

ABORTION IN JUDAISM

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CHAPTER I

The conundrum takes shape: foundational verses

It all began with a struggle. We will never discover what it was that caused the fight or precisely when it took place. Nor will we ever find out the circumstances under which two men happened to clash in the immediate vicinity of a pregnant woman. All we know is that the tussle ended in disaster. There came a point when the men, engrossed in combat and oblivious to bystanders, collided with the pregnant woman, and loss of life resulted. The Torah, at Exodus 21:22–25, provides two alternative conclusions to the incident:

If men fight, and they push a pregnant woman and she miscarries, but no other injury (*ason*) occurs, the one responsible shall surely be fined, when the husband of the woman shall assess, and he shall pay as the judges shall determine. But if an injury (*ason*) does occur, then you shall award a life for a life, an eye for an eye, a tooth for a tooth, a hand for a hand, a foot for a foot, a burn for a burn, a wound for a wound, a bruise for a bruise.¹

In relation to either outcome, the aggressor was to be judged on the basis of regulations that appear to be fairly unremarkable. In practice, such cases would have been handled with customary dispatch, and their role in the history of *halakhah* should have been regarded as minor. With the passing generations, however, their obscurity came to be transformed into prominence, owing to the fact that this episode afforded a critical

¹ The author's translation from the Hebrew in the *Jewish Publication Society Hebrew–English Tanakh*. Unless otherwise indicated, the author is responsible for all the translations in this work.

Deuteronomy 25:11–12 provides another example of a fight between two men in which the wife of one of the men tries to intervene. It is reasonable to assume, therefore, that such fights were by no means unknown, and that the Torah gives its rulings here in the context of events that would have been within the experience of the Israelites. Rabbi Daniel Sinclair reports the finding of other scholars that “. . . women would often adjudicate in disputes, thereby exposing themselves to blows of this nature. This may also account, to some extent, for the detailed treatment in both the Bible and other ancient Near-Eastern codes, of a situation which does not seem, at first sight, to deserve such extensive attention”; “The Legal Basis for the Prohibition on Abortion in Jewish Law,” *Israel Law Review*, volume 15, number 1, 1980: 110, n. 4

insight into the Israelite view of the relative values that were to be ascribed to the life of the woman and the fetus.² Millennia later, long after the adjudication of such physical conflicts had become banal, the implications of this distinction between a woman and her unborn child would continue to be the cause of determined *halakhic* struggle.

In the ancient world, however, this outcome could not even have been contemplated, much less foreseen. The *Tanakh* (Hebrew Bible) is silent on the issue of abortion as it is understood in contemporary society: the intentional termination of a pregnancy resulting in the death of the fetus by physical or chemical means.³ Exodus 21:22–25, which is thought to date back to at least the ninth century BCE,⁴ refers to spontaneous abortion or miscarriage. Given that “[a]bortions were always available”⁵ in antiquity, it is hardly plausible that this silence reflects ignorance of such practices. Rather, this muteness may be due to the orientation of the Israelite tradition, which consistently placed a great emphasis on the *mitzvah* (commandment) of procreation. “Be fruitful and multiply” (Genesis 1:28) is the very first commandment of the Torah. The instruction is repeated following the flood (Genesis 9:7). The initial barrenness of three of the four matriarchs, Sarah, Rebecca, and Rachel, which is overcome through God’s “remembering” them, seems to teach that pregnancy cannot be taken as a biological assumption, but is touched by the Divine. Jacob’s rhetorical question of Rachel, “[A]m I in God’s stead, who has withheld from you the fruit of the womb?” is particularly telling

² This statement will be further elaborated upon below. Debate often arises surrounding the appropriate word to be used for an unborn, developing human being. Some maintain that the use of the term “fetus” provides more of an emotional distance that further opens the door to abortion than if the term “baby” is utilized. While this argument should not be dismissed, “fetus” is technically a more precise and suitable term for one who is still within the womb. In no way should the use of the term “fetus” be comprehended as a diminution of the value of the unborn.

³ Technically speaking, this definition describes induced abortion. Since the abortion discussion focuses particularly on induced abortion, the term “abortion” will be used to refer to induced abortions. References to spontaneous abortion or miscarriage utilize the appropriate specified term: the unintended expulsion of a non-viable fetus during the first three months of pregnancy is usually referred to as “spontaneous abortion,” whereas the unintended expulsion of the fetus later in pregnancy is usually referred to as “miscarriage.”

⁴ This is the dating of those who subscribe to the documentary hypothesis of biblical criticism, though most would agree that the traditions contained in the text probably existed earlier in oral form. According to the documentary hypothesis, the Exodus passage is part of the so-called “Covenant Code” (Exodus 21–23), representing the oldest law collection of Israel. Jewish tradition ascribes a much earlier date to the giving of the Torah, placing it some time in the 1200s BCE. See B.W. Anderson, *Understanding the Old Testament* (3rd edition), New Jersey, Prentice-Hall Incorporated, 1975, pp. 18–21.

⁵ J. M. Riddle, *Contraception and Abortion from the Ancient World to the Renaissance*, Cambridge, MA, Harvard University Press, 1992, p. 7.

in this regard.⁶ This emphasis on the centrality of procreation led one scholar of ancient Judaism to observe: “[s]een from this faith perspective, I think that abortion was absolutely inconceivable. This does not mean that forced abortion could not have occurred in Israelite families at all; but the necessity of an explicit legal regulation pertaining to this matter obviously did not exist.”⁷ It is also possible that the Torah seeks to separate Israelite conduct decisively from abortion by casting it in the category of an unmentionable, repugnant foreign practice. According to either interpretation, it is plausible that the Israelite ideological milieu made abortion sufficiently rare that biblical statements on the subject would have seemed superfluous.

It may be assumed, then, that the judges of the biblical era understood well how the provisions of Exodus 21:22–25 were to be applied in their day. Since that time, however, the meaning of the text has become sufficiently opaque that even its plain sense is no longer clear. Among the issues that require elucidation, the following have the greatest significance: What exactly was meant by the Hebrew term *ason* – translated above as “injury” – to which the account refers? Who was considered to be the victim of the *ason*? Further, what was the precise nature of the penalties that were to be imposed?

