Abortion in Judaism

Daniel Schiff

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Abortion in Judaism presents a complete Jewish legal history of abortion from the earliest relevant biblical references through the end of the twentieth century. For the first time, almost every Jewish text relevant to the abortion issue is explored in detail. These texts are investigated in historical sequence, thereby elucidating the development inherent within the Jewish approach to abortion. Following an examination of the foundational sources, contemporary responses from across the Jewish spectrum are introduced in order to probe their place in this history, as well as to discern the directions in which they would have the law proceed. The impact of Jewish abortion law upon Israeli legislative enactments is evaluated, along with the social outcomes of such legislation. Finally, the work considers the insights that this thematic history provides into Jewish ethical principles, as well as into the role of *halakhah* within Judaism.

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Preface

At the core of Judaism is the legal system known as *halakhah*, from the Hebrew meaning "to go" or "to walk." Originating at Sinai, *halakhah* shapes Jewish life and, ideally, directs Jews towards righteous and exalted conduct. Yet even this legal system, seen to be based in divine revelation, is not exempt from its share of complex questions, uncertainties, and disagreements about the appropriate path to follow. In those occasional circumstances when the correct legal ruling is unclear, *halakhic* authorities formulate responses through the application of precedents and principles to the situation under consideration. This task, accomplished as it is by gifted but fallible human beings, at times produces differing interpretations and rulings such that the law generates various solutions that cannot be neatly reconciled. While, in time, the *halakhah* usually converges on a path that comes to be regarded as normative, this "right way" is rarely so obvious that it can be determined with ease, nor can alternative potential legal options be dismissed without reservation.

The issue of abortion presents the *halakhah* with exactly this type of challenge. While there is fundamental agreement on the broad parameters of the distinctive Jewish attitude to abortion, legal clarity on critical particulars – a low priority for many centuries – has proven to be a difficult goal to attain. This reality makes the thought of the rabbis – as they grapple with a delineated textual tradition, wrenching actual moral dilemmas, and a diversity of developing responses – particularly intriguing.

For this reason I have chosen to write a historical account of the development of the Jewish response to abortion. It is, of course, relatively unusual to explore *halakhic* issues through the lens of historical reflection. The methodical study of history is, after all, essentially a modern enterprise involving analyzing, comparing, and contrasting events from differing epochs. *Halakhic* subjects, conversely, are typically explored according to topic, without regard to time-period. Thus, the examination

of a particular *halakhic* question might consider the positions of the Talmudic rabbis, Rashi, Maimonides, Caro, and contemporary figures as if they were all sitting around the same table, rather than spread across two millennia. This approach is useful when trying to fathom the assorted insights that bear upon a discrete legal problem. It does not, however, attempt to survey the broader view of how one generation reacts to a range of issues within a given field, and how subsequent generations deal with the legal inheritance transmitted to them, within altered contextual settings.

This volume, then, provides an account of the Jewish legal response to abortion through the centuries. It is a history replete with unexpected developments. Alongside important ethical insights there are unforeseen prohibitions, significant divisions on pivotal issues, bold departures from inherited assumptions, forgery allegations, and unsettled conundrums. The absorbing saga of the Jewish reaction to abortion unfolds through a succession of vastly different historical conditions, from the wandering in the desert to the contemporary state of Israel, and gives eloquent testimony to the flexibility and the adaptability that appear to be enduring strengths of the *halakhic* system.

Two cautions are in order. First, this is a history of the response of Judaism to abortion, not that of Jews. There is, consequently, no attempt to describe the varied emotions and feelings that Jews have on the delicate matter of abortion. Rather, I have restricted my analysis to those legal statements that have contributed to the *halakhic* picture of abortion, together with those reflective observations that offer commentary on the law and on its coherence and conduciveness.

Second, this work should not be used as a Jewish legal handbook in individual cases. In large measure, this book is a study of the *she'eilot uteshuvot* (questions and answers) literature, the rabbinic responsa, which have been penned through the centuries and apply the law to those specific inquiries that have not received a previous reply that could be considered adequate. Hence, I have encapsulated rabbinic rulings on the suitability of abortions in numerous situations like those that could arise in personal experience. Jewish law, however, counsels that every case is different and must be judged on its own merits. This is particularly so in the matter of abortion, where the consequences of any decision inevitably are weighty. *Halakhah*, it must be stressed, cannot be self-administered from a knowledge of general conclusions. A competent rabbinic authority must be consulted in order to determine the *halakhic* answer to any real-life abortion question.

I am deeply grateful to all those who have provided me with their insights, their thoughtfulness and the strength of their support during the production of this work:

To my colleagues: Mark Washofsky for his encouragement, his academic erudition, and for the time that he devoted to this endeavor; Moshe Zemer, who first sparked my interest in the responsa literature, for his detailed comments on each chapter, and for his keen assistance and eagerness throughout; Aaron Mackler, who offered thoughtful observations on the completed text; Walter Jacob, who greeted my scholarly endeavors with enthusiasm, and who invited me to use the rabbinic libraries and the wonderful responsa collection of Rodef Shalom Congregation.

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Words are inadequate to express the fullness of my appreciation to each of these extraordinarily fine individuals. Naturally, any errors, omissions, or deficiencies in the final work are mine alone.

Finally, I give thanks to God for the gift of life itself, for the manifold blessings bestowed upon me, and for having been granted the ability to embark upon and to complete this project.

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 III, *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 *baʿal*, which appears in verse 22 as a part of the expression *baʿal haʾishah* (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 *baʿal haʾishah* 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 *baʿalah* (her husband) rather than *baʿal haʾishah* (husband of the woman). Jacob contends that the term *baʿal haʾishah* 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 *baʾal haʾishah* 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 *kaʾasher* 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 *kaʾasher* 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 "*kaʾasher 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 tahat 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.