

A SHORT ARGUMENT AGAINST ABORTION RIGHTS

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In this paper I will put forward a brief argument against abortion rights. The argument concerns itself with the two main ways in which defenders of abortion rights develop their position. The first strategy through which they tend to do this is by arguing against the personhood of the fetus. The second strategy, made famous by Judith Jarvis Thomson, is to argue that, even if the fetus were a person, its right to life would not entail the right to draw upon the resources of the woman in pregnancy, and so the pregnancy can be terminated (even if the fetus loses its life in the process). My argument will provide reasons to suspect that attacks on fetal personhood are based on a questionable notion of personhood, and that the most common attempts to show that the fetus does not have the right to draw on the resources of the woman in pregnancy also have considerable problems. This will buttress the case for the view that the fetus is a person and that it has the right to draw on the resources of the woman in pregnancy.

Fetal personhood

David Boonin's excellent book, *A Defense of Abortion* (Cambridge University Press, 2003), argues that the most telling reason to reject the personhood of the fetus (at least up to the time in fetal development prior to which the vast majority of abortions take place) is that organized cortical brain activity, which is thought necessary for the development of consciousness, is not yet present. According to Boonin, it seems best to conclude that this develops at around 25–32 weeks after fertilization (127).

doi:10.1017/S1477175613000080
Think 34, Vol. 12 (Summer 2013)

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Boonin is trying to fix a point at which the fetus can reasonably be called a person, since he argued in his previous chapter that while Don Marquis is right that depriving someone of a 'future like ours' (Marquis, 'Why Abortion is Immoral', *The Journal of Philosophy*, vol. 86, no. 4 (1989), 183–202) is a good reason to prohibit killing in general, the vast majority of abortions do not involve this since the typical fetus does not yet possess a 'future like ours'. Boonin takes the cases of the '(A) fetus, (B) infant, (C) suicidal teenager, (D) temporarily comatose adult, and (E) you or me' (57) and argues that he has a plausible criterion that accounts for why it is wrong to end the lives of (B)–(E) but not (A). He suggests that while the individuals in (B)–(E) have a 'present ideal dispositional desire' for their future, the fetus does not, and cannot be wronged by the deprivation of a biologically continuous future because it cannot yet be a person, understood as the subject of desires. By 'dispositional desire' Boonin means a desire that we have even if we are not conscious of having it at the moment. So the adulterer is not off the hook simply because his wife is playing bridge and not consciously entertaining the desire that her husband be faithful because she still has the dispositional desire that he be faithful (68). Similarly, the adulterer's wife has the 'ideal' desire that her husband be faithful to her even if she is so distraught over her son's failing health that she claims to her therapist that her attention is so focused on her son that she would not even mind if her husband were cheating on her, because she *would have* the desire that her husband remain faithful to her under conditions that more accurately reflect her real priorities (74–75).

So what about the fetus? We are told that the temporarily comatose adult has dispositional desires for a future and that the suicidal teenager has ideal desires for a future, but the fetus does not qualify because it lacks any dispositional and ideal desires and this, in turn, is because it lacks any actual desires on which either of those could be based (78–85). But there are several objections one might raise

at this point. For one, why is the presence of *some* actual desires (even dispositional ones) morally relevant to purchase ideal ones? Rocks and thermostats, it is true, have no ideal desires because there are no desires they *would* form under more ideal circumstances (80). But why is an individual's stage of development disqualified from counting as a less than ideal circumstance? Certainly we give children some leeway in our legal systems when they are charged with a crime precisely because we're not comfortable claiming that their actions resulted from a character that had been sufficiently formed in the right sorts of circumstances. Why not say that fetuses are not yet in a position to desire their future but will be as soon as the biological equipment that we believe helps give rise to conscious experience adequately develops?

A related objection might be put this way: the temporarily comatose adult, it is claimed, possesses dispositional desires even though her actual desires are artifacts of the past and the future. Since we are in no position to claim that her future desires will be anything more than ideal desires for her future, and we are in no position to claim that the fetus's future desires will be anything more than ideal desires for his future, it comes down precisely to the issues of present and future dispositional desires. The temporarily comatose adult, while lacking conscious desires, possesses conscious desires in the past, and, let us grant, in the future. The fetus, while lacking conscious desires, lacks such desires in the past but possesses them, let us grant, in the future. Why is the fact of a desire's having taken place in the past, as opposed to the future, morally relevant?

