

Defending Abortion Philosophically: A Review of David Boonin's *A Defense of Abortion*

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ABSTRACT

This article is a critical review of David Boonin's book *A Defense of Abortion* (2002), a significant contribution to the literature on this subject and arguably the most important monograph on abortion published in the past twenty years. Boonin's defense of abortion consists almost exclusively of sophisticated critiques of a wide variety of pro-life arguments, including some that are rarely defended by pro-life advocates. This article offers a brief presentation of the book's contents with extended assessments of those arguments of Boonin's that are his unique contributions to the abortion debate and with which the author disagrees: (1) Boonin's critique of the conception criterion and his defense of organized cortical brain activity as the acquired property that imparts to the fetus a right to life: (2) Boonin's defense of J. J. Thomson's violinist argument and his distinction between responsibility for existence and responsibility for neediness and its application to pregnancy.

IT IS DIFFICULT TO BELIEVE that another book on the abortion controversy could contribute anything new to what appears to be an intractable dispute whose resolution is not imminent. David Boonin proves this notion wrong in his book *A Defense of Abortion*.¹

Although I am an abortion opponent,² and thus I come to much

¹ David Boonin, *A Defense of Abortion* (New York NY: Cambridge Univ. Press, 2002).

² See, for example, Francis J. Beckwith, "Personal Bodily Rights, Abortion, and Unplugging the Violinist: A Critical Analysis," *International Philosophical*

different conclusions than does Professor Boonin, I found myself admiring his careful and rigorous method and his philosophical creativity, and learning much in the process. I will limit this review-article to a brief presentation of the book's contents with extended assessments of those arguments of Boonin's that are his unique contributions to the abortion debate and with which I find myself in disagreement.

I. OVERVIEW OF THE BOOK

According to its author, the purpose of this book is to support the view that abortion is morally permissible for most of a woman's pregnancy. In order to accomplish this task, and to do so in a way that Boonin believes would be persuasive to abortion opponents (or pro-lifers), he critiques their arguments on grounds that he maintains they should accept. So, for example, Boonin concedes, as pro-lifers contend, that the fetus is substantially identical to its postnatal being. However, unlike abortion opponents, Boonin argues that the fetus during most of its gestation lacks certain value-making properties that its future postnatal being possesses, even though they are the same substantial being. Boonin admits this at the beginning of his book, in a deeply personal passage:

On the desk in my office where most of this book was written and revised, there are several pictures of my son, Eli. In one, he is gleefully dancing on the sand along the Gulf of Mexico, the cool ocean breeze wreaking havoc with his wispy hair.... In the top drawer of my desk, I keep another picture of Eli. The picture was taken September 7, 1993, 24 weeks before he was born. The sonogram image is murky, but it reveals clearly enough a small head tilted back slightly, and an arm raised up and bent, with the hand pointing back toward the face and the thumb extended toward the mouth. There is no doubt in my mind that this picture, too, shows the same little boy at a very early stage in his physical development. And there is no question

Quarterly 32 (1992): 105–18; “When You Come to a Fork in the Road, Take It? Abortion, Personhood, and the Jurisprudence of Neutrality,” *Journal of Church & State* 44 (2003): 485–497; “*Roe v. Wade*: Its Logic and Its Legacy,” *The Southern Baptist Journal of Theology*, 7/2 (2003): 4–29; “Thomson’s ‘Equal Reasonableness’ Argument for Abortion Rights: A Critique,” *American Journal of Jurisprudence* 49 (2004): 118–34; “The Explanatory Power of the Substance View of Persons,” *Christian Bioethics*, 10 (2004): 33–54.

that the position I defend in this book entails that it would have been morally permissible to end his life at this point. (pp. xiii, xiv)

Boonin's philosophical method, reflective equilibrium (RE), is typical of what one finds in the works on moral issues penned by analytic philosophers. It is a method or style of moral reasoning that has its roots in the work of the late John Rawls.³ According to Rawls, we start our moral reasoning from our "considered judgments," those values and beliefs about morality with which we find ourselves and that seem to be *prima facie* correct at different levels of abstraction (e.g., "do good and avoid evil," "killing persons without justification is wrong," "it's wrong to torture babies for fun"). We then make moral judgments that are consistent with these considered judgments, perhaps adjusting the latter when the former provide us with new insights. For example, if we were to come across in our space travel an alien race of "persons" (e.g., Klingons or Romulans of Star Trek lore) that are not human beings, we would have to rethink and amend the meaning of our prohibition of killing persons without justification (a considered judgment) to include more than just human beings but the members of this alien race as well, for such beings would have the moral properties that make human beings valuable (another considered judgment).

Boonin applies RE to the abortion controversy in this way. He starts with what we know: healthy adult human beings have a *prima facie* right to life. Because pro-lifers believe that it is *prima facie* wrong to kill the fetus because it has a right to life, Boonin needs to show that there are good reasons to believe that there is something about the fetus, or its relationship to its mother, that would justify his position that abortion is morally permissible during most of the fetus's gestation because it is not *prima facie* wrong to kill the fetus at that time.

Boonin attempts to accomplish this by showing that the major arguments offered by abortion opponents fail to support two claims that are essential to justifying the impermissibility of abortion conditioned on the fetus having a right to life:

³ See John Rawls, *Political Liberalism* (New York NY: Columbia Univ. Press, 1993), pp. 8–11.

1. “The claim that the fetus (at least in typical circumstances) has a right to life,” and
2. “[T]he claim that if the fetus has a right to life, then abortion (at least in typical circumstances) is impermissible.” (p. 282)

Consequently, Boonin’s burden is to show that either one of the following two claims is true:

- A. The fetus is not a moral subject (i.e., it is not a being with a right to life) during the time at which virtually all abortions occur, which is prior to 25 weeks gestation. (As we will see below, Boonin argues that the fetus does not have a right to life until it achieves organized cortical brain activity, which occurs between 25 and 32 weeks after conception), or
- B. Even if the fetus is a moral subject when virtually all abortions occur, abortion is still permissible because no one, including the fetus, has a right to use another’s body against her will.

Prolifers defend claims (1) and (2) by what Boonin calls rights-based arguments. Nearly ninety percent of this book’s content that deals with arguments for and against abortion is devoted to these rights-based arguments, with the final chapter of the book (pp. 282–334) devoted to non-rights-based arguments. These latter arguments are the golden rule argument, the culture of death argument, the pro-life feminist argument, and the uncertainty argument. Because they are not considered decisive for most people concerned with the abortion debate, this article will focus only on the rights-based arguments.

II. DOES THE FETUS HAVE A RIGHT TO LIFE?

After framing the debate in Chapter 1, Boonin moves on in Chapters 2 and 3 to assess arguments that vary as to the time in fetal development at which the fetus possesses a right to life. They, however, have one thing in common: they maintain that because the fetus is a moral subject during some point in pregnancy, therefore, abortion from that point forward is *prima facie* morally wrong. Boonin offers chapters 2 and 3 as support of claim (A) and a critique of claim (1).

A. The Conception Criterion

In Chapter 2 Boonin presents and critiques nine different arguments for the right to life beginning at conception: (i) the parsimony argument; (ii) the species essence argument; (iii) the kindred species argument; (iv) the sanctity of human life argument; (v) the slippery slope argument; (vi) the potentiality argument; (vii) the essential property argument; (viii) the future-like-ours argument; and (ix) the probability argument. These arguments do not vary in the conclusion they draw, which is that the right to life begins at conception; they differ only in the reasons that support the conclusion.

I found myself agreeing with many of Boonin's criticisms of these arguments, though I do not believe he always deals with the strongest version of his opponent's case. Let me offer two examples.