Certain biblical scholars, such as Michael Fishbane and Nahum Sarna, consider the answers to these questions to be indeterminable from the Torah passage itself. Fishbane postulates that the text may well have been shaped in the light of some unrecorded interpretative tradition,⁸ so that it is no longer possible to perceive the correct biblical intent of these verses and their significance, without employing the spectacles of later generations. He regards the Exodus 21:22–25 legislation as a primary example of a biblical structure that is beyond comprehension without the help of interpretation: “it is quite clear that the present instance of *aberratio ictus* is thoroughly dependent upon legal exegesis for its viability. There is virtually no feature of its present formulation and redaction which is entirely unambiguous and self-sufficient.”⁹ Both scholars believe it is impossible to state definitively whether the Exodus case is an instance of premature birth, instant miscarriage, delayed stillbirth,

⁶ See Genesis 16:1–2; 17:15–21; 21:1–2; 25:21; 30:1–2, 22–24.

⁷ A. Lindemann, “‘Do Not Let a Woman Destroy the Unborn Babe in Her Belly’: Abortion in Ancient Judaism and Christianity,” *Studia Theologica*, volume 49, 1995: 258.

⁸ M. Fishbane, *Biblical Interpretation in Ancient Israel*, Oxford, Clarendon Press, 1985, p. 19.

⁹ *Ibid.*, p. 94.

or term delivery.¹⁰ Neither scholar finds that the victim of the *ason* is identifiable with any certainty.¹¹

However, where Fishbane and Sarna see uncertainty, the biblical linguist Benno Jacob provides definitive answers based on the internal logic of the passage. In contrast to his colleagues, Jacob contends that although the meaning of the Hebrew word *ason* is attested to in many places in the strata of post-biblical Judaism,¹² its correct interpretation can readily be derived from the context of the Torah itself. The term *ason* occurs five times in the Torah: twice in Exodus 21:22–25, as well as three times in the Joseph narrative of Genesis.¹³ Jacob holds that a logical reading of verses 23–25 must conclude that an *ason* is “an accident which could lead to any type of injury or even to death.”¹⁴ The contention that an *ason* is an accidental, rather than a deliberate, harm is supported by the three references in Genesis to *ason* which depict it as an event which might “happen along the road,” and, therefore, includes “overtones of bad luck and misfortune.”¹⁵

Jacob further discerns that the Hebrew term *ve-nagfu* (push) in verse 22 is never employed for the direct act of striking someone, but is adopted in those circumstances where a blow “might unintentionally strike a third party.”¹⁶ Hence, the combination of *ve-nagfu* with *ason* reinforces the impression of the passage that the tragic collision with the pregnant woman was an unintentional act. A scholar of Jewish law, Rabbi Daniel Sinclair, asserts that “the term *nagaf* . . . generally refers to a hostile, deliberate act,” and that “[a]ccording to several Talmudic sources, the blow was intentional, but was aimed at someone other than the pregnant woman . . .”¹⁷ Sinclair and Jacob are not necessarily in conflict with one another in their understanding of *ve-nagfu*. The blow may well have been “hostile and deliberate” towards the other man, yet unintentionally struck the woman. However, Jacob would contend that there is no need

¹⁰ These matters, according to Fishbane, are relevant to the viability of the fetus at the time of the incident, and, therefore, may help to indicate the “legal protection and benefits” to which the fetus is entitled.

¹¹ Fishbane, *Biblical Interpretation*, and N. Sarna, *Exploring Exodus: The Heritage of Biblical Israel*, New York, Schocken Books, 1986, p. 186.

¹² *Ason* has always been understood by tradition to mean “injury” or “harm.” For the rabbinic definition, see J. C. Lauterbach (ed.), *Mekilta de-Rabbi Ishmael*, volume 111, *Nezikin*, Philadelphia, 1935, chapter 8, pp. 65–66, and *Sanhedrin* 74a, 79a.

¹³ See Genesis 42:4; 42:38; and 44:29.

¹⁴ B. Jacob, *The Second Book of the Bible: Exodus* (translated by W. Jacob), Hoboken, Ktav Publishing House Incorporated, 1992, p. 656.

¹⁵ *Ibid.* ¹⁶ *Ibid.*, p. 654. ¹⁷ Sinclair, “Legal Basis,” 110–111.

to go to the Talmud for a fuller understanding of the term, since this sense can be derived from the word itself.

A credible reason why the Exodus ruling is set in the context of a conflict between two adversaries may be in order to avoid any suggestion of premeditation, an understanding that supports Jacob's analysis. For the laws promulgated by these verses certainly did not require the presence of more than one aggressor. Precisely the same regulations could have been established had only a sole individual collided with the pregnant woman. It can be seen in the verses immediately preceding the text under consideration that while Exodus 21:18–19 involves two people in its description of the punishments for injuries inflicted in a fight, Exodus 21:20–21 depicts only one individual in its delineation of the penalties for a person who strikes a slave. While either of these two paradigms could have been used for Exodus 21:22–25,¹⁸ it is quite conceivable that the Torah employs the two-person model so that there should be no doubt that “here we had no direct attack, but an accidental injury to a third party . . .”¹⁹

Regarding the identity of the assaulted “third party,” although the rabbis considered the possibility of various victims of the *ason*,²⁰ no coherent sense can be made of the Exodus text were the casualty to be anybody but the pregnant woman. For example, Jacob refutes the rabbinic suggestion that the fetus be considered a candidate as the victim of the *ason* in verses 23–25 by pointing out that the fetus could not have been included in the “tooth for a tooth” provision because it possessed no teeth, and hence could not be the subject of the injuries listed! Jacob concludes that the woman must be the injured party by deducing that the Hebrew term *ba'al*, which appears in verse 22 as a part of the expression *ba'al ha'ishah* (husband; literally, husband of the woman), always alludes either to the one who has “responsibility for damages which must be borne” or to “a recipient for payment of damages to a dependent.”²¹ Thus, in this case, the use of *ba'al ha'ishah* implies that the husband was to be paid in his capacity as the recipient of payment for any damages done to his dependent wife. The text, after all, could have simply used *ba'al* (her husband) rather than *ba'al ha'ishah* (husband of the woman). Jacob contends that the term *ba'al ha'ishah* is utilized here so that there should be no doubt that the husband is receiving the money on account

¹⁸ Fishbane, *Biblical Interpretation*, p. 92, n. 7. ¹⁹ B. Jacob, *Exodus*, p. 656.

