

Ch 4: The Ethics of Abortion

Brendan's Big Book of Bioethics | Brendan Shea, Ph.D. (Brendan.Shea@rctc.edu)

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2 JUDITH JARVIS THOMSON AND DON MARQUIS: A BRIEF OVERVIEW

In this section, we'll examine two influential arguments, one pro-choice and one pro-life. We'll be answering the following questions:

1. What's wrong with common pro-life and pro-choice arguments?
2. What is Thomson's **violinist analogy**? How does it support the right to an abortion?
3. Why does Thomson think that the "right to life" does NOT guarantee a "right not to be killed"?
4. What is Marquis's **future-like-ours** theory of the wrongness of killing?
5. Why/how does Marquis's approach entail that abortion is almost always wrong?
6. What are the strengths and weaknesses of Thomson's and Marquis's arguments?

The contemporary American philosophers **Judith Jarvis Thomson** and **Don Marquis** wrote two of the most famous and influential articles regarding the morality of abortion. Thomson's "A Defense of Abortion" (1973) argues that abortion would still (often) be morally OK even if we *assume* that fetuses have the exact same moral rights as adult humans. Don Marquis's "Why Abortion is Immoral" (1989), by contrast, argues that abortion is (often) immoral, for the same reasons that murdering innocent adult humans is. Peter Singer's *Practical Ethics* (2011) provides criticisms of both arguments.

2.1 WHY COMMON ABORTION ARGUMENTS DON'T WORK

Many of the most common arguments for/against the legality of abortion (both pro-choice and pro-life) simply don't work as arguments. In particular, they commit what philosophers call the fallacy of **begging the question**, which occurs when you give an argument of the following form:

1. Premise: You and I disagree about some issue.
2. Premise: I'm right about everything.
3. Conclusion: So, you must be wrong this issue.

The problem here is premise 2, which "begs the question" against your opponent. You have given them *no reason* to accept that you are correct and have instead simply asserted that you are correct. They have every right to ask, "And why should I agree with that?". In real-life arguments, this usually isn't quite so explicit. You commit this fallacy whenever your argument has a premise you know your opponent won't agree with (for which you've given no good evidence). The problem isn't just a "philosophical" one either. Whenever you beg the question, you can expect that (1) you aren't going to convince anyone that you're correct, and will probably just annoy them and (2) people may wonder (with good reason!) whether you have really "thought the issue through."

Here are some examples of question-begging arguments in the abortion debate.

Bad Argument	The Questions it Begs
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“Fetuses have a right to life. Abortion violates this right. So, abortion is immoral.”	Do fetuses have a right to life? Does abortion violate this right? No reason for either claim has been provided. And, in fact, most defenders of abortion rights disagree with these claims!
“Women have a right to choose what happens to their bodies. Abortion involves only a woman’s body. So, abortion is morally OK.”	Do women have a right to choose what happens to fetus’s bodies? Does abortion involve “only” a woman’s body? After all, my “right to choose what happens to my body” does NOT mean I can “choose to move my fist to punch your face.” Again, without answering these questions, there’s no reason to accept this argument.
“My religion says that abortion is (not) OK. So, abortion is (not) morally OK, and should (not) be legal.	Why should we agree that your religion is correct? Is it really OK to make things <i>illegal</i> just because your religion says so? Does this mean we must ban alcohol, pork, or premarital sex? For this argument to work, the arguer needs to either (1) provide evidence that your religion is correct or (2) provide religion-independent reasons that abortion is right/wrong.
“In general, laws prohibiting abortion have been made by men. Men aren’t affected by abortion and so have no right to make these laws. So, laws restricting abortion should be repealed.”	Why should we agree that men aren’t affected by abortion (after all, many of them <i>would be</i> fathers). And why should we agree that people can’t make laws that don’t affect them? Does this mean that white lawmakers can’t ever make laws that protect ethnic minorities? Finally, there is a practical problem—many abortion critics are (other) women. Would laws restricting abortion be OK if a majority of women approved of them?
“Abortion stops a beating heart, and thus involves killing. Killing is wrong. So, abortion is wrong.”	Why is killing a fetus <i>more wrong</i> than killing a pig, which many people are fine with? After all, pigs are in many ways “more advanced” than fetuses.
“If I were pregnant, I would (or wouldn’t) consider an abortion. So, I must be pro-choice (or pro-life).	Abortion laws involve deciding what’s right for OTHER people. Why should these people (or fetuses, as potential future people) agree that your feelings are relevant on what they should (or shouldn’t) be able to do?
“If your mother decided on having an abortion, you wouldn’t be here today. So, you should oppose abortion.” “If your mother hadn’t had an abortion while young, she never would have had you [since she would have stopped having children]. How dare you take away that right from others?”	Again, why on earth should other people accept that your mother’s <i>personal experiences</i> , or the fact that she happened to have you in the way she did, is relevant to the morality of abortion? These arguments assume your mother was MORALLY OBLIGATED to give birth to you. However, this simply isn’t true. (For example, she wouldn’t have been wrong for choosing not to have sex!).

Most pro-choice and pro-life philosophers (including Judith Thomson and Don Marquis, whom we’ll discuss) *reject* such arguments. Now, onto some better arguments!

3 VIOLINISTS, EXPANDING BABIES, AND HENRY FONDA: THOMSON ON ABORTION

A common argument against the morality of abortion goes as follows:

- Premise: All fetuses are innocent persons.
- Premise: All innocent persons have a right to life.
- Premise: It is always immoral to kill those with a right to life.
- Conclusion: It is wrong to kill fetuses (i.e., to get an abortion).

Most arguments for the morality of abortion deny premise 1: they deny that fetuses are “persons” in the sense that morally matters. **Judith Jarvis Thomson**, by contrast, assumes that both premise 1 and premise 2 are true; that is, she assumes that fetuses are just as much persons as adult humans, and that they have all the same rights as normal humans. She denies premise 3: she claims that the right to life does NOT mean that you have a right not to be killed. (Thomson notes that she doesn’t believe that early-term fetuses would count as “persons,” but she notes that nothing in her argument depends on this belief.)

Over the course of her essay, Thomson argues that abortion is often (though not always) morally permissible. Moreover, in many cases where it is NOT morally OK, she argues it is nothing like “murder”.

3.1 THE VIOLINIST ANALOGY

“You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist’s circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, ‘Look, we’re sorry the Society of Music Lovers did this to you – we would never have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it’s only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you.’ **Is it morally incumbent on you to accede to this situation?**” (Judith Jarvis Thomson)

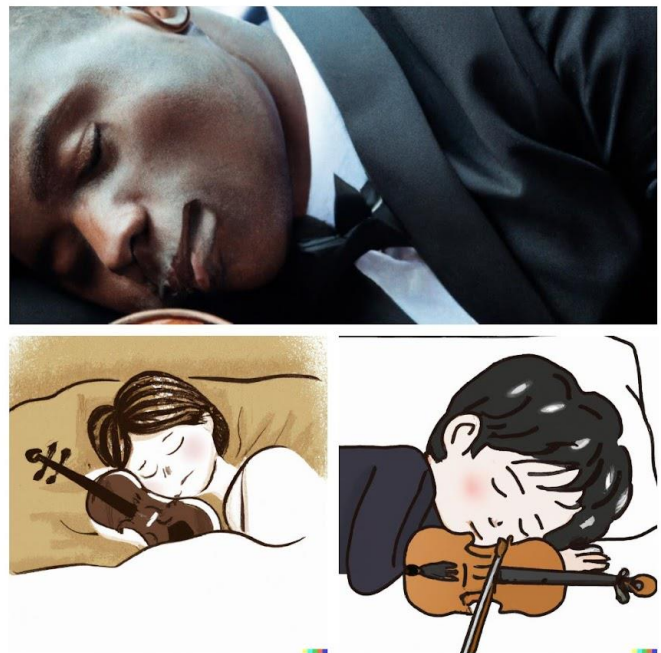


Figure 1 Famous, unconscious violinists (Brendan Shea x Dall-E).