Here is one response I can imagine. The fetus's lack of past desires is important because of what it means for the status of the fetus as a person. Since he lacks conscious desires in the past, he hasn't attained to genuine personhood in the past, whereas the temporarily comatose adult has. But this objection will not hold. For one thing, it appears to beg the question against those who oppose abortion rights since

they typically elect a different criterion for personal identity. One might think, for instance, that the organic threshold for human (personal) identity is crossed when we can speak of an embryo and not of gametes any longer. Robert P. George and Christopher Tollefsen, for example, in their book *Embryo: A Defense of Human Life* (2nd edition, Witherspoon Institute, 2011) argue that when the sperm has entered and united with the oocyte the gametes undergo fundamental changes and the oocyte itself hardens to prevent polyspermy, which occurs just prior to syngamy, or when the twenty-three pairs of chromosomes line up, the organic criteria are fulfilled for a new entity that will then eventually develop into an adult of the human species (38). Indeed, since the person is a living human animal on this view, it will be the same subject that lacks the conscious desires now, and possesses them in the future. Such a subject has little in common with rocks and thermostats.

If the reply continues to be that personhood as a threshold must be reached so that we can then assign personhood to the fetus, we must consider the concept of personhood at work here. Many writers from a pro-choice standpoint are explicit about their debt to Locke's concept of personal identity on this point. But, of course, Locke's view is controversial. Locke argues that it is 'the same consciousness that makes a man be himself to himself, personal identity depends on that only' (*An Essay Concerning Human Understanding*, ed. Alexander Campbell Fraser, 2 vols., (New York: Dover, 1959), vol. 1, 450–451). Here Locke explicitly distinguishes the person from the thinking substance (in another thinker this might have been the 'soul') and the body. Locke himself was forced to acknowledge that if we could take Socrates' consciousness and transfer it from the historical animal Socrates to the historical animal Plato, then we would still have Socrates. This suggests that consciousness is not simply a conscious state or a series of conscious states but an entity in which those states are somehow collected and are capable of being moved. Now, it is a fair point to note that this point about

transference may only be trivially true; it might be outright impossible to transfer consciousnesses, but if it *were* possible, then sure, it *would* be Socrates in Plato's body. But there is a deeper problem related to the nature of consciousness. Do we think a person is a moment, or slice, of conscious awareness? Surely not. However important my 'I dos' were for my life to follow, surely I was still relevantly the same metaphysical person before and after I spoke them.

What, then, is consciousness? This, of course, is a vexed question that is endlessly debated and will find no authoritative resolution here. But surely a simple atomic instant will not do; despite the protests of some philosophers, I am not an experience, but an *experiencer*. But what will do the work? Personal identity is widely understood to be in some sense diachronic, but what will join these instants of conscious awareness so that they go to constituting the same person over time? What will these conscious awarenesses inhere in? Personhood is not plausibly understood as an instant of conscious awareness, and so it seems much better for it to be the thing that in some sense gives rise to or ensures the continuity of these instances of conscious awareness.

The most obvious candidate, and the one with the least amount of metaphysical 'spookiness', is simply the body. But if the body is the thing that gives rise to, or at any rate, ensures the continuity of, conscious awareness, then we need to ask what personhood has become on this view. If the person is the living human body, then we need *organic* criteria (such as George and Tollefsen provide), and not *phenomenological* criteria, for its crossing the threshold into personal existence. If the person is not the living human body, then we need some candidate for what it is.

An objector might point out at this point that our dichotomy above is misleading since a person could be the living human organism *in possession of the power of (self)consciousness*. That is, perhaps an organism constitutes a person under appropriate circumstances, such as the body's having the requisite maturity to discharge its

developed capacity for (self)consciousness. George and Tollefsen note several troubles for this view (66–81), but one trouble with this objection is that it does not seem metaphysically parsimonious. If the person only comes on the stage at a certain point in the biological entity's life, then we have a new entity at that point, namely, the person. But why assert this? To do so, one option would be to claim that the fetus is not truly human until it becomes a person (a similar move would be to claim that the fetus is human but the person is not). But then we would need to identify the species of the fetus. There is simply too much organic unity present at many points prior to consciousness's threshold to dismiss the fetus biologically. So this move appears ad hoc: of all the species in the world, what is the motivation for claiming that a biologically continuous entity is not yet 'human' simply because one of its signature capacities is not yet fully developed? Since we don't do this with any other species, there must be a very good reason to do it with the human species, but it's not easy to find a non-question-begging reason.