(1) Boonin correctly points out that there is a dispute among human embryologists concerning the precise point in the fertilization process at which a new human being comes to be (pp. 37–40). Many maintain that this occurs before syngamy, the time at which the maternal and paternal chromosomes cross-over and form a diploid set. Some, for example, argue that a human being comes to be when the sperm penetrates the ovum, while others argue that this occurs when the pronuclei of the maternal and paternal chromosomes blend in the oocyte. It seems to me that the penetration criterion is flawed because the sperm and ovum still seem to be two distinct entities and thus no new individual human being exists. The pre-syngamy pronuclei standard is less problematic since sperm and ovum have ceased to exist as distinct entities and the oocyte, though not possessing the diploid set of chromosomes of the zygote and embryo, seems to behave like an individual living organism with an intrinsically-directed nature. Nevertheless, even though a new human being may have come to be prior to syngamy (and there is good reason to hold this view), it seems indisputable that at syngamy a new human being, an individual human substance, exists and is in the process of development and is not identical to either the sperm or the ovum from whose uniting it arose.⁴

⁴ For an overview of the different points of view, see Dianne N. Irving,

Boonin argues that the dispute about the precise moment at which a new human organism comes into existence counts against the conception criterion (pp. 37–40). Although he brings up many of the same points I have briefly summarized above, it seems to me that Boonin’s raising of this important epistemological question (When do we know X is an individual organism and its germ cell progenitors cease to be?) does not detract from the strongly supported ontological claim offered by prolife advocates: a complete and living zygote is a whole organism, with certain capacities, powers, and properties, whose parts work in concert to bring the whole to maturity. It may be that one cannot, with confidence, pick out the precise point at which a new being comes into existence between the time at which the sperm initially penetrates the ovum and a complete and living zygote is present. But how does it follow from that acknowledgment of agnosticism that one cannot say that zygote X is a human being? It seems to me that Boonin commits the fallacy of the beard: just because I cannot tell you when stubble ends and a beard begins, this does not mean that I cannot distinguish bearded faces from clean shaven ones. After all, abortion defenders typically pick out what they consider value-making properties—e.g., rationality, having a self-concept, sentience, or organized cortical brain activity (as in the case of Boonin)—that they maintain justify one in concluding that a being lacking one or all of them does not have a right to life. But it is nearly impossible to pick out at what precise point in a being’s existence it acquires the correct trait, e.g., when it becomes rational enough or has a sufficient amount of organized cortical brain activity, to warrant a right to life. But it’s doubtful whether the abortion advocate would abandon her position on those grounds.

(2) I could not find in Boonin’s book what is sometimes called the substance view of persons,⁵ though Boonin would probably say that the substance view is either the species essence argument or an essential property view, both of which he does present and critique (pp. 23–25, 49–56). Although I am not sure that he would be correct, I won’t quibble

Philosophical and Scientific Analysis of the Nature of the Early Embryo, Ph.D. dissertation (Washington, D.C.: Georgetown Univ., 1991).

⁵ See, for example, Beckwith, “The Explanatory Power” (cited above).

with that here. My concern is whether Boonin has presented the strongest arguments for the substance view, regardless of what he or I may call it.

In any event, what I call the substance view is a philosophy of the human person defended by a number of philosophers including Patrick Lee,⁶ Robert Joyce,⁷ J. P. Moreland, and Scott B. Rae.⁸ In fairness to Boonin, he does briefly mention Joyce's work when he critiques the essential property (p. 51) and slippery slope arguments (p. 37). But Boonin detaches Joyce's case from its rich metaphysical roots and thus edits from the reader's view the philosophical scaffolding that is necessary to understand and appreciate Joyce's point of view. Boonin presents Joyce's conclusion—"I am a person essentially" (p. 51)—as if it were an ungrounded belief that Joyce and his philosophical allies, like Lee and Moreland, merely stipulate and for which they offer no support. This is why Boonin states that "the proponent of the essential property argument...needs to provide an argument in defense of the claim that possession of a right to life is an essential property, an argument that does not beg the question in favor of the claim that the fetus has a right to life. And such an argument simply does not seem to be forthcoming" (p. 54).

I think Boonin is mistaken, if he is in fact saying that the substance view is an essential property view (or the species essence argument).⁹ For

⁶ Patrick Lee, *Abortion and Unborn Human Life* (Washington, D.C.: Catholic Univ. of America Press, 1996), chs. 1-3.

⁷ Robert Joyce, "Personhood and the Conception Event, *The New Scholasticism*, 52 (1978): 97-109.

⁸ J. P. Moreland, "Humanness, Personhood, and the Right to Die," *Faith and Philosophy*, 12 (1995): 95-112, as well as J.P. Moreland & S.B. Rae, *Body and Soul: Human Nature and the Crisis in Ethics* (Downers Grove IL: InterVarsity Press, 2000).

⁹ In his brief assessment of what he calls the species essence argument (pp. 23-25), Boonin does engage the work of Stephen Schwarz, who, in my judgment, defends a version of the substance view; see his book *The Moral Question of Abortion* (Chicago IL: Loyola Univ. Press, 1990). Nevertheless, Boonin does not address responses to the sort of critique he is offering. These responses can be found in the works of Patrick Lee, *Abortion and Unborn Human Life* as well as J.P. Moreland & S.B. Rae, *Body and Soul: Human Nature and the Crisis in Ethics*. Boonin's treatment of Schwarz's case would have benefitted from engaging these

the defenders of the substance view do offer non-circular arguments to support their position. Because space constraints prohibit me from repeating these extended and sophisticated arguments in this venue, I will just address Boonin's charge of question-begging. I will do so by first briefly presenting the substance view and then engaging one of Boonin's arguments.

Substance view advocates typically include in their case the well-known facts of prenatal human development. At conception, a whole human being,¹⁰ with its own genome, comes into existence, needing only food, water, shelter, and oxygen, and a congenial environment in which to interact, in order to grow and develop itself to maturity in accordance with her own intrinsically-ordered nature. It is a unified organism with its own intrinsic purpose and basic capacities, whose parts work in concert for the perfection and perpetuation of its existence as a whole. Like the infant, the child, and the adolescent, the conceptus is a being that is in the process of unfolding its potential, that is the potential to grow and develop itself but not to change what it is. This being, because of its nature, is actively disposed to develop into a mature version of itself, though never ceasing to be the same being. Thus, the same human being that begins as a zygote continues to exist to its birth and through its adulthood unless disease or violence stops it from doing so. For there is no decisive break in this physical organism's continuous development from conception until death from which one can reasonably infer that the being undergoes a substantial change and literally ceases to exist and a new being comes into existence (like the substantial change that the

other thinkers, for it would have afforded Boonin an opportunity to present and critique a more complete case for the substance view.

¹⁰ A defender of the substance view could abandon the conception criterion if, for example, there are good reasons for one to believe that there is not a whole being present until the primitive streak arises at around 14 days after conception. (This is because twinning or the recombination of twinned embryos could occur, thus calling into question whether the entity is truly a unified substance at that time). Thus, someone could hold that an intrinsically valuable substance—a whole human being with certain basic capacities—begins its existence soon after, but not at, conception. That is precisely the thesis held by Jason T. Eberl, "The Beginning of Personhood: A Thomistic Biological Analysis," *Bioethics* 14 (2000): 134–57.

sperm and ovum undergo when they cease to exist and a new being comes into existence). This is why it makes perfect sense for any one of us to say, "When I was conceived..." and Boonin concedes as much in his discussion of his son, Eli.

