

# Chapter 6: Moral and Legal Arguments

A Little More Logical | Brendan Shea, Ph.D. (Brendan.Shea@rctc.edu)

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## 2 THOUGHT QUESTIONS

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Here are a few questions for you to consider before starting the reading:

1. What is the strongest argument you can think of FOR the claim “abortion is (usually) morally OK?”
2. What is the strongest argument you can think of AGAINST the claim “abortion is (usually) not morally OK?”
3. How would you “evaluate” these arguments? Are they deductive or inductive? Valid/invalid or strong/weak? Are the premises true?

## 3 ARGUMENTS FROM ANALOGY: THE CASE OF THE DYING VIOLINIST

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When people think of “arguments” outside of logic, they often think of debates of controversial moral or political issues, such as the debate between “pro-life” and “pro-choice” positions on abortion. In this lesson and the next one, we’ll be using the abortion debate to examine some general principles of moral and legal argumentation. Our goal here is NOT to provide definitive answers to questions like “Should abortion be legal?” or even “Under which circumstances, if any, is abortion morally acceptable?” Instead, our goal is to identify some common *problems* with the arguments we tend to make regarding these sorts of highly emotional issues, and start to think about how we might avoid them. This will hopefully allow us to become better at engaging with those who disagree with us.

If you’ve taken my bioethics class, you’ll probably recognize some of the arguments we’ll be discussing. However, what we’re doing with them here is slightly different than in that class.

A few main points we’ll be covering:

1. Arguments about morals/law can be both deductive and inductive. Many people use a combination of deductive and inductive arguments to defend their positions.
2. It’s important not to confuse your *feeling* that a certain principle/idea must be true with having *evidence* that it is true.

3. In many cases, we really can make progress of moral issues by paying careful attention to how we reason/argue. However, logic can't solve all of our problems. In some cases, there really do seem to be "deep" ethical disagreements.

Let's get started!

### 3.1 TWO METHODS OF THINKING ABOUT MORALITY AND THE LAW

While there are a number of different ways of arguing about the truth/falsity of ethical and legal claims (what philosophers sometimes call **normative** statements, since they concern norms about what "norms" we ought to follow), we'll be focusing on two main techniques. These techniques are among the most important and commonly used.

#### 3.1.1 Method 1: Argue from First Principles

The first method is to take general moral "rules" or "principles," and to offer an argument showing how they can be applied to the case that you are interested. These are generally (though not always) deductive arguments. If you disagree with the conclusion, you must either show that the argument is invalid, or that a premise is false.

1. Premise (Factual Claim): Action A is of type T.
2. Premise (Rule, Principle, or Law): All actions of type T are moral/immoral. (Or, this type of action is legal/illegal.)
3. Conclusion: So, action A is moral/immoral.

So, for example:

1. Premise: Jones had no good reason to kick his dog Dina. This action caused pain to Dina, who is clearly a sentient being (who can feel pleasure or pain).
2. Premise: It is morally wrong to cause pain to sentient beings for no good reason.
3. Conclusion: It was morally wrong of Jones to kick Dina.

Assuming the argument is valid (a big if!), the success of these sorts of arguments depends on whether the premises are true or false:

1. **Are the facts of the particular case described accurately and objectively?** In any ethical arguments, it's always worth making sure that all of the facts are accurate *before* starting to get into a big debate about principles. So, for example, in the abortion debate, you'll want to make sure that any claims about things like the ability of the fetus to feel pain, etc. are backed up by scientific consensus. Remember to avoid *appeals to inappropriate authority*.
2. **Is the rule, principle, or law being appealed to one that is acceptable to your audience?** In order for an argument like this to actually work, you'll need to start with rule, principle, or law that your opponent actually accepts. So, for example, in the abortion debate, you can't *start* with a principle like "All fetuses have a right to life" or "No fetuses have a right to life." By contrast, a principle like "Normal adult humans have a right to life" is a safer starting point.
3. **Is the rule, principle, or law applied to the case in an acceptable way?** Even if the principle you've used is an acceptable one, the application to a particular case might still be challenged. So, for example, in the United States, Supreme Court Judges all accept general principles like the right to free speech and the right to bear arms. However, they don't always agree on which particular actions these principles apply to, or how they apply. Here, you'll want to be on the lookout for the *fallacy of accident*,

Even if you don't spend your time arguing about morality or the law, this sort of reasoning can play an important role in day-to-day life. In particular, whenever you get put in charge of making/enforcing rules (for employees, children, students, etc.), it's important to make sure that the rules are clear, that they are applied in

consistent ways, etc. (In real life, this is often complicated by the fact that *multiple principles* may apply to a given case, and each principle might suggest a somewhat different conclusion).

