

TWO STALEMATES IN THE PHILOSOPHICAL DEBATE ABOUT ABORTION AND WHY THEY CANNOT BE RESOLVED USING ANALOGICAL ARGUMENTS

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ABSTRACT

Philosophical debate about the ethics of abortion has reached stalemate on two key issues. First, the claim that fetuses have moral standing that entitles them to protections for their lives has been neither convincingly established nor refuted. Second, the question of a pregnant woman's obligation to allow the gestating fetus the use of her body has not been resolved. Both issues are deadlocked because philosophers addressing them invariably rely on intuitions and analogies, and such arguments have weaknesses that make them unfit for resolving the abortion issue. Analogical arguments work by building a kind of consensus, and such a consensus is virtually unimaginable because (1) intuitions are revisable, and in the abortion debate there is great motive to revise them, (2) one's position on abortion influences judgments about other issues, making it difficult to leverage intuitions about other ethical questions into changing peoples' minds about abortion, and (3) the extent of shared values in the abortion debate is overstated. Arguments by analogy rely on an assumption of the commensurability of moral worldviews. But the abortion debate is currently unfolding in a context of genuinely incommensurable moral worldviews. The article ends by arguing that the default position must be to permit abortion as a consequence of the freedom of conscience protected in liberal societies.

INTRODUCTION

I support abortion rights, but I am worried. Philosophers defending abortion as a morally permissible choice tend to be confident that their arguments conclusively demonstrate the morality of abortion.¹ However, the arguments appear less convincing upon closer inspection.²

¹ See D. Boonin. 2003. *A Defense of Abortion*. New York: Cambridge University Press: 2; and M.A. Warren. 1997. On the Moral and Legal Status of Abortion. In *The Problem of Abortion* 3rd edn. S. Dwyer & J. Feinberg, eds. New York: Wadsworth: 59.

² In this paper I omit an analysis of two influential philosophical works on the ethics of abortion: F.M. Kamm. 1992. *Creation and Abortion*. New York: Oxford University Press; and J. McMahan. 2002. *The Ethics of Killing*. New York: Oxford University Press. Each book presents important arguments defending the ethical permissibility of abortion. However, in my opinion, neither work clearly and convincingly breaks the stalemates identified in this paper, though I make no attempt to

There are two necessary conditions for successful opposition to abortion. First, in order to show that abortion is immoral, one must show that fetuses³ have a right to life, or interests that overrule a pregnant woman's substantial interest in terminating an unwanted pregnancy. Second, the abortion opponent must also show that a pregnant woman is obligated to allow an unwanted fetus the use of her body until birth.

argue this point here. Some of the analysis of Boonin's arguments could be applied to the works by Kamm and McMahan since these authors use a similar style of argumentation.

³ Throughout the paper, when I refer to fetuses, I mean fetuses prior to the point at which they attain the capacity for consciousness, whenever that happens. The vast majority of abortions occur in the first trimester and early second trimester. There are no credible scientific claims of foetal consciousness prior to the end of the second trimester, a point after which very few abortions occur.

As I will argue, the philosophical debate about abortion runs into two stalemates that correspond to each of these necessary conditions. In each case, a stalemate ensues because philosophers participating in the debate are forced to rely on problematic intuitions generated by analogical arguments. This deadlock cannot be resolved because the use of argument by analogy in the abortion debate is faced with intractable problems.⁴

In Section One I describe the current state of the debate on the issue of foetal moral standing. Section Two outlines the largely unresolved philosophical discussion about a pregnant woman's obligations to her foetus. In Sections Three and Four, I examine the problems faced by analogical argument in the abortion debate. The concluding section gives a quick argument that the current situation favours the pro-choice position.

I. THE FOETUS

Don Marquis' oft-cited article 'Why Abortion is Immoral' argues that killing foetuses is wrong for the same reason it is wrong to kill one of us – an adult human.⁵ It is wrong to kill us because such a killing would deprive us of futures that contain many things that are valuable – relationships, experiences, projects. Marquis reasons that human foetuses have futures like ours, and that since abortion deprives foetuses of their valuable futures, abortion is wrong.

Marquis argues that his position on the wrongness of abortion is compelling because the position derives from a more general theory on the wrongness of killing. In order for such a theory to be successful, it must explain why killing is wrong in several difficult non-abortion cases. Marquis argues that his theory handles difficult cases well. For example, it is wrong to kill a depressed and suicidal teenager because killing would deprive the teenager of the future of value that lies ahead of him. It is wrong to kill newborn babies for the same reason.

David Boonin agrees that a satisfactory theory of the wrongness of killing must account for the wrongness of killing in difficult cases: infants, people who are suicidal, and people who are temporarily comatose. However, he attempts to rebut Marquis by providing an alternative explanation for the wrongness of killing in such cases that

does not imply the wrongness of killing foetuses.⁶ Boonin further argues that his alternative explanation is preferable to Marquis'.

