I received a barrage of angry replies to my comment, recently, accusing me of supporting the violent airport security team commissioned with the defenestration of a United Airlines passenger. For the record, I did no such thing, nor am I inclined to let these people off the hook. My point was that those who ordered this action—and could have stopped it before it became abusive—were equally responsible and should also be held accountable. Airport security is actually not allowed to disobey an order, and clearly their training is a farce. There’s a lot of blame to go around here. The underling making $14 an hour is not the one who should bear all of it, in my opinion.

No matter how hard I tried to illustrate that I felt management should SHARE responsibility, I was continually accused of being an apologist for the “reprehensible” security team. In psychological terms, this intentional misreading of my position might be described as “splitting”—a defense mechanism which stridently places people and situations into categories of either black or white, good or bad, all or nothing. It’s chaos to be in any kind of relationship—even a reddit relationship—with someone who is either idolizing or demonizing you. It’s unsustainable. There is no fidelity to reality or good will. I wasn’t trying to look at the complexity of the situation, according to my angry critics; I was trying to justify the slaughter of innocents.

This is almost always the way discussions go around abortion. You are either for or against, good or bad, a half-wit or a serial killer. But the abortion issue has turned dire only in recent times—prior to which there was still abortion but no significant culture war around it. Undergirding every discussion about abortion in our own time is an inescapable, fundamental ambiguity that we aggressively ignore. So follow me with good will for just a few moments, and I will return that conviviality. I do have a point of view, but I do NOT insist yours is illegitimate by contrast.

What I mean by “fundamental ambiguity” is this: how do we know when consciousness or the soul (let’s call them two terms for the same thing) enters the body or arises? This, we tend to agree, is the moment—or the passage—that counts. So when does it happen?

If you maintain that conception is the point of entry of the soul, where did you come by this knowledge? Is it biblical? Is it scientific? If you have decided that 6 weeks or 12 weeks or viability is the point of entry of consciousness, how did you arrive at this? Is there any evidence—scientific or otherwise—to vigorously support any of these positions? And here’s the more intriguing question:

how could anyone even go about investigating the question when we explicitly don’t know what consciousness is, have never come close to something as tidy as a definition of “soul”? Descartes felt that the soul was located in the pineal gland, and we’ve evolved on this topic only as far as the ability to say that this is not true. Most likely.

As Josh Weisberg explains, “The usual methods of science involve explanation of ... what a thing
does, how it changes over time, and how it is put together. But even after we have explained the functional, dynamical, and structural properties of the conscious mind, we can still meaningfully ask the question, Why is it conscious? This suggests that an explanation of consciousness will have to go beyond the usual methods of science. Consciousness therefore presents a hard problem for science, or perhaps it marks the limits of what science can explain.”

This is casually referred to in both academic philosophy and cognitive science as "the hard problem of consciousness."

In brief, no one in any of the sciences has a satisfying way of explaining why something physical (a human) is conscious rather than nonconscious. That we exist at all is already an intriguing problem for some philosophers, but that we KNOW we exist and have an experience of being - this is a conundrum for scientists as well.

It's important to clarify that biological aliveness is not identical with consciousness or a living soul - at least this is something that most people agree on. Bacteria are alive since they develop, they have metabolism, they reproduce.

A hedge is alive.

An embryo can be said to be alive - because it is developing - but whether it has consciousness is not knowledge available to us*, at least not in the foreseeable future. An early stage embryo is an enigma and though we can observe development, we have no access to what the embryo is experiencing as a being. We are only, since the 20th century, even aware of the presence of the smallest embryos because of the imaging technology that has invaded the uterine environment. Prior to that, a woman experienced the earliest stages of pregnancy in a state of either obliviousness or relative secrecy. She might be pregnant, she might not. She suspects but is not sure and neither is anyone else. It was for her to sense, imagine, conjecture, and dream about. Or remain clueless. It was her private experience - and her family's if she chose to share it. Generally speaking, it was hers in a more complete way than a woman's pregnancy is hers today. A woman's pregnancy now seems to belong to everyone.

The pregnancy experience that marks us moderns as distinctly different from our pre-technological predecessors is that a woman once had to reconcile herself to live in an extended period of of vagueness and possibility and that she would only know for sure, when she started to show or failed to show. She might be pregnant and lose that pregnancy and never know. Before imaging technology, you might in fact have been "kind of pregnant."

