



THE SUBSTANCE VIEW: A CRITIQUE

ROB LOVERING

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ABSTRACT

According to the theory of intrinsic value and moral standing called the 'substance view,' what makes it prima facie seriously wrong to kill adult human beings, human infants, and even human fetuses is the possession of the essential property of the basic capacity for rational moral agency – a capacity for rational moral agency in root form and thereby not remotely exercisable. In this critique, I cover three distinct reductio charges directed at the substance view's conclusion that human fetuses have the same intrinsic value and moral standing as adult human beings. After giving consideration to defenders of the substance view's replies to these charges, I then critique each of them, ultimately concluding that none is successful. Of course, in order to understand all of these things – the reductio charges, defenders of the substance view's replies to them, and my criticisms of their replies – one must have a better understanding of the substance view (in particular, its understanding of rational moral agency) as well as its defense. Accordingly, I address the substance view's understanding of rational moral agency as well as present its defense.

INTRODUCTION

When it comes to determining the intrinsic value and moral standing of the standard human fetus and, specifically, whether it is prima facie seriously wrong to kill it (hereafter, simply 'wrong'), contemporary philosophers often rely upon arguments from inference to the best explanation.¹ For example, some philosophers first judge that it is wrong to kill the following individuals: (1) the standard adult human being (including those who are sleeping), (2) the reversibly comatose adult human being, (3) the suicidal adult human being, and (4) the standard human infant, among others. Next, they attempt to determine what property or set of properties – accidental or essential – the possession of which is sufficient for the

wrongness of killing them. Once that's been done, they attempt to determine whether another individual, (5) the standard human fetus, possesses that property or set of properties. If it does, they reason, then just as it is wrong to kill individuals (1)–(4), so it is wrong to kill individual (5).

Adopting such an approach, defenders of the 'substance view'² – such as Francis Beckwith, Patrick Lee, Robert George, and Christopher Tollefsen – hold that the property the possession of which is sufficient for the wrongness of killing individuals (1)–(4) is the essential property of being a person or, more specifically, a rational moral agent.³ (What they mean by these things and

¹ By 'human fetus,' I mean the developing human organism from conception until birth.

By 'intrinsic' value I mean value it's logically possible for something to have, even if it were the only thing that existed. By 'moral standing' I mean the property of being morally considerable, a property in virtue of which moral agents have moral obligations toward those things that possess it.

² Beckwith refers to it as the 'substance view' while Lee, George, and Tollefsen refer to it as 'animalism.' See F. Beckwith. 2007. *Defending Life: A Moral and Legal Case Against Abortion Choice*. New York, NY: Cambridge University Press; R.P. George & C. Tollefsen. 2008. *Embryo: A Defense of Human Life*. New York, NY: Doubleday.

³ See P. Lee & R.P. George. 2007. *Body-Self Dualism in Contemporary Ethics and Politics*. Cambridge, UK: Cambridge University Press; P. Lee & R.P. George. 2008. The Nature and Basis of Human Dignity. *Ratio Juris* 2008; 21(2): 179–93; P. Lee. The Pro-Life Argument from

Address for correspondence: Rob Lovering, PhD, Department of Political Science, Economics, and Philosophy, College of Staten Island/CUNY, 2800 Victory Blvd., Room 2N-224, Staten Island, NY 10314 USA. E-mail: robert.lovering@csi.cuny.edu

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how, specifically, they defend their view will be addressed shortly.) Moreover, defenders of the substance view contend that, like individuals (1)–(4), individual (5), the standard human fetus, possesses the essential property of rational moral agency as well. Accordingly, they reason, it is just as wrong to kill individual (5) as it is to kill individuals (1)–(4).

Given the preceding, one might wonder why this view is referred to as the ‘substance view.’ Simply put, defenders of the substance view (hereafter, SV) hold that rational moral agency is an essential property of a particular substance sort – the human organism – and that individuals (1)–(5) are essentially human organisms. With that said, defenders of SV contend that individuals (1)–(5) have the intrinsic value and moral standing they do not *simply* because they are members of the species *Homo sapiens* but because of the human organism’s essential property of rational moral agency. Stated counterfactually, defenders of SV maintain that, without possessing the essential property of rational moral agency, the substance sort human organism would not possess the intrinsic value and moral standing that it does (at least, all else being equal).⁴

Critics of positions like SV – i.e. those positions that attribute an intrinsic value and moral standing to individual (5) equal to that of individuals (1)–(4) – attempt to refute them in a number of ways. In some cases, objections are raised to the premises invoked in support of the conclusion that individual (5) has the same intrinsic value and moral standing as individuals (1)–(4); in other cases, objections are raised to the conclusion itself, usually in the form of a *reductio ad absurdum*; and in yet other cases, both of these things are done.⁵ In the following critique of

SV, I address only *reductio* charges directed at its conclusion. (I also find some of the premises invoked in favor of SV to be seriously problematic, but space considerations require me to address them elsewhere.)⁶ In so doing, I also address defenders of SV’s replies to *reductio* charges, ultimately concluding that none is successful.

