

Ectogenesis and the Moral Status of the Fetus

William Simkulet

Many people believe the morality of abortion stands or falls with the moral status of the fetus. Judith Jarvis Thomson's violinist argument bypasses the question of fetal moral status; even if the fetus has a right to life, she argues the gestational mother has a right to disconnect herself from the fetus. However, should ectogenesis – a technology that would allow the fetus to develop outside the womb – become sufficiently advanced, the fetus would no longer need a gestational mother to live. Recently, Joonas Räsänen has argued that parents have a right to secure the death of a fetus that has been removed from the mother's body, and that this right might extend to infanticide. However, here I argue Räsänen's position ignores the moral status of the fetus; if the fetus is morally comparable to beings like us, then of course parents lack a right to the death of their children. However, if the fetus is morally comparable to a tumor, then the right to kill it is philosophically uninteresting.

I. Introduction

Most opposition to abortion is grounded on the belief that the fetus is a person, broadly construed, from conception or soon afterwards. In “Why Abortion is Immoral,” Don Marquis notes that many of the most insightful authors on abortion agree that the moral permissibility of abortion “stands or falls on whether or not a fetus is the sort of being whose life it is seriously wrong to end.”¹ However, Judith Jarvis Thomson's argument in “A Defense of Abortion,” undermines this consensus.² Thomson assumes the fetus is a person with a full right to life, but argues the right to life is not a positive right to be given what one needs to survive, such as the right to use another's body.³

Advancements in technology promise an alternative to abortion. Current surrogacy technology allows for women to become surrogate gestational mothers to children they are not genetically related to. Advances in surrogate technology may allow for a fetus to be moved from the body of one woman to that of a surrogate mother. Similarly, *ectogenesis* – a technology that would allow a fetus to develop outside the womb – would allow for a fetus to be moved from a woman's body to an artificial womb that would carry it to term.

¹ Don Marquis. Why abortion is immoral. *The Journal of Philosophy* 1989; 86:183–202.

² Judith Jarvis Thomson. A defense of abortion. *Philosophy & Public Affairs* 1971; 1(1): 47–66.

³ Many philosophers believe there is a morally relevant distinction between killing and letting die; that killing is *prima facie* deeply wrong and “merely” letting die *prima facie* morally acceptable. To avoid this debate, for the purposes of this paper *abortion* will refer to medical interventions that involve disconnecting the fetus from the mother's body before it is independently viable. If we assume a distinction between killing and letting die, then it seems fair to say that abortion by disconnect kills nothing; if the fetus is not saved by ectogenesis, it is “merely” allowed to die.

For Thomson, women are said to have the right to abortion because they have the right to disconnect the fetus from their body. However, if either ectogenesis or advanced surrogacy were possible, disconnecting need not be fatal. At present, a woman's choice to disconnect herself from the fetus normally determines whether it lives or dies, but with such advances in technology, this wouldn't be the case – a woman may choose to disconnect, and the fetus may continue to develop outside her womb.

Historically, disconnecting a fetus from the mother has usually resulted in the fetus's death, but new technologies like surrogacy and ectogenesis would break this connection, adding a new wrinkle to the abortion debate – is a woman's right to abort merely a right to disconnect the fetus, or is it a right to secure the death of the fetus?

Recently Eric Mathison and Jeremy Davis look at three arguments that women have a right not just to disconnect the fetus, but to secure its death – the biological parents rights argument, the property rights argument, and the genetic privacy argument – concluding that these arguments are unpersuasive.⁴ Joona Räsänen discusses the same three arguments, but contends they succeed in showing that genetic parents have a right to secure the death of the fetus⁵ (and perhaps one's infant⁶).

This paper devotes a section to each of these arguments (sections III.-V.). However, before doing so it will be practical to devote a section (section II.) to discuss the moral significance of the moral status of the fetus to these arguments.

II. Moral Status

Philosophers disagree on the moral status of human fetuses. Roughly, to have a *moral status* is to be the sort of thing that moral agents may have obligations towards. To have moral status is to be a *moral subject* that can be benefitted or harmed.