W. Norris Clarke offers a four-part definition of what constitutes a human substance:

- (1) it has the aptitude to exist in itself and not as a part of any other being;
- (2) it is the unifying center of all the various attributes and properties that belong to it at any one moment;
- (3) if the being persists as the same individual throughout a process of change, it is the substance which is the abiding, unifying center of the being across time;
- (4) it has an intrinsic dynamic orientation toward self-expressive action, toward self-communication with others, as the crown of its perfection, as its very *raison d'être*....¹¹

Consequently, the task of the substance view proponents is to establish that a human being, from conception, has a right to life because of the sort of thing that it is: a rational moral agent, that remains such as long as it exists even if it is not presently exhibiting the functions, behaving in ways, or currently able to immediately exercise these functions that we typically attribute to active and mature rational moral agents. That is, substance view advocates must show why their view has more explanatory power in accounting for why human beings have a right life even when they lack certain functions (e.g., when one is temporarily comatose or lacks consciousness or the present exercisable capacity to engage in rational thought, and so on), why human beings remain identical to themselves over time, and why the fetus has a right to life. But, like Boonin's use of reflective equilibrium (RE), proponents of the substance view offer a conclusion that relies on premises that depend on intuitions for which one can go no further. If this is question begging, as Boonin seems to be claiming, then it is not clear how Boonin, or anyone else, can escape this charge against his own philosophical deliberations. Let me explain by offering a typical substance view argument and then engage an argument of Boonin's that may be legitimately employed to critique the

¹¹ W. Norris Clarke, S. J., *Explorations in Metaphysics* (South Bend IN: Univ. of Notre Dame, 1994), p. 105.

one I am offering.

Imagine that your father, Bob, was involved in a car accident that put him in a temporarily comatose state. His physician tells you and your mother that although your father will awake from the coma in nine months, his conscious experiences, memories, particular skills and abilities will be lost forever and he will have no mental record of them. This means that he will have to relearn all of his abilities and knowledge as he did before he had any conscious experiences. But they would not be the same experiences and desires he had before. That is, he is in precisely the same position as the standard fetus, with all the basic capacities he had at the beginning of his existence. Thus, if your father has a right life while in the coma, then so does the standard fetus. The following is Boonin's response to this sort of scenario.¹²

Of course, the critic might instead appeal to an imaginary case in which a temporarily comatose adult has had the entire contents in his brain destroyed so that there is no more information contained in his brain than is contained in that of the preconscious fetus. In this case, it seems right that my position does not imply that such an individual has the same right to life as you or I. But, as in the case of the adult who has never had conscious experiences, a critic of abortion cannot appeal to such a case as a means of rejecting my position because we cannot assume ahead of time that killing such individuals is seriously immoral. (p. 78)

So, this is Boonin's dilemma: Either it's *prima facie* wrong to kill Bob in the coma or it isn't. Suppose he opts for the first horn of the dilemma, arguing that killing Bob is seriously wrong because he once exercised abilities that resulted from his basic capacities. But what precisely is doing the moral work in this judgment? Is it Bob's past? That does not

¹² This quote is from a portion of Boonin's book in which he critically assesses Don Marquis's "future-like-ours" argument against abortion. See Don Marquis, "Fetuses, Futures, and Values: A Reply to Shirley," *Southwest Philosophy Review*, 6/2 (1995): 263-65; "Why Abortion Is Immoral" in *The Abortion Controversy 25 Years After Roe v. Wade: A Reader*, 2nd ed., ed. L. Pojman & F. Beckwith (Belmont CA: Wadsworth, 1998), pp. 339-56; "A Future Like Ours and the Concept of a Person: A Reply to McNerny and Paske" in *The Abortion Controversy*, pp. 372-85.

seem right, for remember that this past will never be regained; so killing Bob is not preventing the eventual return of a cluster of experiences and desires uniquely associated with Bob. After all, if Bob were in precisely the same situation except that he was so damaged that he would stay in a comatose state for the rest of his life (Bob₂), a legitimate, though disputed, question to raise by his attending physicians would be whether continued medical treatment of Bob₂ is warranted. The question would be legitimate because Bob₂'s prognosis would be essentially hopeless. However, if there is a very good chance that he will regain his abilities and acquire new knowledge, experiences and memories over time, his prognosis would not be hopeless. Thus, it seems that if Boonin were to correctly conclude that it would be wrong to kill Bob before he came out of the coma, what would be doing the moral work would not be Bob's past, but that he is a being of a certain sort with certain basic capacities that make certain functions and abilities possible. That is, Boonin would have to employ the resources of the substance view. But this would mean that abortion is *prima facie* morally wrong as well, for the standard fetus is a being of the same sort with certain basic capacities that make certain functions and abilities possible.

To tease this illustration out further, imagine that you have an uncle, Stuart. Stuart is in precisely the same position as Bob, except that Stuart will regain all his memories, prior abilities, etc. and it will take Stuart exactly the same amount of time to reacquire what he has lost as it will for Bob to acquire new memories and relearn old abilities and skills. If I understand correctly Boonin's view of the right to life it would be permissible to kill Bob but not Stuart, even though the only difference between them would be that the latter will regain what he has lost while the former will gain memories he never had and many abilities he once mastered. Boonin clearly does not want to assert that it is *prima facie* permissible to kill a reversibly comatose person (p. 123). Yet, given his position, it is *prima facie* permissible to kill a similarly situated reversibly comatose human being merely on the grounds that he will not be able to reacquire past traits and memories and he will have to relearn skills and abilities he possessed prior to his condition. It seems to me that the difference between Bob and Stuart carries no moral weight whatsoever. Of course, Boonin in fact bites the bullet and asserts a point of view that

would seem to require that he opt for the second horn of the dilemma: it is not *prima facie* wrong to kill Bob because the entirety of Bob's past abilities, experiences, and knowledge would be gone forever (which would be consistent with Boonin's understanding of the right to life and his taxonomy of desires that is presented below). But the premise on which this argument is based is as controversial as the conclusion for which it is employed to support: having a human nature with intact basic capacities is not sufficient for one to have a right to life because one is not now exhibiting or engaging in functions or mental activities that result from these basic capacities even if one will most likely in the future exhibit and engage in these functions or mental activities that result from these basic capacities. Granted, such a premise will support the belief that most abortions are not serious moral wrongs, a conclusion many people, including Boonin, find desirable. But that is precisely the conclusion that Boonin attempts to establish with the help of this controversial premise. Consequently, one could argue that it is Boonin who is in fact begging the question.

B. Various Post-Conception Criteria

Chapter 3 concerns arguments for a human being's post-conception right to life. Boonin assesses seven criteria: (i) implantation; (ii) external human form; (iii) actual fetal movement; (iv) perceived fetal movement (quickening); (v) initial brain activity; (vi) organized cortical brain activity; and (vii) viability. Unlike in chapter 2, in which Boonin critiques various arguments for the same criterion (conception), in Chapter 3 he critiques various arguments for various criteria. As with Chapter 2, many of Boonin's arguments in Chapter 3 can be, and ought to be, fully embraced by pro-life advocates.

The most important section of this chapter is the one in which Boonin offers his own account of the right to life, arguing that this moral status arises in a human being at the point at which the fetus acquires organized cortical brain activity (25–32 weeks after conception). Boonin's claim is based on an argument that can be summarized in the following way:

a. Organized cortical brain activity must be present in order for a being

- to be capable of conscious experience,
- b. Prior to having a conscious experience, a being has no desires,
- c. Desires (as understood in Boonin's taxonomy; see below) are necessary in order for a being to have a right to life,
- d. The fetus acquires organized cortical brain activity between 25 and 32 weeks gestation,
- e. Therefore, the fetus has no right life prior to organized cortical brain activity.

Like other contemporary philosophers,¹³ Boonin maintains that rights depend on desires. However, because there exist human beings, such as newborns and the temporarily comatose, who do not have present awareness of their desires, and because most people believe that it is obvious that such beings in fact have rights, Boonin is offering a view that attempts both to ground rights in desires and include such beings as newborns and the temporarily comatose as rights-bearers while excluding the fetus during most of its gestation.

In order to defend his view, Boonin reintroduces the reader to distinctions he made earlier in the book in his critique of Don Marquis's future-like-ours argument against abortion.¹⁴ Boonin makes a distinction between dispositional and occurrent desires, and between ideal and actual desires. According to Boonin, "a desire of yours is occurrent if it is one you are conspicuously entertaining," such as your desire to read the rest of this sentence. On other hand, "a desire of yours is dispositional if it is a desire that you do have right now even if you are not thinking about it at just this moment," such as your desire to live a good long life (p. 122). Thus, according to Boonin, all things being equal, it seems reasonable to

¹³ For example, Ronald Dworkin argues that it is "very hard to make sense of the idea that a fetus has rights from the moment of conception. Having rights seems to presuppose having interests, which in turn seems to presuppose having wants, hopes, fears, likes and dislikes. But an early fetus lacks the physical constitution required for such psychological states." Ronald Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (New York NY: Vintage Books, 1994), p. 15.