²⁰ See below, chapter 2, p. 29, n. 9. ²¹ B. Jacob, *Exodus*, p. 656.

of his dependent wife's misfortune. Thus, the use of *ba'al ha'ishah* indicates that the Exodus text perceived the pregnant woman as the victim of whatever collateral *ason* occurred in connection with the expulsion of the fetus. Consequently, the Torah can be understood as requiring that if the fetus alone were lost, then the one who caused the damage should be fined, but, if the woman were also killed, then it was a matter of *nefesh tachat nefesh*,²² "a life for a life."²³

What, though, did these stated punishments actually imply in practice? In the case of the fine for fetal loss, the translation of the Hebrew word *ka'asher* to mean "as much as" leads to the following confusing reading: "[T]he one responsible shall surely be fined, *as much as* the husband of the woman shall assess, and he shall pay as the judges shall determine."²⁴ Obviously, if both the husband and the judges had set out to establish the fine, it would have been a recipe for legal chaos. Avoiding this route, some concluded that the text actually provides for the imposition of not one, but two fines.²⁵ However, as Rashi makes clear, such contortions are unnecessary if the word *ka'asher* is given its other suitable translation of "when" or "if."²⁶ This offers the simplest understanding, namely that the fine was not levied automatically by societal demand, but was applied only in circumstances where the aggrieved husband called for it. If the husband requested that the fine be imposed, then the authorities determined the appropriate amount. It follows from this reading of the text that the fetus did not have a fixed value, and the husband would have been recompensed for his "property loss" according to its assessed worth. A comparison with other sources from antiquity supports the notion that the fetus' value was probably arrived at on the basis of sundry criteria such as viability and gender.²⁷

²² The Hebrew term *nefesh* refers to a "living soul." E. Urbach, *The Sages: Their Concepts and Beliefs* (translated by Israel Abrahams), Jerusalem, Magnes Press of the Hebrew University, 1979, p. 214, expresses the definition with precision: "In the Bible a monistic view prevails. Man is not composed of two elements – body and soul, or flesh and spirit. In Genesis (ii 7) it is stated 'and man became a living soul [*nefesh*]', but the term *nefesh* is not to be understood in the sense of *psyche*, *anima*. The whole of man is a living soul. The creation of man constitutes a single act. The *nefesh* is in actuality the living man . . ." Thus, the question of if and when a fetus, or baby, actually becomes a *nefesh* – from a Jewish perspective – will become highly relevant to the abortion issue.

²³ Clearly, if she were not killed, but lost an eye, it would be "an eye for an eye"; if a foot, "a foot for a foot," etc. (see below for the definition of these expressions). Since, however, she had been struck in such a way as to cause her to lose her fetus, the loss of her life was the most likely outcome of the irreversible damages listed.

²⁴ Some translate: . . . and he shall pay "based on reckoning." See *JPS Hebrew – English Tanakh*, Exodus 21:22.

²⁵ See below, pp. 18, 22–23. ²⁶ Rashi to Exodus 21:22 at "*ka'asher yashit alav*."

²⁷ See the four ancient texts mentioned below, p. 9. See also B. Jacob, *Exodus*, p. 657.

The second penalty, that of *nefesh tachat nefesh* if the woman were killed, has a long history of being misunderstood. It is well known that the rabbis interpreted *nefesh tachat nefesh* as requiring financial compensation for the value of a life, rather than capital punishment for the perpetrator.²⁸ It is, however, less well known that, even without this rabbinic interpretation, financial compensation rather than capital punishment is what was intended in the text originally. Benno Jacob writes with forceful conviction that when Exodus 21:23–25 is described as a law of talion,²⁹ “we can recognize this to be absolutely wrong, and the words *ne-fesh tachat ne-fesh* could only indicate *compensation through money*, as I have clearly demonstrated through numerous proof texts . . .”³⁰ Jacob’s two principal arguments that refute the possibility that the Exodus law is an example of talion are founded in the Hebrew words *ve-natatah* and *tachat*. According to Jacob, *ve-natatah*, translated above as “you shall award,” always carries with it the sense of “handing over” something which another party can receive. Thus, the punishment cannot mean, “you shall give up” one life for another, because in the “giving up” of a life, the deceased individual is lost and nothing is transmitted to the injured party. Similarly, if an eye were removed as punishment, it could not be “handed over” to anyone, but would be discarded, and *ve-natatah* is not a word that could possibly describe such an activity. The use of the word *ve-natatah*, then, indicates that something tangible was “given over,” not “given up.”³¹ When this understanding is combined with the precise meaning of *tachat*, “in place of” or “something that could function as a substitute,” the text actually can be comprehended to communicate: “You shall hand over a life as a substitute for the life that was lost.”³² Jacob demonstrates, furthermore, that *tachat* was regularly used to denote a pecuniary substitution. He writes, “there are not only many places in which *tachat* means ‘substitute,’ but that there are absolutely no other meanings. Moreover, there are numerous citations in which it signifies a financial restitution . . .”³³ Thus, a linguistic analysis of this punishment demonstrates that something had to be handed over, something of equivalent value, which could be substituted for a life, an eye, or the

²⁸ *M. Baba Kamma* 8:1, *Baba Kamma* 83b–84a.

²⁹ “*Lex talionis*.” A law of talion demanded that the perpetrator suffer the exact equivalent act – as punishment – to that committed in the crime. However, as will be demonstrated, the law which appears three times in the Torah (Exodus 21:23–25; Leviticus 24:17–22; and Deuteronomy 19:18–19, 21) does not possess the characteristics of talion.

³⁰ B. Jacob, *Exodus*, p. 657. For a fuller treatment of the subject, see Jacob’s comprehensive work: *Auge um Auge: Eine Untersuchung zum Alten und Neuen Testament*, Berlin, Philo Verlag, 1929.

³¹ B. Jacob, *Exodus*, p. 657. ³² *Ibid.* ³³ B. Jacob, *Auge um Auge*, pp. 37–38.

other injuries mentioned, and that “something” was most likely to be money.