Of course, in order to understand all of these things – the *reductio* charges, defenders of SV’s replies to them, and my criticisms of their replies – one must have a better understanding of SV (in particular, its understanding of rational moral agency) as well as its defense. These will be addressed immediately hereafter in turn.

A final caveat: throughout the following, unless otherwise noted, statements such as ‘the standard human fetus has the same intrinsic value and moral standing as individuals (1)–(4)’ and ‘Jones ought to save the five-year-old girl rather than the standard human fetus’ are to be understood simply as all-else-being-equal claims.

THE SUBSTANCE VIEW ON RATIONAL MORAL AGENCY

Being a rational moral agent involves possessing certain capacities, of course, such as the capacity to reason, the capacity to think in terms of and regulate one’s behavior in accordance with moral principles, and so on. However, defenders of SV contend that these capacities need not be immediately exercisable for something to possess the essential property of rational moral agency. You see, defenders of SV distinguish among three types of capacity, to be referred to here as *basic*, *proximate*, and *ultimate*.⁷ A basic capacity for X is a capacity for X that is not remotely exercisable. A proximate capacity for X is a capacity for X that is exercisable but, for whatever reason, is not immediately exercisable at a given time.

Substantial Identity: A Defense. *Bioethics* 2004; 18(3): 249–263; P. Lee & R.P. George. 2005. The Wrong of Abortion. in *Contemporary Debates in Applied Ethics*. A.I. Cohen & C.H. Wellman, eds. Oxford, UK: Blackwell Publishing: 13–26.

⁴ As Lee and George write, ‘While membership in the species *Homo sapiens* is sufficient for full moral worth, it is not in any direct sense the criterion for moral worth. If we discovered extraterrestrial beings of a rational nature, or that some other terrestrial species did have a rational nature, then we would owe such beings full respect. Still, all members of the human species do have full moral worth because all of them do have a rational nature and are moral agents . . .’ (Lee & George 2008, *op. cit.* note 3).

⁵ For example, regarding the first approach, some critics of positions such as SV have raised objections to the claim that an entity’s potential – for personhood, rational moral agency, or what have you – is moral-standing-conferring. As for the second approach, some critics have argued that, if individual (5) had the same intrinsic value and moral standing as individuals (1)–(4), then nothing short of a State-protected holocaust has occurred in the United States since *Roe v. Wade* – indeed, one far worse than the Nazi holocaust, with 45 million dead and counting. But that a State-protected holocaust far worse than the Nazi holocaust has occurred in the United States is absurd – or so these critics argue – and, thus, positions which attribute such a high intrinsic value and moral standing to individual (5) must be incorrect. See, for example, M.Tooley. 1983. *Abortion and Infanticide*. New York, NY:

Oxford University Press; J. McMahan. 2002. *The Ethics of Killing: Problems at the Margins of Life*. New York, NY: Oxford University Press; J. Reiman. 1999. *Abortion and the Ways We Value Human Life*. Lanham, MD: Rowman and Littlefield.

⁶ As of this writing, I have a draft of a paper addressing criticisms of some of the premises invoked in defense of SV.

⁷ It should be noted that it’s actually unclear whether they distinguish among three types of capacity or just between two. The following statement, taken from Lee and George, epitomizes this lack of clarity: ‘So, we must distinguish between two sorts of capacity or potentiality for higher mental functions that a substantial entity might possess: first, an immediately (or nearly immediately) exercisable capacity to engage in higher mental functions; a basic, natural capacity to develop oneself to the point where one does perform such actions’ (Lee & George 2005, *op. cit.* note 3, p. 18.). Clearly, an *immediately exercisable* capacity is not one and the same as a *nearly immediately exercisable* capacity: I have a nearly immediately exercisable capacity for solving complex algebra problems, but I do not thereby possess the immediately exercisable capacity to do so (brushing up, alas, would be required). Even so, Lee and George have decided to lump them together, whereas I have decided to distinguish between them for clarity’s sake.