3.2 THOMSON’S ARGUMENTS FROM ANALOGY

An **argument from analogy** is an argument of the form “Action X has properties A, B, and C. Action Y has properties A and B. Therefore, Action Y has property C.” In the case of the ethics property C is often “is morally permissible.” If you object to the conclusion of an argument from analogy, you must show how the cases are *relevantly different*. It is not OK to say “one case is unrealistic” unless you explain how this is relevant to the morality of the case.

Thomson’s most famous argument from analogy concerns a renowned violinist. She asks you to suppose that the society of music lovers has kidnapped you and connected you via IV to a sick violinist. The violinist took no part in your kidnapping and would never have approved of it. If you stay attached to the sick violinist for nine months, he will live; if you detach before nine months, he will die. Here is the argument:

- Premise: The violinist is an innocent person with a right to life. You did not consent to be hooked up to him. You could save his life by staying attached to him. If you unplug yourself from the violinist, he will die.
- Premise: (Supposition) A fetus *resulting from rape* is an innocent person with a right to life. You did not consent to have him/her in your body. If you have an abortion, the fetus will die.
- Premise: It is morally OK to disconnect from the violinist.
- Conclusion 1: So, it is morally OK to have an abortion in the case of rape.
- Conclusion 2: So, it is sometimes morally OK to kill innocent people with a right to life. The right to life does NOT guarantee the “right not to be killed.”

This argument is intended to show two different things: (1) that abortion is morally OK in the case of rape and (2) that the pro-life argument presented above fails. Thomson thinks that the **right to life** guarantees only the right not to be unjustly killed. She thinks that many opponents of abortion have (incorrectly) assumed that it is always and everywhere wrong to kill innocent people.

3.3 AGAINST “THE EXTREME VIEW” OF ABORTION

Thomson also offers an analogical argument against the “extreme view of abortion” (the view that abortion is morally prohibited even to save the mother’s life). This view is most prominently defended by the Catholic Church (there are some exceptions, but they are irrelevant to Thomson’s argument).

1. Premise: If you were trapped in a tiny house that you owned with a (very) rapidly growing baby such that your choices were (a) you could let the baby grow and crush you or (b) you could kill the baby and live, it would be ethical to kill the baby.
2. Premise: A life-threatening pregnancy is analogous to the growing-baby case.
3. Conclusion 1: So, abortion is morally OK if the continued pregnancy would endanger the life of the mother.
4. Conclusion 2 (again): It is sometimes OK to kill people that have a right to life. The right to life does NOT guarantee the “right not to be killed.”

Thomson also argues that, in cases like these, outside observers should aid the mother and not the baby. Why? Because it is the mother’s house.

3.4 THE HENRY FONDA CASE: WHEN DOES THE RIGHT TO LIFE APPLY?

Thomson offers an argument intended to show that the right to life does NOT guarantee the right to the resources we need to live. Moreover, she thinks that other people have only very weak moral obligations to help us get the things we need to live.

- Premise 1: Even if Henry Fonda could save my life merely by touching my forehead, he would not be murdering me if he failed to do so.
- Premise 2: If it were very easy for Henry Fonda to touch my forehead, he would have some (weak) obligation to do so. If it were very difficult for him to do so (if he lived far away, for instance), he would have NO obligation to do so.
- Conclusion 1: My right to life does not mean that people are required to give me the things I need to live.
- Conclusion 2: We have SOME obligation to be “good Samaritans” and to give others the things they need to live. However, this is a fairly weak moral requirement, and failing to do so does not mean that one has committed “murder” or that one has violated an innocent’s person “right to life.”

Based on these sorts of arguments, Thomson concludes that the morality of abortion may vary somewhat on a case-to-case basis. For example, it would (most likely) be morally wrong to have an abortion in the ninth

month of pregnancy if there was no threat to the woman's health. It would (most likely) be morally OK to have an abortion in the first trimester if the pregnancy would be very difficult (health-wise, career-wise, etc.) for the woman. In neither case, however, would abortion be akin to “murder.”

Thomson concludes by noting two significant differences between her position and some more common pro-choice positions:

1. Her position does not entail that abortion is always morally acceptable. Late-term abortions where there is no health risk to the mother will be especially suspect on Thomson's view.
2. Her position does not allow the mother to secure the child's death if there is some way to save the child without cost to the mother. For example, if a rich family offers to pay to have the fetus removed and put in an incubator, the mother would be morally wrong in choosing abortion – in this case, she might even be guilty of murder.

3.5 THOUGHT QUESTION: PEOPLE SEEDS!

Thomson uses the “people seed” analogy to argue that abortion is permissible for some pregnancies resulting from voluntary intercourse that does *not* threaten the mother's life. Explain what type of pregnancy each of the following cases corresponds to, then state whether you think you it is morally OK to kill the people-seed person in such a case.

1. You live in a house with no windows out of fear of people seeds. However, the league for people-seeding smashes opens your door, and throws a people-seed in which attaches to your couch. You come home to find an (innocent) person attached to your couch, who will die without your constant attention for nine months.
2. You have windows, but they are guarded with top-of-the-line screens to keep out people seeds. Due to no fault of your own, the screen has a flaw and a people-seed slips in. You come home to find an innocent person...
3. You have windows with screens as described above. However, you occasionally forget to put up the screens properly. During one of these occasions, a people seed slip by. You come home to find an innocent person...
4. You have windows with no screens whatsoever. The rest is as described above.

3.6 REVIEW QUESTIONS

1. Briefly explain the “point” of Thomson's violinist and Henry Fonda analogies in your own words. To what extent do you think she succeeds? In your answer, consider both the relevant *similarities* and *dissimilarities* between these scenarios and “real-life” abortion scenarios. (Also: remember that many similarities/dissimilarities won't be relevant).
2. Explain why the following (common) confusions about Thomson's argument are NOT correct:
 - a. She genuinely believes a fetus is a person from the moment of conception.
 - b. She thinks fetuses don't have a right to life, which is why it is OK to kill them.
 - c. She believes that abortion is only OK in the case of rape or life-threatening pregnancy.
 - d. She argues that abortion is always morally OK.

4 WHY IS MURDER WRONG? MARQUIS ON ABORTION AND THE WRONGNESS OF KILLING

Don Marquis (1935-) is an American ethicist. He has written widely on issues of biomedical ethics. His most famous article (by far) is “Why Abortion is Immoral” (1989). Like Thomson’s “A Defense of Abortion,” this article played a major role in shaping the modern debate concerning abortion.

In this essay, he argues that abortion is generally (though not always) morally wrong, in much the same way (and for the same reasons) that killing adult humans is generally (though not always) morally wrong.

4.1 MORAL ARGUMENTS: ARGUMENTS TO THE BEST EXPLANATION

Marquis’s argument is a type of **argument to the best explanation**. These arguments have the following form:

- Premise: Theory T successfully explains observations O_1 , O_2 , O_3 , and so on. These observations should be things that even your *opponent* will accept as true.
- Premise: No other theory explains these observations as well as T.
- Conclusion: Theory T is true.

The strength of an argument to the best explanation depends on the following sorts of things:

1. How many observations T successfully explains. (More is better)
2. Whether there are any *better* explanations of O_1 , O_2 , etc. The presence of a better explanation will significantly weaken the case for T being true. The argument only work if T is the *best* explanation.
3. Whether we have any independent reason for thinking T is false. For example, if T gives a false prediction, then we would know T is false. The fact that T could explain lots of other stuff would simply be irrelevant.

