

It's Her Body

A  *Collection*

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Trump, Cuomo, Kavanaugh, and “It’s Her Body”



A Reflection from JFA's Executive Director, Steve Wagner

Introduction to “It’s Her Body” Series — July 10, 2018

Dear Friend,

Even before President Trump nominated Brett Kavanaugh to the Supreme Court yesterday, New York Governor Andrew Cuomo was signing pre-emptive orders aimed at protecting women’s “constitutional legal protection to control their own bodies” after *Roe v. Wade* is overturned.

There’s nothing like the feeling that the legal right to abortion might be in jeopardy to motivate people to start talking about abortion again. Indeed, the “Should Abortion Remain Legal?” poll question is our most reliable tool for causing pro-choice advocates to stop and share their opinions with us. In one sense, that’s unfortunate, because many haven’t ever thought much about whether or not the unborn is a human being and whether or not abortion is wrong. Without these prior questions resolved, the discussion of the law is premature. Still, it does make people stop.

The increased buzz about abortion because of the Kavanaugh nomination will likely make people more willing to share their opinions about abortion. Beyond buzz and discussion, though, I think it’s difficult to say what a more conservative Supreme Court might do with *Roe v. Wade* and its progeny if a case were to come before it in the next few years. Hadley Arkes has voiced some serious concerns about whether even the justices who seem most conservative are willing to make the moral arguments that are essential to protecting unborn children. (See “Another Pro-Life Victory?” and “The Moral Turn” in *First Things*.) So, having conservative justices and a case to rule on may be only half that battle. If the Court strikes down *Roe* but not for the reason that abortion kills a human being, it’s true that many states would likely outlaw abortion, but those with the most abortions (such as California and New York), if allowed to make whatever law seems best to them, would likely keep legal abortion alive (irony intended). This underscores how we cannot hope to protect unborn children for the long-term through the Court alone, apart from another key strategy: seeking to change the hearts and minds of the strong majority that is tolerant of legal abortion.

In any case, we can hope the Supreme Court drama will make it less awkward to discuss unintended pregnancy and abortion with people in our churches, the parents of our kids’ friends, and teens just entering college. I predict many of these will follow the same familiar path Andrew Cuomo just trod. We’ll hear “it’s her body” and its variants not only from those who think abortion is morally neutral, but also from those who say they are strongly against abortion...for themselves. (Indeed, isn’t “I’m against abortion, but I think it should be legal” the most common pro-choice position?)

In the enclosed letter and the accompanying blog posts, I outline a timely approach to these “it’s her body” arguments. My approach might surprise you. It may seem to you to be too sympathetic at a time when we need firm, even strident, proclaiming of truth. *Here’s what I’m up to:* It doesn’t hurt our case against abortion one bit to find common ground with “it’s her body” statements as much as we honestly can. Once you read my letter, I hope you’ll agree this approach is not only morally good but also has the best chance of helping those who disagree become receptive to the truth of our position, clearly and confidently presented at the appropriate time. Because “it’s her body” statements require careful attention to relational complexity, intellectual complexity, and the meaning that a person is intending, the P.S. of the enclosed letter includes links to blog posts that fill out our approach and give you a good start at being ready to discuss “it’s her body” statements when they are surely to come up in the coming months.

This approach is part of JFA’s attempt to integrate love and truth in every moment of every conversation. Just as we shouldn’t “love” the woman at the expense of the child, we also shouldn’t “love” the child without concern for the woman. We aim instead to love every human being. This includes the person with whom we’re speaking.

I hope you find this letter and the accompanying blog posts helpful. I’d love to hear your thoughts!

Steve Wagner



JUSTICE FOR ALL – TRAINING THOUSANDS TO MAKE ABORTION UNTHINKABLE FOR MILLIONS, ONE PERSON AT A TIME

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It's Her Body



A Reflection from JFA's Executive Director, Steve Wagner

Part I in a Series — July 2018

Dear Friend,

I was in the middle of a conversation with a few young women who had stopped to sign our “Should Abortion Remain Legal?” poll at Colorado State University in April. They were putting their mark on the “Yes” side. I asked a few questions, and each began to explain the limitations she would put on abortion at different times and in different circumstances of pregnancy.

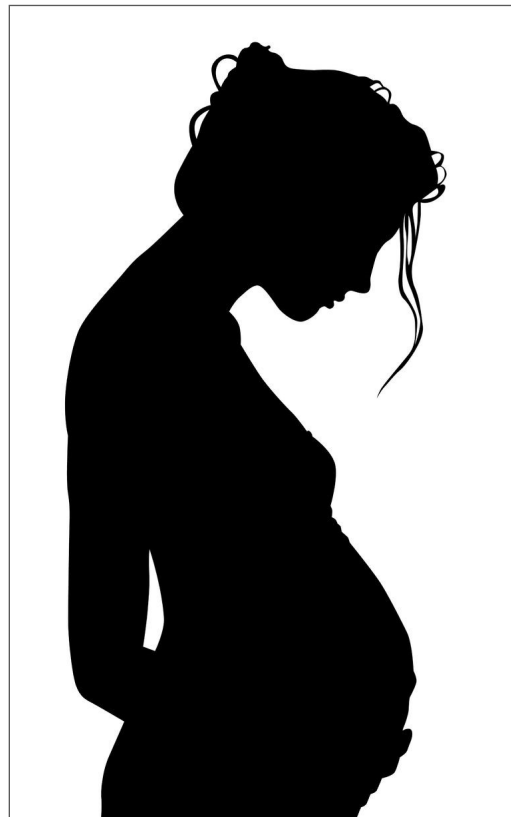
Another young woman stopped and interjected, “It should be legal up until birth.” Without much prompting, she gave her reason: “I have a right to do what I want with my body.”

At this moment, I wanted to launch into a precision set of questions and counter-arguments to show this woman and those standing nearby that her right to her body doesn't entail a right to kill another human by abortion. I have been thinking, writing, and teaching about appeals to bodily rights for more than 15 years. I was ready.

But as I looked at this woman, I hesitated. I stuttered and said something not too tidy, struck afresh by the fact that this topic affects this *person* very *personally*. Reflecting on it later, I was a little embarrassed that I hadn't had more to say, but then I realized there was something quite right about the approach into which I had fallen. Rather than saying something intellectual, I think I said something more along the lines of sympathy and concern, a little like this:

“I don't know if I can fully understand what it's like for matters so personal as your body and your right to do what you want with your body to be brought up on your campus. I don't know what it feels like to consider the possibility of being pregnant or to think about the government placing restrictions on your ability to control everything about your body. These things are very heavy to think about. Your right to your body is important.”

I don't want the conversation about a woman's right to her body to end there, but I think it needs to start there. Indeed, my conversation with two of the women who heard this exchange was very productive, I think due in part to the moment in which I chose sympathy over argument. But the conversation can't end with sympathy for the woman only, because this woman's view that abortion should be legal until birth also affects an unborn *person* very *personally* (and not just one unborn child, but thousands each day). If we focus on the unborn, though, without first seeking to understand the woman's concern for her body, we not only will make practical success in the conversation much more unlikely, failing to build a bridge when we could, but we'll also fail to accurately describe what's true. For what we're discussing is a *person* with equal value to the unborn person, and yes, she has a right to her body that we should be the first to champion. I mean “right to her body” not in the controversial sense of abortion but in the uncontroversial sense that she should be protected from harm, terror, assault, and oppression. She should be valued as an equal. In general,



Some of JFA's recent outreach exhibit panel designs feature images like this one in order to communicate concern for women and sympathy for their experiences of pregnancy. See the *Stop and Think* Exhibit page (www.jfaweb.org/stop-and-think) for exhibit designs and commentary.



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individuals and the government should leave her to be free, unless she is causing harm to someone else.

At JFA we've been making the point for more than a decade that when discussing abortion in the case of rape, those who are defending unborn children must meet the "relational challenge" first, focusing on the horror of rape and showing sympathy for the woman who has been assaulted, even if this means that we set aside for the moment our agenda of changing a mind about whether abortion should be legal in the case of rape (the "intellectual challenge"). This is primarily because it is good and right to communicate love, concern, and sympathy for women who have been violated by an evil act of rape. It also turns out that it's practically essential. People are much more likely to listen to our argument against abortion in the case of rape (or any other case) if they can tell that we are genuinely concerned about the evil that occurred in that act.

I've realized that anytime a woman defends abortion by referring to her right to her body, we confront essentially the same two challenges. There's a relational challenge ("Do you care about the woman's bodily rights?") and an intellectual challenge ("Do the woman's bodily rights include the right to abortion?"). Let's say you are a woman claiming you have a right to your body that includes the right to abortion, and I am responding to your claim. Even though you and I are not discussing assault, *per se*, we *are* talking about whether the government should restrict your freedom to do something that you think affects *only* your body, and so that idea of

government intrusion may very well feel similar to assault for you. Many men will view this in the same way, through the prism of concern for their sisters, mothers, and female friends. We would do well to consider bodily rights claims through this same prism, letting the beginning of our response be guided by a realization: we are talking about *somebody's body*.

It's Still *Her* Body, Even if it's Not the *Only* Body Involved.

Now, perhaps you are longing at this point, as I am, for there to be a balancing of the scales, a revealing of the truth about the unborn child alongside this sympathy and concern we've been showing towards the woman. We who consider the unborn an equal human being know there is much else to say that brings this "prism of concern for somebody's body" into proper light. (See the P.S. below.) There's a reason, though, other than limits of word and page count, that I emphasized the woman's bodily rights in this letter and stopped short of saying other important things about the topic: *we pro-life advocates are sometimes too quick to gloss over the woman*. At times we only give lip service to her value (if we mention her at all), and then we proceed with our arguments as if she is (for the most part) not even there. Let this letter's singular focus on the woman be a reminder of the need to pause and the need to let every statement about the value of the unborn that follows be colored by the truth that the woman's body is still *her* body, even if it's not the *only* body involved.

In Christ,



Steve Wagner
Executive Director

PS: See www.jfaweb.org/blog/bodily-rights to access a series of additional thoughts this letter brought to the surface for me. I consider these posts to be equally important to this letter, and they are meant to be read in conjunction with it:

- *It's Her Body (Part I in a Series on Bodily Rights Defenses for Abortion) – This Letter*
- *How Important Is Your Body to You? (Part II)*
- *Focusing Only on the Woman for a Time Is Not Compromise (Part III)*
- *Practical Suggestions for Concern and Common Ground Regarding Bodily Rights (Part IV)*
- *Is "It's Her Body" a Statement about Biology? Ask a Question to Find Out. (Part V)*
- *From a Foundation of Love for Women and Children, We Respond Intellectually to Bodily Rights (Part VI)*
- *A Few Additional Thoughts on Bodily Rights (Part VII)*

How Important Is Your Body to You?



A Reflection from JFA's Executive Director, Steve Wagner

Part 2 in a Series — July 2018

I want to ask you a question: How important is your body...to you?

How important is it to you that you're healthy? If you go to the doctor because you are in pain, and she does some tests, and you're not sure what the diagnosis will be, well... Maybe there's nothing wrong with you, but maybe something is really wrong. Do you worry? Having a healthy body is pretty important to you, isn't it? You don't even have to think about it to answer.

Do you care about your body? Even in the best circumstances, when everyone and everything in one's presence is trusted and safe, each of us has a basic concern about what happens to his or her body. But when our bodies are in the presence of something which feels unsafe or someone we don't trust, we are especially aware of our bodies and our concern for them.

What about laws and the government? How important is it to you that the government and laws "stay away" from your body? Do you want the government to refrain from putting unnecessary limitations or restrictions on your body? Do you want to be protected from the government putting you in prison without justification or restricting your basic rights? We all care deeply about our ability to move around, to assemble with others, and to speak freely.

Still, I think most people believe in a few reasonable restrictions on peoples' bodies. As one person in Oklahoma said to me, "My rights end where your rights begin. There's a civil rights bubble around each of us." I think a lot of people believe that, but even still, most of us don't want the government putting a lot of unjustified restrictions on our bodies. We definitely don't want the government forcing us to do things with our bodies that we don't want to do.