Boonin argues that it is wrong to kill suicidal adolescents, neonates, and temporarily comatose people because they desire to continue to live, whereas it is not wrong to kill foetuses since they have no desires whatsoever. In order to handle the difficult cases, Boonin draws a key distinction between ideal desires and actual desires.⁷ What we actually desire may be different from what we ideally desire. Our ideal desires consist in what we would desire if our perception was not distorted by ignorance and incapacity.

Boonin gives the example of a hiker who chooses between two paths.⁸ One path is shorter and more scenic than the other. However, unbeknownst to the hiker, the short scenic path is full of landmines. The hiker's actual desire is to take the short scenic path, but we can attribute to the hiker an ideal desire to take the longer, less scenic path, since it is safer. According to Boonin, this distinction can be applied to the case of a depressed and suicidal adolescent, whom he names 'Hans'.⁹ It is wrong to kill Hans because we can attribute to him the ideal desire to continue living. If Hans's outlook was not distorted by depression, he would desire continued life. Similarly, we can attribute to infants the ideal desire to continue living because if an infant's capacity for understanding was more developed, he or she would want to remain alive.

The foetus, however, cannot be attributed an ideal desire to continue living because a foetus has no desires at all. Boonin argues that it is not meaningful to attribute desires to a non-desiring being.¹⁰ Newborn infants are different from foetuses in this respect. Infants desire various things: they desire to be fed, to be kept warm, to sleep, to be free of pain, and so on. To establish this distinction, Boonin draws an analogy with rocks:

There is no desire that a rock would have under more ideal circumstances, for example, because a rock does not have any desires to begin with. But it follows from this that a particular ideal desire can meaningfully be attributed only to someone who has at least some other actual desires. And since the preconscious fetus has no actual desires, it follows that it has no ideal desires either.¹¹

Boonin therefore develops a desire-based account of the wrongness of killing that can handle the difficult comatose, depressed, and infant cases, without having to concede that killing foetuses is wrong.

⁴ Others have argued that the philosophical debate about the ethics of abortion is unresolvable. For example, Susanne Gibson argues that foetal personhood is essentially contested and thus indeterminate (S. Gibson. *The Problem of Abortion: Essentially Contested Concepts and Moral Autonomy*. *Bioethics* 2004; 18: 221–233.) Bernard Gert argues that since impartial rational persons disagree whether foetuses are entitled to the protections of morality, the abortion debate is unresolvable (B. Gert. 2005. *Morality: Its Nature and Justification*. New York: Oxford University Press.)

⁵ D. Marquis. *Why Abortion is Immoral*. *J Philos* 1989; 86: 183–202.

⁶ Boonin, *op. cit.* note 1, p. 62.

⁷ *Ibid*: 70–79.

⁸ *Ibid*: 75.

⁹ *Ibid*: 70.

¹⁰ *Ibid*: 80.

¹¹ *Ibid*: 80.

In a recent article, Marquis disputes the claim that foetuses cannot meaningfully be attributed ideal desires to continue living. Marquis argues that Boonin's ideal desire account is actually parasitic upon his (Marquis') own future of value theory.¹² For instance, we are justified in attributing to the suicidal adolescent an ideal desire to continue living (rather than accepting his stated desire to end his life) because we make a judgement about his welfare. We judge that Hans would be better off staying alive because he has a future of value ahead of him, and it is on the basis of this welfare judgment that we attribute an ideal desire to him. If Hans's outlook was undistorted by depression, he would see how valuable his future is and thus he would desire continuing to live. Similarly, 'a preconscious foetus, were she rational and fully informed, would have (because she, like Hans, has a future of value) the desire to continue to exist'.¹³ Just as we can attribute hypothetical desires to depressed adolescents, we can equally attribute hypothetical desires to foetuses. Such attributions are ultimately dependent upon a judgment that each has a future of value.

There are two issues here. The first is the question of whether attributions of ideal desires are parasitic upon welfare judgments as Marquis contends. I think Marquis is convincing on this point. The welfare judgments appear to do all of the work in explaining why it would be wrong to kill Hans or the infant. Killing in such cases would be wrong because it would be bad for them. The further attribution of ideal desires seems unnecessary.

The second issue is where we run into the stalemate. We run into a stalemate when we ask whether it is meaningful to make welfare judgments about preconscious foetuses such that it would be bad for the foetus's well-being if it did not continue living. Marquis would argue that death would be bad for the foetus's well-being because being denied one's future is a terrible fate for anyone. Yet Boonin could still rebut Marquis' account by questioning whether a foetus can be an 'anyone' with a well-being – whether it can be bad for a preconscious foetus's own sake if it died.