¹⁴ Boonin, pp. 64–69.

attribute to the temporarily comatose adult certain dispositional desires including a desire to not be killed. So, according to Boonin, it is dispositional desires that ground one's right to life, for one has a right to life even if one is not presently aware of desiring it.

But what about people who have occurrent and/or dispositional desires for perceived goods that are inconsistent with what they would desire in the future? For example, a person may have the desire to engage in an act that deprives her of life because she is depressed, holds false beliefs, or has acquired incomplete information. In order to address this problem, Boonin introduces a distinction between ideal and actual desires. To employ one of Boonin's own examples: although you may have an actual occurrent desire to drink a glass of water that you do not know is laced with poison, "we may confidently consider your ideal desire 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" (pp. 123-24).

What these distinctions show, according to Boonin, is that Marquis is right that it is wrong to kill a being that has a future-like-ours, but, contra Marquis who maintains that this occurs very early in pregnancy and perhaps at conception,¹⁵ the fetus does not become such a being until it has acquired organized cortical brain activity. Because abortion opponents typically respond to traditional personhood-criteria that exclude fetuses (e.g., rationality, self-consciousness, etc.) by citing counterexamples of beings we know are *prima facie* wrong to kill even though they lack the present ability to exercise these personhood-criteria (e.g., newborns, toddlers, the temporarily comatose), Boonin's distinctions are ingenious.

¹⁵Boonin correctly points out that Marquis does not commit himself to conception as the time at which an individual human being (and thus one with a future-like-ours) comes into existence, (p. 61 n26), though, according to Boonin, "Marquis clearly maintains that if a new individual human being comes to exist at conception, then the future-like-ours argument provides grounds for accepting the conception criterion." (p. 61 n26). But it is clear that Marquis believes that such a being comes into existence long before it acquires organized cortical brain activity.

Based on these distinctions, Boonin maintains that newborns, toddlers, and the temporarily comatose have a right to life even if they do not occurrently desire a right to life. For they have an ideal dispositional desire because they possess a particular sort of brain that has had a conscious experience and thus has the potential to desire a right to life. Writes Boonin,

Once an individual does develop such desires, the potential that his brain has for developing further becomes morally relevant: It is because a human infant's brain has a potential that a mature cow or pig does not have that the human infant uncontroversially has a future-like-ours, whereas the cow or pig does not. And it is because of this that the conscious desire that an infant has provides a solid foundation for attributing to it an ideal dispositional desire that its future-like-ours be preserved, whereas this cannot be said of the conscious desires of the cow or the pig. (p. 126, footnote omitted).

Although the distinctions between desires offered by Boonin may be uniquely suited for his conscription of Marquis' future-like-ours account, they do not seem to be useful in either overcoming the comatose-Bob counterexample I suggested above (whose prior experiences are forever erased) or establishing organized cortical brain activity as the condition that imparts to the human being a right to life. Thus, I believe that premise (3) in Boonin's argument—desires are necessary in order for a being to have a right to life—is false. I offer two reasons for this: the problem of the indoctrinated slave, and the problem of creating brainless human beings.

1. The Problem of the Indoctrinated Slave

As Patrick Lee has argued, a person, such as a slave, may be indoctrinated to believe he has no interests, but he still has a *prima facie* right not to be killed, even if he has no conscious desire for, or interest in, a right to life. Even if the slave is never killed, we would still think that he has been harmed precisely because his desires and interests have been obstructed from coming to fruition.¹⁶

Boonin may respond that the slave's ideal desire is to have a right to life, which is why he suggests it would be wrong to kill a despondent

¹⁶ Lee, pp. 7–31.

teenager, Hans, who desires to die after his girlfriend broke-up with him (pp. 70–79). But unlike the slave, Hans had a past in which he desired a right to life and thus it would not be unreasonable to suggest that after he recovers from the break-up he will reacquire that desire. The slave, however, did not have a past in which he desired a right to life; and in fact, his indoctrination may make it unlikely that society could rid him of the false beliefs he has about himself. Of course, we want to say that this indoctrination harmed the slave, that in fact he would desire a right to life if not for the intervention of those who indoctrinated him. But that judgment seems to assume that the slave is a being of a certain sort that ought to desire a right to life even though he has never desired it, either occurrently or dispositionally, and that it is unlikely that he will desire it in the future. Yet, a being seems to have been wronged, precisely because he was indoctrinated to believe something false about himself. And if he were killed by his master for sport or some other ignoble reason, we would say that his right to life was violated, even if we discovered later in his diary that he desired to be killed by his master for sport or some other ignoble reason. Therefore, it is not desire, either occurrently or dispositionally, that grounds the right to life, but the nature of the sort of being that will have this desire when it reaches a certain level of maturity and is functioning properly.

Suppose, however, that Boonin replies that the indoctrinated slave story is actually a case in which Boonin would appeal to the slave's ideal desire as the reason why it would be wrong to indoctrinate and subsequently kill the slave. That is, because the slave has organized cortical brain activity, it is reasonable to conclude that the slave would have desired liberty and a right to life absent the indoctrination.

I do not think that this response adequately addresses the problem. For consider this illustration. Imagine that you own one of these indoctrinated slaves and she is pregnant with a fetus that has not reached the point of organized cortical brain activity. Because you have become convinced that Boonin's view of desires is correct, and thus you are starting to have doubts about the morality of indoctrinating people with already organized cortical brain activity to become slaves, you hire a scientist who is able to alter the fetus's brain development in such a way that its organized cortical brain activity prevents the fetus from ever

having desires for liberty or a right to life. That is, the organized cortical brain activity arises in this being in such a way that its basic capacities to desire liberty and a right to life, that it possessed from the moment it came into being, can never come to maturity. Yet, it seems that the rights of this fetus have been violated precisely because its acquisition of certain presently exercisable abilities to which it is entitled was intentionally disrupted by an external agent prior to the arising of organized cortical brain activity. But if rights presuppose desires and desires presuppose organized cortical brain activity, then Boonin's criterion cannot account for the wrong done to the fetus when a scientist changes the developmental trajectory of the fetus's organized cortical brain activity before it arises.

2. *The Problem of Creating Brainless Human Beings*

Another, though similar, problem with the desire account is its inability to account for the wrongness of purposely creating brainless human beings for an apparent public good. David W. Brock, for example, cites Carol Kahn's proposal for a possible use of human cloning, in which she suggests that "[a]fter cell differentiation, some of the brain cells of the embryo or fetus [clone] would be removed so that it could then be grown as a brain-dead body for spare parts for its earlier twin."¹⁷ According to Brock, "this body clone would be like an anencephalic newborn or presentient fetus, neither of whom arguably can be harmed, because of their lack of capacity for consciousness." Yet, Brock maintains, "most people would likely find" the practice of purposely creating non-sentient human beings "appalling and immoral, in part because here the cloned later twin's capacity for conscious life is destroyed solely as a means to benefit another"¹⁸ It is not precisely clear, given the desire account of rights, what would be wrong with cloning brainless human beings for the

¹⁷ D. Brock, "Cloning Human Beings: An Assessment of the Ethical Issues Pro and Con" in *Cloning Human Beings*, vol. 2 (Rockville MD: National Bioethics Advisory Commission, 1997), pp. E1-E23, on p. E8 citing C. Kahn, "Can We Achieve Immortality? The Ethics of Cloning and Other Life Extension Technologies," *Free Inquiry* (1989): 14-18.

