THE SEPTUAGINT HAS THE CORRECT TRANSLATION OF EXODUS 21:22-23

BY

THOMAS F. McDANIEL, Ph.D.

©

2012
THE SEPTUAGINT HAS THE CORRECT TRANSLATION OF EXODUS 21:22–23

When Nina Collins (1993: 290) concluded with reference to Exod 21:22 “Yet the verse as a whole fails to make sense” she was referring to the Hebrew Masoretic text of this verse and its many variant translation, not to the Hebrew Vorlage behind the Greek translation in the Septuagint (250 B.C. to 132 B.C.), a translation which makes perfect sense. Consider first the Masoretic text and its varied translations.

EXODUS 21:22–23 (MT)

יהוה י oltre לה אשתך כשם נפשך נפשך
נערו נגען וכסף ניגה עליה בועל אשתך
נשת בפלילים:
יאמר-אלן יוהי ונחתה נש חחת נש.

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

PESHÎTTA

كَذَٰلِكَ وَذَاكَ لَئِنْ تَحْمِلْ زَامِلَةَ نَفْسِهَا
تَأْكُلُ قُلْبُهَا وَذَاكَ لَئِنْ تَحْمِلْ زَامِلَةَ نَفْسِهَا
كُلُّ مِنْ أَعْمَالِ زَامِلَةَ حَلَالٌ نَفْسُهَا
فَإِنَّمَا فَعَالُ ذَٰلِكَ هُدَى عِلْمُ مُرْسِلِهِ.
If two men quarrel, and strike a pregnant woman and her fetus (m. sg.) comes out, — it not become a calamity — he shall surely pay a fine such as the woman’s husband will lay upon him; he shall pay as the judges determine. But if it is a calamity, life in exchange for life . . . .

**TARGUM ONKELOS**

“因為二人爭訟，打著妻子，而其腹內的孩子（名）為之死亡，他必當照其夫所定之額作贖子之價；若其夫之定價為殺人之罰，便當照其定價作贖子之價，他必照法官所定之價為之贖子之價：若其夫之定價為殺人之罰，便當照其定價作贖子之價，他必照法官所定之價為之贖子之價：”

**ETHERIDGE’S TARGUM PARAPHRASE**

“If men when striving strike a woman with child, and cause her to miscarry, but not to lose her life, the fine on account of the infant which the husband of the woman shall lay upon him, he shall pay according to the sentence of the judges. But if death befall her, then thou shalt judge the life of the killer for the life of the woman.”

Once upon a time there were two distinctly different Hebrew words which were spelled consonantly as יָסָא. There was the well recognized יָסָא, cited in all the standard Hebrew lexicons, which was related to the Arabic اسی (asaya) “he grieved or mourned” (Lane, 1863: 61). There was also another יָסָא in the early Israelite and Alexandrian dialects of Hebrew which became lost in the later
Judean and Samaritan Hebrew dialects. This lost הָשְׁתָּא was related to the Arabic سوى (sawaya) “he made it equal, he became full-grown in body” and “of regular build and growth” (Lane, 1872: 1478.)

This lost הָשְׁתָּא — which was in the Hebrew Vorlage behind the Septuagint — has yet to be recognized by the Hebrew lexicographers.

In the KJV, cited above, the MT הָשְׁתָּא became "mischief," which appears also in the WEB and YLT. Other English translations include "harm" (ASV, RSV, NRS, NKJ, JPS), “further harm” (NJB), “injury” (NAB), “serious injury” (NIV, NIB), and “further injury” (NAS, NAB, NAU, NLT).

In the Targum, cited above, the MT הָשְׁתָּא was translated as הָשְׁתָּא הָאֵֽבִּים "and there is no death” [of the woman]. A similar interpretation appears in the Vulgate and DRA, which read:

Si rixati fuerint viri et percusserit quis mulierem praegnantem et abortivum quidem fecerit sed ipsa vixerit subiacebit damno quantum expetierit maritus mulieris et arbitri iudicarint. Sin autem mors eius fuerit subsequita reddet animam pro anima.

“If men quarrel, and one strike a woman with child and she miscarry indeed, but live herself he shall be answerable for so much damage as the woman's husband shall require, and as arbiters shall award. But if her death ensue thereupon, he shall render life for life.”

