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Bertha Alvarez Manninen

Arizona State University

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Rethinking Roe v. Wade: Defending the Abortion Right in the Face of Contemporary Opposition

Bertha Alvarez Manninen, Arizona State University

In 2008, many states sought to pass Human Life Amendments, which would extend the definition of personhood to encompass newly fertilized eggs. If such an amendment were to pass, Roe v. Wade, as currently defended by the Supreme Court, may be repealed. Consequently, it is necessary to defend the right to an abortion in a manner that succeeds even if a Human Life Amendment successfully passes. J.J. Thomson's argument in "A Defense of Abortion" successfully achieves this. Her argument is especially strong when one considers that her central thesis—that one person's right to life does not entail the right to use another's person's body for continued sustenance—is pervasive in legal policies in the U.S.A.

Keywords: abortion, feminist ethics, moral theory, philosophy

Within the past few years, since the confirmations of Justices Samuel Alito and John Roberts onto the Supreme Court, I have become increasingly worried about the future of a woman's right to receive a safe and legal abortion; a right that Roe v. Wade granted 37 years ago but one that has resulted in what seems like never-ending debate. As much as discussing the abortion issue is viewed by many as beating a dead horse, we, as a society, are no closer to reaching a consensus on the issue. Indeed, the matter is so divisive that some citizens vote for certain political candidates based on this issue alone. There are two reasons why I worry about the future of abortion rights in the United States.

On April 13, 2010, Nebraska lawmakers enacted one of the boldest challenges to Roe v. Wade since 1973. The law, entitled the “Pain Capable Unborn Child Protection Act,” bans abortion after 20 weeks gestational age on the grounds that, after this point in pregnancy, a fetus is capable of feeling pain, including the pain that comes with a second trimester abortion. The law includes an exception for the life or health of the pregnant woman, although it does not take mental health into account. It is no accident that Nebraska is the home of LeRoy Carhart, who is one of the only physicians in the United States willing to practice late-term abortions. Carhart stepped up his practice after the 2009 murder of Dr. George Tiller, also widely known for his late-term abortion practices; indeed Carhart regards himself as Tiller’s successor. Many pain specialists, however, argue that fetal sentience is not possible until mid or late second trimester (Lee et al. 2005), and have argued against this law on that basis. The Nebraska law directly challenges Roe by enacting a new threshold for when states can prohibit abortion. Whereas, currently, abortion access cannot be denied by states (though they can be restricted through other means) until the fetus achieves viability (at approximately 25 weeks gestational age), the Nebraska law decreases the window for abortion by 5 weeks, into the second trimester.

In the 2008 election year, Colorado and Montana had propositions on their state ballots (Propositions 48 and CI-100, respectively) that, had they passed, would have expanded the legal definition of personhood to encompass newly fertilized eggs.1 Some citizens of Georgia attempted to do the same in 2008, introducing a Human Life Amendment (HR 536) to the state legislature, which failed to make it onto their ballot. Two years after the citizens of South Dakota rejected a change to the state Constitution that would have almost categorically banned abortion (the only exception would have been to save the pregnant woman’s life), in 2008 they voted again on whether to outlaw abortion in most cases, with exceptions for rape, incest, or the health of the pregnant woman. Like its 2006 predecessor, the 2008 bill also failed to pass. However, the repeated attempts to have amendments of this sort on state ballots illustrate the dedication and tenacity with which many anti-choice advocates approach this issue. Colorado Proposition 48 sponsor and law student, Kristi Burton, has stated that if the proposition failed to pass in 2008, that she was ready and willing


Address correspondence to Bertha Alvarez Manninen, PhD, Assistant Professor of Philosophy, Arizona State University at the West Campus, New College of Interdisciplinary Arts and Sciences, PO Box 37100, Mail Code 2151, Phoenix, AZ 85069, USA. E-mail: bertha.manninen@asu.edu
to try again in subsequent years, and that she had garnered support from citizens all across the country that were willing to volunteer and invest time to ensuring that the proposition passes. She states: “Maybe I’ll do it again. . . Maybe someone else will. But this isn’t going away” (Kilg 2008). Burton’s words were prophetic, for 2010 has seen a wave of new Human Life Amendments attempting to be passed in various states across the United States. In addition to Nebraska’s law, in 2010 Alabama, California, Colorado, Florida, Michigan, Mississippi, Missouri, Montana, Nevada, and Virginia all attempted to pass Human Life Amendments.

It is no secret that the ultimate intent of passing such a state amendment is to directly challenge *Roe*. Richard Thompson, the President and Chief Counsel of the Thomas More Law Center states, in reference to Georgia’s 2008 initiative, that:

The Human Life Amendment provides Georgia with the best legal means of overturning the central holding of *Roe v Wade*. At the very least, it ensures that Georgia immediately becomes a pro-life state the moment the shackles of *Roe* are broken. . . The adoption of this amendment will place Georgia at the forefront of the battle to restore the sanctity of innocent human life. (HLA Coalition 2008)

The 2008 Republican presidential nominee John McCain has stated “that *Roe v Wade* was a bad decision” and vowed to take steps to overturn it had he been elected president (Ertelt 2008). His former vice-presidential candidate, Sarah Palin, is a self-described anti-choice candidate who opposes abortion almost categorically, even in cases of rape and incest (Palin believes that abortions should be performed only to save the pregnant woman’s life). Former Republican presidential candidate Mike Huckabee fervently supported Colorado’s and Georgia’s attempts to alter their respective Constitutions to grant fertilized eggs the status of personhood. During the confirmation hearings for Justices Alito and Roberts, both were heavily questioned concerning their stance on upholding *Roe* and both were vague in their responses. The hope of many conservatives, however, is that their consistently conservative voting history will lead them to overturn *Roe* if the chance ever presents itself. This all indicates that many citizens and politicians in the United States are ready and willing to continually challenge *Roe* until the Supreme Court is willing to at least re-assess the case.²

All this, then, is evidence for my first worry: anti-choice advocates are becoming increasingly emboldened in their efforts to pass Human Life Amendments and make no secret about their ultimate intent of passing such laws in order to challenge *Roe*. Abortion rights have become far more restrictive within the past few years, and I worry that those restrictions will increase to the point where the right will be extremely compromised. Both 1989’s *Webster v. Reproductive Health Services* and 1992’s *Planned Parenthood of Southeastern Pennsylvania v. Casey* upheld the right to an abortion, but made it easier for individual states to impose restrictions on abortion access. Such an opportunity has not been wasted. Various states (Idaho, Indiana, Kansas, Kentucky, Louisiana, Michigan, Mississippi, Nebraska, Ohio, Pennsylvania, South Carolina, South Dakota, Utah, and Wisconsin) have laws mandating pre-abortion counseling, where women are read a state-prepared script meant to warn them about the dangers of abortion (which are minimal in the first trimester, and comparatively minimal in the second trimester), the psychological, physical, and emotional harm that can come from abortion (with no mention about the psychological, physical, and emotional harms that can come from childbirth and undesired parenthood—which illustrates that the concern is not for the woman herself, but rather to ensure that she give birth), and mandate a waiting period of at least 24 hours. Other states (Alabama, Alaska, California, Connecticut, Delaware, Maine, Minnesota, Nevada, Rhode Island, and Virginia) mandate pre-abortion counseling but no waiting period. Some states (Alabama, Arkansas, Delaware, Georgia, Idaho, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Nebraska, North Carolina, North Dakota, Ohio, Pennsylvania and Rhode Island) have parental notification laws. As this year’s health care debate illustrated, politicians are easily willing to overlook the interests of pro-choice advocates if this means obtaining a perceived higher goal; thanks to Rep. Bart Stupak and his supporters, abortion funding for poor women will be more difficult to come by via public funds.