### 3.1.2 Method 2: Argue from Analogy with Other Cases

An argument from analogy is an inductive argument that depends on a claim of similarity. If you disagree with the conclusion, you must show the argument is weak, that the premises are false, OR that some evidence has been “left out.” It has the following form:

- Premise 1: Object P1 has properties A and B, and also has property C.
- Premise 2 [optional]: Object P2 (and P3, P4,...) has properties A and B, and also has property C.
- Premise 3: Object X has properties A and B.
- Conclusion: Object X has probably has property C.

Objects P2, P3, P4, etc. are the **primary analogues** (which means they are the things we are comparing P1 to). Properties A and B are the **similarities**. An example:

- Premise 1: Adult men are generally reasonable, and benefit from political participation. They deserve the right to vote.
- Premise 2: Adult women are generally reasonable, and benefit from political participation.
- Conclusion: Adult women deserve the right to vote.

Arguments from analogy (unlike arguments from first principles) are always inductive. These means that they come on a spectrum: from “very weak” to “very strong”, and everything in between. Moreover, their strength can change as we gather more and more evidence. The strength of an argument from analogy depends on a few things:

1. **In how many ways are the primary analogues *relevantly* similar to your case? In how many ways are they *relevantly* dissimilar?** In general, an argument from analogy gains strength from having relevant similarities between the primary analogue and the conclusion case, and loses strength from relevant dissimilarities. So, for example, in the context of political participation, adult women are highly similar to adult men (in cognitive ability, interests in voting, etc.). By contrast, the dissimilarities between adult women and adult men don’t seem terribly convincing.
  - a. If the analogues are *very, very* similar, we may only need one premise. So, for example, when testing new products (cars, computers, etc.), magazines like *Consumer Reports* may need to test only one model, (and conclude that the test results can tell us something about *all* models.
  - b. Remember that primary analogues don’t always support your conclusion! In some cases, you’re going to find very similar cases that go AGAINST what you want to argue. These need to included—to intentionally “leave them out” is the fallacy of **suppressing evidence**.
2. **How many primary analogues do you have, and how different are they *from each other*?** In general, we want primary analogues that are themselves quite diverse, just to make sure we’ve covered all of our bases. While the sample argument above only mentions one primary analogue (adult men), we could break this premise down further to make the diversity more obvious: by the time the U.S. and U.K. considered giving women the vote, nearly ALL men could vote. This included men without education, employment, wealth, etc. This strengthened the argument for providing women the vote.

As is the case with the method of arguing from first principles, it’s tough to overstate just how frequently we use arguments from analogy in everyday life. So, for example, we argue by analogy every time we say (or think) something like “This outcome isn’t fair! Why I am being treated different from Sam, whose behavior was just like mine?” or “I want to learn how to be a better player. So, I should watch a really good player X, and try to imitate her/him...”

## 3.2 APPLICATION TO THE ABORTION DEBATE: A PRO-LIFE ARGUMENT

Let's begin by considering a common pro-life argument:

- Premise 1: All innocent persons are beings with a right to life.
- Premise 2: No beings with a right to life are beings it is OK to kill. (RULE)
- Premise 3: All fetuses are innocent persons.
- Conclusion: So, no fetuses are beings that it is OK to kill. (That is, abortion is immoral)

A close examination will show that this argument from first principles is both *deductive* and *valid*. So, if you disagree with the conclusion, you *must* show that at least one premise is false. Most writers have focused on arguing for/against premise 3, with pro-life writers arguing that fetuses are relevantly “like” adult humans and pro-choice authors arguing that they are more “like” a body part or non-human animal. However, the philosopher **Judith Thomson** offers a different response which we'll be examining.

