

Abortion Policy and Christian Social Ethics in the United States

Why the Fetus is Not Assigned Full Personhood in Exodus 21:22 – 25

Mako A. Nagasawa

Last modified: October 11, 2022

Found online at The Anástasis Center website:

- Study and Action Guide to Abortion Policy: www.anastasiscenter.org/study-action-abortion-policy
- Exodus: www.anastasiscenter.org/bible-torah-exodus

The Question

Does the Bible assign full human personhood to the fetus? Exodus 21:22 – 25 is the single most important and decisive passage on the topic, because it deals with the situation where someone strikes a pregnant woman, and potentially harms the unborn fetus.

Option 1

The New Revised Standard Version (NRSV) translates this passage:

²² When people who are fighting injure a pregnant woman so that there is a miscarriage, and yet no further harm follows, the one responsible shall be fined what the woman's husband demands, paying as much as the judges determine. ²³ If any harm follows, then you shall give life for life, ²⁴ eye for eye, tooth for tooth, hand for hand, foot for foot, ²⁵ burn for burn, wound for wound, stripe for stripe.

If the NRSV is correct, then the situation is that of a forced miscarriage, and Jewish law does not assign the fetus full personhood. We can ascertain that because the standard principle of accountability – “life for life, eye for eye,” which is used for full human persons – is not used for the fetus. A fine is levied instead, which means that the fetus is important, but not assigned full human personhood.

Option 2

But if the English Standard Version (ESV) is correct, then the situation is that of an early but healthy delivery, and Jewish law does assign the fetus full personhood. The ESV translates the passage:

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, ²⁴ eye for eye, tooth for tooth, hand for hand, foot for foot, ²⁵ burn for burn, wound for wound, stripe for stripe.

Seldom do translational problems have such high stakes, especially given how much abortion is an issue in U.S. politics.

Option 3

Making matters even more complicated is the Greek Septuagint (abbreviated LXX) translation of the Hebrew Scriptures. The LXX was composed ~250 BC by Jewish scholars in Alexandria, Egypt. It was approved for synagogue use by the ruling Jewish body, the Sanhedrin in Jerusalem, and used in parallel with the Hebrew manuscript family in the diaspora Jewish community. The New Testament quotes from the LXX more often than any other version of the Old Testament. The LXX translated Exodus 21:22 – 25 yet another way:

²² 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. ²³ But if it be perfectly formed, he shall give life for life, ²⁴ eye for eye, tooth for tooth, hand for hand, foot for foot, ²⁵ burning for burning, wound for wound, stripe for stripe.

The Confusion

So does the Bible regard the fetus with full personhood? There are three possible answers:

1. No: forced miscarriage (Hebrew Masoretic, NRSV)
2. Maybe: forced miscarriage + stage of fetus (Greek LXX)
3. Yes: early delivery view (Hebrew Masoretic, ESV)

The Argument

Below, I will give a short explanation for why the NRSV is correct and the ESV is not correct. This argument is constrained to discuss the Hebrew Masoretic Text (MT). I discuss the LXX in my book, *Abortion Policy and Christian Social Ethics in the United States*. Taken together, Exodus 21:22 – 25 in both MT and LXX manuscript families do not assign full human personhood to the fetus from conception.

Since Exodus 21:22 – 25 deals specifically with the moral value of the fetus, unlike other passages of Scripture, we can say that Scripture itself does assign full human personhood to the fetus from conception. When Scripture might do so depends on a much deeper evaluation of the manuscripts, other biblical principles and passages, and scientific considerations as well.

Evidence 1: Other Ancient Near East Law Codes

The Code of Hammurabi 209 – 214 also covers the situation of someone striking a pregnant woman. It reads:

If an awilu strikes a woman of the awilu class and thereby causes her to miscarry her fetus, he shall weigh and deliver ten shekels of silver for her fetus.

If that woman should die, they shall kill his daughter.

If he should cause a woman of the commoner class to miscarry her fetus by the beating, he shall weigh and deliver five shekels of silver.

If that woman should die, he shall weigh and deliver thirty shekels of silver.

If he strikes an awilu's slave woman and thereby causes her to miscarry her fetus, he shall weigh and deliver two shekels of silver.¹

As the close phrasing suggests, this situation is a stock situation and the case law is stock case law. There was also lots of communication and trade between the Mesopotamian region and the Egyptian. Moses and the Israelites, therefore, would have known the Babylonian Code of Hammurabi, which came before Moses by a few centuries.