Another reason I worry about the outcome of any impending challenge to *Roe* is that it seems that the pro-choice community is gradually losing the public relations battle. I first began to notice this in my teaching of the moral permissibility of abortion when many students would cite, as one of the reasons they were not pro-choice, the callousness with which many of those who espouse the position regard nascent human life. They are often turned off when reading Mary Anne Warren’s assertion that later-term fetuses are no more developed than guppies and that procuring an abortion is as morally innocuous as getting a haircut year, individuals who are committed to these causes will continue to put them forth until they are successfully passed. In reference to the second concern, I remind my reader that it only took one married interracial couple, Mildred and Richard Loving, to get Virginia’s Racial Integrity Act overturned and, consequently, end all race-based marriage restrictions in the United States of America (*Loving v. Virginia*, 1967).

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2. It may seem, at first, that I am overstating the future danger of *Roe* being overturned, given that these Human Life Amendments have thus far failed to pass. Moreover, it may be argued, even if a few states did successfully pass such an amendment, it is unlikely that this would create a large effect at the Supreme Court level. In reference to the first concern, one need only to look at the recent debates in California and Arizona over the passing of Constitutional amendments that ban same-sex marriage. In Arizona, the successful passing of Proposition 102 in 2008 came after a similar bill was defeated in 2006. In California, Proposition 8 passed even after same-sex marriage had been legalized in the state. This illustrates that, even if a certain proposition fails to pass in one election
(Warren 1973, 52–58). If one visits the website in support of Colorado’s Proposition 48, a video featuring Burton is posted on the main page, where she explains that one of the motivations behind supporting the proposed amendment is that “life has been devalued in our society, it has been cheapened; I think we can all agree with that” (Colorado for Equal Rights 2008). Recently, I encountered more confirmation that those who are in favor of Roe are losing “the hearts and minds” of the public upon reading Frances Kissling’s article “Is There Life After Roe?: How to Think About the Fetus”:

The precise moment when the fetus becomes a person is less important than a simple acknowledgement that whatever category of human life the fetus is, it nonetheless has value, it is not nothing. . .I am deeply struck by the number of thoughtful, progressive people who have been turned off to the prochoice movement by the lack of adequate and clear expressions of respect for fetal life, people who are themselves grappling with the conflict between upholding women’s rights and the right to conscience and respecting the value of nascent human life. There is a strong distaste of the prochoice community in many facets of society because of the inability or unwillingness to acknowledge one iota of value in fetal life. It almost seems as if there has been a “hardening of the heart” resulting from the prochoice position. (Kissling 2004)

Indeed, although I also am a supporter of abortion rights, I have expressed concern to several of my colleagues and peers about the prevalence of abortion, and that I am not prepared to detach value from fetal life (indeed, the more I study embryonic and fetal development, the more respect I feel for the value of nascent human life). My comments have often been the brunt of much criticism (although, in all fairness, they have often found support as well).

But it is not just those who are ambivalent about abortion that pro-choice advocates are standing to lose—we also stand to lose the newer generation of pro-choice supporters. Indeed, even women who have themselves obtained an abortion are hesitant to align themselves with the prochoice community for the reasons Kissling cited; consider what “Heidi” has to say:

Heidi also feels alienation from reproductive rights activists, whom she feels treats abortion too casually. She says, “I find myself not being a great supporter of the pro-choice movement. When I ask myself why that is, since I believe in the right to choose, what comes back as my answer is that it is something you are killing. You are killing a child.” Heidi laments that so much of the pro-choice side “tries to pretend that’s not true. These are just a collection of cells and da-da-da-da-da.” She feels uncomfortable that pro-choicers say “it’s just a medical operation” and it’s not about “the taking of, at least, a potential life.” (Kushner 1997, 148)

A recent article in Newsweek entitled “Remember Roe?” tells about how the new generation of girls and women, who have grown up in a post-Roe society, have become lax in defending abortion rights, mostly because they take them for granted. One intriguing point the article made is that young members of NARAL Pro-Choice America didn’t “view abortion as an imperiled right in need of defenders.” Moreover, “young voters flat-out disapproved of a woman’s abortion, called her actions immoral, yet maintained that the government had absolutely no right to intervene.” It is important to understand why so many young voters are disapproving of a woman’s decision to obtain an abortion, even though approving of her right to make that choice. According to one young woman

“I only get mad when [a friend] tries telling me, ‘It is nothing, oh well, it is just an abortion.’” It wasn’t the abortion itself that seemed to trouble the woman; rather, it was her friend’s nonchalance. “Even if it was like nothing,” the woman told NARAL, “it was something.” (Kliff 2010, 38–39)

As a result of such conversations with young female NARAL members, NARAL pollster Anna Greenberg has concluded that the pro-choice community needs to do more to “recognize the moral complexity” of abortion and therefore to start “an open discussion about the moral, ethical, and emotional complexity of abortion that would be more likely to resonate with young Americans.” If this does not begin to happen, the concern is that “legal abortion [will become] vulnerable. If [pro-choice advocates] don’t act to protect it . . .it could well fade away with postmenopausal milita” (Kliff 2010, 39). NARAL president Nancy Keenan agrees: “our reluctance to address the moral complexity of this debate is no longer serving our cause or our country well. In our silence, we have ceded moral ground” (Kliff 2010, 39). These concerns have incited me to write this article (and a manuscript still in the works) in the hopes that I can offer a defense of abortion rights that will accomplish two things. First, I hope to give a defense of abortion rights that could survive the passing of a Human Life Amendment. Although these various amendments did not pass in 2008 or 2010, it does illustrate that many individuals are attempting to codify into public policy their moral belief that embryos and fetuses are persons from the point of fertilization. Given the dedication that such an initiative elicits from various anti-choice citizens and anti-choice politicians alike, it is likely that in future election years this topic will be revisited. Hence, it remains true that as long as the argument granting women abortion rights is based on the premise that the fetus is not a person (as I will show Roe is) the right remains on tenuous grounds.

It is also true that many philosophers, theologians, lawmakers, and everyday citizens are irrevocably divided on the issue of fetal personhood. The reason being, I think, is that this is not an empirical question, but rather a metaphysical, philosophical, or theological one; and the variety of philosophical and religious beliefs that our diverse population brings to the discussion renders it highly unlikely that consensus will ever be reached on this issue. For this reason, we need to move away from defending the right to an abortion on the grounds that the fetus is not a person and appeal to different grounds. I will argue that this is best achieved by revisiting Judith Jarvis Thomson’s main thesis
in her article “A Defense of Abortion” that no one is morally required (and cannot be legally compelled) to submit to unwanted bodily intrusion in order to render aid to another person, even for life itself.

Second, this approach will also serve to address the concern that denying value to fetal life has done little to advance the pro-choice movement. It is becoming increasingly necessary to make the case that the right to an abortion is not about flippantly ignoring the value of fetal life, but rather about stressing that no human being has the moral right to use another human being’s body against the latter’s will to sustain life. Such a conclusion does not necessarily entail that the fetus lacks a right to life, or that its life has no value. Rather, what it entails is that no matter how valuable a person is, forced violation of another’s bodily autonomy or integrity in such a manner is prima facie morally indefensible.

Finally, I want to clarify my method of argumentation in this essay. I am not a legal scholar, and therefore the arguments in this article will deal with the question of moral, rather than legal, rights. However, in order to support my arguments in various instances, I will appeal to certain aspects of accepted legal and policy practices in the United States for two reasons. First, certain sections of my article will borrow heavily from Thomson’s article and her violinist example, which has been criticized as being too aberrant to take seriously (Wilcox 1989, 467–468). By focusing on certain aspects of our public policies, I hope to present some “real-life” violinist examples, which render Thomson’s thought-experiment, and her subsequent conclusions thereof, less anomalous and more palatable. Second, as abovementioned, the challenges that the right to an abortion will face in the near future will stem from individuals, like Burton, who wish to translate their moral belief that fetuses are persons with full rights into legal policies. Because of this, I argue it is warranted to do the same on behalf of the opposing side. That is, while I will offer mainly moral arguments, I want to also show that these moral arguments can be successfully translated into legal policies. If my arguments are successful, they will serve to thwart the attempts to eradicate abortion rights via the passing of a Human Life Amendment.

