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Does Exodus 21 Justify Elective Abortion?

Answering the Theological Case for Abortion, Part III

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In parts one and two of this series, I argued that the case for elective abortion based on the alleged silence of Scripture is weak. The Bible's silence on abortion does not mean that its authors condoned the practice, but that prohibitions against it were largely unnecessary. The Hebrews of the Old Testament and Christians of the New were not likely to kill their unborn offspring.

Moreover, we don't need Scripture to expressly say elective abortion is wrong before we can know that it's wrong. The Bible affirms that all humans have value because they bear God's image. The facts of science make clear that from the earliest stages of development, the unborn are unquestionably human. Hence, Biblical commands against the unjust taking of human life apply to the unborn as they do other human beings.

Finally, abortion advocates cannot account for basic human equality. If humans have value only because of some acquired property like self-awareness, it follows that since this acquired property comes in varying degrees, basic human rights come in varying degrees. Theologically, it's far more reasonable to argue that although humans differ immensely in their respective degrees of development, they are nonetheless equal because they share a common human nature made in the image of God.

What does the passage really prove?

Nevertheless, some abortion advocates ignore the cumulative case that I have presented and appeal directly to Scripture. Exodus 21:22-25 is their favorite reference, though, as I will show in this article, it does little to bolster their case. The passage presents a situation where two men fighting accidentally injure (harm) a pregnant woman. Here's the passage in context, read in the New American Standard Bible:

And if men struggle with each other and strike a woman with child so that she has a miscarriage, yet there is no further injury, he shall surely be fined as the woman's husband may demand of him; and he shall pay as the judges decide. But if there is any further injury, then you shall appoint as a penalty life for life, eye for eye, tooth for tooth, hand for hand, foot for foot, burn for burn, wound for wound, bruise for bruise.

Abortion advocates argue that this Scripture proves the unborn are not fully human because the penalty for accidentally killing a fetus is less than that for killing its mother. But this argument is problematic for several reasons.

First, assuming the pro-abortion interpretation of this passage is correct (i.e., that the unborn's death is treated differently than the mother's), it does not follow that the unborn are not fully human. The preceding verses present a situation where a master unintentionally kills his slave and escapes with no penalty at all (the lack of intent being proven by the interval between the blow and the death), yet it hardly follows that Scripture considers the slave less than human.

Second, this passage does not even remotely suggest that a woman can willfully kill her unborn child through elective abortion. Nothing in the context supports this claim. At best, the text assigns a lesser penalty for accidentally killing a

fetus than for accidentally killing its mother. It simply does not follow that a woman may deliberately abort her own offspring.

Third, the pro-abortion interpretation of this passage (that a lesser penalty applies for accidental fetal death) is highly suspect. When read in the original Hebrew, the passage seems to convey that both the mother and the child are covered by *lex talionis*—the law of retribution. According to Hebrew scholar Dr. Gleason Archer, "There is no second class status attached to the fetus under this rule. The fetus is just as valuable as the mother."¹ Furthermore, we should not presume that the miscarriage of Exodus 21 produces a dead child, as does elective abortion. Millard Erickson citing the work of Jack Cotrell writes that the Hebrew word for "miscarriage" in this context is 'yasa'—which often refers to the emergence of a living thing.² (See, for example, Gen. 1:24; 8:17; 15:4; 25:26; 1 Kings 8:19; 2 Kings 20:18.) In this case, the passage can be reasonably translated "the child comes forth" and if it's not injured, the penalty is merely a fine. But if it is harmed, the penalty is life for life, tooth for tooth, etc. (Note also the text calls the expelled fetus a "child"—a fact abortion advocates cannot easily get around.)

Nephesh

Finally, abortion-advocate Roy Bowen Ward argues that humans are uniquely defined as persons by the Hebrew term *nephesh*, which he equates with physical "breath." Adam, Ward argues, did not become a living soul until God breathed into him the "breath of life" through the nostrils. Because the unborn don't yet breathe air through the nostrils, Ward contends that they are not valuable human beings.³ Ward is wrong on three counts.

First, his argument proves too much. Some newborns do not breathe air through the nostrils until a couple of minutes after birth, which means that immediately upon delivery, the parents would be justified committing infanticide if it suits their preferences. Second, the unborn do in fact breathe long before birth, but through the umbilical cord rather than the nostrils. At birth, only the mode of breathing changes, like switching from AC current to DC current.⁴ Third, Ward's "breath" argument doesn't do the work he needs it to. All it proves is that any adults God immediately creates out of dirt are not alive until He breathes air into their nostrils.⁵ On that point, I agree. However, since you and I were not immediately created as adults from raw dirt but began life in the womb, the verse cannot apply to us and is specific only to Adam.

Finally, Ward's equation of *nephesh* with physical breath is sloppy exegesis. As J.P. Moreland and Scott Rae point out in their book *Body and Soul*, although the Hebrew word *nephesh* (soul) primarily applies to human beings, "it is also used of animals (Gen.1:20; 9:10) and God himself (Judges 10:16; Isa. 1:14). When the term is used of God, it certainly cannot mean physical breath or life since God is an immaterial, transcendent self." Furthermore, "there are passages where *nephesh* refers to the continuing locus of personal identity even after death—when breathing has long ceased" (Gen. 35:18; 1 Kings 17:21; Ps. 16:10; 30:3; 49:15; 86:13; 139:8).⁶

Conclusion

Taken together, the exegetical, philosophical, and scientific considerations we've examined in this series show that the theological case for elective abortion is seriously flawed. Nothing in the Hebrew culture of the Old Testament supports the practice. And given the consensus against abortion by early Jewish Christians, there is no reason to suppose that the New Testament authors approved of it either. Moreover, the facts of science make clear that from the earliest stages of development, the unborn are members of the human family. As such, they bear the image of their Maker and that alone gives them inestimable value.

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Notes:

1. Cited in J. Ankerberg and J. Weldon, *When Does Life Begin* (Brentwood, TN: Wolgemuth & Hyatt, 1989) pp.195-6. See also Meredith Kline, "Lex Talionis & the Human Fetus," *Simon Greenleaf Law Review* 5 (1985-1986) pp.73-89.
2. Millard Erickson, *Christian Theology* (Grand Rapids: Baker Books, 1999) p. 572. See also Jack Cotrell, "Abortion and the Mosaic Law," *Christianity Today*, March 16, 1973.
3. Roy Bowen Ward, "Is the Fetus a Person?" *Mission Journal* (January 1986). Article is posted by the Religious Coalition for Reproductive Choice at www.rcrc.org.
4. Bernard Nathanson, *Aborting America* (New York: Doubleday, 1979).
5. I owe this observation to Greg Koukl, who used it in a talk at Biola University June 2004.
6. J.P. Moreland, *Body and Soul: Human Nature and the Crisis in Ethics* (Downers Grove: InterVarsity Press, 2000) pp. 27-8.