In light of this, consider these defenses of legal abortion: "It's her body," "She can do what she wants with her body," "The unborn is a part of her body," "The unborn is in her body," and "The unborn is dependent on her body." What word pair is common to all of these? *Her body*. And the most common abortion defense of all only makes this emphasis more personal: "My *body*, my choice."

What's the common word in all of these statements? *Body*. *Her body*. *My body*.

In future posts in this series, I'm going to outline JFA's approach to these bodily rights statements, including seeking to clarify what the person means by her argument (Part V) and sharing analogies that help point out the truth about the limits to a woman's bodily rights (Part VI). But this intellectual approach is only part of the puzzle, and as important as philosophy surely is, I am now realizing that as we make our arguments we must continue to express great sympathy and understanding for the woman's concern for her body.

I suggest that regularly in the midst of the discussion, we pause to reflect: *Remember how important your body is to you.*

Then, remember that this dear person to whom we are speaking, if she's a woman, has one of those bodies we're discussing. She can't disassociate herself from her concern about her own body, at least not without purposeful effort. But all of us can understand that right? Even a man can understand the feeling of caring about one's own body.

See www.jfaweb.org/blog/bodily-rights to read more posts in this series.



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Focusing Only on the Woman for a Time Is Not Compromise



A Reflection from JFA's Executive Director, Steve Wagner

Part 3 in a Series — July 2018

I've now written two posts in this series focused on the woman's right to her body and the value she has as a person. I've made the point that discussing what her right to her body entails must be accompanied by a sort of healthy recognition that we're talking about somebody's body.

You may worry that making this recognition somehow chips away at or cheapens our concern for the unborn child. No, I'm *not* forgetting the unborn child. Don't worry. But I *am* attempting to take seriously what it means to have a body and to have another person's body inside one's body.

Focus on the woman or focus on the unborn child? It doesn't have to be one or the other. But I am arguing that in order to show concern for the woman's real right to her body, in order to communicate to the pro-choice advocate the real value we believe the woman has, we might have to be okay with not mentioning the unborn for a moment. This is a small concession, and I don't think it's a compromise. Currently, the typical pro-choice advocate sees most pro-life advocacy as only about the baby. There is truth in their perceptions, even though I think this characterization of us as mostly anti-woman is wildly off the mark.

I've been working for years to respond to arguments about the woman's body, and I have rarely, if ever, paused to reflect on the *person* I'm in fact discussing. Without much fanfare, I've been discussing the physical organism, the body, to which she is more deeply connected than she is connected even to the unborn child inside of her. For, of course, she isn't connected to her own body through a placenta or umbilical cord or by "sharing space." She is *directly* connected to her body as her *own*.

With that reality in mind, I can no longer simply proceed as if this discussion of what her real bodily rights entail is a purely theoretical argument. I can no longer proceed as if we simply need to get to the right answer about that argument, as important as that is. Questions such as, "What rights and responsibilities does she have?" and "What limits can be legitimately made by law upon the actions of her body?" and "What is right?" are all important, to be sure. Concern for the woman's body doesn't erase these other concerns. We can't love the woman and be sympathetic about her experience and simply ignore the question at hand, "Can you ask a doctor to kill the unborn child in her body?" We must find a way to love both as equal human beings.

I'm not arguing here for focusing on the woman to the exclusion of the unborn child. I'm saying that I can no longer in good conscience simply think about, teach about, and respond to the statements and arguments regarding a "woman's right to her body," without giving some reflection and time to the fact that she has a special connection to her body, and all of our discussion affects her in a way it doesn't affect us who don't have her body. I'm arguing that giving focus to the woman will gain us a hearing for our thoughts not only about her, but also about the unborn child. Both the woman and the child are often forgotten in these conversations.

Remember how important your body is to you. This is not only about the woman, of course, but it is at least about the woman. It would be a great progress for the woman to whom we are speaking to feel clearly the value we believe she has. If we hope to kindle affection for unborn children as valuable human beings, one necessary (though not sufficient) step is to kindle affection for the woman experiencing unintended pregnancy.

See www.jfaweb.org/blog/bodily-rights for more posts in this series.



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Practical Suggestions for Concern and Common Ground Regarding Bodily Rights



A Reflection from JFA's Executive Director, Steve Wagner

Part 4 in a Series — July 2018

I've made the point in the previous posts in this series, that when someone defends abortion by saying, "It's her body," the first thing we should do is find common ground and show concern for the woman and the uncontroversial aspects of her real right to her body. Here are a few additional practical suggestions for finding common ground and showing concern for the woman when her bodily rights are the topic of conversation:

- "How does it feel for you to discuss this topic? I'm not sure I can understand what it's like to discuss this, but I'd like to try."
- "Is it difficult to be open-minded, considering what's at stake for you? Can you describe for me what you feel is at stake with your legal right to abortion? How does this discussion affect you?"
- "This is a really difficult experience we're talking about, and one that the woman understands in a way I cannot as a man. She has a body that has the ability to have another body inside of her. And then she sees all of these people arguing about what she can do or not do. She feels conflicted, perhaps, about what is inside of her when she is pregnant. She may feel conflicted about the circumstances in which she got pregnant and the man who contributed to her becoming pregnant. But now here she is, pregnant...and in a very real sense, she feels alone with her body and what's happening within her body."
- "There are many different ways in which women are oppressed and their bodies are not respected. The last thing I want, as a proponent of human rights, is for her real right to self-determination to be unnecessarily or unjustly restricted. I think we need more advocacy and action against rape and domestic violence and other forms of assault against women. These ways of treating women must be stopped. I am committed to giving my time and money to being a part of the solution."

Here's another thought you should consider: When someone says, "I have a right to my body," there's a possibility that the person is not really intending to make an argument. The person may be intending to say something more emotive, something more like a desperate cry of self-preservation.

I think the same is true, by the way, with many statements that seem to us to be justifications of abortion, but which pro-choice advocates are intending more along the lines of shows of sympathetic concern. Sometimes when people mention poverty or single parents or other situations in which it's understandable that a woman wouldn't want to be pregnant, I think the person is really just processing and emoting with language, and is not really intending to give reasons in the sense of argument and logic.

So it may be with the statement, "It's her body." We can't assume an argument is intended by those words. Sure, an argument is definitely lurking in the shadows, even if its not intended, and we need to be ready for it. I think the communication that's intended, though, is something simpler: "Her body is affected by pregnancy a lot, and I care about her." We can surely agree with those sentiments. Let's pause, then, to hear the heart, and only move forward to clarify and respond to the intellectual arguments once that concern has been laid as a foundation stone in the conversation.

See www.jfaweb.org/blog/bodily-rights for more posts in this series.



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Is “It’s Her Body” a Statement about Biology? Ask a Question to Find Out.



A Reflection from JFA’s Executive Director, Steve Wagner

Part 5 in a Series — July 2018

Look at some of the most common defenses for legal abortion:

- “It’s her body.”
- “The unborn is a part of the woman’s body.”
- “The unborn is in her body.”
- “She should be able to do what she wants with her body.”
- “My body, my choice.”
- “The unborn is totally dependent on her body.”
- “She has a right to her body.”

In this series, I’ve been issuing a wake-up call to help us remember our common sense when we hear these statements. There is a person behind the statements, a *somebody* who has a *body*, and we must give some time and reflection to how this topic personally affects the women whose rights we’re discussing. I’ve pointed out that we need only think about how important our own bodies are to us, and I’ve given some practical suggestions for ways to communicate our concern for women in discussions about abortion.

I’ve also pointed out, though, that the same concern for human beings that motivates us to care for the woman also motivates us to speak up for unborn children. Justifications for abortion based around claims about the woman’s body and her bodily rights don’t only present the relational challenge of “Do you care about a woman’s bodily rights?” These justifications also present an intellectual challenge comprised of questions such as “What do the woman’s bodily rights entail?” and “Does her right to her body include the right to kill another human by abortion?”

So, keeping in mind that we not only need to show concern for women at the beginning of a discussion about a woman’s right to her body, but also throughout that discussion, let’s think together about the intellectual challenge: “Does a woman’s right to her body entail the right to abortion?”

When we hear the statements above, we are immediately confronted with a problem. What are they? Are they philosophical arguments, statements of feeling, vague sentiments, or some combination of these? In my experience, I have found that many people don’t really know how they intend these statements. But when we launch into a response as if they meant these as a full-fledged argument, many are surprised. Sure, they may be surprised that their favorite slogan didn’t “silence all opposition” as it might have the last time they used it. I think, though, that some of the surprise is due to the fact that the person is not intending to be philosophical at all. Still, these statements have the structure of arguments, so we should gently respond.

When I hear a defense for legal abortion that references the woman’s body, my first questions are aimed at determining which of the following arguments the person is intending:

1. Because the unborn is in the woman’s body, dependent on it, connected to it, or “part of it” in some sense, then the unborn is not a human being. (“The unborn is not a human organism biologically.”)
2. Because the unborn is in the woman’s body, dependent on it, connected to it, or “part of it” in some sense, the unborn does not have equal value or an equal right to life. It is deficient and therefore it is not a person with equal rights and value. (“The unborn doesn’t have equal intrinsic value or rights.”)



3. Because the unborn is in the woman's body, dependent on it, connected to it, or "part of it" in some sense, the woman should be allowed to kill the unborn through abortion because of her bodily rights, even though the unborn is a human being with equal value and rights. ("The unborn does have an equal right to life, but the woman's bodily rights trump the unborn's right to life.")

So, to determine which of these arguments is intended, we ask a single question:

"When you mention the unborn's connection to the woman's body, do you mean that the unborn is not a human being with equal value, or do you mean that even though the unborn is a human being with equal value, the woman can still kill it through abortion because of bodily rights?"

The point here is that we shouldn't assume it's a bodily rights argument straight off just because it refers to the "body," nor should we assume it's an argument against the biological status or value of the unborn straight off just because it seems to downplay the existence of the unborn's own "body." We have to ask questions to know for sure.

Here's an example of this problem. You might have seen an image passed around on social media which pictures a pregnant woman with an arrow pointing to her saying, "Your body," and an arrow pointing to the unborn child visible in her belly, saying, "Not your body." My friend Timothy Brahm at the Equal Rights Institute responded to this recently (<https://blog.equalrightsinstitute.com/stop-sharing-straw-man-meme>).

I agree with the point of Tim's post, and I encourage you to read it. I'll add a comment or two here. Although there is truth in this meme (the unborn child does have her own body with her own bodily rights, after all), this image doesn't really communicate any of the understanding and concern for the woman that I have been emphasizing in this series. That's perhaps the most serious problem with it. The image also assumes that defenses for abortion referring to the woman's body simply get the facts wrong about the number of bodies involved. The image essentially takes all "it's her body" statements to be claiming that, as a matter of biology, the unborn is simply a functional part of the mother's body. Tim calls this the "scientifically ignorant" position, and while he agrees that some people who make "it's her body" (and similar) statements do hold the "scientifically ignorant" position, he points out that in many cases, the person is intending a bodily rights argument instead. (As you can see from my questions above, I think there's another possibility, too, that the person is making an argument against the value of the unborn.)

In my experience, many people who talk about the woman's right to her body don't have a clear idea of what they're saying. They are still working it out. Once you ask the question I suggested above, you can help the person determine what he or she is trying to get at. Some aren't clear on biology. They think that the unborn is less than an organism (a mere mass of tissue). Some agree that the unborn is biologically a human organism, but they think it's not the sort of human organism with rights because it's dependent on another body. This is a different argument. And many are intending to make the claim that whatever the unborn might be, the woman's right to her body takes precedence.