Arguments to the best explanation frequently occur in moral reasoning. For example, consider the following argument

- Fact to be explained (O) : “The wanton infliction of pain on humans is wrong.”
- Theory (T): “Causing suffering to sentient beings is immoral, unless there is a good reason for it.”
- Since T successfully explains O (and we can’t think of a better explanation), we can conclude that T is probably true.

Since we now have some evidence that T is true, we can use T to offer arguments about other moral problems:

- Premise (Theory T): Causing suffering to sentient beings is immoral unless there is a good reason for it.
- Premise: Many animals are sentient.
- Conclusion: The wanton infliction of pain on many animals is wrong.

Notice that there are two different argumentative “steps.” First, we provide evidence that our moral theory is true (by offering an argument to the best explanation). Second, we *apply* this theory to a new case.

4.2 MORE MORAL ARGUMENTS: HOW TO DISPROVE MORAL THEORIES

Marquis also (briefly) discusses the problem of how we can **falsify** a moral theory. This process is simple: if a proposed moral theory entails something insane (like “Hitler was an great guy”), we should get rid of it. He offers two examples from the abortion debate:

- **Theory 1: It is (in most cases) morally wrong to kill any living being with unique human DNA.** This would entail that “Abortion is morally wrong.” However, it also (incorrectly) entails “It is wrong to kill human cancer cells.” Because of this, the theory is false.
- **Theory 2: It is (in most cases) morally OK to kill any being that is NOT capable of rational thought.** This would entail “Abortion is morally OK.” However, it also (incorrectly) entails “It is OK to kill developmentally disabled people and infants.” So the theory is false.

Marquis concludes that these two theories are fundamentally flawed, and should be abandoned. He does not think anyone (whether pro-life or pro-choice) should appeal to simplistic arguments like these to defend their views on abortion.

4.3 THE “FUTURE LIKE OURS” THEORY

Marquis defends the **future-like-ours** theory of the wrongness of killing, which he then applies to abortion.

*What primarily makes killing wrong is neither its effect on the murderer nor its effect on the victim's friends and relatives, but its effect on the victim. The loss of one's life is one of the greatest losses one can suffer. The loss of one's life deprives one of all the experiences, activities, projects, and enjoyments which would otherwise have constituted one's future. Therefore, killing someone is wrong, primarily because the killing inflicts (one of) the greatest possible losses on the victim. To describe this as the loss of life can be misleading, however. The change in my biological state does not by itself make killing me wrong. The effect of the loss of my biological life is the loss to me of all those activities, projects, experiences, and enjoyments which would otherwise have constituted my future personal life. These activities, projects, experiences, and enjoyments are either valuable for their own sakes or are means to something else that is valuable for its own sake. Some parts of my future are not valued by me now, but will come to be valued by me as I grow older and as my values and capacities change. **When I am killed, I am deprived both of what I now value which would have been part of my future personal life, but also what I would come to value. Therefore, when I die, I am deprived of all of the value of my future. Inflicting this loss on me is ultimately what makes killing me wrong.** This being the case, it would seem that what makes killing any adult human being prima facie seriously wrong is the loss of his other future.*

This theory forms the heart of Marquis's argument that abortion is immoral. Let's take a closer look at how it works.

1. Premise: The following must be explained: “It is morally wrong to kill adult humans, except in special circumstances (such as in self-defense)”. Here are three theories about “the wrongness of killing” that successfully explain this fact:
 - a. (DES) It is morally wrong to kill a being with desires like ours, because there is then no chance to fulfill those desires.
 - b. (EXP) It is morally wrong to kill a being with experiences like ours, since this would destroy those experiences.
 - c. (FLO) It is morally wrong to deprive a being of a “**future like ours**”, since this future would be full of valuable activities/experiences. [Marquis wants to defend FLO. He thinks DES and EXP are false.]
2. Premise: Here are four (other) facts that a good theory about the “wrongness of killing” should explain:
 - a. O₁: It is (generally) wrong to kill adult humans.
 - b. O₂: It is wrong to allow a suicidal teenager to kill him- or herself.
 - c. O₃: It is wrong to kill infants.

- d. O₄: it is morally OK to allow euthanasia for terminally ill patients in severe pain.
- 3. Premise: We now ask: Which theory of the wrongness of killing does the *best* at explaining these four facts?
 - a. DES explains O₁ (since adults *want* to live) and O₄ (since these patients want to die). It does not explain O₂ (since the teenager *desires* to kill themselves) or O₃ (since the infant doesn't understand desires like "I want to live") .
 - b. EXP explains O₁ (since adults have experiences like ours) and O₂ (since teenagers have experiences like ours). It does not explain O₃ (since infants don't have experiences like those of an adult human being) or O₄ (at least if the patient in question is not in horrible suffering *right now*).
 - c. FLO explains O₁, O₂, O₃, and O₄. After all, adult humans, infants, and teenagers all have futures like ours, *even if* the depressed teenager or infant don't know this. By contrast, the terminally ill patient does NOT have a future like ours (their future is full of pain), but this explains why it might be OK to help them die peacefully. FLO wins!
- 4. Premise: There is independent evidence for the truth FLO. Look at some of the other stuff it can explain:
 - a. **Murder is the worst of crimes.** FLO says that crimes like theft or assault are wrong because they take away part of our future; murder is more wrong because it takes away all of it. This agrees with the law, and with "common sense."
 - b. **Our judgments about killing plants and animals.** FLO says that it is perfectly OK to kill plants. It says that the wrongness of killing animals will depend on how similar they are to us. So, it is more wrong to kill an ape than a pig, and more wrong to kill a pig than a mosquito. This agrees with most peoples' intuitions.
 - c. **Normal peoples' considered judgment.** When asked why they don't want to die, people say it's because they will miss out on the future. This is what FLO predicts.
- 5. Conclusion 1: By argument to the best explanation, we can conclude that FLO is true!
- 6. Conclusion 2: Since human fetuses have a future like ours, FLO entails that killing them is wrong except in very special cases (Marquis grants Thomson's argument for rape and life-endangering cases). So, abortion is almost always immoral.

If you want to reject Marquis's argument, only two moves are available. First, you can show that Marquis' argument to the best explanation fails, and that FLO is NOT the best theory. For example, both DES and EXP would entail that abortion is morally OK. Second, you could show that we have other reason for thinking the FLO is false.

4.4 REVIEW QUESTIONS

1. FLO is a moral theory. It say that, in general, killing a being with a future like ours is morally wrong. One way of criticizing a moral theory like FLO is to show that there are consequences that disagree with our **intuitions** (or judgments) about particular cases. For example, consider the following objection:
 - a. Premise: Suppose that, in the distant future, someone invented a machine capable of transforming finger nail clippings into fully functioning adult humans. In this future, FLO would imply that it would be morally wrong to throw away fingernail clippings, since they have a "future like ours."
 - b. Premise: It would be morally OK to throw away fingernail clippings, even if we had this machine.
 - c. Conclusion: So, FLO is false.

Do you think this objection works? Why or why not?

2. Which of the following beings have a “future like ours” and are thus wrong to kill (according to Marquis)? Some are easy; others have been debated (especially the “unfertilized human egg”, which critics have alleged counts as an FLO on Marquis’s theory.):
 - a. A human embryo
 - b. A sleeping person
 - c. An intelligent robot, like Wall-E or R2D2
 - d. An intelligent non-human, like ET or Chewbacca
 - e. An unfertilized human egg
 - f. Baby Hitler (you somehow *know* it’s baby Hitler)

5 READING: A DEFENSE OF ABORTION (JUDITH THOMSON)¹

An excerpt from Judith Thomson’s “A Defense of Abortion”:

I propose, then, that we grant that the fetus is a person. from the moment of conception. How does the argument go from here? Something like this, I take it. Every person has a right to life. So the fetus has a right to life. No doubt the mother has a right to decide what shall happen in and to her body; everyone would grant that. But surely a person's right to life is stronger and more stringent than the mother's right to decide what happens in and to her body, and so outweighs it. So the fetus may not be killed; an abortion may not be performed.