This explanation is not only linguistically compelling, but intuitively satisfying as well, given that the common understanding of the text is that it provides for sentences of capital punishment, mutilation, or dismemberment. For if the Torah were actually calling for the death of the one who killed the pregnant woman, this would be an excessive penalty for what is acknowledged to be an inadvertent act and which, at worst, should be considered manslaughter.³⁴ Indeed, it has been shown that in other ancient codes, a true law of talion, actually insisting on the taking of a life for a life, is only prescribed in cases where the resulting harm was committed intentionally.³⁵ Unintentional acts never resulted in the death of the perpetrator in any comparable ancient source,³⁶ and thus it stretches credibility to assert that the Torah presents a highly exceptional or blatantly disproportionate case here. Hence, the Torah’s plain meaning yields a position that calls for monetary payment, albeit on wholly different scales, for the loss of either the fetus or the mother.³⁷

This statement is controversial. The biblical scholar, Umberto Cassuto, for example, was undoubtedly referring to those of a similar mind to Jacob when he wrote about what he described as *talio*:

This principle implies, according to the Rabbis, that one who takes a life, and one who blinds an eye must pay the value of the eye, and so forth, and the apologetically inclined commentators have endeavoured to show that this was the meaning of the formula even in ancient Hebrew. But this is impossible. It is not feasible that the meaning of the word “eye” should be “the value of the eye . . .”³⁸

Cassuto maintains that this *talio* is an example of a formula which was meant literally at first, and only at some later point came to signify financial restitution. Sarna agrees that the wording was formulaic, rather than specific to a particular circumstance, but seems to concur with Jacob that it had already come to signify monetary compensation in the Bible itself: “Thus in Israelite law . . . unlike its Near Eastern predecessors, the

³⁴ This, however, did not prevent some later rabbinic interpreters from continuing to view this as a capital offense. See below, chapter 2, p. 30.

³⁵ B. Jacob, *Exodus*, pp. 658–659.

³⁶ The Ancient Near Eastern texts cited below call for the death penalty in the context of what are considered to be intentional attacks. Exodus is the only text that avoids the inference of an intentional act by way of the two-man approach.

³⁷ B. Jacob, *Exodus*, p. 662.

³⁸ U. Cassuto, *A Commentary on the Book of Exodus* (translated by I. Abrahams), Jerusalem, The Magnes Press, 1967, p. 275.

‘eye for an eye’ formula was stripped of its literal meaning and became fossilized as the way in which the abstract legal formula of equivalent restitution was expressed.”³⁹

Jacob, however, makes a powerful case that the principle was designed to exact punishment, although not capital punishment, for this unintentional act. The perpetrator could not be allowed to avoid penalty, as the Code of Hammurabi (see below) provided, but neither could his physical disfigurement be intended. Jacob almost seems to be replying to Cassuto when he writes:

For the Hebrew it must have been impossible to extract a sentence of bodily crippling *talion* from *ne-fesh ta-hat ne-fesh*, but also the English “eye for an eye” is not appropriate linguistically, nor was it original. This was transmitted to us through the Greek and Latin translators as well as the New Testament; through them it entered medieval law and eventually the various modern languages. The unbelievable tenacity with which this interpretation has been preserved, as well as the reluctance to admit error, has its roots in the feeling that *talion* was the simplest and most primitive path of justice. But the Torah had left the primitive world far behind . . .⁴⁰

The *ason*, then, was regarded by the Jewish tradition as an accidental injury to the pregnant woman. If the fetus died but no *ason* occurred, then only the fine for the fetus’ value had to be paid. If an *ason* leading to the woman’s death did occur, then full financial compensation for the lost *nefesh* was required. The significance of these conclusions can be comprehended by comparing Exodus 21:22–25 with the four sources of ancient Near Eastern law that contained similar passages concerning injury to a pregnant woman: the Sumerian Laws, a text from approximately the nineteenth century BCE,⁴¹ the Babylonian Code of Hammurabi, parts of which may date back to the eighteenth century BCE,⁴² the Middle Assyrian Laws, which could be as old as the fifteenth century BCE,⁴³ and the Hittite Laws from around the fourteenth century BCE.⁴⁴ Each one has telling differences from the biblical text, which serve to amplify features of the deliberate wording found in the *Tanakh*.

³⁹ Sarna, *Exploring Exodus*, p. 189. ⁴⁰ B. Jacob, *Exodus*, p. 662.

⁴¹ “Sumerian Laws” translated by J. J. Finkelstein, as found in J. B. Pritchard, *Ancient Near Eastern Texts Relating to the Old Testament* (3rd edition), Princeton, Princeton University Press, 1969, p. 525.

⁴² “The Code of Hammurabi” translated by Theophile J. Meek, as found in Pritchard, *Ancient Near Eastern Texts*, p. 175, sections 209–214.

⁴³ “The Middle Assyrian Laws” translated by Theophile J. Meek, as found in Pritchard, *Ancient Near Eastern Texts*, pp. 181, 184–185, sections 21, 50–53.

⁴⁴ “The Hittite Laws” translated by Albrecht Goetze, as found in Pritchard, *Ancient Near Eastern Texts*, p. 190, sections 17–18.

What emerges from juxtaposing Exodus 21:22–25 with these other ancient legal texts is a picture that makes the biblical source appear consistent and advanced. The biblical outlook shares some features with these texts, while yet articulating profound differences from the attitudes of neighboring cultures. Where, for example, the other texts differentiate on the basis of social standing, the Exodus text does not. Although Israelite society allowed for a relatively benign form of slavery and at times applied divergent damage laws to citizens and slaves,⁴⁵ there is no hint in Exodus of an attempt to impose some alternate punishment for the loss of a woman or a fetus from a lower social stratum. Where the biblical words do draw a distinction, it is between existent maternal life and the potential life of the unborn. Indeed, a close analysis reveals that the Exodus text is unique and represents a truly progressive drive for legal impartiality in considering all maternal life to be of similar worth and all fetal life to be of similar worth, while yet creating a substantive differentiation between the value of the two, a differentiation that brooked no exceptions. Moreover, in Exodus, neither the loss of the fetus nor that of the mother could be recompensed through the payment of a fixed fine; both had to be compensated to the fullness of their worth. That compensation, furthermore, had to come from the one responsible for the injury, and, unlike some of the parallel texts of the ancient Near East, there is no intimation in Exodus that punishment could be inflicted on any other party.⁴⁶

Perhaps of greatest significance, however, the Exodus legislation is without peer insofar as it does not merely depict the mother's life as being of a higher value, but it ascribes to her a status that is on a qualitatively different plane. It stands alone in requiring that the compensation for her loss be appropriate to the loss of a *nefesh*, while the compensation for the fetus is evaluated simply on the basis of its features. Moshe Greenberg has demonstrated, by comparing the laws of homicide, that

⁴⁵ See, for example, Exodus 21:26–27, immediately after the section under discussion. Here a slave receives his freedom for the loss of his eye or his tooth, but the financial penalty of “an eye for an eye, a tooth for a tooth” is not imposed upon the assailant. The rabbis held that this was the case for heathen slaves, but not for Hebrew slaves, for whom the same punishments as for Hebrew citizens would have been exacted. See *Kiddushin* 24a, *Baba Kamma* 74a. From a plain reading of Exodus, however, all that is certain is that citizens and slaves were not treated identically in this regard.