Challenges to interpreting Roe as the right to avoid social or genetic parenthood

Let us consider three ways to interpret the nature of the abortion right. First, the right can be interpreted as a mechanism to prevent unwanted social parenthood. Second, the right to can be interpreted as a mechanism to prevent unwanted genetic parenthood. After all, avoiding unwanted social parenthood could be achieved by simply placing the resulting infant up for adoption. Some women, though, may wish to exercise the right to abortion in order to be rid of genetic progeny simpliciter; that is, these women simply do not wish there to be a child in existence who is their progeny in any respect, regardless of whether they are socially responsible for the child. Third, the right to an abortion can be interpreted as an instance of the broader right to bodily autonomy qua the right not to be subjected to unwanted bodily intrusion. In this section, I will illustrate how the first two methods of defending the nature of the abortion right would fail if a Human Life Amendment were to pass.

In one sense, John McCain is right: Roe was a bad decision; not necessarily in its conclusion of granting women abortion rights, but rather in its method of arguing for this right. Although many individuals who espouse a pro-choice position do so in the interest of preserving a woman’s right to her bodily integrity, the justices who decided Roe did not explicitly appeal to this in order to defend abortion rights. Rather, they relied on appealing to a certain practice of reproductive autonomy: the right to refrain from procreation. The problem with this is that a successful argument in favor of abortion rights based upon the right to avoid procreation (whether in the social or genetic sense) is contingent upon the premise that the human fetus is not a person, which is exactly the premise those who support a Human Life Amendment seek to counter. It is also the premise that the justices refused to address in any other manner other than by appealing to legal precedent which denies fetuses the status of personhood. Appeal to precedent may be a defensible manner of deciding an issue legally (although legal precedent is often challenged and subsequently altered. This is especially true when it comes to the issue of ascribing Constitutional personhood to a group of individuals who previously lacked it, e.g., women and African-Americans), but it is much less defensible from a moral standpoint.

The justices who wrote the Roe majority opinion rejected the premise that the right to an abortion can be defended by appealing to the right to privacy qua the right to bodily integrity or autonomy:

The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim asserted by some amici that one has an unlimited right to do with one’s body as one pleases bears a close relationship to the right of privacy previously articulated in the Court’s decisions. The Court has refused to recognize an unlimited right of this kind in the past. (United States Supreme Court 1973)³

Rather, the justices understood the right to privacy to manifest itself in a different way when it comes to this issue, i.e., as the right of women to avoid procreation and the subsequent demands of unwanted parenthood⁴:

This right of privacy... is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force

³ While it may be argued that what the justices rejected was a categorical right to bodily autonomy, they no where return to the argument in any fashion, not even by appealing to a prima facie right to bodily autonomy, in order to defend their decision.
⁴ Another way the right to privacy manifests itself in Roe is by protecting women from state interference regarding important life decisions.
upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. (United States Supreme Court 1973)

All the considerations brought up by the justices deal with the negative consequences of forcing women to have unwanted children. Most of these negative consequences occur postnatally, and most of them reference the burdens of social parenthood, i.e., the burden that comes with being responsible for and caring for a (unwanted) child. According to the justices, up until the time the fetus is viable, women have a right to seek an abortion in order to avoid the burdens of unwanted future progeny unfettered by the government, unless the abortion procedure is perceived as being more dangerous to her health than actual childbirth.5

The right of all people to take steps to avoid procreation, whether in the social or genetic sense, is a common exercise of reproductive liberty, and one that has been explicitly appealed to in many other cases concerning reproductive freedom. For example, this right was invoked in cases concerning the legal regulation of contraception. In Eisenstadt v. Baird (1972), the Supreme Court ruled that: “If the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child” (United States Supreme Court 1972). In Carey v. Population Services International (1977), the Supreme Court further asserted this interpretation: “Regulations imposing a burden on a decision as fundamental as whether to bear or beget a child may be justified only by compelling state interests, and must be narrowly drawn to express only those interests” (United States Supreme Court 1977). In Davis v. Davis (1992), the first embryo disposition case, the Supreme Court of Tennessee explicitly appealed to the right to privacy in order to defend its contention that procreational autonomy includes the right to refrain from procreation:

...a right to procreational autonomy is inherent in our most basic concepts of liberty and is also indicated by the reproductive freedom cases, see, e.g., Griswold v. Connecticut and Roe v. Wade, and by cases concerning parental rights and responsibilities with respect to children... For the purposes of this litigation it is sufficient to note that, whatever its ultimate constitutional boundaries, the right of procreational autonomy is composed of two rights of equal significance – the right to procreate and the right to avoid procreation. (Supreme Court of Tennessee 1992, emphasis added)

The validity of a right to avoid procreation, therefore, is not the topic of my dispute; such a right has long been acknowledged and I do not wish to question it. My concern, rather, lies with whether this consideration can properly be used to defend a right to an abortion given the justifications provided by the justices who decided Roe.

How ought we to best understand the right to avoid procreation? It seems to me that the right is best understood as a right to refrain from having progeny; that is, the right is best understood as a preventative one. The right to avoid procreation does not extend to currently existing children in quite the same way. While exercising this right entails that you can prevent the existence of a genetically related child, it does not entail that you can kill an already existing genetically related child if you decide, after her birth, that you no longer wish to be a parent. One may be able to abdicate one’s role as a social parent by signing away parental rights and the correlative parental responsibilities, but once a child is born (or viable, according to Roe), she is acknowledged as a moral subject, a being with rights and interests of her own, and therefore she cannot be killed in order to uphold her parents’ right to abstain from procreation either in the social or genetic sense.

In Davis v. Davis, the Tennessee Supreme Court decided that, when there is a conflict amongst genetic donors as to the fate of surplus embryos:

disputes involving the Disposition of preembryos produced by in vitro fertilization should be resolved, first, by looking to the preferences of the progenitors. If their wishes cannot be ascertained, or if there is dispute, then their prior agreement concerning Disposition should be carried out. If no prior agreement exists, then the relative interests of the parties in using or not using the preembryos must be weighed. Ordinarily, the party wishing to avoid procreation should prevail, assuming that the other party has a reasonable possibility of achieving parenthood by means other than use of the preembryos in question. If no other reasonable alternatives exist, then the argument in favor of using the preembryos to achieve pregnancy should be considered. (Supreme Court of Tennessee 1992; emphasis added)

According to the decision, in absence of a prior agreement, a genetic donor’s right to abstain from procreation should prevail, and this can perhaps be mitigated only if disposing the embryos permanently compromises the other genetic donor’s right to procreate. The welfare of the embryos themselves (if they even possess one) was not a relevant factor in the decision; the disposal of the embryos was only seen as relevant insofar as it affected the interests of its genetic donors. Indeed, before the judges announced their final decision in this case, a fair amount of time was devoted to addressing the issue of whether embryos should be viewed as either persons or property; that is, whether embryos should be seen as entities with legal and moral rights, including the right not to be killed, or whether they should be regarded as possessions with no intrinsic rights of their own.