## 3.3 THOMSON'S VIOLINIST ANALOGY

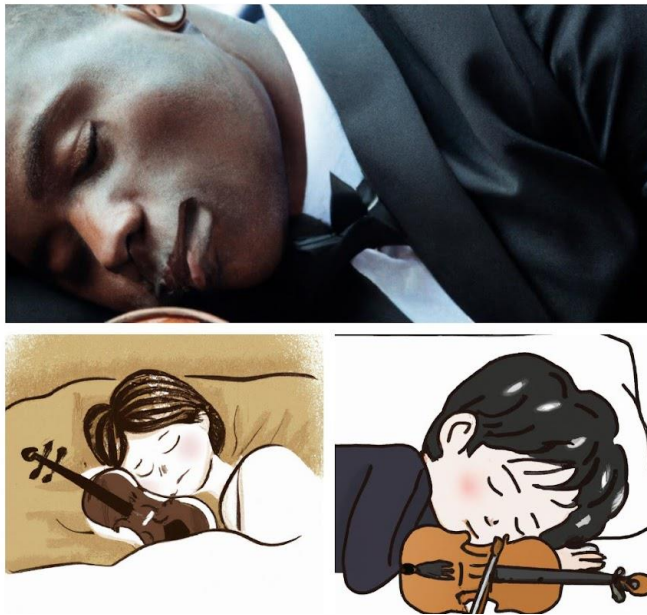


Figure 1 Famous, unconscious violinists (Brendan Shea x Dall-E).

Thomson begins with a thought experiment:

*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?*

**Conclusion 1: Abortion is sometimes OK.**

Thomson has several goals with this argument. One thing she wants to show is that abortion is OK *when pregnancies are caused by rape*:

- Premise 1: The violinist is an innocent person with a right to life, but you did not consent to let him use your body. There are significant costs to staying hooked up to him. It is morally OK to disconnect. [PRIMARY ANALOGUE]
- Premise 2: If you were raped, the fetus is an innocent person with a right to life, but you did not consent to the pregnancy. There are significant costs to being pregnant.
- Conclusion: It is morally OK to have an abortion in the case of rape.

**Conclusion 2:** Along with directly arguing for the permissibility of abortion in the case of rape, Thomson *also* wants to show that there is something wrong with the common pro-life argument: that is, she thinks that the *reasons* they give for thinking abortion is immoral actually are not actually very good ones.

- Premise 1: The violinist is an innocent person with a right to life.
- Premise 2: It is morally OK to kill the violinist.

- Conclusion: Some beings with a right to life are beings it is OK to kill.

**The Take-Away:** If this argument works, it means that the pro-life argument discussed earlier is not sound (that is, it is valid but has a false premise). It does NOT show that abortion is morally OK (except in the special case of rape mentioned earlier). It puts us back at “square one”—we have no good argument for (or against) the morality of abortion in the general case.

**How might this argument be criticized?** First, we can ask whether Thomson’s premises are true. For example, do you agree that it’s OK to disconnect from the violinist? Second, we can ask whether Thomson left out any *morally relevant* disanalogies between the violinist and the fetus. (Remember that not all differences are relevant ones).

### 3.4 PEOPLE SEEDS: THE GENERAL CASE

At the end of her article, Thomson tries to expand her argument to cover abortion more generally. She uses the thought experiment of the “people seeds” to make her case. Here is the basic idea:

- A “people seed” is a thing that floats around in the air. When it lands in a human house with furniture, it sprouts, and immediately becomes a full-fledged adult human being.
- The person resulting from a people-seed can’t leave your house for nine months, though, and will need you to take care of him/her. You’ll feel nauseous, can’t drink, etc. It’s just as if you are pregnant.
- Thomson’s question: Under what sorts of condition would it be appropriate to kill the person resulting from a people seed? She uses this to explore the morality of abortion in non-rape cases. **Thomson thinks that careful consideration of this analogy will show that abortion is morally OK in at least some non-rape cases.**

Many authors who have *agreed* with Thomson’s violinist case have *disagreed* with this argument. This includes some pro-choice writers, who think that abortion is morally *only* because the fetus is not a “person.” (So, they agree at least in part with Thomson’s conclusion, but disagree about the reasoning process by which she gets there.).

### 3.5 REVIEW QUESTIONS

1. Name at least three DIFFERENCES between a fetus and Thomson’s violinist. Do you think these differences morally relevant? Why or why not? How do they affect the strength of her argument from analogy?
2. Consider the following variants of the people-seed case. (a) What sorts of pregnancies are these analogous to? (b) Do you think it is OK to kill the people-seed person in this case? Why or why not?
  - a) 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.
  - b) 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...
  - c) 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 slips by. You come home to find an innocent person...
  - d) You have windows with no screens whatsoever. The rest is as described above.