⁴⁶ The *Tanakh* scholar, Moshe Greenberg, contrasts the readiness of the ancient Near Eastern law codes to punish relatives of the perpetrator for crimes committed, with the biblical attitude that only the instigator could be punished. Greenberg is of the view that “In this . . . there is doubtless to be seen the effect of the heightened stress on the unique worth of each life that the religious-legal postulate of man's being the image of God brought about”; M. Greenberg, “Some Postulates of Biblical Criminal Law,” in M. Haran (ed.), *Sefer HaYovel LeYehozkel Kaufmann*, Jerusalem, Magnes Press, 1960, pp. 20–27.

there is a dramatic gap in the relative values ascribed to “life” and “property” between the *Tanakh* and the other ancient Near Eastern sources. The other texts, with their lodestars of social status and the strength of the community, could legislate for a homicide to be financially compensated, or a property offense to be paid for with a life. But not the *Tanakh*:

[I]n biblical law life and property are incommensurable; taking of life cannot be made up for by any amount of property, nor can any property offense be considered as amounting to the value of a life. Elsewhere the two are commensurable: a given amount of property can make up for life, and a grave enough offense against property can necessitate forfeiting life . . . [A] basic difference in the evaluation of life and property separates the one from the others. In the biblical law a religious evaluation; in non-biblical law, an economic and political evaluation, predominates.⁴⁷

From Greenberg’s analysis, it can be seen that the *nefesh tachat nefesh* formula of Exodus 21:23 serves as a powerful reminder that, although the involuntary nature of the incident allowed for a financial restitution for the loss of the woman’s life, this restitution actually represented a sizable legal compromise. According to the value system of the *Tanakh*, a singular and supreme human life had been lost for which no amount of property could adequately compensate. Conversely, the fact that the loss of the fetus could be calculated readily and a fine imposed without such considerations being involved demonstrates that, from the biblical point of view, the fetus did not possess a status equivalent to that of its mother. As Exodus presents it, then, fetal expulsion represented the loss of property, the value of which had to be repaid; the death of the woman, on the other hand, represented the loss of a life, an unquestionably living soul, which deserved a full restitution, the amount of which could not be preordained, but had to befit the extinguishing of a unique, extant human being.

The historic role of these Exodus verses vis-à-vis abortion should, therefore, have been simple. In their specification of the mother as a *nefesh*, as opposed to the fetus, they appear to convey the sense that the status of maternal life is superior to that of the fetus. This suggests that in circumstances where mother and fetus are in a competition for life the Torah might advise saving the life of the mother over that of the fetus. The ramifications of this ranking for the issue of abortion are, of course, dramatic. Since the *Tanakh* does not address the topic of abortion directly, it might be assumed from these verses that any abortion performed with the express purpose of saving the mother’s life would be permitted.

⁴⁷ *Ibid.*, pp. 18–19.

This conclusion, of course, presupposes, as most authorities agree, that feticide contravenes no other laws of the Torah.⁴⁸ Such a conclusion could open the door to abortion within the limited range of instances in which the fetus is directly threatening its mother's existence. However, even before the full implications of Exodus 21:22–25 could become the subject of analysis by later rabbis and codifiers, a variant understanding of the meaning of the passage's words arose. Although this alternative rendering sprang from Jewish roots, it ultimately would provide the basis for deep divisions in Western thought. This effectively ensured the positioning of these Exodus sentences at the core of a controversy that would refuse to be dismissed easily.

The Exodus verses transmitted through history belong to the Hebrew Masoretic (received) text of the *Tanakh*, finalized some time in the second century CE from the various proto-Masoretic texts which had been in circulation in the centuries before.⁴⁹ However, already in the third century BCE, the prominent Jewish community of Alexandria in Egypt⁵⁰ had begun the production of a *Tanakh* translation into Greek to be used for public recitation and study. This first ever translation of the *Tanakh*, the Septuagint,⁵¹ was far from just an attempt at the conversion of Hebrew words into their Greek equivalents:

The Septuagint was not simply a literal translation. In many passages, the translators used terms from Hellenistic Greek that made the text more accessible to Greek readers, but they also subtly changed its meaning. Elsewhere, the translators introduced Hellenistic concepts into the text. At times, they translated from Hebrew texts that differed from those current in Palestine, a matter now made clearer through the evidence of the biblical scrolls from Qumran. At other points, the Septuagint reflects knowledge of Palestinian interpretative traditions enshrined in rabbinic literature.⁵²

⁴⁸ See chapter 2, generally.

⁴⁹ L. H. Schiffman, *Reclaiming the Dead Sea Scrolls*, Philadelphia, The Jewish Publication Society, 1994, pp. 161–173.

⁵⁰ Immediately after the founding of Alexandria in 332 BCE, the city became an instant magnet for Jews, so that by the first century BCE its Jewish population was said to be of the order of four hundred thousand. It was indubitably the largest Jewish community of its time, even compared with those of Judea. See J. Alpher (ed., English edition), *Encyclopedia of Jewish History* (translated by Haya Amir et al.), Ramat Gan, Israel, Massada Publishers, c. 1986, pp. 58–59.

⁵¹ “Septuagint” – also abbreviated as “LXX” – means “seventy.” The name derives from a legend to be found in the Letter of Aristeas (a Greek work thought to be from the late second century BCE) and in the Talmud, claiming that the translation was produced in seventy-two days by seventy-two elders brought from Jerusalem to Alexandria by Ptolemy II Philadelphus (285–246 BCE). See “Introduction” in *The Septuagint Version of the Old Testament and Apocrypha*, Grand Rapids, Zondervan Publishing House, 1972, pp. i–ii.

⁵² Schiffman, *Dead Sea Scrolls*, p. 212.

The Septuagint, then, represents a work that coalesced from the interpretation of particular groupings of *Tanakh* texts (the specific texts used depending on the given translator), which had been filtered through the lens of Hellenistic terminology and thought. In reality, given that several centuries would pass before the Septuagint would be standardized, it is probably more accurate, before the Common Era, to speak of the work in progress as “Septuagintal-type manuscripts.”⁵³ Even though there were numerous places where these manuscripts deviated from the meaning of the Hebrew that would ultimately comprise the Masoretic text, their use became widespread among Jews, not just in Alexandria, but in the Hellenistic world generally and remained so until rabbinic times.