For example, one might say that you possess moral status because you are a rational agent with inherent moral worth. But it wouldn't make sense to say that your pencil has moral status, as while snapping your pencil in half might frustrate your interests, the pencil has no interests that can be frustrated or sated.

In short, agents can have moral status, while things cannot. Normal, adult human persons have a robust moral status, possessing a wide range of rights that may generate obligations in others. Differences in moral status might result in different rights and generate different obligations; for example, one might contend that normal, human children persons may have less rights than adults, but their moral status might also create greater obligations in others.

Philosophers disagree about whether non-person animals have moral status, but many believe that if non-person animals have moral status, it is a lower moral status than that of persons. Beings with lesser moral status may have less rights than those with greater

⁴Eric Mathison & Jeremy Davis. Is there a right to the death of the foetus? *Bioethics* 2017; 31(4): 313–320.

⁵Joona Räsänen. Ectogenesis, abortion and a right to the death of the fetus. *Bioethics* 2017; 31:697–702.

⁶Joona Räsänen. Why Pro-Life Arguments Still are not Convincing: A reply to my critics. *Bioethics* 2018; 32(9): 628-633.

moral status, or the rights of beings with greater moral status may take priority over those with lesser moral status.

Rescue cases are thought experiments that may help illustrate our intuitions regarding moral status. Consider the following case from Michael Sandel:

[A] fire breaks out in a fertility clinic, and you have time to save either a five-year-old girl or a tray of 10 embryos. (Sandel 245)⁷

If you believe you should prioritize the life of one five-year-old girl over that of 10 human embryos, this is evidence you believe a five-year old girl has more moral status than 10 human embryos, and presumably far greater moral status than just one human embryo.

However, many anti-abortion theorists contend that such cases can be misleading. Henrik H. Friberg-Fernros contends that we might believe that embryos in such cases have the same moral status as the child, but that other factors might obligate us to prioritize the child over the embryos.⁸ Friberg-Fernros notes that children have developed greater interests than embryos, such that a single child's death may lead to more evil than multiple embryos. Friberg-Fernros's response here is somewhat problematic, as it suggests that the additional evils of interest-frustration are doing most of the work here, rather than the being's moral status. Despite this, our intuitions in rescue cases might not perfectly capture our intuitions about moral status, as contingent features about the situation might obligate us to prioritize one being over another even when both have identical moral status. Consider the following case:

[A] fire breaks out in a school, and you have time to save either a healthy five-year-old girl or a terminally ill five-year-old girl.

By assumption, both five-year-olds have the same moral status, but the terminally ill five-year-old girl probably benefits less from rescue than the healthy five-year-old girl, explaining why we might reasonably prioritize the healthy five-year-old girl.

Most opposition to abortion rests on the belief that fetuses, from conception or soon afterwards, have a moral status comparable to that of adult human persons because they *are* persons, broadly construed, where *person* is meant to pick out one of a broad range of categories that assorted theorists ground moral worth in, whether being a human organism⁹, a rational substance¹⁰, having a possible future it would be wrong to deprive

⁷ Michael J. Sandel. The Ethical Implications of Human Cloning. *Perspectives in Biology and Medicine* 2005 48(2): 241–247. George Annas and Rob Lovering discuss similar cases. See: George Annas. A French Homunculus in a tennessee Court. *Hastings Center Report* 1989; 19(6): 20–22. and Rob Lovering. The Substance View A Critique. *Bioethics* 2012; 27(5): 263-270

⁸ Henrik Friberg-Fernros. A Critique of Rob Lovering's Criticism of the Substance View. *Bioethics* 2015; 29(3): 211–216.

⁹ Jack Mulder. A Short Argument against Abortion Rights. *Think* 2013;12(34): 57-68.