To support their respective positions, each philosopher can reach for his preferred analogies. For Marquis, the foetus is like you or me. Foetuses have futures of value just like us. In contrast, Boonin compares preconscious foetuses to non-conscious entities like rocks. It is not meaningful to speak of a rock's well-being. We also do not tend to think it is bad for a carrot's own sake if we uproot it, such that the well-being of the carrot is something we must account for in our decision to eat a salad. Plants do not have an 'own sake' in the relevant sense. For that you need consciousness. Who is right? Is a

human foetus more like a plant (lacking consciousness), or like us adults (possessing a future like ours)?

The conflict cannot be resolved on the basis of these analogies because one's political views on the abortion debate are likely to determine which analogies seem appealing. The abortion opponent will view the foetus as like one of us, and will consider it obvious that a foetus has a well-being. The abortion rights advocate will be more inclined to see the preconscious foetus as akin to a non-conscious entity like a plant, or a part of the pregnant woman's body, like a liver. These analogies cannot resolve the conflict because each merely reflects the divide between the two camps, rather than having a consensus appeal.

II. A PREGNANT WOMAN'S OBLIGATIONS TO THE FOETUS

In her influential article 'A Defense of Abortion' Judith Jarvis Thomson asks us to imagine being kidnapped and rendered unconscious.¹⁴ Upon awakening you find that you are hooked up to an ailing violinist. Your body is being used to sustain his life. Detaching him means he will die. You are the only one who could save him. But he will only need to use your body for nine months to ensure his survival. You ask to be detached from the violinist, but are told that detaching the violinist would kill him, and it is wrong to kill someone with a right to life, so it cannot be done.

This answer, of course, is ridiculous. Most of us have the intuition that there is no obligation to remain attached to the violinist. This reaction implies that it is not always wrong to kill someone with a right to life. Thus, in order to show that abortion is wrong, one must establish that a foetus has a right to life, *and* that the foetus is entitled to use the pregnant woman's body against her will for its own survival – an entitlement that the ailing violinist does not have.

There have been numerous objections to Thomson's groundbreaking violinist argument. Many try to point out disanalogies between the two cases. One of the most enduring objections has been what is called the 'responsibility objection'. Mentioned even by Thomson herself,¹⁵ one major difference between the violinist scenario and the pregnancy scenario is that the person attached to the violinist is an unwilling kidnap victim, whereas a woman who gets pregnant as a result of voluntary intercourse has engaged in an action that could foreseeably result in the creation of an individual uniquely dependent upon her for survival. According to this objection, the kidnap victim's unwillingness absolves the victim of responsibility to

¹² D. Marquis. 2007. Abortion Revisited. In *The Oxford Handbook of Bioethics*. B. Steinbock, ed. New York: Oxford University Press: 412.

¹³ *Ibid*: 413.

¹⁴ J.J. Thomson. A Defense of Abortion. *Philos Public Aff* 1971; 1: 47–66.

¹⁵ *Ibid*: 57.

sustain the violinist's life, while a woman's voluntary participation in intercourse (when it *is* voluntary) makes her partly responsible for the creation of a foetus, which in turn makes her responsible for sustaining the foetus's life.

Mary Anne Warren¹⁶ argues that if one concedes that the foetus has a right to life, a woman's obligation to sustain the foetus's life derives from a general principle of moral conduct requiring the care of others rendered vulnerable by our own voluntary actions involving the foreseeable risk of exposing them to vulnerability.¹⁷ One illustration of this principle involves two people hunting together in an isolated area. The first hunter, seeing some movement in the bush, accidentally shoots the second. Because she was voluntarily engaging in an activity that had the foreseeable consequence of exposing the other hunter to a risk of harm, the first hunter is obligated to provide aid to the hunter she shot, even at considerable cost to herself.

Defenders of Thomson's argument contest the applicability of the principle behind the responsibility objection. It appears to agree with our intuitions about some cases, like the hunter example, but the principle might not apply in others. For example, when I cook with my wok I expose my tenant to a remote risk of a house fire. But am I obligated to run into the flames to save him if the house catches fire? Some would say that such an action is supererogatory. Clearly, the degree of risk posed by the initial action, and the degree of burden of saving the vulnerable person are relevant factors in determining responsibility in such cases. The question is whether the responsibility principle applies to pregnant women. David Boonin does not think it does.

Boonin makes a distinction between two types of responsibility.¹⁸ In the first sense of responsibility, you are responsible for the existence of the vulnerable individual, and thus are responsible for her vulnerability since you have created her. Engaging in intercourse that leads to pregnancy falls into this category. In the second sense of responsibility, you are responsible for the fact that someone needs your assistance, but not for the fact that the individual exists. The hunter example falls into this category. Boonin argues that one has an obligation to provide aid only in the second category of cases, which means that pregnant women do not have an obligation to sustain the lives of their foetuses.