¹⁸ Brock, pp. E8-E9.

purpose of harvesting their organs. That is, if there is no injustice done to another and someone receives a benefit, it is difficult to know where exactly the wrong is to be located in the act. I suspect that some would locate it in the moral intuition that the pre-brain embryo is deprived of something to which he is entitled. But if that is the case, then desire (whether occurrent, dispositional, actual or ideal) is a condition that is not necessary in order for a human being to possess both rights and a present capacity to be harmed. Yet, what follows is that the intentional creation of brainless children (or embryos) for the purpose of harvesting their organs is a serious wrong. But if we were to extract from this insight the principle that seems to ground this wrong—it is *prima facie* wrong to destroy the physical structure necessary for the realization of a human being's present capacity for the exercisability of a function that is a perfection of its nature—then the pre-brain embryo is a subject of rights even if it has no desires.

Thus, given these two problems, as well as the comatose-Bob counterexample, the *prima facie* wrongness of killing or damaging another cannot rest on a human being's occurrent, dispositional, actual or ideal desire not to be killed or damaged. Rather, its wrongness seems to be grounded in that it is a being of a particular sort who is deprived of real goods when it is killed or maimed, and these goods are ones for which its nature is intrinsically directed to achieve for its own perfection. Consequently, organized cortical brain activity fails as a condition that imparts to a human being a right to life.

III. IS ABORTION STILL PERMISSIBLE EVEN IF THE FETUS HAS A RIGHT TO LIFE?

Chapter 4, which spans 144 of the book's 350 pages, is offered as support of claim (B) and a critique of claim (2). Boonin's point of departure is Judith Jarvis Thomson's argument from unplugging the violinist, an argument to which I have offered published critiques,¹⁹ a portion of which

¹⁹ See, for example, F.J. Beckwith, "Personal Body Rights" (cited above) and "From Personhood to Autonomy: The Shifting Legal Focus in the Abortion Debate" in *Bioethics and the Future of Medicine*, ed. N. Cameron, D.

Boonin critiques in his book (pp. 246-53). Thomson offers an argument intending to show that even if the fetus is a person (that is, a being with a right to life), it does not follow that abortion is unjustified homicide. To make her point, she presents what is probably the most famous analogy in contemporary moral philosophy:

You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look we're sorry the Society of Music Lovers did this to you—we would never have permitted it if we had known. But still, they did it, and the violinist now is plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you have to accede to it? What if it were not nine months, but nine years? Or still longer? What if the director of the hospital says, "Tough luck, I agree, but you've now got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine that you would regard this as outrageous....²⁰

Thomson, by this illustration, is making the point that just because a being has a *prima facie* right to life it does not follow that one is never

Schiedermayer, & J. Kilner (Grand Rapids MI: Eerdmans/Cumbria UK: The Paternoster Press, 1995), pp. 187-98.

²⁰ Judith Jarvis "A Defense of Abortion" in *The Problem of Abortion*, ed. Susan Dwyer & J. Feinberg (Belmont CA: Wadsworth, 1984), pp. 173-87, here at pp. 174-75. This article was originally published in *Philosophy and Public Affairs* 1 (1971): 47-66. References to Thomson's article in this essay are to the former piece.

permitted to act in a way that would result in that being's death. After all, one can consistently maintain that all human beings have a *prima facie* right to life, while at the same time holding there may be some cases in which killing, or letting die, is justified, such as in the cases of capital punishment, a just war, self-defense, or passive euthanasia. Thomson's argument, therefore, poses a special difficulty because she argues that since pregnancy constitutes an infringement on the pregnant woman's personal bodily rights by the fetus, the ordinary abortion, although it results in the death of a being with a *prima facie* right to life, is morally permissible.

The responses to Thomson in the literature are plentiful and growing.²¹ As Boonin points out, there are many objections to Thomson's argument, and he impressively presents and offers critiques of sixteen of them (some of which have different versions, and Boonin presents and critiques those as well): (i) the weirdness objection, (ii) the tacit consent objection, (iii) the responsibility objection, (iv) the killing versus letting die objection, (v) the intending versus foreseeing objection, (vi) the stranger versus the offspring objection, (vii) the adult versus infant objection, (viii) the different burdens objection, (ix) the organ ownership objection, (x) the child support objection, (xi) the extraction versus abortion objection, (xii) the third-party objection, (xiii) the feminist objection, (xiv) the duty to save the violinist objection, (xv) the compensation objection, and (xvi) the inconsistency objection. However, of the

²¹ In addition to my works cited above, among the numerous publications that offer critiques of Thomson's argument are the following: J. Finnis, "The Rights and Wrongs of Abortion: A Reply to Judith Thomson," *Philosophy & Public Affairs*, 2 (1973): 117–45; Lee (1996), ch. 4; K. Pavlischek, "Abortion Logic and Paternal Responsibilities: One More Look at Judith Thomson's Argument and a Critique of David Boonin-Vail's Defense of It" in *The Abortion Controversy 25 Years After Roe v. Wade: A Reader*, 2nd edition, ed. L. Pojman & F. Beckwith (Belmont CA: Wadsworth, 1998), pp. 176-99; S. Schwarz & R.K. Tacelli, "Abortion and Some Philosophers: A Critical Examination," *Public Affairs Quarterly* 3 (1989): 81–98; Schwarz (1990), ch. 8; M. Tooley, *Abortion and Infanticide* (Oxford UK: Clarendon Press, 1983), p. 45; J. Stone, "Abortion and the Control of Human Bodies," *Journal of Value Inquiry*, 17/1 (1983): 77–85; and J. T. Wilcox, "Nature as Demonic in Thomson's Defense of Abortion," *The New Scholasticism* 63 (1989): 463-84.

sixteen, two seem to dominate the literature: (1) the responsibility objection, and (2) the parental obligation objection. Although, because of space constraints, I will deal only with Boonin's critique of the latter, much of my analysis applies to Boonin's critique of the responsibility objection as well, since the two objections and Boonin's critiques of them do appeal to some of the same moral intuitions. I will first present my version of the parental obligation objection and then reply to Boonin's critique of it.

A. Parental Obligation Objection

According to this objection, the pregnant woman has a special obligation to care for her unborn child. This obligation does not arise from explicit choice or intention to produce a child, but rather, it arises from the fact she engaged in an act, sexual intercourse, which is naturally ordered to result in the foreseeable consequence of the procreation of a dependent human being that requires her care. Because we hold the father responsible for child support for postnatal children even if he did not intend for his sexual encounters to result in offspring, therefore, it follows that the pregnant woman has the same obligation prenatally.

Consider the following story. Suppose a couple has a consensual sexual encounter that is fully protected by several forms of birth-control short of abortion (condom, the Pill, IUD, etc.), but nevertheless results in pregnancy. Instead of undergoing an abortion, the mother of the conceptus chooses to bring the pregnancy to term although the father is unaware of this decision. After the birth of the child the mother pleads with the father for child support. Because he refuses, she seeks legal action and takes him to court. Although he took every precaution to avoid fatherhood, showing that he did not wish to accept such a status, according to nearly all child support laws in the United States he would still be obligated to pay support precisely because of his relationship to this child.²² As Michael Levin points out, "All child-support laws make the

²² Boonin mistakes my citation of child-support laws, which I have also employed in other publications, as a moral reason for the case I am making. He writes: "It is clear from Beckwith's comment about the sperm donor case that when he says the father has an obligation in his example, he means a moral obligation and not

parental body an indirect resource for the child. If the father is a construction worker, the state will intervene unless some of his calories he extends lifting equipment go to providing food for his children.”²³ These laws are grounded in deep moral intuitions, that seem *prima facie* correct, that ground our notion that parents have a natural, pre-political, obligation to care for their child even if the child’s existence was not the result of a conscious plan to bring the child into being. Our intuitions about parental obligation to children, and society’s obligation to its vulnerable immature members, seem to be more well-grounded intuitions than the autonomy to which abortion rights advocates appeal.

