

Abortion Facts and Feelings

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The story is told of a young student from an exotic place, a colonial dependency of Britain, who was suddenly delivered to Oxford University. The word soon got about that the tradition of cannibalism had not been perfectly extinguished in this young man's tribe, and a certain concern was registered, particularly among his potential roommates. But the assurance was quickly tendered: the young man had a powerful aversion to Anglicans, and as a point of principle he never ate meat while travelling abroad. As the story is played out, the community was grateful to receive this assurance, and it felt no apprehension about the outcome of his stay. Still, the people in the neighborhood were hardly cheered about the principle from which his judgment had sprung.

In the same way, many of my friends will be grateful to mark the step taken by *Commentary* magazine, in its issue of January 1994, with the publication of James Q. Wilson's article, "On Abortion." For the first time, the editors of *Commentary* have published a piece that would explicitly challenge the moral rightness of abortion on demand, and the unmodulated license for abortion that was created in *Roe v. Wade*. It is not the first time that the editors have intimated moral qualms about abortion. But the editors of *Commentary* have proceeded over the years with a delicacy that no doubt reflects their own perplexity over the substance of the issue, as well as the demands of prudence. After all, over the years *Commentary* has found the base of its support, and much of its readership, in the Jewish community; and in that community—as I record here with some melancholy for my coreligionists—the support for abortion has achieved a level that probably now exceeds the support for any tenet, or commitment, in Jewish law. With a constituency of this kind, it is hardly remark-

able that *Commentary* has not been a principal organ of the pro-life movement. Indeed, what may be considered remarkable is that *Commentary* should for some time now have been such a persisting source of articles, thoughtful and circumspect, that at different points would challenge the moral premises and the empirical assumptions that attend the movement for "abortion rights."

But even against the background of that record, the publication of Wilson's piece represents a notable step. With many hedges, and with labored indirection, Wilson nevertheless manages to put the decisive question: "Should the law recognize [the point at which most people think that an embryo turns into a 'baby'] and ban abortions after that period?" His answer is muffled with tentativeness, and open to layers of qualification and exceptions, and yet that answer, finally rendered, is "I believe that [the law] should" impose these restrictions. When would those restrictions come into play? Somewhere between the eighth and the tenth week of pregnancy. Wilson thinks the moral sensitivities of the public would be engaged more readily at that point, because the moral reflexes will be allied now with the clear evidence of the senses. Through the benefits of ultrasound, people can see the being in the womb, and by eight or ten weeks even people clouded in their perception will recognize that figure in the womb as a baby.

Of course, those who have heard something about the advances in embryology over the last two hundred years will know that we have some astoundingly precise information about the nascent being and its human attributes even before it lands at the uterine wall. In all strictness, we do not need to see the child sucking its thumb in the womb before we know that we have an offspring of *Homo sapiens*. But Wilson's "moral" argument is grounded radically in the "natural sentiments." By that he means the per-

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ceptions available to our common sense—though not “common sense” as it was understood by writers in an earlier age, as the evidence of the senses, corrected and improved by the principles of understanding, or the canons of reasoning, that are also a part of our “natural” wit. Wilson appeals, rather, to a notion of “sentiments” that are pre-rational or pre-articulate. When that understanding is applied to the matter of abortion, it leads him to the familiar maxim that “people treat as human that which appears to be human; people treat as quasi-human that which appears quasi-human.” In this reckoning, “perception” is all. Whether the child in the womb is regarded as a human child depends entirely on whether the pregnant woman, or the community gathered around her, “sees” that being as a child. The question of what that being *is*—what it is objectively, or what tenable grounds we have for claiming that it is anything less than human—is a question that must be placed out of view and separated from the judgment on abortion.