To defend this position, Boonin provides a complicated series of analogies and objections inspired by the literature on Thomson's article. At the culmination of

this series, Boonin presents an analogical argument that he thinks is definitive evidence that voluntary intercourse does not make a woman responsible for gestating the resulting foetus. He entitles the analogy 'Hedonist'.

You are a hedonist who wishes to engage in a very pleasurable activity. The activity is such that if you engage in it, there is a chance that it will cause some gas to be released that will result in adding a few extra months of unconscious existence to the life of some already-comatose violinist in the world. As things now stand, this violinist has no more conscious life ahead of him. But if the gas is released, and if he does have a few extra months of unconscious life added as a result, it will then be possible for you to bring him out of his coma by giving him the use of your kidneys for nine months. There are certain devices that you can use during the pleasurable activity which reduce the chances of gas emission but do not eliminate them entirely, but you do not like the way the use of such devices 'makes you feel' when you engage in the pleasurable activity. So you engage in the pleasurable activity, and without such devices. As a (foreseeable, but not intended) result, some gas escapes, causing some extra unconscious time to be added to the life of an already comatose violinist, and making it possible for him to then be brought out of his coma if you remain plugged into him for nine months.¹⁹

This bizarre and convoluted analogy is supposed to show decisively that the responsibility objection can be refuted. The argument supposes that the 'Hedonist' example will generate the intuition that there is no moral requirement for the hedonist to allow the violinist the use of his or her body for nine months. Furthermore, the example has been constructed so that it matches, in all morally relevant respects, the case of becoming pregnant after voluntarily having unprotected intercourse. The analogical argument then concludes that since the hedonist bears no responsibility to sustain the life of the violinist, and since 'Hedonist' and the pregnancy scenario are alike in all morally relevant respects, there is no responsibility for a pregnant woman to sustain the life of a foetus.

'Hedonist' is such a complicated analogy because of Boonin's effort to construct the analogy so that it matches the morally relevant features of pregnancy after unprotected sex. The release of gas extends the life of the violinist, making the hedonist responsible for the violinist's existence (the first sense of responsibility above), rather than merely for his vulnerability (the second sense). The failure to use devices to inhibit gas release is supposed to match the failure to use contraception. The violinist's need to use the hedonist's kidneys mimics the foetus's use of the pregnant woman's body in gestation.

¹⁶ Though Warren was among the first to formulate the responsibility objection, she is not an opponent of abortion. She worries that Thomson's argument is not strong enough as a defense of abortion, and recommends the other strategy of arguing against the personhood of the fetus as a justification for abortion.

¹⁷ Warren, *op. cit.* note 1, p. 64.

¹⁸ Boonin, *op. cit.* note 1, pp. 168–172.

¹⁹ *Ibid.*: 186–187.

The science fiction oddness of the example is due to the difficulty of constructing a perfect detail-by-detail match to the pregnancy scenario.

For me, 'Hedonist' generates no strong intuitions. This failure to generate the desired intuitions could result from the fact that, in its baroque weirdness, the Hedonist example bears no resemblance to actual moral dilemmas. It also fails as a narrative. Unlike Thomson's violinist analogy, there is no drama or sense of injustice. Nonetheless, Boonin is confident in the strength of the intuitions it generates. He says that even 'the critic of abortion will be unwilling to insist that in the Hedonist case you are morally required to provide the violinist with the use of your body'.²⁰ For this reason, 'the responsibility objection . . . must ultimately be rejected on grounds that the critic of abortion already accepts'.²¹

However, critics of abortion are less than enthusiastic about Boonin's analogical argument. Celia Wolf-Devine and Phillip E. Devine criticize the use of elaborate arguments by analogy as generating 'a confusing morass of unanswerable questions' rather than reliable moral judgments, citing 'such examples as a pleasurable activity that releases a gas that prolongs the life of a comatose violinist'.²² Because of the uncertainty and confusion with which it is met, the Hedonist example does not have the decisiveness Boonin hopes for. Instead, it is likely to leave the abortion opponent with the sense that the responsibility objection can be vindicated.

Though Boonin's analogy is unimpressive, the responsibility objection is itself of uncertain force. It is by no means clear whether there is, or is not, an obligation in all cases to provide aid to the person made vulnerable in such scenarios. The responsibility objection points to a disanalogy between Thomson's violinist case and standard pregnancy scenarios, but there is lack of clarity about whether the difference indicated in the objection tracks anything morally meaningful that can be applied to the pregnancy case.