¹⁰ Patrick Lee & Robert P. George. The Wrong of Abortion. in *Contemporary Debates in Applied Ethics*. Andrew I. Cohen & Christopher Health Wellman eds., 2005; Francis J. Beckwith *Defending Life: A Moral and Legal Case Against Abortion Choice*. New York, NY:Cambridge University Press. 2007; Robert P. George & Christopher Tollefsen. *Embryo: A Defense of Human Life*. New York, NY: Doubleday. 2008.

one of¹¹, etc. On this view, the fetus is numerically identical to the person that will develop from it, and has the same moral status as a normal, adult human person.

Many defenders of abortion rights believe that a fetus may become a person at some point during pregnancy, but that at least during early stages of development, a fetus is not a person, broadly construed, or not yet a person, and thus has a different moral status.

The question of fetal moral status turns on empirical questions regarding fetal development and complex metaphysical questions regarding personhood and personal identity over time. In light of this, many writers try to bypass the debate entirely. Thomson set the standard for bypassing this debate; assuming what the anti-abortion theorists seeks to argue – that a fetus is a person, broadly construed, with the same moral status and rights as you or I.¹² Thomson asks us to consider the following case:

Violinist: The Society of Music Lovers kidnaps you and attaches your circulatory system to a famous, innocent, unconscious violinist suffering from a kidney ailment that will kill him unless he remains connected to you for 9 months. (Adapted from Thomson 1972: 49-50)¹³

Here, the violinist is a person with a right to life. However, Thomson contends the right to life doesn't give the violinist the freedom to use your body without your permission. If we assume the fetus has the same moral status and rights as the violinist, then it seems that it is no more entitled to use the woman's body without her ongoing consent than the violinist would be to use yours in this case.

Mathison and Davis wish to "remain agnostic" about the moral status of the fetus. Similarly, Räsänen contends that the moral status of the fetus is outside the scope of his inquiry, merely noting that if the fetus is a person "it might change the outcome of the debate".¹⁴

The problem with this move is that in cases of ectogenesis, the moral status of the fetus makes all the difference. Thomson bypasses the debate regarding the moral status of the fetus by assuming what abortion critics argue and arguing the right to life is not a positive right to be given what one needs to survive. However, whether a biological mother has a right to kill a disconnected fetus stands or falls on the moral status of the fetus.

Räsänen seeks to argue that parents have a right to do more than just disconnect a fetus – they have the right to kill it. If the fetus lacks moral status, its death is relatively trivial. However, if a fetus is a person with full moral status, then Räsänen must show something *prima facie* absurd, that parents have the right to kill their children.

Most opposition to abortion turns on the claim that fetuses are persons, broadly construed, from conception or soon afterwards, with a comparable moral status and right to life as you or I. The reason for this is clear – as Marquis notes, killing *us* is one of the worst crimes.¹⁵ He says "Killing is especially wrong, because it deprives the victim of more

¹¹ Marquis, *op. cit.* note 1.

¹² Thomson, *op. cit.* note 2.

¹³ *Ibid* 49-50.

¹⁴ Mathison & Davis, *op. cit.* note 4, p. 314; Räsänen 2017, *op. cit.* note 5, p.701.

¹⁵ Marquis, *op. cit.* note 1, p. 190.

than perhaps any other crime.”¹⁶ Marquis contends that killing is wrong because it deprives them not only of what they currently value about their future, but anything about their future that they can come to value.¹⁷

In contrast, the violation of rights to property, privacy, or the like are trivial by comparison. They are lesser violations, and so draw less philosophical attention and carry less normative force. To illustrate this, suppose that you learned that one of your neighbors was a murderer, another a lawn gnome thief, and a third likes to go through your trash to speculate on your diet. Each revelation is disturbing, but only one is a matter of life and death.

Räsänen seems to be aware of this precarious dichotomy, proposing that his argument is aimed at those who believe the fetus has “some but not a full moral status,” which he contends are “most people.”¹⁸ Räsänen positions partial moral status as something of a middle ground between the traditional anti-abortion and prochoice theorists; but this is misleading.