5. Which, according to Roe, is only a concern from the second trimester onward. While this health consideration may have been an issue in 1973, when Roe was decided, it is far less so now, since abortion procedures have become safer well into the second trimester.
The court agreed that embryos “cannot be considered ‘persons’ under Tennessee law… Nor do preembryos enjoy protection as ‘persons’ under federal law” (Supreme Court of Tennessee 1992). Although the court did acknowledge that embryos ought not to be regarded merely as akin to any other type of tissue in the body, they did conclude that embryos ought not to be considered persons:

The preembryo is due greater respect than other human tissue because of its potential to become a person and because of its symbolic meaning for many people. Yet, it should not be treated as a person, because it has not yet developed the features of personhood, is not yet established as developmentally individual, and may never realize its biologic potential. (Supreme Court of Tennessee 1992; emphasis added)

The judges comprehended that, in order to count embryo disposal as a legitimate exercise of the right to avoid procreation, it had to be antecedently determined whether frozen human embryos are entities deserving of rights. In addition to an appeal to legal precedent, the judges also attempted to offer other reasons that can be scrutinized from a philosophical or moral standpoint why embryos should not be considered persons. Although they hesitated to refer to frozen embryos as merely property, for all intents and purposes this is exactly the status accorded to them. If the embryos were regarded as persons, the right to avoid procreation could not entail their destruction, for, again, the right to avoid procreation expands to preventing the existence of persons that are one’s progeny but it cannot expand to killing persons that are one’s progeny, lest we accord such a right to the parents of infants, toddlers, children, teenagers, and even adult progeny.

Given this, it is easy to see that the argument in Roe does depend on denying fetuses the status of persons, even though the justices maintained that it was unnecessary for them to make such judgment:

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at a consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer. (United States Supreme Court 1973)

The justices admitted that they lacked the expertise to volunteer an argument that would settle the question concerning fetal personhood. Yet in order to maintain a plausible argument that the right to avoid procreation entails the right to an abortion, it seems as if it were necessary to do just that. Consider the consequences if a certain number of people, who hold steadfast to the moral belief that fetuses are persons from conception, are one day successful in codifying that moral belief into law via the passing of a Human Life Amendment. If so, then it could be argued that the right to avoid procreation cannot justify the right to an abortion any more than it can justify a right to infanticide. According to philosophers Stuart F. Spicker, H. Tristram Engelhardt Jr. and Kevin Wildes, if we grant the fetus personhood, then this has a significant effect on the right to refrain from procreation *qua* social parenthood because “one cannot exercise the right not to remain a social parent at the expense of one’s progeny’s well-being… the right not to be a social mother does not allow one to endanger or neglect the life of one’s progeny” (Spicker, Engelhardt, and Wildes 2005, 111). Similarly, if the fetus is considered a person, then this has a significant effect on the right to refrain from procreation *qua* genetic parenthood, for “once [a woman] is pregnant, it is logically impossible for her to exercise her right not to become a genetic… mother, since whatever she chooses, she cannot turn back time. Once pregnant, genetic motherhood is established for the fetus is genetically her progeny” (Spicker, Engelhardt, and Wildes 2005, 111). That is, if the fetus is viewed as a person with rights from conception, then there “simply is no such thing as the right not to remain a genetic mother… the right not to remain a genetic mother does not include the right to kill one’s progeny” (Spicker, Engelhardt, and Wildes 2005, 111).

Even Justice Blackmun conceded, when he delivered the opinion of the Supreme Court, that if fetal “personhood is established, the appellant’s case, of course, collapses, for the fetus’ right to life would then be guaranteed specifically by the [Fourteenth] Amendment.” More telling is Attorney Sarah Weddington’s (who argued the winning side of *Roe v. Wade*) response to Justice Potter Stewart’s question: “If it were established that an unborn fetus is a person, with the protection of the Fourteenth Amendment, you would have almost an impossible case here, would you not?” She admitted that she “would have a very difficult case.” Advocates of Human Life Amendments have caught onto this, and some have argued that a successful passage of a Human Life Amendment would be a “silver bullet” to *Roe v. Wade* (Unruh 2007). If the fetus were not considered a person, then the logic used in Roe could justify a right to an abortion, for then abortion could be seen as an instance of preventing the existence of a person to whom one is genetically related or responsible for, and therefore correctly entailed by the right to avoid procreation. In this case, the fetus’ standing would then be more akin to the status granted to embryos in *Davis v. Davis*, where it was clear that discarding human embryos was regarded as an instance of preventing future children rather than destroying currently existing ones. However, if the fetus is considered a person, then, for all the reasons explained above, the logic behind Roe collapses. Therefore, interpreting the right to an abortion as the right to avoid or prevent either social or genetic parenthood is vitally contingent upon a premise that is highly contested by many, not argued for by the justices who decided Roe, and mistakenly thought by those same justices to be irrelevant to their decision; they do indeed need to solve the issue of when life begins. Of course, they were correct that they could not solve this issue, but this just means that that the logic they used to defend abortion rights is unsound, and that another argument needs to be made in its stead.

Judith Jarvis Thomson argues in “A Defense of Abortion” that the right to an abortion can be defended even if the fetus were granted full moral status or personhood. Thus, what her argument ends up doing is questioning whether...
granting the fetus personhood from conception really serves as the foundational lynchpin for eradicating abortion rights, as is claimed by those who support the passing of a Human Life Amendment.

Revisiting the argument from bodily autonomy

In Schloendorff v. Society of New York Hospital (1914), the New York Court of Appeals ruled that a physician could not operate on a patient, even if the operation proved to be beneficial for the patient’s health, without the patient’s consent. Judge Benjamin Cardozo, who issued the ruling, wrote that “every human being of adult years and sound mind has a right to determine what shall be done with his own body.” This sentiment would be echoed repeatedly in subsequent court cases. In 1978, Robert McFall suffered from aplastic anemia, and consequently required a bone marrow transplant to survive. After a long search, it was determined that his cousin, David Shimp, possessed matching bone marrow, yet Shimp refused to undergo the extraction procedure. McFall sued Shimp in the hopes that the Courts would compel his cousin to submit to further testing and ultimately the extraction as itself. As the Court stated, the main ethical issue at stake was whether “in order to save the life of one of its members by the only means available, may society infringe upon one’s absolute right to his ‘bodily security?’” (Tenth Pennsylvania District Court 1978). The Tenth Pennsylvania District Court answered this question in the negative:

The common law has consistently held to a rule which provides that one human being is under no legal compulsion to give aid or to take action to save that human being or to rescue…Our society, contrary to many others, has as its first principle, the respect for the individual, and that society and government exist to protect the individual from being invaded and hurt by another. For our law to compel the defendant to submit to an intrusion of his body would change the very concept and principle upon which our society is founded. To do so would defeat the sanctity of the individual, and would impose a rule which would know no limits, and one could not imagine where the line would be drawn… (Tenth Pennsylvania District Court 1978)

Notice that the Court’s conclusion was not that McFall lacked a right to life, or that his life was otherwise worthless. Rather the conclusion was that no person’s right to life entailed that another person had to forcibly submit to unwanted bodily intrusion in order to sustain the former’s life. Thomson argues for the same conclusion in “A Defense of Abortion” using her now (in)famous violinist example. Imagine, she writes, that an ailing violinist needs to stay hooked up to your kidneys for a certain amount of time in order to survive a rare affliction. If you choose to unplug yourself, the violinist will surely die. According to Thomson, if you have not consented to this dependency relation, you are always free to terminate it, even if doing so results in the violinist’s death. Thomson does not deny that the violinist is a person who possesses a right to life. Rather, she questions what follows from this right; it is certainly not the case, she maintains, that the violinist’s right to life automatically entails that another person has an obligation to provide him with whatever assistance he needs in order to survive. Analogously, she argues, even if the human fetus were considered a person from conception, it does not follow from this alone that a woman should be compelled to provide it assistance via gestation until it can survive independently of the womb:

I am not arguing that people do not have a right to life… I am arguing only that a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person’s body—even if one needs it for life itself. So the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would. (Thomson 1971, 56)

Despite the criticisms of Thomson’s violinist example as aberrant, it seems that her conclusion concerning how to balance competing rights in this regard is sufficiently analogous to the Court’s conclusion in McFall v. Shimp to render Thomson’s argument transferable into the legal realm. That is, the McFall v. Shimp case is a “real-life” violinist example in all relevant respects, and the court judges unwittingly echoed Thomson’s conclusion. If Thomson’s argument is successful, then it certainly calls into question whether passing a Human Life Amendment alone puts the abortion right at risk. In order for anti-choice advocates to successfully make a case against abortion rights, they have to argue two key premises: first, that the fetus really is a person with all the moral and legal rights thereof and, second, that the fetus’ right to life entails that it possesses an additional right, one that no other extra-uterine person possesses, to be given whatever it needs for survival, including access to a woman womb, regardless of whether she is willing to voluntarily provide it. The adoption of a Human Life Amendment is a step toward codifying the first premise into law, but there has been little argument in defense of the second premise. Indeed, such a defense would be rather difficult to provide, since there is no case (to my knowledge) in which one person’s body was forcibly invaded in order to save another person.

