know they must care personally for those they injure, they will be more careful not to cause harm.
- v.21 What this means is that the slave must be treated as a person – a revolutionary advance in ANE thinking – and slave owners must be punished if they mistreat their slaves. On the other hand, if the owner was only punishing and correcting and the harm is accidental (the NIV's "gets up after a day or two" is an interpretation; most take it to mean "survives for a day or two," meaning that the slave then dies, but that it was not intentional on the owner's part: the slave's death was accidental), then the slave owner has himself lost the service of his slave. These are utterly unique provisions in the law

codes of the ANE. And take note: these commands, in context, cannot be taken as implied permission for an owner to beat his slave, so long as he doesn't kill him. The case law reads as it does because it is describing a certain set of circumstances that provide a clue for how other acts in other circumstances should be treated. The master must not be punished if he did not intend any real harm. But if he does real harm the slave's rights must be respected. He too is a person made in God's image. We are about to read in vv. 26 and 27 that slaves *are to go free with compensation* if a master causes the loss of an eye or so much as even a tooth. These laws are clearly designed to protect the rights of the slave and are remarkably humanitarian in their effect.

v.25 Since *Roe v. Wade* and the controversy over abortion in our land and even among Christians a great deal of attention has been paid to these two verses, because they amount to the only statement in the Bible that might be construed as dealing with the actual situation contemplated in an abortion, viz. the violent end of a pregnancy. However, these are not statements that are entirely simple to interpret. There are two primary alternatives. *One interpretation* understands the situation contemplated as resulting in a miscarriage and the additional "serious injury" would refer to further harm done to the mother. The main argument for this interpretation is that other ANE law codes also include laws governing miscarriages that occur as the unintended consequence of a fight. Interestingly, in those codes punishments are imposed in varying amounts depending upon the social status of the woman involved. In the Law of God all women are treated equally under the law. Interpreted in this way this law has sometimes been alleged as support for abortion because the *lex talionis*, the principle of corresponding retribution, of life for life, is not applied to the fetus who was thus killed. The law did not treat the death of the baby as the murder of a human being for which the murderer's life would be demanded. But, of course, the principle of life for life – in this case capital punishment for the death of the baby forced prematurely and violently from the womb – wouldn't apply in this case in any event *because the killing of the baby was not premeditated; in fact it was accidental*. The woman was not the target of the blow, still less her baby; they were its accidental victims. What is more, the accidentally caused miscarriage, upon this interpretation, was still something that must be punished on any reading of the text. If the woman were not injured further "the offender must be fined whatever the woman's husband demands and the court allows." So it is not the case that the law regards the death of the baby as incidental and unimportant. Punishment must be exacted, even though the baby's death was unintentional. In the Law of God the punishment of manslaughter or accidental homicide is never the death penalty. *The second interpretation* is that the baby prematurely born is not thought to have died. The "further injury" applies to either the mother or the child. Thus, if no further injury results to either mother or child, the man deemed responsible must pay a fine. However, if further injury occurs, the man must pay according to the law of retribution: eye for eye and life for life. The primary argument for this interpretation is that the phrase the NIV translates "gives birth prematurely," in every other instance in the Hebrew Bible refers to live childbirth.

It is interesting, by the way, that The Code of Hammurapi [ANET 175:209] requires a fine to be paid for the loss of a fetus in a similar set of circumstances while the Middle

Assyrian Laws [ANET 184:50] requires the guilty party's life in exchange for that of the fetus. [Durham, 323-324]

It is quite common nowadays for people to think of the *lex talionis*, literally "the law of retaliation," such as we have it here in vv. 24-25, as primitive and harsh. In fact, as one scholar put it, it was "an important advance in the history of jurisprudence." [Paul in Durham, 324] What is required is that there be retribution but also that the retribution should not exceed the damage done. Remember Cain's descendant Lamech who promised to avenge himself sevenfold? In Leviticus (24:19-20) and Deuteronomy (19:21) the same principle, as employed by a judge, is invoked as a deterrent to malicious injuries and false witness in court. Remember, we are not speaking here of personal relations or personal vengeance, but of the application of the law by judges in court cases (as v. 22 reminds us). The fact is, this balancing of the scales, this weighing out of punishment to fit the crime, is still what everyone really wants, what everyone thinks justice is. When there is some public outcry that justice has not been done in some case, is it not invariably the case that the outcry results from the sense that the punishment did not fit the crime and is it not most often the case that it is felt that the punishment was not sufficient retribution for the crime committed? It is also to be remembered that in the law of God there was provision made so that an offender could redeem his eye or hand or foot by the payment of an indemnity. It was not necessarily literally required that an eye be gouged out if an offender had caused the loss of another's eye. Only for capital murder was there no such indemnity allowed (Num. 35:31).