Much should be said about the differences between the two law codes. In Hammurabi, punishment is based on the victim's class status, whereas in Jewish law, the punishment did not recognize class. In Hammurabi, wife and daughter are treated as property of the father, and the father is harmed through harming his property, whereas in Jewish law, harming a woman brings the response of charging proportional harm to the assailant (in a restorative, not retributive, mode, as I explain elsewhere), and persons are treated as the children and property of God.

However, as with Jewish law, in Hammurabi, the question of the assailant's motivation is not part of the case law. This means the case law was meant to cover the occasions when the assailant intended to cause an abortion.

Is it possible that the assailant in Exodus 21 intended to cause the miscarriage? It is, and the case law format allows for that. For in Scripture itself, we find men who don't want to share inheritance with their brother's branch of the family (Genesis 38; Deuteronomy 25:5 – 10) and a husband who questions whether his wife is pregnant with his child (Numbers 5, Deuteronomy 22). Greed and jealousy can be the motivations for an assailant to intend to cause an abortion. We cannot set those situations aside because we see people with those motivations in Scripture itself.

While I think the fine and the community process in Jewish law are reasonable markers to indicate that the stage of the fetus and assailant's motive should and would be included in the Jewish context and not the Babylonian, the underlying framing is the same. This case law was designed to cover the situation where the assailant wanted to cause an abortion.

Evidence 2: Accidental Manslaughter Not Considered

Second, Jewish law takes very seriously the situation when a fully human person is killed. The question then becomes whether the killing was an intentional murder or an accidental manslaughter. If the killing was accidental, then it would fall into the "city of refuge" process (Exodus 21:13; Numbers 34). If the struck and miscarried fetus has full personhood, then the process should be to determine whether the assailant intentionally caused the miscarriage or only accidentally did so. The fact that this question does not even come up indicates that the starting premise is not true. The fetus is not assigned full personhood.

Above, we considered whether the miscarriage could have been caused intentionally, and here we consider whether it could have been caused accidentally, because the case law format of Exodus 21:22 – 25 requires that as well. In Deuteronomy 25:11 – 12, another case law addresses

¹ Bill T. Arnold and Bryan E. Beyer, *Readings from the Ancient Near East* (Grand Rapids, MI: Baker Academic, 2002), p.113 – 114

the situation where a physical fight unfolds with a man on one side, and a husband and wife on the other. In that situation, the woman grabs the other man's genitals to disable or permanently damage him. Whatever we might make of Deuteronomy 25:11 – 12, its existence suggests that a pregnant woman could be a participant in a fight, and a man with whom she is contending could strike her in self-defense, causing a miscarriage accidentally.

The fetus is still valuable, as the fine of Exodus 21 would indicate, especially in the Greek LXX. And the assailant's intentions are still morally significant, as suggested by the fine and the community process – as the judges decide in the Hebrew Masoretic manuscript family. But the fact remains: Scripture itself separates full human personhood from biological human life in this case. And the case law includes the situation where the assailant wanted to cause an abortion.

Evidence 3: The Paper Trail

Third, there's the paper trail of interpretation. The history of Jewish discussion confines the interpretation to two situations. On the one hand, we have discussions about fines until fetus was "formed" as in Greek LXX Exodus 21 (~250 BC). In this category are the commentary of Philo (20 BC – 50 AD); Midrash Nidpas 3:7; Mekhilta de Rabbi Ishmael; Sanhedrin 84b; Niddah 44b. On the other hand, we have discussions about fines until full personhood at birth and breath, as in the Hebrew Masoretic Exodus 21, which is also found in the Samaritan Pentateuch (122 BC) and Dead Sea Scrolls 4Q22 (100 – 25 BC). In this category are Targum Onkelos (composed 100 – 150 AD) used by the Babylonian synagogues, where the content is held to go back to Ezra (c.440 BC); Targum Yerushalmi / Pseudo-Jonathan (composed 4th – 10th century AD) used in Palestinian synagogues; Tosefta Sanhedrin 59a; Chullin 33a.