Again we have reached a stalemate. One's political position on the abortion issue is likely to determine what one thinks about the principle stipulated by the responsibility objection. Pro-life advocates are likely to think that it is obvious that a pregnant woman has an obligation to provide aid to a foetus created through her own voluntary actions. Defenders of abortion rights will doubt whether the principle is applicable to pregnant women. There is no consensus position on the

applicability of the responsibility objection, and no decisive refutation of it.

III. WHY THE STALEMATES CANNOT BE RESOLVED

I have described the state of the philosophical debate on abortion as reaching stalemate on two key questions. It is possible that with a display of creativity, some philosopher or other will be able to move these issues toward a resolution. However, there is reason to believe no such resolution is possible. The resort to analogical arguments meant to generate intuitions has become a necessary feature of the debate, and this style of argumentation faces many challenges (which I will outline) when applied to the abortion issue.

Analogical arguments and the analysis of cases are necessary features of the philosophical debate about abortion because, by its nature, the debate is marked by a conflict of *principles*. The pro-life side puts forward the principle that killing humans is wrong, while the pro-choice side enunciates the principle that autonomous choices ought to be respected. Since multiple conflicting principles apply, one must discuss limitations of principles, and their application to the case at hand. In such a discussion, one needs to examine how the general principles apply to particular cases. The move to a case-based analysis is a necessary tool when there is disagreement at the general level of principles.

A move from general principles down to particular cases is apparent in Thomson's violinist analogy. The analogy presents a limitation on the principle that persons must not be killed. If detaching yourself from the violinist means killing him, then a person may be killed when what the person requires for life is the long-term highly burdensome use of your body against your will. According to Thomson, this limitation of the principle opposing the killing of persons can be applied to the abortion issue. Philosophers thus are driven to the use of analogies because the abortion issue admits of no resolution through the application of principles.

When used in the abortion debate, arguments by analogy operate by suggesting that there is an unacknowledged consensus around the abortion issue. The arguments imply that the opposing camp in the debate already agrees with your position, but they just do not know it yet. To uncover this underlying agreement, analogical arguments present non-abortion examples that provoke a moral judgment (e.g. 'it is wrong to kill Hans') and then claim that the example is relevantly similar to the abortion situation. The arguments allege that there is a common ground of shared values that become apparent in our reaction to analogous cases. These value

²⁰ Ibid: 187.

²¹ Ibid: 188.

²² C. Wolf-Devine & P.E. Devine. 2009. Abortion: A Communitarian Pro-Life Perspective. In *Abortion: Three Perspectives*. M. Tooley, C. Wolf-Devine, P.E. Devine, & A.M. Jaggar, eds. New York: Oxford University Press: 70.

commitments on non-abortion issues are then supposed to commit our opponent to convert to our favoured position on abortion.

Participants on both sides in the philosophical debate over abortion endorse this strategy. For example, amongst the defenders of abortion, David Boonin states that ‘the moral case against abortion can be shown to be unsuccessful on terms that critics of abortion can, and already do, accept’.²³ Mary Anne Warren claims that ‘it is possible to show that, on the basis of intuitions which we may expect even the opponents of abortion to share, a fetus is not a person, and hence not the sort of entity to which it is proper to ascribe full moral rights’.²⁴

Amongst abortion opponents, Francis Beckwith argues that in the abortion debate ‘since there is a common ground of values, the question as to which position is correct rests on which one is best established by the facts and is consistent with our common values’.²⁵ Celia Wolf-Devine and Phillip E. Devine preface their account by saying that they will approach the issue ‘in terms of everyday morality’ and state that they ‘will often appeal, among other things, to the intuitions of the reader’.²⁶ These claims imply that we share our everyday morality, and that this common ground justifies a common opposition to abortion, even though we might, at the moment, support abortion rights.

There are three interrelated problems I see with this strategy of appealing to analogies and intuitions as an attempt to resolve the abortion issue.

Intuitions are revisable

The devotion people have to the pro-life and pro-choice causes has few rivals in its intensity. One’s position on abortion is often central and indispensable to one’s cultural identity. Opposition to abortion rights and evangelical Christianity tend to go together. Support for abortion rights usually goes together with being a feminist. Since a person’s views on abortion are often anchored to identity in this way, a change of position could mean identity crisis, which makes it very difficult to change the mind of an interlocutor once his or her commitments are well established.

Identity formation likely happens in various ways. For example, one might become a feminist because one feels a certain way about the right to bodily integrity.²⁷ Our identities can form on the basis of our beliefs, rather than the other way around. Nonetheless, we arrive at the

sophisticated philosophical discussion of the abortion issue with our identities already in place, however these identities initially developed. The overwhelming need to preserve the identities that inform our ethical judgments serves as a roadblock to the creation of consensus on the abortion issue.