## 4 EXPLAINING WHY MURDER IS WRONG: MARQUIS ON ABORTION AND “FUTURES LIKE OURS”

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**Don Marquis** (1935-) is a contemporary ethicist who teaches at the University of Kansas. He has written widely on issues of biomedical ethics. His most famous article (by far) is the “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. Here, we’ll be using to explore another common form of moral and legal reasoning: the argument to the best explanation.

### 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: There is no other theory that explains these observations as well as T.
- Conclusion: Theory T is true.

Arguments to best explanation are NOT deductive, and for the purposes of this class, we’ll classify them as inductive. (Some logicians, philosophers, and scientists actually argue that these arguments form a third type of argument called **abductive arguments**<sup>1</sup>). 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 very 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 very good reason for it.
- Premise: Many animals are sentient.

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<sup>1</sup> The main reason for thinking this has to do with the definition of “inductive argument” as one where we claim the conclusion is “probably true, given the truth of premises.” Some people think that abductive arguments—which are super common in both everyday life and science!—aren’t like this. Instead, we should believe in the conclusion of such arguments simply because it’s the “best option we have” even we think the conclusion is probably false. For example, we might adopt a given scientific theory as “the best available option” even if we suspect that we’ll someday discover a better theory.

- 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 then *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. In essence, this process is pretty simple: if a proposed moral theory entails something that is obviously insane (like “Hitler was a good 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 “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 both fundamentally flawed, and should be abandoned. He does not think anyone (whether prolife or prochoice) should appeal to simplistic theories 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 fact needs to be explained: “It is morally wrong to kill 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 who has 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. O<sub>1</sub>: It is (generally) wrong to kill adult humans.
  - b. O<sub>2</sub>: It is wrong to allow a suicidal teenager to kill him- or herself.
  - c. O<sub>3</sub>: It is wrong to kill infants.
  - d. O<sub>4</sub>: 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 O<sub>1</sub> and O<sub>4</sub>. It does not explain O<sub>2</sub> or O<sub>3</sub>.
  - b. EXP explains O<sub>1</sub> and O<sub>2</sub>. It does not explain O<sub>3</sub> or O<sub>4</sub>.
  - c. FLO explains O<sub>1</sub>, O<sub>2</sub>, O<sub>3</sub>, and O<sub>4</sub>. 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, there are only two moves 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. For example, does FLO entail something that is obviously false?

## 4.4 REVIEW QUESTIONS

Please answer the following 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 actually be morally OK to throw away fingernail clippings, even if we had this sort of machine.
  - c. So, FLO is false.

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

- d. 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”): A human embryo
  - e. A sleeping person

- f. An intelligent robot, like Wall-E or R2D2
- g. An intelligent non-human, like ET or Chewbacca
- h. An unfertilized human egg
- i. Baby Hitler (you somehow *know* it's baby Hitler...)

## 5 READING: BUN OR BUMP? (BY SUKI FINN)<sup>2</sup>

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After a long wait, last year Bridget Jones once again graced our cinema screens. But things had changed considerably for the heroine, played by Renée Zellweger, in *Bridget Jones's Baby* (2016). Following an emotional rollercoaster of romantic misunderstandings and sexual mishaps, Bridget becomes pregnant, a state that finds her in a reflective and deeply philosophical mood, as she sits in her kitchen, baking buns. She looks at the buns, growing bigger inside the oven, and then looks down to her belly and compares herself to her kitchen appliance, wondering: 'Do I too have a bun in the oven? Is there a baby growing separately inside of me, or am I growing a baby part of my own?'

Once the buns are ready, she tucks in to her baked delights, and gazes longingly at the portion she had set aside for friends and asks: 'Is it true that I am eating for two? Are there actually two beings to be fed here, or just one that is bigger than normal?' She also contemplates the option of terminating the pregnancy, and asks: 'Is it really my body, and therefore my choice to abort? Do I have complete autonomy over my body, and what is actually included in what counts as my body?' The musings go on and on...

Okay, so Bridget does not actually ask these questions, but philosophers do. The sciences (in particular, biology) have added immensely to our knowledge of how we and other things reproduce, and so it is natural to think that these questions are best left within the scientific domain. But this thought is mistaken, as there are philosophical issues around pregnancy that remain unanswered by the sciences, leaving many aspects of pregnancy a mystery.