In any case, sharing the meme probably does more harm than good. (Indeed, Tim's stronger admonition to never share it is good advice.) I'd prefer to share a different image that communicates better our concern for women and our understanding that in many cases, the person who says, "It's her body," is making a bodily rights argument, contending that the woman should be allowed to get an abortion even though there are two bodies involved. This argument deserves our careful attention, and simplistic memes and dismissals which miss the point won't help us dismantle it.

See www.jfaweb.org/blog/bodily-rights to read all of the posts in this series.



From a Foundation of Love for Women and Children, We Respond Intellectually to Bodily Rights Arguments



A Reflection from JFA's Executive Director, Steve Wagner

Part 6 in a Series — July 2018

How should we respond to defenses of abortion that refer to the woman's body? Let's review the steps I've outlined so far in this series and complete the process by preparing to respond intellectually:

1. **Show concern for the woman.** I described how important this is in Part I of this series and elaborated on the concept in a series of follow-up blog posts. I suggested that we remember our concern for our own bodies (Part II), realize that it's not compromise to focus on the woman and not the unborn for a time (Part III), and find common ground about seeking to stop violations of a woman's right to her body, such as rape, that we can all agree should be stopped (Part IV). Read each part of the series at www.jfaweb.org/blog/bodily-rights.
2. **Ask a clarification question** to determine if the statement referencing the woman's body is arguing against the idea that the unborn is a human being with equal value (biologically not a human organism or lacking equal rights to the rest of us) or is intended to make a bodily rights argument (Part V).
3. If the person is fuzzy on biology, **be ready to clarify the facts that show that the unborn is a living, human organism** (see www.jfaweb.org/extending-your-learning#biology).
4. If the person is fuzzy on the equal rights of the unborn, **be ready to make an argument for those equal rights** (see www.jfaweb.org/extending-your-learning#equal-rights).
5. If the person is crystal clear that the unborn is a human being with equal rights but thinks abortion is justified anyway because of bodily rights, **you know you're discussing a bodily rights argument, but still you need to ask for more clarification.** When the person says, "The woman has a right to her body," and intends a bodily rights argument, perhaps she means, "The woman can do anything she wants with anything in her body." Trent Horn has called this the "Sovereign Zone" view.
6. **Be prepared to respond to the Sovereign Zone view.** This view makes a very strong claim. Timothy Brahm's "Autumn in the Sovereign Zone" essay (www.EqualRightsInstitute.com/SZ) will give you a good model for responding. See also JFA's *Abortion: From Debate to Dialogue—The Interactive Guide*, Activity 6 for a scripted dialogue that will help you learn to respond (www.jfaweb.org/extending-your-learning#bodily-rights).
7. When the person says, "The woman has a right to her body," she may mean, on the other hand, "the woman cannot be forced to use her body to sustain the life of the unborn." Trent Horn has called this the "Right to Refuse" view. This view makes a weaker claim, and it can come in very sophisticated forms. Use our post, "A Response to the Strongest Violinist" (www.jfaweb.org/DFG) to **understand the "Right to Refuse" argument and learn to respond.** This post includes a link to a paper JFA helped produce which attempted to put this argument in its strongest form and respectfully show where the argument fails.
8. **In all of the above steps, remember the woman.** When you are discussing the woman's right to her body and whether it entails the right to legal abortion, there is a person whose body and life you are discussing. In the same way, when you discuss the woman's right to her body, **you also must work to remember the unborn child**, contrary to the spirit of the age. Both the woman and the child are persons for whom these arguments are not mere intellectual exercises, but rather are matters intensely practical and intimate.

See www.jfaweb.org/blog/bodily-rights to read all of the posts in this series and access the internet links above.



JUSTICE FOR ALL – TRAINING THOUSANDS TO MAKE ABORTION UNTHINKABLE FOR MILLIONS, ONE PERSON AT A TIME

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A Few Additional Thoughts on Bodily Rights and Abortion



A Reflection from JFA's Executive Director, Steve Wagner

Part 7 in a Series — July 2018

To wrap up this series for now, here are a few additional thoughts about bodily rights defenses of abortion:

Bodily Rights Arguments Commonly Come in Combo:

- When someone says some version of “it’s her body,” many times it’s not as simple as identifying her argument as being in one of three distinct categories. It’s not as simple as, “She’s either arguing that the unborn is not a human organism biologically, or arguing that the unborn is not equal in rights and value, or agreeing that the unborn is a fully valuable human being but that abortion should be allowed because of the woman’s bodily rights.” Many times, the person holds more than one of these positions simultaneously. In other words, many times bodily rights arguments come in combination with other arguments.
- For example, a person may refer to the fact that the unborn is “in her body” and may be fuzzy on the biology, fuzzy on equal rights for the unborn, and may also be intending to make a sort of bodily rights argument.
- I suggest peeling the arguments apart and seeing if you can get agreement on the biology first, then see if you can gain agreement about the equal rights of the unborn, then tackle the bodily rights argument once these foundation stones are laid in the conversation.

For Those Who Don’t Believe the Woman’s Body Is Her Body:

- Someone may respond to my series by saying that “we are not our own” so “we don’t own our bodies.” I assume that someone with this view would be consistent and say that even he himself doesn’t own his body. This person might say, “in some philosophical or metaphysical sense, no one owns his or her body.” Even if you believe this, this particular point won’t be very helpful when someone makes a bodily rights argument in a discussion of unintended pregnancy and abortion. The question is this: Can you agree that among all human beings (and all collectives, such as governments), the person who is closest to having ownership of the woman’s body is the woman herself? Even if you’re right in your philosophical point, shouldn’t we treat her as if she owns her body?

More Resources on Bodily Rights (www.jfaweb.org/extending-your-learning#bodily-rights)

- JFA’s *Interactive Guide*, Activity 6. If you read nothing else, this entry-level material will at least help you ask the right questions to determine if you’re encountering a bodily rights argument.
- “A Response to the Strongest Violinist” - JFA “De Facto Guardian” paper and other links.
- Trent Horn and David Boonin debate. Both are experts on bodily rights arguments.
- Bodily Rights Resources from Equal Rights Institute (ERI)
- ERI President Josh Brahm teaches on bodily rights (video/audio).
- Find additional resources on bodily rights available at the link above.



Autumn in the Sovereign Zone

Timothy Brahm¹

Anyone who has ever heard a conversation about abortion has heard pro-choice statements like:

- “My body, my choice.”
- “You can’t tell another person what she can’t do with her own body.”
- “The fetus is part of her body.”
- “The fetus is inside her body.”

When a pro-life advocate hears statements like these, a common impulse is to respond by saying, “But it’s not her body; it’s another body!” or “If the fetus is part of her body, does she have two heads and twenty toes?” or, perhaps, “But the unborn is a human being, here’s some evidence for that...”

Not so fast. The pro-choice statements above are ambiguous. If the pro-choice advocate is confused about whether the unborn is a separate organism from the mother, then graciously giving him an impromptu biology lesson might be helpful. In many cases, though, the pro-choice advocate is intending to communicate that the woman can do what she wants *even if the fetus is a human being*. Many pro-choice advocates don’t know how to articulate this argument in a way that helps pro-life advocates understand. The pro-life advocate hears, “The fetus is not human,” but the pro-choice advocate means, “*It doesn’t matter* if the fetus is human.”

Pro-life people generally think there is one question to answer in order to determine the morality of abortion: “What is the unborn?” Generally speaking, there is merit to this idea. For instance, when a pro-choice advocate says abortion should be legal because some women are too poor to have a child, he is begging the question. He is assuming the unborn is not a valuable human because (presumably) he wouldn’t say women should have the right to kill their toddlers if they are too poor. If the unborn is human, like the toddler, then we can’t kill the unborn in the name of poverty any more than we would kill a toddler. In contrast, attempting to give a reason that the unborn is not a valuable human being would make a better argument.²

One might be tempted to think that all pro-choice justifications can be accurately summarized as either 1) *assuming* the unborn isn’t human or 2) *arguing* that the unborn isn’t

¹ Many thanks to [Trent Horn](#), [Steve Wagner](#), [Rich Poupard](#), [Scott Klusendorf](#) and [Josh Brahm](#) for their excellent work, and for helping me to understand the Sovereign Zone Argument. I heartily recommend their web sites and their work. Additional thanks to Steve Wagner for serving as my editor.

² For examples of this focus on the question, “What is the unborn?” see Greg Koukl’s article “[Only One Question](#),” and Scott Klusendorf’s article “[Only One Issue](#).”



human. But as Trent Horn³ has pointed out, there is a third type of pro-choice justification, one that 3) *admits* the unborn is human and says that the woman can kill it anyway because of her *bodily rights*.

Learning to Recognize Bodily Rights Arguments

When I first heard this distinction, it seemed foreign to me. Why would anyone admit that the unborn is a valuable human being *and* say it's okay to kill it? Then I started thinking about all of the conversations I'd had in which pro-choice people made references to the woman's body and how it didn't seem to matter to them when I demonstrated that the unborn is a separate human organism. Could I have simply been misunderstanding them all along?

So I went on the lookout. If someone made one of the above pro-choice statements, I would clarify if he was arguing that the unborn isn't human or if he was making a bodily rights argument. For instance, when someone said the unborn is part of the mother's body, I asked:

"I want to understand you, but it sounds like you might be saying one of two different things. Do you mean that the unborn is literally a part of her body, like a functional part or something; or do you mean that because it is inside her body and connected to her body that she has the right to kill it because she can do what she wants with her body?"

Almost every time I have asked this question, the pro-choice advocate has said that he meant the latter. I ask a similar question when people say that the unborn is inside the woman, such as:

"I want to understand you, but it sounds like you might be saying one of two different things. Do you mean that the unborn is not a valuable human being because it is inside the woman; or do you mean that even if it is a valuable human being, that a woman has the right to kill it because it's inside her and she can do what she wants with her body?"

Almost every time, he responds by saying he meant the latter. Since I began asking for clarification on this, I have found that bodily rights arguments are much more common than I had previously thought.

The pro-life mind is generally oriented towards the unborn: the unborn is a human

³ See Trent Horn, "My Body, My Choice," in *Abortion: From Debate to Dialogue – The Interactive Guide*, ed. Steve Wagner (Wichita: Justice For All, 2013), p. 95. Trent is a former Justice For All intern. See Trent's blog, www.trenthorn.com, for more information about Trent's current work with Catholic Answers.



being, and it should be illegal to kill human beings, so abortion should be illegal. But pro-choice people are generally oriented differently. Even if they don't believe that the unborn is a human being, sometimes they don't think that issue matters. The important thing is that women can do what they want with their bodies, *no matter what*. If this is the perspective of one of your pro-choice friends, then biological or philosophical arguments that the unborn is a human being are not likely to change his mind about abortion. Some pro-choice people truly don't care what the unborn is; the unborn is in the woman's way, and that's all that matters.

Pro-life advocates need to get in the habit of asking these kinds of clarification questions. If we do not clarify, but merely assume we know what the pro-choice advocate means, then it's likely our conversation will get stuck and neither person will know why.

Some might think, "What's the use in trying to persuade people who think it's okay to kill humans? They're so unreasonable. A lost cause." I strongly disagree! While I've found some hardcore moral relativists almost impossible to persuade, the pro-choice advocate focused on bodily rights is different. He is right about something very important: we *do* have significant rights to our bodies. Yet it is not difficult to make a persuasive case that our bodily rights don't extend as far as most pro-choice advocates think.

Distinguishing Between Bodily Rights Arguments

Trent Horn has distinguished between two types of bodily rights arguments: the Right to Refuse Argument and the Sovereign Zone Argument.⁴ **The Right to Refuse Argument states that even if the unborn is a human being, a woman has the right to refuse to allow the unborn the use of her body.** I will not address that argument here; if you are interested, I recommend "[De Facto Guardian and Abortion: A Response to the Strongest Violinist](#)," Steve Wagner's summary of the discussion of Justice For All's philosophy team.