Josephus (37 A.D. to 101 A.D.), in Antiquities 4: 278, also made the MT הָשְׁתָּא הָאֵֽבִּים apply to the mother, stating:

“He that kicks a pregnant woman, if the woman miscarry, shall be fined by the judges for having, by the destruction of the fruit of her womb, diminished the population, and a further sum shall be presented by him to the woman’s husband. If she die by the blow, he shall also die, the law claiming sacrifice of life for life.”
Similarly, the אָסָי (‘asaya) which is related to the Arabic أُسِمَ which is related to the Arabic أُسِمَ (‘asaya) “he grieved, mourned” appears in Genesis 42:38,

And he said, My son shall not go down with you; for his brother is dead, and he is left alone: if mischief befal him by the way in which ye go, then shall ye bring down my gray hairs with sorrow to the grave.”

KJV

But be said, My son shall not go down with you; for his brother is dead, and he alone remains of his mother; and if death should befall him (רֵעֶרֶנִיהָ מְלוֹת) in the way that you go you will bring down my age with mourning to the grave.”

TARGUM ONKELOS

“But he said, My son shall not go down with you, because his brother is dead, and he only has been left; and suppose it shall come to pass that he is afflicted by the way by which you go, then you shall bring down my old age with sorrow to Hades.”

SEPTUAGINT

And he said, My son shall not go down with you; for his brother is dead, and he is left alone: if mischief befal him by the way in which ye go, then shall ye bring down my gray hairs with sorrow to the grave.”

BRENTON’S TRANSLATION

“All of the above translations which read the אָסָי as אָסָי “mischief, harm, injury, death” can be recognized as extensions of the
TRANSLATION OF EXODUS 21:22–23

basic meaning of the Hebrew lexeme which was related to the Arabic اسی (‘asaya) “he grieved, mourned.” ⁵ Even the μαλακισθήναι “to be afflicted” in the Septuagint of Gen 42:38 can be so identified—as well as the £ in Gen 42:4, γάρ μήποτε συμβῇ αὐτῷ μαλακία, “lest disease befall him,” and in Gen 44:29, καὶ συμβῇ αὐτῷ μαλακία, “lest disease befall him.” Even the £ in the Hebrew text of Sirach 41:9 (which was published by Cowley and Neubauer ⁹ can be related to the Arabic £ “he grieved, mourned.” ⁵ It reads as follows:

If [ye increase, it shall be into] the hands of bodily mishaps, and [if ye] begat, it will be for sighing” . . . .
If ye stumble it will for perpetual joy; and if ye die it shall be for a curse. ¹⁰

However, the translation of the £ in the Septuagint of Exodus 21:22–23 cannot be related to this £ which is related to the Arabic اسی (‘asaya) “he grieved, he mourned.” ¹¹ The Septuagint translation of Exod 21:22–23 reads:

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

BRENTON’S TRANSLATION

“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.”

In addition to the well recognized אַסָּא ("asaya) “he grieved, mourned,” there was, as noted above, also the word חֶסָּא which was related to the Arabic سوّى (sawayya) “he made it equal, he became full-grown in body” and “of regular build and growth.” This חֶסָּא is a perfect match for the Septuagint’s ἐξεικονισμένον, “to make like, to be perfectly/fully formed.” Thus the חֶסָּא in the Vorlage of the Septuagint could have been read as קֶסֶו (ceswan) or קֶסֶו (ceswon) from the stem חָס— with (a) a prosthetic א, (b) an affixed א, and (c) the ו of the חָס being a consonant rather than a vowel letter.

Contra the MT plural יַלְדוֹת הָאָדָם “and her children come out,” the Septuagint has the singular קאֲיָלֶיתָה תֹּהַיָּא מֵאָדָם אֲבֵיָה, “and her child came out,” which is in agreement with the Samaritan Pentateuch which has the singular יִלְדוֹת אִלְדָּה. Once the singular יִלְדוֹת אִלְדָּה “and her child came out” is in focus it becomes obvious that the subject of the masculine singular verb הָיְדָה in the phrase יָדַי הָאָדָם (v. 22) and ידַי הָאָדָם (v. 23) is the singular יִלְדוֹת אִלְדָּה “her child,” permitting the following translation of these phrases: “. . . her child come out but HE is not fully formed, . . . but if HE is fully formed.” The masculine יִלְדָּה/אָדָם “child” is obviously gender inclusive like the אָדָם “man” in Gen 1:27 and 5:2.

Simply by substituting the antecedent noun child for the pronoun HE the Septuagint text in 21:22–23 stipulated:

“And if two men strive and smite a woman with child, and her CHILD BE NOT FULLY FORMED, he shall be forced to pay a penalty as the woman's husband may lay upon him, he
shall pay what seems fitting. But if the CHILD BE FULLY FORMED, he shall give life for life.”