- v.28 The next section of personal injury laws deals with injuries caused by animals. The ox was the most dangerous animal on a typical Israelite farm even though it is usually quite a placid animal. In the ANE law codes, a goring ox is the typical example of damage caused by animals. [Cassuto, 278] The owner, in other words, would not be expected to anticipate that it would be so dangerous. But the bull has killed a human being; one cannot go on as if nothing has happened. There is to be implanted in the Israelite mind a horror at the thought of murder. The murder trials conducted in the Middle Ages against animals that had killed human beings were, no doubt, based on this law, though that is clearly not the point. In any case, the owner loses the considerable value of the animal as it must be killed and its meat cannot be sold but because it was an accident he cannot be held responsible for the death of the man or woman killed by the animal.
- v.29 In modern law codes, such a man is guilty of murder by "criminal negligence" or "depraved indifference." He was as much as firing a loaded gun in a crowd.
- v.30 Payment may be required instead of execution if desired by the victim's family. This loophole exists "because even criminal negligence is not the same as malicious intention to kill." [Alter, 441]
- v.31 No less payment is required if the dead is a child. This provision may be included because other ANE law codes provided that in such instances the son of the offender would be punished if his ox had gored someone's son or the daughter of the offender if a

man's ox had gored another man's daughter. In the Law of God only the man who causes the injury is to be punished, not other members of his family. [Cassuto, 280]

v.32 In the case of a slave death the indemnity – the payment required to exempt oneself from an incurred punishment – was fixed at 30 shekels, a considerable sum in any case and a way of avoiding legal wrangling over the cost of the indemnity.

The break is really here, at the end of v. 32. The next set of laws concern crimes against property not persons.

We began by saying that what we have here are “cases,” that is, hypothetical situations – no doubt they actually occurred at one time or another, but they are given here the form of a hypothetical set of circumstances – that serve as examples of the application of fundamental principles of justice to the actual circumstances of human behavior. That is, these cases are the “what is to be done if this happens” sort of jurisprudence. It is a stroke of genius that led the ancient civilizations to set out their laws in this form (and modern civilizations to do the same) because the actual circumstances of human life are so varied and complex that no legal code could possibly account for them all. We will never have a law for every occasion, so, instead, we get a few case laws that show us how to apply the principles of justice to new occasions.

What the case laws give us, in other words, is what our *Westminster Confession of Faith* calls the principle of “general equity.” After saying that the various judicial laws of the ancient epoch expired with the State of that people – that is, expired when Israel ceased to be a national government, and all the more when the church ceased to be virtually entirely identified with that ancient nation – it says that we are, therefore, not obliged to keep those laws any longer *further than the general equity thereof may require*. [XIX, iv]

What is meant by that is that the principles of justice enshrined in those laws continue to govern our lives, even if the specific regulations may not. Interestingly, the first proof texts that the Westminster divines added as demonstration of their assertion about the expiration of the ancient judicial laws but the continuation of their general equity are chapters 21 and 22 of Exodus.

Now, I understand what the divines meant by what they said and, as we shall see, there is much evidence to support their understanding of the continuing authority of the general equity or justice enshrined in these Mosaic case laws, but it was perhaps not the best way to speak about these ancient laws.

The fact is, it is not entirely clear in the Bible that we should speak of their expiration or abrogation. It seems entirely right to say that the laws of Exodus 21 are universal in their reach, so long as necessary changes are made to their particular form and ancient context. It is hard to believe that it would be right to say that any of these laws is actually abrogated. They are, after all, case laws, designed to indicate the manner of the application of more fundamental principles of justice. Case laws, in the nature of the case, are constantly being rewritten to take account of new circumstances. The *Westminster Confession of Faith* is careful to say that God's moral law forever binds all men. But the case laws are simply illustrative ways of applying that moral law to circumstances.

What is more, we may find ourselves in trouble if we abrogate all the case laws and discover too late that some things we know very well are wrong are not explicitly forbidden in the New Testament. For example, the prohibition against incest is found only in the case law of the Law of Moses, never in the New Testament. But we rightly do not doubt that incest is still forbidden.