And an ultimate capacity for X is a capacity for X that is immediately exercisable. Consider, for example, the capacity for rationality: the standard human infant has the basic capacity for rationality – a capacity for rationality that is not remotely exercisable; the sleeping or reversibly comatose adult human being has the proximate capacity for rationality – a capacity for rationality that is exercisable but, due to temporary unconsciousness, is not immediately exercisable; and the conscious standard adult human being has the ultimate capacity for rationality – a capacity for rationality that is immediately exercisable.

If you haven't already guessed, defenders of SV use 'capacity' and 'potential' interchangeably. This is made evident not only by passages in which 'potential' is clearly substituted for 'capacity' (and vice versa), but also by their explicit acknowledgement of using them interchangeably, such as when they state 'we must distinguish two senses of the capacity (or, as it is sometimes called, the potentiality) for mental functions, psychological states, and so on.'⁸ The three aforementioned types of capacity, then, may be stated in terms of three types of potential: again, *basic*, *proximate*, and *ultimate*. A basic potential for X is an active but not remotely actualizable potential for X. A proximate potential for X is an active and actualizable potential for X but, for whatever reason, is not immediately actualizable at a given time. And an ultimate potential for X is an active and immediately actualizable potential for X. Consider the potential for rationality: the standard human infant has the basic potential for rationality – the active but not remotely actualizable potential for rationality; the sleeping or reversibly comatose adult human being has the proximate potential for rationality – the active and actualizable potential for rationality but, due to temporary unconsciousness, is not immediately actualizable; and the conscious standard adult human being has the ultimate potential for rationality – the active and immediately actualizable potential for rationality.⁹

Given these distinctions, we may now see on what grounds defenders of SV believe that the standard human fetus possesses the essential property of rational moral agency. According to defenders of SV, in order for something to possess the essential property of rational moral agency, one need not possess the ultimate or even proximate capacity for rational moral agency – one need only possess the basic capacity for rational moral agency. And it is just this basic capacity that the standard human fetus possesses. Or, to state this in terms of potentiality, in order for something to possess the essential property of

rational moral agency, one need not possess the ultimate or even proximate potential for rational moral agency – one need only possess the basic potential for rational moral agency. And it is just this basic potential that the standard human fetus possesses. (Hereafter, I will forgo writing in terms of both capacities and potentialities and, instead, write in terms of potentialities only.)

SV'S DEFENSE

With the preceding in mind, we may now state SV's defense precisely.

To begin with, defenders of SV believe that intrinsic value is not a degreed property – 'you either have it or you don't'.¹⁰ In turn, they hold that the intrinsic value and moral standing of individuals (1)–(4) must be a function of essential rather than accidental properties, as the latter admit of degrees.¹¹ For, if the intrinsic value and moral standing of individuals (1)–(4) were a function of accidental and thereby degreed properties, then they would not possess the same intrinsic value and moral standing since they do not share all the same accidental properties, let alone share them to the same degree. But individuals (1)–(4) do possess the same intrinsic value and moral standing, or so they believe. Thus, intrinsic value is not an accidental, degreed property; in turn, the intrinsic value and moral standing of individuals (1)–(4) must be a function of essential properties.¹²

With this said, defenders of SV argue that possessing the essential property of the basic potential for rational moral agency is sufficient for the intrinsic value of individuals (1)–(4) and, in turn, the wrongness of killing them. To see this, consider a theory of intrinsic value and moral standing that emphasizes possessing, say, the accidental property of the ultimate potential for rational moral agency. Individuals (2) and (4) lack the accidental property of the ultimate potential for rational moral agency, as do individuals (1) and (3) on occasion (such as when they are asleep). But it's counterintuitive if not absurd to think that – as a result their lacking this accidental property – it is not wrong to kill them. SV, on the other hand, accounts for the judgment that it is wrong to kill them, since each possesses the essential property of the basic potential for rational moral agency. Moreover, like individuals (1)–(4), individual (5), the standard human fetus, has the essential property of the basic potential for rational moral agency. Accordingly, it is just as wrong to kill individual (5) as it is to kill individuals (1)–(4).

⁸ George & Tollefsen, *op. cit.* note 2, p. 80.

⁹ For the sake of space, I must forego discussing the difference between active and passive potentialities. For such a discussion, see Michael Tooley et al. 2009. *Abortion: Three Perspectives*. New York, NY: Oxford University Press.

¹⁰ Beckwith, *op. cit.* note 2, p. 139.

¹¹ Briefly, P is an essential property of X if X cannot be what it is without P; whereas P is an accidental property of X if X can be what it is without P.

¹² George and Tollefsen, *op. cit.* note 2, 117ff; Lee, *op. cit.* note 3, 253ff.