Prior to the criminalization of abortion in all U.S. states by 1900, the general - and in some states, expressed - restrictions on abortion began not at conception but at the point of "quickening," meaning fetal movement. Quickening typically happens between 15-20 weeks. This was implicitly understood to be the threshold of "aliveness." Not an unreasonable legal position for the time, given that it was based on physical evidence.

Enter high tech equipment and we enter the era of the "medicalization" - as philosopher Ivan Illich put it - of every possible condition, including pregnancy. Women - and in fact all patients - are required to take a passive, rather than a collaborative, position in the face of medically trained specialists and their powerful medical technologies. We have photographs of the zygote and assume this conveys the information we need to understand what is happening. But in the plainest sense, what we have is a blurry 2-dimensional representation of something that could easily be mistaken for abstract art. Do we really know what we have photographed? When identical twins split as late as 10 days after conception (later in the case of conjoined twins), can we reasonably claim that soul/consciousness has also split into two distinct entities at this point?

Can we claim anything at all?

Abortion has a history going back to the earliest written records. In De materia medica libri quinque, the Greek physician and botanist Dioscorides (40-90 C.E.) listed the recipe for an "abortion wine"-
squirting cucumber, scammony and most importantly, hellebore. Depending on the culture or the specific family, abortion was more or less frowned upon, but it was only rarely a matter of law. Religious commentary, sometimes, but it was a legal problem on extremely few occasions.

St. Augustine asked, "who is there that is not rather disposed to think that unformed abortions perish, like seeds that have never fructified?"

Augustine also posed the crucial question:

"And therefore the following question may be very carefully inquired into and discussed by learned men, though I do not know whether it is in man's power to resolve it: At what time the infant begins to live in the womb: whether life exists in a latent form before it manifests itself in the motions of the living being."

But this respect shown toward the limits of knowledge and this level of comfort in the face of uncertainty has vanished in the 21st century American context. Instead, many in the pro-life group have connected contemporary medical imaging with passages in the Bible that speak not about abortion but refer to the fetus as a "baby." This is given as evidence of God's meaning, indirect though it may be. Some have countered that there are also passages that connect spirit/life with breath—that God breathed life into us—but it's best to abandon the attempt at Biblical interpretation right away. The problem is less one of interpretation and more one of the claim to certainty.

**SO WHAT ABOUT RIGHTS?**

Since we don't know when "life begins"—and have no way of finding out—it does seem prudent and reasonable to err on the side of caution. But laws are, by their nature, autocratic, inflexible. And individual lives vary endlessly. If a school makes a rule that all freshmen must be able to run a mile to move on to sophomore status, and no exception is made for the disabled, you have a catastrophe on your hands. Include an exception for the disabled and then what qualifies as disability will come into question. Is an asthmatic disabled? How about a person with inner ear problems? Soon the rule has become the focus of everyone's energy instead of what was intended: physical fitness.

Only in a society such as ours—in a time such as ours—could we routinely pit a woman against an invisible being living inside her. Stewie Griffin, the animated baby on *Family Guy,* describes his desperate maneuvering to "escape that amniotic Attica." I have to wonder how this would read in a different society. We understand it because we can make a conflict out of anything. We insist that personhood has a precise beginning—whether conception or some time after—and that that marks the point of competition between the two persons who live and breathe in concert. We go from one to two in an instant. According to this point of view, there is no gathering period, no time-dependent emergence. Bam! a new person. And we want the law to recognize this purely speculative idea.

But "personhood" is not a question of fact because, if we understand the idea to mean roughly "a human being with a soul or with consciousness," we have no facts. And we have no possibility of establishing facts.

I know I don't have any sense of when my own consciousness arose—though my first memories are around the age of two and were of a bronze sculpture of an eagle—and if I did know when I became a being, I would have no way of offering legal proof. In order to bring the question of being into a legal framework, we have to ignore the most obvious and the most significant issue: we don't know. Ivan Illich, who was concerned about the systemization of health care "from womb to tomb," highlights the folly of our enduring efforts to put the concept of being into organized categories: "The notion of a human life as a distinct entity which can be professionally and legally protected has been torturously constructed through a legal-medical-religious-scientific discourse whose roots go far back into theology." Life, as Illich sees it (and Louis C.K. as well), is not something we have or we own. It is something we participate in; it is not a thing. You can create management systems, but being will not be managed.
Is it possible to legally foresee every unique situation a pregnant woman might see herself in? No. But some feel that we should, nevertheless, make a rule that aims for the maximum number of infants birthed, regardless the consequences for particular women.