Most opposition to abortion relies on the premise that the fetus is a human being, a person, from the moment of conception. The premise is argued for, but, as I think, not well. Take, for example, the most common argument. We are asked to notice that the development of a human being from conception through birth into childhood is continuous; then it is said that to draw a line, to choose a point in this development and say "before this point the thing is not a person, after this point it is a person" is to make an arbitrary choice, a choice for which in the nature of things no good reason can be given. It is concluded that the fetus is, or anyway that we had better say it is, a person from the moment of conception. But this conclusion does not follow. Similar things might be said about the development of an acorn into an oak tree, and it does not follow that acorns are oak trees, or that we had better say they are. Arguments of this form are sometimes called "slippery slope arguments—the phrase is perhaps self-explanatory—and it is dismaying that opponents of abortion rely on them so heavily and uncritically.

It sounds plausible. But now let me ask you to imagine this. You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you—we would never have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you have to accede to it? What if it were not nine months, but nine years? Or longer still? What if the director of the hospital says, "Tough luck, I agree, but you've now got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a

¹ Judith Jarvis Thomson, “A Defense of Abortion,” *Philosophy & Public Affairs* 1, no. 1 (1971): 47–66.

person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous, which suggests that something really is wrong with that plausible-sounding argument I mentioned a moment ago.

In this case, of course, you were kidnapped; you didn't volunteer for the operation that plugged the violinist into your kidneys. Can those who oppose abortion on the ground I mentioned make an exception for a pregnancy due to rape? Certainly. They can say that persons have a right to life only if they didn't come into existence because of rape; or they can say that all persons have a right to life, but that some have less of a right to life than others, in particular, that those who came into existence because of rape have less. But these statements have a rather unpleasant sound. Surely the question of whether you have a right to life at all, or how much of it you have, shouldn't turn on the question of whether or not you are the product of a rape. And in fact the people who oppose abortion on the ground I mentioned do not make this distinction, and hence do not make an exception in case of rape.

...

Brendan's Question: Think about what would happen if you **changed** the violinist analogy in certain ways to more closely resemble other sorts of abortions (besides pregnancies due to rape).

6 READING: PHILOSOPHICAL ARGUMENTS ABOUT ABORTION (BY NATHAN NOBIS AND KRISTINA GROB)

By Nathan Nobis and Kristina Grob²

6.1 INTRODUCTION

We argue that abortion should not be illegal because *most* abortions are not morally wrong (and so they are not *seriously* or *extremely* wrong). So, states are making bad moral and legal moves, to say the least, in trying to criminalize abortions, at least when they are done early in pregnancy, as they usually are.

6.2 ARGUMENTS AGAINST ABORTION

We will begin with arguments for the conclusion that *abortion is generally wrong*, perhaps *nearly always wrong*. These can be seen as reasons to believe fetuses have the "right to life" or are otherwise seriously wrong to kill.

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6.2.1 Fetuses are human

First, there is the claim that fetuses are “human” and so abortion is wrong. People sometimes debate whether fetuses are *human*, but fetuses found in (human) women clearly are *biologically human*: they aren’t cats or dogs! And so we have this argument, with a clearly true first premise:

- (1) Fetuses are biologically human.
- (2) *All things that are biologically human are wrong to kill.*
- (3) Therefore, fetuses are wrong to kill.

The second premise, however, is false, as easy *counterexamples* show. Consider a blob of random living *biologically human* cells or tissues in a petri dish. It wouldn’t be wrong at all to wash those cells or tissues down the drain, killing them; scratching yourself or shaving might kill some biologically human skin cells, but that’s not wrong; a tumor might be biologically human, but not wrong to kill. So *just because* something is biologically human, that doesn’t at all mean it’s wrong to kill that thing.

A different meaning of “human” will be discussed below: people who insist that (biologically human) fetuses aren’t “human” might mean “person” or *human person*.

6.2.2 Fetuses are “human beings”

Some respond to this argument by observing that fetuses aren’t just random biologically human cells, but are organized in ways that makes them *beings* or *organisms*. (A kidney is *part* of a “being,” but the “being” is the whole organism). That suggests this argument:

- (1) Fetuses are *human beings* or *organisms*.
- (2) *All human beings or organisms are wrong to kill.*
- (3) Therefore, fetuses are wrong to kill, so abortion is wrong.

The first premise is true. About the second premise, clearly *many* human beings or organisms are wrong to kill. Why is this though? What *makes* us wrong to kill?

It is generally argued that this is *because* we, these human beings, are conscious and feeling: we are aware of the world, have feelings and our perspectives can go better or worse *for us* – we can be *harmed* – and that’s what makes killing us wrong. (It may also be *not wrong* to let us die, and perhaps even kill, if we come to be completely and permanently lacking any consciousness, however, say from major brain damage or a coma, since we can’t be harmed by death anymore.³) So, on this explanation, human beings are wrong to kill, *when* they are wrong to kill, not *because they are human beings* (a circular explanation), but *because* we have these psychological or mental (or emotional) characteristics: this explains why we have rights in a simple, common-sense way.

The challenge then is explaining why fetuses *that have never been conscious or had any feeling or awareness* would be wrong to kill. How can the second premise above, general to *all* human organisms, be supported, especially when applied to early fetuses?

³ See the essay “Euthanasia, or Mercy Killing” by Nathan Nobis (Chapter 9) in this volume. For a shorter version of that essay, see Euthanasia, or Mercy Killing by Nathan Nobis at *1000-Word Philosophy: An Introductory Anthology*.

One attempt is argue that early fetuses are wrong to kill because there is continuous development from fetuses to us, and since *we* are wrong to kill *now*, fetuses are also wrong to kill, since we've been the "same being" all along. But this can't be good reasoning, since we have many physical, cognitive, emotional and moral characteristics now that we lacked as fetuses (and as children). So even if we are the "same being" over time, even if we were once early fetuses, that doesn't show that fetuses have the moral rights that babies, children and adults have: we, our bodies and our rights sometimes change.



Figure 2 *The scales of justice* (Brendan Shea x Dall-E).

A second attempt proposes that rights are *essential* to human organisms: they have them whenever they exist. This perspective sees having rights, or the characteristic(s) that *makes* someone have rights, as *essential* to human bodies: "having rights" is an *essential property* of human beings or organisms: so whenever there's a living human organism, there's someone with rights, even if that organism totally lacks consciousness, like an early fetus. (In contrast, our proposal about what *makes* us have rights understands rights as "accidental" to our bodies, since our bodies haven't always "contained" a conscious being.) Such a view supports the premise above; maybe it just *is* that premise above.

But why believe it? Why believe that rights are *essential* to human organisms? Some argue this because of what "kind" of beings we are, which is often presumed to be "rational beings." The reasoning is, first, that rights come from being a rational being. And, second, that all human organisms, including fetuses, are the "kind" of being that is a "rational being," so every being of the "kind" *rational being* has rights.