The use of analogical arguments involves the provocation of intuitions about an analogous case – e.g. Thomson’s violinist. It is widely acknowledged, however, that intuitions are not, and should not be, fixed points in our moral reasoning. The method of reflective equilibrium in ethics requires that we seek coherence among our pre-theoretical intuitions, the principles we subscribe to, more general ethical theories we find satisfying, and matters of empirical fact that have a bearing on the issue. This coherentist requirement means that intuitions ought to be treated critically and discarded if they get in the way of an otherwise coherent set of principles, theories, other intuitions, and facts.

Since intuitions can be revised, those presented with analogies that are troubling to their cause always have a way out. There are at least two options when such analogies are presented: either (a) you agree with your interlocutor and change your views on abortion to bring them in line with your judgment about the analogous case, or (b) you resist the intuition and seek coherence in some other way. Because peoples’ views on abortion are so zealously defended, there is usually an overwhelming motive to reject the intuition rather than change one’s views on abortion.

Consider an example. Francis Beckwith presents an analogy involving a character he names Uncle Jed, who is in a temporary coma.²⁸ The coma has destroyed all of Uncle Jed’s memories, abilities and cognitive capacities so that when he awakens, he will have to re-learn everything and he will not remember any of his previous life. Beckwith theorizes that Uncle Jed is similar to the pre-conscious foetus in relevant respects, and believes that we will have the intuition that it is wrong to kill Uncle Jed while in the temporarily comatose state. Then the argument proceeds: if it is wrong to kill Uncle Jed, and Uncle Jed is relevantly similar to foetuses, then it is also wrong to kill foetuses.

Presented with such a scenario, an interlocutor from the pro-choice camp will have great incentive to resist the intuition that it is wrong to kill Uncle Jed. When Boonin considers an Uncle-Jed-like scenario involving ‘a temporarily comatose adult [who] has had the entire contents of his brain destroyed so that there is no more information contained in his brain than is contained in that of the

²³ Boonin, *op. cit.* note 1, p. 2.

²⁴ Warren, *op. cit.* note 1, p. 59.

²⁵ F.J. Beckwith. 1993. *Politically Correct Death: Answering the Arguments for Abortion Rights*. Grand Rapids, MI: Baker Books: 28.

²⁶ Wolf-Devine & Devine, *op. cit.* note 22, p. 73.

²⁷ I thank one of my reviewers for making this point.

²⁸ F.J. Beckwith. 2007. *Defending Life: A Moral and Legal Case Against Abortion Choice*. New York: Cambridge University Press: 134–136.

preconscious foetus',²⁹ he resists the intuition that killing this person is wrong. Boonin says 'we cannot assume ahead of time that killing such individuals is seriously immoral'.³⁰ Because intuitions are never decisive determinants of moral reasoning, this reaction is entirely legitimate if one's ethical commitments can be brought into coherence.³¹

Intuitions can usually be revised. Because our views on abortion are often non-negotiable aspects of our cultural or ideological identities, there is a huge impetus to revise intuitions that might be at odds with our position on abortion, rather than revise our views on abortion themselves. Thus, because of the interference of our ideological commitments, arguments using analogies designed to provoke such revisable intuitions will be largely ineffective in resolving the philosophical debate about abortion.

One's position on abortion influences judgments about other issues

Arguments by analogy in the abortion debate are an effort to bring your opponent's views on abortion into line with his or her other values. The interlocutor's position on abortion is seen as an outlier to the main group of moral judgments revealed in the interlocutor's reactions to the analogous cases.

However, in the formation of our political and moral beliefs, influence frequently runs in the opposite direction. Moral judgments on issues tangential to the abortion debate are often re-arranged so that they can be brought into line with one's position on abortion. The recent change of doctrine in the Catholic Church with respect to ethical issues in end-of-life care is an example of this phenomenon. In 2004 Pope John Paul II departed from longstanding doctrine and declared that artificial feeding and hydration for patients in a persistent vegetative state (PVS) were now considered 'ordinary' and 'morally obligatory' treatment.³² As recently as 1980 such treatment was considered extraordinary and optional if its burdens were disproportionate to its benefits.³³

The influence of the abortion issue appears to be an impetus for the change. John Paul II justifies his declaration by saying that 'no evaluation of costs can outweigh the value of the fundamental good we are trying to

protect, that of human life'.³⁴ The change in policy appears to be a move from a consequentialist position on the use of feeding tubes for PVS patients to a deontological position that mirrors the Church's position on issues at the beginning of life.³⁵ This new position echoes President George W. Bush's defence of a 'culture of life' in which it is understood that abortion and end-of-life issues go together.