OBJECTIONS

As stated previously, the objections to be raised here pertain to *reductio* charges directed at SV's conclusion. In the following, I cover three distinct *reductio* charges as well as defenders of SV's replies to these charges. I then critique each of these replies.

SV and the intrinsic value and moral standing of frozen human embryos

Frozen human embryos possess the basic potential for rational moral agency; thus, according to SV, frozen human embryos possess the same intrinsic value and moral standing as individuals (1)–(4). Indeed, George and Tollefsen begin their book with a story invoked to lend support to this view. In a section titled 'Noah and the Flood,' George and Tollefsen tell us of a boy named Noah who nearly died as a result of Hurricane Katrina. 'Trapped in a flooded hospital in New Orleans,' they write, 'Noah depended upon the timely work of seven Illinois Conservation Police officers, and three Louisiana State officers who used flat-bottomed boats to rescue Noah and take him to safety.'¹³ In case you haven't already guessed, at the time of the rescue, 'Noah' was a frozen human embryo. Accordingly, as defenders of SV, George and Tollefsen believe that 'Noah' – qua frozen human embryo – had the same intrinsic value and moral standing that individuals (1)–(4) have and, thus, that saving him involved saving something of equal importance to them.

Once one begins to think critically about this case, one quickly sees that it does not do the intuitive work George and Tollefsen seem to think that it does. Consider, for example, the following twist to the case. Suppose the Illinois Conservation Police officers and the Louisiana State officers had chosen to save 'Noah' rather than, say, a ten-year-old boy or even a middle-aged man. Suppose, further, that when the officers were asked why they selected 'Noah' rather than the ten-year-old boy, they replied, 'Well, we couldn't save them both, the frozen human embryo and the ten-year-old boy possess equal intrinsic value and moral standing, and everything else was equal, so we did the only thing we could do, morally speaking: we flipped a coin.' Given SV, the reasoning behind their decision to flip a coin in this situation is essentially flawless. Yet, that flipping a coin is what they ought to have done in order to decide whom to save is strongly counterintuitive if not absurd.

George and Tollefsen reply to this type of objection. In a section titled 'Whom to Rescue?', they consider a case

similar to the preceding, this one involving a building on fire and an individual's (Jones's) opportunity to save one five-year-old girl or ten frozen human embryos. All else being equal, whom should Jones save? George and Tollefsen answer, 'We agree that . . . most people in Jones's circumstances would choose to rescue the girl. However, we do not believe that this shows that human embryos are not human beings, or that they may be deliberately killed in order to produce stem cells.'¹⁴

George and Tollefsen are certainly correct on all counts: most people *would* save the five-year-old girl, and *that* most people would save the five-year-old does not entail that human embryos are not human beings (at least, genetically speaking) or that human embryos may be deliberately killed to produce stem cells. Even so, George's and Tollefsen's answer misses the point entirely. This and other whom-should-you-save cases are invoked in an attempt to figure out whether we really believe (intuitively) that human embryos have the same intrinsic value and moral standing as individuals (1)–(4), an essential step in the evaluation of arguments from inference to the best explanation. And that most people would save the five-year-old girl speaks volumes about what most people's intuitions are regarding the intrinsic value and moral standing of human embryos.

Undeterred, in an attempt to explain why most people would save the five-year-old girl rather than the ten human embryos, George and Tollefsen state that there are 'differences between the embryos and the five-year-old girl that are or can be morally relevant to the decision concerning whom to rescue. For example, the five-year-old will suffer great terror and pain in the fire, but the embryos will not.'¹⁵ But this gets things right for the wrong reason. To see this, we can simply alter the case such that the five-year-old girl is reversibly comatose or sedated and, as such, will not suffer. Again, there's little doubt that most people would save the five-year-old girl rather than the ten frozen human embryos. Yet – and here's the rub – if SV is correct, then what most people would do in this case is arguably immoral. For, given SV, each human embryo has the same intrinsic value and moral standing as the five-year-old girl. Accordingly, given SV, if the choice were between the five-year-old girl and just *one* frozen human embryo, then it seems what one ought to do is decide whom to save on the basis of an independent procedure, such as a coin flip. But the choice here isn't between one five-year-old girl and *one* frozen human embryo; it's between one five-year-old girl and *ten* frozen human embryos. Given this – and SV – it's rather clear that what one ought to do in this situation is save the ten frozen human embryos

¹³ George and Tollefsen, *op. cit.* note 2, p. 1.

¹⁴ *Ibid.*: 139.

¹⁵ *Ibid.*: 140.

and let the fire consume the girl. After all, saving ten intrinsically valuable beings is clearly better than saving only one when all parties are equally intrinsically valuable. But that one ought to save the ten frozen human embryos rather than the five-year-old girl is strongly counterintuitive if not absurd.