We also have to consider that both the Hebrew and Greek manuscript families were used simultaneously and approved by the Sanhedrin. This was conceptually possible because "an eye for an eye" was an upper-limit compensation fine anyway, at least during Israel's exile (though I would argue it was intended in the text of Exodus 21), so there could be basic agreement between using the Hebrew and Greek versions *if and only if* the fetus was not assigned full personhood from conception. Otherwise, you would have a major unreconcilable disagreement between the Hebrew and Greek manuscript families.

Also significant is that the 4th century Christian translator Jerome, who was certainly a moralist who thought about abortion, nevertheless translated from the Hebrew manuscripts into the Latin Vulgate the forced miscarriage view, which required that the fetus not be assigned full personhood. What is even more remarkable is that Jerome himself went beyond his own Hebrew-Latin Vulgate translation and believed in quickening and delayed ensoulment, if we believe Augustine, *Epistle* 121, on the matter. Even more fascinating still is the fact that Jerome was in Constantinople for nearly two years, from 380 – 381, right after Basil of Caesarea had died. Jerome became very acquainted with Gregory of Nazianzus and Gregory of Nyssa. Yet he apparently did not feel accept their opposition to pre-quickened abortion.

Evidence 4: A Mortal Blow

Fourth, the assailant of the pregnant woman delivers a "death-dealing blow" or "mortal blow." The Hebrew word נָגַף, "nagaph," means that in every other instance where that word is used in the Pentateuch (Exodus 12:23, 27; 21:35; 32:35; Leviticus 26:17; Numbers 14:42; Deuteronomy

1:42; 28:7, 25). This is true when God strikes “the land” of Egypt per se in Exodus 8:2 as well, especially when we see in the plagues that God is undoing the creation boundaries of Genesis 1 that established life on the land and for the land. Beyond the Pentateuch, “nagaph” is used of warfare strikes where someone dies and the assailant intended to cause death (Joshua 24:5; Judges 20:32, 35, 36, 39; 1 Samuel 4:2, 3, 10; 7:10; 2 Samuel 2:17; 10:15; 2 Chronicles 13:15 – 20; 21:18; Isaiah 19:22; Jeremiah 13:16; Zechariah 14:12, 18).

The issue therefore is this: Who was killed? Not the woman. That only leaves the unborn child.

Here is where KJV, NASB, NIV, ESV, and other translations all go wrong. They do not pay attention to the biblical context in which “nagaph” is consistently and always used. They shift the lexical range of “nagaph” into the same lexical range as another word, “nakah.” That is a mistake.

Consider the difference between the Hebrew words “nagaph” and “nakah,” especially in Exodus 21 itself when these two words are placed in direct proximity to each other. The usages show the difference between these Hebrew words.

- Exodus 21:12. When an adult man strikes [“nakah”] another, but not necessarily with the intention of killing him (21:12), the Law of Moses decides what should happen based on the perceived intention of the strike. If the man dies, then the assailant should die. But if the man did not “lie in wait” or premeditate the homicide – in other words, if it is manslaughter, not murder – then, the city of refuge process unfolds (Numbers 35). Exodus 21:12 - 13 uses the Hebrew word “nakah” because that word denotes a physical strike with possibly severe consequences, but which was not necessarily death-dealing in its original intent or outcome. More scrutiny and inquiry needed to be applied. The case law situation is broad, leaving the community of Israelites to do some investigative work. So the word “nagaph” is not used.
- Exodus 21:15. When an adult man strikes his parent(s), and the parents are not killed, the word “nakah” is used, not “nagaph.” Neither the assailant's intent or effect are presumed by this particular case law. In this situation, it doesn't matter because the violent son is removed from posing a threat in the future.
- Exodus 21:18, 19. When two men fight and one strikes [“nakah”] another and causes a temporary injury such that the second man needs bedrest and a staff to assist him in walking, the first man will give compensation for the loss of his time. Since this was not a mortal blow, “nakah” is used, not “nagaph.”
- Exodus 21:20. When a master strikes his servant, and death may or may not result by accident, but the master's intention was not to land a lethal blow, the word “nakah” is used, not “nagaph.”
- Exodus 21:26. When a man strikes [“nakah”] the eye of his servant and causes permanent damage to the eye, the servant will go free.
- Exodus 22:2. When a thief breaks into a home, with the implication that the entry happens at night and in the dark, and he is struck [“nakah”] such that he dies, there is no blood-guilt, or accountability for a homicide. But if the thief's entry and the resident's strike happen “after sunrise” (22:3), with the implication that the residents of the house can see the thief and perceive that the thief is after property and not human life, then blood-guilt is incurred. Notably, property theft does not justify homicide.

