

DIRECTING THE ABORTION DEBATE

by

Emily Bingeman

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DALHOUSIE UNIVERSITY
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This thesis is dedicated to my Mother, who has always encouraged me to pursue anything I wanted.

TABLE OF CONTENTS

ABSTRACT	x
LIST OF FIGURES	xi
LIST OF ABBREVIATIONS AND SYMBOLS USED	xii
ACKNOWLEDGMENTS	xiii
CHAPTER 1: INTRODUCTION	1
1.1 Introduction To The Problem	1
1.2 General Characterization Of The Debate	1
1.3 Characterization Of The Pro-Choice And Pro-Life Positions	3
1.4 Characterization Of The Position Of The Pro-Choicer's Opponents & My Use Of The Word "Pro-Life"	4
1.5 What Are The Arguments That The Proponents Of The Pro-Choice Position And Their Opponents Are Making?	7
1.6 Outline	11
CHAPTER 2: REASONABLE DISAGREEMENT OVER PERSONHOOD AND THE RIGHT TO LIFE OF THE FETUS	12
2.1 Standard Of Reasonable Disagreement	12
2.2 Preliminaries	12
2.21 Structural Symmetries	13
2.3 Arguments For Personhood And The Right To Life Of The Fetus	14
2.31 The Sanctity Of Human Life Argument	14
2.31.1 The Argument	14

2.31.2 Justification	14
2.31.3 The Separation Of Church And State Objection	16
2.31.4 Boonin’s Criticism	17
2.32 Don Marquis’ Future Like Ours Argument	20
2.32.1 The Argument	20
2.32.2 Justification	20
2.32.3 Assessment Of Marquis’ Principle Under Criterion #1	21
2.32.4 Assessment Of Marquis’ Principle Under Criterion #2	21
2.32.5 Objection #1	23
2.32.6 Objection #2	23
2.32.7 Objection #3	23
2.4 Arguments Against Personhood And The Right To Life Of The Fetus	24
2.41 Mary Anne Warren’s Universal Concept Argument	24
2.41.1 The Argument	24
2.41.2 Justification	24
2.42.3 Objections	26
2.42 Michael Tooley’s Desire Argument	27
2.42.1 The Argument	27
2.42.2 Justification	28
2.42.3 Argument For K2	29
2.42.4 Argument For K4	29
2.42.5 Critique Of K2	30
2.42.6 Critique Of K4	30

2.43 David Boonin's Present Ideal Dispositional Desire Argument	32
2.43.1 The Argument	32
2.43.2 Justification	32
2.43.3 Boonin's Interpretation Of Marquis' Principle	32
2.43.4 Boonin's Reformulation Of Marquis' Principle	33
2.43.5 Argument For The Superiority Of Boonin's Principle	35
2.43.6 Objection To Boonin's Interpretation And Reformulation	38
2.43.7 Objection To Boonin's Claim Of Superiority	41
2.43.8 Objection To L2	43
2.43.9 Objections To Marquis	44
2.5 Summary	45
CHAPTER 3: REASONABLE DISAGREEMENT OVER THE MORALITY OF KILLING THE FETUS	46
3.1 Preliminaries	46
3.11 Thomson's Method	46
3.12 My Method	47
3.2 The Arguments	48
3.21 Argument #1: The Conflicting Rights Argument	48
3.21.1 The Argument	48
3.21.2 Plausibility Of Q1	48
3.21.3 Refutation Story #1	49
3.21.4 Success As A Counterexample	50
3.21.5 Success As An Analogy	50

3.22 Argument #2: “The Extreme View”: Abortion As Direct Killing	53
3.22.1 The Argument	54
3.22.2 Plausibility Of R1	54
3.22.3 Refutation Story #2	54
3.22.4 Success As A Counterexample	54
3.22.5 Success As An Analogy	55
3.23 Argument #3: “The Extreme View”: Self-Administered Abortion	56
3.23.1 The Argument	56
3.23.2 Plausibility Of S1	56
3.23.3 Refutation Story #3	57
3.23.4 Success As A Counterexample	57
3.23.5 Success As An Analogy	58
3.24 Argument #4: “The Extreme View”: Third Party Intervention	59
3.24.1 The Argument	59
3.24.2 Plausibility Of T1	59
3.24.3 Refutation Story #4	60
3.24.4 Success As A Counterexample	60
3.24.5 Success As An Analogy	61
3.25 Argument #5: The Responsibility Argument	62
3.25.1 The Argument	62
3.25.2 Plausibility Of X5	63
3.25.3 Plausibility Of X1	63
3.25.4 Refutation Story #5.1	63

3.25.5 Refutation Story #5.2	64
3.25.6 Refutation Story #5.3	64
3.25.7 Success Of RS #5.1 & 5.3 As Counterexamples	64
3.25.8 Success Of RS #5.1 & 5.3 As Analogies	65
3.25.9 Success Of RS #5.2 As A Counterexample	66
3.25.10 Success Of RS #5.2 As An Analogy	67
3.25.11 An Alternative Characterization	67
3.3 Summary	68
CHAPTER 4: APPEALING TO PRO-LIFERS ON THEIR OWN TERMS	70
4.1 Assumption #1	70
4.2 Assumption #2	72
4.3 Focusing On The Legal Question	73
CHAPTER 5: CONCLUSION	77
BIBLIOGRAPHY	79

ABSTRACT

Arguments in the debate over abortion can, for the most part, be categorized as aiming to provide an answer to one of two questions: “Is abortion Immoral?”, and “Should abortion be legal?” I will argue that those wishing to make arguments in support of the Pro-Choice position ought to focus on providing an answer to the legal question rather than the moral one. I will argue for two claims in support of this thesis, first, that the current state of the debate over the answer to the moral question is one of reasonable disagreement; second, if we accept David Boonin’s methodology of appealing to one’s opponent on terms that she is likely to accept, then it makes sense for the Pro-Choicer to focus on answering the legal question.

LIST OF FIGURES

Figure 1: Chart Of Possible Positions On Abortion	3
Figure 2: Chart Of Pro-Life And Pro-Choice Positions	4
Figure 3: Chart Of My Use Of The Word Pro-Life	7
Figure 4: Chart Of Possible Routes To The Pro-Choice Position	74

LIST OF ABBREVIATIONS AND SYMBOLS USED

~: “not” or “it’s not the case that”

→: “implies” or “only if”

v: “or”

IL: Abortion to be illegal

IM: Abortion is immoral

FP: The fetus is a person

RL: The fetus has a right to life

VR: Abortion violates the fetus’s right to life

UK: Abortion unjustly kills the fetus.

CA: Controversial Assumption

SA: Shared Assumption

CVA: Conclusion of a Valid Argument

X, P or Q: some individual

y: some property sufficient for personhood/the right to life

z: some property necessary for personhood/the right to life

M: anything that can be desired/accessed

C: some event

N: some action

F: a future of experiences, projects and activities.

FV: a future of valuable experiences, projects and activities

t_2 : a point in time in the future

t_1 : a point in time now

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CHAPTER 1: INTRODUCTION

1.1 Introduction To The Problem

Arguments in the debate over abortion can, for the most part, be categorized as aiming to provide an answer to one of two questions: “Is abortion Immoral?”, and “Should abortion be legal?” I will argue that those wishing to make arguments in support of the Pro-Choice position ought to focus on providing an answer to the legal question rather than the moral one. I will argue for two claims in support of this thesis, first, that the current state of the debate over the answer to the moral question is one of reasonable disagreement; second, if we accept David Boonin’s methodology of appealing to one’s opponent on terms that she is likely to accept, then it makes sense for the Pro-Choicer to focus on answering the legal question.

1.2 General Characterization Of The Debate

Before making any arguments for these claims it will be necessary to give a characterization of the debate over abortion, identifying the positions and arguments at play in the debate.

It will be helpful to first give broad characterizations of possible positions. If someone believes that abortion is immoral, I will say she holds “moral position A”. If some believes that abortion is not immoral, I will say she holds “moral position B”. If someone believes that abortion ought to be illegal, I will say that she holds “political

position A”.¹ If someone believes that abortion ought to be legal, I will say she holds “political position B”.

It is important to note that many people do not have such extremely polarized views on abortion. For instance, some people who believe that abortion is generally morally wrong will make exceptions for pregnancies resulting from rape or incest. Similarly, some people who think that abortion should be legal in most cases will make exceptions for women who are in their third trimester or for women who are seeking an abortion for reasons of sex selection. I am going to consider people who make such exceptions to hold the position that they believe the majority of cases of abortion to fall into.² So, for example, in the former case the person would be said to hold moral position A; and in the latter case, the person would be said to hold legal position B.

I should be able to ascribe to any individual person, for the most part, one of the two moral positions, and one of the two political positions.³ This makes four possible combinations of positions as illustrated in Figure 1 below:

¹ I choose to call this a ‘political’ position and not a ‘legal’ position because I think the word political better represents what is at stake. A legal position could be about what course of action is required given the laws that we have now, whereas a political position is about what sorts of laws there ought to be, given that the state is functioning properly.

² In practice this might be quite difficult to determine. For example, we know that for various reasons the majority of rape victims do not report the crimes committed against them. This and other similar problems would likely come up when collecting data on reasons for abortion. Since abortion is itself such a stigmatized act, it may be difficult for women to be honest about the reason for which they are seeking an abortion, whatever that reason may be. For example, if I think abortion is immoral except in cases of rape, incest, or pregnancy in girls under the age of 18, the statistics might report that these cases make up only 10% of women seeking abortions, and so I would say that I take moral position B. In reality it may be that these cases make up 70% of the total, which would mean that I should take moral position A. However, I believe it is necessary to simplify the positions on abortion in this way in order to be able to explore the issues surrounding abortion on the general level that I aim to talk about them.

³ In relation to the note above, there will of course be people whose views do not classify into either category very well. It is conceivable that someone could think that half of all abortions are morally permissible and that half of them are morally impermissible. However, I am going to assume in this thesis that in the majority of cases people tend to have an opinion about the majority of abortions even though they may make exceptions for certain ones.

Figure 1: Chart of Possible Positions On Abortion

	MORAL POSITION A: Abortion is immoral.	MORAL POSITION B: Abortion is not immoral.
POLITICAL POSITION A: Abortion ought to be illegal.	POSITION AA	POSITION BA
POLITICAL POSITION B: Abortion ought not be illegal.	POSITION AB	POSITION BB

1.3 Characterization Of The Pro-Choice And Pro-Life Positions⁴

A simple statement of the Pro-Choice position would be “A woman ought to be able to choose for herself whether or not to have an abortion.” This idea can also be expressed by the following proposition:⁵

~IL: Abortion ought not be illegal.

This statement of the Pro-Choice position casts it as what I would call an “essentially” political position. By this I mean a position whose central tenet is political. In other words, someone who held the particular political position held by the Pro-Choicers would




⁴ The term “Pro-Life” is a problematic. Identifying people that oppose legal abortion as “Pro-Life” implies that people who support legal abortion are “Anti-Life”. Similarly, identifying people that support legal access to abortion as “Pro-Choice” implies that people who oppose legal abortion are “Anti-Choice”. None of these terms captures the complexity of the positions at play in the debate over abortion accurately. It would perhaps make sense to identify the positions in question as “Pro-Legal-Abortion” and “Anti-Legal-Abortion” and avoid these politically and emotionally charged terms all together. While I acknowledge the problematic nature of these terms, I have chosen to use these terms to describe positions on abortion in this thesis. I did this because I wanted to be conscious of representing the supporters and opponents of legal abortion in a way that these people would represent themselves. This is important to me because I do not want the reader of this thesis, whether they be pro-legal-abortion or anti-legal-abortion, to have to accept an analysis of the ways these terms are being used in order to get to the arguments made in this thesis. I have attempted to address the problematic nature of these terms to some degree by being very clear about how I am using them in the analysis below.

⁵ A critic might argue that making abortion legal does not ensure that a woman has a real choice to have an abortion. She must also have access to safe facilities, be free from persecution and/or violence should she choose to have an abortion, etc. I agree that a real choice requires all of these things, but will be limiting myself to this one aspect of having a choice here.

be categorized in that group regardless of her moral beliefs about abortion. I do not think this is a controversial characterization of the Pro-Choice position. In terms of Figure 1 an essentially political position has a fixed political position (in this case political position “B”) that can be accompanied by either of the moral positions. This means that the Pro-Choice position encompasses both Positions AB and BB as illustrated in Figure 2 below.

It is a little bit more difficult to characterize the Pro-Life position in the terms of our chart. This difficulty is due to the fact that the Pro-Life position is variously understood as an essentially political position (Pro-Life Position #1 below) and as an essentially moral position (Pro-Life Position #2 below). I believe that both characterizations represent ways in which the Pro-Life position is actually understood by both its proponents and its opponents.

Figure 2: Chart Of Pro-Life And Pro-Choice Positions

	MORAL POSITION A: Abortion is immoral.	MORAL POSITION B: Abortion is not immoral.	
POLITICAL POSITION A: Abortion ought to be illegal.	POSITION AA	POSITION BA	 Pro-Choice Position
POLITICAL POSITION B: Abortion ought not be illegal.	POSITION AB	POSITION BB	 Pro-Life Position #1
			 Pro-Life Position #2

1.4 Characterization Of The Position Of The Pro-Choicer’s Opponents & My Use of The Word “Pro-Life”

My purpose in this thesis is to provide a focus for those wishing to make Pro-Choice arguments. I am, therefore, interested in a characterization of the Pro-Life position only insofar as it would help me to understand the position that opposes the Pro-Choice position. Many people would automatically have an idea of the Pro-Life and Pro-Choice

positions as being diametrically opposed. But if my dual characterization of the Pro-Life position is accurate, this would not be the case. Not all of those holding Pro-Life position #2 can be identified as the opponents of Pro-Choicers since a segment of those holding this position, namely those that hold position AB, are actually included in the Pro-Choice position as I have defined it, and therefore these cannot be meaningfully opposed to the Pro-Choice position.

It would seem right to say that anyone who argued for the negation of the Pro-Choicer's main proposition, \sim IL (IL: Abortion ought to be illegal), would be considered an opponent of the Pro-Choicer and that therefore the opponents of the Pro-Choicer could be identified as those holding Pro-Life position #1. However, I do not wish to identify the opponents of Pro-Choicers with those who hold Pro-Life position #1. I do not wish to do this because a segment of Pro-Life position #1, namely those who hold Position BA, hold a position that I believe to not be either very prevalent or to represent a very serious a threat to Pro-Choicers. Someone who holds position BA holds that there is a justification for a legal prohibition of abortion that does not involve claims to the effect of the immorality of abortion itself at all. Some examples of this sort of justification would be: performing abortions takes time away from life-saving surgeries, abortion is physically and/or psychologically damaging to women; allowing abortion promotes a relaxed attitude towards killing and contributes to a higher murder rate. These arguments are difficult to support, for a couple of different reasons. First, there is not enough evidence to support these claims. Second, even if there were evidence to support them, it is doubtful that they could be seen as providing sufficient reason to outweigh a pregnant woman's right to control her own body.