Seemingly in an attempt to avoid such an implication, George and Tollefsen submit a third possibility, writing that

there could be circumstances in which people could agree that it would be reasonable for a particular person to save the embryos, even if other people with no personal attachment to either the embryos or the girl, might be drawn to rescue the girl. For example, if Jones happens to be the mother or father or grandparent of the embryos, Jones might well choose to rescue them, and most people would not regard this as immoral.¹⁶

The problem with this reply, of course, is that George and Tollefsen have introduced an extrinsic (specifically, relational) property in order to motivate the choice to save the frozen human embryos rather than the five-year-old girl.¹⁷ The problem with doing so, however, is that the point of such whom-should-you-save cases is to determine whether we really believe that human embryos have the same *intrinsic* value as five-year-old girls – i.e., value that is independent of whatever extrinsic properties they may happen to possess. Thus, that some people would save the frozen human embryos in virtue of an extrinsic property is simply irrelevant.

Before moving on to this section's concluding remarks, it is worth noting that there is something about this case that, ironically, suggests that even George and Tollefsen *themselves* do not really believe that frozen human embryos possess the same intrinsic value and moral standing as individuals (1)–(4). Consider the fact that the choice George and Tollefsen present to us is between saving *one* five-year-old girl and *ten* frozen human embryos. If George and Tollefsen really believed – and would have us believe – that human embryos have the same intrinsic value and moral standing as individuals (1)–(4), why did they feel it necessary – or even appropriate for that matter – to pit one five-year-old girl against ten human embryos? Were they afraid that pitting one five-year-old girl against *one* human embryo would not be compelling enough? If so, is this not some indication that even they doubt that the intrinsic value and moral standing of frozen human embryos is equal to that of individuals (1)–(4)?

To drive this point home, consider a similar case in which the choice is between one five-year-old girl and – instead of ten frozen human embryos – ten *five-year-old girls*. I'm quite certain that most people – including George and Tollefsen – would not find it immoral for Jones to save the ten girls rather than the one. Indeed, I'm quite certain that most people – again, even George and Tollefsen – would hold that Jones *ought* to save the ten girls rather than the one. After all, each five-year-old girl is equally intrinsically valuable to each of the other girls. And, again, saving ten intrinsically valuable beings is clearly better than saving only one when all parties are equally intrinsically valuable.

But if human embryos have the same intrinsic value and moral standing as five-year-old girls – as George and Tollefsen allegedly believe – then why don't George and Tollefsen come to the conclusion that Jones *ought* to save the ten frozen human embryos rather than the five-year-old girl? Why, instead, do they cautiously suggest that there *could* be circumstances in which 'people *could* agree' (not '*will likely* agree') 'that it would be *reasonable* for a particular person to save the embryos' (not 'that it would be *right* for him to save the embryos'), that 'Jones *might well* choose to rescue them' (not 'Jones *ought* to choose to rescue them') and that the choice to save the embryos 'is not necessarily fanciful or unreasonable' (not 'is the *right* thing to do').¹⁸ Surely such language would be excessively cautious in the case of saving the ten five-year-old girls rather than merely the one. But if human embryos have the same intrinsic value and moral standing as five-year-old girls, then such language is equally excessively cautious in the case of saving the ten frozen human embryos rather than the five-year-old girl. Whence, then, the cautious language? I, for one, cannot help but think that, despite their claims to the contrary, George and Tollefsen do not really believe that frozen human embryos possess the same intrinsic value and moral standing as five-year-old girls. Either that, or they doubt that most of their *readers* really believe that frozen human embryos possess the same intrinsic value and moral standing as five-year-old girls. But this, too, presents a problem for George and Tollefsen. For, if most of their readers do not really believe that frozen human embryos possess the same intrinsic value and moral standing as five-year-old girls, then most of their readers are likely to retain that intuition and reject SV rather than the other way around.

I'd like to conclude this discussion of whom-should-you-save cases by upping the ante and discussing whom-should-you-*destroy* cases. Consider, for example, a case similar to the one involving 'Noah.' Suppose Jones is a Louisiana State officer who – again, through the use of a flat-bottomed boat – saves one reversibly comatose five-year-old girl and, later, a crate containing 1,000 frozen

¹⁶ Ibid: 140.

¹⁷ Beckwith also invokes extrinsic considerations in his own discussion of whom-should-you-save cases (Beckwith, *op. cit.* note 2, p. 169).