Another option is for the person to exist simultaneously alongside the organism that constitutes it. This view seems to introduce a radically new entity simply because the capacities – ones that especially very old and very young human organisms no longer or do not yet exercise – are very impressive. But this seems like an insufficient reason to introduce a new entity. Further, it is worth noting that this is a peculiar position for the pro-choice thinker to be in. It is often assumed that the opponent of abortion rights is hanging her proverbial hat on some doctrine of 'ensoulment' to ground her opposition. Perhaps there was a time when this was the vital issue, but, for many opponents of abortion rights, this is simply an anachronism. George and Tollefsen assiduously avoid basing any arguments on the concept of a 'soul' (20 and 140). Instead, now it is the pro-choice thinker who needs to consider what she has in her metaphysical toolkit to house and organize a set of conscious experiences belonging to a *person*. Thus, it is not at

all clear that the opponent of abortion rights is resting her case on a metaphysically 'spooky' concept of a soul.

Nor is this simply a question of two theories being at a stalemate, since the theory that holds that a person is a living human body appears more metaphysically parsimonious. Furthermore, a powerful supporting reason exists for preferring this theory. We rightly repudiate racism, since it wrongly supposes that accidental features of a person's skin color and/or ethnic heritage downgrade her dignity as a person. Similarly we repudiate ageism, and a host of other 'isms' precisely because such accidental features are irrelevant to the dignity of a person and the moral treatment of which she is deserving. A theory exists that, with metaphysical parsimony, preserves many of our most important intuitions about when it is wrong to kill and it requires only that we recognize that fetuses too young for conscious awareness are not to be thought disposable simply on the basis of this accidental fact regarding their development.

Women's rights

Along with race and ethnicity, George and Tollefsen list 'age, size, stage of development, location, or condition of dependency' (21) as factors on the basis of which it would be unjust to discriminate against people. The previous section dealt with fetal personhood, in an effort to argue that 'stage of development' in the case of the fetus is in fact an irrelevant consideration when it comes to basic rights. It remains for us to consider the claim that, even *if* a fetus counted as a person, the fetus's rights would not extend to the right to draw sustenance and protection from the pregnant woman. This argument was given its most famous philosophical formulation by Judith Jarvis Thomson in 1971 (Thomson, 'A Defense of Abortion', *Philosophy and Public Affairs*, no. 1 (1971), 47–66). Thomson's logical argument begins a good deal later than her first invocation of the most famous example from the article, namely, that

of the unconscious violinist (48–49). Rather, if set out logically, one of the first things Thomson wants us to do is to imagine ourselves in a tiny house with a rapidly expanding infant (52). The case is such that the infant will survive if the house breaks, but you, the only other individual, will be crushed. Thomson assures us that it would simply be self-defense to kill the infant if possible, before it ballooned to the point where it would crush you. Many, however, will not see it this way. As many writers have pointed out, the fetus is not an aggressor, and traditionally self-defense pleas require that one is actually being assaulted. The attempt, therefore, to use this example as an instance where self-defense is justified is questionable.

Two other analogies give us all the right data but perhaps not the same intuitions. For a first case, suppose that two mountain climbers are on one line and it becomes clear that the line has been compromised to the point where it can hold one person but not both. Two lives are threatened by an emergent condition (say it is because of an avalanche), but neither is an aggressor. The person on the top of the line cuts the line short where the person on the bottom will fall, even if to his death. Since both lives were in danger, and the intention was to save one life by doing something, namely, cutting the rope, that was not in itself morally problematic, this case seems fine. The trouble is that this case does not correlate with Thomson's expanding infant case. The mountain climbing case is a better fit for an ectopic pregnancy where the nonviable embryo is lodged in the fallopian tube and will rupture the tube, possibly killing the woman, if the embryo is left where it is. One method that even the most rigorous of Catholic moralists will permit one to consider in this situation is a salpingectomy, or the removal of this tube (or a portion thereof) itself. However, in Thomson's case the fetus is clearly supposed to be viable (since it will survive the destruction of the house). In such a case, to know what to do we would need a good deal more information in a particular case, but

one option to consider would be to remove the viable fetus and give it the care it needs.