There is tacit affirmation of Thomson’s thesis at the foundation of many other practices in our society. Consider the blood shortages that permeate many medical establishments. Certainly, this can be solved if the workers in blood mobiles simply grabbed random people from the street, strapped them down to a bed, and forcibly extracted their blood. Similarly, the organ shortage crisis would be significantly curtailed if all nonvital organs were forcibly extracted from random hospital patients, or if vital organs were removed after death regardless of the patient’s wishes while still alive.6 The adoption of such prospects, undoubtedly, is

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6. One thing to note is that those who desire to eradicate abortion rights seem more willing to respect the wishes of a dead person, who may not have wanted his bodily autonomy violated after his death, even if it entailed donating organs that may save the lives of many persons, than the wishes of a live woman concerning whether she wants to use her body to gestate a fetus.
rather chilling because, as Donald H. Regan puts it, “[w]e are traditionally very dubious about the practices which involve direct invasions of the body or imposition of physical pain or extreme physical discomfort” (Regan 1979, 1569). The judges who decided *McFall v. Shimp* would probably support Regan in this regard. They never denied McFall’s right to life or his worth as a person. However, none of these were strong enough to forcibly impose on Shimp a bone marrow extraction. The “sanctity of the individual,” and the entailment that respecting that sanctity means that it was not possible to force Shimp (and by extension any person) to “submit to an intrusion of his body” could not be overridden in this case, not even to save the life of an innocent person.

To prohibit abortion and compel women to carry an undesired pregnancy to term (which would certainly be more of an intrusion than a forcible bone marrow extraction) would mean that pregnant women would be forced to surrender their bodies in order provide another human being with what it needs for survival. It would be to exclude pregnant women from the scope of the arguments that were used to defend Shimp’s right to his bodily integrity. Doing so would, as Regan puts it, violate pregnant women’s right to equal protection:

> It is a deeply rooted principle of American law that an individual is ordinarily not required to volunteer aid to another individual who is in danger or in need of assistance. In brief, our law does not require people to be Good Samaritans . . . if we require a pregnant woman to carry the fetus to term and deliver it—if we forbid abortion, in other words— we are compelling her to be a Good Samaritan . . . the equal protection clause forbids imposition of these burdens on pregnant women. (Regan 1979, 1569)

As far-fetched as Thomson’s violinist example may initially sound, it provides a thought-experiment that is analogous with the accepted aspects of American policy that do not require individuals to surrender the use of their body in order to render aid to another. Moreover, Thomson’s conclusion can be further vindicated by appealing to a key tenet of Kantian moral philosophy: the second principle formulation of the categorical imperative, which prescribes treating persons as a mere means to an end. To compel a pregnant woman to submit to an unwanted intrusion of her body to sustain the life of the fetus violates her autonomous decision to do otherwise, and uses her body as a mere means to saving the life of the fetus. Regan echoes this when he writes:

> Pregnancy is painful. It involves a significant risk of death. It represents an intrusion into the most intimate parts of the woman’s body . . . the woman who is compelled to carry a fetus she does not want is in effect being used as an incubator. She is being used as a physical object . . . laws forbidding abortion

 involve the requisitioning of the woman’s body by the state . . . it relegate[s] [women] to the status of a broodmare (for this is how the pregnant woman may well view the matter) by society at large . . . (Regan 1979, 1616–1617)

The reason why this defense of abortion rights is superior to the reproductive autonomy argument offered by the justices who decided *Roe* is that the conclusion here that women do possess a right to an abortion is not dependent on denying fetuses the status of persons, and therefore the argument stands even if certain states did succeed in passing a Human Life Amendment and taking their challenge to the Supreme Court. In Thomson’s example, the violinist’s personhood is never contested, as McFall’s personhood was also never contested by the Pennsylvania courts. Individuals who are in desperate need of blood transfusions, bone marrow transplants, or healthy organs are also, of course, persons with full moral status and a right to life. Whilst I feel deeply for many of the sick individuals who desperately need a bone marrow transplant or a blood donation, I cannot endorse the conclusion that persons ought to be compelled to give their body parts or vital fluids, even in the face of dire need by others. Therefore, whether the fetus is considered a person or a valuable entity in its own right does not change the outcome of the argument for those in favor of abortion rights who appeal to bodily autonomy as the key premise in defense of their position.

**Considering two objections**

There are two objections to this argument that I would like to briefly address. The first objection maintains that appealing to bodily autonomy as a defense of abortion rights is, to a certain extent, disingenuous. Women, usually, do not wish to have access to abortion in order to spare themselves nine months of compelled pregnancy; that is, women do not usually obtain abortions for the reason of preserving their bodily autonomy. Rather, if asked why they are seeking abortions, women usually refer to some undesirable aspect of life after the birth of the infant. In this sense, the argument proffered by the justices who decided *Roe* more accurately captures the real reasons women procure abortions.

While there is truth to the claim that the reason women usually procure abortions is to avoid future parenthood rather than compelled gestation, this objection rests on a fundamental confusion. Just because some women may use the right to an abortion as a mechanism to relieve themselves from the future duties of parenthood does not necessarily entail that this is the purpose of the abortion right, or that the right to an abortion ought to be construed as a mechanism of granting women such a mechanism. A distinction must be drawn between how people use a certain right and what privileges that right is meant to bestow. Bonnie Steinbock stresses this distinction when it comes to laws that allow patients to refuse life-sustaining treatment. Such a law, she argues, should be construed as a derivative law from the right to avoid unwanted bodily intrusion; it should not be construed as a right to die, even if some patients utilize the right in order to die:

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7. I should note here that Regan is a legal scholar who would seem to support the claim I am making in this article: that Thomson’s main thesis can be successfully translated into a legal policy that retains abortion rights even if the fetus were granted personhood from conception.
In general, a competent adult has the right to refuse treatment even where such treatment is necessary to prolong life... the right to refuse treatment is not itself a “right to die”; that one may choose to exercise this right even at the risk of death or even in order to die is irrelevant. The purpose of the right to refuse medical treatment is not to give persons a right to decide whether to live or die, but to protect them from the unwanted interference of others. (Steinbock 1979, 1583–1584)

Steinbock brings up a valid distinction, and one which can be applied to the abortion right. Just because some women may utilize the right to an abortion as a method to avoid the future duties of parenthood does not entail that this is the purpose of such a right. To further illustrate this point, suppose that the reason Shimp denied McFall bone marrow was because he harbored a secret hatred for his cousin and wanted to see him dead. Therefore, he used his right to bodily autonomy as a mechanism to bring about his cousin’s death. It does not follow from this, however, that this was the nature of Shimp’s right, for certainly Shimp did not possess the right to kill his cousin because of his hatred toward him (had Shimp shot and killed McFall on the doorstep of the courthouse, for example, he surely would have been charged accordingly). What Shimp did possess was a right to use his body in a manner that he deemed fit, even if in this particular instance using his body in the desired manner lead to McFall’s death. Similarly, just because some women utilize the right to an abortion as a mechanism to avoid either genetic or social parenthood, it does not follow from this alone that this is the purpose, or the best defense, of the right.