Characteristic of the Septuagint, the phrasing that was finally enshrined in the standardized version cast Exodus 21:22–25 in a quite different light from the view presented by the Masoretic text. A literal translation from the Greek produces the following reading:

And if two men strive and smite a woman with child, and her child be born imperfectly formed, he shall be forced to pay a penalty: as the woman’s husband may lay upon him, he shall pay with a valuation. But if it be perfectly formed, he shall give life for life . . .⁵⁴

In understanding the word *ason* as “form” rather than “accidental injury,” the Greek reading totally changed the meaning of the text. The Septuagint effectively removed the matter of the woman’s death from consideration and, instead, based the severity of punishment upon whether or not the fetus was fully formed. If the fetus was not yet formed, then a fine was to be paid to the husband in recompense for the loss; if it was formed, then capital punishment was the appropriate penalty.

How did the Septuagint arrive at this widely variant rendering? In each of the three Genesis occurrences of the Hebrew term *ason*, the Septuagint employs a form of the Greek noun *malakia*, generally translated as “affliction,” for *ason*.⁵⁵ Had the Septuagint utilized *malakia* in Exodus 21:22–25, it would have conveyed a sufficiently similar sense to the original Hebrew that it would have been highly unlikely to have become the cornerstone of a wholly divergent approach to the status of the fetus. But, in Exodus 21:22–25, instead of *malakia*, the Septuagint twice

⁵³ S. Sandmel, *Philo of Alexandria*, New York, Oxford University Press, 1979, pp. 168–169. See also S. Daniel, “Bible Translations,” in *Encyclopaedia Judaica*, Jerusalem, Keter Publishing House, volume 14, pp. 851–856.

⁵⁴ *The Septuagint Version*, Exodus 21:22–23, p. 98.

⁵⁵ *The Septuagint Version*, pp. 57, 58, 61.

uses the Greek participle *exeikonismenon* to translate *ason*.⁵⁶ A scholar of Hellenistic Judaism, Richard Freund, has made the case that the translator of these verses, who either deliberately bypassed or was ignorant of the translation used elsewhere, arrived at his version through a process of homophonic substitution.⁵⁷ This technique was not uncommon in both Greek and rabbinic texts. According to this explanation, the translator probably transliterated *ason* into some form of the Greek word *soma*, meaning “human life,” and then replaced this Greek transliteration with a synonymous term that offered a more profound theological resonance.⁵⁸ This resonance can be readily apprehended through the literal translation of *exeikonismenon*: “made from the image,”⁵⁹ which evokes an immediate connection to the wording of Genesis 1:27, “In the image of God, God created man.” Freund posits that the usage of the verb *exeikonizein* in the Septuagint and Philo establishes a strong connection to the “made from the image” metaphor. This remarkable textual allusion led Freund to conclude that “[i]t is clear from the LXX use of *exeikonizein* in Exodus 21.22–23 that the translator had some idea, principle, or presupposition in mind, which made him deliberately violate a literal translation in favor of a more complex formulation.”⁶⁰

It is possible, moreover, to conjecture why this “more complex formulation” was preferred by the translator. Using *exeikonismenon*, the translator’s literal rendering of verse 23 would be “If it be made in the image, he shall give life for life.” This implies that one who kills a fetus that is already “made from the image” deserves death. But the translator must have been aware of the fact that one of the Torah’s six references to being “made from the image” explicitly calls for the capital punishment of a murderer on the grounds that he had destroyed a being “made from the image”: “Whoever sheds the blood of man, by man shall his blood be shed; for in God’s image did God make man.”⁶¹ It is, therefore, reasonable to deduce that the Septuagint translator, through the employment of *exeikonismenon*, intended to create a link between feticide and homicide by way of the “made from the image” formulation.⁶² As a result, “formation” became critical because it was only when the fetus had attained a form that could be considered to be recognizably

⁵⁶ *Ibid.*, p. 98.

⁵⁷ R. Freund, “The Ethics of Abortion in Hellenistic Judaism,” *Helios*, volume 10, number 2, 1983: 129–131.

⁵⁸ *Ibid.* ⁵⁹ *Ibid.*, 127–128.

⁶⁰ *Ibid.*, 128.

⁶¹ Genesis 9:6.

⁶² Freund, “Ethics of Abortion,” 128–129. This link also would appear in later rabbinic literature. See below, chapter 2, p. 52.

“in God’s image” that it would be considered sufficiently human that its destruction would become the equivalent of homicide.

The nature of the impact of Hellenistic thought on this section of the Septuagint has been much discussed. The scholar Victor Aptowitzer contends that the Septuagint’s portrayal of the status of the fetus effectively compromised between two schools of Greek philosophy, Plato (the Academy) and the Stoics. While the Stoics saw the fetus as being an integral part of the mother’s womb, the Academy regarded it as an independent living being. Hence the compromise entailed viewing the fetus either as dependent or as independent, contingent upon formation.⁶³ Others have pointed to the similarities between the Septuagint’s focus on the pivotal role of formation and Aristotelian thought which held that full human status was conferred at formation, since it was at that juncture that the soul was thought to infuse the body.⁶⁴

But perhaps the most significant Hellenistic idea of all was to be found in the notion that the willful abortion of a formed fetus was to be considered one of the most serious transgressions imaginable, deserving of the death penalty. From a range of pagan and Hellenistic sources, Moshe Weinfeld, a prominent thinker in the field, has demonstrated that the Assyrian attitude of determined opposition to the woman who self-abortioned was generally dominant in the Hellenistic world.⁶⁵ Thus, bringing about the loss of a fetus was cited regularly alongside witchcraft, murder, adultery, and theft as principal societal crimes.⁶⁶ In contrast to this strong stance against feticide, however, the Hellenistic world often legitimated a relaxed attitude of “complete lawlessness” to infanticide, especially for children who were in any way defective. Indeed, Aristotle

⁶³ V. Aptowitzer, “Observations on the Criminal Law of the Jews,” *The Jewish Quarterly Review*, volume 15, 1924: 115–116.

⁶⁴ There was significant philosophical debate as to when formation occurred, with thirty, forty, and ninety days being suggested possibilities (see B. Jacob, *Exodus*, p. 655). Aristotle was of the view that the fetus possessed vegetative life at conception, received an animal soul several days later, and was endowed with a fully rational human soul forty days after conception for the male fetus and eighty days for the female (see D. L. Perry, “Abortion and Personhood: Historical and Comparative Notes,” at <http://www.home.earthlink.net/~davidlpercy/abortion.htm> [the publisher has endeavored to ensure that the URLs for external websites referred to in this book are correct and active at the time of going to press. However, the publisher has no responsibility for the websites and can make no guarantee that a site will remain live or that the content is or will remain appropriate]). In this section, however, the Septuagint provides no timing estimates and makes no gender distinctions.