Another example of the influence of the abortion issue on other ethical questions is the opposition by pro-choice groups to the introduction of foetal homicide legislation that would treat the foetus *in utero* as an independent victim in acts of violence against pregnant women. Even if such laws totally exempt abortion, pro-choice organizations generally oppose them because the laws are usually viewed as an attempt to create precedents for the legal recognition of the rights of foetuses.³⁶ Pro-choice groups have nothing against the protection of foetuses that women wish to bring to term, but the influence of the abortion issue is so strong that they are compelled to oppose such laws in fear of their legal implications.

If views on issues outside of the abortion debate are often brought into line with one's views on abortion, then it will be difficult to bring an interlocutor's views on abortion into line with intuitions generated by analogies. The interlocutor's position on abortion may not be an outlier. Instead, her other moral judgments may be orbiting the fixed point of her position on abortion. If so, when presented with a compelling analogy, the interlocutor is more likely to rein in her other moral judgments rather than alter her views on abortion.

Arguments by analogy rely on an assumption of the commensurability of moral worldviews. But this assumption might be overly confident. The abortion debate occurs against a background of profound political differences. Liberal and conservative opinions diverge on a number of disparate topics. The so-called 'culture wars' are fought on multiple fronts. Though it would be difficult to identify the abortion issue as the catalyst for this difference in moral worldviews, the influence of the abortion debate is often present in unexpected places.³⁷

²⁹ Boonin, *op. cit.* note 1, p. 78.

³⁰ *Ibid.*: 78.

³¹ I would argue that Boonin's reaction to this case is consistent with his commitments.

³² See John Paul II. 2004. Care for Patients in a 'Permanent' Vegetative State. Available at: http://www.vatican.va/holy_father/john_paul_ii/speeches/2004/march/documents/hf_jp-ii_spe_20040320_congress-fiamc_en.html [Accessed 14 May 2009].

³³ T.A. Shannon & J.J. Walter. Implications of the Papal Allocution on Feeding Tubes. *Hastings Cent Rep* 2004; 34(4): 18–19.

³⁴ John Paul II, *op. cit.* note 32.

³⁵ Shannon & Walter, *op. cit.* note 33, pp. 18–19. Of course, I do not mean to imply that all deontologists think alike about this issue. Some deontologists may contest whether there is a duty to 'protect' human life in the abstract when faced with an extremity of suffering. The Church assumes there is such a duty. The deontological flavour of this position derives from a newly conceived unwillingness to make exceptions to this supposed duty based on the consequences of enforcing the use of feeding tubes (i.e. prolonging suffering).

³⁶ See Abortion Rights Coalition of Canada. 2008. Talking Points Against the 'Unborn Victims of Crime Act'. Available at: <http://www.arcc-cdac.ca/action/unborn-victims-act.htm> [Accessed 14 May 2009].

³⁷ For example, witness the anti-drug ad presented during the 2002 Super Bowl that attempted to link drug-use and support for terrorism.

The extent of shared values is overstated

The use of analogical arguments, as I have argued, depends on the existence of a pool of shared values that can be drawn upon in analogies to forge a consensus. However, both sides in the philosophical debate about abortion use the same strategy, drawing on the same pool of supposedly shared values, yet the two camps arrive at opposite conclusions. If there was a consistent pool of shared values that could be accessed through the use of analogies, one would expect that the shared values would point in a single determinate direction. But as the two stalemates demonstrate, the use of analogical argument usually results in ambiguity and disagreement instead of in a clear resolution to the debate.

It may be the case that people with different commitments on the abortion issue react differently to the analogous cases that philosophers present, which would suggest that the extent of common ground is overstated. Since common ground is essential for the functioning of these arguments, its absence would be a barrier to resolving the debate.

IV. ANOTHER POSSIBLE STANDARD OF SUCCESS

So far I have been assuming that the success of analogical arguments in the abortion debate depends on whether they are met with agreement by one's opponent in the debate. But perhaps this standard is unrealistic. After all, one's opponent may be irrational or stubborn such that it is useless to appeal to her sense of consistency by using an argument by analogy.

Rather than requiring that the argument actually change people's minds about abortion, perhaps a normative standard of success is more realistic. According to such a standard, an argument by analogy in the abortion debate is successful insofar as an interlocutor *ought to* take up the argument's conclusion, rather than making success contingent upon the interlocutor *actually* taking up the conclusion. One's opponent may resist intuitions, or reject the conclusion, but nonetheless if the argument

In the ad, actors portraying drug users make admissions of complicity in terrorist violence – 'I helped a bomber get a fake passport' – or give lame justifications for drug use – 'I was just having fun'. Near the end of the commercial, one actor offers the justification 'my life, my body'. At least one media commentator has pointed out that this justification is 'reminiscent of what a woman might say in defense of her right to an abortion, which hints at a larger conservative agenda' (C. Tennis. 2002. Let the Anti-Drug Ads Continue. *Salon.com* 12 February. Available at: http://dir.salon.com/story/news/feature/2002/02/12/anti_drug_ads/index.html, [Accessed 13 May 2009].) The ads were created by the Bush White House's Office of National Drug Control Policy. The ad is a clear attempt to draw links between illegal drug use, support for terrorism, and abortion.

is good, the argument will show that she ought to change her position. Though someone might fail to be persuaded by an argument, the argument might nonetheless be sound.