A second objection I would like to address is a more popular, and a prima facie stronger, consideration against Thomson’s argument. It is an objection that, as John Wilcox rightly states, is usually pointed out by the majority of students immediately after reading Thomson’s article:

There is a third problem that I see... and it is the problem that many undergraduates see straight off. In the violinist scenario, you do nothing to get yourself into the mess; you wake up one morning and simply “find yourself” hooked up to the violinist. But in the normal case of pregnancy, one has voluntarily engaged in the sexual relations which led to conception... So it is not clear that one’s obligations in the violinist case really parallel a woman’s obligations in a normal pregnancy...(Wilcox 1989, 470–471)

This is often called the “Responsibility Objection” to Thomson’s argument. According to those who proffer this objection, if a woman concedes to voluntary sexual intercourse, she has incurred a responsibility to care for the fetus, since she is responsible for its existence and subsequent dependence on her body for sustenance. Consequently, she has a moral obligation to sustain it until birth, an obligation that ought to be legally enforced by proscribing abortions. According to those who espouse this objection, the germane disanalogy between the typical case of abortion and McFall v. Shimp (or the violinist example) is that Shimp was in no way causally responsible, and therefore not morally responsible, for McFall’s condition. Similarly, the reason why we cannot be forced to give blood or donate nonvital organs is because we are not responsible for the afflictions suffered by these needy patients. But, since a woman is responsible for the fetus’ dependence on her body, the objection goes, she can be compelled to surrender her body in order to provide the fetus sustenance. One conclusion that could be drawn from this line of reasoning is that if I were responsible for someone’s dependence on my blood or nonvital organ, say if I had caused an accident that lead to their afflictions, then I should be compelled to submit to a blood “donation” or give a nonvital organ in order to sustain the life of the person whose tragic state of affairs I am causally responsible for. Yet, as I will elaborate below, this also is not an accepted practice in our society.

Many philosophers have attempted to defend Thomson against this objection by denying that a woman who engages in voluntary sexual intercourse incurs moral responsibility for the fetus’ dependence on her body.8 However, I wish to defend Thomson by further elaborating on her own response to this objection. Thomson proposes counterexamples to illustrate that there are various possible situations in which someone may voluntarily engage in a certain action and yet this would not entail that all her rights in regard to the situation are thereby voided. For example, if you deliberately leave your window open late at night, knowing full well that there is a burglar on the loose, and as a result you get robbed, you may perhaps be called many things, such as naïve or irresponsible, but you do not thereby forfeit your right to not have your house burglarized. As Thomson states, we do not respond to such a situation by saying: “Ah, now [the burglar] can stay, she’s given him a right to the use of her house—for she is partially responsible for his presence there, having voluntarily done what enabled him to get in...” (Thomson 1971, 58). Thomson is not necessarily denying that in some situations voluntarily acting in a certain manner entails some incurred responsibility for the outcome of that action.9 What she seems to be questioning is the degree of responsibility that can be incurred from voluntarily engaging in a certain action. Consider a shop owner who is careless about securing his business against burglary, perhaps by failing to fix a damaged door or lock. If his business is indeed burglarized or vandalized, perhaps his insurance company would refuse to cover the incurred costs because of his negligence. Yet, he is not so responsible for his negligence that he forfeits his right to his property and thereby gives the burglar “permission” to invade. The

9. I doubt that Thomson is arguing against this claim, since doing so would lead to a patently false conclusion. There are plenty of situations in which voluntarily engaging in a known risky activity renders someone morally responsible for outcomes that thereby ensue. For example, a drunk driver is certainly morally responsible to some extent if he crashes into a car and injures another.
right to decide who is allowed on his property remains with him unconditionally. Similarly, if a woman is walking down the street at night in a neighborhood with a high crime rate, and is beaten, her wallet is stolen, and she is raped, her actions may be described as careless to some extent, but this does not at all mean that her assailant had a right to act against her in such a way. Simply because she voluntarily engaged in an action that had such a foreseeable consequence, it does not thereby follow that she forfeits her right to her bodily security.

Insofar as how this applies to abortion, individuals who bring up the responsibility objection against Thomson assume, without providing any argument, that the appropriate price women should pay for voluntary engaging in sexual intercourse that produces a fetus is surrendering her body for its sustenance. However, it is not obvious that this follows, and, indeed, further consideration of relevantly similar cases in the legal system reveals supporting evidence for rejecting this conclusion. As Regan points out, it is true that “one who injures another, or one who creates a situation which is dangerous to another, has a duty to take steps to minimize the injury or danger, even if it is innocently caused” (Regan 1979, 1601). Yet, as far as I am aware given my research, in contemporary society the perpetrator of a harm has never been required to aid his victim by the compelled surrendering of his body for the victim’s sustenance. I have never heard of a situation, for example, that someone at fault in a car accident was forced to give blood to aid the victim of the accident, or to donate a nonvital organ if the accident led to organ failure for the victim. Even in attempted murder or assault cases, there has been no situation (again, as far as I am aware) where the assailant has been forcibly restrained in a manner that compromises his bodily integrity in order to aid the victim’s recovery. I do not mean to compare a fetus to a reckless driver, or to a rapist or to a burglar (nor do I think Thomson means to compare the fetus to a burglar), but rather to illustrate that, no matter what voluntary actions are undertaken by an individual, some rights remain with the rights-bearer alone, and they are not forfeited by her because she voluntarily places herself in a situation that may lead to a violation of her rights.

One of the strengths of Regan’s argument is that he concedes that a woman does have some responsibility for the fetus’ creation and subsequent dependence upon her for sustenance:

It is true that in every case in which a woman becomes pregnant (still excepting the case of rape), she has voluntarily had sex. Voluntariness, however, is something that admits of degrees…the woman seeking an abortion falls somewhere on a spectrum of eligibility for compulsion to be a Samaritan, a spectrum that runs from the totally uninvolved bystander at one end to the parent at the other. (Regan 1979, 1622)

Yet even the parent, who, in the act of taking the child home from the hospital and caring for it, has assumed not just the responsibilities that come with the child’s creation, but also with its subsequent physical and emotional needs, is not obligated to submit to unwanted bodily intrusion if that is what is necessary to preserve the life of the child. Regan notes:

It would be interesting to see a case in which the issue was presented of whether a parent has a duty to donate a needed organ to his or her child. My guess is that no duty would be found…I would be surprised if any American court ordered even a parent-to-child bone marrow transplant, and imposition which (not to forget our ultimate purposes) seems more defensible than forbidding abortion in every respect. (Regan 1979, 1586)

The United States Supreme Court has not, as of yet, been asked to adjudicate such a case, however, there have been real examples of parents who have been asked to donate an organ to help save their dying child. The key word here is “asked;” the respective parents were not forced to donate the organ. One example involves a U.K. man, Michael Shergold, who discovered that he had fathered a son whom he never knew (from a previous relationship where the woman gave the baby up for adoption without his knowledge or consent) when Hampshire Social Services contacted him, asking if he would be willing to donate a nonvital organ to the boy who would otherwise die without it. After finding out about his son’s existence, Shergold attempted to adopt him, arguing that his legal rights as a father were never rightly terminated. His application was denied and, what’s more, he is unable to have any contact whatsoever with the boy. Shergold commented as follows:

To track me down, tell me I have a son I knew nothing about, throw my life into chaos then tell me I will never be able to see him is nothing short of disgraceful…To know my son has been adopted against my consent by strangers rather than his blood family, where he would have had a loving home, has been bad enough. But to know that, if I don’t donate an organ, my son might not live long enough to know me has put me in the worst situation of all. I am in a dilemma about what to do. (Savill, 2009)

Like a pregnant woman, Shergold is causally responsible for the creation of the child, given his participation in voluntary sexual intercourse. Like a pregnant woman, Shergold would have to use his body in a very intimate manner in order to keep his biological child alive. However, unlike a pregnant woman in the eyes of anti-choice advocates, Shergold was asked to donate his organ; those who wish to eradicate abortion rights wish to compel women to make a similar (if not more intimate) sacrifice.