Whether this is your point of view or not, it's a legitimate point of view - and I think we can acknowledge that - because the aim is not the injury of others. The aim is care of others. (Not the result, but the aim.) But it's a position that makes it morally imperative that we take full account of the potential consequences of such a rule. That we don't just make a law in the heat of passion and then walk away from what that rule brings into the world. That we take full ownership of that position by honestly facing the possibilities. And philosophical argumentation on either side has nothing to add in the face of the testimony of Mindy Swank who speaks briefly in this video about her much-wanted baby and all the options that were stripped from her when she was at her most vulnerable. This is a profound piece and the message cannot be conveyed in any other medium (no disturbing images).

Nothing that I or anyone else writes can convey the power and dignity of this woman and her experience: https://www.youtube.com/watch?v=9finqZJJNA8

Pro-lifers want American lawyers to establish the parameters of human existence. Does this not desecrate the life that they aim to make sacred while causing, on occasion, extraordinary and unnecessary suffering (see Mindy Swank)? Pro-choicers want us to ignore the question of a fetus's consciousness entirely. Does this position make logical sense? That consciousness pops into existence in its entirety upon birth? (The nobel laureate, Francis Crick, didn't seem to think it ever really mattered as he expressed passing support for what could be called post natal abortion. Eegads! *)

Is a third position possible that acknowledges that full grown humans can be subjects of the law in a way that an invisible being simply cannot be, while also acknowledging that a fetus is something to take seriously? In other words, it's not that the fetus doesn't matter, it's that it matters too much, and in too elusive a way, to be subject to the shiftiness of the law. *

Legally speaking, we have no facts to support the granting of personhood to a fetus in the womb.
The closest approximation is the standard of viability which is roughly the last trimester. This seems a reasonable cut off point (with allowance for exceptional cases (oh dear, here we go) like the death of the fetus, terminal illness in the fetus or serious risk to the mother). It's very nearly the standard we have in place now. Would a hardening of this line - the third trimester - be a satisfying compromise to both sides in the face of our uncertainty?

Not likely.

Women have always had abortions and that's not going to stop.
At least not in our type of society. There are two principal, closely-related reasons for this: 1. shame 2. lack of financial support. Pro-choicers don't shame women for getting pregnant and tend to be in favor of social supports like maternity leave and free health benefits for children. This leads to the logical conclusion that the stressors that often create the desire for abortion are emanating from the other side. So this part of the abortion equation seems resolvable: stop shaming, start helping. If you want to welcome more children into the world, then welcome them. But there remains the irresolvable complexity of the question about the beginning of consciousness. We live, inevitably, under the yoke of law, but there are some things about which the law can have nothing to say. Being is one of those things. Because if we allow the law to be constitutive of our idea of being, of soul, of consciousness, we instantly reduce the grand mystery of our existence to a line on a form on some bureaucrat's dusty hard drive.

Footnotes
*There are cultures with very different scientific and religious paradigms from our own who actually do
have much to say about how consciousness arises - highly advanced Tibetan Buddhist practitioners, for example - but I restrict this piece to the American cultural and political context.

"Jonathan Glover's landmark *Causing death and saving lives* notes that 'Dr Francis Crick (the Nobel Laureate who discovered DNA with Jim Watson in 1956) once proposed a two-day period for detecting abnormalities, after which infanticide would not be permissible'. From "Abortion, infanticide and allowing babies to die, 40 years on." by Julian Savulescu in *J Med Ethics* May 2013 Vol 39 No 5. http://jme.bmj.com/

"I offer an awkward analogy: there are marvelously subtle ways to emotionally abuse one's children. And the effects can be terrible and permanent. Should we bring every nuance of parenting under the harness of the law so that we are all at constant risk of losing our children to the state? Should an otherwise decent parent who makes a fairly serious mistake come under legal judgement? Or is parenting too important and varied a task for it to be the subject of pervasive monitoring by a state representative with checklist on a clipboard and many boxes to click? Is it too complex an issue to attempt regulation in this manner? Perhaps the parent who makes an egregious parenting mistake should only have him or herself to reckon with, rather than the justice system. That seems to be what we have decided anyway.