Now take another case. Let us suppose that, on a trans-Atlantic voyage of a sufficiently large vessel, because of emergent weather conditions, or operator misconduct, or both (think of the *Titanic*), crew and cabin alike are boarding the lifeboats. A man and a child are the last with a real chance at survival and yet it is clear the lifeboat will hold only one of them. The boat is going to sink, so 'essential crew' are a nonissue, and in any case the crew acquitted itself valiantly and at great cost. Again, neither the child nor the adult trying to secure passage on the lifeboat is an aggressor. While the child is not expanding rapidly, this is ultimately an accidental (and strange) feature of Thomson's case. What is essential to Thomson's expanding infant case is that the mother and her child are trapped in a circumstance such that, if conditions remain what they are, the infant will survive but the mother will not. That is, a decision is called for regarding who will survive, since either could survive but both cannot (unlike the mountain climbing case where the person at the high end of the rope is the only one whose survival can be really intended). Similarly, in our new case (call it the *Titanic* case), a decision is called for regarding who will survive, the child or the adult. Now every life, let us say, is of equal dignity, but some moral considerations tip the scales in various directions. I submit that most of our moral intuitions at this point regard it as strange to insist that the adult be given the seat on the lifeboat when, in consequence, a young child is left for dead in a chilling sea. Rather, it seems to me that the only respectable thing to do is to allow the child the seat precisely because she or he is a *child*. Now, if the infant in Thomson's case were actually acting somehow maliciously and had something more like an adult consciousness and were consuming a magical food that, with each bite, resulted in more and more rapid expansion and the infant were undertaking this course of action with a

view to killing its mother, then self-defense becomes a more interesting appeal. Until then, the case is more like asking whether to give up one's seat in a lifeboat to a child, and while this seems admirable to the point of being heroic, it also seems morally required given the only available alternative.

We should also briefly consider the most famous case from Thomson's article, namely, the unconscious violinist case. The essential features of this case seem to be that one is being forced to provide life-sustaining care for the violinist over a long period of time (nine months) against one's will. A similar case, it is often alleged, can be found in *McFall v. Shimp* where David Shimp refused to undergo a bone marrow extraction to save the life of his cousin, Robert McFall, who died as a result. In these cases, it is said, one's bodily autonomy (understood as the right to refuse) is threatened (see Bertha Manninen, 'Rethinking *Roe v. Wade*: Defending the Abortion Right in the Face of Contemporary Opposition', *American Journal of Bioethics*, no. 10 (2010), 33–46, and the responses by Jason T. Eberl, 'Fetuses are Neither Violinists nor Violators', 53–54 and Jack Mulder, Jr., 'Let's Rethink *Roe v. Wade* – And Overturn It', 65–66). There are at least two ways one could go on this. The first, and less extreme method, is to make a distinction between terminating the life support of the violinist, or withholding the bone marrow that one needs to survive on the one hand, and acting directly against the bodily integrity of the fetus, whom we have been assuming for the sake of argument is itself a person, on the other (see Eberl, 54).

Another possibility is simply to claim that, when people's needs are sufficiently grave and unique, others who can supply for these needs are sometimes required to do so, and that society has an obligation to support both the patient in her suffering and the agent of healing in her own suffering and/or inconvenience (see Mulder, 65, for a suggestion). While one should not be 'strapped down' to offer this service, one could be punished in various ways for

failing to provide it. Compulsory military service, often for very long periods of time, is still practiced in the Swiss military, and this, presumably, has everything to do with providing for the common good of society and the persons who are members of it. Should we suppose that fetuses are persons (which we are doing for the sake of argument) then they might very well have a claim on the protection of society and, perhaps, those members of it who are uniquely poised to offer this protection.

Thus, one might insist that there is a distinction between, on the one hand, failing to be the conduit through which another secures what he, in an extraordinary situation, needs to survive, and, on the other, acting directly against the bodily integrity of another person (such as we have been assuming the fetus to be). Or one might claim that the obligations of an individual to the good of her society, and the vulnerable members of it, are simply more stringent than we are wont to claim they are. Either way, the claim that the fetus, understood as a person, does not have the right to bodily security in the face of the mother's autonomy is not at all obvious.

Conclusion

In this paper I have argued that the two main argumentative attempts to establish the abortion right, namely, the attack on fetal personhood, and the argument that a fetus's supposed 'right to life' does not entail the right to draw upon the resources of the woman in pregnancy, can be subjected to some considerable pressure. Indeed, the view that the fetus is a person seems much less 'spooky' than is commonly supposed, and possibly less 'spooky' than its rivals. Moreover, the largely intuition-driven cases that purport to show that the fetus lacks this right to the woman's resources can be subjected to more effective counterexamples. Even the cases that seem most decisive for the abortion right in particular circumstances (the

violinist, with its correlate of pregnancy in the case of rape) are not as successful as many would have us believe.

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