It is only on this ground that Wilson could write, in his piece, things he could not literally mean, and which should not have escaped his word processor: “I am not convinced,” he writes, “that there is such a thing as the ‘moment of conception.’” Or: “In the fifth week [of pregnancy], a creature is visible, but one that is not materially different from a mouse or pig.” Between a wooden crucifix and a wooden Star of David there is no “material” difference. But in its genetic composition, in the complexity of its tissues, there is a vast *material* difference between a mouse and a human. An embryo may resemble, at different stages, a tadpole or a mouse, but the question of what it looks like is radically different from what it is. Wilson’s argument depends on an appeal to the “looks” of the fetus, and so his move to thicken the moral tension involves a scheme to engulf the pregnant woman with an array of photographs—“266 photographs in all, one for each day of embryonic or fetal development.” A woman who is considering an abortion might be told, “You are X weeks pregnant, as near as we can tell. The embryo now looks about like this (pointing). In another week it will look like this (pointing). You should know this before you make a final decision.”

Wilson knows, as well as anyone else, what the effect of such a procedure would be. That is precisely why the pro-choice groups, and their allies among the judges, have resisted even the mildest versions of this arrangement. But as Wilson recognizes, a procedure of this kind would not challenge the authority that is accorded to a woman now in the law to reach her own judgment on abortion. Still, the partisans of abortion will not brook the slightest gesture toward “informed consent.” Apparently, anything that brakes the movement toward the surgery, anything that induces a pause for reflection, offers the occasion for raising unsettling moral questions about

abortion. As Wilson must surely know, his proposal, modest as it is, would not stand a chance of acceptance in the courts. It would be described by the judges as tendentious and provocative: its purpose (as the argument would run) is not to inform, but to discourage, to lead people away from the choice of abortion. And in this reflex, the partisans of abortion keep revealing that their concern is not really with “choice.” Far more important for them is the need to resist any arrangement in the law that implies an adverse judgment on abortion, or questions its moral rightness.

But if this part of Wilson’s scheme is politically unattainable at the moment, it should be even clearer that his proposal for restricting abortions, after eight or ten weeks, has not the faintest chance of acceptance by the courts, or by the groups that now defend the right to an abortion. For them, there is nothing moderate or even minimally acceptable in what he has to offer. On the other hand, there is not the slightest doubt that the pro-life groups would be doing handstands, or setting off celebrations, if Wilson’s plan could be incorporated tomorrow in the law. That irony seems to pass Wilson by, and that want of recognition may be a key to the flaws that go unseen by him in his own argument.

For Wilson offers his essay in the voice of the affable citizen, guided by common sense, and free from the zeal, or the rigid principles, that define the partisans on either side of this issue. And yet it seems to have passed his notice that the pro-life groups have shown a willingness over the years to accept accommodations far more modest than the proposals put forth by Wilson. In 1989, in the celebrated case of *Webster v. Reproductive Health Services*, the Supreme Court seemed to take the first step toward returning the issue of abortion to the domain of legislatures. I myself suggested at the time that the pro-life groups could be quite disarming, and establish some critical points of beginning, if they merely proposed measures as modest as these: (a) that there be no abortion without a pregnancy test, and (b) that we seek simply to preserve the life of the child who *survives* the abortion. From that modest beginning, we might go on to restrict abortions after the point of “viability,” or we could ban those abortions ordered up simply because the *child* happens to be a female. We could move in this way, in a train of moderate steps, each one commanding a consensus in the public, and each one tending, intelligibly, to the ultimate end, which is to protect the child from its earliest moments.

The problem with Wilson’s proposal, then, is not that it is too moderate or accommodating. The pro-life movement would readily offer measures even more modest, but with this difference: as modest as they may be, these measures would all be aimed at establishing points of principle that would be critical

in preparing the legal ground for a defense of unborn children.