But this obligatory relationship is not based strictly on biology, for this would make sperm-donors morally responsible for children conceived by their seed.²⁴ Rather, the father’s responsibility for his offspring stems

merely a legal one. And since the good Samaritan argument (that is, Thomson’s argument) is an argument about whether abortion is morally impermissible, and not about whether it would be morally permissible to make abortion illegal even if it is not morally impermissible, this is what Beckwith must mean if his objection is to have any chance of succeeding. But the only support Beckwith provides for this claim is the observation that there are many laws that would require the man to pay child support. And it simply does not follow from this fact that the man stands under a moral obligation to pay such support” (p. 247). I do not believe this is a correct reading of my case. I do not cite the child support laws as a moral reason for the father’s obligations. Rather, I make mention of those laws as best accounted for by the father’s moral responsibility that arises from the act of intercourse in which he voluntarily engaged. This is why I place the phrase “precisely because” directly after my citation of child support laws. Their presence in our legal system is the result of our pre-political moral understanding of paternal responsibility.

²³ M. Levin, “Review of *Life in the Balance* by Robert Wennberg,” *Constitutional Commentary* 3 (1986): 500-13, at p. 511.

²⁴ An anonymous referee asks: “Why should sperm donors be so different from a man having sexual intercourse? The act of the donor more surely leads to conception than the contracepted sex of the man having intercourse.” I’m not sure sperm donors are so different. After all, such donors typically sign contracts that relieve them from responsibility for, and surrender parental rights over, the children that result from their donated seed. These children are often brought up by two parents, one of whom is the adoptive father. It is to this individual that the sperm donor transfers his paternal responsibilities and obligations. Consequently,

from the fact that he engaged in an act, sexual intercourse, which he fully realized could result in the creation of another human being because reproductive organs are ordered to result in reproduction if they are functioning properly, although the father took every precaution to avoid such a result short of abstaining from sex. This is not an unusual way to frame moral obligations, for we do so even in cases where a particular result is merely foreseeable and not naturally ordered. For example, we hold drunken people whose driving results in manslaughter responsible for their actions, even if they did not intend to kill someone prior to becoming intoxicated. Such special obligations, although not directly undertaken voluntarily,²⁵ are necessary in any civilized culture in order to preserve the rights of the vulnerable, the weak, and the young, who can offer very little in exchange for the rights bestowed upon them by the strong and the powerful.

B. Boonin's Critique of The Parental Obligation Objection

In order to understand Boonin's response to the parental obligation objection to Thomson's argument, it is important that we cover a distinction he makes when assessing the responsibility objection. Boonin makes a distinction between (a) one's responsibility for "the needy

if these sperm donors had no responsibilities or obligations to the children they sire, as the referee suggests, no contracts that transfer their responsibilities and obligations would be necessary. Moreover, if the donated sperm is being used by unmarried women to bring children into single-parent homes, I think one can question the ethics of men who provide genetic material that bring fatherless children into the world.

²⁵ I am setting aside the question of whether Thomson's argument applies only in the cases of pregnancies resulting from rape and adult-child incest, cases in which there is no voluntary consent on the part of the mother. As Mary Anne Warren points out: "The plausibility of such an argument is enough to show that the Thomson analogy can provide a clear and persuasive defense of a woman's right to obtain an abortion only with respect to those cases in which the woman is in no way responsible for her pregnancy, e.g., where it is due to rape." M. Warren, "On the Moral and Legal Status of Abortion" in *The Problem of Abortion*, 3rd edition, ed. J. Feinberg (Belmont CA: Wadsworth, 1997), pp. 59-74 at p. 64. Whether Warren is correct is outside the scope of this article. For I am only assessing Boonin's defense of Thomson as applied to ordinary cases of pregnancy.

person's neediness" and (b) one's responsibility for "the needy person's existence" (p. 170). Concerning (a), if one is responsible for causing someone's neediness—e.g., one harmed another as a result of driving drunk, using a hunting rifle, and so on—then one is specially responsible for providing compensation and/or assistance to the victim. However, concerning (b), if one is responsible for a person's existence and that person is or will be in need of assistance, Boonin argues that one has no special responsibility to provide assistance to that person. For example, a physician who performs an emergency appendectomy on a patient who would have died without the operation, does not owe that patient assistance two years later when the patient is diagnosed for Parkinson's disease, an ailment the patient would not have been around to acquire if the physician had not performed the appendectomy. Boonin offers a modified version of an illustration authored by Harry S. Silverstein²⁶:

You are the violinist's doctor. Seven years ago, you discovered that the violinist had contracted a rare disease that was on the verge of killing him. The only way to save his life that was available to you was to give him a drug that cures the disease but has one unfortunate side effect: Five to ten years after ingestion, it often causes the kidney ailment described in Thomson's story. Knowing that you alone would have the appropriate blood type to save the violinist were his kidneys to fail, you prescribed the drug and cured the disease. The violinist has now been struck by the kidney ailment. If you do not allow the use of your kidneys for nine months, he will die. (pp. 172–73).

According to Boonin, it is clear that you are responsible for the violinist's existence, for "had you not done it, the violinist would not now exist" (p. 173). However, now that he exists, "you are not...responsible for his neediness" (p. 173). For it was not within your power seven years ago both to provide the violinist a drug that would extend his life and guarantee that the violinist would not require your kidneys in five to ten years to extend his life even further. After all, if you had not given him

²⁶ H. S. Silverstein, H.S. "On a Woman's 'Responsibility' for the Fetus," *Social Theory & Practice*, 13/1 (1987): 103-19, at pp. 106-07, cited in Boonin, p. 172 n27.

the drug, he would not exist to be needy. “So,” writes Boonin, “you are responsible for the needy violinist’s existence, but you are not responsible for his neediness, given that he exists” (p. 173). The application to pregnancy is obvious: “A woman whose pregnancy is the result of voluntary intercourse, that is, is responsible for the existence of the fetus, but is not responsible for the neediness of the fetus, given that it exists” (p. 175). And given that she is not responsible for the fetus’s neediness, she is not required to provide it assistance. Because all human beings brought into existence eventually die of something, Boonin’s illustration is helpful in showing that just because parents bring a human being into existence does not mean that they are responsible for any or all the harm the child suffers throughout the child’s life (assuming that it is not the parents’ conduct that directly contributes to the harm the child suffers, e.g., the child shoots himself while playing with a loaded gun left in a conspicuous place by one of the parents). It seems to me, however, that Boonin misses an important distinction between the illustration he offers and the nature of pregnancy. The physician extends the life of a violinist, an already existing person; the physician does not bring a brand new person into existence. The parents of an unborn child do not extend the life of an already existing human being; they bring into being a brand new human being. There are two reasons why this distinction is important.²⁷

First, the two cases are not symmetrical relative to increasing or decreasing human neediness. The physician, by giving the violinist the drug to extend his life for at least another five years, decreases his patient’s net neediness, since, after all, the violinist was given the drug at the edge of death. An already existing state of affairs was improved. On the other hand, in the case of pregnancy, net human neediness is increased, for a child-with-neediness, a joint condition, is actualized by an act which is ordered in such a way that its proper function (though not its only function) is to produce a child-with-neediness. In the case of the violinist, the physician helps a violinist to be less needy than he otherwise would have been. In the case of pregnancy, a needy being is brought into

²⁷ Steve Thomas graciously offered me several helpful suggestions on how to better, and more clearly, present these reasons.

existence that otherwise would not exist if not for its progenitors engaging in an act ordered toward producing needy beings.

Consider this scenario. Imagine a scientist has discovered a procedure by which he can clone human beings for infertile couples, but there is a glitch: all of the children conceived by this procedure will develop a genetically caused, yet correctable, heart condition. The procedure is elective, the scientist and the parents do not desire that the cloned children have this condition, but the children cannot be brought into existence without this defect. The scientist's procedure results in simultaneous existence and neediness, just as in an ordinary pregnancy, but with more neediness than what is typical. It seems to me that the scientist and/or the clone's parents have a responsibility to make sure that the children receive the proper care, that the children's neediness is remedied. In that case, the degree of neediness is not relevant in requiring that those who caused the neediness provide a remedy. So, if one agrees that the scientist and the children's parents are responsible for the cloned children's neediness, then one must agree that parents of ordinary non-cloned children are just as responsible for their neediness.