⁶⁵ M. Weinfeld, “*Hamitat Ubar: Emdatah Shel Masoret Yisrael BeHashva’ah LeEmdat Amim Acherim*,” *Ẓion*, volume 42, 1977: 129–142. Weinfeld quotes the Septuagint, Aristotle, the Didache (see below, p. 24), an inscription from Philadelphia in Asia Minor, the Hippocratic and other oaths, the letter of Barnabas, and Pseudo-Phocylides as representing this position.

⁶⁶ *Ibid.*, p. 134.

openly expressed limited support for infanticide in close proximity to his clearly stated rejection of the killing of the formed fetus.⁶⁷ This stark polarity of forceful resistance to the destruction of the formed fetus alongside a measure of acceptance of infanticide, conveys that the pagan and Hellenistic orientation in this regard was not rooted in a moral vision of the value of life, as such a vision might be perceived within contemporary Western civilization, but rather was rooted in a practical approach to the needs of society. The developing fetus needed to be protected for its economic, military, or communal value; the disabled child was a burden to be discarded. According to this understanding, despite the Septuagint's theological concerns with being "created in the image," opposition to abortion in the Hellenistic world had little ethical motivation, but saw fetal destruction as a "crime against state and society: [it represented] the loss of manpower and the diminution of community and family, and, for that reason, society was determined to punish transgressors."⁶⁸

The Septuagint did not absorb all these aspects of Hellenistic philosophy. However, to ignore the remarkable resemblances between the Septuagint and the Greek philosophical setting and thereby to judge the difference between the Septuagint and the Masoretic texts as being simply the result of mistranslation or of chance interpretation is not intellectually tenable.⁶⁹ As in numerous other places, the Septuagint Hellenized the Exodus 21:22–25 text, in accordance with its goal of making biblical concepts more comprehensible to those who lived within an essentially Greek *Weltanschauung*. Small wonder, then, that one of the foremost Jewish scholars in this area would observe that the Septuagint "is not genuinely Jewish but must have originated in Alexandria under Egyptian-Greek influence."⁷⁰

But if the Septuagintal-type manuscripts were not "genuinely Jewish" then this would have been genuinely startling to the dominant

⁶⁷ Aptowitz, "Criminal Law," 99. Weinfeld, "*Hamitat Ubar*," xvi, 136. See especially Aristotle, *The Politics*, edited by S. Everson, Cambridge, Cambridge University Press, 1988, v11. 14, p. 182, who states: "As to the exposure and rearing of children, let there be a law that no deformed child shall live. But as to an excess in the number of children, if the established customs of the state forbid the exposure of any children who are born, let a limit be set to the number of children a couple may have; and if couples have children in excess, let abortion be procured before sense and life have begun . . ."

⁶⁸ Weinfeld, "*Hamitat Ubar*," 139.

⁶⁹ See E. R. Goodenough, *The Jurisprudence of the Jewish Courts in Egypt*, Amsterdam, Philo Press, 1968 (reprint of 1929 edition), p. 111, where it is stated that in the Septuagint version of Exodus 21:22–23 "the Greek mistranslates the Hebrew." While this is certainly true, it fails to highlight that what was at work here went beyond just the making of a mistake.

⁷⁰ Aptowitz, "Criminal Law," 88.

figure of Alexandrian Jewry, Philo Judaeus (c. 20 BCE – c. 50 CE), who undoubtedly used these texts extensively in his erudite philosophic reconciliation of the worlds of Greek and Jewish thought. So thoroughly immersed in the Hellenistic milieu of his day was Philo that his voluminous writings also have been judged by Jewish history to be lacking in Jewish standing. Nevertheless, his profound loyalty to Judaism is unquestioned, and his philosophy clearly represented an attempt to cast Judaism within the mold of Hellenistic ideas, not to step outside the Jewish framework.⁷¹

In relation to Exodus 21:22–25, Philo took the ideas promulgated by the Septuagint text even further within his *De Specialibus Legibus*:

But if any one 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 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, who had not thought it as yet a proper time to produce him to the light, but had kept him like a statue lying in a sculptor's workshop, requiring nothing more than to be released and sent out into the world.⁷²

Despite the fact that he was aware of the text that would ultimately become part of the Septuagint, in this passage Philo's eloquent prose displays some subtle, though significant, differences from the Septuagint translation.⁷³ To begin with, Philo seems to depart deliberately from the "two-person paradigm," in preference for that of a sole aggressor

⁷¹ Sandmel, *Philo of Alexandria*, pp. 127–134.

⁷² *The Works of Philo* (new updated edition, translated by C. D. Yonge), Peabody, Hendrickson Publishers, 1993, *De Specialibus Legibus* 111.108–109, p. 605.

⁷³ Philo actually quotes the Septuagint text in a section of "The Preliminary Studies": "Therefore an indistinct and not clearly manifested conception resembles an embryo which has not yet received any distinct character or similitude within the womb: but that which is clear and distinctly visible, is like one which is completely formed, and which is already fashioned in an artistic manner as to both its inward and its outward parts, and which has already received its suitable character. And with respect to these matters the following law has been enacted with great beauty and propriety: 'If while two men are fighting one should strike a woman who is great with child, and her child should come from her before it is completely formed, he shall be mulcted in a fine, according to what the husband of the woman shall impose on him, and he shall pay the fine deservedly. But if the child be fully formed, he shall pay life for life.'" See *The Works of Philo, De Congressu Quaerendae Eruditionis Studies*, 136–137, p. 316.

who is actually engaged in a “contest” with the pregnant woman.⁷⁴ This suggests that Philo is referring here to a blow that was purposeful, although the killing of the fetus may not have been the intended outcome.⁷⁵ Further, Philo does not make explicit to whom any moneys to be paid would be due, whereas both the Masoretic and Septuagint texts indicate that they would be due to the husband of the victim. The reason for this omission may be that Philo provides two grounds, “the assault” and “preventing nature,” upon which one who kills an unformed fetus is fined. This led to speculation that he may be referring to two separate fines that were levied, only one of which was to go to the husband.⁷⁶

But perhaps of greatest moment for the abortion discussion of later centuries, in both Jewish and non-Jewish circles, is Philo’s explicit association of “formation” with the point at which the fetus becomes discernibly human in shape and being. Philo makes plain the reasoning that had been implicit within the Septuagint translation by conveying that when this particular juncture is reached, nature has done its essential work of fashioning human life and thereafter is simply incubating the creation until it is ready to emerge. It follows that the intentional killing of the fetus would be tantamount to murder from the moment that formation is achieved, and would be a crime worthy of the penalty of execution. This is consistent with Philo’s stated view in the *Hypothetica* that, on pain of death, “no one shall cause the offspring of women to be abortive by means of miscarriage, or by any other contrivance.”⁷⁷