¹⁸ George & Tollefsen, *op. cit.* note 2, p. 140.

human embryos. Suppose, further, that Jones comes to realize that the flat-bottomed boat is incapable of supporting the combined weight of himself, the five-year-old girl, and the crate of embryos. With the boat sinking and no one around to assist him, Jones is forced to decide between throwing the five-year-old girl overboard and throwing the crate of embryos overboard. (Throwing himself overboard is an option, of course, but presumably not a moral requirement. Moreover, were Jones to throw himself overboard, that would leave a comatose girl and a crate of embryos to fend for themselves – not exactly a strategy for maximizing the preservation of human life.) Whom should Jones throw overboard? That is, whom should Jones destroy? The view that Jones should destroy the five-year-old girl by throwing her overboard is strongly counterintuitive if not absurd. Yet, if SV is correct, it seems this is precisely what Jones ought to do, as it is clearly better to destroy one intrinsically valuable being than to destroy 1,000 intrinsically valuable beings when all parties are equally intrinsically valuable.

SV and spontaneous abortions

Conservatively, it's estimated that 60% of pregnancies spontaneously abort.¹⁹ Given SV, what this means is that beings with intrinsic value and moral standing equal to individuals (1)–(4) are perishing annually in astonishing numbers. To wit: in 2009, a little over 4 million infants were born in the United States; that means that, in that same year, roughly 6 million human fetuses died as a result of spontaneous abortions.²⁰ And that's just in a single year in a single country. Worldwide, roughly 138 million infants were born in 2009, which means that roughly 230 million human fetuses died as a result of spontaneous abortions.²¹

Now, if a natural epidemic were killing the same number of, say, standard adult human beings annually, we would at least be talking about if not doing all that we could to eliminate the epidemic. Consider, for example, the fact that we at least talk about doing something about AIDS in the United States, which – relative to the number of spontaneous abortions in the United States – kills a paltry 14,000 adults and adolescents a year.²² But, I know of no one – including defenders of SV – who has given *any* (let alone serious and considerable) consideration to

thwarting the 'epidemic' of spontaneous abortions. Yet, if SV is correct, then our failure to give serious and considerable consideration to and, in turn, attempt to do something about this 'epidemic' is almost certainly immoral. But that our failure to attempt to do something about spontaneous abortions is immoral is strongly counterintuitive if not absurd.

George and Tollefsen attempt to overcome this type of objection. In doing so, they adopt a two-pronged attack. First, they protest that 'a percentage' of these failed pregnancies are due to severe chromosomal defects and that these defects 'are so significant that a human embryo probably failed to form.'²³ Given the vagueness of 'a percentage,' one is naturally led to wonder: well, what percentage? For if the percentage of failed pregnancies in which a human embryo 'probably' failed to form is relatively small, then this reply amounts to nothing more than a red herring. As it turns out, the percentage is (generously)²⁴ 50 – that still leaves roughly 3,000,000 spontaneously aborted human fetuses in the United States alone, more than 200 times the number of people who die each year from AIDS in the United States. And that's annually. Surely that's enough such that, given SV, our failure to give serious and considerable consideration to and, in turn, attempt to do something about this 'epidemic' is seriously immoral. But, again, this is strongly counterintuitive if not absurd.

Second, George and Tollefsen claim that the argument from spontaneous abortions commits the naturalistic fallacy as it 'supposes that what happens in 'nature,' i.e. with predictable frequency in the absence of human intervention, must be morally acceptable when deliberately caused by human action.'²⁵ In short: no, it does not. In raising the issue of spontaneous abortions against SV, I and others do so in order to test our intuitions about whether standard human fetuses *do indeed* have the same intrinsic value and moral standing as individuals (1)–(4), again, an essential step in the evaluation of arguments from inference to the best explanation. For many of us, the issue indicates that standard human fetuses do *not* have the same intrinsic value and moral standing as individuals (1)–(4). But we do not thereby infer from this that it must be morally acceptable to kill human fetuses at the rate that nature does. And the reason we do not do so is

¹⁹ C.E. Boklage. Survival Probability of Human Conceptions from Fertilization to Term. *Int J Fertil* 1990; 35(2): 75–94; H. Leridon. 1977. *Human Fertility: The Basic Components*. Chicago, IL: Chicago University Press.

²⁰ Centers for Disease Control and Prevention, <http://www.cdc.gov/nchs/births.htm> [Accessed 1 Jul 2011].

²¹ Population Reference Bureau, http://www.prb.org/pdf09/09wpds_eng.pdf [Accessed 1 Jul 2011].

²² Centers for Disease Control and Prevention, <http://www.cdc.gov/hiv/topics/surveillance/basic.htm#ddaids> [Accessed 1 Jul 2011].