This law was so perfectly clear that Sprinkle (1993:247) well noted:
The penalty paid is assessed on the basis of the stage of the development of the dead fetus. The rationale for this view is that the later the stage of pregnancy, the more time has been lost to the woman, the greater the grief for the loss of a child, and the more difficult. This may have been the view of the LXX, which paraphrases הָיוֹת עֵצָמָהוֹ as “imperfectly formed child” and translates בֵּפֶלָלֵים with valuation.” Furthermore, Speiser’s view gains credibility in that penalties for miscarriage actually do vary with the age of the dead fetus in the parallel ancient Hittite Law §17, which states, “If anyone causes a free woman to miscarry—if (it is) the 10th month, he shall give ten shekels of silver, if (it is) the 5th month, he shall give five shekels of silver and pledge his state as security.”

A fetus aborted in an accidental miscarriage which is not fully formed—nor equal to an infant born prematurely—was to be treated as property. However, if the aborted fetus was fully formed—and equal to an infant born prematurely—it was to be treated as a person. A property which is accidentally destroyed called for a fine to be paid by the destroyer. But the lex talionis became applicable when a person—including a fully developed fetus—was accidentally injured or killed. Accordingly, in Mosaic law a woman’s fertilized egg or an imperfectly formed fetus was not considered to be a נפש, a person. Only a fetus that was רון / שָׁם (eswon / ១ eswan) “fully formed” was recognized as a נפש, a person.

Unfortunately the Septuagint translators were the only ones who recognized the rare hapax legomenon פָּרָה (= פָּרָה) “fully formed.” They did not confuse it with the well attested פָּרָה. But the
THE SEPTUAGINT HAS THE CORRECT

The Septuagint has the correct rare יָוַשְׁנָא / יָוַשְׁנָא never made it into the Masoretic or rabbinic texts nor the Hebrew lexicons. Instead every יָוַשְׁנָא in Hebrew became יָוַשְׁנָא, with its various translations cited above: “mischief, injury, harm, death, etc.”

However, Philo (20 B.C. to 40 A.D.) followed the Septuagint’s translation of יָוַשְׁנָא as ἐξελκονωμένον, “fully formed.” In his Congressu Quaerendae Eruditionis Gratia, xxiv 137, he wrote:

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 muleted 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.”{35). For it was not the same thing, to destroy a perfect and an imperfect work . . . .”

Similarly in De Specialibus Legibun, iii 108–109, Philo wrote:

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 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, 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.{25}
Other than being quoted by Philo the Septuagint translation of Exod 21:22–23 has not been taken seriously. For example Bernard Jackson (1973: 293) stated:

The LXX and Philo preserve the meaning of the original in that they take aswn, both in v. 22 and in v. 23, to refer to the child . . . . But if aswn refers to the foetus, does not Exod. xxi 23 indicate that causing a miscarriage was treated as homicide, and thus that legal personality was accorded the foetus? . . . . Once Exod. xxi 23 is freed from the context forced upon it by the addition of vv. 24–5, this phrase does not have to indicate the death penalty. . . . But though the MT uses aswn in reference to the foetus, it is impossible to read into it the LXX’s distinction based on viability.26

William Propp in his Anchor Bible Commentary, Exodus 19–40 (2006), simply concluded, “this [translation of אֲסָנָא as “fully formed.”] cannot be a straight rendering of a Hebrew Vorlage.” Having dismissed the Septuagint translation and being unaware of the rare hapax legomenon אֲסָנָא/אָסָנָא “fully formed,” Propp concluded that the Hebrew text is deliberately ambiguous, stating:

Something comes out of the pregnant woman. There are four possible outcomes: healthy mother and child, dead-or-injured mother and healthy child, healthy mother and dead-or-injured child, and dead-or-injured mother and child.

The Septuagint though is unambiguous: aborted the fetus may or may not be fully formed. Once its form was decided (be it אֲסָנָא or אָסָנָא לֵיל) a penalty was fixed. If it was אֲסָנָא “fully formed” the penalty was death (מֵת הָאוֹת). If it was אָסָנָא לֵיל “not fully formed” the penalty was a fine.27
CONCLUSION

The Septuagint translators understood correctly the meaning of Exod 21:22–23 which states quite clearly that a fully developed fetus was a person protected by the *lex talionis*, but a fetus which was not fully formed was not a person but was a property properly protected by the *lex pensationis*. The Hebrew dialect of the Septuagint translators in Alexandria included two words spelled ēwsa, namely, (a) the ēwsa which was translated as μάλακτια, “affliction, disease” (Gen 42: 28) and (b) the ēwsa which was translated as εξελεκονειομα, “to be fully formed” (Exod 21: 22–23) The word ēwsa did not survive in the Judean and Samaritan Hebrew dialects.