This explanation is, at least, abstract. It might seem to involve thinking that rights somehow "trickle down" from later rationality to our embryonic origins, and so what we have *later* we also have *earlier*, because we are the *same being* or same "kind" of being. But this idea is, in general, doubtful: we are now *responsible* beings, in part because we are rational beings, but fetuses aren't responsible for anything: we are now able to engage in moral reasoning since we are rational beings, but fetuses don't have the "rights" that uniquely depend on moral reasoning abilities. Even if fetuses and us are the same "kind" of beings, that often doesn't tell us much about what rights fetuses would have, if any. And we might even reasonably think that, despite our being the *same* kind of beings as fetuses, we are also importantly *different kinds* of beings.

In sum, the abstract view that all human organisms have rights *essentially* needs to be plausibly explained and defended. We need to understand how it really works. We need to be shown why it's a better explanation, all things considered, than a consciousness and feelings-based theory of rights that explains why we, and babies,

have rights, why racism, sexism and other forms of wrongful discrimination are wrong, *and*, importantly, how we might *lose* rights in irreversible coma cases (if people always retained the right to life in these circumstances, presumably it would be wrong to let anyone die), and more.

[Brendan's Question: What's wrong with the view that human beings *essentially* have rights, according to this passage? What's the alternative?]

6.2.3 Fetuses are persons

Finally, we get to what some see as the core issue here, namely whether fetuses are *persons*, and an argument like this:

- (1) Fetuses are persons, perhaps from conception.
- (2) Persons have the right to life and are wrong to kill.
- (3) Therefore, abortion is wrong, as it involves killing persons.

The second premise *seems* very plausible, but there are some important complications about it that will be discussed later. So let's focus on the idea of personhood and whether fetuses are persons. What is it to be a *person*? One answer that everyone can agree on is that *persons are beings with rights and value*. That's a fine answer, but it takes us back to the initial question: OK, who or what has the rights and value of persons? What *makes* someone or something a person?

Answers here are often merely asserted, but these answers need to be tested: definitions can be judged in terms of whether they fit how a word is used. We might begin by thinking about what *makes* us persons. Consider this:

We are persons now. Either we will always be persons or we will cease being persons. If we will *cease* to be persons, what can end our personhood? If we will *always* be persons, how could that be?

Both options yield insight into personhood. Many people think that their personhood ends at death or if they were to go into a permanent coma: their body is (biologically) alive but the *person* is gone: that is why other people are sad (we hope!). And if we continue to exist after the death of our bodies, as some religions maintain, what continues to exist? The *person*, perhaps even without a body! Both responses suggest that personhood is defined by a rough and vague set of psychological or mental, rational and emotional characteristics: consciousness, knowledge, memories, and ways of communicating, all psychologically unified by a unique personality.

A second activity supports this understanding:

Activity. Make a list of things that are definitely *not persons*. Make a list of individuals who definitely *are persons*. Make a list of imaginary or fictional *personified* beings which, if existed, would be persons: these beings that fit or display the concept of person, even if they don't exist. What explains the patterns of the lists?

Rocks, carrots, cups and dead gnats are clearly not persons. *We* are persons. Science fiction gives us ideas of *personified* beings: to give something the traits of a person is to indicate what the traits of persons are. Even though the non-human characters from Star Wars don't exist, they fit the concept of person: we can befriend them, work with them, and so on, and we could only do that with persons. A common idea of God is that of an immaterial *person* who has exceptional power, knowledge, and goodness: you couldn't pray to a rock and hope that rock would respond: you could only pray to a person. Are conscious and feeling animals, like

chimpanzees, dolphins, cats, dogs, chickens, pigs, and cows more relevantly like us, as persons, or are they more like rocks and cabbages, non-persons? Conscious and feeling animals seem to be closer to persons than not. So, this classificatory activity further supports a psychological understanding of personhood: persons are, at root, conscious, aware and feeling beings.

Concerning abortion, early fetuses would *not* be persons on this account: they are not yet conscious or aware since their brains and nervous systems are either non-existent or insufficiently developed. Consciousness emerges in fetuses much later in pregnancy, likely after the first trimester. This is after when most abortions occur. Most abortions, then, do not involve killing a *person*, since the fetus has not developed the characteristics for personhood. We will briefly discuss later abortions, that potentially affect fetuses who are persons, below.

It is perhaps worthwhile to notice though that *if* someone believed that fetuses are persons and thought this makes abortion wrong, it's unclear why a pregnancy resulting from rape or incest would be a morally justified abortion. Some people who oppose abortion argue that, since you are a person, it would be wrong to kill you now *even if* you were conceived because of a rape, and so it's wrong to kill any fetus who is a person, even if they exist because of a rape: whether someone is a person or not doesn't depend on their origins: it would make no sense to think that, for two otherwise identical fetuses, one is a person but the other isn't, because that one was conceived by rape. Therefore, those who accept a "personhood argument" against abortion, yet think that abortions in cases of rape are acceptable, seem to have an inconsistent view.

[Brendan's Question: How would you describe the concept of a *person*? How does this differ from the concept of a *human being*?]

6.2.4 Fetuses are potential persons

If fetuses aren't persons, they are at least potential persons, meaning they could and would become persons. This is true. This, however, doesn't mean that they currently have the rights of persons because, in general, *potential things of a kind don't have the rights of actual things of that kind*: potential doctors, lawyers, judges, presidents, voters, veterans, adults, parents, spouses, graduates, moral reasoners and more don't have the rights of actual individuals of those kinds.

Some respond to that that potential gives the right to at least *try* to become something. But that trying sometimes involves the cooperation of others: if your friend is a potential medical student, but only if you tutor her for many hours a day, are you obligated to tutor her? If my child is a potential NASCAR champion, am I am obligated to buy her a racecar to practice? 'No' to both and so it is unclear that a pregnant woman would be obligated to provide what's necessary to bring about a fetus's potential.

6.2.5 Abortion prevents fetuses from experiencing their valuable futures

The argument against abortion that is likely most-discussed *by philosophers* comes from Don Marquis.⁴ He argues that it is wrong to kill "normal" adults and children because it deprives us from experiencing their (expected to be) valuable futures. He argues that since fetuses also have valuable futures also ("futures like ours" he calls them), they are also wrong to kill. His argument has much to recommend it, but there are reasons to doubt it as well.

First, fetuses don't seem to have futures *like our futures*, since – as they are pre-conscious - they are entirely psychologically disconnected from any future experiences: there is no (even broken) chain of experiences

⁴ [Marquis, Don. "Why abortion is immoral." *The Journal of Philosophy* 86.4 \(1989\): 183-202.](#)

from the fetus to that future person's experiences. Babies are, at least, aware of the current moment, which leads to the next moment; children and adults think about and plan for their futures, but fetuses cannot do these things, being completely mindless and unconscious. This fact might even mean that the early fetus doesn't *literally* have a future: if *your* future couldn't include *you* being a merely physical, non-conscious object (e.g., you couldn't be a corpse: if there's a corpse, *you* are gone), then perhaps non-conscious physical objects, like a fetus, couldn't *be* a future person.⁵ If this is correct, early fetuses don't even have futures, much less futures like ours.

A third objection is more abstract. It begins with the observation that *there are single objects with parts with space between them*. Indeed almost *everything* is like that, if you could look close enough, not just *single* dinette sets: there is some space between the parts of normal physical objects. From this, it follows that there seem to be single objects such as *an-egg-and-the-sperm-that-would-fertilize-it*. And these would also seem to have a future of value, given how Marquis describes this concept. (It should be made clear that sperm and eggs *alone* do not have futures of value: this is not the objection). But contraception, even by *abstinence*, prevents that thing's future of value from materializing, and so seems to be wrong on Marquis's argument. Since contraception isn't wrong, it seems that preventing something from experiencing its valuable future isn't always wrong and so Marquis's argument appears to be unsound.

In sum, these are some of the most influential arguments against abortion. Our discussion was brief, but these arguments do not appear to be successful: they do not show that abortion is wrong, much less make it *clear and obvious* that abortion is wrong.