Nothing in the language in the McFall v. Shimp decision suggests that the reason Shimp was not compelled to donate bone marrow was because he was not causally responsible for McFall’s illness; the “sanctity of the individual” and his right to “bodily security” is not contingent upon the individual’s lack of responsibility for the situation. From all the examples above, it seems that the right to bodily integrity and security is a right that is not forfeited by voluntarily engaging in certain actions. The drunk driver does not have
to give his organs or bodily fluids to aid the victim whose injuries he caused. A woman does not forfeit her right to her bodily or sexual integrity because she voluntarily walks down the street of a dangerous neighborhood. Michael Sher-
gold does not give up his right to deny an organ to his ailing biological child, even though he voluntarily engaged in the sexual intercourse that led to the child’s creation. It is in-
cumbent upon those who maintain that the Responsibility Objection is a decisive one against Thomson’s argument to argue why the right to bodily integrity, in the case of preg-
nancy, is a right that can be overridden due to a woman voluntarily engaging in sexual intercourse. That is, there is a gap between contending that the woman is responsible for the fetus’ dependence on her body and concluding that the only way for her to fulfill this responsibility is to completely surrender the use of her body, even if doing so goes against her will, for nine months. The success of the “Responsibility Objection” requires that this gap be filled.

**Pro-choice, not Pro-Abortion**

I often point out to my students that there is a difference between being “pro-choice” and “pro-abortion.” The term “pro-abortion” implies that the act of abortion is welcomed, encouraged, or celebrated, and this is certainly not necessarily entailed by the pro-choice position. I continue to support abortion rights for the reasons espoused in this article. Yet, nothing I have thus far argued entails that fetal life must necessarily be devalued or disregarded. Even if one is not prepared to grant the fetus the full rights of personhood, it does not seem unreasonable to grant the fetus some level of significance and to acknowledge that, no matter what the circumstances, the termination of fetal life always has a dimension of tragedy to it, whether it be because of the termination of the life itself or because of the circumstances that surround the decision to terminate fetal life. In refer-
ence to the moral status of in vitro surplus embryos, John Robertson holds that they do possess some degree of moral significance, if not a right to life, because they “constitute an arena for expressing one’s commitment to human life” (Robertson 1999, 118). Rosalind Hursthouse writes that fetal life has value because of its symbolic connection with other aspects of life that we also value:

[The death of a fetus] connects with all our thoughts about human life and death, parenthood, and family relationships...[t]o disregard this fact about it, to think of abortion as nothing but the killing of something that does not matter...is to do something callous and light-minded, the sort of thing that no virtuous and wise person would do. It is to have the wrong attitude not only to fetuses, but more generally to human life and death, parenthood, and family relationships. (Hursthouse 1991, 237–238)

There are understandable reasons, however, why some individuals assume that those who are in favor of abortion rights simultaneously devalue fetal life or favorably regard the act of abortion. Philosophical literature, in par-
ticular, is permeated by pro-choice arguments that come to their conclusion by denying the fetus not just a right to life, but any value or import whatsoever. As abovementioned, Mary Anne Warren espouses such an attitude in her rather influential article “On the Moral and Legal Status of Abor-
tion.” Warren refers to those who support abortion rights as “proabortionists” (Warren 1973, 44) and argues that:

**[Opponents of laws restricting abortion possess the conviction]**

that abortion is not a morally serious or extremely unfortunate, even though sometimes justified act...but rather is closer to be-
ing a morally neutral act, like cutting one’s hair...in the relevant respects, a fetus, even a fully developed one, is considerably less person like than is the average mature mammal, indeed the average fish. And I think that a rational person must con-
clude that if the right to life of a fetus is to be based upon its resemblance to a person, then it cannot be said to have any more right to life than, let us say, a newborn guppy. (Warren 1973, 52–58)

According to Warren, only persons (beings with certain cognitive capacities, such as self-consciousness and reasoning abilities) possess moral rights. Because the fetus is not a per-
son, it is not a rights-bearer, and therefore it has no right to life. She then compares the human fetus in cognitive develop-
ment and moral value to a fish, and thereby regards the act of abortion as morally neutral or innocuous.

Philosophers Michael Tooley (1972) and Peter Singer (1993) share Warren’s view concerning the value of fetal life. They too maintain that only persons possess the right to life, and they embrace the conclusion that their logic entails the intrinsic moral permissibility of infanticide. For example, Tooley maintains his position illustrates that “there is excel-
ent reason to believe that infanticide is morally permissible in most cases where it is otherwise desirable” (Tooley 1972, 64). Any repulsion one feels at this conclusion, he argues, is merely visceral and ought not to be given any serious moral weight (Tooley 1972, 39–40). Singer argues that “no infant—disabled or not—has a strong claim to life” and the only objection against killing an infant (and thereby a fetus) is that doing so may detrimentally affect the expecting parents or any other person who has a stake in the infant’s or fetus’ life. Because they are not persons, Singer also regards fetuses and infants as replaceable. For example, if one infant has an affliction, say hemophilia, and if his death would lead to the birth of an infant with no such disability and there-
fore one with a possibly happier life, Singer’s reliance on consequentialist moral philosophy leads to the conclusion that “if killing the hemophiliac infant has no adverse effect on others, it would...be right to kill him” (Singer 1993, 186).

An invaluable contribution that Warren’s, Tooley’s, and Singer’s respective article have made to the literature is that they draw an important and valid conceptual distinction between the biological use of the term “human being” (to

10. Tooley does not explain what he means by “otherwise desirable,” but given that a healthy infant, as well as a disabled infant, lacks the cognitive capacities he (and Warren and Singer) argue is requisite for personhood, it follows from his argument that there is nothing intrinsically objectionable about infanticide for any reason.
denote a member of the species *Homo sapiens* and the moral use of the term “human being” (to denote a person). I also do not wish to take issue with their claim that only persons have a right to life; not because I agree with the position, but because doing so is tangential for the purposes of this article. What I do take issue with is the claim that killing a being who lacks a right to life is an intrinsically morally innocuous action. As Hursthouse points out, this is reducible to maintaining that “[y]ou ought not to kill anything with the right to life but may kill anything else” (Hursthouse 1991, 236). I do not believe a dog is a person, for it certainly lacks the abovementioned cognitive capacities in any robust sense. However, it does not follow from this alone that killing a dog is a morally innocuous action. There certainly may be times that killing a dog is necessary (e.g., if he is terminally ill, or poses a risk to humans that cannot otherwise be addressed other than by its death, or due to overpopulation at an animal shelter), but it is always unfortunately necessary, and it is not as morally neutral of an act as obtaining a haircut.

Returning to *McFall v. Shimp*, although Shimp was well within his rights to deny McFall his bone marrow, and even though the judges legally supported Shimp’s decision, they did admonish him for refusing to aid his cousin in this regard. That is, although Shimp’s action was not unjust or a violation of McFall’s rights, since McFall had no right to use Shimp’s body for sustenance, this does not exhaust the moral dimensions of Shimp’s refusal. Morality extends beyond what is just or whether rights are being violated. Although Thomson spends the vast majority of her article arguing in favor of a woman’s right to decide whether she wishes to aid a fetus by allowing it the continued use of her body for gestation, she also maintains that some instances of abortion would be “morally indecent” (for instance, if a woman wishes to abort late in her pregnancy in order to exact revenge on an ex-partner, aborting a fetus because it is of an undesired gender, or because it is bi-racial (I am personally acquainted with women who have procured abortions for these reasons). There is a moral dimension to the abortion decision that surpasses the consideration of whether a woman has a right to an abortion, or whether the fetus meets a Lockean definition of personhood, and it is within that moral dimension that we can find room to value fetal life to some degree; to regard any act of abortion as “the cutting off of a new human life [and therefore] a serious matter” (Hursthouse 1991, 237).