Thanks to Septuagint translation of Exod 21:22–23 and the Arabic cognate سوى (sawaya), “he made it equal, he became full-grown in body,” the lost lexeme ēwsa has been recovered. Exod 21: 22–25 can be properly interpreted once the accuracy of the Septuagint translation is duly recognized. This old lost lexeme ēwsa, “fully formed / full-grown,” needs to be included in all the new commentaries of today and the Hebrew lexicons of tomorrow.28

NOTES

1. For the Syriac terms *σκληρός* “pregnant,” *αμβρο* “fetus, embryo,” and *μεθυμο* “misfortune, calamity” see Payne Smith, pages. 42, 405, and 486, respectively. (Click on the page number.) Lamsa (1933) translate the phrase as “and yet no mischief follow.”

3. J. W. Etheridge, *The Targums of Onkelos and Jonathan Ben Uzziel* *On the Pentateuch With The Fragments of the Jerusalem Targum From the Chaldee*. The לַאֹתְנָה יַדִּידֵיָהּ מֵלֹא דָּוִי ≈ נָא הַרְפָּאָה יְבַיָּא מַלְעַה become “if death befall her.”


5. Click here to view Lane, 1863: 61, column 1.

6. Click here to view Lane, 1872: 1478, column 2.


8. In light of all these varied translations it is not surprising that scholars like Nina Collins (1993: 290), as noted above, would conclude “Yet the verse [21:22] as a whole fails to make sense.” Note the statement of Bernard Jackson (1973: 292), “Exod. xxi 22 refers not to a miscarriage, but rather to a premature birth, a Frühgeburt, not a Fehlgeburt . . . . In fact, aswn did not originally refer to the mother, but to the child.” Compare the following opinion of Joe Sprinkle (1993: 253):

> On the other hand, the case of the pregnant woman cannot be used to prove the humanity of the fetus either. Contrary to the exegesis common among certain anti-abortion Christian theologians, the most likely view is that the death of the fetus
is to be assumed throughout the entire case. It cannot be proven whether the formula "life for life" applies to the fetus since it occurs in the instance with קַסְוָן ("serious injury"), which deals exclusively with injuries to the mother. The wording of the case does not rule out the possibility that the fetus was considered subhuman.


10. The Greek text Sirach 41:9 is καὶ ἐὰν γεννηθῆτε εἰς κατάραν γεννηθῆσεσθε καὶ ἐὰν ἀποθάνητε εἰς κατάραν μερισθῆσεσθέ, “when you were born, you were born to be accursed, and when you die, that curse will be your portion.”

11. Note the conclusion of Stanley Isser (1990: 30):

Either the translators worked from a Hebrew text that differed from MT, i.e., it had a different word in the place of קַסְוָן, or the translation represents an interpretation of קַסְוָן, whose original meaning may have been unclear to the translators. In any case LXX relates קַסְוָן not to the mother but to the fetus —whether it be formed or unformed—and וֶנֶתַן בִּיפֶלְלִים to a determination of the value of the unformed fetus. Thus there were two separate legal traditions concerning the law of Exod 21:22–23, one based on damage to the woman, and one based on the stage or age of the embryo.

12. E. W. Lane, Arabic-English Lexicon, 1872: 1478 and H. Wehr, A Dictionary of Modern Written Arabic, 1979: 519. The Arabic سوی (saway) “he became full-grown in body, of full vigour, or mature in body and intellect” is a synonym of بلغ (balağa) “he attained his manly vigor or full maturity,” which appears in the
TRANSLATION OF EXODUS 21:22–23

Qur'an in 12: 22, “When Joseph attained his full manhood ([balaqa 'aṣuddahu]), We gave him power and knowledge” (Lane 1863: 250). (Click here to view Lane 1863: 250, column 3, and here to view Lane 1872: 1478, column 2).


Note for example (a) בַּלֶּגא “gateway,” from the root בָלָּג “begging” from the root בָּלָה, (c) בָּלֶג “vessel, basket” from the root בָּלֵל, and (d) בָּלַק “exit, end” from the root בָּלָק / בָּלָמ (Jastrow, 1903: 4, 8, 21, 101).