The Sovereign Zone Argument states that even if the unborn is a human being, a woman should still be able to have an abortion because she has the right to do anything she wants with anything inside the sovereign zone of her body. Notice that this is a much more extreme claim than that of the Right to Refuse Argument. The Right to Refuse Argument says a woman has the right *not* to be forced to do something, while the Sovereign Zone Argument says she has the right *to do anything*, as long as it's to something within her sovereign zone.

If you say something like, "My right to swing my fist ends where your nose begins, and abortion kills a baby," you won't be addressing this pro-choice person's concern.

⁴ See Trent Horn, "My Body, My Choice," in *Abortion: From Debate to Dialogue - The Interactive Guide*, ed. Steve Wagner (Wichita: Justice For All, 2013), pages 95-106. Trent's observation that there are two distinct forms of bodily rights arguments was, in my opinion, a groundbreaking development for the pro-life movement.



Remember, she has acknowledged that the unborn is a human being. She doesn't believe a woman's right to bodily autonomy gives her the right to kill a toddler, or swing her fist into her neighbor's nose. The unborn is different because it is in her territory, in her sovereign zone. While I haven't ever heard a pro-choice person use the term "Sovereign Zone" to explain this view, I have talked with many who hold the position I've described. And, it's an integral part of their pro-choice perspective.

Dismantling the Sovereign Zone Argument

The most obvious problem with the Sovereign Zone Argument is that it entails something that is indefensible: a woman should legally be allowed to do *anything* to her unborn child, even if it is a human being. Once I've clarified that I am dealing with the Sovereign Zone Argument, I respond with some version of a story I call *The Five Years of Autumn* to help the person see the problem and hopefully abandon the view.⁵ If the pro-choice person wants to continue to defend abortion with the Sovereign Zone Argument, he will have to "bite the bullet" in five progressively difficult scenarios.

I want to be clear that this story is not intended to mock anyone, and I don't *ever* approve of pro-life people mocking pro-choice people. I also don't ever approve of pro-life people attacking straw men instead of actual pro-choice arguments; on the contrary, I think we should go to great pains to make sure we understand pro-choice people's views and respond to the most plausible versions of them. I'm not intending to imply that pro-choice people are like Autumn or that they should approve of her actions. I think a pro-choice person who agrees with the Sovereign Zone Argument should consider the implications of that view as illustrated by Autumn. If someone justifies abortion with the Sovereign Zone, I do not think he can consistently claim that Autumn should not at least have the *legal* right to do what she does.

The Five Years of Autumn

Autumn has just completed her doctorate at the age of thirty. She is pro-choice and has fully embraced the Sovereign Zone Argument. She believes the unborn is a valuable human being, but that abortion is justified because women have the right to do anything they want with anything inside their bodies.

In the First Year after completing her doctorate, Autumn becomes pregnant. Her boyfriend is supportive, and she's excited because she's always wanted a baby. Well, that is, she's always wanted a baby boy. Her doctor orders an early amniocentesis test at twelve weeks because of factors discovered during genetic counseling with Autumn and her boyfriend. Though the child appears to be normal, Autumn's heart sinks when the doctor tells

⁵ Thanks to Steve Wagner for the ingenious idea to take the five points of this argument and tell it as a story.



her that it's a girl. She wrestles for a few days, and finally decides to have an abortion. She doesn't want to have a girl, and her body is her sovereign zone after all, so she shouldn't have to justify to anyone what reason she has for getting an abortion.

Autumn gets pregnant again soon after and this time at twelve weeks she is relieved to find out that she's having a boy. She and her boyfriend eagerly anticipate the birth, until around eight months into the pregnancy when they break up. Suddenly Autumn goes from being excited at the prospect of raising a baby boy with her boyfriend to the terrifying reality of raising a child all by herself. She thinks eight months is awfully late to have an abortion, but she considers the sovereign zone of her body. If it's her sovereign zone and she has the right to do anything she wants with anything in her body at twelve weeks, why not at thirty-five weeks? Her state happens to allow abortion up until birth, and she convinces the doctor that her mental strain is sufficient to qualify her for abortion in this late stage. After she goes through with the abortion, she tells herself that it was the right thing for her.

In her Second Year after completing her doctorate, Autumn starts dating a physician. She becomes pregnant, and she is somewhat happy about it, but her excitement is quickly overshadowed by a terrible case of morning sickness. One day her ever-attentive new boyfriend brings home some white pills he has illegally acquired for her. He tells her he has brought her thalidomide, which will help her to feel better, but could cause their baby to be born with very severe birth defects. He may be born without arms or without legs.⁶ She thanks him for his compassion for her, but declines the pills. After suffering through three straight days of morning sickness though, she decides she can't take the discomfort anymore and starts taking thalidomide. She fears for what may happen to her baby, but she decides that those possible effects shouldn't stop her from doing what she feels is necessary. After all, she tells herself, "My body, my choice." When she sees her deformed baby for the first time, she realizes just how severe the consequences of her actions are. But, she thinks, at least she gave him a chance to live, and if he decides later that he would have preferred death to being handicapped, he could make the choice to end his own life when he is old enough.⁷

As she goes into the Third Year after completing her doctorate, she discovers that she doesn't mind so much having to take care of a deformed child. Her community doesn't know she took thalidomide, so they all think she's a hero for being so strong for him. When she becomes pregnant again, this time with a little girl, she fortunately doesn't experience such a bad case of morning sickness, but she still has some of those little white pills left. She considers the bond her kids would have if they went through the same challenges together, and the way her community would support her and admire her.

⁶ I believe Rich Poupard of the Life Training Institute was the first to utilize thalidomide in an argument against the bodily-rights-based arguments for abortion. See his post "Do No Harm (Except For That Killing Thing)" [here](#). Trent Horn applied it specifically to the Sovereign Zone Argument.

⁷ I don't think words can do justice to the effect thalidomide has on a child. A simple Google image search on the term "thalidomide" illustrates this. *Warning:* The pictures are disturbing.



She thinks about her deformed infant son and how hard his life will be, and feels selfish for even thinking of deforming another child. But then again, she considers what her abortion doctor told her about abortion procedures. If she had the right to have a doctor pull her baby apart while killing it through a dilation and evacuation abortion,⁸ why shouldn't she have the right to take a drug to deform it? Having an arm pulled off seemed a lot worse to her than just not growing one properly, so if her sovereignty over her body gave her the right to do the one, why not the other?

She considers the possibility that some might argue that it is worse to maim someone than to kill him. But if people really thought that, why didn't they go around killing maimed people to help them out of their misery? She knew happy handicapped people. And even if it is worse to be maimed than to be killed, who are they to judge her for doing what she wants to with what's in her body, especially if they're pro-choice? She concludes that she doesn't have to justify to anyone her personal decisions about what she does with her body. After all, it is a private medical decision between her and her doctor. She takes the remaining thalidomide and when her baby girl is born, she is pleased to see that she turned out deformed. She has second thoughts about her decision from time to time, and sometimes even feels like she's a pretty mean person. But she tells herself that even if it were immoral, surely no one could tell her it should be illegal.

In her Fourth Year after completing her doctorate, she decides to take an art class at a local university. She was always artistically talented and had even considered pursuing an art degree when she was in high school. She seems to have the skill to succeed, but she struggles to come up with ways to make herself really stand out as an artist. One day a pro-life group comes to her campus with graphic pictures depicting the results of abortion. The pictures don't really bother her, but it does occur to her that they are very controversial and attention-grabbing, and this gives her an idea.

She gets herself pregnant three times and has three early abortions, having already agreed with her doctor that she could keep the bloody remains of the embryos and placentas so she can use them for her art.⁹ She succeeds at getting a lot of attention when she unveils her project, though more of it is negative than she expected. When one critic asked her how she could do such a thing, she fired back at her, "Who are you to tell me what I can do with my body? What business is it of yours how many abortions I have, when I have them, or why I have them? It's my body, so it's my choice."

⁸ To learn about abortion procedures, see http://www.abort73.com/abortion/abortion_techniques/ or "What Are the Facts? Frequently Asked at Justice For All Events" (www.jfaweb.org/Facts).

⁹ Unfortunately, this is based on a true story. Aliza Shvarts, an art student at Yale, allegedly had multiple early abortions intentionally so she could use the remains for her art project. When I talk about her in conversations with pro-choice people, I'm careful to specify that it isn't clear whether she actually did this or not, but that she claims she did it. I heard of this story as a response to bodily rights arguments from Scott Klusendorf of the Life Training Institute on pages 199-200 of *The Case for Life*. Trent Horn applied it specifically to the Sovereign Zone Argument.



At the beginning of the Fifth Year after completing her doctorate, Autumn breaks up with her physician boyfriend and falls madly in love with a very pro-life man. She doesn't tell him about her abortions, her role in deforming her children, or, heaven forbid, her recent art project. Before they start sleeping together, they agree that if she becomes pregnant, she won't have an abortion. She becomes pregnant after a few months, and shortly thereafter, her new pro-life boyfriend cheats on her. Fueled by her desire for revenge, she forms a plan.

She goes back to her abortion doctor and tells him of her situation and he agrees to help Autumn carry out her plan. He devises the cruelest possible ways he can hurt a late-term fetus without killing it. They wait until thirty-eight weeks, then Autumn goes to her doctor's clinic, where he tortures her child for as long as possible until finally the child dies.

She reflects afterward on how much suffering she caused her child, but reminds herself that her right to do what she wants with her body is absolute. While many would surely disapprove of her decision, no one, not even the child's father, has a right to stop her from doing *anything* to her baby as long as it is inside her sovereign zone.

Cognitive Dissonance with the Sovereign Zone

There is only one question this story is intended to ask the pro-choice person: *should Autumn's actions be legal?* My argument is very simple: if abortion should be legal on the basis that women can do whatever they want with anything inside their bodies, then Autumn's actions should also be legal. One could consistently believe abortion should be legal *and* believe that Autumn's actions should *not* be legal, but only if he doesn't rely on the Sovereign Zone Argument to justify abortion.

As a conversational tool, sometimes it is easier to simply point to the five implications of the Sovereign Zone Argument, rather than walk through a detailed story.

Five Implications of the Sovereign Zone Argument:

- 1: There can be no restrictions on abortion at any stage or for any reason.
- 2: A pregnant woman can take thalidomide to treat her morning sickness even though it will deform her fetus.
- 3: A pregnant woman can take thalidomide to intentionally deform her fetus.
- 4: A woman can have multiple abortions for the sole purpose of using the results for an art project.
- 5: A pregnant woman can do *anything* to her unborn child, including having it tortured to death.

In my experience, most people aren't willing to accept the third "year" or implication



of the Sovereign Zone Argument. Most people do not think a woman should have the right to intentionally deform her child, *even if they think she should have the right to intentionally kill it*. They know intentionally deforming a child is wrong, so when confronted with the third year, they either try to make a distinction to save the Sovereign Zone Argument, or they abandon it entirely and move on to a new argument. Every now and then, they change their minds about abortion altogether. Only on very rare occasions have I met someone who has agreed that fetal torture should be legal.

When I'm in a conversation in which I can tell the pro-choice person advocating the sovereign zone is struggling with her view, especially after discussing thalidomide, I often ask her if she knows how abortion procedures are done. Often she has no idea. After describing an abortion procedure, such as suction abortion or dilation and evacuation abortion, I gently ask one of the following questions:

- Why should a woman have the right to dismember a child if she shouldn't have the right to deform him?
- Why is it okay for her to have a doctor rip her child's limbs off with a suction machine or with forceps, but it is not okay for her to take a drug that causes her child to not grow limbs?
- Why does she not have the right to cause her child to have a harder life, but she does have the right to deprive him of life completely?

The cognitive dissonance this line of argument creates is extremely powerful. I suspect that pro-choice views are often driven by a sort of wishful thinking. Many pro-choice people *want* abortion to be okay, so they rationalize it in their minds.¹⁰ They think: "It's not really human anyway," or, "it's basically a part of her body," or even, "maybe it's wrong, but it should still be legal." But while they have spent years rationalizing that *killing* fetuses is justified, they have not gone through a similar process of telling themselves that it is okay to *deform* a fetus. Their moral compasses still function properly once we step away from abortion for a minute and talk about doing something else to an unborn child, something that is obviously immoral. When we bring up the case of thalidomide, we force their rationalization of abortion to come into conflict with their view that it is obviously wrong to deform a child with thalidomide.