Still, as I say, the case laws continue to speak with authority, even as circumstances change, and the New Testament makes a point of teaching this. For example:

1. In 1 Tim. 5:18 Paul quotes the law from Deuteronomy 25:4, “Do not muzzle an ox while it is treading out the grain.” In context it was a law preventing the abuse of and cruelty to animals. The animal must share in the profit of its master. He must be allowed to eat some of what his labor produces. But Paul applies that law – or better the principle of justice enshrined in that law – to the matter of a minister’s pay. He’s talking there not about animals but about those who preach and teach the Word, but he applies to them a law that dealt specifically with the treatment of farm animals. The worker is worthy of his wages, he goes on to say, quoting this time not Moses but Jesus himself. But take note of the fact that Paul lays down the law and the law he lays down is a case law from Moses.
2. Or take the case of 1 Cor. 5:13 where Paul, in the context of the excommunication of the Corinthian church member who was living in a romantic and perhaps marital relationship with his step-mother, cites Deut. 17:7. That law, in context, commands the execution of vicious criminals, but Paul applies it here to the excommunication of a notorious sinner. The church does not any longer execute its offenders, but it must do the equivalent, which is excommunication. And to make that point Paul cites the law. He calls on the Corinthian Christians to obey the law of God. They may have to apply it in a new way, but keep it they must.

There are other examples of this same citation of OT laws as laws to be kept by NT Christians, however the application may differ because of different circumstances. This is what the Westminster divines meant by the general equity of these laws. The principle of justice enshrined in these specific regulations is transtemporal and transcultural. It binds us today as it did Israel then.

And it is not at all hard to see that this is the case for the laws we have read this evening in Exodus 21:12-32.

We understand that it is absolutely right and necessary to distinguish between the killing of one human being by another that is unintended, accidental, or even the result of carelessness on the one hand and murder with malice aforethought on the other. Manslaughter is not the same thing as first degree murder and an accident is not the same thing as a crime.

In fact, the cultural and temporal transposition of these laws to our modern situation is usually obvious and straightforward. Later in the Law of Moses, for example, we will read that the Israelites were required to build parapets or fences around their roofs. That commandment made perfect sense. The flat roof of the house was a place where people lived, where they found cool

in the evening, where they sometimes ate and slept. One would entertain on the roof of his house; his children would play there. It was the patio or the deck of our modern American homes. As a result, care had to be taken to provide a safe environment for those who would be on the roof, to ensure especially that they would not fall. Hence a fence was required. In our culture roofs are steeply pitched to shed rain. No one except the roofer himself is ever on our roofs. They are not a part of the living space of the house. So we are not obliged to build parapets or fences around them. But the principle of that law obliges us just as much today. We are responsible for the safety of those who live in our homes and those who visit them. An irresponsible indifference to the safety of others exposes us to liability and to guilt if someone is injured through our inattention or carelessness. The 6th commandment requires us not only not to kill our neighbor, but to take care for his welfare.

Well, in the same way, we can as readily and simply apply the law of the goring ox. We can apply it to any number of situations in which what we are responsible for poses a danger to others. We can apply this law to a poorly maintained airplane or bus or car even though Moses had never heard or thought of such means of transportation. We can just as well apply it to environmental issues so much in the news these days.

Take, as an example, nuclear power. If a company or a government knows how to create power plants that are safe and knows how safely to dispose of the radioactive waste generated by such plants, then it can build such plants and we can profit from the electricity they generate. If no one knows how to make a safe nuclear power plant or how safely to dispose of the radioactive waste, but the plants are built anyway, then that company or that government is acting in indifference to the welfare of others and is obliged for any harm that maybe caused. On the other hand, if wise people can see a safe way to generate nuclear power and dispose of its waste, then, should a genuine accident occur, one that a reasonable person could not have foreseen, the people who built and operate the plant cannot be held responsible for the harm done *as if they did it on purpose!* Life is full of accidents and this must be acknowledged in the application of the law. Much is done both without either malice or criminal negligence and this must be taken into account in the application of the law. It is an injustice in our present system in the United States that frequently people are punished as if they acted intentionally when everyone knows they did not or punished for outcomes no reasonable person could have been expected to anticipate and prevent.

It is, I think, wonderful to contemplate how just, how enlightened, how humane, and yet how firm and strict the system of jurisprudence was that God gave to Moses to give to Israel. It was in very striking ways not a law code of its time – it regularly transcended and very dramatically, the concept of justice then held in ANE cultures. It was in fact a system of justice for all time. And we can learn as much from it today as could anyone who lived in the second millennium B.C. It is a wonderful reminder of the relevance of God's Word for the entire human race and not simply for the church. We have been given truth for all men to live by and should be commending that truth to the world.

He has revealed his word to Jacob,
 His laws and decrees to Israel.
 He has done this for no other nation;

They do not know his laws.
Praise the Lord.