**[Brendan: What do you think about this? Are there questions about fetuses/babies/people that science can't answer?]**

To illustrate these, let us return to Bridget Jones. Bridget affectionately calls her pregnant bump her 'baby'. We will less affectionately (but more accurately) use the term 'foetus', which will here be used generically to describe whatever Bridget is pregnant with at any stage during the pregnancy, all the way from conception to birth. We will not be talking solely of Bridget, nor will we be talking specifically about human mothers-to-be, but rather our discussion of the metaphysics of pregnancy will be applicable to any mammal with a placenta. As such, our discussion covers hamsters and hippos, but not, for example, kangaroos. For this reason, we will use the phrase 'maternal organism' to refer to the pregnant placental mammal regardless of whether it is a human or has the social status of being a mother. As for the role of the 'paternal organism', or father, this is obviously important and significant, but falls outside the remit of the study of the metaphysical state of pregnancy that I am focusing on here.

What, then, is the metaphysical relationship between the maternal organism and the foetus? One possible answer is that the foetus is a part of the maternal organism, just like the maternal organism's organs and limbs are. Let us call this the *parthood model*. Another possible answer is that the maternal organism carries, or contains, the foetus, which is a distinct entity in its own right. Call this the *container model*. So which model is correct, and does it change throughout the pregnancy? This is not a mere matter of choice, nor an argument over the language we use to describe what is otherwise considered to be the same situation. Rather there is a

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<sup>2</sup> Suki Finn, "Bun or Bump?," Aeon, 2017, <https://aeon.co/essays/is-the-mother-a-container-for-the-foetus-or-is-it-part-of-her>.

fact of the matter to be found, and as we will see, the truth about the metaphysical relationship between the foetus and the maternal organism will have wide-reaching implications for our moral and legal practices regarding pregnancy. But before looking at such consequences, we shall next take a closer look at these two rival models of the metaphysics of pregnancy.

**[Brendan: Before reading further, can you think of any problems with either the parthood or container model?]**

The philosopher Elselijn Kingma at the University of Southampton, defends the parthood model in her paper ‘Were You a Part of Your Mother?: The Metaphysics of Pregnancy’ (forthcoming, *Mind*), which takes the foetus to be a proper part of the maternal organism. To be a proper part of something is to be a section of a whole, which comprises only some of the whole thing, and is not identified by the whole thing itself. In the case of pregnancy, the maternal organism is the whole, where the maternal organism has many sections, such as the maternal organism’s arms, legs, heart and lungs, etc. The foetus is simply one of those sections. And so we can say on this parthood model that the foetus is a proper part of the maternal organism, just like any other part of the maternal organism.

But it is important to note that the foetus can also be very different from the other parts of the maternal organism, as all the parts are different to each other in their own way, and some can be entities of their own with their own special status as well as being a part of something else. So all that this model states is that the foetus is a part of the maternal organism, but it does not specify what sort of thing the foetus is. On this model, the foetus and the maternal organism are not seen as completely separate things, but rather are related to each other as a part is to a whole. For the sake of an analogy, we can compare this metaphysical relationship between the maternal organism and foetus as being like that of a cat to its tail. The foetus is a part of the maternal organism just like a tail is a part of a cat. But a tail of a cat is not a cat itself – it is just a cat’s tail! Whereas, the foetus might at some point during the pregnancy actually be the same sort of thing as the maternal organism. For example, the foetus can be a human, just like the maternal organism is a human.

So can a human be part of another human? Let us revisit Bridget Jones for some help in visualising this. Imagine that Bridget shaves off her hair on Sunday after a bleaching disaster the day before (easily done). On Sunday, we have Bridget without hair, which is in some sense a part of the Bridget on Saturday, since it is just like the Bridget on Saturday with a part removed (namely the hair part), leaving the bald part of Bridget to roam free. So on Saturday we have the complete Bridget Jones, *avec* hair, and on Sunday a part is removed, leaving us with the remaining Bridget Jones, *sans* hair. Is bald Bridget from Sunday a part of hairy Bridget on Saturday? We might think, well, surely not, since if that were the case then on Saturday there would be two Bridgetes present – the bald one and the hairy one, where the bald one is part of the hairy one – and that is too many Bridget Joneses existing for anyone’s liking, especially in the same place at the same time.