²³ George & Tollefsen, *op. cit.* note 2, p. 137.

²⁴ This percentage is derived from the same source used by George and Tollefsen: see Bruce Carlson. 1994. *Human Embryology and Developmental Biology*, 4th edn. Saint Louis, MO: Mosby-Year Book, Inc: 48. It should be noted that, unlike George and Tollefsen, Carlson does not even imply – let alone state explicitly – that, in these cases, 'a human embryo probably failed to form,' as George and Tollefsen write. He simply writes of the 'embryo,' saying things such as 'the small size of the embryo,' 'embryos obtained after spontaneous abortion,' and 'many of the aborted embryos are highly abnormal.'

²⁵ George and Tollefsen, *op. cit.* note 2, p. 138.

that this clearly does not follow. But all of this beside the point anyway, which, as stated before, is to test our intuitions about whether standard human fetuses do indeed have the *same* intrinsic value and moral standing as individuals (1)–(4), *not* to determine whether we may kill standard human fetuses at the rate that nature does.

SV and the law

A final objection to SV's conclusion is as follows. If SV is correct and the standard human fetus has the same intrinsic value and moral standing as individuals (1)–(4), what, if anything, should be the legal penalty for deliberately killing a standard human fetus? Arguably, it should be as follows: someone who deliberately kills a standard human fetus ought to be punished to the same extent that he would have been punished had he deliberately killed one of individuals (1)–(4). Like cases, after all, ought to be treated alike.

Assuming this is correct, one may ask: to what extent should someone who deliberately kills one of individuals (1)–(4) be punished? For present purposes, I will simply note two things. First, throughout most of the world, the legal penalty for deliberately killing individuals (1)–(4) is severe, usually involving lengthy incarceration. Second, most agree – including most defenders of SV, I presume – that it *ought* to be so severe. Given these two things, if individual (5) has the same intrinsic value and moral standing as individuals (1)–(4), it seems that the legal penalty should be equally severe. If this is correct, then, in the case of a typical induced abortion, the mother, the attending physician, and anyone else involved with facilitating the abortion should be charged with and convicted of murder and/or conspiracy to commit murder, and they should be punished accordingly. But that they should be charged and punished so is strongly counterintuitive if not absurd.

Beckwith addresses the preceding argument in the following way. First, he contends that, if one is presenting the preceding argument in an attempt to demonstrate an inconsistency for some anti-abortionists – namely, those who do *not* agree that the mother et al. should be charged with and convicted of murder and/or conspiracy to commit murder and punished accordingly – then the argument

does not prove that the unborn are not human persons or that abortion is not a great moral evil. It simply reveals that pro-lifers are unwilling to 'bite the bullet' and consistently apply their position. The fact that pro-lifers may possess this character flaw does not mean that their arguments for the unborn's full humanity are flawed.²⁶

Beckwith is correct about this – the argument under consideration does not prove that the unborn are not human persons or that abortion is not a great moral evil. But rather than demonstrating to the reader that *he* does not suffer from this 'character flaw' by consistently applying the anti-abortion position himself, Beckwith immediately moves on to his second criticism of the argument. The problem with moving on thusly, however, is that, in doing so, Beckwith leaves unanswered the very question at issue: *should* (logically speaking) defenders of SV and other like-minded anti-abortionists bite this unsavory bullet? In raising this argument against SV, I and others are contending that they should, and Beckwith's first reply to this argument fails to address this.

Beckwith's second reply fares no better when it comes to addressing the question of whether defenders of SV should bite this bullet. In it, Beckwith contends that, in all likelihood, women who would obtain illegal abortions and the physicians that would perform them would not be punished so severely. For, when making judgments of sentencing, legislatures will have to take into consideration all of the following 'facts':

- (1) Unborn human beings are full-fledged members of the human community and to kill them with no justification is unjustified homicide.
- (2) Because of a general lack of understanding of the true nature of the unborn child . . . most citizens who procure abortions will do so out of well-meaning ignorance.
- (3) Women who seek illegal abortions will probably do so out of desperation.
- (4) [T]he illegal abortionist will not be ignorant of the demands and purposes of the law and the nature of the being that the abortion kills. However, because juries may be reluctant to sentence such a physician to decades in prison let alone the death penalty, a lighter penalty may be easier to secure.
- (5) The government has an interest in preventing unjustified and premeditated killing of human beings, whether born or unborn, who live within its jurisdiction.²⁷

But such 'facts' are ultimately irrelevant, for what's at issue here is not what *would* be the case, but what *should* be the case. And the five preceding 'facts' do nothing to thwart the charge that, if SV is correct, then women who obtained illegal abortions and the physicians that performed them should be charged with murder and the conspiracy to commit murder and punished accordingly. To motivate this point, consider contract killings. Some women have hired contract killers to kill other standard adult human beings, such as their respective spouses. Clearly, their spouses are 'full-fledged members of the

²⁶ Beckwith, *op. cit.* note 2, p. 108.