I have now eliminated Positions AB and BA from consideration as opponents of the Pro-Choicer, and I am therefore left with the intersection of the Pro-Life Position #1 and Pro-Life Position #2: Position AA. The most basic structure of the arguments made for position AA would be as follows:

IM (Abortion is immoral) → IL (Abortion ought to be illegal)

Within this basic structure I can further identify two types of arguments, namely, rights-based and non-rights-based. Rights-based arguments always include the premise that the fetus has a right to life.⁶ Non-rights-based arguments do not include this premise. I will therefore further subdivide position AA into Positions AA#1: (rights-based) and AA#2: (non-rights-based). I believe that rights-based Pro-Life arguments are the most common and the most threatening arguments that Pro-Choicers have to deal with. I think there are two clear reasons for this: 1) The Pro-Choice position is about what ought to be legal with regards to abortion; there is a direct and established connection between human rights and law. 2) Asking for the legal prohibition of abortion amounts to asking for a significant restriction of a pregnant woman's right to control her own body. It is difficult to justify outweighing this right without appealing to something as weighty as the supposed rights of the fetus. I am not saying that it is impossible to make non-rights-based arguments against abortion, only that it is difficult in principle and that I have not seen it done with much force.⁷

⁶ When it is argued that the fetus has a right to life, it is usually explicitly or tacitly understood to mean "a right to life on par with the right to life of a paradigm person." This is the way I will use the term 'right to life' in this thesis.

⁷ I acknowledge that I have likely not provided an adequate defense of my claims about the prevalence, or potential threat to Pro-Choicers, of Positions BA and AA#2. If some readers disagree with me on this point, then they should look at my thesis as specifically dealing with rights-based Pro-Life arguments. The force of this thesis will then be diminished for such readers since they will not be convinced that I am addressing the debate on as large a scale as I purport to be. But I hope that these readers will still find this an informative treatise on the particular topic of defeating rights-based Pro-Life arguments.

By the process of elimination then, I can now identify the opponents of the Pro-Choicers as anyone who holds Position AA#1. I think it is appropriate to call Position AA#1 a “Pro-Life” position since under either conception of Pro-Life, above, proponents of Position AA#1 are Pro-Lifers. Therefore, from now on when I use the word ‘Pro-Life’ in this thesis, unless otherwise specified, I will be referring only to proponents of Position AA#1. The position of the opponents of the Pro-Choicers and my use of Pro-Life can be represented as in Figure 3 below:

Figure 3: Chart Of My Use of the Word Pro-Life

	MORAL POSITION A: Abortion is immoral.	MORAL POSITION B: Abortion is not immoral.	
POLITICAL POSITION A: Abortion ought to be illegal.	<div style="border: 1px solid black; padding: 5px; display: inline-block;"> POSITION AA <div style="border: 1px solid black; padding: 2px; display: inline-block; margin: 2px;"> POSITION AA#1 </div> <div style="border: 1px solid black; padding: 2px; display: inline-block; margin: 2px;"> POSITION AA#2 </div> </div>	POSITION BA	<div style="border: 1px solid black; width: 40px; height: 20px; margin: 0 auto;"></div> Opponents of the Pro-Chooser
POLITICAL POSITION B: Abortion ought not be illegal.	POSITION AB	POSITION BB	

1.5 What Are The Arguments That The Proponents Of The Pro-Choice Position And Their Opponents Are Making?

In order to get an idea of what an argument in support of ~IL (Abortion ought not be illegal) should look like, I must first get an idea of what arguments for IL (Abortion ought to be illegal) look like. Though I have significantly narrowed down the scope of Pro-Life arguments under consideration, Position AA#1 is still very vaguely defined.

All rights based arguments contain the premise that abortion violates the fetus’s right to life. For this reason a rights-based argument must first begin with either the

assertion that the fetus is a person⁸ (and therefore has a right to life), or the assertion that the fetus has a right to life:

Pro-Life Argument Part 1:

(FP) The fetus is a person. (controversial assumption)

(FP → RL) If the fetus is a person, then the fetus has a right to life. (shared assumption)

(RL) Therefore, the fetus has a right to life.

Or:

(RL) The fetus has a right to life. (controversial assumption)

If the Pro-Lifer takes the first approach then she must be able to justify the premise that the fetus is a person. If the Pro-Lifer takes the second approach, then she must justify the premise that the fetus has a right to life. Once the Pro-Lifer has established either the personhood or the right to life of the fetus she can go on to make the following argument:

Pro-Life Argument Part 2:

(UK): Abortion unjustly kills the fetus. (controversial assumption)

(UK → VR): If abortion unjustly kills the fetus, then abortion violates the fetus's right to life. (shared assumption)

(VR → IL): If abortion violates the fetus's right to life, then abortion ought to be illegal. (shared assumption)

(IL): Therefore, abortion ought to be illegal.

Premise (UK) is obviously controversial, and an argument must be given in order to justify it. (UK → VR) is uncontroversial if it's taken to be true that the fetus has a right to life. This means that Part 2 of the argument cannot be made independently of Part 1.

⁸ The term person is ambiguous: Sometimes "person" gets used synonymously with the terms "human being" or "member of the human species". Sometimes the word "person" gets used in a normative sense. What exactly it means to state that something is a person in this sense is one of the matters up for debate in this chapter, but at the very least being a person in this sense implies having a right to life. In order to keep these two concepts distinct, when I want to refer to this first sense of person I will say "human being". I will only use the word "person" to refer to the second sense of person discussed above.

(VR \rightarrow IL) is again fairly uncontroversial. Our laws protect every individual's right to life, and if the right to life is being violated, it is appropriate that there be a law to prevent further such violations. A simplified version of the argument considering only the controversial premises would be the following:

[(FP \vee RL) & UK] \rightarrow IL: If the fetus is a person or the fetus has a right to life, and if abortion unjustly kills the fetus, then abortion ought to be illegal.

I will call this simplified argument the basic Pro-Life argument. A Pro-Choicer can take two different approaches to defeating the basic Pro-Life argument. First, she can simply try to undermine the basic Pro-Life argument by disproving one of its controversial assumptions. Second, she can take her arguments a step further and use the negations of the controversial assumptions to construct positive arguments for her own conclusion (\sim IL).

PC argument for (\sim IL) using (\sim FP/ \sim RL):

(\sim FP/ \sim RL) The fetus is not a person/doesn't have a right to life. (controversial assumption)

(\sim FP/ \sim RL \rightarrow \sim VR) If the fetus is not a person/doesn't have a right to life, then abortion does not violate the fetus's right to life. (shared assumption)

(\sim VR) Therefore, abortion does not violate the fetus's right to life.

(IL \rightarrow VR) Abortion ought to be illegal only if abortion violates the fetus's right to life. (shared assumption)

(\sim IL) Therefore, abortion ought not be illegal.

It is fairly straightforward why (\sim FP/ \sim RL \rightarrow \sim VR) is counted as a shared assumption: if the fetus does not have a right to life, then abortion cannot possibly violate the fetus's right to life. However, (IL \rightarrow VR) is more controversial. It implies that the only thing that can justify a legal prohibition of abortion is a violation of the fetus's right to life. The idea behind this is that the only thing strong enough to outweigh the pregnant woman's

right to control her own body is the fetus's right to life. I do not pretend that this is a completely uncontroversial assumption. If the rights-based argument for (IL) were defeated by a successful attack on (FP/RL), then Pro-Lifers could question the truth of (IL \rightarrow VR), and make an argument for something else that could justify a legal prohibition of abortion. In doing so they would be stepping into the territory of non-rights-based arguments for (IL). I have already stated that I do not intend to deal with this type of argument here, and so for the sake of this thesis I am going to assume (IL \rightarrow VR) is a shared assumption for both sides.

PC argument for (\sim IL) using (\sim UK)

(\sim UK) Abortion does not unjustly kill the fetus. (controversial assumption)

(\sim UK \rightarrow \sim VR) If abortion does not unjustly kill the fetus, then abortion does not violate the fetus's right to life. (shared assumption)

(\sim VR) Abortion does not violate the fetus's right to life. (conclusion of a valid argument)

(IL \rightarrow VR) Abortion ought to be illegal only if abortion violates the fetus's right to life. (shared assumption)

(\sim IL) Abortion ought not be illegal. (conclusion of a valid argument)

Again (\sim UK \rightarrow \sim VR) is a fairly uncontroversial statement: A right to life is violated not when someone is killed in just any circumstance at all, but only when that person is killed unjustly. See above for explanation of (IL \rightarrow VR).

These two Pro-Choice arguments then can be simplified to only consider controversial assumptions as follows:

(\sim FP/ \sim RL \vee \sim UK) \rightarrow \sim IL: If it is true either that the fetus is not a person/does not have a right to life, or that abortion is not the unjust killing of a fetus, then it is true that abortion ought not be illegal.

I will call this simplified version of the arguments the basic Pro-Choice argument.

1.6 Outline

In the introduction I stated that the first claim I would argue for is that there is a state of reasonable disagreement over the moral question of abortion. It is apparent when looking at the basic Pro-Life argument and the basic Pro-Choice argument that the moral claims at stake in the debate over abortion are whether or not the fetus is a person/has a right to life and if so whether or not abortion violates this right to life.

Chapter 2 of this thesis will be devoted to arguing that there does exist a state of reasonable disagreement in the debate over the personhood and right to life of the fetus.

Chapter 3 will be devoted to arguing that there also exists a state of reasonable disagreement over the premise that abortion constitutes the unjust killing of the fetus.

In Chapter 4, having established that there is a state of reasonable disagreement in the moral debate over abortion, and therefore having given support to the claim that the Pro-Choicer ought to focus attention on making arguments at the legal level, I will go on to make a brief argument for why accepting the strategy of appealing to one's opponents on terms that they can accept is a good strategy. I will then argue that focusing on the moral question of abortion is contrary to this strategy.

In chapter 5 I will look at two examples of what an argument aimed at offering a solution to the legal question might look like: An argument made by Judith Jarvis Thomson her 1995 paper "Abortion revisited", and an argument made by Roger Wertheimer in his 1979 paper "Understanding the Abortion Argument."

CHAPTER 2: REASONABLE DISAGREEMENT OVER PERSONHOOD AND THE RIGHT TO LIFE OF THE FETUS

2.1 Standard Of Reasonable Disagreement

When questioning the reasonableness of an argument one can attack the validity of the argument's logical structure and the justification of the argument's premises. I will say that two arguments are equally reasonable if they are logically valid and have equally justified premises. I will eliminate questions of logical validity by constructing all arguments on both sides as deductively valid. I will then classify all the premises of the arguments into three categories: shared assumptions (SA), controversial assumptions (CA) and conclusions of valid arguments (CVA). Once I have identified the controversial assumptions of a particular argument, I will look at how the author of the argument justifies these assumptions and how the justifications stand up to various objections. It will be shown that each of these arguments contains at least one controversial assumption that is justified only by the intuitions of the author. If it is true that all of these arguments are equally logically compelling, and contain premises that are equally unjustified, then it will make sense to say that these arguments are equally reasonable.

2.2 Preliminaries

In his article, "Why Abortion is Immoral" (1989), Don Marquis argues that the root of the intractability of the debate over abortion, and more specifically the debate over whether or not the fetus has a right to life, lies in understanding symmetries that exist between the opposing arguments of Pro-Choicers and Pro-Lifers. The first aspect of Marquis' symmetry is a structural symmetry. Parties on both sides of the debate must

establish a moral principle that connects having a right to life with some characteristic which fetuses either possess (in the case of Pro-Life arguments) or lack (in the case of Pro-Choice arguments).

The second aspect of Marquis' symmetry is a symmetry of attitudes. Participants on both sides of the debate take their moral principles to be obviously true, and take the characteristic they identify in this principle to be obviously morally salient to the question of what it means to have a right to life. Although each side sees its own characteristic as obviously morally salient, it does not see its opponent's characteristic as obviously morally salient.

I believe that Marquis is correct to say that the debate over the fetus's personhood/right to life has these sorts of symmetries. Framing the debate in terms of these symmetries allows us to easily identify the premises that the Pro-Lifer and Pro-Choicer are taking to be obviously correct.

2.21 Structural Symmetries:

The Pro-Lifer must argue that the fetus possesses some property that is *sufficient* for the fetus to be considered a person/to have a right to life. Therefore, the Pro-Life argument for FP/VR must take the following form:

If X is y then X is a person/has a right to life.
The fetus is y.
Therefore, the fetus is a person/has a right to life.

The Pro-Choicer on the other hand must argue that the fetus does not meet some necessary condition for being a person/having right to life. Making an argument about why the fetus does not meet a particular sufficient condition would not show that the

fetus is not a person, since it may meet some other sufficient condition. Therefore the Pro-Choice argument for \sim FP/ \sim VR must be of the following form:

X is a person/has a right to life only if X is z.

The fetus is not z.

Therefore, the fetus is not a person/does not have a right to life.

My analysis of the equal reasonableness of arguments for FP/VR and \sim FP/ \sim VR will begin by identifying the moral principles employed in various Pro-Choice and Pro-Life arguments. I will then examine the justifications for the moral salience of the properties identified in these moral principles. I will argue that the justifications for the Pro-Lifers' sufficient properties are no less strong than the Pro-Choicers' justifications for their necessary properties.

2.3 Arguments For Personhood And The Right To Life Of The Fetus

2.31 The Sanctity Of Human Life Argument

2.31.1 The Argument:

E1: If X is a human being, then X's life is sacred. (CA)

E2: If X's life is sacred, then X has a right to life. (CA)

E3/C: If X is a human being, then X has a right to life. (CVA)

E4: The fetus is a human being from the moment of conception. (SA⁹)

C: Therefore, the fetus has a right to life from the moment of conception. (CVA)

2.31.2 Justification:

The Catholic Church is the most prominent proponent of the sanctity-of-human-life argument. In 1995 Pope John Paul II wrote a papal encyclical called the "Evangelium Vitae" or "The Gospel of Life". This document presents the Catholic Church's position

⁹ I do not wish to engage in the debate about when a human biological life begins, and so I will assume for the sake of argument that it begins at conception.

on the value of human life. The encyclical explains the sacredness of human life as follows:

Human life is sacred because from its beginning it involves the creative action of God, and it remains forever in a special relationship with the Creator, who is its sole end. God alone is the Lord of life from its beginning until its end: no one can, in any circumstance, claim for himself the right to destroy directly an innocent human being." With these words the Instruction *Donum Vitae* sets forth the central content of God's revelation on the sacredness and inviolability of human life. (EV §53)

The encyclical asserts and promotes the right to life of all human beings in the following passage:

Even in the midst of difficulties and uncertainties, every person sincerely open to truth and goodness can, by the light of reason and the hidden action of grace, come to recognize in the natural law written in the heart (cf. Rom 2:14-15) the sacred value of human life from its very beginning until its end, and can affirm the right of every human being to have this primary good respected to the highest degree. Upon the recognition of this right, every human community and the political community itself are founded. In a special way, believers in Christ must defend and promote this right [...] (EV §2)

There is much attention paid in the encyclical to arguing that believers and non-believers alike will see the correctness of these views, implying that anyone "open to truth and goodness can, by the light of reason" recognize the sacredness and inviolability of human life as a natural law. However, I do not think it can be denied that a belief in the sacredness of human life and the right of that person to have her or his life preserved is, in this conception of things, based in religious belief – a belief presupposing the existence of God.