We may take as examples those two seemingly modest points I offered as first steps. Consider the pregnancy test. The courts are persistently striking down measures to protect nascent life at early stages by insisting that it is not legitimate to "legislate any particular theory" of when human life begins. But of course a pregnancy test merely renders operational a certain understanding about the beginning of human life. As a surgical procedure, an abortion is hardly more relevant than a tonsillectomy in the absence of a pregnancy test. No one says, in the face of a pregnancy test, that we ought to see whether the process of growth, now begun, actually continues. Nor does one say, let us see whether this process of growth culminates in an orange or a pigeon. An "unwanted pregnancy" would not seem to pose such a weighty problem if it promised merely to deliver, at the end, an unwanted pigeon. In sum, no one shows the least doubt that something self-sustaining has been put into motion, and there is no mystery about the species of the being in the womb. The pregnancy test is the very predicate that makes abortion an intelligible choice. And yet, a pregnancy test would stand as an unambiguous marker for the "beginning of human life." A law that prescribed a pregnancy test would have the value of dislodging the premise that there is something irreducibly subjective about the beginning of human life. And perhaps even more tellingly, it would prevent even sober commentators like James Q. Wilson from declaiming in public that "I am not convinced that there is such a thing as the 'moment of conception.'"

The second modest proposal was to save the life of the child who *survived* the abortion. And the point of that proposal was to break out to the public news that most of the public would find jolting: namely, that abortions can be performed now through the entire length of the pregnancy; and if a child happens to survive the abortion, there is no obligation to preserve the life of that child. Judge Clement Haynesworth once explained that a child who had survived outside the womb for twenty days was not "viable" because his mother did not want him. A law that begins with the protection of this child would begin at a point at which even Kate Michelman could not deny that a human being is present. And the purpose of that exceedingly modest step would be to establish this simple, but momentous, point: that the claim of the child to the protection of the law would not hinge on the question of whether anyone happens to *want* him.

Wilson's proposals, crafted with the object of moderation, are actually far more extravagant than these modest proposals, and yet they would help to establish none of these points in principle. In fact, the difficulty, at the root, with Wilson's proposals is that they supply no moral ground at all, no ground on

which they can finally be explained or justified. It is not merely that his proposal would fail to persuade the groups that regard abortion now as a constitutional right. More than that, he would not even be left with a ground of objection when they reject his moderate scheme, as they plainly will reject it.

If the matter of abortion is to turn entirely on perceptions—if there is no independent standard of judgment that could be set against our "feelings" about the fetus—then there is no reason for the partisans of abortion to regard the "sentiments" of the community as any more plausible or compelling than their own. The redoubtable Immanuel Kant once warned that even if we were unanimous in our feelings on any subject, that unanimity of sentiment would still not provide the ground of a moral judgment. If the whole country suddenly found itself concurring in a preference for frozen yogurt, nothing in that unanimity of feeling would provide a ground for making the yogurt *compulsory*. If 99 percent of the public achieved a "consensus," as Wilson puts it, in the perception that life begins at seven to nine weeks in the womb, nothing in that consensus would provide a ground on which to impose that judgment on the woman who looks at the ultrasound and reports that she, at least, "sees" nothing she regards as human.

In shaping his argument, Wilson has drawn on the analogy to the treatment of black people, and so it is curious that he has not seen, in that same problem, the eery reflection of his argument. For after all, there were some accomplished men of letters in the middle of the nineteenth century who did not see black people as fully human. Blacks were often seen, rather, on the scale of evolution somewhere between orangutans and real human beings. If cultivated people were to be guided by the evidence of their senses, how could they look upon the slave, or the man newly freed from slavery, and see "a person like themselves"? Surely not that dark creature, with mangled syntax, giving a laughable imitation of a human being. He might be a "quasi-human," but by any reckoning of common sense, he did not resemble the blond, well-tailored man who conjugates verbs and knows just which forks to use at dinner.