[Brendan's Question: What do you think of these objections to Marquis's "Future Like Ours" Theory?]

6.3 ARGUMENTS THAT ABORTION IS OFTEN NOT WRONG

Finally, we turn to arguments that abortion is generally not wrong.

6.3.1 No good arguments that it is wrong

A first argument depends on the discussion so far. If you are familiar with the most important arguments given to believe that abortion is wrong, and believe *with good reason* that they are unsound, then that gives a reason to think that abortion is not wrong. In general, *a good reason to think that an action is permissible is that there is no good reason to think it's wrong*. **[Brendan's Question: What do you think of this principle?]** How this general strategy is applied to this issue depends on your evaluation of the arguments discussed above, and any other arguments against abortion that you think are worth critically evaluating.

6.3.2 Early fetuses aren't conscious & feeling: personhood and harm

The next positive argument in defense of abortion depends on the scientific facts about *early* fetuses that we have emphasized over and over: they are not conscious, are not aware of anything, cannot feel anything, and so on: they are and *have been* entirely mindless so far. The proposal is that beings like this are very different from beings like us and babies and children, who are conscious: despite being the same *kind* of beings, we are also different *kinds* of beings.

⁵ For discussion of this question of what you *could* and *could not* become, see Chad Vance's "Origin Essentialism: What Could Have Been Different about You?" at *1000-Word Philosophy: An Introductory Anthology* at <https://1000wordphilosophy.com/2014/04/28/origin-essentialism/>

These observations motivate these principles:

If a being *is and has always been completely unconscious*, it's definitely not a *person*. And if something is definitely not a person, then it's not wrong to kill it.

This proposal is supported by, among other sources, the idea that if someone permanently ceases to be a person, it can be OK to bring about their death, perhaps even by killing their body, since their being alive is doing them no good. This is related to this proposal:

If a being *is and has always been completely unconscious*, it really cannot be *harmed*, which requires some “turn for the worse” *for that being*. There is no “for that being,” yet, so things can't get worse for it. So killing doesn't harm it.

Given the fundamental moral significance of consciousness and all that results from that, that *early* fetuses lack it is highly relevant to how they can be treated.

6.3.3 The right to life & the right to someone else's body

Finally, suppose much of the above is mistaken and that fetuses indeed are persons with the right to life. Some think that this clearly shows that abortion is wrong. Philosopher Judith Jarvis Thomson famously argued in 1971 that this isn't the case. She observes that people often have a naive understanding of what the right to life is a right to. She makes her case with a number of clever examples. First, the violinist:

You wake up in a hospital, “plugged in” to a famous violinist, who needs to use *your* kidneys to stay alive. You were kidnapped for this purpose. If you unplug, he will die. But it's only for nine months.

Does the violinist have a *right* to your kidneys? Do you violate his *right to life* if you unplug, and he dies? Most would say ‘no’, which suggests that *the right to life is not a right to anyone else's body, even if that body is necessary for your life to continue*. This suggests that fetuses, even if they were persons with the right to life, would not have a right to the pregnant woman's body. So until there is a way to remove fetuses and place them in other wombs, women have a right to abortion. This even suggests another definition:

Abortion is the intentional withholding of what a fetus needs to live, to end a pregnancy.

Some respond the violinist case is somewhat like a pregnancy that results from rape, since there's no consent involved, but that pregnancies that don't result from rape *do* give fetuses the right to the woman's body because, they argue, the woman has done something that she knows might result in someone existing who is dependent on her.

While Thompson had cases to address this type of concern – if someone falls in your house *because* you opened a window, they don't have the right to be there, even though you *did something* that contributed to their being there – we should notice that the response appears to be question-begging. Compare doing something that results in the existence of a new plant that is *dependent* on you: you wouldn't be obligated to provide for that plant. To assume that things are different with fetuses is, well, to assume what can't be merely assumed, especially if we don't already believe that early fetuses are persons with the right to life.

It should be made clear that even if the fetus doesn't have a *right* to the pregnant woman's body, there *could* be other rights or other obligations that could make abortion wrong nevertheless: e.g., if pregnancy were just 9 hours perhaps women would be *obligated* to be Good Samaritans towards them, even if fetuses didn't have a right to the woman's resources and assistance. What's important though is the right to life and personhood are not the “slam dunk” against abortion that people often think they are.

6.3.4 “What ifs”: Rape and later-term abortions

We are now in a good position to address some of the “what if” situations regarding abortions.

First, rape: if early abortions are generally not wrong, then abortions due to rape are *especially* not wrong. While people sometimes consider rape a special excuse that justifies abortion, if abortions generally aren’t wrong, no special excuse is needed. (It is worthwhile to notice that those who think that all fetuses are persons and so argue that abortion is wrong *should* think abortion is wrong in cases of rape also, since a person is a person, irrespective of their origins). **[Brendan’s Question: Is it true that one *can’t* hold that fetuses are persons and ALSO think that some abortions are OK? How does this compare with Thomson’s argument?]**

Second, later-term abortions: these *might* affect conscious and feeling fetuses badly, but fortunately these abortions are rare and evidence suggest that they are done only for justifying medical reasons (Google for harrowing personal stories of women having later abortions, due to medical difficulties, including fetal abnormalities incompatible with life). But *if* any far later abortions are done for frivolous reasons, they *could* be morally wrong, since it’s wrong to cause serious pain for no good reason.

Should laws be created to *ban* any potential later abortions done for trivial reasons? Again, not all wrongdoing should be illegal, but – most importantly – a ban on these *potential* abortions would surely have a negative impact on actual later abortions done for legitimate medical reasons. If the justifiability of any later abortions had to be proven in court, or people had to go through the criminal justice system to approve an emergency medical procedure, that would have very bad effects, given the speed, inefficiency and occasional incompetence of courts. Involving the police and the legal system in private medical decisions would also be very bad for all, especially vulnerable groups: people of color, immigrants, and poor people.

Brendan’s Question: What do you think about this argument? Basically, even if some late-term abortions ARE immoral, trying to make these “illegal” would have too many bad effects?

6.4 CONCLUSION

For important issues, we need well-developed reasons or arguments to decide what to believe and do about the issues. The purpose of this essay has been to provide some of that training so you can better develop an informed and well-reasoned moral perspective on abortion. Many people say they “feel” that abortion is wrong or they “feel” that it’s OK. But complex issues require fair and honest critical thinking, not just uniformed “feelings” or “opinions,” and we hope this paper has displayed this.

We have focused on disagreements about the issue, but we want to end on an agreement: everyone agrees there should be fewer abortions. Even people who think abortions are generally not wrong don’t think that having an abortion is just a great way to spend time and resources. So everyone *could* agree that we, as a society, should do more to reduce the “demand” for abortions. Some other countries don’t have as many abortions as the US does, and this is because of deliberate choices they have made to make their country more supportive of all of its citizens and make it easier for them to meet their economic, medical and familial needs. We too could be like Good Samaritans, which would be good not just for this issue, but many others, as well as who we are, as people, together.

6.5 FOR REVIEW AND DISCUSSION:

1. Do the reasons that people get abortions matter for its moral permissibility? Why or why not?

2. Describe the arguments *against* abortion and assess them. Are they good or bad arguments? Do they make assumptions or claims that are problematic? Do the reasons provided actually provide evidence and reasons to oppose abortion?

3. Describe the arguments *for* abortion and assess them. Are they good or bad arguments? Do they make assumptions or claims that are problematic? Do the reasons provided actually give evidence and reasons to support abortion?