First, to say a fetus has partial moral status is to say either (i) it has less rights than a normal, adult human person, or (ii) that it has the same rights but the rights of full persons trump those of persons with only partial moral status. The former might characterize fetuses as morally comparable to non-person animals; the latter as comparable to second-class citizens.

Second, most opposition to abortion turns on one claim about the moral status of the fetus – that it has a right to life comparable to those with full moral status. To say a fetus has partial moral status in either sense is to reject the traditional anti-abortion position, and thus cannot serve as a middle ground.

There can be sensible disagreement about the moral status of a fetus. Thomson-style arguments in favor of abortion rights bypass this controversy by assuming what the critic attempts to show, but arguments in favor of the right to kill a disconnected fetus that can be saved by ectogenesis do not have this luxury. If the fetus has no moral status, then its death is morally irrelevant, while if the fetus has full moral status, then its death is a substantive moral loss.

The next three sections of this paper explore three arguments that Räsänen believes show that parents have a right to secure the death of their fetus derived from three distinct rights – a right to property, a right to procreation, and a right to privacy. However, if the fetus has little or no moral status then its destruction is trivial; as such if Räsänen seeks to bypass the debate regarding the moral status of the fetus, then like Thomson he ought to assume what his critics will argue – that fetuses are persons. In the following sections I will show that if we assume fetuses are persons, then like Mathison and Davis argue, and contra Räsänen, parents have no right to secure the death of their fetuses.

III. The Property Rights Argument

Räsänen summarizes the property rights argument as follows:

¹⁶ *Ibid.*

¹⁷ *Ibid.* 189-190.

¹⁸ Räsänen 2017, *op. cit.* note 5, p.701 note 33.

1. The fetus is property of the genetic parents.
2. People can destroy their property.
3. Therefore, genetic parents can destroy their fetus.¹⁹

In support of premise 1, Räsänen contends that genetic parents own surplus embryos created during in vitro fertilization, such that no-one can use them without their parent's consent.²⁰ Furthermore, he contends that the genetic parents have a right to destroy these frozen embryos.²¹ However, both claims are dubious.

The first is comparable to a parent exclaiming "That's my child," but, as Räsänen says, "Obviously, children are not parents' property... Children are not property because children are persons: morally valuable individuals."²² Thus, when a parent makes such an exclamation, it would be uncharitably to interpret her as asserting a property right rather than noting genetic or historic relatedness.

Of course, Räsänen intends to skirt discussion of the moral status of fetuses, but he seems to suggest that beings with any moral status cannot be property. Thus, even if fetuses have only partial moral status, premise 1 is false on his view.

Similarly, the second claim need not imply the fetus is property. We often err on the side of caution regarding parental authority when it comes to their children's medical treatment. To illustrate this, consider a scenario discussed by James Rachels:

In the United States about one in 600 babies is born with Down's syndrome. Most of these babies are otherwise healthy - that is, with only the usual pediatric care, they will, proceed to an otherwise normal infancy. Some, however, are born with congenital defects such as intestinal obstructions that require operations if they are to live. Sometimes, the parents and the doctor will decide not to operate, and let the infant die.²³

Here we treat parents as though they have the authority to refuse life-saving medical treatment of their children - to let them die. The right to refuse others access to one's surplus embryos, and to let those embryos go unused, is consistent with such a parental right to let one's child die.

But what of the claim that these genetic parents have the right to destroy these frozen embryos? Rachels contends there is no morally significant difference between killing and letting die, such that if parents have the right to let their children die, there is good reason to think they might also have the right to kill them; doing so, at least, would be more humane and would lead to life and death decisions being made on less arbitrary grounds.²⁴ By this reasoning, parental authority may allow parents to have their embryos killed.

Note that Mathison and Davis contend that although many people believe they have the right to secure the destruction of cryopreserved embryos, they don't believe they

¹⁹ Räsänen 2017, *op. cit.* note 7, p. 700.

²⁰ *Ibid.*: 700.

²¹ *Ibid.*

²² *Ibid.*: 701.