¹⁰ For the record, I am not claiming that self-deception only exists on the pro-choice side. I am making a specific comment about how self-deception affects pro-choice people, and how that impacts their response to thalidomide.



De Facto Guardian and Abortion: A Response to the Strongest Violinist

Stephen Wagner, for the Justice For All Philosophy Team

Posted for Public Discussion on 4/13/2013 at Life Report's Blog. See www.jfaweb.org/DFG.

Note: The discussion of the bodily rights arguments in general, and the "right to refuse" in the case of rape in particular, has dominated much of the intellectual discourse at Justice For All (JFA) from 2009 until the present. Various small groups have worked on the problem at various times. Some ideas have been written up in unpublished papers and others have been floated in small group discussion, so it's difficult to trace who had which idea when. I am writing my thoughts on the matter, but because of the community nature of the genesis of the ideas, the other members of the JFA Philosophy Team deserve much of the credit here. Although every member of the JFA Certification Community through the years has participated in the discussion of these ideas to some degree and helped develop the ideas in this paper, the people most involved were (in alphabetical order) Josh Brahm (Right to Life of Central California), Timothy Brahm (JFA Staff), Jacob Burow (JFA Staff), Tony George (former JFA Intern), Trent Horn (now with Catholic Answers), Matthew McKinley (now with FOCUS), Joanna Wagner (JFA Staff), myself, and Catherine Wurts (JFA Staff). Timothy Brahm and Josh Brahm deserve special mention as the people most engaged in helping put this paper in the current form for publishing. Special thanks to RLCC's Life Report blog for hosting ongoing discussion. Finally, JFA has thousands of dedicated volunteers and financial supporters. JFA's work and this discussion would simply be impossible without each one of them.

– Stephen Wagner, Director of Training, Justice For All

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I: The Story

Ia. The Cabin in the Blizzard

Imagine that a woman named Mary wakes up in a strange cabin. Having gone to sleep in her suburban home the night before, she starts to scream frantically. She goes to the window and sees snow piled high. It appears she is snowed in. On the desk by the window, she finds a note that says,

“You will be here for six weeks.
You are safe, and your child is, too.
There is plenty of food and water.”

Since she just gave birth a week ago, she instinctively begins tearing through each room of the cabin looking for her infant son. She finds an infant in a second room, but it is not her infant. It is a girl who appears to be about one week old, just like her son. Mary begins to scream.

Pulling herself together, she goes to the kitchen area of the cabin and finds a huge store of food and a ready source of water. The baby begins to cry, and she rightly assesses that the baby is hungry. Mary sees a three-month supply of formula on the counter in the kitchen area.

Now, imagine that the police show up at the cabin six weeks later, and Mary emerges from the cabin. After determining she is in good health, albeit a good bit frazzled, one policeman says, “We’ve been investigating this situation for some time. The Behavioral Psychologists from the nearby University of Lake Wobegon are responsible. We’ll bring them to justice. We’re so glad you’re okay. Is there anyone else in the cabin?”

Mary said quietly, “There was.”

“There was?” The police hurry past her to the cabin. They search the cabin and find the infant formula unopened on the counter. They find the infant dead on a bed. The coroner confirms that the infant died from starvation.¹

¹ Some readers will notice that the “Cabin in the Blizzard” story is similar to Frank Beckwith’s story of Alice in *Defending Life* (pp. 195) and Rich Poupard’s story of the woman in the cabin in “Suffer the Violinist.” I read (and others on our team read) both pieces prior to the writing of this piece, although not in direct connection with the construction of the “cabin in the blizzard” story. I credit Professor Beckwith and Dr. Poupard with the kernel of the idea in the thought experiment here presented, and I credit Dr. Poupard with many of the particulars (notably, the variables of the snowstorm and infant formula) that wove their way into my own storytelling as I sought to use the cabin idea for a somewhat different purpose here. See Frank Beckwith, *Defending Life: The Moral and Legal Case Against Abortion Choice* (New York: Cambridge University Press, 2007), pp. 195ff; and Rich Poupard, “Suffer the Violinist: Why the Pro-Abortion Argument from Bodily Autonomy Fails” (Christian Research Journal, Volume 30, No. 4, 2007), pp. 4-5.



Ib. The “Formula” Case: Moral Intuitions

Surely we have great sympathy for Mary. We can imagine how difficult it must have been for Mary to be kidnapped, be separated from her child, be placed with a needy child, and be in this situation for six weeks. Clearly, the behavioral psychologists are most at fault here, but what about Mary? Did Mary do something wrong?

I take it to be a basic moral intuition that what Mary did (or, more precisely, Mary’s refraining from doing something) in the cabin was seriously wrong. She has a moral obligation to feed the child.

Ic. The “No Formula” Case: Moral Intuitions

Now, imagine that everything in the story above is exactly the same, except for one detail: When Mary goes looking for food for the infant, she finds no food suitable for the one-week-old infant. Remember, she is lactating. She can breastfeed the child.

Six weeks later she emerged from the cabin. She confessed that she knew she could have breastfed the child, but the emotional strain of being locked in the cabin was too great, and she just refused to do it.

What’s your moral intuition about her actions in this case? If you think she did not have a moral obligation to feed the child, then you will need to explain why this “no formula” case is different from the “formula” case. The food is administered by a body part in both cases. In the “no formula” case, the food is administered by a more intimate body part and comes from within the woman’s body. Those appear to be the only differences. But how can these differences change whether or not the woman has a moral obligation to feed the child?²

If you have the same intuition I have, that Mary has the same moral obligation to feed the child in both the “formula” and “no formula” cases, then it appears that the woman’s very real bodily rights claims don’t include the right to withhold feeding from the child, even if it’s an intimate body part that must be used for that feeding.

Id. Legal Intuitions?

While discussion of moral intuitions is common among philosophers, I am not aware of much discussion of “legal intuitions.” Humor me for a moment, though. What are your intuitions about what the law should be in the cases above? My intuition is that whatever the law actually is currently, Mary’s moral obligation to feed is so weighty that it should be a legal obligation as well.³ It should not be legal for Mary to do what she did.

² To the person who believes Mary is not obligated to breastfeed based on the fact that breastfeeding uses a more intimate body part than feeding with formula, Josh Brahm asks, “Is it *so* much more intimate that it literally means in one case we would charge her with some kind of crime for starving the child and in the other case we would say she did nothing wrong? I’m agreeing that breastfeeding is more intimate but I’m not convinced that it’s *so* much more intimate that it legitimizes the starvation of a child.”

³ I am not here seeking specificity about the way in which the moral obligation is “so weighty that it should be a legal obligation.” Whether moral obligations differ by type (e.g. those that relate to private virtue cannot be placed into law, those that relate indirectly to the common good might be placed into law but also might



Sure, the law may not rule on such obscure cases, but if we imagine a world in which the “Cabin” case is not rare but is actually common, we can easily imagine the need to make a law demanding that Mary feed the child. If our moral intuitions are a guide for making law, it would be reasonable to expect people in Mary’s situation to feed the child and subject them to punishment if they do not.

II: Making Sense of Our Intuitions

Ila. De Facto Guardian

What are we to make of our moral intuitions about the “Cabin in the Blizzard” case? Why is Mary obligated to feed the child? Mary doesn’t have a parental obligation to the child in any sense. It is neither true that she *consented* to take on a parental obligation, nor is it true that she is *biologically related* as the child’s parent and therefore has a parental obligation.

The mode of killing doesn’t seem relevant either. It seems wrong both for Mary to bring about the child’s death by withholding breast milk and through some more direct killing method like slitting the throat. If anything, withholding breast milk is bad, and slitting the throat is either equally bad or worse.

Rather, a few other factors do seem relevant:

1. Mary is the only person in the immediate geographical vicinity of the child.
2. She is able to help the child.
3. The help the child needs is food and shelter.

Change any one of these, and Mary’s moral obligations seem more uncertain.⁴ If there had been lots of people around, perhaps her obligation is less clear. If she had been disabled in some way that made feeding the child impossible, her obligations seem less clear. If the child had needed some sort of help that goes beyond food and shelter, her obligations seem

not be, and those that directly relate to the common good must be placed into law) or by degree (e.g. this obligation regards such a weighty matter, such as killing a human, so it must be reflected in law, while this other obligation regards such a light matter by comparison, such as complaining about bad weather, that it cannot be reflected in law) is an interesting question, but I am not implicitly making an assertion about which of these theories, or some other theory, is correct. I am simply trying to capture that while it may be questionable whether or not some moral obligations can or should be placed into law, the moral obligation to feed the child in the Cabin in the Blizzard case for whatever reason (perhaps unclear to us) is the sort of obligation that seems rightly to fall within the purview of the law if for no other reason than it seems indistinguishable from other cases of killing which are more familiar to us.

⁴ I think I’m making an epistemological point here rather than an ontological one. In other words, I think I’m saying that if one of these three factors were not present, the moral obligation may not be available to us to know. I think that doesn’t mean the existence of the moral obligation (whether there is a right or wrong in that particular case) is necessarily in doubt.



less clear. Yet, if all three of the three factors in the list above are in place, Mary's moral obligation is obvious: she should feed the child.

What's going on here? My colleague Timothy Brahm and I, in trying to put our finger on what seems to be happening in her case, called her a *de facto guardian*.⁵ It just happens to be the case, for whatever reason, that Mary is now in a situation in which she is the only person in the vicinity who can help a child in need. It's as if Mary is now situated the same way a parent or guardian is situated most of the time, but in Mary's case, it's by accident. Finding herself situated as a parent, she now shoulders the *same obligations of a parent or guardian*, and in her case, temporarily. It's as if the obligations slipped over onto her by the accident of the situation.

IIb. The De Facto Guardian's Legal Obligations

A parent's moral obligations, at least for feeding and sheltering their children, are so strong that we say there should also be laws forcing parents to do these things. If the moral obligations of a *de facto guardian* like Mary are simply the same obligations of a parent, yet temporary, then they must also be legal obligations. In other words, it should not be legal for a person in the *de facto guardian* position to neglect the feeding and sheltering of the child.

III: The Cabin in the Blizzard Story: An Analogy to Pregnancy

IIIa. Pregnancy from Rape

Because the "Cabin in the Blizzard" story is similar to pregnancy from rape in all of the morally relevant aspects, it can help shed light on the moral obligations a woman has when she is pregnant from rape.

First, let's assume for the sake of the argument that the unborn is a living human organism with the same basic rights as other human organisms. If that's the case, note how Mary's situation in the "no formula" case is similar to pregnancy in the case of rape. Mary didn't do anything to put herself in the situation in which she now finds herself, with a child totally dependent on her body for survival. Similarly, the woman pregnant from rape didn't do anything to put herself in the situation, but she now has a child totally dependent on her body for survival. Both Mary and the woman pregnant from rape are *de facto guardians*, and as such, they both have the obligation (moral and legal) to feed and shelter the children in their care, regardless of the fact that they didn't consent to be in the situation they are in.

Put differently, if Mary has an obligation (moral or legal) to feed the child in the cabin using an intimate body part (the breast), and the cabin and pregnancy cases are similar in the

⁵ I am aware that the term, *de facto guardian*, has precise legal meaning in some countries and contexts. I am not using the term to bank on the capital of these legal meanings. I am using it strictly philosophically, to attempt to put into words what seems to be happening with our intuitions in the Cabin case.



relevant details, then the woman pregnant from rape also has the obligation (moral or legal) to feed her child using an intimate body part (the uterus).

If that's the case, then abortion is not the right thing to do in the case of rape, and it should not be legal.

IIIb. "If the child in the cabin dies, you'll be rescued immediately."