7 READING: AN ARGUMENT THAT ABORTION IS WRONG (BY ROSS DOUTHAT)⁶

A striking thing about the American abortion debate is how little abortion itself is actually debated. The sensitivity and intimacy of the issue, the mixed feelings of so many Americans, mean that most politicians and even many pundits really don't like to talk about it.

The mental habits of polarization, the assumption that the other side is always acting with hidden motives or in bad faith, mean that accusations of hypocrisy or simple evil are more commonplace than direct engagement with the pro-choice or pro-life argument.

And the Supreme Court's outsized role in abortion policy means that the most politically important arguments are carried on by lawyers arguing constitutional theory, at one remove from the real heart of the debate.

But with the court set this week to hear *Dobbs v. Jackson Women's Health Organization*, a direct challenge to *Roe v. Wade*, it seems worth letting the lawyers handle the meta-arguments and writing about the thing itself. So this essay will offer no political or constitutional analysis. It will simply try to state the pro-life case.

[Brendan's Note: *Dobbs v Jackson* was decided in Summer 2022. It overturned *Roe v Wade* and ruled there was no "constitutional" right to abortion. States currently have a wide variety of abortion laws, and these are changing rapidly. For example, Minnesota has much more liberal laws than Iowa or Wisconsin.]

At the core of our legal system, you will find a promise that human beings should be protected from lethal violence. That promise is made in different ways by the Constitution and the Declaration of Independence; it's there in English common law, the Ten Commandments and the Universal Declaration of Human Rights. We dispute how the promise should be enforced, what penalties should be involved if it is broken and what crimes might deprive someone of the right to life. But the existence of the basic right, and a fundamental duty not to kill, is pretty close to bedrock.

There is no way to seriously deny that abortion is a form of killing. At a less advanced stage of scientific understanding, it was possible to believe that the embryo or fetus was somehow inert or vegetative until so-called quickening, months into pregnancy. But we now know the embryo is not merely a cell with potential, like a sperm or ovum, or a constituent part of human tissue, like a skin cell. Rather, a distinct human organism comes into existence at conception, and every stage of your biological life, from infancy and

⁶ Ross Douthat, "Opinion | The Case Against Abortion," *The New York Times*, November 30, 2021, sec. Opinion, <https://www.nytimes.com/2021/11/30/opinion/abortion-dobbs-supreme-court.html>.

childhood to middle age and beyond, is part of a single continuous process that began when you were just a zygote.

We know from embryology, in other words, not Scripture or philosophy, that abortion kills a unique member of the species *Homo sapiens*, an act that in almost every other context is forbidden by the law.

This means that the affirmative case for abortion rights is inherently exceptionalist, demanding a suspension of a principle that prevails in practically every other case. This does not automatically tell against it; exceptions as well as rules are part of law. But it means that there is a burden of proof on the pro-choice side to explain why in *this* case taking another human life is acceptable, indeed a protected right itself.

One way to clear this threshold would be to identify some quality that makes the unborn different *in kind* from other forms of human life — adult, infant, geriatric. You need an argument that acknowledges that the embryo is a distinct human organism but draws a credible distinction between human organisms and human *persons*, between the unborn lives you’ve excluded from the law’s protection and the rest of the human race.

In this kind of pro-choice argument and theory, personhood is often associated with some property that’s acquired well after conception: cognition, reason, self-awareness, the capacity to survive outside the womb. And a version of this idea, that human life is there in utero but human personhood develops later, fits intuitively with how many people react to a photo of an extremely early embryo (*It doesn’t look human, does it?*) — though less so to a second-trimester fetus, where the physical resemblance to a newborn is more palpable.

But the problem with this position is that it’s hard to identify exactly what property is supposed to do the work of excluding the unborn from the ranks of humans whom it is wrong to kill. If full personhood is somehow rooted in reasoning capacity or self-consciousness, then all manner of adult human beings lack it or lose it at some point or another in their lives. If the capacity for survival and self-direction is essential, then every infant would lack personhood — to say nothing of the premature babies who are unviable without extreme medical interventions but regarded, rightly, as no less human for all that.

At its most rigorous, the organism-but-not-person argument seeks to identify some stage of neurological development that supposedly marks personhood’s arrival — a transition equivalent in reverse to brain death at the end of life. But even setting aside the practical difficulties involved in identifying this point, we draw a legal line at brain death because it’s understood to be irreversible, the moment at which the human organism’s healthy function can never be restored. This is obviously not the case for an embryo on the cusp of higher brain functioning — and if you knew that a brain-dead but otherwise physically healthy person would spontaneously regain consciousness in two weeks, everyone would understand that the caregivers had an obligation to let those processes play out.

Or almost everyone, I should say. There are true rigorists who follow the logic of fetal nonpersonhood toward repugnant conclusions — for instance, that we ought to permit the euthanizing of severely disabled newborns, as the philosopher Peter Singer has argued. This is why abortion opponents have warned of a slippery slope from abortion to infanticide and involuntary euthanasia; as pure logic, the position that unborn human beings aren’t human persons can really tend that way.

[Brendan’s Question: What is the “organism-but-nonperson” view? Why does Douthat reject it? Do you agree?]

But to their credit, only a small minority of abortion-rights supporters are willing to be so ruthlessly consistent. Instead, most people on the pro-choice side are content to leave their rules of personhood a little hazy, and combine them with the second potent argument for abortion rights: namely, that regardless of the precise moral status of unborn human organisms, they cannot enjoy a legal right to life because that would strip away too many rights from women.

A world without legal abortion, in this view, effectively consigns women to second-class citizenship — their ambitions limited, their privacy compromised, their bodies conscripted, their claims to full equality a lie. These kind of arguments often imply that birth is the most relevant milestone for defining legal personhood — not because of anything that happens to the child but because it's the moment when its life ceases to impinge so dramatically on its mother.

There is a powerful case for some kind of feminism embedded in these claims. The question is whether that case requires abortion itself.

Certain goods that should be common to men and women cannot be achieved, it's true, if the law simply declares the sexes equal without giving weight to the disproportionate burdens that pregnancy imposes on women. Justice requires redistributing those burdens, through means both traditional and modern — holding men legally and financially responsible for all the children that they father and providing stronger financial and social support for motherhood at every stage.

But does this kind of justice for women require legal indifference to the claims of the unborn? Is it really necessary to found equality for one group of human beings on legal violence toward another, entirely voiceless group?

We have a certain amount of practical evidence that suggests the answer is no. Consider, for instance, that between the early 1980s and the later 2010s the abortion rate in the United States fell by more than half. The reasons for this decline are disputed, but it seems reasonable to assume that it reflects a mix of cultural change, increased contraception use and the effects of anti-abortion legal strategies, which have made abortion somewhat less available in many states, as pro-choice advocates often lament.

If there were an integral and unavoidable relationship between abortion and female equality, you would expect these declines — fewer abortions, diminished abortion access — to track with a general female retreat from education and the workplace. But no such thing has happened: Whether measured by educational attainment, managerial and professional positions, breadwinner status or even political office holding, the status of women has risen in the same America where the pro-life movement has (modestly) gained ground.

Of course, it's always possible that female advancement would have been even more rapid, the equality of the sexes more fully and perfectly established, if the pro-life movement did not exist. Certainly in the individual female life trajectory, having an abortion rather than a baby can offer economic and educational advantages.

On a collective level, though, it's also possible that the default to abortion as the solution to an unplanned pregnancy actually discourages other adaptations that would make American life friendlier to women. As Erika Bachiochi wrote recently in *National Review*, if our society assumes that “abortion is what enables women to participate in the workplace,” then corporations may prefer the abortion default to more substantial accommodations like flexible work schedules and better pay for part-time jobs — relying on the logic of abortion rights, in other words, as a reason *not* to adapt to the realities of childbearing and motherhood.