²³ James Rachels. Active and Passive Euthanasia. *The New England Journal of Medicine* 1975; 292: 78-80.

²⁴ *Ibid.*

have the right to secure the death of the fetus.²⁵ This is consistent with the view that fetuses are not persons at conception, but at become persons later.

The property rights argument stands or falls on the moral status of the fetus. If we assume fetuses lack moral status, there is little reasonable opposition to their destruction – whether in the womb, cryopreserved outside the womb, or during ectogenesis. However, if fetuses have any moral status, they *belong* to nobody and are not property!

IV. The Genetic Parental Rights Argument

Most philosophers agree that moral agents have a broad right to liberty, from which the right to bodily autonomy and assorted procreative rights (such as a right to pursue a morally legitimate interest in procreation²⁶ and the right to refuse to procreate) can be derived from.

A person is a *genetic parent* of their child if and only if the child develops from a significant portion of that person's genetic makeup. In normal sexual reproduction, parents contribute half of their child's nuclear DNA (nDNA); however, in cases of cloning and parthenogenesis the genetic parent would contribute all of the child's nDNA.²⁷ Genetic parenthood includes a historical element; genetic parents directly contribute genetic material to their children. For example, this means that identical twins are not the genetic parents of their siblings' children, despite their genetic similarity.

Historically, becoming a genetic parent without your consent has involved rape – a violation of your right to liberty and one of the worst rights violations. As such, it has made sense to say that one has a right to refrain from becoming a genetic parent, and that this right is derived from one's broader rights to liberty. However, advances in technology might lead to one becoming a genetic parent through significantly lesser rights violations. Existing assisted reproductive technologies make it possible to use stolen sperm or eggs cells to create a child. Theft of such genetic material from medical storage need not involve the direct violation of one's liberty, but merely one's property right. Future cloning and/or genetic engineering technologies might allow for one to become a genetic parent with even less violation; as one might be able to create a clone and/or genetically engineered child from a naturally discarded cell, such as shed skin cells or a drop of blood.

Although existing assisted reproductive technologies and possible future technologies might allow for nonconsensual creation of genetic children without the violation of one's right to liberty, it strikes me that such unwanted reproduction still violates a commonsense right of some sort. Call this the right to genetic parental autonomy (GPA); the right to decide whether one becomes a genetic parent.²⁸ Actions that might

²⁵ Mathison & Davis, *op. cit.* note 4, p. 317

²⁶ George W. Harris. Fathers and Fetuses. *Ethics* 1986; 96(3): 594-603.

²⁷ Note that in cases of cloning, and other assorted assisted reproduction technologies, mitochondrial DNA from the donor egg is passed down to the child. In cases of cloning, this DNA does not belong to cloned parent unless the cloned parent is also the egg donor; thus clones will often not be genetically identical to their genetic parent.

²⁸ For the purposes of this paper, I will remain agnostic about whether the right to parental autonomy is limited to genetic parenthood, or if it extends to any kind of parenthood. Most non-genetic parents become parents through some consensual act of their own – they come to take responsibility for the children of others; however it is not inconceivable that there can be circumstances beyond one's

reasonably cause one to become a genetic parent without one's consent would violate this right. Sexual assault would violate both one's right to liberty and one's right to GPA; in contrast a mad scientist who clones you from a discarded genetic skin cell only violates the latter right.

Does this right yield the right to kill one's unwanted genetic offspring? To answer this, consider what Räsänen calls the "Right Not to Become a Biological Parent Argument:"²⁹

1. Becoming a biological parent causes harm to the couple because of parental obligations towards the child.
2. The couple has the interest to avoid the harm of parental obligations.
3. Therefore, the couple has a right to the death of the fetus to avoid the harm of parental obligations.³⁰

There are several problems with this argument. First, premise 1 suggests that mere genetic parenthood is sufficient to generate moral obligations, but this is far from obvious. Don Marquis suggests something similar, contending that gestational mothers, *qua* biological mothers, come to have a special moral obligation to the fetuses they carry.³¹ However, elsewhere I challenge this view, noting that Marquis has failed to show that a mere biological category makes a moral difference.³²

However, if we assume that mere genetic parenthood generates special parental moral obligations towards the child then killing the fetus wouldn't avoid these obligations, but rather fail them!