“Nagaph” is demonstrably a narrow term with a more precise meaning than “nakah.” It refers to a “lethal strike” or “mortal blow” and even seems to include the intention to cause death. Yet the KJV, NASB, NIV, ESV, etc. elide this difference.

Therefore, in Exodus 21:22, the person who lands a “nagaph” on the pregnant woman caused the miscarriage, and probably intended to do so. Minimally, the assailant’s “nagaph” kills the fetus. Potentially, more harm befalls the woman.

Evidence 5: Bodily Harm and Bodily Relationships

Fifth, the topics in Exodus 21:2 – 36 have to do with bodily harm and bodily relationships. Literarily, that makes sense after Pharaoh did bodily harm to Israel in Egypt. Having an early but healthy delivery, which is what John Calvin, NIV, John Piper, ESV, and others believe would require a fine in Exodus 21:22 – 23, is not bodily harm. An early but healthy delivery may be an inconvenience, but it does not fit with the main theme of the section. And it is difficult to understand why someone would have to pay a fine for that, especially if we consider that the pregnant woman may have been part of the fight (e.g. Deuteronomy 25:11 – 12). By contrast, forced miscarriage, which is what the NRSV and others believe about Exodus 21:22 – 23, is definitely bodily harm.

Evidence 6: Progression of Bodily Injury

Sixth, the progression of topics in Exodus 21:2 – 36 is in the form of a chiasm, and the parallels indicate the forced miscarriage view, where the fetus is not assigned full personhood.

- A. Restoration Without Payment: Indentured Servants; Betrothed Daughters (21:2 – 11)
- . B. Sacredness of Bodies and Relations; Crimes Punished by Death (21:12 – 17)
- .. C. Injuries from a Physical Fight; Toward Full Healing (21:18 – 19)
- ... D. The Full Humanity of the Slave: Cases of Murder vs. Homicide (21:20 – 21)
- .. C'. Injuries from a Physical Fight; Compensation (21:22 – 25)
- . B'. Sacredness of the Body and Relations; Freedom to Servants (21:26 – 27)
- A'. Restoration With Payment: Indirect Injuries; Servants; Compensation (21:28 – 36)

C and C' are topically symmetrical: A fight ensues; bodily harm is done; assistance is owed in C and compensation is owed in C'. In C, the man injured will recover. In C', the woman injured loses a fetus, and possibly is harmed further. The forced miscarriage view (fetus not assigned full personhood) fits much better here.

The second half of the chiasm in D through A' intensify the nature of the bodily injuries, compared to the first half of the chiasm. They describe lasting, not temporary, bodily injuries. Miscarriage fits the progression. Early but healthy delivery does not.

Evidence 7: The Fetus is Part of the Woman's Body

Seventh, in other places in Jewish law, the fetus is treated as part of the woman's body. If the woman committed adultery, for instance, the fetus could die alone, apparently, depending on one puzzling passage (Numbers 5:11 – 31). Or, the fetus could die with its mother (Deuteronomy 22:13 – 19) depending on the available evidence for the woman's sin.

Evidence 8: God's Creation of Adam is an Archetype

Eighth, God's creation of Adam is seen as an archetype, and "breath" is associated with life. God made Adam's body from the earth and then gave the breath of life (Genesis 2:7).

The portrayal of Eve's creation is also thought-provoking: God made Eve from the pre-existing living human matter of Adam's "side" or "rib" (Genesis 2:21). Yet it is very unlikely that God made Eve consciously endure the fashioning of her own body. Indeed, it would be deeply problematic to suggest such a thing. Implied by the text of Genesis is that God first made Eve's body and then breathed in the breath of life. Put in terms of the discussion about the fetus and abortion ethics, we can make two statements. First, God made Eve's body from human life, and then ensouled that body soon afterwards. Second, God drew upon human life in the form of existing human DNA, and shortly thereafter, ensouled her with the breath of life, which constituted her as a fully human person. In other words, the human body can be temporally and conceptually separated from the human soul, and human life can be conceptually and morally separated from human personhood.