²⁷ *Ibid.*: 110.

human community and to kill them with no justification is unjustified homicide.’ Just as clearly, the ‘government has an interest in preventing unjustified and premeditated’ contract killings within its jurisdiction. Moreover, it’s safe to assume that many of the women who do this probably ‘do so out of desperation.’ And, it’s also safe to assume that the contract killer ‘will not be ignorant of the demands and purposes of the law and the nature of the being’ that he kills. Even so, the law stipulates that contract killings are instances of murder and that both the killer and the one who hired the killer may be charged and punished accordingly. If Beckwith and other defenders of SV do not think that induced abortions should be treated similarly to contract killings, they should provide a principled reason for thinking so, something Beckwith fails to do.

One significant disanalogy, of course, pertains to (2): there isn’t a general lack of understanding of the true nature of the spouses and most citizens who procure contract killings will not do so out of well-meaning ignorance. Defenders of SV, then, might argue that, in virtue of this disanalogy, there is reason to punish the spouse-killing conspirators more severely than the fetus-killing conspirators. But a reply that trades on this disanalogy is objectionable on a number of grounds.

First, one reason there isn’t a general lack of understanding of the true nature of the spouses – more to the point, of standard adult human beings – is that the punishment for murdering them is as severe as it is. Among other purposes, the law serves the purpose of educating people on the true nature of standard adult human beings. Given this, it’s simply baffling that Beckwith – who deems abortion a ‘great moral evil’ – would have nothing critical to say about legislation wherein the law would fail to similarly educate people on the ‘true’ nature of standard human fetuses. The most expedient and effective way to combat the general lack of understanding of the ‘true’ nature of standard human fetuses would be to punish all those culpably involved in an illegal abortion just as severely as we punish those involved in any other murder. Indeed, not to do this would likely *reinforce* the view that standard human fetuses do not possess intrinsic value and moral standing equal to that of individuals (1)–(4). Again, that Beckwith fails to say anything critical about legislation wherein the law would fail to educate people on the ‘true’ nature of standard human fetuses as it does the true nature of standard adult human beings is simply bewildering.

Second, and related to the previous reply, given SV-guided changes in law, public policy, education, etc., as well as the passage of time, the general lack of understanding of the ‘true’ nature of fetuses will eventually dissipate. And with the dissipation of the general lack of understanding of the ‘true’ nature of fetuses goes the aforementioned disanalogy.

Finally, if a general lack of understanding of the true nature of the one who is killed significantly mitigates against severe punishment – as Beckwith would have us believe – then, arguably, convicted murderers who were motivated by deeply entrenched prejudices should not be punished as harshly as other convicted murderers, at least in some cases. Take, for example, a young-adult Nazi who has lived his entire life in a Nazi household in Nazi Germany, an environment in which there is a general lack of understanding of the true nature of Jews. As a result, this Nazi believes that Jews are morally inferior to Aryans; indeed, that they are the moral equivalent of dogs or pigs. Now, given Beckwith’s reasoning, if this Nazi kills a Jew, his lack of understanding of the true nature of Jews mitigates against severe punishment. But this is very difficult to believe.

CONCLUSION

As stated previously, critics of positions that attribute an intrinsic value and moral standing to individual (5) equal to that of individuals (1)–(4) challenge the premises for this conclusion, the conclusion itself in the form of a *reductio ad absurdum*, and, in some cases, both. For the sake of space, I have done the second of these things here, though a thorough critique of SV would involve challenging the premises as well. Even so, it’s worth noting that, as indicated above, defenders of SV hold that theories of intrinsic value and moral standing may be deemed all-things-considered implausible on the grounds of counterintuitive if not absurd implications. By their own standards, then, one may deem SV all-things-considered implausible on the grounds of counterintuitive if not absurd implications discussed above.

Rob Lovering is Assistant Professor of Philosophy at the College of Staten Island/City University of New York. His recent publications include: *The Problem of the Theistic Evidentialist Philosophers (Philo)*, *The Ever Conscious View: A Critique (Philosophy in the Contemporary World)*, *Futures of Value and the Destruction of Human Embryos (Canadian Journal of Philosophy)*, and *On What God Would Do (International Journal for Philosophy of Religion)*.