Rather than avoidance, Räsänen seems to be interested in rectification, proposing that after some previous rights violation resulted in one becoming a genetic parent without their consent, one could remove these special parental obligations by killing one's genetic child. However, this is deeply confused. Consider the following case:

Gnome Theft: Smith asks his neighbor, Jones, to house-sit while he is away for the week. During this time Jones steals Smith's lawn gnome and sells it for a tidy sum. However, he later regrets his action and wishes to rectify his wrongdoing. He replaces the stolen gnome with a brand new one, and Smith never finds out.

Most would agree Smith's property rights were violated, even though he is seemingly not worse off. Suppose, though, that Jones confesses and apologizes. Smith might reasonably respond "no harm done" and forgive him, and for many of us, this might be the end of the matter. However, suppose that Smith reveals the gnome was an antique, that it had sentimental value, or that he had hidden his life's savings inside. Jones's replacement gnome and confession fail to fix any of this. But now consider:

control that causes to become a (non-genetic) parent without one's consent in such a way that does not violate this right.

²⁹ Räsänen, *op. cit.* note 5, p. 698.

³⁰ *Ibid.*

³¹ Don Marquis. A defence of the potential future of value theory. *Journal of Medical Ethics* 2002; 28, 198–201; Don Marquis. Manninen's defense of abortion rights is unsuccessful. *American Journal of Bioethics* 2010; 10(12), 56–57.

³² William Simkulet. The Parenthood Argument. *Bioethics* 2018; 32(1), 10-15.

Life Theft: Smith asks his neighbor, Jones, to house-sit while he is away for the week. However, unbeknownst to Smith, Jones is an assassin hired to kill him, and uses this opportunity to kill Smith and dispose of the body without being caught. However, he later regrets his action and wishes to rectify his wrongdoing...

Uncontroversially Smith has the right to life, and Jones violates this right. However, as with many rights violations, there is no “undoing” this – Jones cannot give Smith his life back. The lesson here is clear – it isn’t always possible to rectify a rights violation.

Suppose that you become a genetic parent without your consent, violating your right to GPA. Would killing your genetic offspring rectify the problem? I think not; the death of your genetic offspring doesn’t mean you’re not a genetic parent, it means your genetic child is dead.

Note, however, that Räsänen is not really concerned with the right to GPA; rather he seems to be concerned exclusively with the right not to incur parental obligations, and contends that the death of the fetus removes these obligations (or, at least, dramatically reduces them... perhaps the genetic parent is obligated to pay for the funeral, but may be relieved they need not change the child’s diapers).

Here Räsänen conflates being a moral parent with being a genetic parent. Genetic parents have a historical and genetic connection to a child, but moral parents care for and raise their children. Adoptive parents are moral parents; many genetic parents abdicate parental responsibility and cannot reasonably be said to be moral parents to their genetic children. To paraphrase Marquis, to treat genetic parents as moral parents would be treating a mere biological category as a moral category.³³

Of course, when we learn about deadbeat parents – those who abandon their children without support – we are rightfully outraged. However, many governments allow genetic parents to surrender their default legal parental rights and duties to the state, care agencies, or adoptive parents. There are compelling reasons in favor of adopting such social policies; if nothing else, they disincentivize genetic parents from illegally killing or abandoning their children. There can be reasonable moral disagreement as to whether, and when, it is morally acceptable to give up one’s genetic children; but merely having the option to do so undermines the first premise of Räsänen’s argument, as becoming a genetic parent needn’t harm that person by burdening them with moral parental responsibility.

Of course, some genetic parents might feel bad about abandoning their genetic offspring. Mathison and Davis note that many genetic parents who give their children up for adoption feel they are failing their moral obligations, and that they can be psychologically harmed by failing to satisfy what they see as their obligations to their children – even when these obligations are merely self-imposed or socially-imposed.³⁴ These harms are morally significant, but trivial compared to the harm of killing a person.