In fact, the Hebrew language itself is imprinted with the connection between breath and full human personhood.

Hebrew words function in a structured, layered way. They contain at least poetic associations and meanings, like how the word for heaven, "shamayim," contains the word for water, "mayim." This structured, layered formation of words conceptually ties together "heaven" with "water." This relation is supported by the biblical narrative in various ways. In Genesis 1, God separates the waters above and the waters below with an expanse of air; in that sense, there are waters in the "heavens." In Genesis 2, Eden is a source of water because "heaven on earth" provides life-giving water for the earth. Many people have remarked that the Hebrew language itself is peculiarly well-suited to delivering the biblical story.

The primitive Hebrew root הָוָה , "havah," has the meaning, "to breathe." This root forms the structural base of other Hebrew words, such as the verb הָוָה , also pronounced "havah," which means "to be/become," or "to exist." In Exodus 3:14, God famously used the word "havah" to express His covenant name, YHWH. So to exist/be/become is intrinsically connected with breathing, in the structure of the Hebrew language itself. This explicit link in Hebrew word structure affirms the implicit link between birth and breath in Hebrew Masoretic Exodus 21:22.

Thus, the saying which has passed over into English that when we die, we breathe our last breath. That saying matches symmetrically the Hebrew Masoretic tradition: When we are born, we breathe our first breath. In the context of the U.S., the majority Jewish position on the fetus and abortion therefore becomes a First Amendment, freedom of religious exercise, issue. That tradition sees the fetus as valuable but subordinate to the interests of the mother. It is an argument made from Scripture in good faith.

Incidentally, this pattern of God's creation of Adam and Eve also has resonance with other habitations that God made first, and then inhabited. In Genesis 1:1 – 2:3, God built the creation-as-temple structure first and then invested it with His image-bearers. In Exodus 35 – 40, God

instructed Israel to build the tabernacle first and then invested it with His shekinah glory. In 1 Kings 8, God honored the physical stone temple that Solomon built by investing it with His shekinah glory. In the ministry of Jesus, Jesus built his community of disciples and then invested it with his Spirit (John 20:22; Acts 2:1 – 13). The conceptual parallels to the individual human person are intriguing: God makes the physical body of the fetus first, then invests it with the soul, or breath of life.

Evidence 9: The Ethiopian Orthodox Liturgy

Examples from church writings show that the earliest Christians actually used both Hellenistic science and Scripture to develop their views of the fetus and abortion. While this serves as encouragement that Christians today should consider the science of embryology to be a friend in the determination of fetal life, it is also troubling that some Christians went further than the Greek LXX manuscript on the fetus, based on Hellenistic views of the fetus.

The Anaphora of St. Athanasius, a prayer spoken by the priest over the eucharist, in the official Liturgy of the Ethiopian Orthodox Tewahedo Church,² says this:

“O You, Who takes a child from his father’s waist to the woman’s womb,
Who clots him after he is formed as fluid,
You breathe out the breath of life into him on the fortieth day [in the womb] . . .”
Anaphora of St. Athanasius 113

This liturgical prayer is important, fascinating, and troubling. The following points are very significant here:

1. This prayer follows the assumption, shared by Hippocrates and Galen and the Hellenistic tradition in general, that the child comes from the father’s sperm. They believed the mother provides the nourishment.
2. The “clot” language is odd today but understandable then, because we observe blood clotting into a scab. Without a microscope to see the sperm and egg, the naked eye could only imagine that male fluid would thicken into the fetus’ body and “clot.”
3. The “clot” language is also used by Qur’an 22:5; 23:14; 40:67; 75:38; and 96:2 to describe the formation of the human in the womb from a “seed” and fluid. This suggests (1) a common understanding in the ancient world about how the fetus was formed in the womb; and/or (2) contact between early Islamic sources and the Syriac-Greek Christian tradition specifically related to Hellenistic medical views. After the Arab Islamic conquest of the region of Syria, Syriac and Greek speaking Christians like John of Damascus were in high demand as translators. They translated the works of Aristotle into Arabic, for instance.
4. The Ethiopian prayer believes that God recapitulates the creation of Adam per Genesis 2:7 in the formation of fetal life. This is shown by the use of the phrase, “You breathe out the breath of life into him” which is uniquely Hebraic, not Hellenistic.
5. The prayer believes this ensoulment happens on the fortieth day, which might be related to biblical patterns of giving meaning to certain numbers like 7, 10, 40, etc. But given the presence of Hellenistic medical assumptions about the male sperm, it is likely that the 40 days of gestation comes from Aristotle. Aristotle observed miscarriages and sought to

² <http://www.ethiopianorthodox.org/biography/englishethiopianliturgy.pdf>; page 104

understand when a miscarried fetus was “formed” enough to appear human. He said, in *History of Animals* 7.3, that a male fetus was “formed” at 40 days, and a female at 90. The Ethiopian liturgy appears to simplify that down to the 40 day mark.