**[Brendan: Philosophers and logicians love thought experiments such as this! What do you think—is bald Bridget a “part” of hairy Bridget? Or are they simply the same person?]**

For this sort of reason, some philosophers have held a ‘**maximality**’ principle that restricts the type of thing that one can have as a part to not including the same type of thing as the whole. In other words, the maximality principle in this context claims that no thing can be a proper part of the same type of thing. So no cat can be a proper part of a cat, and no human can be a proper part of a human. This avoids the overpopulation that arises from co-location. Now if this maximality principle is true, then the parthood model of the metaphysics of pregnancy would have to claim that the foetus and the maternal organism are different types of things. This is because if the foetus is a proper part of the maternal organism, and no thing can be a proper part of the same type of thing, then the foetus is not the same type of thing as the maternal organism of which it is a part.

In the case of Bridget Jones, the maternal organism is a human, so what is the foetus if it is not a human? Perhaps the foetus becomes a human in its own right only at birth, once it is no longer a part of the maternal organism. If that is so, then Bridget is making a mistake when she talks to her bump as if it were a human and calls it 'baby'. According to the parthood model combined with a maximality principle, it would be more accurate for Bridget to look upon her bump as if it were a growth of her own body, where she is growing her very own foetus part which is not a separate human existing inside of her.

This certainly seems to be more plausible early on in Bridget's pregnancy, because just after the time of conception the foetus is constituted only by a bunch of cells, which you might think hardly qualifies it as human – it doesn't look, think or act like a human! However, towards the end of Bridget's pregnancy this combination of views might seem less plausible, since just before birth the foetus does seem to have many of the features of a human (although whether it is able to think and class as a person with rights is a different question). In order for the parthood model to allow for the foetus to be the same type of thing as the maternal organism, which in Bridget's case is for both to count as humans, the maximality principle must be rejected. Otherwise, if the maximality principle is true, and the foetus and the maternal organism are the same types of thing, then the parthood model must be rejected, as the foetus cannot be considered part of a maternal organism.

**[Brendan: What do you think of the maximality principle? Is it a good reason to reject the idea that the "foetus is just a part of the mother"?]**

An alternative view to the parthood model is the container model, which seems to be the extreme opposite of it, since it claims that the foetus is not a part of the maternal organism, but rather is contained inside the maternal organism. So, according to this container model, the maternal organism is literally a container for the foetus, where the relationship between the maternal organism and the foetus is like that of a niche to a tenant. A niche is something that encloses something else, such that the smaller thing is inside the larger thing, where the smaller thing is classed as the tenant. Think of this model as being like a tenant in a rented house, such that the house is the niche for its occupant. The foetus, as a tenant, inhabits the maternal organism, as a niche. This is a view held by the philosophers Barry Smith and Berit Brogaard in their [paper](#) 'Sixteen Days' (2003) in *The Journal of Medicine and Philosophy*. They provide the analogy of the foetus being inside some space in the maternal organism in much the same way as a tub of yogurt is inside a fridge or, as phrased earlier, the way a bun is inside an oven.

This container model (as with the parthood model) does not on its own state what sort of thing the foetus is, but rather claims only that it is contained in something else. Yet the paradigmatic cases of the tenant-niche relationship share the feature that the tenant is a different type of thing to the niche. For example: the renting tenant is a human, and the rented house that is the niche is a building; likewise, the bun that is the tenant is a food, and the oven that is the niche is an appliance. However, in the case of pregnancy, the tenant might be the same sort of thing as the niche, if we class both the maternal organism and the foetus as humans (or whichever animal is in question). If the definition of a niche requires it to be a different type of thing from the tenant, then this would render the container model incompatible with treating the foetus as being a thing of the same kind as the maternal organism. It is therefore of great importance for philosophers to study such definitions and concepts so as to inform the debates in which they're applied.

The applications of these models and concepts are not limited to debates in metaphysics: they also feature in debates in reproductive ethics. Many of the reasons that we cite to support our stance on abortion and surrogacy, for example, are based (sometimes unknowingly) on metaphysical grounds, as those debates depend on their philosophical foundations. As such, we will first need to get our metaphysics straight in order to inform our ethical opinions. The metaphysics of pregnancy matters not only because it has such implications, but it also lies within many of our surface values and disputes regarding pregnancy and the

ethical questions that accompany it, which can be some of the most divisive social-value questions we face. Hence, the metaphysics of pregnancy relates importantly to issues of reproductive ethics, which demonstrates that doing philosophy is going to be a necessary first step to resolving such debates.