2.31.3 The Separation Of Church And State Objection:

The idea of the separation of the Church and State has a long history in philosophy and in both American and Canadian Society. It is outside the scope of this thesis to discuss this history here, or to attempt to give a comprehensive definition of the idea of separation of Church and State. The main idea as I understand it is the idea of freedom of religion, something valued highly in both Canadian and American society. In order to allow for this religious freedom the State must not only refrain from influencing the religious practice of individuals within the State, but must also itself refrain from adopting any particular religious doctrines. It could be objected on this second ground that no argument for the illegality of abortion can be based on religious premises, since if this argument were accepted by the State, it would be tantamount to the State's preferring one religion over others.

If the State were to adopt the sanctity-of-human-life argument as sole justification for prohibiting abortion, then the State could be justifiably accused of preferring one religious doctrine over another. However, what is up for debate here is not whether the state should adopt the sanctity-of-human-life argument for fetal personhood/right to life, but rather whether or not it is reasonable for the Pro-Lifer to adopt the sanctity-of-human-life argument for fetal personhood/right to life. The separation of Church and State does not say anything about what sorts of beliefs are valid when it comes to making moral arguments. Therefore I do not see how the idea of the separation of Church and State could possibly imply that Pro-Lifers cannot use religious beliefs as premises in moral arguments about fetal personhood/right to life.

2.31.4 Boonin's Criticism:

Boonin also argues that the sanctity-of-human-life argument must be rejected on the basis that it includes premises based in religious belief (E1 & E2). His arguments for this seem to be as follows:

F1) "Many critics of abortion are avowedly non-religious." (DB 29)

F2) Few, if any, critics of abortion are willing to make the concession that their claim that abortion is morally impermissible is conditional on premises based in religious belief. (DB 29)

F3) "Even those critics of abortion who do believe in religious prohibitions against abortion do not believe that abortion is wrong *only* for reasons that are essentially religious in nature, anymore than people who believe in religious prohibitions against theft and murder believe that these forms of behavior are wrong for only religious reasons." (DB 29)

C) Therefore, "If we are to engage critics of abortion on their own terms, then we must reject any argument for the claim that abortion is impermissible whose validity depends on essentially religious assumptions. When the sanctity of human life argument is understood in this way, it does rest on an essentially religious assumption. And so understood in this way, the argument must be rejected." (DB 30)

Boonin gives four examples in support of F1-F3:

E.g. 1) In the introduction to *Abortion and Social Justice* (1972), George Williams, who is a professor of divinity, writes: "Not a single essay or paper among the nineteen is theological or programmatically religious... The arguments against abortion as a public policy can be cogently stated without resort to religious, ecclesiastical, or theological sanctions." (GW ix)

E.g. 2) In a booklet called "Fight For Life: A Pro-Life Student's Abortion Debate Guide" (1994) Kathy Hochderffer writes: "Don't get trapped into making it a religious issue – it is not – it is a human rights issue; a social justice issue." (KH 5-6)

E.g. 3) Bernard N. Nathanson, a physician and a self-identified "convinced atheist" writes that his position on abortion has "never been influenced in the slightest by the empires of faith." (BN 6) Boonin tells us that Nathanson was once the director of the largest abortion clinic in the world and is the co-founder of the National Association for Repeal of Abortion Laws, and that he is "one of the most commonly cited figures in popular works opposed to abortion." (DB 30)

E.g. 4) Boonin writes that in the *Evangelium Vitae* (The Gospel of Life, 1995) Pope John Paul II “avows that the natural law that underwrites the Catholic Church’s opposition to abortion is accessible to ‘every person sincerely open to truth and goodness’ including ‘believer and non-believer alike,’ and the text itself maintains at several points that this law is ‘knowable by reason itself.’” (DB 30)

F1 above is not controversial, and Bernard N. Nathanson (e.g. 3) is certainly a valid example of a non-religious Pro-Lifer. However, F1 lends little support to Boonin’s claim that we should reject any arguments that involve religious premises. The fact that there are non-religious Pro-Lifers gives us a reason not to incorporate religious premises into Pro-Choice arguments, but it does not give us reason to reject any Pro-Life argument solely on the basis that it contains religious premises.

Example 4 is clearly meant to support F2. Boonin says that the *Evangelium Vitae* states that the natural law that underwrites the Catholic Church’s opposition to abortion is knowable by “reason itself.” This is accurate. However, Boonin’s implication that the *Evangelium Vitae* is stating that this natural law is somehow completely separable from religious belief is not accurate. It is made clear in the *Evangelium Vitae* that this “natural law” that is “knowable by reason itself” is a divine law, a law made by God: “The deliberate decision to deprive an innocent human being of his life is always morally evil and can never be licit either as an end in itself or as a means to a good end. It is in fact a grave act of disobedience to the moral law, and indeed to God himself, the author and guarantor of that law.” (EV §57)

Even if I am right about the *Evangelium Vitae*, F2 could still be supported by all of examples 1-3, which are all examples of Pro-Lifers asserting that their arguments are not dependent on religious belief. It is unsurprising and uninteresting that the “convinced atheist” in example 3 would make such a claim. However, it is interesting for two

avowedly religious people to assert that their arguments are not dependent on religious belief. I think it is prudent to wonder what would motivate such a claim and also what could be meant by it. I believe it is naive to ignore the rhetoric of these arguments, one of which is meant as a strategy book for making convincing Pro-Life arguments. Just as it is in a Pro-Choicer's interest to make arguments on terms that the Pro-Lifer can and does accept, it is in the Pro-Lifer's interest to persuade non-religious Pro-Choicers on terms that non-religious Pro-Choicers can and do accept. Therefore, if Pro-Lifers want to make arguments to convince non-religious Pro-Choicers that abortion is immoral, then they have to do so without using any religious premises. F2 does not claim that the arguments for the moral permissibility of abortion *are not* conditional on premises based in religious belief. F2 rather states that *the critics of abortion are not willing to make the concession that* their claim that abortion is morally impermissible is conditional on premises based in religious belief.

This discussion relates to F3, which is meant to be supported by examples 1, 2, and 4. F3 seems to imply that there are religious moral beliefs and some sort of more neutral moral beliefs. Boonin seems to be equating "religious reasons" for believing something with believing something based on the prohibitions made by your religious institution. Although I think it is true that most religious people who believe that killing is wrong would believe so even if there were no formal pronouncement by their religious authority that killing was wrong, I am skeptical that the ethical intuitions that cause the belief that killing is wrong can be easily separated out from people's religious beliefs, which would likely encompass their beliefs about what "wrongness" is and where it comes from. When someone holds a belief in God as a creator of all things, including

moral law, it is not clear how one would go about separating out their ethical beliefs from their religious beliefs.

Even if it were true that there are Pro-Lifers who would endorse F2 and F3, those who endorse the sanctity of life argument would not endorse these premises. I have argued that Catholic doctrine does not support F2, and it would not support F3 for the same reasons: the Catholic doctrine does not support a view of ethical beliefs and religious beliefs that come apart neatly and cleanly. If this is true and I assume that the members of the Catholic Church for the most part can be said to endorse Catholic doctrines such as the Evangelism Vitae, then it is true that there are quite a few people who endorse a sanctity-of-human-life argument based in religious beliefs. The question is whether these people are more, less or equally reasonable to endorse such an argument as Pro-Choicers are to endorse their own moral principles in support of their arguments.

2.32 Don Marquis' Future Like Ours Argument

2.32.1 The Argument:

G1: If X has a future-of-value, then X has a right to life. (CA)

G2: A fetus has a future of value from the moment of conception.¹⁰ (SA)

G3: Fetuses have a right to life from the moment of conception. (CVA: G1, G2)

2.32.2 Justification:

Marquis's moral principle is based on his suggestion that what makes killing paradigm persons such as you and me wrong is that killing us deprives us of the valuable

¹⁰ Marquis is not very specific as to when he thinks that the fetus can be said to gain this future of value. He does indicate that there may be some points during the early stages of pregnancy when the fetus "is not yet definitely an individual" (DM 1979: 194) and therefore has not gained this future of value. I am assuming in this thesis that human life begins at conception, and am therefore assuming that the fetus becomes an "individual" at conception. This may diverge from Marquis' actual opinion on when the fetus becomes an individual.

experiences, activities, and projects that make up our futures.¹¹ Marquis argues for the acceptability of his moral principle (G1) by assessing it against two criteria: 1) Does it fit with our other moral intuitions? And 2) Is there another principle/natural property that gives a better account of the wrongness of killing?

2.32.3 Assessment Of Marquis' Principle Under Criterion #1:

Marquis thinks his theory does fit with the following intuitions about killing:

- 1) That killing is the worst harm that can be done to anyone (since it deprives us of more than any other harm).
- 2) That dying young is bad (since we lose such a large part of our futures).
- 3) That if we were to encounter aliens that were similar enough to us, we ought not kill them (since they have futures of value like ours).
- 4) That perhaps it is seriously wrong to kill certain animals (if they have futures of value like ours).
- 5) That it is certainly wrong to kill infants (who clearly have a future of value like ours).
- 6) That euthanasia is not necessarily wrong (for example, in instances where the patient has no future of value).
- 7) Contraception is morally permissible (since contraception does not deprive any individual of a future of value, since that individual entity does not yet exist). (DM 1979: 201-2)

2.32.4 Assessment Of Marquis' Principle Under Criterion #2:

Marquis compares his theory to two possible competing theories of what makes killing wrong: the “discontinuation account” and the “desire account.”

The “desire account” states that what makes killing us wrong is that killing us “interferes with the fulfillment of a strong and fundamental desire, the fulfillment of which is necessary for the fulfillment of any other desires we might have”. (DM 1979:

¹¹ Actually, what Marquis says would more accurately stated as “If X has a future of value, then killing X is morally on par with killing us.” I am assuming here that “killing X is morally on par with killing us” directly implies “X has a right to life,” and stating Marquis’ argument in terms of the right to life. I wanted to note that my interpretation does diverge from Marquis’ original paper in this way.

195) Marquis dismisses this account on the grounds that we do in fact think it is sometimes wrong to kill people who do not desire to live (such as people who are suicidal). Marquis also argues that desires are secondary to value: it is the goods of living that make life desirable to us, and therefore it is the goods of life (the value of life) rather than our desire for life that ultimately accounts for the wrongness of killing (DM 1979: 196).

The “discontinuation account” states that people value the experience of living, and that what makes killing us wrong is the discontinuation of the experience of living (DM 1979: 195). If *discontinuation* of the experience of living is what is morally relevant, then of course it cannot be wrong to kill the (pre-conscious) fetus since it is not capable of having experiences, and is therefore not capable of continuing to experience. Marquis argues that it is irrelevant to the morality of killing whether or not an individual is having valuable experiences; what matters is whether he has a future of valuable experiences (DM 1979: 197). For example, I can imagine a man who has been in a coma for 10 years, but whose prognosis has suddenly changed, and it looks like he might come out of the coma any day now. This man has not been experiencing the goods of life, and if I kill him, I will not be discontinuing this experience. However, it still seems clearly wrong to kill him in light of the fact that he is going to wake up and have a future of valuable experiences.

2.32.5 Objection #1:

Having a future of value requires a valuer. The pre-conscious fetus is not capable of valuing its own future.

Marquis quickly rebuts the first objection by stating that one's future can be valuable even if one does not value it oneself:

I may think, in a period of despair, that my future is of no worth whatsoever, but I may be wrong because others rightly see value—even great value—in it. Furthermore, my future can be valuable to me even if I do not value it. This is the case when a young person attempts suicide, but is rescued and goes on to significant human achievements. Such young people's futures are ultimately valuable to them, even though such futures do not seem to be valuable to them at the moment of attempted suicide. (DM 1979: 198)

2.32.6 Objection #2:

Having rights requires the capability of desiring the thing you have a right to. The pre-conscious fetus has no desires.

Marquis takes the second objection from an article written by Michael Tooley (discussed in §2.42 of this thesis). Marquis points to Tooley's own examples of a person who is incapable of desiring to live due to being drugged, indoctrinated or temporarily unconscious. Tooley views these examples simply as exceptions to the rule, but Marquis argues that they actually pose legitimate counterexamples to Tooley's view.

2.32.7 Objection #3:

Plants and people who are permanently unconscious cannot be called victims: being a victim requires mental activity.

To defend against the third objection Marquis offers the counterexample of someone who is temporarily unconscious and therefore not capable of mental activity.

Marquis asserts that certainly we would want to say that this person is capable of being victimized, since what we do to him would have an effect on him in his future.

I will present further objections to Marquis' position after presenting David Boonin's argument for why the fetus does not have a right to life below since Boonin bases his own view on a critique of Marquis' argument.

2.4 Arguments Against Personhood and The Right To Life Of The Fetus

2.41 Mary Anne Warren's Universal Concept Argument¹²

2.41.1 The Argument:

H1: X is a person/has a right to life only if X has at least one of the traits from the list below. (CA)

H2: The fetus does not have any of the traits listed below. (SA)

C: Therefore, the fetus is not a person/does not have a right to life. (CVA)

List of traits:

1. Consciousness (of objects and events external and/ internal to the being), and in particular capacity to feel pain;
2. Reasoning (the developed capacity to solve new and relatively complex problems);
3. Self-motivated activity (activity which is relatively independent of either genetic or direct external control);
4. Capacity to communicate, by whatever means, messages of an indefinite variety of types, that is not just with an indefinite number of possible contents but on indefinitely many possible topics;
5. The presence of self-concepts, and self-awareness, either individual, or racial or both. (MAW 67)

2.41.2 Justification:

Warren formulates her moral principle by considering the question "How would we decide whether or not some totally alien being was a person?" She says the only way to decide would be to assess if that being possessed any traits that would make it a person.