6. The prayer is attributed to Athanasius of Alexandria, who was held in very high regard by the Ethiopian Church, since Athanasius appointed Frumentius as the first “abuna” of the Ethiopian Church in 328. It may also be significant to lend credibility to the scientific claims being asserted here that Athanasius was from Alexandria, the center of learning in the Mediterranean, and probably the most scientifically developed city where Christians were known to be.³ Alexandria, Egypt was the most western of a string of cities founded by the conqueror Alexander the Great, who was a student of Aristotle. Alexander designed it to be the cosmopolitan connection between the Mediterranean world and lands further east such as Persia and India. Alexandria, Egypt was also where diaspora Jewish scholars translated the Hebrew Scriptures into Koine (common) Greek.
7. The view of the fetus held in this prayer can conceptually overlap with the Greek Septuagint translation of Exodus 21:22 – 23, which makes a moral distinction between an “unformed” and “formed” fetus in the situation of a forced miscarriage. The LXX only comments on the physical formation of the fetus.

Later Christian traditions at the fourth century debated and added the timing of “ensoulment” to the timing of the physical formation.

- Basil, Gregory, and the Greek East held to an ensoulment that was basically early on, but presumably not contained by the sperm itself while the sperm was in the father, although Basil, who was a physician with Hippocratic training, seems to have been a preformationist (the sperm already contained the whole physical human being) like Hippocrates and Galen. This explains Basil’s aversion to abortion at any point of gestation and his explicit denial of the distinction between “unformed” and “formed” fetus drawn by the Greek LXX itself.⁴
- Augustine, Jerome, and the Latin West held to “quickening” as “ensoulment” – when the mom felt the baby kick in the womb, which was usually one-third to one-half of the way through the pregnancy.

The Syriac Christian tradition appears split.

- In the mid 4th century, Aphrahat the Persian (d.345), in *Demonstrations* 6 refers to ensoulment as “from the first birth.” This can align with the view of the Hebrew Masoretic, that God ensouls the body at birth and breath.
- The *Apostolic Constitutions*, a document that originated between 380 – 400 in the Syriac-Greek church, comments on abortion using the Greek LXX translation of Exodus 21:22 – 25. How it does so is very important. In Canon 85, the *Apostolic Constitutions* treats the *Didache* as *Scripture*. The *Didache* 2:2 says, “You shall not murder a child by abortion nor kill that which is begotten.” What is “a child”? The *Apostolic Constitutions*, however, styles itself as an expansion on the *Didache*, originates from the same region, and presents itself as wrapped in the same mantle of ancient Christian authority. Perhaps this was an appeal to Syriac Christians who were aware of the *Didache* on some level – either in a general, popular level, or in its elite circles who knew something of Christian

³ See, for example, T.F. Torrance, *Divine Meaning: Studies in Patristic Hermeneutics*.

⁴ Basil of Caesarea, *Epistle* 188.2

history from three centuries previous. Whatever the case, the *Apostolic Constitutions* does something remarkable. It either modifies or clarifies its predecessor on this very ethical question of abortion by using LXX Exodus 21:22 – 25. The authors of the *Apostolic Constitutions* do this at the very same time that Basil of Caesarea wrote on the same subject, saying that the Christians in Asia Minor ruled out the distinction introduced by the Greek LXX itself.

- It appears that the Ethiopian, and possibly the wider Syriac-and-Greek-based Oriental Orthodox Churches, held to a specific 40 day ensoulment based on Aristotle’s attempt at being scientific.