16. Stanley Isser (1990: 42, 45) considered the possibility of emending the בַּלֶּגא, stating:

The Greek version reads ἀσόν as an adjective referring to the embryo and does not translate it as malakia. There have been suggestions that either the Greek translator misunderstood the Hebrew or that his Hebrew Vorlage had something beside ἀσόν. Given its odd appearance in the Hebrew text and the problem of phrasing, the latter is not unlikely. We can only speculate how to emend the original text to give it the sense of “unformed . . . formed.” Was there a term commonly used in reference to a fetus, functionally similar to the rabbinic ben qayyámâ or méruqam? . . . As difficult as it may be to make a case for emending the text, that the reading ἀσόν may be corrupt should not be dismissed out of hand.
14 THE SEPTUAGINT HAS THE CORRECT

The מָנָּה needs simply to be vocalized differently as מָנָה or מָנָה.


19. Note Joe Sprinkle’s statement (1993:247) :

The LXX seems to imply the view that an imperfectly formed child who is not yet viable independently of the mother is not yet fully human; consequently, there can be no case of מָנָה (“deadly injury”) in the case of the death of the fetus.

Note that Russell Fuller (1994: 174, 179, 180) argued as follows for the personhood of every fetus:

Consistent with the culture and society of the ancient Near East, the Exodus covenant code also refutes the argument that differences in punishments imply differences in personhood by showing various legal statuses, the parade example being the slave. . . . Hence whereas Exod 21:22 does not directly address the personhood of the fetus, the passage does intimate, by using yeled instead of gôlem or nepel, that the fetus is more than just parental property. It is a yeled, a human being, a child, a fetus with personhood. . . . Various Biblical passages and Exod 21:22, by specifying the fetus as a yeled, clearly suggest the personhood of the fetus. . . . Exodus 21:22 does not indicate that the Bible values the fetus as less than human or as non-human.

20. In light of the Septuagint’s reading of Exod 21:22–23 whereby only a fully formed fetus required the lex talionis it is impossible to concur with Robert Congdom (1989: 146) who affirmed, “It has been shown that the unborn fetus was regarded as fully human life from the
TRANSLATION OF EXODUS 21:22–23

time of conception. However, the valuation placed on the unborn was less than that placed on a Hebrew adult or child.” Likewise it is not possible to concur with Meredith Klien (1997: 200) who stated:

It is of particular importance for the Biblical view of the nature of the fetus that the life-for-life formula is applied to the destruction of a fetus, with no qualification as to how young the fetus might be. The fetus, at any stage of development, is in the eyes of this law a living being, for life (nepes) is attributed to it. . . . But if it is the fetus of a human mother that is identified by the life-for-life formula as a living being, there can be no question that this living being is a living human being.

21. Note the rabbinic conclusions in the Babylonian Talmud, Tractate Niddah III, about a woman’s status after an abortion. (Click here for the text of Folio 21a.)

22. For rabbinic texts referring to Exod 21:22–23 Jastrow (1903: 374) cited Baba Kama VIII, 2, “damages for causing an abortion.” See the Soncino online edition of Baba Kama Chapter V, §42a, 42b, 43a (click here for pp. 147–150) and §49a-b (click here for pp. 170–173).

23. Yonge’s Chapter 18, “On Mating with the Preliminary Studies,” which he entitled “A Treatise on the Meeting for the Sake of Seeking Instruction.” (Click here.)

24. Yonge’s Chapter 29, Special Laws III, which he entitled A Treatise on Those Special Laws Which Are Referrible to Two Commandments in the Decalogue, the Sixth and Seventh, Against Adulterers and All Lewd Persons, and Against Murderers and All Violence. (Click here.)

25. The references to Philo’s following the Septuagint were well noted by Nina Collins (1993: 292, note 14).
26. Bernard Jackson (1973: 293) argued at length that Exod 21:24–25 was a late interpolation, noting,

Only the LXX and PHILO (DSL. iii 108–9) took the view that the death of a foetus could be homicide, by interpreting Exod. xxi 23 to mean that if a viable foetus was miscarried, the penalty was death. The view of the interpolator of vv. 24–5 was reaffirmed by the Rabbis, who gave damages, whether the foetus was viable or not.

27. Given the fact that the Latin technical term lex talionis was not available to Moses and the lawyers who followed him the lex talionis was fully spelled out in verses 21:23–25. These three verses in the MT could be paraphrased simply as “If any harm follows, then you shall implement the lex talionis.”

28. The Septuagint translation of Exod 21:22–23, which is the oldest available translation of the Hebrew Scriptures, needs to be included in the current political debate about whether or not personhood begins at conception or when an embryo is fully developed.

BIBLIOGRAPHY


THE SEPTUAGINT HAS THE CORRECT