Some will object that when a woman is pregnant and considering abortion, it's different than the "Cabin in the Blizzard" story because abortion frees the woman from the burden of pregnancy. Let's adjust Mary's situation to make it more similar to pregnancy, and see what comes of it: When Mary reads the note, it says,

"You will be here for six weeks.
You are safe, and your child is, too.
There is plenty of food and water.
If the child in the cabin dies, you will be rescued immediately."

Does this change Mary's moral obligations at all? No. No matter how she killed the child, whether directly through suffocation or indirectly through withholding breast milk, and no matter how her life would be bettered by it, it is still seriously wrong.

IIIc. Severity of Burden: Is Breastfeeding Similar to Pregnancy?

Some will object that the "Cabin in the Blizzard" story is not sufficiently similar to pregnancy, and therefore the moral intuitions we have about Mary's obligations cannot speak to the obligations a pregnant woman has. Specifically, some believe that while Mary may be obligated to use her body through breastfeeding, that doesn't mean she is obligated to use her body through the uterus. In the former, the baby is outside the body, and in the latter, the baby is inside. In the former, the baby presents a temporary burden every few hours, while in the latter the baby presents a continuous burden for nine months.

I deny that these differences are significant in the way abortion advocates would need them to be in order to show that the *de facto guardian* obligation doesn't apply to pregnancy and therefore abortion is justified. Sure, pregnancy presents a continuous burden while breastfeeding doesn't. Many breastfeeding moms, however, point out that breastfeeding is much harder on them physically than pregnancy was. Breastfeeding involves more active, purposeful support of the child than pregnancy because the woman has to stop what she's doing to nurse the child. Many women also report sensitivity, tenderness, and pain caused by nursing. Some women report that they have either too much or too little milk, requiring them to eat a special diet to increase milk supply or to pump in order to relieve the pressure of the milk building up to levels the child doesn't drain during a nursing.

But think back to the "Cabin" story. If we simply adjust it and say that the child is actually chained to Mary such that he is continuously at her breast and needs only to latch on at his



whim, do our intuitions then suddenly shift, and we say, “Oh, well, *now* she can cut him off and starve him.” No.

IIId. The “This Looks a Whole Lot Like Pregnancy” Case

Consider this adjustment to the Cabin story. Mary must stay in the cabin for 40 weeks before being rescued. The note describes what those 40 weeks will hold and as she progresses through the 40 weeks, sometimes her experience is easier than expected, but for much of the time, it is much more difficult. She has to change the child’s diapers and eliminate the child’s waste. Sometimes the smell of the child’s diapers makes her vomit. Other times, she just feels tired. She develops mastitis, which makes feeding the child painful, but not impossible. In addition, imagine that the child cries continually, and the only way to comfort the child is to carry her around continuously. This, along with gaining weight due to an adverse reaction to breastfeeding, has the effect of making Mary feel like she’s carrying around 50 more pounds than normal. The note on the desk also mentions that at the end of 40 weeks, if the child lives, the only way Mary will be able to emerge from the cabin is through 30 hours of difficult work shoveling snow with bare hands while clinging to the child. This snow tunneling will involve her skin and muscles being twisted and strained in incredibly painful ways.

This scenario resembles the severity of burden of a typical pregnancy, but isn’t it obvious that Mary still has a moral and legal obligation to feed the child? Yes. If not, how could any of these changes to the level of burden change her obligation? Remember, the alternative to her having the burden is that the child dies. In light of this reality, it is difficult to conceive of a way in which the burden could be adjusted to change her obligation to feed the child.

IIIe. The “This Is Worse Than Pregnancy” Case

We can imagine adjusting the story again to make the burdens Mary experiences in the cabin worse than the normal pregnancy situation and get the same result. Imagine she had to stay in the cabin for *two* years, or that she constantly felt tired such that it became difficult for her to function, or that she was severely depressed, or that the mastitis is continual and excruciatingly painful. Would her obligation to feed the child change? No. In my view, the only point where the severity of the burden may change her obligation is when it threatens her life.⁶

IIIf. Outside or Inside the Womb?

There is another difference between the Cabin case and pregnancy: Mary doesn’t have the baby inside her body and the pregnant woman does. The abortion advocate might say, “It’s just different because the pregnant woman has the child inside her body.” If it’s “just different,” though, we still need to hear why that’s significant. If the answer is, “It just is,” then we are not compelled to think it is. In contrast, though, there are good reasons to think location is *not* significant.

⁶ I am not intending in this paper to discuss the nature of Mary’s obligations (or the pregnant woman’s obligations) if for some reason her life is in danger.



In the next section on “Sovereign Zone” arguments, I’ll take a short detour to address the possibility that simply being located in the womb (and no other factor) releases the woman from the obligation to feed. Then, I’ll explain how the *de facto guardian* idea, and the obligations a *de facto guardian* has, address the “Right to Refuse” argument (more commonly known as the Violinist Argument), both in the case of rape and in other cases of pregnancy.

IV: Background: Two Kinds of Bodily Rights Arguments

IVa. The “Sovereign Zone” Argument

None of the discussion above has been predicated on a denigration of bodily rights. On the contrary, I believe certain bodily rights arguments for abortion are quite strong and demand careful response. Others are weaker because of the extreme nature of their claims.

Trent Horn, past JFA intern and now speaker for Catholic Answers, divides bodily rights arguments into two types: “Sovereign Zone” arguments and “Right to Refuse” arguments. The Sovereign Zone breed of bodily rights arguments say, “My body is like a sovereign zone. I have an absolute right to do anything I want with anything that is in my body.” As Trent has pointed out, this very extreme claim is difficult to defend in light of clear cases where we don’t seem to have the right (legal or moral) to do anything we want with our bodies and anything in them. The wrong of Aliza Shvarts’s abortion-is-art project, the wrong of using thalidomide when pregnant, and the wrong of killing a child who has been transferred out of the mother’s uterus to an artificial womb and back to the mother’s uterus (what Horn calls the “deadly transfer” case) all indicate that we don’t have a right to do anything we want with anything in our bodies.

“Right to Refuse” arguments, on the other hand, aren’t so easily dismantled, especially when they are carefully explained and defended. Judith Jarvis Thomson’s “Violinist” is an example.

IVb. The “Right to Refuse” Argument: The Violinist

Recall Judith Jarvis Thomson’s famous “Violinist” story. It is similar to the “Cabin” story above. In the Violinist story, you are connected to a miniature violinist who will die if you do not use your body to help (he needs your kidney to filter his blood for nine months). In the Cabin story, the child will die if Mary does not use her body to help (the child needs Mary to deliver nourishment to her via her breast for six weeks). Yet, our intuitions seem to lead us in different directions.

With the Violinist story, although we may think staying hooked up would be heroic, or possibly virtuous, or possibly the right thing to do, few people say that it should be illegal to unhook. To put it another way, our intuitions lead us for some reason to say that one cannot be forced by law to stay hooked up to the violinist. With the Cabin story, on the



other hand, our intuitions lead us to say one *can* be forced by law to “hook up” and breastfeed the infant.

On the face of it, the Violinist story seems very similar to pregnancy. In both cases, one human is hooked up to another human who needs assistance from the person’s body to live. If the two cases are parallel in all of the relevant ways, then, just as the kidnapped person has the legal (if not moral) right to unhook from the violinist, then a woman should have the legal right to “unhook” from her unborn child.⁷ Therefore, the argument goes, abortion should be legal.

V: Responding to the Right to Refuse Argument (The Violinist)

Va. Parallels that Aren’t Parallel

Responses to the Violinist argument typically attempt to show that while the Violinist story and pregnancy appear to be parallel, they are *not* parallel in certain morally or legally relevant ways.⁸ Let’s discuss a few of those “parallels that aren’t parallel.”

Before we do, let’s limit our discussion from this point forward by focusing on the strongest version of the Violinist argument, which I take to be a legal one: Should you be forced by the state to stay hooked up to the violinist? It’s important to cast the argument this way because some responses to the Violinist may apply to a moral version of the argument only. And while it’s important to determine what is right or wrong concerning abortion, the most controversial aspect of the debate about abortion is about whether or not it should be legal.⁹ So, successful responses to the Violinist will have to apply not only to a moral version of the argument, but also to a legal one as well. Essentially, we can’t find out if the Violinist story can shed light on the question, “Should you be forced by the state to ‘stay hooked up’ to your unborn child?” unless we look at the Violinist story in legal terms. Putting the argument in legal terms is putting the argument in its strongest form possible, because the argument then is making the *least extreme claim*.¹⁰ It seems obvious that a human being has a basic right to bodily autonomy, and it seems obvious that that basic right entails the idea that the state can’t force one human to use her body to sustain another human’s life.

⁷ The argument assumes that the child is considered a full human person morally and legally.

⁸ As far as I know, the “parallels that aren’t parallel” frame comes from Gregory Koukl’s “Unstringing the Violinist” article (<http://www.str.org/site/News2?id=5689>), which originally appeared in *Stand to Reason’s Clear Thinking* journal.

⁹ Witness, for example, the great popularity of JFA’s on-campus poll, “Should Abortion Remain Legal?” Sometimes we receive nearly a thousand responses in a given two-day period. Many times we hear respondents say, “I think abortion is bad, but I think it should be legal.” In fact, I’ve heard this sort of statement so many times, I’ve come to believe that it is really the standard pro-choice view.

¹⁰ I owe this point to Trent Horn. I suppose another way to put his point is this: the smaller the claim, the bigger the headache it creates.



Vb. Three “Parallels that Aren’t Parallel”

Consider three “parallels that aren’t parallel” commonly discussed by pro-life advocates.¹¹ For reasons I’ll mention shortly, there are liabilities to focusing a case against the violinist *only* on these (individually or taken together).¹²

- A. ***Unhooking vs. Dismemberment***: While perhaps the law should permit you to unhook from the violinist, the only way to unhook from the unborn child is to dismember him. Since your right to your body doesn’t entail the right to reach over and dismember the violinist, the woman’s right to her body doesn’t entail the right for her to dismember her unborn child.

This is true as far as it goes, and it may mean that the Violinist fails to justify surgical abortions (which account for the vast majority of abortions currently in the United States), but RU-486 (meaning, the mifepristone component of a mifepristone-misoprostol protocol) is a type of abortion method that *is* very much like unhooking.¹³ It detaches the embryo from the endometrium (uterine lining). If that’s the case, then the unhooking-dismemberment disanalogy dissolves. If that’s the only “parallel that’s not parallel,” the violinist justifies legal abortion at least in the case of RU-486 abortion.

A related difference between the violinist story and pregnancy focuses not on the method of the killing but on the intention of the act. The “parallel that’s not parallel” might be framed as ***Withdrawing Treatment vs. Intentionally Killing***. It’s true that any type of abortion, even RU-486, seems to be a case of “intentionally killing” and my action if I unhook from the violinist could be distinguished from that because I am not intentionally killing *him*. Under analysis, though, I fear that this “parallel that’s not parallel” won’t be very helpful in persuading most abortion advocates. Remember that in this section I’m not intending to show that these disanalogies have no value in persuading some. I’m only intending to show that they have liabilities that should lead us to consider alternatives.

Is *withdrawing treatment vs. intentionally killing* a meaningful difference between the violinist and pregnancy? Perhaps, but it is far from obvious that “intentionally killing,” at least in common parlance, is always wrong. And it’s even further from obvious that “intentionally killing” should always be illegal. Now, I put “intentionally killing” in quotes to highlight one aspect of the problem: what does “intentionally killing” mean? Let me give some examples of what many take to be

¹¹ See for example, [Gregory Koukl, “Unstringing the Violinist”](#); Scott Klusendorf, *The Case for Life* (Wheaton, IL: Crossway Books, 2009), pp. 185-201; Frank Beckwith, *Defending Life* (New York: Cambridge University Press, 2007), pp. 172-199.

¹² Whether viewed as individually necessary or mutually sufficient defeaters of the Violinist argument.