The existence of this prayer in the Liturgy raises questions about how the Ethiopian Orthodox Tewahedo Church interpreted the *Syriac Peshitta* version of Exodus 21:22 – 25. The Syriac Peshitta was a translation of the Bible – in all likelihood undertaken by Syriac-speaking Christians, not Jews – done in the late second century. The seven Oriental Orthodox Churches use this translation. The Peshitta appears to take the view that the assailant’s strike causes an early delivery, thus appearing to grant the fetus the status of full human personhood at an earlier date than the Greek LXX, at least potentially. However, if the Liturgy adds more detail, then 40 days is the earliest and most specific date given to when God ensouls the body.

The Jews in this region were developing the Babylonian Talmud and the Targum Onkelos, which subscribed to the forced miscarriage view of Exodus 21:22 – 25 which entailed fetal development, not fetal personhood.

Consequences: Openness to Contraception, From a Facebook Debate, July 2022

What are the consequences of this understanding of Scripture and the early Christian traditions? Here is one example of a debate I had on Facebook in a private group:

“Surely the issue of full personhood and ensoulment is a red herring in the ethical consideration of abortion. Regardless of when these things occur, of which you've displayed the conclusion to be ambiguous, should the natural process of development continue from conception the body will develop past the points at issue here (brain development, personhood, ensoulment) such that any deliberate ending of that life is morally wrong.”

My response was this:

“Surely... a red herring”? No, it’s not a red herring. The natural process of development is precisely what raises the question.

I affirm that the unborn fetus has moral weight. But the question must still be asked, how much weight, relative to full human personhood? And at what stages of development? Compared to what competing moral concerns?

You seem to be using an argument from “potential,” and I am using an argument from what is actual. This difference between us is far from trivial. Contraception, for instance, as part of women’s health care is the reason why the abortion rate decreased significantly from 2010 –

2016, from 15 to 11 abortions per 100,000 women ages 15 – 44 (at the time of Roe, the abortion rate was 17.3). Also, long-acting contraception like IUD's are the single best strategy to help poor women avoid unintended pregnancies and thus abortions. Yet conservative lawmakers and voters consistently argue against contraception on the basis that an IUD might cause the uterus to expel a fertilized egg, which can only stand on two metaphysical premises: Either the fertilized egg is already ensouled and has full personhood, or the fertilized egg has the "potential" for full personhood which you are making. I am arguing that both are wrong as moral premises.

Ensoulment is still non-negotiable, especially for Christians who recognize the human soul of Jesus. Whatever your precise views about "the soul," it still helps to use soul-based language to denote something mysterious that happens in life and death. When you die, won't your loved ones have a different responsibility to your body? Otherwise, the argument from "potential" which you are using for the beginning of life would have to be used at the end of life. Family members, hospitals, and society would then be morally obligated to keep my body on life support because of the "potential" for a mysterious or miraculous recovery. Or, they would be morally obligated to ignore and override my own "do not resuscitate" instructions. Calling death the departure of the soul from the body, or the sleep of the soul, or some such thing, provides closure and a minimum and sufficient condition. The soul helpfully demarcates what is actual, not what is potential. Arguments from "potential" are not strong arguments.

If the soul marks the end of biological life, then we have to wonder how the soul interacts with the beginning of biological life. And while science cannot observe the mystery of ensoulment per se, embryology can help us identify physical prerequisites for ensoulment. And, that is why I said above that embryology now indicates that conception cannot be the point at which we assign to the fetus full human personhood. The lack of a brain and nervous system, and lack of brain waves until 40 – 43 days in a healthy nervous system, is very important here.

Here are some other science-related reasons why conception cannot be the point of full personhood, i.e. ensoulment:

- 50 – 70% of all fertilized eggs do not implant in the uterine wall. This raises concerns about theodicy and God's moral consistency as it relates to His commandments. If ensoulment happens when the sperm meets the egg, then we would have to call God the greatest abortionist for losing half of all people for no reason whatsoever. It would make more sense to push out the time frame of ensoulment until after the fertilized egg implants in the uterine wall.
- Until day 4, the zygote becomes totipotent cells which are absolutely identical to each other. Totipotent cells can twin which raises a bit of a puzzle because Christian theology has traditionally said that the soul is irreducible and the principle of personal, individual existence: one soul cannot become two souls. While one can resolve this by supposing that God invests the twin with another soul, who is the "original" and who is the "twin"? However, a larger problem is that a totipotent cell will become the placenta. And it is quite impossible for the placenta to contain a soul, or part of a human soul. That is another reason to push out the time frame of ensoulment.
- Until day 21, the pluripotent cells raise the same concern. Some can become the embryo yet some can become or duplicate a specific organ if placed strategically. Even more puzzling, pluripotent cell development can be reversed; they can be placed elsewhere,

and they will resume a path of development accordingly. But can a kidney or liver have a soul?