Second, the two cases are not symmetrical relative to the actors' responsibility for the neediness of the beings in question. In the case of the violinist, his future neediness is a foreseeable, though unintended, consequence of extending his life, just as inevitable death is the foreseeable, though unintended, consequence of providing a life-saving measure to any human being. (For example, a person given cardio-pulmonary resuscitation [CPR] and survives eventually dies of something). However, in the case of the fetus, his neediness is the direct result of his parents engaging in an act, because the act is ordered to bring needy persons into existence. Unlike the physician who is ministering to his violinist patient for the patient's greater good, agents engaged in intercourse are not extending their child's life for his greater good. For there is no child to which they can minister. Rather, they are engaging in an act, for their own gratification (assuming that they do not intend pregnancy),²⁸ that is

²⁸ An anonymous referee finds this reasoning "tortured and unpersuasive," because "the existence of a needy child is a side effect of some pleasure-seeking sex just as the future need for transfusions is the side effect of life saving action."

ordered to bring into being a person—an intrinsically valuable being, Boonin grants—who is needy by nature, and if brought into existence will be deprived of life precisely because it is needy and because those responsible for its needy existence do not want to offer assistance. After all, if sex resulted in the procreation of full-grown responsible adults who are not needy, there would no longer be a justification under Boonin's thesis to permit the killing of newly conceived human beings. So, it is the neediness of the child that justifies depriving it of life by those responsible for its neediness, one of whom is in a unique position to care and nurture that child. But according to Boonin, when one is responsible for causing someone's neediness, one is especially responsible for providing compensation and/or assistance to the one in need. Consequently, the parents of the fetus are responsible for assisting it because they are in fact

I think this analogy fails for several reasons. First, the existence of a needy child is not a side effect of sex; it is a foreseeable result of properly functioning male and female human beings participating in the conjugal act, though a needy child need not always result even in such an ideal set of circumstances. We would not say, for example, that wisdom is a side-effect of sound reasoning, but rather, a foreseeable result of a properly functioning mind in an appropriate environment, though wisdom need not always result even in such an ideal case. The work of Alvin Plantinga, *Warrant and Proper Function* (New York NY: Oxford Univ. Press, 1993) has influenced my use of the term "proper function." Second, though a future need for a transfusion may be a side effect of saving a patient's life, such life-saving is a side effect that places the patient in a better position than she otherwise would have been if her life had not been saved. So, the physician (or "physician₁") who saves this patient's life does not owe her the cost of a future transfusion. However, if the need for a future transfusion is the result of the negligence of another physician (or "physician₂") and is not merely a typical side-effect of the treatment, then physician₂ is the proximate cause of increasing the net neediness of his patient. Therefore, the difference between physician₁ and physician₂ rests on each physician's role as proximate cause of the patient's decreased or increased neediness. Physician₁ decreased the neediness of a patient that would have been worse off if physician₁ had not acted. Physician₂ increased the neediness of a patient that otherwise would have been less needy if physician₂ had not acted negligently. Physician₁ is responsible for helping his patient, and does not owe his patient the cost of a future transfusion. But physician₂ is responsible for his patient's increased neediness, and thus is morally required to remedy it.

responsible for bringing into existence a being that is needy by nature and thus are responsible for its neediness.

Consider this illustration. Imagine you are a physician whose patient is a violinist. However, unlike in the previous tale, your patient is healthy and also happens to be your lover. After arriving at your office for his yearly physical, you suggest to him a vitamin regimen in order to maintain his health. You offer him what you think is a sample of the vitamin, but it is really a narcotic to which the violinist is highly allergic. You hand him the samples, he swallows one right there in your office, and then moments later he has a severe allergic reaction. He is rushed to the hospital and soon after his arrival the chief of neurology gives you the tragic news: "Your patient, the violinist, will survive, and live quite a long time. However, he has suffered serious brain damage that has resulted in his losing all his memories, abilities, and skills. He will remain in a coma for nine months, but upon awakening he will be able to relearn all his abilities and skills and acquire new memories. It should take about a decade to accomplish this. This means that he is effectively in precisely the same position as a standard fetus." According to Boonin, you are clearly responsible for your patient's neediness and your patient is entitled to your assistance.

However, suppose while the violinist is laying in his hospital bed in a coma, you obtain some of his DNA in order to clone him. You rush back to your lab, produce an embryo clone, and then implant the embryo in yourself (you are a woman, after all) because you want to bring into the world another human being who is likely to acquire similar characteristics and develop a similar personality as the violinist you dearly love. But suppose you discover a week later that when you implanted the cloned embryo you were pregnant already as a result of sex with the violinist an hour before he had visited your office. You had not intended to become pregnant; but you now are in such a condition. So, now there exist three human beings in precisely the same position: identical twin violinists (though decades apart in chronological age) and a child who is the offspring of the senior twin. All three are needy, unconscious, and require time to develop their latent abilities, basic capacities, they have by nature. In all three cases it seems correct to say that you are responsible for their neediness, but in the second and third cases you are also responsible for

the being's existence, though in the second case you directly intended a needy being to exist but in the first and third you did not. Yet, according to Boonin, you are only responsible for the neediness of the first, the violinist, but not the second and third because in the latter two cases you are only responsible for the being's existence but not its neediness. But that doesn't seem right. For in the second and third cases neediness is caused simultaneously with existence, because the sort of being brought into existence is needy by nature and the acts performed in each case are ordered toward the production of needy human beings. Thus, Boonin's argument fails to show that the distinction he makes between responsibility for neediness and responsibility for existence is applicable to the case of pregnancy.

With the responsibility for neediness/existence distinction and its problems already covered, we can now directly assess Boonin's critique of the parental obligation objection. Although he offers several responses, two are relevant to the analysis here.

(1) Boonin maintains that it is not clear that a man who took every contraceptive precaution to avoid fatherhood, and prior to intercourse plainly conveyed to his female partner that he did not intend to sire a child, "is violating the moral rights of the child or the woman" (p. 248). Boonin admits that it may be legally permissible for the state to require child support from such a father or one who was not as contraceptively careful but merely did not want paternal responsibilities. Boonin claims that such a law may be morally "proper" but still "consistent with the claim that there is no independent moral obligation for such men to pay child support" (pp. 248-49). But it's difficult to make sense of this, for at least two reasons.

First, Boonin understates the force of the intuition that guides our understanding of parental obligation, namely, that explicit consent to parenthood is not a necessary condition for parental obligation. It seems to me that most people would think it bizarre to discard that intuition on the grounds that Boonin is suggesting, that parental obligation is grounded exclusively on explicit consent. In fact, most people would think that Boonin's understanding of parental obligation itself should be discarded precisely because what it affirms about parental obligation is inconsistent with our intuitions on this matter.

Second, given Boonin's claim that the mother has no moral obligation to assist in any way her unborn child because she is only responsible for its existence but not its neediness, it would follow that the father is only responsible for the child's existence but not its neediness and thus has no moral obligation to assist the child in any way including the payment of child support. As we have seen, Boonin seems to agree with this analysis. Nevertheless, he also claims that if the state were to require the father to provide assistance in a particular way, namely the payment of child support, such a requirement is morally proper. But how can a requirement be morally proper if it is at the same time not a moral obligation? After all, Boonin is saying that there are no moral grounds for justifying the obligation to pay child support in our story of the dead-beat Dad. But it would seem to follow then that the state has no moral grounds for justifying its requirement to pay child support in our story of the dead-beat Dad. The state cannot be acting in a morally proper fashion if it is in fact, let's say, garnishing the father's wages and distributing them to his abandoned children, since that for which one has no moral grounds cannot be morally proper.