At the very least, I think an honest look at the patterns of the past four decades reveals a multitude of different ways to offer women greater opportunities, a multitude of paths to equality and dignity — a multitude of ways to be a feminist, in other words, that do not require yoking its idealistic vision to hundreds of thousands of acts of violence every year.

It's also true, though, that nothing in all that multitude of policies will lift the irreducible burden of childbearing, the biological realities that simply cannot be redistributed to fathers, governments or adoptive parents. And here, too, a portion of the pro-choice argument is correct: The unique nature of pregnancy means that there has to be some limit on what state or society asks of women and some zone of privacy where the legal system fears to tread.

This is one reason the wisest anti-abortion legislation — and yes, pro-life legislation is not always wise — criminalizes the provision of abortion by third parties, rather than prosecuting the women who seek one. It's why anti-abortion laws are rightly deemed invasive and abusive when they lead to the investigation of suspicious-seeming miscarriages. It's why the general principle of legal protection for human life in utero may or must understandably give way in extreme cases, extreme burdens: the conception by rape, the life-threatening pregnancy.

At the same time, though, the pro-choice stress on the burden of the ordinary pregnancy can become detached from the way that actual human beings experience the world. In a famous thought experiment, the philosopher Judith Jarvis Thomson once analogized an unplanned pregnancy to waking up with a famous violinist hooked up to your body, who will die if he's disconnected before nine months have passed. It's a vivid science-fiction image but one that only distantly resembles the actual thing that it describes — a new life that usually exists because of a freely chosen sexual encounter, a reproductive experience that if material circumstances were changed might be desired and celebrated, a “disconnection” of the new life that cannot happen without lethal violence and a victim who is not some adult stranger but the woman's child.

[Brendan's Question: Is this an accurate description of Thomson's argument? Is her violinist analogy meant to describe a pregnancy resulting from a “freely chosen sexual encounter”?]

One can accept pro-choice logic, then, insofar as it demands a sphere of female privacy and warns constantly against the potential for abuse, without following that logic all the way to a general right to abort an unborn human life. Indeed, this is how most people approach similar arguments in other contexts. In the name of privacy and civil liberties we impose limits on how the justice system polices and imprisons, and we may celebrate activists who try to curb that system's manifest abuses. But we don't (with, yes, some anarchist exceptions) believe that we should remove *all* legal protections for people's property or lives.

That removal of protection would be unjust no matter what its consequences, but in reality we know that those consequences would include more crime, more violence and more death. And the anti-abortion side can give the same answer when it's asked why we can't be content with doing all the *other* things that may reduce abortion rates and leaving legal protection out of it: Because while legal restrictions aren't sufficient to end abortion, there really are a lot of unborn human lives they might protect.

Consider that when the State of Texas put into effect this year a ban on most abortions after about six weeks, the state's abortions immediately fell by half. I think the Texas law, which tries to evade the requirements of *Roe v. Wade* and *Planned Parenthood v. Casey* by using private lawsuits for enforcement, is vulnerable to obvious critiques and liable to be abused. It's not a model I would ever cite for pro-life legislation.

But that immediate effect, that sharp drop in abortions, is why the pro-life movement makes legal protection its paramount goal.

According to researchers at the University of Texas at Austin, who surveyed the facilities that provide about 93 percent of all abortions in the state, there were 2,149 fewer legal abortions in Texas in the month the law went into effect than in the same month in 2020.

About half that number may end up still taking place, some estimates suggest, many of them in other states. But that still means that in a matter of months, more than a thousand human beings will exist as legal persons, rights-bearing Texans — despite still being helpless, unreasoning and utterly dependent — who would not have existed had this law not given them protection.

But, in fact, they exist already. They existed, at our mercy, all along.

Ross Douthett has been an Opinion columnist for The Times since 2009. He is the author of several books, most recently, “The Deep Places: A Memoir of Illness and Discovery.”

[Brendan’s Question: How would you describe the “main points” of Douthett’s argument in your own words? Does he successfully respond to some of the pro-choice arguments given in earlier readings? More generally, after all of these readings, do you feel like you have a better understanding of how people who *disagree* with you about abortion think about the issue?]

8 CASE STUDY: IN PURSUIT OF THE PERFECT CHILD (ETHICS BOWL)

National Ethics Bowl 2018-19 Case Authors and Editors: Chris Blake-Turner, Izzy Brassfield, Dominique Déry, Matthew Hernandez, Intercollegiate Ethics Bowl, Joanna Lawson, Pavel Nitchovski, Macy Salzberger, Steve Swartzler, Lauren Townsend, Jacky Wang, Rob Willison, Brian Wong, and Lili Zay

Advancements in reproductive and genetic technologies have opened up numerous possibilities for the way we have children as well as which children we decide to have. Non-invasive prenatal testing for fetal sex or chromosomal abnormalities can be performed as early as 10 weeks. More invasive procedures like chorionic villus sampling or amniocentesis can test for additional genetic disorders as early as 10 or 16 weeks, respectively. For those using in-vitro fertilization (IVF), genetic testing for some disorders can now be performed on embryos as small as eight cells (3-5 days old).

Many parents use the information obtained in these screenings to help decide whether to continue or terminate the pregnancy—or, in the case of IVF, whether or not to implant the embryo(s). In Iceland, at the extreme end, 100% of pregnancies in which the fetus is determined to have Down’s Syndrome are terminated.¹

Some people criticize such prenatal testing—especially when it is used to determine whether or not to terminate a pregnancy—as an unnatural attempt to influence the genetics of the human race. Moreover, critics argue, like other forms of eugenics, this use of genetic testing is inherently discriminatory against those with conditions such as Down’s Syndrome, and sends the message that the lives of such people are less valuable or less worth living. Some defenders of genetic testing note that not all pre-natal diagnoses lead to termination and that knowing ahead of time that one’s child will have a genetic disorder can allow parents to prepare appropriately. Other defenders of current practices argue that there is nothing wrong with wanting to

have the healthiest child possible—especially given that genetic disorders can sometimes create significant personal and financial costs for families and that many families do not feel like they are in a position to take on these additional costs. Some defenders of pre-natal testing go even further, arguing that it might be wrong to bring a child into the world knowing that she will suffer from some genetic disorder. In response, critics, reiterate that these arguments are themselves based on biased perspectives that devalue the lives of people with genetic disorders.

Many of these moral concerns will be amplified as gene editing technology, such as CRISPR/Cas9, becomes more powerful, allowing us to become better able to determine the genetic makeup of our offspring. Gene editing will enable parents to eliminate genetic diseases in embryos and fetuses, without requiring that they terminate that pregnancy. Although many scientists have cautioned against the use of this technology before its safety and potential ethical issues can be evaluated,² a Chinese scientist has claimed to have used CRISPR/Cas-9 to create embryos resistant to HIV infection for a couple who gave birth to twin girls in 2018.³

8.1 STUDY QUESTIONS:

1. Does the moral permissibility of selective implantation or termination depend upon *what* is being selected for or against?
2. What are the morally relevant similarities and/or differences between deciding not to implant an embryo with Down's Syndrome or another genetic abnormality, and terminating a pregnancy in which the fetus has Down's Syndrome or that genetic abnormality?
3. What are the morally relevant similarities and/or differences between selecting which child to bring into the world and intentionally altering the genetic makeup of a single child?

¹ <https://www.youtube.com/watch?v=S-X97xxw5aI>

² https://www.nytimes.com/2015/03/20/science/biologists-call-for-halt-to-gene-editing-technique-in-humans.html?_r=0

³ <https://www.npr.org/sections/health-shots/2018/11/26/670752865/chinese-scientist-says-hes-first-to-genetically-edit-babies>