She then goes on to develop what she thinks is a plausible list of traits which, if possessed

¹² "On the Moral and Legal Status of Abortion," 1973.

by any being, would qualify it as a person. Warren gives no real argument for choosing these particular traits as necessary properties, and as a defense of them says only that:

I consider this claim to be so obvious that I think anyone who denied it, and claimed that a being which satisfied none of (1)-(5) was a person all the same, would thereby demonstrate that he had no notion at all of what a person is—perhaps because he had only confused the concept of person with genetic humanity. If the opponents of abortion were to deny the appropriateness of these five criteria, I do not know what further arguments would convince them. We would probably have to admit that our conceptual schemes were indeed irreconcilably different, and that our dispute could not be settled objectively. I do not expect this to happen, however, since I think that the concept of person is one which is very nearly universal (to people), and that it is common to both pro-abortionists and anti-abortionists, even though neither group has realized the relevance of this concept to the resolution of their dispute. (MAW 68)

In a postscript dated 1982 Warren notes that her view excludes infants from personhood status, and consequently implies that infants do not have the same right to life as you and I. She recognizes that some people would object to her theory based on this consequence but states, “While it is important to appreciate the emotional force of this objection, its logical force is far less than it seems at first glance.” (MW 71) Warren does not see the implication that infants do not have the same right to life as you and I as a major problem for her theory since there are other reasons why killing infants should be considered wrong, such as:

- 1) Infants are “so very close to being persons.” (WM 71)
- 2) Infants unwanted by their parents are wanted by people who wish to adopt, and therefore killing an unwanted infant would deprive those potential adoptive parents of a great source of pleasure and satisfaction.
- 3) Even the lives of unadoptable babies such as babies that are severely mentally or physically handicapped are of value to many people who would be willing to pay taxes to support them.

Warren concludes that as long as infants are wanted by some individuals, or valued by our society, and society has the means to care for them, then it is morally

impermissible to kill them. Conversely, if our society did not have the means to care for unwanted infants, it would be permissible to kill them. Warren admits that some readers will find her theory to be morally monstrous, and to address this issue she states that:

[I]t is a philosopher's task to criticize mistaken beliefs which stand in the way of moral understanding [...] The belief that moral strictures against killing should apply equally to all genetically human entities, and *only* to genetically human entities is such an error. The overcoming of this error will undoubtedly require long and often painful struggle; but it must be done. (MW 74)

2.41.3 Objections:

In the introduction to the argument made by Warren above (MW 1973), she argues that it is not possible to make a successful argument for the moral permissibility of abortion without providing a proof that the fetus is not a person. She notes that some philosophers will think that it is impossible to come up with such a proof, and will think that such a proof is unnecessary since the moral permissibility of abortion is self-evident. She goes on to say that “the inadequacy of this attitude should be evident from the fact that both friends and foes of abortion consider their position to be morally self-evident.” (MW 59) Warren asserts that it is in fact possible to come up with a proof for the claim that the fetus is not a person, and goes on to give her version of such a proof.

Warren takes her concept of personhood to be self-evident, calling it a universal concept. Warren seems to be missing the fact that the argument that she applied to the debate over the moral permissibility of abortion applies to the debate over the personhood/right to life of the fetus. The fact that the concept of personhood/right to life is not a universal concept is evidenced by the fact that there is widespread disagreement over what constitutes a person/having a right to life.

2.42 Michael Tooley's Desire Argument

2.42.1 The Argument:

J1: X is a person/has a right to life only if statements 1-4 below are true of X. (CA)

J2: Statements 1-4 below are not true of the fetus. (SA)

C: Therefore, the fetus is not a person/does not have a right to life. (CVA)

Statements 1-4:

- 1) X desires continued existence as a subject of experiences and mental states.
- 2) X is conscious (is a subject of experiences and mental states).
- 3) X possesses the concept of a self as a continuing subject of experiences and other mental states.
- 4) X believes that X is now a subject of experiences and mental states.

Argument for J1:

K1: X has a right to M only if X's right to M can be violated. (SA-implicit for Tooley)

K2: X's right to M can be violated only if X desires M. (CA)

K3/C: X has a right to M only if X desires M. (CVA: K1, K2)

K4: X has a right to life if and only if X has a right to continued existence as a subject of mental states. (CA)

K5: X has a right to continued existence as a subject of mental states only if X desires continued existence as a subject of mental states. (K3)

K6/C: X has a right to life only if X desires continued existence as a subject of mental states. (CVA: K4, K5) (Statement #1)

K7: X desires M only if X is conscious. (SA)

K8: X desires continued existence as a subject of mental states only if X is conscious. (K7)

K9: X has a right to life only if X desires continued existence as a subject of mental states. (K6)

K10/C: X has a right to life only if X is conscious. (CVA: K8, K9) (Statement #2)

K11: X desires M only if X has a concept of M. (SA)

K12: X desires continued existence as a subject of mental states only if X has a concept of continued existence as a subject of mental states. (K11)

K13: X has a right to life only if X desires continued existence as a subject of mental states. (K6)

K14/C: X has a right to life only if X has a concept of continued existence as a subject of mental states. (CVA: K12, K13) (Statement #3)

K15: X desires continued existence as a subject of mental states only if X believes that X is now a subject of mental states. (SA)

K16: X has a right to life only if X desires continued existence as a subject of mental states. (K6)

K17/C: X has a right to life only if X believes that X is now a subject of mental states. (CVA: K15, K16) (Statement #4)

K6 or Statement #1 is used to support all of the arguments for the other three statements, and K6 is dependent on K2 and K4, both of which I have identified as controversial assumptions. Therefore the validity of all of statements 1-4 as necessary properties for having a right to life is dependent on the truth of K2 and K4.

2.42.2 Justification:

In “Abortion and Infanticide” (1972) Michael Tooley notes that in order to make an argument against the position that human beings have a right to life from the moment of conception the Pro-Choicer must be able to specify a *non-arbitrary* point at which human beings become persons/gain the right to life. The problem is that many times Pro-Choicers’ arguments, such as Mary-Anne Warren’s above, end up implying that this point at which human beings become persons is some time after infancy, and that therefore infants are not persons, infants do not have a right to life, and infanticide is morally permissible. For many people such an implication acts as a *reductio ad absurdum* of the argument. Tooley believes that the negative reactions to the implications of the moral permissibility of infanticide are “visceral” reactions, the result of a societal taboo rather than a rational deliberation, similar to previous generations’ negative reactions to oral sex or masturbation (MT 39-40). Tooley believes that a morally relevant point at which a human being becomes a person can be established through rational argument,

and that this point is after infancy. He believes that once the issue of personhood is rationally considered the moral permissibility of both abortion and infanticide will not be an issue anymore. And so Tooley's project is to establish what makes a person a person, and therefore establish when a human being gains the right to life.

2.42.3 Argument For K2:

To ascribe a right to an individual is to assert something about the prima facie obligations of other individuals to act, or refrain from acting, in certain ways. However the obligations in question are conditional ones, being dependent upon the existence of certain desires of the individual to whom the right is ascribed. Thus if an individual asks one to destroy something to which he has a right, one does not violate his right to that thing if one proceeds to destroy it. (MT 45)

In an attempt to deal with possible counterexamples to his view Tooley amends K2 in the following way:¹³

K2-2: X's right to M can be violated only if X desires M or if X would desire M if it were not for one of the following being true of X: (1) X is in an emotionally unbalanced state, (2) X is temporarily unconscious, or (3) X has been conditioned to desire the absence of M. (MT 48)

2.42.4 Argument For K4:

Tooley argues that when we talk about a right to life we are really talking about a right to continued existence as a subject of mental states. He attempts to persuade us of this by asking us to imagine the existence of some future technology which would cause the human brain to be completely erased and reprogrammed with new memories, beliefs, personality traits etc. Surely, says Tooley, if that technology were to be applied to an

¹³ This revision would also apply to all the premises in Tooley's argument that are dependent on K2. I have added this revision after stating Tooley's argument in order to preserve the clarity of the argument's structure.

individual, that individual would cease to exist, and her right to life would be violated even though no biological life had been taken. (MT 46)

2.42.5 Critique Of K2:

As noted above, Tooley does recognize that there are possible counterexamples to K2, such as someone who is suicidal, comatose or brainwashed. Tooley deals with these counterexamples by simply casting them as exceptions to the rule of K2. It is not clear to me why these examples should count as exceptions rather than genuine counterexamples to K2. Tooley's solution seems *ad hoc*. He has done very little to persuade us that having rights requires desires, and he has basically ignored that there are valid counterexamples to the premise that one must desire something to have a right to it.

Even if I did want to accept Tooley's classification of these examples as exceptions rather than counterexamples, why could I not add the situation of the fetus to the list of exceptions? I could add a fourth condition: (4) X has not yet reached the stage of development where X has conscious desires, but will potentially do so in the future. Tooley does not give any kind of argument for why I should not do this.

2.42.6 Critique Of K4:

If it is true that the right to life really just amounts to a right to continued existence as a subject of mental states then it is also true that: 1) Depriving someone of their biological life is not necessary for violating their right to life. And 2) Depriving someone of continued existence as a subject of mental states is both sufficient and necessary for violating their right to life.

These premises would not be intuitive to someone who believes that all persons continue to exist as subjects of experiences and mental states after their physical body dies. For assuming that these same people still assign some kind of meaning to the right to life, it cannot be that depriving someone of continued existence as a subject of mental states is either necessary or sufficient for violating the right to life, since it is not possible to deprive someone of continued existence as a subject of mental states, even by taking their biological life. For someone who believes that after biological death I continue to exist as a subject of experiences and mental states, it seems like taking my biological life would be a necessary and a sufficient condition for violating my right to life since for her “life” refers to a biological life.

Even if I did want to accept that having a right to life really meant having a right to existence as a subject of experiences and mental states, why should I believe it must be *continued* existence as such a subject? For example, what about someone who is in a coma, but who had a good chance of someday coming out of that coma and again being a subject of experiences and mental states? If I killed that person I would not be killing someone with continued existence as a subject of mental states, but nonetheless it seems that it would be intuitive to many that this is a violation of the right to life. Tooley gives no argument as to why it should be continued existence and not potential future existence.

2.43 David Boonin's Present Ideal Dispositional Desire Argument

2.43.1 The Argument:

L1: X has a right to life only if X has a future-like-ours F *and* if X now has a present ideal dispositional desire that F be preserved. (CA)

L2: X has a present ideal desire that F only if X has some actual desires. (CA)

L3: X has some actual desires only if X has organized cortical brain activity. (SA)

C/L4: X has a right to life only if X has organized cortical brain activity. (CVA: L1, L2, L3)

L5: The fetus does not have organized cortical brain activity. (SA)

C: The fetus is not an individual with the same right to life as you or I. (CVA: L4, L5)

(F= a future of experiences, projects and activities)

2.43.2 Justification:

Boonin bases his argument that the fetus does not have a right to life on Don Marquis' future-like-ours argument. Boonin's strategy in doing this is to appeal to the Pro-Lifer on his own terms: "...in proposing an alternative account of the wrongness of killing [...] I will again be arguing with the critic of abortion on his own terms. I will, in effect, be accepting Marquis's future-like-ours *argument* but defending a different version of the future like ours *principle*." (DB 64) He offers his own interpretation of Marquis' principle and then proposes a reformulation based on criticism of the original principle. He then argues that his principle is superior to Marquis'.

2.43.3 Boonin's Interpretation Of Marquis' Principle:

In *A Defense of Abortion* Boonin argues that in order to account for cases where someone does not currently value her future, but where we will still have the intuition that she has

a right to life (such as someone who is suicidal or comatose) it is necessary for Marquis to alter his position in the following way:

BMP#1: “If an individual [X] has a future-like-ours F and if either (a) [X] now desires that F be preserved, or (b) [X] will later desire to continue having the experiences contained in F (if [X] is not killed), then [X] is an individual with the same right to life as you or I.” (DB 63)

Boonin calls this the “present or future desire” version of the future like ours principle.

2.43.4 Boonin’s Reformulation Of Marquis’ Principle:

Boonin originally added clause (b) to Marquis’ principle in order to account for cases of the comatose adult and the suicidal teenager. Boonin argues that if we could account for these two cases without adding clause (b), then we could make Marquis’ principle more parsimonious. If we did remove clause (b) from Marquis’ argument, then we would be left with the following principle, which Boonin calls the “present desire” version of Marquis’ principle:

BMP #2: If X has a future-like-ours F and X now desires that F be preserved, then X has a right to life. (DB 64)

Boonin argues that we can account for the case of the comatose adult with the “present desire” version of Marquis’ principle by making a distinction between “occurrent desires” and “dispositional desires”. An occurrent desire is a desire that you are consciously and presently experiencing. Boonin argues that you also have dispositional desires, desires that you are not consciously aware of at a particular moment, but that you nonetheless can be said to have. For example, when I am eating dinner, I might have the occurrent desire to eat more mashed potatoes, but I might also have the dispositional

desire to be successful at my job (DB 65-66). Even though the comatose person is has no occurrent desire to live, she can still be said to have a dispositional desire to live.

Therefore, in order to account for the comatose adult Boonin proposes what he calls the “present dispositional desire” version of Marquis’ principle:

BMP #3: If X has a future-like-ours F and X now has a present dispositional desire that F be preserved, then X has a right to life. (DB 66)

Boonin then argues that we can account for the case of the suicidal teenager with the “present dispositional desire” version of Marquis’ principle by making a distinction between “actual desires” and “ideal desires”. Actual desires are the actual occurrent or dispositional desires you are having at any moment. Ideal desires are your actual desires corrected for “the various distorting effects that [...] imperfect conditions may have caused.” (DB 71) Boonin gives the example of having a desire to drink a glass of water in front of you. If I imagine that unbeknownst to you there is a deadly poison in that glass of water, “then while your actual desire will be to drink from the glass, I may confidently consider your ideal desire to be to avoid drinking from the glass, given that your actual (though likely dispositional rather than occurrent) desire not to be killed strongly outweighs your actual (even if occurrent) desire to quench your thirst.” (DB 123-4)

Therefore, in order to account for the case of the suicidal teenager Boonin proposes what he calls the “present ideal dispositional desire” version of Marquis’ principle:

BMP #4: If X has a future-like-ours F and X now has a present ideal dispositional desire that F be preserved, then X has a right to life. (DB 73)

The principle above still does not match the principle identified in L1 (X has a right to life only if X has a future-like-ours F and if X now has a present ideal

dispositional desire that F be preserved). The difference is that L1 describes a necessary property for having a right to life, and BMP#4 identifies a sufficient property for having a right to life. This is because Boonin was modeling his principle on Marquis' principle. But if Boonin wants to convert his argument into a Pro-Choice argument, then he will have to convert his principle into a necessary condition like L1. Boonin does not discuss this issue and does not formulate his principle as a necessary condition. However, if he does not convert his principle into a necessary condition, then he will not be able to make a valid argument using this principle. I have done this conversion for him because I believe that his position is best represented by L1 even if he did not explicitly formulate it that way, and so it is most generous to Boonin to formulate his argument with L1. However, formulating Boonin's principle as a necessary condition does undermine Boonin's claim that he is appealing to the Pro-Lifer on her own terms by simply improving upon Marquis' existing argument. Marquis says explicitly that he sees his principle as stating a sufficient condition (DM 1979: 194-5), and expressing this modified principle as a necessary rather than a sufficient condition significantly changes the meaning of the principle. Casting the future-of-value property as a sufficient condition leaves open the possibility that possessing other properties might justify a right to life. Casting the future-of-value as a necessary condition forces a much more restricted definition of the right to life and what kinds of beings might be said to have it.