¹³ See the paragraph that begins “In medical abortion regimens” here:

<https://en.wikipedia.org/wiki/Mifepristone>.



clear cases of intentional killing that are neither obviously wrong nor obviously the sort that should be illegal:

(1) A soldier kills another soldier in a just war. (Let's assume there is such a thing as a just war for the sake of the argument.)

(2) A bystander at a party shoots and kills an "innocent aggressor" or "innocent threat." For example, imagine that reckless pranksters spike George's drink at a party so that he starts hallucinating, but then they place a loaded gun in his hand just to see what will happen. George begins threatening to shoot everyone in the room by pointing the gun at their faces. A bystander shoots him dead, believing that was the minimal amount of force necessary to protect himself and the others at the party.¹⁴

(3) A state worker is ordered to give a lethal injection to a capital criminal who tortured five people to death.

My point in raising these three examples is not to argue that the killing is actually justified in any of them. The point is a pragmatic one: If any of these killings is justified in many people's minds, then it's very questionable whether the "withdrawing treatment vs. intentional killing" distinction will show the average person we're speaking to that unhooking from the violinist is morally right or should be legal while unhooking from the unborn, say, with RU-486, is wrong or should be illegal. Which killings are justified is controversial.

The definitions of "intentional" and "killing" may also be controversial. Notice that each of these cases appears to be a case of intentional killing. Perhaps the precise meaning of "intentional" and "killing" could be discussed, showing that these are either not "intentional" or not "killings." Or, perhaps, one might attempt to show that while one or more of these is a case of *justified* intentional killing, the sort of killing that abortion is is always *unjustified* intentional killing. Whether or not various cases of killing are intentional or justified is unclear to some and controversial to others, so it may prove difficult to rely only on "withdrawing treatment vs. intentional killing" distinction without appearing to beg the question. Let me illustrate.

A few weeks ago I spoke with a student named Jason at the University of Texas at San Antonio. Jason and I covered a lot of ground in the conversation. He went from believing that viability makes the unborn valuable to believing that the unborn is valuable from fertilization. I then outlined for him the violinist argument and proceeded to dismantle it through dialogue with him about its salient points along the lines of what I've argued so far in this paper. Jason was very grateful for this,

¹⁴ I'm indebted to Trent Horn for passing this example on to me.



and confirmed at the end of the conversation that he thinks abortion should not be legal at any time in the pregnancy, even in the case of rape. Now, imagine I took the conversation a different direction when attempting to dismantle the violinist:

Steve: Notice how in the violinist story you are withdrawing treatment from the violinist, which is justified, but with abortion, you would be intentionally killing the unborn.

Jason: I don't see how that's relevant.

Steve: Well, intentionally killing the unborn would be wrong.

Jason: But it doesn't seem to me to be the case that intentionally killing is always wrong.

Steve: Can you tell me a case you're thinking of?

Jason: Killing in self-defense or war. Or how about this. I heard this example in my ethics class: What if someone is drugged at a party and a loaded gun is placed in his hand. The drug makes him start hallucinating and he starts pointing the gun at people's faces and saying he's going to kill them. If someone shoots him, that would be an intentional killing, but it wouldn't be unjust. And it should be legal.

Steve: But it's a justified intentional killing.

Jason: But couldn't abortion be a justified intentional killing?

Steve: No, it's an unjustified intentional killing.

Jason: But Steve, I've taken enough philosophy to smell a rat here. I don't mean to be accusatory or mean, but aren't you begging the question? Isn't this precisely the point at issue, whether abortion is a justified intentional killing?

Now, my point in this imaginary dialogue is not to say that the defender of the "withdrawing treatment vs. intentional killing" distinction is being adequately represented by the words I've placed in Jason's mouth here. And I'm not saying that the defender of this distinction might be able to make a case that the distinction is meaningful, at least if certain presuppositions are in play in the conversation. My point is that it's not a very reliable route for many people of many worldview persuasions. And if we're attempting to make our case not only that abortion is wrong but should be illegal, then we shoulder an even heavier burden to make a case that's accessible to most people.



B. ***Artificially Hooked Up vs. Naturally Hooked Up* and *My Kidney Wasn't Intended to Filter the Violinist's Blood vs. My Uterus Was Intended to Gestate My Child*:**

These “parallels that aren’t parallel” are similar in that they both focus on the teleology of bodily organs. While some of us individually find this persuasive, because teleological arguments probably require natural law or theological assumptions that many in our democratic society won’t hold, the value of these disanalogies is questionable.

- C. ***Stranger vs. Parent*:** Perhaps the most glaring “parallel that’s not parallel,” is the fact that in the Violinist story, the violinist is not your child, while in pregnancy, the unborn is the woman’s child. The woman is the parent. It does seem that parents have special moral and legal obligations to their children, but if we simply adjust the Violinist story, it’s easy to see that parents aren’t obligated legally or morally to give their children just any sort of assistance that their child needs. For example, a parent is not obligated to become a kidney dialysis machine to sustain the life of her child. So, imagine the Violinist is your child. Are you now legally obligated to stay connected to him for nine months and filter his blood? No.

To understand the stakes of relying solely on the *Stranger vs. Parent* disanalogy to respond to the Violinist, consider the following point Matt McKinley made in an unpublished paper for Justice For All: If the only reason you must stay hooked up to the unborn child (and not to the Violinist) is because you are the unborn child’s parent, then you need to give some explanation of what a parent is. If you then define “parent” in terms of consent, it won’t have a bearing on many pregnant women, for many have not “consented” to parental obligations. If on the other hand you define “parent” in terms of biology only (i.e. something like a certain DNA relationship), then you will have to countenance a real case from Wales in which a woman was implanted with an IVF embryo that was not biologically related to her.¹⁵ If the only reason she must stay hooked up to her unborn child is the fact that the child is biologically related to her, and the child is not biologically related to her, then in that case she should be able to have an abortion.¹⁶

My colleague Josh Brahm writes,

McKinley’s story seems to show that a biological relationship to the child in question alone cannot be a *necessary* condition for the kind of obligation that

¹⁵ Jo Macfarlane and Brian Radford, “‘In ten seconds our world was shattered’: Distraught IVF couple discover their last embryo was given to the wrong woman - and then aborted,” *Daily Mail Online*, June 14, 2009. See http://www.jfaweb.org/Daily_Mail_Article_2009_06.

¹⁶ The same problem with biological relationship exists with any IVF procedure in which a donor egg is used. The child does not have a biological relationship to the mother. One might adjust the definition of “biological relationship” to mean, “joined by some bodily connective tissue” or something like this, but why should we believe that this is what “parenthood” is, and why should we believe special “parental” obligations attend it in virtue of it being a biological tissue connection?



would lead us to conclude that a pregnant woman should not be allowed to abort. Perhaps the biological relationship parents have to their children are *sufficient* conditions to obligate a woman to not abort her child, but it's clearly not a *necessary* condition.

There's another reason the biological-parental obligation argument is often unconvincing to pro-choice people: many pro-choice people believe that merely having a biological relationship to a child is not *sufficient* to making someone a parent in any meaningful sense. For example, they may believe that being a parent is consent-based, that you sign an invisible contract to care for this child when he is born and not offered for adoption. If pro-life people are not aware of this alternative definition of "parent" that is used by many in our society, we are in danger of equivocating when talking about parental obligation.

A few examples demonstrate why many people think there is more to being a parent than having a biological relationship to a child:

- Consider a rape victim who becomes pregnant, carries her child to term, and gifts the child for adoption as soon as the child is born. The adopting couple lovingly cares for the child for 18 years. Who is the mother?
- Consider a married couple who decides to use in vitro fertilization because of the wife's infertility. They use the husband's sperm to fertilize an oocyte from an anonymous donor, and then implant the embryo into the wife's body. She carries the child to term and she and her husband lovingly care for the child for 18 years. Who is the mother?

Many people would say that in both cases, the wife is the mother in the meaningful sense of the word that includes *the obligations of parents*. For the same reason, if an irresponsible young man impregnates his girlfriend and dumps her when he learns she is pregnant and never pays child support, many people disdainfully call him a "sperm donor" to signify that he is not shouldering the responsibilities he actually has as the "father."

This paper is not arguing that parental obligation does not exist for women that have a biological relationship to their child. We are simply noting that the idea that a person has a parental obligation simply in virtue of a certain biological relationship to the child is controversial to many pro-choice people because they believe the definition of the word parent that's operative in the term "parental obligation" is something distinct from biology.



Vc. Another “Parallel that Isn’t Parallel”

- D. **Kidnapped vs. Responsibility:** Trent Horn explains another important “parallel that’s not parallel” in Justice For All’s *Abortion: From Debate to Dialogue – The Interactive Guide* on page 108-110.

In the case of a stranger who will die unless I donate blood or bone marrow, I am not obligated to help him because I was not involved in how he became ill. Likewise, if I’m the one who’s been kidnapped in Thomson’s violinist scenario, the reason the violinist is dying has nothing to do with my actions. He has been connected to my body by the plotting of the “Society of Music Lovers.” But why is the fetus connected to a woman’s body in pregnancy? Approximately ninety-nine percent of the time, it is because she engaged in an act (sexual intercourse) that is known to create dependent people (i.e. unborn children). In normal cases of pregnancy, both the mother and father resemble the “Society of Music Lovers” more than the kidnapped kidney donor in creating an innocent child and causing that child to be dependent on a woman’s body to live. If I am **responsible**, or freely engaged in an activity that I knew had the possibility of creating a helpless human life, then I owe that human life whatever assistance she needs to survive.

Horn then references thought experiments that illustrate the responsibility objection: the reverse violinist¹⁷ and the baby-making machine.¹⁸

It’s common for people in my experience to accept that “the responsibility objection” defeats the violinist in the vast majority of abortion cases, but it clearly does not hold in the case of rape. If a woman is raped and gets pregnant, after all, she willingly did nothing related to bringing the child into existence.

(continued on following page)

¹⁷ Tony George, “Good Samaritan on Life Support,” Justice for All, 2009. Available online at: www.jfaweb.org/Training/George_Anthony_GSonLifeSupport.pdf.

¹⁸ Scott Klusendorf, *The Case for Life* (Wheaton, IL: Crossway Books, 2009), p. 195.



VI: Tying Our Hands Behind Our Backs: Responding to LRRR

Vla. The Legal Right to Refuse in the Case of Rape (LRRR)

Taking these factors into consideration, let's assume the following case for the sake of discussion:

- A woman was raped.
- She got pregnant.
- She's two weeks along (since fertilization; four weeks since Last Menstrual Period)
- The woman has not consented to parental responsibilities in any way
- She is considering an RU-486 abortion.

Should it be legal for her to have the abortion? The Violinist argument would affirm that she should, because each of the disanalogies listed in the previous section either don't apply to this case or face significant persuasive challenges, either as necessary or sufficient defeaters of the Violinist argument.

- (1) she wants to use a method that truly unhooks the child,¹⁹
- (2) teleological concerns are difficult to make into moral concerns (much less legal ones)
- (3) she may not have a parental obligation because she hasn't consented in any way to the initial act that produced the "parenthood" (assuming the person we're talking to refuses to define parenthood in non-consensual terms), and because...
- (4) she isn't responsible for the child (she didn't consent to the sexual act that created the child in a needy condition for which she would have been responsible had she consented to sex initially)

Vlb. Parallels that Aren't Parallel...In Most Cases...It Depends.

Each of the disanalogies reviewed above is legitimate as far as it goes. Please review the footnoted resources for a more detailed defense of these disanalogies. So in what follows, we're not discounting the strengths of these strategies against the Violinist. But let's realize that it appears that none of them cover all cases of abortion (real or theoretical), at least not conclusively for most people. In following the argument where it leads, we should either admit that abortion should be legal in some cases, find a way for some or all of these disanalogies to work better together than they work apart, or find another parallel that's not parallel, one that covers all cases of abortion.