The problem, however, is that there is no way to assess the soundness of an argument by analogy independently of your interlocutor's intuitive response to the analogy. If the interlocutor does not have the desired intuitive response (for example to the Hedonist analogy) then there are no grounds for the claim that she ought to accept the conclusion. Furthermore, as I have argued, revising one's intuitive response is also a legitimate strategy for resisting a conclusion.

A standard of consistency offers the most promising criterion for determining whether an interlocutor ought to adopt a conclusion. If an interlocutor's position on abortion is in fact an outlier when compared to her obvious commitments with respect to other issues, then we could judge that she ought to accept the argument by analogy and change her position on abortion. Otherwise, she is being inconsistent. The use of such a standard might require a long conversation between arguer and interlocutor, and a wide canvassing of the interlocutor's views on issues outside of the abortion debate.

Though this consistency standard could point the way toward a resolution of many ethical issues, there is a problem with applying it to the abortion debate. If the use of this consistency criterion is supposed to resolve the two stalemates, then members of one or the other camps in the abortion debate must tend to have inconsistent moral worldviews. In order to judge (because of a person's inconsistent value commitments) that she ought to accept an argument by analogy that would change her position on abortion, there must actually be inconsistent value commitments to exploit. But as I have argued, there is a strong likelihood that the existence of these inconsistencies is over-stated. Inconsistencies in a moral worldview become less likely if people alter their value commitments in other areas of their moral lives so that their commitments are brought into line with their views on abortion, which I argue is a common phenomenon. It is possible to have a comprehensive and consistent moral worldview that includes *either* support for abortion rights, *or* opposition to abortion rights. In such a situation of equal consistency, there will be few inconsistent commitments to act as indicators that an interlocutor ought to change her position on abortion.

V. CONCLUSION: THE WAY FORWARD

As I mentioned earlier, I am pro-choice, and it is worrisome that some of the best pro-choice arguments fall flat. But being pro-choice does not conflict with recognizing the current stalemate in the debate. However, there is still

good reason to be pro-choice. Political considerations support abortion rights in a liberal society when there is no conclusive reason to believe that the foetus has a right to life, and no conclusive reason supporting an obligation for a pregnant woman to allow the foetus the use of her body against her will for the period of gestation. The stalemates favour the pro-choice position. Other authors have argued for this claim in greater detail than I can here. In particular, I recommend an article by Judith Jarvis Thomson published in 1995.³⁸ In the 1995 article, Thomson argues that

One side says that the fetus has a right to life from the moment of conception, the other side denies this . . . Why break the symmetry by letting the deniers win instead of the supporters? . . . What the supporters want is a license to impose force; what the deniers want is a license to be free of it. It is the former that needs justification.³⁹

And as we have seen, supporters of foetal rights have not supplied the required justification.

In my opinion, Thomson's political argument is the most effective kind of argument we have in favour of abortion rights. Since the metaphysical questions and the

³⁸ J.J. Thomson. Abortion. *Boston Review* 1995; 20(3). Available at: bostonreview.net/BR20.3/Thomson.html [Accessed 14 May 2009]. See also P. Alward. Ignorance, Indeterminacy, and Abortion Policy. *J Value Inq* 2007; 41: 183–200; and R. Dworkin. 1993. *Life's Dominion: An Argument about Abortion, Euthanasia, and Individual Freedom*. New York: Vintage Books.

³⁹ Thomson, *op. cit.* note 38.

ethical questions are filled with uncertainty, the political resolution of the abortion issue must treat the issue as a matter of personal conscience. The moral standing and entitlements of the foetus have not been, and likely will not be, resolved. Without such a resolution, views of the foetus that support opposition to abortion are simply a matter of personal belief that cannot justifiably override the liberties of others. Since liberal societies protect freedom of conscience and religion, women must be free to terminate unwanted pregnancies.

Of course, for opponents of abortion, this political resolution is not a resolution at all. Abortion opponents will continue to argue that abortion is murder. But in the face of the stalemates I have outlined, to insist that the law should reflect one's own (inconclusive) view of the foetus, is to reject *liberalism*. Some abortion opponents may indeed be inclined to reject liberalism, but they should be clear about what political philosophy they are espousing – one that subordinates all other values to their own partial (often religious) moral worldview.

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