An example of simultaneously granting women abortion rights but also regarding any act of abortion as a serious matter can be found in Japanese Buddhist culture. In Japan, abortions are legal and they are viewed as generally morally permissible. However, they are never viewed as morally innocuous; indeed the event of an abortion is considered a result of an unfortunate state of affairs, and all aborted fetuses are honored in some capacity. In his studies of Japanese Buddhist culture, Professor William LaFleur notes:

> There is a consensus that abortion constitutes a painful social necessity and as such must remain legal and available, although religiopsychological mechanisms for relieving bad feelings about abortion—the mizuko rites, for instance—most cases probably play a positive therapeutic role. . . . [t]he first concern is that people not become inured to abortion and trivialize it. Many Buddhists are worried that, especially if there is no real grief and ritual, a kind of personal degradation becomes the pattern: from repeated abortions to a flippant acceptance of the practice and from there to deterioration in a person’s capacity for generalized sensitivity. (LaFleur 1990, 534–537)

The Japanese Buddhist manner of approaching abortion illustrates that there is a difference between being pro-choice and pro-abortion; that it is compatible to simultaneously hold that abortion rights are necessary to retain in a society, and yet to regard the act of abortion as always having serious moral dimensions; as, more often than not, being a time of “necessary sorrow” (LaFleur 1990, 531).

I share the concern, along with Kissling, that, in their admirable attempts to passionately defend abortion rights, many pro-choice advocates have regarded the value of the fetus too flippantly. Some defenders of *Roe* refer to the fetus as nothing but a parasite, or as “a growth, an appendix, a polyp” (Miller 2008, 18). It is no wonder that so many people equate defenders of *Roe* with people who are indifferent to the act of abortion, to the value of nascent human life, and who approach abortion in a callous manner (Miller 2008, 18). In the constant struggle to argue why the abortion right must be upheld (and I agree that the right needs to be sustained and therefore better argued for in order to secure its preservation), many philosophers, ethicists, and politicians have forgotten to take the next step, one that Hursthouse implores that we all take: in addition to arguing in favor of upholding the right to procure an abortion, we must also, as
is the case for the majority of rights we possess, remember how to use that right responsibly. As abovementioned, this is a conversation that the newer generation of pro-choice advocates are eager to partake in. Leslie Cannold, whose book The Abortion Myth features invaluable discussions with both pro- and anti-choice women, notes:

For many pro-choice supporters, the thunder of many of these unanswered questions has simply become too loud to ignore: are there “irresponsible” pregnancies? Which reasons for having an abortion are bad ones? Does the fetus matter, how much, and why? Even if women have a right to choose abortion, is it always right for them to do so? (Cannold 1998, 17)

The younger pro-choice generation is hungry for a discussion of the moral complexities of abortion rights, one that includes a discussion of the moral value of the fetus that moves beyond regarding it as a mere “clump of cells”; the pro-choice community has not, as of yet, met this hunger.

Conclusion: Taking the next step together

During the 2008 presidential campaign, President Barack Obama was questioned various times concerning his support of Roe v. Wade. While defending his position, Obama emphasized that the crucial question we should all be concerned with is: What are the best ways to reduce the number of abortions so that they become increasingly rare? The pro-life website “Real Abortion Solutions” shares Obama’s concern in this regard. The individuals who are part of this group argue that one of the ways the prevalence of abortion can be curtailed is by supporting sex education as a manner of preventing unplanned pregnancies, and by offering various instances of social support for individuals facing unplanned pregnancies. For example, they suggest:

expanding coverage to pregnant women and unborn children through Medicaid and the State Children’s Health Insurance Program (CHIP), banning the discriminatory practice against pregnant women in the health insurance industry by removing pregnancy from all “pre-existing condition” lists in health care, making adoption tax credits permanent, provid[ing] grants for low-income parenting college students, fully funding the federal WIC program, increase[ing] funding for domestic violence programs, and provid[ing] free home visits by registered nurses for new mothers.” (Real Abortion Solutions 2008)

A recent report released by the Catholics in Alliance for the Common Good finds that:

11. For example, few would contest that, at least given our capitalist way of life, I have a right to use the money I earn in any (legal) manner I see fit. Nevertheless, it does not follow that every exercise of this right is a virtuous, decent, or responsible one. It would certainly be unvirtuous, for example, to gamble away ten dollars on a frivolous bet when there is a hungry homeless person next to me who would have benefited from a hot meal. Although my use of the ten dollars in such a manner would not be unjust, since the homeless individual has no right to my money, it is certainly morally indecent to ignore the suffering of the hungry in order to satisfy my desire for the momentary excitement that comes from placing the bet.


the abortion rate among women living below the poverty level is more than four times that of women above 300% of the poverty level. This study of all U.S. states from 1982–2000 finds that social and economic supports such as benefits for pregnant women and mothers and economic assistance to low-income families have contributed significantly to reducing the number of abortions in the United States over the past twenty years. (Catholics in Alliance for the Common Good 2008)

In terms of taking preventative measures to avoid unwanted pregnancies, one recent study from the RAND Corporation illustrates that children, ages 12–17, who were constantly exposed to television programs with high sexual content were twice as likely to either become pregnant or impregnate others (RAND Health Corporation 2004). If this is the case, it is certainly a call to parents or other guardians to monitor their children’s television watching practices as a partial way to protect young teenagers from hastening the initiation of sexual activity.

It is on these grounds where, I believe, both advocates and opponents of abortion rights can begin to find common ground. This may finally help us look beyond the stultifying polemics that have thus far permeated the abortion debate in this country. Anti-choice advocates need to recognize that, in order to achieve their goal of reducing fetal deaths, it is not simply a question of outlawing abortion; criminalizing abortion without offering the concurrent social support like the ones suggested above will most likely have the effect of relegating abortion into the dangerous back-alleys that were frighteningly common before Roe. If a woman is desperate enough to procure an abortion because she feels she is completely incapable or unwilling to care for a child, she will find the means to do so at whatever costs.

What is important to note from the above studies is that a promising solution to the prevalence of abortion is to address the causes of that desperation so that abortions are not viewed as the default option. Certainly this will not eradicate all abortions, but it may go a long way towards significantly curbing their frequency. The 2004 Children’s Defense scorecard illustrates that the 113 members of Congress who have consistently voted against child welfare programs also proclaim to be pro-life. The 2007 Children’s Defense Fund scorecard reflects a similar voting trend. In contrast, the top members of Congress who have supported children’s social programs were all Democrats and many of them have a voting record that reflects a pro-choice allegiance. It seems inconsistent, to say the least, to be against pro-choice laws and in favor of women keeping their children, but also be against social programs that benefit children, which, in turn, makes it so much easier for their parents to see to their care. The message sent by these votes is reminiscent of a prevalent pro-choice bumper sticker, claiming that, for anti-choice advocates, “Life begins at conception and ends at birth.”

At the same time, pro-choice supporters need to recognize that if we hope to successfully preserve the abortion
right in the near future in the face of the repeated attempts to pass Human Life Amendments, it is necessary to, first, defend the conclusion of Roe with far better arguments than the ones currently found in the decision and, second, illustrate to the public that there need not be a “hardening of the heart” in reference to the value of fetal life from the pro-choice community. I hope to have illustrated in this article that focusing on the importance of bodily autonomy does seem to provide an avenue for successfully achieving both ends. Moreover, I also hope to have illustrated that there is no contradiction or mutual exclusivity between supporting abortion rights and valuing fetal life. How to properly develop and flesh out how the two can go hand-in-hand is a topic for another venue.

REFERENCES