2.43.5 Argument For The Superiority Of Boonin's Principle:

Boonin believes that Marquis' principle has the most potential to be used to develop a successful argument for the claim that the fetus has a right to life at conception. He

argues that any Pro-Choicer who hopes to defeat Marquis' argument must construct an argument that does all three of the following:

- 1) It identifies an alternative property that accounts for the wrongness of killing infants, suicidal teenagers, temporarily comatose adults, and paradigm persons.
- 2) It shows that the alternative property is preferable to Marquis' property, especially in terms of offering an account that best explains the wrongness of killing.
- 3) It shows that the fetus does not possess this alternative property (or that it doesn't possess the property during the period of gestation in which the majority of abortions take place). (DB 62-3)

Using 1-3 as criteria for a successful refutation of Marquis' argument is basically an attempt to show that Marquis' principle does not hold up against Marquis' own second criterion of success identified above (Is there another principle/natural property which gives a better account of the wrongness of killing?). If Boonin can accomplish all of 1-3 then he will have defeated Marquis' argument by Marquis' own criteria of success.

So, at this point Boonin has almost accomplished #1 on his list of things needed to defeat Marquis' argument. That is, he has identified an alternative principle that accounts for the wrongness of killing paradigmatic persons, comatose adults and suicidal teenagers. However, he has not yet shown that his principle accounts for the wrongness of killing infants. In order to accomplish this Boonin proposes that we divide the case of the fetus into two sub-cases: the conscious fetus and the pre-conscious fetus (DB 79). He then argues that the earliest we can attribute conscious desires of any kind to a fetus is at the point at which it starts to have organized cortical brain activity. This is somewhere between 25 and 32 weeks after conception. So, conservatively, we can say that from 0-25 weeks the fetus is a "pre-conscious fetus" and from 25 weeks to birth the fetus is a "conscious fetus".

L2 states that a being must have at least some actual desires to be attributed any ideal desires. If this is true, and if Boonin's principle is true, then his argument would imply that a preconscious fetus doesn't have a right to life, and that conscious fetuses and infants do have a right to life. And, since 98.4% of abortions take place before the 20th week after conception, on this view the vast majority of abortions should not be thought to be killing beings with a right to life.¹⁴

If L2 is true, then Boonin has accomplished both #1 and #3 on his list of things needed to defeat Marquis' argument. Boonin argues for L2 by stating that the content of an ideal desire is the content of what someone's *actual desire would be* if she were able to rationally and calmly consider her situation, and were aware of all of the information relevant to her situation that is obscured to her by her less than ideal circumstances. Boonin concludes that it is therefore necessary to have some actual desires that can be idealized in order to attribute any kind of ideal desires to someone (DB 80).

Having established that his principle meets criteria #1 and #3, Boonin goes on to argue that his principle is preferable to Marquis' principle in three ways:

1) **It is more parsimonious.** Boonin argues that he is able to account for the wrongness of killing infants, suicidal teenagers, temporarily comatose adults, and paradigm persons with only one property: the property of having a present ideal dispositional desire that one's future be preserved. Marquis must use two separate properties to account for the wrongness of killing infants, suicidal teenagers, temporarily comatose adults, and paradigm persons: the property of now desiring that one's future be preserved, and the property of possibly desiring in the future to have one's future preserved.

¹⁴ This statistic can be found at <http://www.guttmacher.org/pubs/fb_induced_abortion.html>.

2) **It is more morally salient.** Boonin argues that what matters morally are dispositional and ideal desires, not actual and occurrent desires.

3) **It coheres with our intuitions about an example that Marquis' principle does not.**

Franz has a permanent chemical imbalance in his brain, such that Franz will never have an actual or a dispositional desire that his future be preserved. Marquis' account does not seem to accord Franz a right to life. Boonin argues that Franz's ideal desire, when corrected for the imperfect conditions of his chemical imbalance, would be to go on living.

2.43.6 Objection To Boonin's Interpretation And Reformulation:

The simplest statement of Marquis' principle would be something like this:

**MP#1: If X has a valuable future like ours (FV), then X has a right to life.
(FV= a future made up of valuable experiences, projects and activities)**

But how does Boonin get from MP#1 to BMP#1 above? He begins by pointing to an ambiguity in Marquis' principle. This ambiguity is in Marquis' use of the word 'value'. What makes X's future valuable? What makes these experiences, activities and projects that make up X's future valuable? And more specifically, is my future valuable even if I do not value it? If my future is not valuable when I don't value it, then Marquis would not be able to account for the wrongness of killing people who are suicidal. We saw above that Marquis' answer to this problem is that even if you do not value your future, your future can still be "of value" to you. Boonin argues that what Marquis means when he says that "X's future is of value to X" is just "X values his future or will come to value his future". And so Boonin states that the property that Marquis picks out as being

sufficient for having a right to life is “having a future-like-ours that contains experiences of the sort that one now values or will later come to value (if one is not killed).” (DB 61)

This reinterpretation of Marquis’ principle would then look like this.

MP#2: If X has a future like ours F that contains experiences of the sort that X now values or will later come to value (if X is not killed), then X has a right to life, (F= a future of experiences, projects and activities)

This interpretation is not a radical change from Marquis’ original principle. The change here is really just a specification of what it means to have a valuable future. However, Boonin’s next interpretation (which is equivalent to BMP#1) above is far more drastic:

MP #3: If X has F and if either (a) X now desires that F be preserved, or (b) X will later desire that F be preserved, then X has a right to life.

Boonin gives two reasons for this conversion into a “desire” account. First, Boonin argues that Marquis uses ‘value’ and ‘desire’ interchangeably. Boonin cites two passages from a paper by Marquis called “Fetuses, Futures and Values: A Reply to Shirley” (1995) in support of this claim. Second, Boonin simply states that “[I]t will prove to be more natural to characterize the alternative property I wish to propose in terms of the language of desires...” (DB 63)

Boonin’s claim that Marquis equates valuing and desiring seems plainly false.

Consider this passage from Marquis that Boonin gives in support of this claim:

“The value of my future is not simply based on my present beliefs or desires. It is based on the attitudes toward my life I will have (or would have) in the future.” (DM 1995: 264)

I do not see Marquis equating valuing and desiring here, I see him saying that desiring one’s future is an aspect of valuing ones future.

But even if it were true that Marquis equates valuing and desiring, MP#3 would still not be a good interpretation of MP#2 or MP#1. This can be seen by looking at two passages from Marquis that Boonin quotes in support of his earlier claims about the meaning of “X’s future is of value to X” for Marquis:

When I am killed, I am deprived both of what I now value which would have been part of my personal future life, but also of 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 or her future. (DM 1989: 190)

Consider some class of human individuals at t_1 . Consider the hypothesis that those human individuals will have a future valuable to them at t_2 . Verify this by asking those individuals at t_2 whether they believe that their lives are worth living. Those who answer in the affirmative have a valuable future at t_1 . (DM 1995; 263-4)

Both of these passages express the idea that what makes my future valuable now is not just that I value it now, but that I will value it in the future, and that in fact it is sufficient for my future to be of value to me now that I value it at some point in my future. It is taking away someone’s future, not their present or past, that makes killing them wrong. This is almost axiomatically true since it is strictly speaking impossible to take away someone’s present or past from them: you cannot take away from me what I am now experiencing, but only my ability to go on experiencing in the future. Since valuing my future at t_2 is sufficient for my having a future of value, the easiest way to express Marquis’ principle in the language of desires would be to drop clause (a) from MP#3 and make an argument like this:

M1: If X would desire to live at some point in the future (t_2), then X has a valuable future now (at t_1).

M2: If X has a valuable future now (at t_1), then X has a right to life now (at t_1).

C: If X would desire to live at some point in the future (t_2), then X has a right to life now (at t_1).

2.43.7 Objection To Boonin's Claim Of Superiority:

In an article called "Abortion Revisited" (2007) Don Marquis attempts to refute Boonin's claim that Boonin's principle is superior to Marquis' principle in terms of parsimony, salience, and agreement with our intuitions about "Franz". I will go over Marquis' argument here and argue that his refutation of Boonin's claim is successful.

Boonin argues that his principle is more parsimonious because it only involves one property (that of having a present ideal dispositional desire to preserve one's future), whereas Marquis' principle involves two properties (the property of now desiring to preserve one's future, and the property of later desiring to preserve one's future). Marquis states that Boonin's appeal to parsimony will only be successful if the lack of parsimony of Marquis' principle when compared to Boonin's principle is due to the nature of Marquis' principle itself, and not to Boonin's expression of it. Marquis argues that his principle makes reference only to the value of one's future and not one's present or past, and that therefore there is no reason to state the future-like-ours position in terms of present or future desires, and that rather it can be stated in terms of having a "future of value", which is only one property (DM 2007: 410).

Even if I accept Boonin's "present or future desire" interpretation of Marquis' principle, Boonin's claim of parsimony does not offer sufficient motivation to prefer Boonin's principle. Boonin has Marquis referring to present and future desires, while Boonin claims to be referring only to the single property of present ideal dispositional

desires. It is not clear to me why this difference in ontological parsimony should make Boonin's account any more appealing than Marquis'.

Boonin argued that his account was more morally salient than Marquis' since it is our ideal and dispositional desires that matter morally rather than our actual desires. I think that the main problem with Boonin's assertion of superior salience is that he doesn't consider the possibility that desires are not always what is most morally relevant. Sometimes we need to consider more than what people desire when considering what is the correct moral action with respect to them. It is true that if I have a desire to drink the (secretly) poisoned water, and a desire to live, then these two desires conflict. It is also true that my desire to live would most likely outweigh my desire to drink the water if I were given that choice. I do not have to assess this situation to mean that I have an "ideal desire" to not drink the water. I could rather say that it is in my best interest, given the hierarchy of my desires, to not drink the water.¹⁵ I acknowledge that this is a vague explanation, but I don't think Boonin's present-ideal-dispositional-desire explanation is any less vague. Boonin has not given us sufficient reason to accept his more complex account of desires over a more straightforward account of desires that does not require calculation of things like 'ideal desires'.

Marquis argues that though it is true that his own account does not accord Franz a right to life, neither does Boonin's. Boonin's claim is that Franz does in fact have an ideal desire to live even though he does not now nor will he ever have a desire to live in the future. But from what Boonin says about attributing ideal desires to people it is not clear that Franz would have an ideal desire to live. As Marquis notes, the Ideal-desire view

¹⁵ Marquis also gives an objection to Boonin's claim of superiority with respect to salience which has to do with the ideal-desire account being parasitic on the future-of-value account. For the sake of brevity, I did not outline this complaint here.

considers what the fully informed and rational individual would desire in a given situation. Marquis imagines that I give Franz a drug that can temporarily and briefly relieve Franz of his chemical imbalance, but that this drug can only be given to Franz once. Is it not obvious that Franz, knowing that he is in for a life of permanent depression, where he will be miserable and never have a desire to live, would in that moment of clarity desire that he continue to live (DM 2007: 412).

2.43.8 Objection To L2:

Even if I were to accept that Boonin's principle (L1) is superior to Marquis' in all the ways that Boonin describes, it is not clear that Boonin's principle sufficiently supports a Pro-Choice position, since it is also dependent on L2. L2 states that a being must have at least some actual desires to be attributed any ideal desires. Boonin's justification for L2 is as follows:

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. (DB 80)

Marquis would agree with Boonin that there is no desire that a rock would have under more ideal circumstances, but would say that this is because there is no stage in a rock's existence at which it has any desires at all. This is not true of the fetus, and I can just as easily attribute hypothetical desires to a fetus as I can to a suicidal teenager. Marquis proposes that we amend the ideal-desire account to say that you have to be able to attribute desires to that thing at some point in its future existence in order to be able to

attribute any kind of ideal desires to it. Marquis argues that Boonin has given us no reason to prefer his version over Marquis' (DM 2007: 413-414).

2.43.9 Objections To Marquis:

Although Boonin is ultimately unsuccessful in defeating Marquis' position in his attempt to replace it with his own, he does recognize a flaw in Marquis' argument, which is the ambiguity with which Marquis uses the term 'value'.

Much of the intuitive force of Marquis' argument is dependent on the concept of a "future of value". There are at least two ways that the word 'value' could be interpreted here, and I believe that Marquis uses both at different points in his paper. The first is using 'value' in its subjective form, as in "I value my antique watch". The second is using 'value' in its objective form, as in "My antique watch has value". If Marquis were to commit to a subjective interpretation of his use of the word 'value', then he could not account for the wrongness of killing those who do not value their lives. However, if Marquis were to commit himself to an objective-value interpretation then his position would become quite controversial. How do I determine that the fetus has a future that is objectively valuable, or that you or I have a future that is objectively valuable? Certainly there will be widespread disagreement over the answer to this question. Someone who is Christian will have a very different answer than someone who is Buddhist or Atheist. Finding agreement amongst a diverse group about what constitutes objective value does not seem like a realistic goal for making an argument in applied ethics.

2.5 Summary

In section 2.1 I established that two arguments would be considered equally reasonable if they were both logically valid and both contained premises that were equally justified/unjustified. In sections 2.2-2.4 I have shown that each of the Pro-Choice and Pro-Life arguments discussed is deductively valid and that each argument contains at least one premise that is unjustified and based solely in the contentious intuitions of the author. Therefore, in this small survey of the debate over personhood and the right to life of the fetus there is a state of reasonable disagreement.

