

Naked Bible Podcast Transcript

Episode 23

The Bible's Literary Context: The Legal Genre

(Part 2 of 8-part series)

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Summary

In the last episode of our series on studying the Bible, we transitioned to an important area of study: learning to read the Bible in terms of the various types of literature found in its pages. Our first example concerned reading narrative, where I recommended reading biblical stories like fiction — like you would read a novel. In this episode we focus on the legal genre of the Bible using a controversial example from Exodus 21.

Transcript

Welcome back to the Naked Bible Podcast.

In the last episode, I turned our discussion of studying the Bible to the area of literary genre—how knowing what type of literature within the Bible you're looking at *matters* for interpretation. We began last time with a discussion of how to intelligently read biblical narrative. That was called "close reading." In this episode, I want to focus on the genre of law or legal literature. This genre will overlap in significant ways to the earlier series on interpreting the Bible in light of its own context (that of the ancient Near East for the Old Testament and the Second Temple period for the New Testament).

Legal literature has a long history in the written materials of the ancient Near East. Law codes have survived from ancient Near Eastern literature that pre-date the Old Testament by centuries. There's a good deal of comparative legal material that can inform our reading of the Old Testament when this genre is present.

By way of a brief overview, I'd like to quote selections from *The Law, Prophets, and Writings* blog where Rusty Osborne has provided a succinct summary. Two of Rusty's observations are pertinent to the present discussion. He writes:

Ancient law codes functioned as "prescriptive" or "positive" law and were intended to be applied by the sovereign throughout his empire. The law was legally binding and meant to be observed.

He also writes:

Some have argued that ancient laws were characterized by a “theory of jurisprudence” or “applied law.” As a result, the legal codes became compilations of sentences passed by judges and making the judges the “authors” of the law codes.

In other words, what he's saying there is that law codes in the ancient Near East are sort of like compilations of precedent—what we have today when any lawyer or Supreme Court decision either tries to argue a case or rule on a case... there is a whole body of precedent that they consult to see how others have ruled.

Old Testament law has a lot in common here. Let's turn to a specific case where knowing that the legal genre exists when it comes to studying the Bible in its literary context is really helpful. I think you'll see the value of interpreting this passage in its wider ancient Near Eastern legal context. The passage I'm thinking of is Exodus 21:22-23.

²² “When men strive together and hit a pregnant woman, so that her children come out, but there is no harm, the one who hit her shall surely be fined, as the woman's husband shall impose on him, and he shall pay as the judges determine. ²³ But if there is harm, then you shall pay life for life...”

In case the interpretive problem isn't clear, let me unwrap it a bit. We have a bit of case law in Exodus 21, in which two men are fighting and accidentally hit a pregnant woman. As a result, the woman loses the child she's carrying, either in the sense that the injury caused her to give birth prematurely or she miscarries. Discussion of the passage focuses on the legal issues that extend from the event. The phrases “if there is no harm” and “if there is harm” are the key issues. The first phrase is followed by a penalty of a fine. The second is followed by the death penalty. But it's ambiguous as to whose life is lost with respect to the second phrase that incurs the death penalty. The passage can be read as follows:

If there is no harm to the woman, then the one who hit her shall be fined according to what her husband demanded and the judges decided. But if (and here's the second phrase) there is harm (in other words, the woman dies), then the one who hit her must be put to death.

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Now in this scenario, the focus of the harm is the woman in both cases. If she survives the incident, the penalty is a fine. If not, then the penalty is life for life (the death penalty). Well, what about the child? Since the Hebrew behind the phrase “that her child come out” is elsewhere used for miscarriage and not live, premature birth (that is, there's a biblical usage precedent for seeing it as a miscarriage, but not a clear precedent for a live birth, even though that's

possible). Many people argue that this passage values the life of the woman more than the miscarried child because there's no death penalty named for the child that was miscarried. In other words, the focus is only the woman. The child's death is completely incidental. This assumes, of course, that the loss of the child resulted in its death. The passage doesn't actually say that, but it's certainly possible.

So here's the question: Does this biblical passage show a higher estimation for an adult woman than a fetus? This rationale has been used to justify abortion (most famously, by the Southern Baptist President, Bill Clinton, during his campaign and presidency). The answer to the question is "no." Aside from the ambiguities in the passage rendering any such opinion of it tentative, the genre of the passage needs to guide its interpretation. In terms of genre, this is legal literature. As such, it is not a philosophical or theological treatise. Legal literature is about crime and punishment. It's not designed to make theological statements about whether a fetus was considered a person or not. Fortunately, there are clear parallels in the ancient Near East of this type of literature, and even more significantly, the same kind of legal scenario.