We reject the first two approaches. We don't think the Violinist necessitates "biting the bullet" on certain abortions (e.g. the IVF case in which there isn't a biological connection to the child). Neither do we think that the disanalogies above work better together as a cumulative argument to cover all cases of abortion. The reason is as simple as the problem

¹⁹ Even though the abortion would be an intentional killing, the concerns I shared in the previous section about justified intentional killings and the definition of "intentional" present at least pragmatic hurdles, if not principled ones.



of “Leaky Buckets.”²⁰ If each of these disanalogies on it’s own doesn’t apply to certain abortion cases or is unpersuasive to the listener, then the disanalogies won’t work better together than they do individually. If each of these reasons to deny the Violinist is seen as a bucket, each is leaky, so putting them together won’t make them hold more water than they do apart.

Some of the disanalogies from the list above might be salvaged as a “this is all you need” response to the Violinist. For example,

- (1) The *unhooking vs. dismembering* and might successfully disarm the Violinist, at least in cases of surgical abortion. In addition, the distinction between *withdrawing treatment vs. intentionally killing* relies on a long history that “intentional killing” is prima facie wrong, so it may be helpful, especially if certain worldview assumptions are in play.
- (2) The teleology of the uterus and similar disanalogies might successfully disarm the Violinist if certain assumptions are agreed upon. In addition, teleological arguments have a long history and should not be dismissed out of hand simply because they are controversial.
- (3) Parents sometimes have extreme legal obligations to children, so those obligations may include some sort of bodily obligation. In addition, if a certain definition of “parent” is in play in the conversation, it may be more helpful against the Violinist.
- (4) We think the Responsibility Objection is devastating to the Violinist and, if we make a concurrent case that the unborn is a full human being with a right to life, it’s devastating to almost all abortions.

In addition, it’s important to note here that putting things in moral terms is certainly important in discussions about abortion, so we shouldn’t get in the habit of disregarding wholesale those arguments against the Violinist that are morally construed simply because they may not apply to this narrowly defined legal version of the argument.

We think the project of adjusting and re-explaining each disanalogy above may hold promise for refuting the legal version of the Violinist argument. Far from suggesting any of these disanalogy arguments be thrown out, we are here offering misgivings about them as necessary or sufficient defeaters of the Violinist in every case of abortion. To employ any of these disanalogies against the strongest version of the Violinist, though, each will have to address the challenges we’ve outlined.

Still, we would like to propose a different strategy, one akin to a fighter tying both his hands behind his back and still participating in a match. In other words, let’s set all of these disanalogies aside and focus on another difference between the Violinist story and pregnancy: “medical treatment vs. feeding and sheltering.”

²⁰ See Stephen Wagner, “The SLED Test – Four Leaky Buckets,” *Abortion: From Debate to Dialogue – The Interactive Guide*, p. 94, for more on this: www.jfaweb.org/Training/ADD/ADD_IG_SLEDLeakyBuckets.pdf



Vlc. One More Parallel that Isn't Parallel...in Any Case

- E. ***Medical Treatment vs. Feeding and Sheltering:***²¹ Let's look again at the Cabin story that begins this article. In the Cabin story, Mary is a *de facto guardian* of a child, and as such, she has the same moral and legal obligations as a parent (although temporary). She should feed the child, even if she must use an intimate body part (her breast) to accomplish it. In the Violinist story, you are not the *de facto guardian* because there appear to be others in the story who could help him, at least in terms of certain kinds of care. You are the only one who can filter his blood, we are told, but there are others who can give him the other kinds of care he needs. Let's adjust the Violinist story, then, so that you *are* the *de facto guardian* and see what comes of it.

Imagine you are the only person in the vicinity of the violinist and the violinist is a child or disabled person. In this case, you would be the *de facto guardian*. Imagine, for example, that when you wake up next to the Violinist, you are in a deserted hospital, you have plenty of food next to your bed, and you are connected to a violinist who is not related to you but who recently became a quadriplegic. In this case, you are obligated (morally/legally) to feed and shelter the violinist, but you are not obligated (morally/legally) to give him your body as medical care.²²

Now, the question is, "Is pregnancy more like breastfeeding or kidney dialysis?"

Vld. Is Pregnancy More Like Feeding or Kidney Dialysis?

How is the body sustaining the life of the child during pregnancy? It's obvious that the mother is at least providing the necessary shelter and food for the child, but is she doing more, in a way that is akin to kidney dialysis?

It doesn't really matter. Pregnancy is at least feeding. If the only way to feed a kid is through getting hooked up like kidney dialysis, you'd still have to do it.

Imagine that Mary wakes up in the cabin and the baby is attached to her such that a short tube is protruding from Mary's stomach and entering the baby's stomach. Assume Mary has no formula but neither is she lactating. The only way for her to feed the baby is through the apparatus connecting them. The note tells her that she can remove the apparatus, but then the baby will not be able to eat, so it will starve to death. Does Mary have the moral or legal right to unhook? My intuitions are unchanged.

²¹ We owe the emphasis we've come to place on pregnancy as a form of feeding and sheltering the embryo to Matt McKinley.

²² Note, thinking you are the *de facto guardian* of the violinist does nothing to compromise the *de facto guardian* concept (it doesn't show it has unacceptable implications), so it does nothing to defend abortion.



Vle. Conclusion: The Pregnant Woman Is Obligated to Stay Pregnant

Because the pregnant woman is a *de facto* guardian of a child, she should use her body to feed the child and can be expected by law to do so. She is obligated to stay pregnant.

VII: Taking Our Hands Out from Behind Our Backs: Making the Cabin Story More Like Pregnancy and Abortion

VIIa. What If Mary Did Find Her Child in the Cabin?

Let's adjust the story with regards to one more detail. Imagine that when Mary goes looking for the infant she gave birth to just a week previous, she *does* find him. She then must weather the storm for six weeks with her own infant. Imagine, though, that when she emerges, her infant son is dead. The police question her, but she says that the kidnapping and isolation caused her so much stress, and before the cabin incident the breastfeeding had been getting too difficult, so she let her son die.

Perhaps our intuitions are strongest here that Mary is obligated morally and (should be) legally to feed her own child by breastfeeding him. Similarly, if the unborn is a human being, he must have a parent, and isn't it evident that the woman carrying him is the most likely candidate? And if the woman is the parent of the child inside of her, then, she is surely has the obligation to feed her child by staying pregnant.

VIIb. What If Mary Decided to Slice Up the Child?

Showing that there isn't much of a difference between killing and letting die has become something of a philosophical pastime. And even if it is the case that there is no significant difference between killing and letting die, it seems that the distinction can lend something to our discussion here.

Think back to Mary's situation. The note says, "If the child dies, you will be rescued immediately." Someone may defend her moral or legal right to withhold her body from the child, starving the child, but who would defend her moral or legal right to slice up the child or to pull the child apart with metal implements? Surely that's not right. In the same way, while you might have the right to unhook from the Violinist, do you have the right to do so if the only way to do so is to tear him limb from limb?

Relating this to abortion, while I think this paper has shown it's not a tenable position, let's say someone still believes a woman pregnant from rape can (morally or legally) withhold her body from the child. Can this person further argue that if it's necessary to vindicate her bodily rights, she can slice the child up?



VIIc. What If Mary Consented to Be a Part of the Experiment with Full Disclosure?

Imagine that Mary signed up to be a part of an experiment in which she knew she might²³ be placed in a cabin with an infant and the infant would need her body to survive for six weeks. Would she be morally or legally obligated to feed the infant in this case? While the consent isn't necessary to obligate her (this is the whole point of the *de facto guardian* idea) it certainly is sufficient to obligate her!

If this is true, then this underscores the value of the Responsibility Objection to the Violinist. If one willingly engages in an act (participating in a study) which one knows may bring about a situation where a child needs one's body to live, and if that child only needs food and shelter, then one is obligated. In the same way, if a woman engages in sex willingly, and she knows (or should have known) that the act may bring about a situation in which a child needs her body to live, and all the child needs is food and shelter, then the woman is obligated.

In other words, as a *de facto guardian*, if the woman pregnant from rape is morally and legally obligated to give food and shelter to a child in her care (stay pregnant), how much more is a woman pregnant from *consensual sex* morally and legally obligated to give that same food and shelter to the child in her care (stay pregnant).

VIIc. What If Mary Experienced a Level of Burden More Akin to Most Pregnancies?

One might argue that the Cabin story that begins this article actually is not analogous to pregnancy in that Mary experiences *worse* burdens than a typical pregnancy. Examples might be her feeling of isolation, the pain from breastfeeding, the need to consciously focus on feeding the baby (which is not present in the same way in pregnancy). Therefore, if *Mary* has obligations to feed the child, then surely the pregnant woman does as well.

VIII: Communication Tips – *De Facto Guardian and Up*

My colleague Timothy Brahm notes that the film *Up* includes a memorable example of a *de facto guardian*. Carl is an elderly gentleman, and the house in which he built memories with his wife (now deceased) is about to be demolished under imminent domain. Since he is good with balloons, he uses hundreds of them to lift his house off the ground to take that vacation to South America that he and his wife were never able to take while she was alive. Thousands of feet in the air, he hears a knock at the door. An annoying boy scout named Russell, plastered to the front of the house and fearing that he will fall to his death, says, "Please let me in." Carl says no, and there's a comedic pause. Then he opens the door and says, "Oh, alright," and let's Russell come inside.

²³ Josh Brahm notes, "I think the changes below ["might" instead of "will"] are necessary to make the situation more parallel to pregnancy. The way it is currently worded ["will" in a previous version] would only apply to the person purposely getting pregnant from IVF or something. But those women don't typically want an abortion. I think the responsibility objection is strong because it works even for the person taking a gamble, even a 1 out of 100 shot that no baby will begin to exist.



Does Carl have an obligation to give Russell food and shelter? Yes, because Carl is the only one in the vicinity who can help this child. What accounts for this intuition? Isn't it that as a *de facto guardian*, Carl has the same obligations as Russell's parents, though temporary? The story is very similar to the story of Mary with which we began. Both Carl and Mary have an obligation to feed and shelter the child in their care, and those obligations arise from the situation of being a *de facto guardian*.

Some may object to referencing *Up* in making an analogy to pregnancy and abortion, since it's easy to conclude that in doing so we're comparing a woman's body to Carl's house. Although I believe the *Up* story is sufficiently similar to pregnancy to help some people think differently about our obligations to the unborn, and although the analogy also compares Carl needing to use his body to feed Russell (not just his house), I think the main value of the *Up* story is to give people a general concept of *de facto guardian*. The disanalogies with pregnancy (Carl is a man, Carl doesn't have to use an intimate part of his body to feed Russell, Russell is inside or outside the house and not Carl's body) may limit how helpful the story is in conversation. This is why we began this paper with the Mary and the Cabin in the Blizzard. The story is as close to pregnancy as possible. Our suggestion, however, is to use both stories, especially because we have found the *Up* story to energize conversations due to how memorable and visual the story is for people.

Addendum: Revisions List

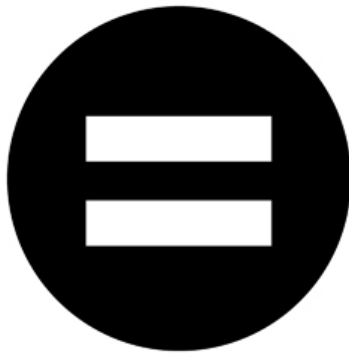
v02 (4/14/2013): fixed grammatical errors; fixed a few word choices and phrases for clarity; made alterations to the discussion of withdrawing treatment vs. intentional killing in Vb. (for clarity); made alterations to Section VIb. for clarity.

v03 (4/20/2013): fixed various misspellings and grammatical errors; changed footnote 15 to address a broken link issue; removed last sentence in Section Vb.A. because it was a remnant from an early draft; for clarity, removed the quotes around the two types of parenthood referred to in the first paragraph in Section IIa. (5/17/2013): fixed pronoun confusion regarding the infant son ("him") and the sex of the unborn child ("he") in Section VIIa.



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