If the fetus lacks any moral status, we might tarry here with a discussion of what one’s moral obligations might be when faced with false moral beliefs and/or unreasonable social pressures.³⁵ However, if we assume a fetus has full moral status, the harm that would

³³ Marquis, *op. cit.* note 1, p. 186.

³⁴ Mathison & Davis, *op. cit.* note 4, p. 315

³⁵ Consider, for example, the work of Jonathan Bennett and Allison McIntyre with regards to Huckleberry Finn’s “failure” to turn in his escaped slave friend Jim. Jonathan Bennett. The Conscience of Huckleberry Finn. *Philosophy* 1974; 49: 123-134; Allison McIntyre. Is Akratic Action

be caused by killing the fetus far outweighs the minor psychological harms the genetic parents experiences. Furthermore, if a genetic parent would feel bad about abandoning their child, surely they'd feel worse about killing it!

Consider a variation of this argument: the procreative autonomy argument:

1. Persons have a right to life.
2. Persons have a right to procreative autonomy.
3. Violating the right to procreative autonomy is worse than violating the right to life.
4. If violating the right to procreative autonomy is worse than violating the right to life, then violated genetic parents have the right to kill their nonconsensually produced genetic children.³⁶
5. Therefore, genetic parents have the right to kill their nonconsensually produced genetic children.

How plausible is this argument? Consider the following case:

One Lie: Jack and Jill, once a passionate couple, meet again at their college reunion and hit it off. Jack confides to Jill that he has refrained from sexual activity since learning that he is genetically predisposed to alcoholism because he is deeply against passing on such genes. Jill, wanting one last night of passion, lies to Jack, claiming she is infertile. They have sex, Jill becomes pregnant, has a child – a son – and never tells Jack. Thirty years later, Jack discovers the existence of his son using a genetic heritage website, then kills his child.

Jill violates Jack's procreative autonomy; but the notion that this gives him the authority to kill his son is absurd. The problem with this argument is that premise 3 is far from obvious, and premise 4 seems dubious; the violation of a right might entitle one to retribution or restitution, but it's not license to harm innocent people. A victim of such an assault doesn't obtain the right to violate the rights of other, unrelated innocent people; for example, such a victim doesn't have a right to break into my home, eat my porridge, and nap in my bed. I'm free to allow such rights violations to go unaddressed, but it would be quite silly for such a person to argue that because he or she was the victim of a grievous assault, my rights don't apply.

At this point, we can compare Räsänen's biological parent argument with the procreative autonomy argument. The former argument is invalid, as premises 1 and 2 do not necessitate the truth of the conclusion – to illustrate this, consider the following argument:

1. Standing in line at the post office causes the harm of me being late to work.
2. I have an interest to avoid the harm of being late to work.

Always Irrational? in *Identity, Character, and Morality*. , O. Flanagan and A. Rorty (eds.), Cambridge, MA: MIT Press, 1990; 379-400.

³⁶ Alternatively, one could entertain the premise that nonconsensually produced genetic children persons do not have a right to life, or that they have less of a right to life than persons produced consensually. See Thomson 1971, *op. cit.* note 2, p. 49.

3. Therefore, I have a right to the death of anyone who would stand in line in front of me at the post office.

This argument shares the same logical form with Räsänen's, but the conclusion is ridiculous and doesn't follow from the premises. Räsänen's argument narrowly skirts the obvious absurdity of this argument only by remaining silent about the moral status of the fetus. In contrast, the parental autonomy argument is valid; the truth of the premises guarantees the truth of the conclusion. However, premise 3 is far from obvious, and intuitively premise 4 is false; the wrongness of one rights violation doesn't provide the victim with license to violate the rights of morally tangentially related innocent people. Jack's son is not morally responsible for the sins of his mother, and Jack's killing his son doesn't relieve him of any real or imagined parental obligations to his son so much as utterly fail them while also violating his son's right to life.