Third, if it is morally proper for the state to require the father to pay child support even though he has no moral obligation to pay child support, as Boonin contends, then why can't the state apply the same reasoning to the mother? It is morally proper for the law to require that the mother carry the child to term even though she has no moral obligation to do so. Although I believe this makes no sense (for either the mother or the father), it is not clear how Boonin could reject it based on the premises of his case. I suppose he could argue, as he does elsewhere in a different context (pp. 249-54), that the mother's burdens during pregnancy are so great that requiring her to carry the child to term is morally improper. But what would be the grounds for this judgment? It seems to me that he would have to argue that it is morally improper because the pregnant woman has no moral obligation to bring the child to term. But turn about is fair play, for then the state cannot require the father to pay child support on the grounds that Boonin suggests, namely, that the requirement is morally proper even though the father has no moral obligation to do so.

(2) Boonin offers another argument. He asks us to assume that there

is a moral obligation for a dead-beat Dad to pay child support (even though Boonin does not believe that there really is such a moral obligation). But even if this is the case, argues Boonin, a woman has unique and greater physical burdens during pregnancy than a man or woman has in caring for his or her child post-natally. For this reason, the woman lacks during pregnancy the moral obligation to assist her child that she and the child's father have after birth. Moreover, if we would not require a man to undergo a similar physical experience against his will, then we cannot require a woman to remain pregnant against her will. Boonin employs several analogies, comparing the mother's apparent obligation to her unborn child to forced organ donation or temporary use of another's body, which are illegal, and immoral, even if parents are the ones whose bodies are used to help their children (pp. 249–252). Boonin writes:

Suppose, for example, that in order for the child to survive, the father must go through [an artificial procedure nearly identical to pregnancy].... He must have a pseudo-zygote implanted in him and let it develop into a pseudo-embryo and then pseudo-fetus before giving "birth" to it in a manner that parallels the nature of childbirth as closely as it is anatomically possible so that a life-saving synthetic drug may then be extracted from it and given to the child. It goes without saying that no court would order him to undergo such a procedure. Or suppose instead, more mundanely, that in order for the child to survive, the father would have to undergo a painful series of bone marrow transplants, or have one of his kidneys removed. Again, the law would surely not compel him to undergo such procedures. (pp. 249-50)

These analogies seem to turn on two key premises, the first of which Boonin explicitly addresses in his book: (1) There is a distinction between responsibility for existence and responsibility for neediness, and the pregnant woman is not responsible for the fetus' neediness (which we have already seen fails); and (2) It is not rational to believe that a woman's physical design is ordered toward the caring, sheltering, and nurturing of unborn children. After all, an involuntary organ donor or lender (even if she is the recipient's parent) is typically not responsible for the neediness of the organ recipient, and the donor's body is not intrinsically ordered toward the donation of organs for a specific person who by nature needs those organs as the woman's body is intrinsically ordered toward the care of her unborn child. Because I have already dealt

in this essay with the first premise, I focus only on the second.

Given what we seem to know about human beings and procreation, it would require a Herculean effort on Boonin's part to provide a convincing account of human beings suggested by the second premise. For it seems reasonable to believe that it is the mother whose body is designed for pregnancy and child bearing, and whose parts work in concert to make the maternal human organism conducive and receptive to the protection and nurture of an unborn member of the species. Thus, during that time of a human being's existence it is only she who has the physical attributes to provide shelter and sustenance to this being, for whose neediness and existence she and the child's father are responsible.²⁹

Boonin is correct that there are burdens that attend the condition of pregnancy that cannot be shared with the male parent, for they are unique to the female of the human species. But it is not clear how the differences in parental burdens between the sexes justify abortion. It seems to me that the correct comparison is between the burdens to be borne by the child and its mother, not between the father and the mother, if the decision to abort hangs in the balance. For if we were to think of the burden of an ordinary pregnancy as a harm exclusively borne by the woman, as no doubt Boonin does, and compare it to the harm of death borne exclusively by the fetus if it is aborted, "the harm avoided by the woman seeking the abortion," writes Lee, "is not comparable with the death caused to the child aborted. (Recall that burden need only involve nine months of pregnancy; the woman can put the child up for adoption)."³⁰

Given my critique, I think one may rightly conclude that it is a mistake to believe that Thomson and Boonin are in fact conceding for the

²⁹ I am not suggesting that the ordering of human bodies is obvious. Rather, what I am suggesting is that it is plainly not irrational to believe that the genitalia of human beings are ordered toward reproduction, and that each parent possesses different functions designed for the creation, protection and nurturing of the unborn child. I do believe, however, that there is a strong presumption in favor of this understanding, but a detailed defense of this presumption is outside the scope of this article.

³⁰ Lee, p. 118.

sake of argument what pro-lifers believe about the fetus, even though they are claiming that they are doing just that.³¹ What Thomson and Boonin are granting is not the pro-life view of personhood, but a view of personhood consistent with the pro-life position only insofar as it is aligned with their own liberal and minimalist understanding of autonomy and choice. For the success of their case depends on assuming a view of the person that isolates the individual from other persons except as those relationships arise from the individual's explicit choice. It is, in the words of Michael Sandel, the "image of the self as free and independent, unencumbered by aims and attachments it did not choose for itself..."³² But if this is their understanding of personhood, as it seems to be, then it is that understanding they are stipulating when they grant to the abortion opponent for the sake of argument that the fetus is a person (or has a future-like-ours). But that is not the pro-life view of personhood. The pro-life view is that human beings are persons-in-community and have certain natural obligations as members of their community that arise from their roles as mother, father, citizen, child, etc. Therefore, the success of Boonin's and Thomson's cases depends on begging questions of philosophical anthropology that are derived from an understanding of personhood that is necessary in order to arrive at the conclusion that abortion is a fundamental right even if the fetus is that sort of person. Thus, Thomson and Boonin smuggle into their cases a philosophical anthropology—a metaphysical view of the human person—that is no less controversial than the fetus's personhood they are apparently conceding for the sake of argument.

³¹ For example, Boonin writes: "Indeed, it is the central thesis of this book [In Defense of Abortion] that the moral case against abortion can be shown to be unsuccessful on terms critics of abortion can, and already do, accept..." (p. 2). He writes elsewhere that he defends a version of Thomson's argument by showing that the pro-life case against it "should...be rejected on the abortion critic's own terms" (p. 133).

³² M. Sandel, *Democracy's Discontent: America in Search of a Public Philosophy* (Cambridge MA: Harvard Univ. Press, 1996), p. 12. Although Sandel is not explicitly writing about Thomson or Boonin, it is fair to say that he is addressing a view of the person or self that their arguments assume.

CONCLUSION

Despite the numerous arguments covered in this book, there seems to be a unifying theme behind them: a human rights-bearer is a desiring self with which another may not interfere unless the rights-bearer grants consent to the other to do so. So, the fetus is not a rights-bearer until it is a desiring self (i.e., the argument from organized cortical brain activity), though society may not require that the parents of the fetus care and nurture it because they are also desiring selves with rights to autonomy and self-determination that may not be obstructed without explicitly consenting to the obligation (i.e., the violinist argument). It seems to me that this understanding of the human rights-bearer affirms the isolated desiring self as the paradigm case of the moral subject. But, as I have argued in this article, this view of the moral subject—the philosophical anthropology that unifies Boonin’s case—is deeply flawed.

Because this article has focused on those portions of Boonin’s book with which I disagree, the reader may get the mistaken impression that my overall assessment of this book is negative. That is far from the truth. In fact, I agree with much of what Boonin has written. However, a review-article consisting mostly of cheerleading and reaffirmation of the author’s point of view would be uninteresting and probably unreadable (except, of course, by the author of the book under review).

A Defense of Abortion is a significant contribution to the philosophical literature on the subject. It is arguably the most important monograph on abortion to be published in the past twenty years. Although one may find oneself disagreeing with Boonin, as I do, one cannot help but be challenged by, and impressed with, the author’s mastery of argument and his honest grappling with the various cases for the position he opposes.³³

³³ Special thanks to Steven Thomas, Patrick Lee, and an anonymous referee who offered valuable comments that helped improve this article as well as our department doctoral fellows, Gerard Figurelli and John Lee, who helped me with the article’s editing. However, I take full responsibility for any of its flaws.