CHAPTER 3: REASONABLE DISAGREEMENT OVER THE MORALITY OF KILLING THE FETUS

3.1 Preliminaries

In “A Defense of Abortion” (1971) Judith Jarvis Thomson argues that many Pro-Life arguments assume that showing that the fetus is a person/has a right to life is enough to show that abortion is unjust killing. But Thomson argues that further argumentation is needed to motivate the conclusion that abortion is unjust killing, and she goes on to examine and attempt to refute several arguments aimed at justifying the claim that abortion is unjust killing. Thomson argues that none of the arguments are successful. In this chapter I will discuss some of the arguments for the immorality of abortion that Thompson identifies and her arguments against them. I will show that the intuitions that Thompson herself employs in trying to refute the Pro-Life arguments are no less contentious than the intuitions that Thomson attacks in her analysis of the Pro-Life arguments for the impermissibility of abortion.

3.11 Thomson’s Method

Thomson follows a loosely uniform method for refuting arguments for B. It will be helpful to outline this method briefly here:

Step 1: Identify the controversial moral principle that supports the Pro-Life argument in question.

Step 2: Present a counterexample to the moral principle identified at Step 1. I will refer to these counterexamples as “refutation stories”, as they are presented in a narrative form

and are meant to refute the Pro-Lifer's controversial assumption. If the counterexample is successful, then two categories of situations will be created:

- 1) Situations where the moral principle identified in Step 1 holds true.
- 2) Situations where the moral principle identified in Step 1 does not hold true. (The situation in Thomson's refutation story will fall into this category.)

Step 3: Make an analogy between the situation of abortion and the situation identified by Thomson's counterexample at step two in order to persuade the reader that the situation of abortion falls into category 2.¹⁶

3.12 My Method

Because Thomson follows a fairly consistent pattern in her argument, it will be convenient for me to follow a fairly strict pattern in my assessment of her arguments and the arguments she attempts to refute. My method will be as follows:

Step 1: State the Pro-Life argument in a deductively valid form, identifying the controversial assumption that Thompson targets.

Step 2: Discuss the plausibility of the controversial assumption identified at Step 1.

Step 3: Briefly outline Thomson's refutation story aimed at the argument identified at Step 1, identifying Thomson's intuitions about what is the morally permissible action in this story.

¹⁶ Thomson does not explicitly identify this method, nor does she talk about the dual function of her examples as counterexamples and as analogies. I explained her method in this way because I think it does represent the way she makes her arguments, and formalizing her method in this way makes it easier to analyze her arguments in comparison to those of her opponents.

Step 4: Analyze the success of Thomson's refutation story.

a) Assess whether or not the story Thomson presents can indeed function as a valid counterexample to the controversial premise.

b) Assess whether or not the situation presented by the refutation story has any relevant disanalogies to the situation of abortion.

3.2 The Arguments

3.21 Argument #1: The Conflicting Rights Argument¹⁷

3.21.1 The Argument:

Q1) If X's right to life comes into conflict with P's right to control P's own body, then X's right to life outweighs P's right to control P's own body.¹⁸ (CA)

Q2) If a pregnant woman seeks to have an abortion, then the fetus's right to life comes into conflict with that woman's right to control her own body. (SA)

C/Q3) If a pregnant woman seeks to have an abortion, then the fetus's right to life outweighs that woman's right to control her own body. (CVA: Q1, Q2)

Q4) If the fetus's right to life outweighs that woman's right to control her own body, then performing an abortion unjustly kills the fetus. (SA)

C) If a pregnant woman seeks to have an abortion, then performing an abortion unjustly kills the fetus. (CVA: Q3, Q4)

3.21.2 Plausibility Of Q1:

There are two intuitions that support Q1. First, many find it intuitive that killing someone is the worst thing you can do to that person. Second, many think that the right to life is the most fundamental right, the right upon which all other rights are dependent. Someone who holds these intuitions would likely find Q1 at least initially plausible.

Examples of instances where the right to life outweighs the right to control one's own body are easy to come up with: my right to control my own body is outweighed

¹⁷ JJT 1971: 48-50.

¹⁸ Q2 assumes that there is nothing else to outweigh the fetus's right to life, so this argument does not apply to cases where continuing the pregnancy threatens the pregnant woman's right to life.

when you are physically restraining me from trying to kill you. Or again, my right to control my own body is outweighed when my desire to drive drunk endangers the lives of others.¹⁹ The overall plausibility of Q1 will depend on one's intuition about whether there are some instances where killing is justified. For those who think that killing is never justified, except perhaps when two people's rights to life are in conflict (which is not the case I am discussing here), this principle would be very plausible. For those who think killing is sometimes justified, perhaps in cases where someone is attempting to seriously harm you or someone else, this principle will not be very plausible.

3.21.3 Refutation Story #1:²⁰

You wake up in the hospital to find that you've been kidnapped by the Society of Music Lovers and your kidneys have been plugged into the circulatory system of a famous violinist, who, without the use of your, and only your, kidneys, will die. Imagine that you had to be plugged into the violinist for nine months, for nine years, or even for the rest of your life.

Thomson's intuition is that this presents a situation where your right to control your own body comes into conflict with the violinist's right to life, and you do the violinist no injustice by unplugging yourself from him, even though this action will cause his death.

¹⁹ It will not be intuitive to everyone that killing is a more serious harm than restricting one's control of one's body. For example some people might think that torture or sexual assault are more grievous violations of one's rights.

²⁰ For the sake of brevity I will sometimes refer to the refutation stories in the abbreviated form RS#X

3.21.4 Success As A Counterexample:

Considered as a counterexample to Q1, RS#1 is successful. The case of the violinist is a case where most people would intuitively agree that the violinist's right to life does not outweigh your right to control your own body. Consequently, it just isn't true that the right to life always outweighs the right to control one's own body (that is, Q1 is false).

Keeping in mind the cases of the violinist, drunk driving and self-defense, I can say that there are some cases where the right to control one's own body does outweigh the right to life, and there are some cases where the right to control one's own body does not outweigh the right to life. Abortion will fall into one of these two categories.²¹ If the Pro-Lifer can come up with a plausible alternative principle for why abortion falls into the category of the right to life outweighing the right to control one's own body, then this counterexample will do little to harm the Pro-Lifer's overall argument.

3.21.5 Success As An Analogy:

If the story of the violinist is a close enough analogy to the situation of abortion, then we would have positive reason for placing abortion in the category of exceptions to Q1.

Thomson notices right away that there is a disanalogy between the case of abortion and the case of the violinist. In the case of the violinist you were kidnapped, and therefore your situation was not entered into voluntarily. However, excepting cases of

²¹ I do not mean to say that each individual case of abortion will fall neatly into one category or the other. Only that the majority of abortions will fall into one category OR the majority of abortions will fall into the other category. Basically I am saying that there is a majority of cases of abortion that will fall into one category which would be counted as "normal" cases, and there is a minority of abortions that will fall into the other category, and these will be exceptional cases. Of course there would need to be something relevant that distinguished these two classes.

rape, sex is a voluntary act.²² If this were a relevant disanalogy, then the Pro-Lifer could argue that abortion would fall into the category of exceptions to Q1 *only* in cases of rape. Thomson imagines that the Pro-Lifer would have to add the following premise in order to save Argument #1:

Q1-B) Persons have a right to life only if they did not come into existence as a result of rape.²³

But as Thomson points out, Q1-B is grossly unintuitive and *ad hoc*. Adopting Q1-B leads clearly to the implication that one's right to life depends on whether or not one is a product of rape. Thomson rightly takes this as a *reductio ad absurdum* for Q1-B.

However, the Pro-Lifer does not have to accept Q1-B. The Pro-Lifer could argue that the fact that exceptions can be made where the fetus is a product of rape does not show that the fetus's having a right to life depends on whether or not it is a product of rape. Rather, the fact that there are these sorts of exceptions shows that whether or not the fetus's right to life is outweighed by the mother's right to control her own body is dependent on whether or not the fetus is a product of rape. The Pro-Lifer could then revise Q1 as follows:

Q1 (revised): If X's right to life comes into conflict with P's right to control P's own body as a result of some voluntary and informed action on P's part, then X's right to life outweighs P's right to control P's own body.

²² The term "rape" here could be used in a broader sense than is usual. Most obviously, statutory rape could be included; and so could other less talked about cases such as where women feel unable to say no to sex due to abuses of gender power. When I use the term "rape" I will be referring to all kinds of involuntary sex.

²³ Thomson also imagines that the revision could go as follows: Persons who come into existence as a result of rape have less of a right to life than persons who came into existence as a result of voluntary intercourse, and this lesser right to life can be outweighed by a woman's right to control her own body (JJT 1971: 49).

The fetus's right to life does not disappear when it is a product of rape, but the rape case presents a situation where the fetus's right to life can be outweighed. It's not as if the right must apply in every case or none at all.

Another aspect of the voluntariness disanalogy is the connection between voluntariness and responsibility. Pro-Lifers endorsing Q1-A may argue that the voluntariness of intercourse gives the woman some sort of special responsibility for the fetus since it was by her act that it was created, and also that the fetus is dependent on her for the duration of the pregnancy. Imagine another violinist analogy where in order to join the Society for Music Lovers you have to agree that if by some very small chance a certain famous violinist becomes deathly ill with a kidney disease, you have to be hooked up to him for 9 months. It is a small chance, say 1%, but you take it because you are eager to partake in the fun had by the members of the society. You are aware that once you're hooked up to the violinist, he can't be unplugged and hooked to someone else or he'll die. It is not so obvious what it is permissible to do in this situation.

A third disanalogy is that, in the case of the violinist, the violinist is a stranger of no particular relation to you, whereas the fetus is at the very least your biological child.²⁴ And we tend to think that we have special responsibilities for our children, especially when it comes to preserving their lives. However, Boonin argues that 'child' and 'parent' are not merely biological designations; rather, being a parent involves actively taking on the responsibilities of being a parent. This is in keeping with the intuition that once someone gives up her baby for adoption we do not hold her to the responsibilities of a parent, and we do hold the child's new non-biological parents to these responsibilities. It could be argued that if one does not take these responsibilities on, then one does not have

²⁴ Surrogacy and other similar exceptions would of course be exceptions to this.

them.²⁵ However, the problem is that it is not clear that these responsibilities can just be given up at will. For example, if someone is pregnant and is in a remote area where she cannot get an abortion, once the baby is born, most people would not think it permissible for her to dump the baby on the side of the road just because she decided that she did not want to take responsibility for the child. Most people would think this person has at least the responsibility to ensure that the child is placed in a situation where it will be cared for. I will come back to this example and issues of responsibility when I talk about Pro-Life Argument #6 below.

3.22 Argument # 2: “The Extreme View”: Abortion As Direct Killing²⁶

The next three arguments (Arguments #2-4) will deal with a particular Pro-Life position that Thomson calls “The Extreme View.” Proponents of The Extreme View hold that all or very nearly all abortions constitute direct killing of the fetus, and direct killing is always an unjust action. This means that even if the pregnancy will end up killing the pregnant woman, an abortion that constitutes direct killing of the fetus is still considered to be morally impermissible.

Argument #2 identifies the basic argument that Thomson believes would be used to support such a view. Arguments #3 and #4 examine the moral obligations, under The Extreme View, of individuals engaged in the moral dilemma presented by abortion.

²⁵ See A Defense of Abortion, Chapter 4 by David Boonin and “Abortion, Intimacy, and the Duty to Gestate” by Margaret Olivia Little.

²⁶ JTT 1971: 50-52.

3.22.1 The Argument:

R1: If a person is directly killed, then that person is unjustly killed. ²⁷ (CA)

R2: When an abortion is performed, the fetus is directly killed. (SA)²⁸

C: When an abortion is performed, the fetus is unjustly killed. (CVA: R1, R2)

3.22.2 Plausibility Of R1:

The plausibility of R1 will depend on whether one finds the distinction between direct killing and indirect killing, and the assertion that direct killing is always wrong, intuitively plausible. Don Locke summarizes the concept of direct killing nicely in his paper “The Choice Between Lives”:

A distinction is drawn between those things we do as a means to our chosen end, and those things which are only a side-effect or by-product of the means and end which we choose. If someone's death is a means to our end—including, in particular, the end of having that person dead—this is direct killing, and as such impermissible; but if that death is not itself a means to the end, but is a separate result of the means we adopt, then the killing is indirect and may, subject to certain other conditions, be permissible. (DL 470)

3.22.3 Refutation Story #2:

Same as RS#1 (violinist), except you find out that the additional strain that the violinist is putting on your kidneys will leave you dead within a month. Thomson’s intuition is that this presents a case of direct killing of a person that is not unjust killing.

3.22.4 Success As A Counterexample:

Whether RS#2 is a successful counterexample depends on whether or not one agrees with Thomson’s intuition that the violinist case is a case of direct killing. Let’s assume with Thomson that it is a case of direct killing and that it is morally permissible to unplug

²⁷ This is more simply stated as “All direct killing is unjust killing.”

²⁸ I am going to assume for the sake of argument here that abortion constitutes direct killing of the fetus.

yourself from the violinist. In this case RS#2 is a valid counterexample to R1, and so we now know that not *all* direct killing is morally impermissible. Two categories are created: the category of cases where direct killing is permissible and the category of cases where direct killing is not permissible. The violinist clearly falls into the former category. In order to persuade us that life-saving abortions are morally permissible Thomson will have to persuade us that life-saving abortions also fall into this former category.

But is killing the violinist actually a case of direct killing? If the Pro-Lifer claims that the violinist is a case of indirect killing, then RS#2 is not a valid counterexample. However, the Pro-Lifer will certainly need to explain why the violinist is not a case of direct killing but the case of life-saving abortion is. In order to do this the Pro-Lifer is going to have to point to some relevant disanalogies between the violinist and the case of life-saving abortion.

3.22.5 Success As An Analogy: Since we are using the same example of the violinist, we are going to run into the same disanalogies we did in argument #1. Again, I will be discussing these disanalogies further at argument #6 below.

3.23 Argument # 3: “The Extreme View”: Self-Administered Abortion²⁹

3.23.1 The Argument:

Setup:

Situation L: *X and P are in an inescapable situation where X will unintentionally cause the death of P if either P or Q does not intervene. The only way to save P is to kill X.*

S1) If X is unjustly killed when Q kills X to save P, then X is unjustly killed when P kills X to save P. (CA)

S2) If the fetus is unjustly killed when a doctor performs an abortion to save a pregnant woman’s life, then the fetus is unjustly killed when a pregnant woman performs an abortion to save her own life.³⁰ (S1)

S3) The fetus is unjustly killed when a doctor performs an abortion to save a pregnant woman’s life. (SA)

C) The fetus is unjustly killed when a pregnant woman performs an abortion to save her own life. (CVA: S2, S3)

S3 is identified as a shared assumption because Thomson targets this argument in order to show that even if we assume that an abortion performed by a third party is impermissible, it is still true that self-administered abortion is permissible.