There can be little doubt that in arriving at these views Philo leaned heavily towards the Platonic outlook that the fetus was an independent being. This is well illustrated by Philo’s understanding of the law of Leviticus 22:28, where the Torah commands that one should not kill an animal together with its young on the same day. Philo subsumes within this provision the instruction that one may not sacrifice a pregnant animal, asserting that Jewish law aims to protect the sensitivities of the animal as well as the vulnerable offspring, both outside and inside the womb.⁷⁸ Plainly, this law would hardly be relevant to a pregnant creature,

⁷⁴ While the Sumerian Laws, the Code of Hammurabi, the Middle Assyrian Laws and the Hittite Laws describe a pregnant woman being struck by a single aggressor, they do not describe it as being in the context of a struggle or “contest.”

⁷⁵ The fact that the killing of the fetus may have been an accidental result of the “contest” does not appear, in Philo’s presentation, to mitigate the consequences.

⁷⁶ S. Belkin, *Philo and the Oral Law*, Cambridge, MA, Harvard University Press, 1940, p. 130. Compare how Josephus has been understood to allude to two fines, below, p. 22.

⁷⁷ *The Works of Philo, Hypothetica* 7.7, p. 744. Though Philo does not restate here the distinction between a formed and an unformed fetus, he makes his opposition to abortion absolutely plain.

⁷⁸ *Ibid.*, *De Virtutibus* 137, p. 653.

unless one held that the “young” fetus had independent standing. From this conclusion, Philo then argues for an extension of the same type of protection to human beings:

And it appears to me that some law-givers, having started from this point, have also promulgated the law about condemned women, which commands that pregnant women, if they have committed any offence worthy of death, shall nevertheless not be executed until they have brought forth, in order that the creature in their womb may not be slain with them when they are put to death.⁷⁹

As will be seen, this position is diametrically opposed to the stance of the Talmud on this matter, which began from the same premise as did the Stoics, namely, that the fetus was a dependent component of its mother.⁸⁰

There are other parts of Philo’s writings, however, which appear to be more compatible with this Stoic doctrine of fetal dependence. In the continuation of *De Specialibus Legibus*, Philo opines:

And yet those persons who have investigated the secrets of natural philosophy say that those children which are still within the belly, and while they are still contained within the womb, are a part of their mothers; and the most highly esteemed of physicians . . . agree with them and say the same thing. But when the children are brought forth and are separated from that which is produced with them, and are set free and placed by themselves, they then become real living creatures, deficient in nothing which can contribute to the perfection of human nature, so that then, beyond all question, he who slays an infant is a homicide, and the law shows its indignation at such an action; not being guided by the age but by the species of the creature in whom its ordinances are violated.⁸¹

Philo, furthermore, describes animal fetuses as “parts of the mothers which have conceived them,”⁸² in the context of his commentary on pregnant animals. In both these places, Philo seems to be directly contradicting his previously depicted stance. The offspring appears to remain a part of its mother so long as it is within the womb, and only once it has been born does it become a “real living creature, deficient in nothing.”⁸³ These sources provide the impression that Philo might indeed have concurred that the fetus was not endowed with a fully independent status.

Was Philo “somewhat confused, if not plainly inconsistent”?⁸⁴ Was he simply unable to make up his mind as to the nature of the loss that would be sustained if a fetus were killed? It was certainly not indecision that

⁷⁹ *Ibid.*, 139, pp. 653–654.

⁸⁰ See below, chapter 2, pp. 32–33.

⁸¹ *The Works of Philo, De Specialibus Legibus* 111.117–118, p. 606.

⁸² *Ibid.*, *De Virtutibus* 138, p. 653.

⁸³ *Ibid.*

⁸⁴ I. Jakobovits, *Jewish Medical Ethics*, New York, Philosophical Library, 1959, p. 179.

characterized Philo's position in this area. In fact, if anything, Philo's apparent equivocation is emblematic of the same complex, blended outlook on the status of the fetus that was discerned in the Septuagint's effective compromise between the Academy's view of fetal independence and the Stoic view of dependence. While this mixed outlook is not evident in the Masoretic text, its echoes in later rabbinic literature⁸⁵ led Samuel Belkin to conclude that Philo's writings were not in the least paradoxical: as the unborn child is inherently physically dependent on the mother, while at the same time it has "the legal status of a human being by itself," it follows that "the passage of Philo which says that the unborn child is a part of the mother is not to be considered a contradiction to the passage in which he maintains that the formed foetus is treated like a living creature."⁸⁶ It seems correct, then, to assert that Philo's reference to the fetus as being part of its mother is used more as a physical evaluation, imparting the sense of an intertwined destiny of mother and offspring, rather than as a legal description. From an ethical and religious perspective, as well as for purposes of considering the legal consequences of causing the loss of a fetus, Philo can be taken to have been single-minded in viewing the formed fetus as an independent being.

For Philo, then, abortion of this formed, independent fetus would have been an anathema that his reading of the texts would have trenchantly opposed. In this respect he was fully in line with Hellenistic thought. But Philo's outlook diverged markedly from the Hellenistic environment when it came to infanticide. On this subject, Philo had no tolerance for the cavalier attitude of the Hellenistic philosophers and emphasized that infants at birth "become real living creatures, deficient in nothing which can contribute to the perfection of human nature, so that then, beyond all question, he who slays an infant is a homicide, and the law shows its indignation at such an action."⁸⁷ It is possible that Philo's rejection of feticide and his determination to frame it as so thoroughly repugnant to Jewish law were components of his strident opposition to the destruction of all early human life. If Jewish law is to take a determined stand against infanticide, the reasoning might have proceeded, then logically it must oppose the taking of life from the moment that "humanness" is recognized.⁸⁸ Whatever the reason, the composite nature of Philo's

⁸⁵ See below chapter 2, p. 44.

⁸⁶ Belkin, *Philo and the Oral Law*, pp. 132–133.

⁸⁷ *The Works of Philo, De Specialibus Legibus* 111.117–118, p. 606 (as cited above).

⁸⁸ Indeed it is precisely this type of argument, pleading for the born creature by analogy to the unborn, that Philo employs in the case of sacrificing an animal with its young on the same day. See *The Works of Philo, De Virtutibus* 137–138, p. 653.