Imagine, then, that we pass the Fourteenth Amendment and offer protection to black people from the lawless assault on their lives. But suppose that we were still affected by a certain perplexity about the "human standing" of blacks. Would we have used Wilson's procedure? Would we leave the matter to the legislatures in the separate states? Would we encourage them to consult the "consensus" in their communities about the points at which black people come to resemble "people like themselves" and turn into humans? Would it be a matter then of "appearance"—perhaps posture, or grooming, or speaking grammatical English? If all this sounds

comical to us today, it must be because we have somehow absorbed the recognition that this species of question cannot be addressed in this style. To classify beings in gradations of "humanness" is not merely to engage in a project of "description." It is part of a scheme, rather, to remove whole classes of beings from the protections that are accorded to human life. And when we understand that something morally portentous is at stake, we somehow recognize that we are not going to consign people to their deaths on the basis of attributes that are wholly wanting in moral significance. People with slovenly manners and poor posture may repel our company, but we would not treat these deficits as flaws that warrant their death.

But of course that is precisely the argument that has been made by many writers in the pro-life cause about the fallacy of arguing about the gradations of human life. The child at five years of age is not more "human" than he was as an infant because he is taller, or because he deploys a larger vocabulary. But then neither was he less human in his first month outside the womb—or in the month before, inside the womb. He would no doubt experience many notable changes in his progress from Little League to the university, but those changes will not be genetic. Genetically, he will have no attributes in his forties that he did not have in his first moments. He might not have been exactly alluring as a zygote, but Wilson would not suggest that somewhere between the seventh and the ninth week he underwent a change of species.

And yet, in the most curious manner—with a confounding altogether rare for him—Wilson treats the vagaries of opinions about the fetus as though they marked some genuine doubts about the ontological standing of that being in the womb. But here we are simply reminded that it is ever the function of our understanding to correct the impressions of our senses. In that famous experiment of Piaget, the small children suffer no problem in perceiving the collection of beads poured from a low, broad container into a tall, narrow cylinder. And it seems clear to them, from the evidence of their senses, that the taller container must contain more beads. There is nothing wrong with their *perception*. But they will come to see the event more accurately when they simply grasp, as a rule of thought, the "law of identity": that the quantity of beads remains the same even though it undergoes a change of place. The child perhaps comes to grasp that point when he understands that he is, today, the same person he was yesterday. In the same way, it was recognized in the past that Socrates sitting was the same as Socrates standing, and that Wendy Himmelstein, receiving her B.A., is no one other than the same Wendy Himmelstein who first became noticed *in utero*.

The philosophers of "common sense" appreciated long ago that people of ordinary wit have no trouble

understanding these things. The American public, we know, has suffered moments of high bewilderment over the issue of abortion, and the surveys often show a jarring discord between the perceptions of the public and its judgments. And yet, the surveys of opinion also reveal that the public has not turned into a collection of relativists or skeptics in epistemology. When people are asked just when they think human life begins, the most frequent response is not seven to nine weeks, or "the first trimester," but "conception." More women than men tend to give that answer, and it should be clear in either case that the response could not be governed by "perceptions." Most people have not "seen" a zygote.

Of course, none of this means that the public has been particularly logical in drawing out the moral conclusions that arise from these recognitions. Yet, in some instances, most people have been remarkably faithful to reason in responding to these judgments—to the evident surprise and regret of many commentators. And so Mr. Roger Rosenblatt in his book *Life Itself* did not quite know what to make of the fact that, in one survey, 56 percent of the respondents refused to sanction abortion, *at any stage of the pregnancy*, merely because the baby was likely to be born blind (and therefore "defective"). And 53 percent would not consider an abortion if the baby would be missing an arm or a leg. But even where Wilson is willing to restrict abortions, he would make a broad allowance, and permit abortions, for "grave and special cases (such as severe deformity)." He would permit these abortions, that is, even when there is no question about the human standing of the child. But if we credit these surveys, most people seem to show a competence in moral reasoning that runs well beyond the limits that Wilson attributes to them. For the public has apparently grasped something that Wilson himself has not yet acknowledged: namely, that once we are clear that disabilities such as blindness or lameness cannot justify the killing of an innocent being, the age of that being is a matter of moral irrelevance.