- Chimerism or recombination of twins can happen, and this is not understood that well but it is presumably early. Conjoined twins can be seen as a partial expression of this. But chimerism is a complete union where you might have the completely suppressed or partially expressed DNA of your twin. For example, in different eye colors. Scientists who have found blood chimerism and organ chimerism now suspect that this occurs far more frequently than we imagined before, because we only test for it when it presents overtly. Traditional Christian theology holds that one person cannot have two souls. So it is again another reason to push out the time frame of ensoulment where this does not happen.

Again, the point I am making here is limited. I am not making an argument that abortions for any reason are perfectly fine and come without moral cost. Instead, I am presenting a Christian argument for contraception as a morally viable and effective way of bringing down the abortion rate. I am arguing against the view of some conservative Christians that this is not acceptable, since they think IUD's, for instance, can cause a fertilized egg to be expelled. But to do this, I have to argue against your view that when I present ensoulment and fetal development as morally significant, I am presenting only a red herring.

I'd like to press you on your argument a bit more. On the basis you suggest, that the morality of what we actually do with fetuses (not abort at all) should be based on the view that a fetus has the "potential" for full personhood, wouldn't we have to carry that moral principle to other realms?

If "potential" persons morally count as actual persons, then we should regulate a surprising number of substances we never did before. A combination of Advil, coffee, and cigarettes have as high a probability of causing a spontaneous abortion as an intra-uterine device or abortifacient. Does that concern you? Tobacco contains chemicals that are toxic for embryos: nicotine, carbon monoxide, and mutagens. Paternal tobacco use even increases the rate of miscarriage because tobacco impacts sperm health. A father who smokes and a mother who does not are three times more likely to have a spontaneous abortion than a non-smoking couple. Would you limit tobacco use to post-menopausal women and post-vasectomy men?

If "potential" persons morally count as actual persons, then we should dramatically invest in technologies that might save non-implanted persons. Yet no one shows an interest in even monitoring fertilized eggs which do not implant in the mother's uterine wall.

If "potential" persons morally count as actual persons, then the U.S. government is trafficking children across borders. Fetuses are not U.S. citizens until they are born here, according to the Fourteenth Amendment, so technically they are undocumented. But if fetuses are persons, then the fetus of an undocumented Mexican woman should be representable by proxy to sue the U.S. federal government for deporting both it and its mother. Because one person's lack of documentation (the mother) cannot serve as the basis for deporting another person (the fetus) who was not personally responsible for crossing the U.S. border illegally.

If “potential” persons morally count as actual persons, then a pregnant woman should drive in the carpool lane because she carries a fetus. IVF clinics storing fertilized eggs should count extra legal persons living at their address. The U.S. census should count fetuses. Miscarriages should count as legal deaths. Churches should hold funerals for miscarriages.

I think these are the ramifications of what you are proposing. Do you think there is a way out of these?

My point is that in the older Christian paradigm that I’m describing, Scripture and science can work together, struggling to respect the mystery of the beginning of each human life. In the contemporary paradigm which you seem to be advocating, though, we would fundamentally have to ignore both, resulting not only in total incoherence, but in self-defeating policies like cutting contraceptive care, which will only increase the abortion rate.

But what exactly is your epistemic basis for assigning the moral weight of full personhood to the fetus from conception rather than varying the moral weight of the fetus based on its actual development? I argue that there is none.

Scripture itself – in two manuscript families no less – instructs people to not assign the fetus full personhood from conception, and instead use the stage of fetal development as a tool for moral discernment in situations of harm. On what basis do you set Exodus 21:22 – 25 aside?

The majority Jewish position on Exodus 21 is based on the Hebrew Masoretic Text, which envisions fetal life as progressing, but birth and breath as the start of full personhood. This leads to fairly liberal abortion laws in the State of Israel, for example, and at least one Jewish synagogue community in Florida that is suing for their religious freedom. Do you think this Jewish argument is made in bad faith?