3.23.2 Plausibility of S1:

If there is no difference between the obligations that P and Q have to X, then S1 seems intuitively plausible. The Pro-Choicer could argue that the pregnant woman does have different obligations from the doctor’s since the pregnant woman’s life is being threatened by the fetus. But the fetus is not intentionally threatening the pregnant woman and has no ability to remove this threat. It is not obvious how this ‘threat’ from the fetus should affect the pregnant woman’s obligations. Examining Thomson’s analogy below will help to sort out some of these intuitions.

²⁹ JTT 1971: 52-53

³⁰ Of course Z need not be an actual doctor, Z could be anyone capable of performing an abortion, but for simplicity’s sake we will say Z is a doctor.

3.23.3 Refutation Story #3:

You are trapped in a tiny house with a small child. The child is growing at a rapid rate and will soon crush you to death before breaking free of the house unharmed. Thomson's intuition is that it is permissible to kill the child in self-defense, even if it is not permissible for a third party to intervene.

3.23.4 Success As A Counterexample:

Many people would find it intuitive that killing can be permissible in at least some cases of self-defense. If a person persists in intentionally trying to kill me, and the only way to prevent him from doing so is to kill him, then many would find it intuitive that it is permissible for me to kill him. However, there are examples where killing someone in order to save your own life would not likely be considered permissible. Thomson herself states that she does not think it is permissible to do anything whatsoever to save your own life: "If someone threatens you with death unless you torture someone else to death, I think you have not the right, even to save your life, to do so." (JJT 1971: 53) If your captor, rather than asking you to torture someone to death, asks you to simply kill that person instead and your life will be spared, is it then morally permissible to kill him? This situation has similarities to a situation of a life-threatening pregnancy. In both cases the person you have to kill in order to protect yourself is innocent and has no intention of harming you; in both cases you will die if you don't kill him. In either case you are being forced to choose between another person's life and your own. Though some people may think that it is permissible to kill the other hostage or the growing child to save your own life, it is not unreasonable to think that it is impermissible to do so out of a belief that

killing an innocent person is wrong, even when you kill them to protect your own life. I am not convinced that Refutation Story #3 would act as a counterexample to S1 for Pro-Lifers who think that direct killing is wrong. In fact I could even imagine Refutation Story #3 being used as an analogy to persuade someone that killing in self-defense is not always permissible, and that life-saving abortion represents one of these cases.

Refutation Story #3 is also meant to act as a counterexample to R1 (If a person is directly killed, then that person is unjustly killed). But Refutation Story #3 is going to fail as a counterexample to R1 for the same reasons it failed as a counterexample to S1: Thomson's assumption that it is morally permissible to kill the rapidly growing child is not going to be intuitive to everyone. Even if S1 was defeated the Pro-Lifer who holds the Extreme View could argue that the moral impermissibility of a pregnant woman giving herself an abortion has nothing to do with the fact that it is morally impermissible for a doctor to perform the abortion, and that it would be equally morally impermissible for the woman or the doctor to perform the abortion because they are both cases of direct killing, which is morally wrong

3.23.5 Success As An Analogy:

Again we run into the disanalogy that the fetus is your biological child and the child in the house is a stranger. What if we imagined that the rapidly growing child was your own biological child? If the scenario were presented like this, then perhaps even more people would find it unintuitive that it is permissible to kill the child.

3.24 Argument # 4: “The Extreme View”: Third Party Intervention ³¹

At this point Thomson believes that she has shown that there are some cases where direct killing is permissible and therefore The Extreme View is false (RS#2 & 3), and that at the very least it is permissible for the pregnant woman to perform an abortion on herself (RS#3). The only way Thomson sees for the Pro-Lifer who holds The Extreme View to salvage his argument at this point is for him to claim that although it is morally permissible for the woman to kill the fetus herself, it is not morally permissible for a third party to intervene and kill the fetus. Given that, in order for abortions to be safe for the pregnant woman, in North America, abortions must be performed by a doctor, perhaps the Pro-Lifer would be willing to live with this amended argument.

3.24.1 The Argument:

T1) In Situation L,³² X’s right to life is violated when Q kills X to save P. (CA)

T2) The fetus’s right to life is violated when a doctor performs an abortion to save a pregnant woman’s life. (T1)

3.24.2 Plausibility Of T1:

There does seem to be some plausibility to T1. If both people are innocent and one of them has to die no matter what, then how does a third party choose who should live and who should die? It doesn’t seem right to automatically choose the one doing the “threatening” given that she is doing it unintentionally and could in no way have avoided it.

³¹ JJT 1971: 53-54.

³² See argument #3 above.

3.24.3 Refutation Story #4:

There are two men named Smith and Jones. Jones finds and puts on a coat, which he needs to keep from freezing to death, but Smith actually owns the coat and also needs it to keep from freezing to death. Thomson asserts that it is morally permissible for a third party to take the coat from Jones and give it to Smith, thereby killing Jones. She does note that she does not think that we are morally required to lay hands on Jones.

3.24.4 Success As A Counterexample:

Thomson believes that RS#4 provides us with an example of a case where it is permissible for Z to kill X; according to Thomson, Z can permissibly choose who should die between X and Y by invoking Y's right to property. Again I find my intuitions do not match up with Thomson's here. The idea that the right to property could justify killing is highly questionable. I do not see how the right to property could be relevant when the right to life and the right to control one's own body are at stake. I think it is fair to say that the right to life and the right to control your own body are more fundamental than the right to property. They are what we call basic human rights, and it is hard to see how they could be outweighed by the right to property. What if I had to suffocate or stab Jones to retrieve the coat for Smith? It is true that it may not be fair that Jones has the coat that Smith owns, but Jones didn't ask for the coat, didn't steal the coat, and didn't put himself in the situation where there was no way for Smith to get it back except for Jones to die. It is also unfair that Jones is in this position, even if the situation is no fault of Smith's.

3.24.5 Success As An Analogy:

Thomson tells us that it must be remembered that it is the woman's body that houses the fetus, and Thomson takes it that the woman *owns* her body. But even if the woman's right to property could be invoked to justify abortion (which I have argued above is highly problematic), it is not clear that the right to property can be invoked in the situation of abortion to begin with. It is not at all clear that the mother "owns" her body any more than the fetus owns her body. After all, the fetus, as has been said by many Pro-Choicers, does not have an entirely separate body from the mother—they share blood etc.³³

Furthermore, it seems to me that a body is not a thing that you do or do not own. Rather it is a part of you, a part of what you are as a person. When I say "this body is my body" or "this body belongs to me," I mean something more than when I say "this toaster belongs to me". The fact that the body is not a mere possession is what makes the violation of your right to control your body such a serious wrong. This is why casting the body as property is such a bad idea for the Pro-Choicer: it somehow cheapens a woman's claim to a right to an abortion, basing it on a right to property rather than a right to control one's own body or a right to life.

RS#4 is neither successful as a counterexample to T1 nor as an analogy to the situation of abortion for a fatal pregnancy. In the end I think both RS#3 and RS#4 end up having the opposite of the effect that Thomson intended. For those of us who do not share the intuition that the fetus is a person I think it is sometimes hard to truly imagine the fetus as a person when considering the moral dilemma presented by abortion. Thomson meant to present us with two cases where a being that is indisputably a person and is

³³ The idea of the woman and the fetus as separate entities has been argued against by Margaret Olivia Little in her paper "Abortion, Intimacy, and the Duty to Gestate" (1999).

innocent of any aggression can be permissibly killed so that we could transfer those intuitions over to the fetus and see that it can permissibly be killed. However, if, like me, you do not find it obvious that it is okay to kill either the child in the house or Jones to get the coat back, then you will have transferred those intuitions over to the case of abortion. Thomson says that she does not think that the Pro-Lifers really take seriously the right to control one's own body that they have granted to the pregnant woman. But I think the foregoing considerations show that perhaps Thomson has not taken seriously what she has granted when she assumes for the sake of argument that the fetus is a person.

3.25 Argument # 5: The Responsibility Argument³⁴

3.25.1 The Argument:

X1) If C occurs after X voluntarily does N while understanding that C is a possible but unlikely consequence of doing N, then X is responsible for C. (CA)

X2) If a fetus gains access to a woman's body after that woman voluntarily had intercourse while understanding that a fetus having access to her body was a possible but unlikely consequence of her having intercourse, then that woman is responsible for that fetus having access to her body. (X1)

X3) In cases of voluntary and informed³⁵ intercourse resulting in pregnancy, a fetus has gained access to a woman's body after that woman voluntarily had intercourse while understanding that a fetus having access to her body was a possible but unlikely consequence of her having intercourse. (SA)

C/X4) In cases of voluntary and informed intercourse resulting in pregnancy the woman is responsible for the fetus having access to her body. (CVA: X2, X3)

³⁴ JJT 1971: 56-59.

³⁵ By informed intercourse I just mean that the woman understands that it is a possibility that she could become pregnant (that the fetus could have access to her body)

X5) If X is responsible for P having access to M, then X has given P the right to M. (CA)

X6) If a woman is responsible for the fetus having access to the woman's body, then the woman has given the fetus a right to her body. (X5)

X8/C) In cases of voluntary and informed intercourse resulting in pregnancy the woman has given the fetus a right to her body. (Modus Ponens X4, X6)

X9) If the fetus has a right to the use of the woman's body, then, if you deny the fetus the use of her body, you violate the fetus's right. (CA)

X10) Abortion denies the fetus of the use of the woman's body. (SA)

X11/C) In cases of voluntary and informed intercourse, abortion is a violation of the fetus's right to the pregnant woman's body. (CVA: X8, 89, X10)

X12) If performing an abortion violates the fetus's right, then abortion kills the fetus unjustly. (CA)

X13/C: In cases of voluntary and informed intercourse resulting in pregnancy, abortion kills the fetus unjustly. (CVA: X11, X12)

3.25.2 Plausibility of X5:

X5 doesn't really seem very plausible. Though it may be true that responsibilities we have for others often go along with rights they have regarding our behaviour towards them, it's not at all clear to me how the responsibility for having someone possess or inhabit your property gives them a right to it.

3.25.3 Plausibility of X1:

X1 is even less plausible to me than X5. People don't normally hold themselves or others responsible for every foreseeable but unintended consequence of their actions.

3.25.4 Refutation Story #5.1:

You are aware of the possibility that if you leave your window open, a burglar can come in. You put bars on your windows to prevent burglars from coming in. You are aware

that these bars are effective only 98% of the time. You open your window to get some fresh air one day and the next day find that your bars are indeed defective and a burglar has gotten into your house.

3.25.5 Refutation Story #5.2:

People seeds drift in the air like pollen. If one of these people seeds floats in through your window, it can take root in your carpet or upholstery. You have carpet and upholstery but you want to avoid having children, so you put mesh screens designed to filter the people seeds on your windows. You are aware that even when these screens are installed properly there is a small chance that your screen could be defective. One of your screens happens to be defective. One day after you've had your window open you notice that a people seed has taken root in your sofa.

2.25.6 Refutation Story #5.3:

You are aware of the possibility that you may become pregnant due to rape if you leave your house without either having a hysterectomy or never leaving the house without some kind of physical protection at all times.

3.25.7 Success Of RS #5.1 & 5.3 As Counterexamples:

RS#5.1 and RS#5.3 provide us with valid counterexamples to both X1 and X5. It is clear that you are not responsible for the burglar getting into your house and you certainly would not be responsible for being sexually assaulted just because you chose to leave your house. In both cases what J is being held responsible for is someone else's actions

(the actions of a burglar or a rapist); and your being held responsible for someone else's actions is hardly in the spirit of the idea that you are to be held responsible for your own actions, the latter being the force behind X1. And if we did want to say that you are in some way responsible for the burglar entering your house or the sexual assault, it certainly could not be the kind of responsibility that gives the burglar a right to your house or the assaulter a right to your body. The only kind of responsibility it seems appropriate to ascribe to you is some kind of vague causal responsibility, as in: if you hadn't done N, then C would never have happened, which merely states a fact but does not seem to provide a basis for you having any particular moral responsibility in these cases. And if this causal responsibility is the only kind of responsibility we're talking about then there is no way that that responsibility gives the burglar a right to your home or the assailant a right to your body. In fact nothing short of your consent could do that.

3.25.8 Success Of RS #5.1 & 5.3 As Analogies:

There are a few obvious disanalogies between the case of abortion and the cases of RS#5.1 and RS#5.3. In the case of abortion the fetus is an innocent person who will die if it is not allowed to have access to your body, while no significant harm will come to you (remember I am just talking about non-fatal pregnancies now). But in RS#5.1 and RS#5.2 the person who is "gaining access to your property" is an aggressor and at least in the latter case has the intention of seriously harming you. And then there is the issue of conceiving of the woman's body as her property. This idea works neither for the case of abortion nor for the case of sexual assault, and so it would be trivializing and offensive to describe the latter case as a violation of the woman's right to her own property

But maybe the point of RS#5.1 and RS#5.3 is just to show that we can't be held responsible for all of the foreseeable consequences of our actions. Of course, this is true: there are some consequences of our actions that we should be held morally responsible for, and there are some that we should not be held morally responsible for. If the consequences are unforeseeable, then we surely cannot be held responsible for them. If the consequences are the morally impermissible actions of others, we cannot be held morally responsible for their actions. But this does not tell us much about the case of abortion since it does not persuade us that the death that results from an abortion falls into the category of consequences that we should not be held responsible for. As I said above, of course there are also situations where we *should* be held responsible for the consequences of our actions. If the consequences are foreseeable, they put another person in danger and they are preventable, then we probably should be held responsible for them. If this is true, then given the disanalogies mentioned above, it seems more suitable to place the case of abortion in the category of consequences that we should be held morally responsible for.

3.25.9 Success Of RS #5.2 As A Counterexample:

Thomson takes it as obvious that you are not responsible for the people seeds should they land in your house without your intending for this to happen, and that they have no right to your property. But I do not think that it is obvious that either of these things would be true in the world that Thomson describes. In a world where people can be created by the simple act of opening a window, who's to say what constitutes responsibility for that fetus? And even if you have not given that fetus a right to your home, that doesn't mean

it doesn't have some right. Not all rights have to be given by someone in order for those rights to exist. Having children in the world that Thomson imagines would be a completely different thing from what it is in this world. For example, children would never be "biologically yours" and it seems likely that there would be many accidental "pregnancies". Perhaps in such a society it would be accepted that if a people seed happens to land in your house, then it has a right to be there at least until it matures enough for it to be cared for in another house and you have a responsibility for it until that time. This society is far too different from ours to make a good counterexample for a principle meant to apply to our society. Our intuitions are formed in the context of our own society and will likely not give us very good moral insights about a society so different from ours as the people seed society.