**[Brendan: What do you think about the claim that many of our ethical opinions are based on (often unexamined) beliefs about “metaphysics” (or the “nature of reality”)? Can you think of examples?]**

Let us first have a think about surrogacy. The container model is particularly evident in our concept of surrogate pregnancy, and at least appears to underpin most moral and legal views of surrogacy. The container model creates the image of the maternal organism as an incubator or environment for the foetus, where the foetus develops as an independent entity, separate from, and merely inside of, the maternal organism. The very naming of the surrogate as the ‘host’ demonstrates that the surrogate is seen as housing a separate entity, and surrogacy is often described as renting a womb. This shows that the surrogate is seen as a mere container, where the foetus inhabits the space that the surrogate host provides. Surrogacy is widely regarded as a service of gestation, where what the surrogate provides is the use of their body as a space within which the foetus can grow. As a result, surrogacy is thought of as bodily labour, where the work required is to provide nutrients and physical care to the foetus, implying that the role of the surrogate is to be a safe container for the foetus to grow independently. This all strongly suggests a container model in the metaphysics of pregnancy.

But on the parthood view of the metaphysics of pregnancy, the foetus is actually literally a part of that surrogate mother. Rather than renting a space like a womb, surrogacy then appears more like the trade of a body part (namely the foetus, a part of the surrogate). Now if this foetus is itself classified as a human, as well as being a part of the human maternal organism (thus rejecting the maximality principle), then a surrogate transaction is both a trade of a body part and a trade of a human. If the foetus is a part of the maternal organism, then the maternal organism is not so easily interchangeable, as the maternal organism and the foetus are then inextricably connected, much more so than if the maternal organism turns out to be just a container. On the parthood model, surrogacy seems to be more like the sale of a product, where that product is the foetus part of a maternal organism that can itself be classified as a human; this contrasts with the bodily labour of renting a womb that is suggested by the container model.

**[Brendan: Commercial surrogacy involves paying another person to carry a child for you. Should this be legal? Illegal? (Governments disagree on this!). What the best reasons for/against it?]**

Now let us cast our eye over the thinking that underpins legalisation that allows some abortion. This might be motivated to some extent by the slogan ‘My body, my choice.’ If the parthood model is true, then this slogan is also literally true, for the foetus is indeed a part of the maternal organism’s body. Of course, the issue will then get complicated if the foetus qualifies as an organism with its own rights, which might conflict with the rights and choices of the maternal organism. This is where the maximality principle will have impact, since it will determine whether the maternal organism has a ‘non-human’ foetus as a part, or a ‘human’ foetus as a part. If the foetus is to qualify as a human, despite also being a part of another human, then it might not be just a matter of implementing ‘my body, my choice’, as that body includes another body. But on the other hand, if the container model is true, then this slogan will not be literally true, as the foetus is not part of the maternal organism’s body. Any appeal to ‘my body, my choice’ must then defend a maternal organism’s right to choose how her body is used, even if it results in the termination of a separate organism.

It is interesting here to note that some bio-political leanings can rest upon incompatible metaphysical views. For example, a more progressive stance that advocates both pro-surrogacy and pro-abortion might end up appealing to a container model and a parthood model respectively, in order to motivate the legitimacy of ‘renting a womb’ while also motivating the legitimacy of abortion as being ‘my body, my choice’. And on the other hand, a more conservative stance that advocates both anti-surrogacy and anti-abortion could end up appealing to a parthood model and a container model respectively, in order to motivate the illegitimacy of a

trade of body parts while also motivating the illegitimacy of a termination of a separate being. Yet given the complexity of these debates, the parthood and container models will not on their own be sufficient to determine the legitimacy or illegitimacy of such stances, since the models alone do not determine the status of the foetus or what sort of thing the foetus is, but rather only whether it is a part of the maternal organism or not. What would then be required to make the necessary connection between these models and the bio-political views is some further philosophy, such as an endorsement or rejection of a maximality principle so as to determine whether the foetus is itself a human, and an exploration of the nature of personal identity and the human rights of foetuses so as to determine their personhood and moral status.

So, although no moral conclusions follow directly from the metaphysical models I've outlined, we do need to get clear about these metaphysical issues if we want to think coherently about the ethical and political questions surrounding reproduction. It really does make a difference whether you have a bun in your oven or whether the foetus is genuinely part of you.

**[Brendan: To what extent is it a problem if people hold “inconsistent” metaphysical views about the nature of fetuses, babies, and mothers when it comes to defending their “ethical” beliefs? For example, what happens if our explanation for “why abortion is right/wrong” contradicts our explanation for “why commercial surrogacy is right/wrong.”?]**