I remarked on the curiosity that Wilson had backed himself into a posture altogether rare for him. What has been bracing and illuminating in his writings over the years has been a sense of "moral realism": in his studies of urban politics and crime, he has described a world layered with moral discriminations. He has written with an uncommon candor about the codes of selfishness or rapacity in certain ethnic groups, and even about the moral depravity that corrodes civic life. He has written, in this vein, sentences that would not appear in other books. And in this style he has given us to understand that we must put aside the conventional pieties, or the polite clichés, if we are to see the world as it is. With the political turn in the universities in the 1960s, that teaching became even more urgent. Wilson quipped on

one occasion that he was trained, at the University of Chicago, to do "value-free" social science, and then he was encouraged at Harvard to profess a study of politics that was "fact-free." Throughout his career, then, he would stand against the new yahoos serving up an arty form of relativism to cover up the defects in their arguments.

But now, when he turns to the subject of abortion, he turns to a field that has been highly cultivated by the advances in embryology and genetics. And here, in the face of facts of remarkable precision, he takes the conflict of opinions, many of them quite feckless, as though they marked a real haziness about the facts themselves. Yet, with the recent developments in "molecular genetic fingerprinting," those "facts" have reached a level of confirmation that should be reckoned, in any sober judgment, as quite staggering. In two recent cases of rape, DNA fragments were used in gauging just who the man was who impregnated the woman. In one case, paternity was established with a certainty of 68 trillion to one, and in the other, at a certainty of 360 trillion to one. In our reigning fables now, we cannot profess to know whether the being in the womb is human, but we can know, at a level of 360 trillion to one, just who the father is. In the steady course of his writings, James Q. Wilson has enjoined us to summon the courage to look plainly at the facts. But never was he able to claim confidence levels of one in 360 trillion for any of those "facts" for which he summoned our respect. Why now, with facts of this kind, and with these moral stakes—why now, this late in the seasons of his experience—does he suffer epistemic doubts, and show a willingness to credit the appeals of relativism?

None of this is to say that Wilson's argument is destined to be politically bootless. For all we know, he may touch a chord with the public and recruit the sentiments of people who have been unmoved by other kinds of appeals. If the laws were altered now to

accord with his formulas, we could only rejoice. But my own reckoning is that his arguments will not move the people who are firmly committed to abortion as a fundamental constitutional right. And if his arguments were absorbed now by people on the pro-life side, the implications might be fearful.

For one thing, those who incorporate the premises behind Wilson's scheme will not be able to give a moral account of what they are doing. They will not be able to explain just why unborn children must claim our respect as human lives, even against the powerful wish of their mothers to destroy them. Wilson's proposal would not alter, then, in any way, the standards that are brought to bear on the "choice" of abortion. He would install even more firmly the premise that there are not "facts" concerning the child in the womb that we are obliged to respect as facts. The decision on abortion would remain, as it is, in the hands of the pregnant woman, who need consult no standard other than her own feelings. Those feelings could not be judged for their rightness or wrongness, and no more could one judge the motives that spring from those feelings. Therefore, she would be left with the franchise to destroy the child for no reason that need rise above her own convenience. Wilson's proposal does nothing to dislodge these premises. And it provides, finally, no ground of objection, or even complaint, when the partisans of abortion refuse to abandon any of these premises, so comforting to their cause, so serviceable to their interests.

For Wilson, his essay was a noteworthy step. But from within the circle of his friends I would enter the plea that he earnestly consider a moral ground of his argument more consistent with his ends and the reach of his sympathies. Wanting in that argument, he would run the risk of offering us a remedy quite as portentous as the evil he would seek to relieve. □

(James Q. Wilson will respond to Hadley Arkes in our next issue.)