3.25.10 Success of RS#5.2 As An Analogy:

Of course if our intuitions about the people seed world are unhelpful to us, then it will not make for a very useful analogy.

3.25.11 An Alternative Characterization:

I do not believe that Thomson presents the most sophisticated version of the responsibility argument in her analysis. I will offer an alternative characterization of the argument below with the aim of demonstrating that a reasonable responsibility argument can be made:

Y1) If X is responsible for P's dependence on X for P's life, then It is unjust for X to deny P the support needed to sustain P's life. (CA)

Y2) In cases of voluntary and informed intercourse, the pregnant woman is responsible for the fetus's dependence on the pregnant woman for the fetus's life. (CA)

Y3) The support needed to sustain the fetus's life is the use of the pregnant woman's body. (SA)³⁶

C/Y4) In cases of voluntary and informed intercourse, it is unjust for the pregnant woman to deny the fetus the use of her body. (CVA: Y1, Y2, Y3)

Y5) Abortion denies the fetus the use of the pregnant woman's body. (SA)

Y6) In cases of voluntary and informed intercourse, abortion is the unjust killing of the fetus. (CVA: Y4, Y5)³⁷

Y1 and Y2 certainly are controversial assumptions; however, they do have some intuitive plausibility. Y1 implies that if I am responsible for someone's being dependent on me for her life, then I have a moral obligation to sustain her life while this dependence continues. This seems like a fairly reasonable claim. Y2, which claims that the pregnant woman is responsible for the fetus's dependence on her, is more controversial. However, again, I do not think it is unreasonable to assert that a pregnant woman who has voluntary and informed intercourse has some responsibility for the resulting pregnancy and the fact that the fetus is dependent on her for its life. I am not saying that Y1 and Y2 are true, only that we would not want to accuse someone who holds Y1 and Y2 to be true of being unreasonable to do so.

3.3 Summary

In this chapter I have shown that the Pro-Life arguments that Thomson targets, and her attempted refutations of them, all contain unjustified premises based on contentious

³⁶ Y4 is true given modern medical technology (at least within the first trimester, which is when 98.4% of abortions take place, again see http://www.guttmacher.org/pubs/fb_induced_abortion.html).

³⁷ It is assumed here that abortion kills the fetus.

intuitions. Since these arguments are all equal in being logically valid and equal in containing unjustified premises, I will say that they are equally reasonable.

CHAPTER 4: APPEALING TO PRO-LIFERS ON THEIR OWN TERMS

In his book *A Defense of Abortion* (2003) David Boonin provides an impressively thorough survey of arguments for the moral impermissibility of abortion. Boonin attempts to refute each of these arguments and then presents his own “present ideal dispositional desire” argument for the moral permissibility of abortion as we saw above.

Boonin makes two methodological assumptions before starting this task:

Assumption #1: If we are to be successful in making arguments convincing to the Pro-Lifer, we must be careful to appeal to her on terms that she can and already does accept.

Assumption #2: It makes sense to focus on the moral question of abortion rather than the legal question because the moral question is more fundamental.³⁸

In this chapter I will argue that these two assumptions are in tension with each other. I will argue that if one intends to make an argument following the advice of Assumption #1, then one ought not to follow the advice of Assumption #2.

4.1 Assumption #1

In the preface of his book Boonin talks about the importance of not treating the problem of abortion as an intriguing philosophical problem, but rather making an earnest attempt to find a resolution to the debate that will be acceptable to one’s opponents. Boonin argues that the best way to do this is to be sure that the premises of one’s argument appeal to the Pro-Lifer on terms that she can or already does accept. I think this seems

³⁸ Boonin also states that the moral question is a large enough problem to focus on at once, but I do not take this to be Boonin’s main justification for focusing on the moral debate.

like a very reasonable methodology, so I will not spend time arguing in support of it but will rather assume its validity and see what follows from that.

Boonin identifies the method of reflective equilibrium as the best method for accomplishing this task. Boonin's interpretation of this method can be outlined as follows:

1) Provisionally accept our intuitions about various different actions, *giving more initial weight to those that seem most clear and forceful.*³⁹

2) Develop a moral theory that accounts for these intuitions:

a) Create a principle or set of principles that serves to unify and explain our intuitions.

b) Give preference to theories that are more theoretically virtuous.

d) Intuitions that do not fit into the theory can be thought of as counterexamples; when one of these counterexamples comes up we have 2 options:

Option #1) Revise the theory/principle(s) by adding restrictions or exceptions (a sacrifice of theoretical virtue).

Option #2) Abandon the original intuition (a sacrifice of intuitive plausibility).

When applying this method the idea is to come up with a theory that strikes the best balance between theoretical virtuosity and intuitive plausibility. In general Boonin applies this method by accepting certain premises in a particular Pro-Life argument and then arguing that even if we accept these premises, we do not end up having to accept the Pro-Lifer's conclusion. Boonin sees this as an application of the method of reflective equilibrium because he takes himself to be appealing to the Pro-Lifer by accepting certain

³⁹ I have added the emphasis on this part of the method.

premises of hers and then arguing that her argument is either not logically or not intuitively compelling even given that these premises are true.

4.2 Assumption #2

Boonin's justification for Assumption #1 is as follows:

If almost everyone believed that abortion was perfectly moral, it is unlikely that there would be much public demand for laws criminalizing abortion, or that such laws would be effectively enforced if they were passed. And if almost everyone believed that abortion was morally on par with murder, it is unlikely that women wishing to have abortions would find that they were easily available, even if they were technically legal. Since the moral question of abortion is the more fundamental in this respect, an inquiry into the subject should begin with it. (DB 4)

I do not disagree with the statement that finding a conclusive answer to the moral question of abortion would likely end the debate over the legal status of abortion. If it could be proven conclusively that abortion was immoral on par with murder, then it would likely have to be made illegal. And similarly, if it could be proven conclusively that abortion was not immoral, then there would be no compelling reason to make it illegal.⁴⁰ I am inclined to agree that these conditional statements are true, but not inclined to agree that pursuing their logic will lead us to a solution to our problem. I will illustrate the problem I see here with the following analogy: You are stranded on an island in the middle of the ocean. It is true that *if* you could figure out how to build an airplane from the resources available on the island, then you would be able to get home. However, we would not think that devoting all your time and energy to figuring out how to make an airplane was a good strategy for attaining your goal of getting home. Rather it would be better to focus on making signs on the beach out of coconuts that would be visible by

⁴⁰ I briefly discussed and dismissed arguments for the illegality of abortion not based on claims of the immorality of abortion. I wanted to briefly acknowledge again that though I do not see these arguments as playing a large role in the debate, they do exist.

airplanes flying overhead (or some such thing). More plainly, I am proposing that pursuing a solution to the moral debate over abortion makes sense only if there is sufficient potential that a resolution to the moral question of abortion will be found. I have already argued in chapters 2 and 3 that the moral debate over abortion is at a state of reasonable disagreement. I will now briefly argue that accepting Boonin's methodology as discussed above gives us another reason to focus on the legal question rather than the moral question.

4.3 Focusing On The Legal Question

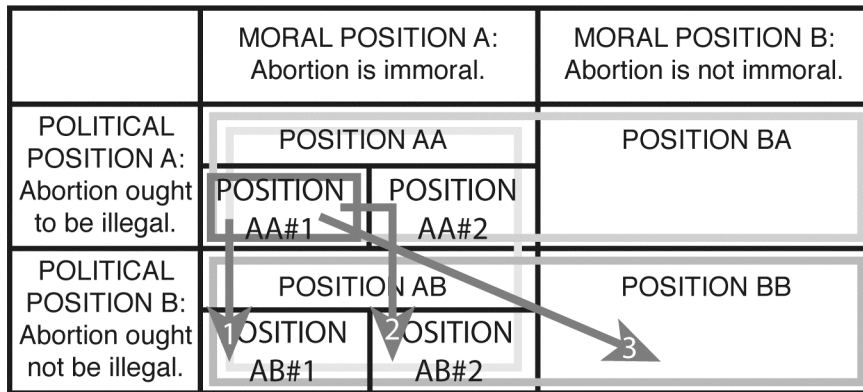
When discussing the different types of positions someone can have on abortion in Chapter 1 I identified two different positions that can fall under the Pro-Choice heading: Position AB and Position BB. I would now like to propose a further division of Position AB:

Position AB #1: I believe that abortion is the unjust killing of a person with a right to life, but I do not believe it should be made illegal based on my belief in this fact.

Position AB #2: Abortion is immoral, but not so much that it ought to be made illegal.

If I now add these two positions onto our chart I can illustrate three possible routes that a Pro-Lifer can take in order to become a Pro-Choicer:

Figure 4: Chart Of Possible Routes To The Pro-Choice Position



In order to get a Pro-Lifer to follow Path 1 the Pro-Choicer must be able to convince the Pro-Lifer that he is not justified in asking for a legal restriction on abortion even though he is reasonable to assert that abortion is the unjust killing of a person. In order to be convinced to take path 2 the Pro-Lifer must first be convinced that abortion is not the killing of a person/the violation of a person’s right to life, and then be convinced that it should not be made illegal even though he may still think it is gravely immoral. Someone who takes this path must pass through Position AA#2 on her way to Position AB#2. And finally, for someone to be convinced to take path 3 he must be convinced that his belief that abortion is immoral is mistaken entirely. In *A Defense of Abortion* Boonin is trying to persuade Pro-Lifers to follow path 3 or perhaps path 2. I will argue that we should expect it to be easier for the Pro-Lifer to take path 1 than it is for them to take path 3. Also, in some cases, we should expect it to be easier to take path 1 over path 2.

Boonin talks about the moral question of abortion being more fundamental than the legal question, but his characterization of the moral question’s fundamentality seems to see the question as fundamental only in some practical sense of fundamental: solving the moral question eliminates the legal question in practice. However, there is another

way that the moral question of abortion could be considered the more fundamental question: The moral question is more fundamental because the intuitions that one uses to support one's answer to the moral question are more fundamental than the ones that one uses to support one's answer to the legal question. That is, the intuitions that go into answering the moral question are intuitions that one is less likely to give up than those of one's intuitions that go into answering the legal question. In his description of the method of reflective equilibrium Boonin mentions that more weight must be given to those intuitions of the Pro-Lifer that are more fundamental. However, because Boonin limits himself to analyzing moral arguments, and thereby obscures the greater scope of the problem, he does not consider the possibility that what are the conclusions of moral arguments are premises in the greater argument for illegality and that these premises are possibly very fundamentally held by the Pro-Lifer.

If fetal personhood/right to life is fundamental to the Pro-Lifer, then she will not be able to take either path 2 or 3. If the immorality of abortion is fundamental to the Pro-Lifer, then she would not be able to take path 3 at all. The question then is what is the likelihood that the claims of fetal personhood/right to life and or the immorality of abortion are based in fundamental intuitions for the Pro-Lifer, intuitions that the Pro-Lifer is highly unlikely to give up? If we are talking about Pro-Lifers whose intuitions about fetal personhood/right to life and impermissibility of abortion are rooted in religious belief, then these intuitions are only as likely to be given up as it is likely for the person to give up her religion. If we are not talking about a religious Pro-Lifer, then it is a bit harder to say. However, I think it is likely that for many people the intuitions that they

have about what constitutes personhood, the right to life, or unjust killing, are more fundamental than their intuitions about what constitutes the proper use of state power.

When trying to convince someone to come from Position AA#1 to Position BB I have to persuade her to give up both her moral and her political views on abortion.

Alternatively, if I can persuade someone to go from Position AA#1 to Position AB#1 I am not asking her to change her fundamental moral intuitions, but rather to change her idea about what those intuitions imply about what laws should get made given the kind of society we live in. It is exactly because the moral question of abortion is more fundamental than the legal question that we should focus our attention on the legal question first and foremost.

CHAPTER 5: CONCLUSION

I have presented my argument for the Pro-Choicer to shift her focus to making arguments answering the legal question. Before concluding this thesis, I will offer a brief look at what these sorts of arguments look like. The arguments I will look at are meant to be examples of what arguments answering the legal question could look like, and are not meant to represent a comprehensive solution to the problem. More work needs to be done to adequately justify the claims made in these sorts of arguments.

Roger Wertheimer in his 1971 “Understanding the Abortion Argument” and Judith Jarvis Thomson in her 1995 “Abortion” both make arguments for the reasonable disagreement over the moral question of abortion. After establishing this, both make similar arguments stating that a prohibition of abortion would be an illegitimate use of state power. Wertheimer summarizes his argument as follows:

The existence and powers of the state are legitimated through their rational acceptability to the citizenry, and it would be irrational for the citizens to grant the state any coercive power whose exercise could not be rationally justified to them. Thus, the state has the burden of proving that its actions are legitimate. Now, without question, the present abortion laws seriously restrict the freedom and diminish the welfare of the citizenry. A law with that effect is not ipso facto unjust, but the state has the burden of showing that such a law is necessary to attain the legitimate ends of the state. But the social costs of the present abortion laws are so drastic that only the preservation of human lives could justify them. So to justify those laws the state must demonstrate that the fetus is a [person]. But if that can't be done at all, the state can't do it either, so the laws must be deemed an unjustifiable burden and hence an illegitimate exercise of power.⁴¹ (RW 94)

Since the moral arguments are equally reasonable, and, in Canada and the United States at least, we live in democratic states— states that highly value liberty—those states

⁴¹ Thomson does not say that the debate over the right to life/personhood cannot be resolved, only that at this time the debate is in a state of reasonable disagreement.

may not prohibit someone from doing what she is reasonable in asserting that she should be allowed to do. Thomson offers a helpful clarification of this point:

My objection is not that constraining liberty on the ground of this [Catholic] doctrine violates the principle of separation of church and state. If the legislature constrains the liberty on the ground of this doctrine, and declares that it is entitled to do so because God says the doctrine is true, then the legislature does violate the principle of separation of church and state. But no sensible contemporary opponent of abortion invites the legislature to do this. The opponent of abortion instead invites the legislature to constrain the liberty on the ground of this doctrine, and declare that it is entitled to do so *because the doctrine is true*.⁴² (JJT 95: 13)

The difference Thomson emphasizes above is subtle, but important. Thomson is saying that the justification that the Catholic doctrine *is true* (or that any justification involves claiming to have the *truth* about fetal personhood) is an illegitimate justification for the state. Given that both sides are equally reasonable, the state has no right to claim that there is any truth of the matter about fetal personhood, let alone to use this claim as a justification to impose a severe constraint of the liberty of its citizens. A proponent of position AB#1 says that although she is reasonable in her moral assertion about abortion, so is her opponent, and equally so. So, although a proponent of AB#1 may believe that abortion is immoral, she does not think that this can be used as a justification to apply a legal restriction on any citizen of a liberal state.

⁴² My emphasis.

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