Let's take a look at the famous law code of Hammurabi. Lines 202-214 in Hammurabi's Code concern crimes of assault and their punishment. Let's read those lines. We'll begin with line 202:

202. If a man has struck the cheek of a man who is more important than he, he shall be struck in the council sixty times with an oxtail.

203. If one man has struck the cheek of another such man of similar status, he shall pay one mina of silver.

Notice in these first two lines, the issue is social status. It's going to become important.

204. If a working man has struck the cheek of another working man [MH: again, a lower status], he shall pay ten shekels of silver.

205. If a man's slave has struck the cheek of another man, they shall cut off his ear.

Let's stop here again. You'll notice that in those four lines, the social status of the person concerned has declined. It's gone from an upper to a lower social status. Let's continue:

206. If a man has struck another man in a brawl and has injured him, that man shall solemnly declare, "I did not wound him intentionally." It is he who shall be responsible for the physician. [MH: in other words, he has to pay the doctor bills.]

207. If someone has died in that brawl, he shall similarly make a solemn declaration, and if it was a man's son, he shall pay half a mina of silver.

208. If he has a working man's son, he shall pay a third of the mina of silver.

209. If a man has struck the daughter of a man and has made her lose her unborn child [MH: **this is our parallel here**], then he shall pay ten shekels of silver for the fetus.

210. If that woman has died, they shall kill his daughter.

10:00 **In other words, the man who struck the woman and the woman died, he's going to lose his daughter. It's life for life.**

211. If he has made a commoner's daughter lose her unborn child by the violence, he shall pay five shekels of silver.

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

213. If he has struck a man's slave girl and made her lose her unborn child, he shall pay two shekels of silver. If that slave girl has died, he shall pay a third of a mina of silver.

Notice in those last two that because the child is the child of a slave girl (the fetus was the child of a slave girl), the penalty is lesser. If the slave girl died, there is no life for life—the person who did it doesn't lose his daughter. These decisions are very clearly dictated on social status of the people and the child concerned. If you were listening closely, you would have discerned all that. You would have discerned that there was a range of different payments for the loss of adults versus children versus the fetus, male and female, social status of the males... These differences have nothing to do with whether the victim was considered a person. Rather, the difference is derived from what social class the victim was in.

Let me read a few lines again, and listen for the differences:

209. If a man has struck the daughter of a man and has made her lose her unborn child, then he shall pay ten shekels of silver for the fetus.

210. If that woman has died, they shall kill his [the offender's] daughter.

211. If he has made a commoner's daughter lose her unborn child by the violence, he shall pay five shekels of silver.

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

It's very clear here that, though the woman and the fetus are valued differently (one you pay a fine, but the other one if the woman dies, the offender loses his daughter—life for life), that has nothing to do with whether the fetus is considered a person or not. It was, again, the social status/standing of the person involved—the victim. We can see that because when we get to the commoner's daughter in the last two lines and *she* loses the child, then there's a lesser payment in both regards—both for the fetus and also for the woman herself if she dies. The issue is very clearly social status.

We have these differences in social class in these texts: commoners are distinguished out, adult males, women against children, that sort of thing. These lines, again, value a commoner's daughter at half a mina of silver, whereas the death of a daughter of a man not described as a commoner results in a death penalty. Both were adults, but there's a difference in valuation. One isn't more of a person than another. Again, it's very clearly social status. So the issue is social class, not personhood. It's really inconsistent hermeneutics on the part of those who want to look at a passage like Exodus (that we read earlier) and want to use it to justify a modern issue like abortion—a modern hot potato like abortion, and then they turn around and want to talk about how the Bible is a product of its own product and culture and we ought to interpret the passage in context. Well, they're not doing that. They're imposing a modern issue on the text and they're making the text speak like a modern philosophical or theological treatise when that isn't what it is and it isn't what it was for. So this is an issue of genre.

Other genres of biblical literature might be apt to tackle more high-browed questions, such as personhood, but legal literature isn't about that.

I hope this example shows that exploring the implications of biblical genre is important. As it pertains to our Exodus passage, if we're really going to interpret that passage in context—in its literary and ancient Near Eastern contexts—the passage makes no comment on the devaluation or valuation of a fetus. The reason that there are two different penalties in Exodus is not because the biblical writers thought that a fetus was not a person. It's because they were very consistent. They were a product of their own time and culture and of their literary culture in that they recognized different social classes and different penalties.

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Next time we'll look at another type of biblical literature. Thanks for listening.