V. The Genetic Privacy Rights Argument

It is generally accepted that people have a right to privacy, and that violating that right can cause serious harm. James Rachels contends that privacy is valuable because the ability to control information about ourselves is related to our ability to create and maintain a variety of social relationships.³⁷ People can create an intimacy by freely divulging private personal information about one's desires, fantasies, history, or experiences. Privacy rights violations can hinder our ability to relate to others, cause psychological harm, and hinder our freedom to live our lives as we see fit.

Consider the physician/patient relationship. This relationship is awkward, and patients have valid medical reasons to disclose intimate personal information in a professional setting – including their daily physical routines, diets, and their sexual activities; but such information is otherwise usually reserved for intimate settings with close friends or loved ones. Physicians have a professional moral obligation to keep this information confidential, and not to use this information for anything other than the medical benefit of their patient.

Briefly consider the following abuses – (1) a physician jokes with her colleagues about her patient's sexual history, (2) a physician divulges a patient's medical history to a drug company for use in direct marketing, and (3) a physician refuses to treat a patient because of the patient's sexual orientation. The first two abuses involve the physician divulging private information for non-medical reasons, while the third involves a physician using confidential medical information for something other than the benefit of the patient.

As it so happens, one can learn a lot about a person from studying her genetics and divulging this information – like other private information – can cause serious harm to that person. Hence, there is compelling reason to think that we have a right to genetic privacy. If advances in technology makes it easier to read one's genetic information without their consent (much as advances in surveillance technology has made it easier to listen or watch people without their consent), there is good reason to think reading this information

³⁷ James Rachels. Why Privacy is Important. *Philosophy and Public Affairs* 1975; 4(4): 323-333.

without consent, or during extenuating circumstances (perhaps even during a crime scene investigation) would be morally unacceptable, as would divulging such information indiscriminately.

Räsänen contends that this right to genetic privacy gives genetic parents the right to secure the death of their fetus, asking us to consider the following case:

For example, if a mad scientist finds a way to clone humans, steals my DNA and creates a fetus that is genetically identical to me, which he then gestates in an artificial womb, my right to genetic privacy is violated. Therefore, in such a case, I have a right to the death of the fetus.³⁸

The most important feature of Räsänen's case is that unlike normal sexual reproduction, which results in a fetus with a unique genetic code (derived from those of its parents, but not identical to either), clones possess identical nDNA to their genetic parent.

However, this case contains a variety of extrinsic details that might bias the reader – notably (I) Räsänen's scientist steals (*prima facie* morally wrong) and (II) creates a clone (many people believe cloning is itself *prima facie* immoral; for example, consider the debate about a child's right to an open future³⁹). Before I redress these issues, consider the following case:

One Clone: Donald is genetically predetermined to go bald and he doesn't want anyone to know. As it so happens, a mix up at the hospital led to a clone being created with Donald's nDNA. Twenty years later, Donald discovers the existence of this cloned, genetically identical offspring on a genetic heritage website. He breaks into his clone's home and kills him.

Much as it is somewhat absurd to suggest that Jack can kill his adult child because Jill violated his procreative autonomy, so too does it seem absurd to think Donald can kill his adult clone on the basis that the lab mix up violates Donald's genetic privacy. But now suppose the case played out a bit differently.

One Father: One day Hank discovers the existence of his genetically identical genetic father on a genetic heritage website. After confirming this, he breaks into his genetic father's home and kills him.

If each of us possesses a genetic privacy right to our DNA, then it strikes me that both Hank and Donald each own their own DNA. Thus, if Donald is justified in killing Hank to protect his genetic privacy, it seems to follow that Hank has the same right to kill Donald. If this genetic privacy right extends to sexually produced children with distinct DNA, then it seems that not only do parents have a moral right to the death of their genetic children, but their genetic children also have a moral right to the death of their genetic parents!

Räsänen contends that the right to the death of the genetic child should be seen as a collective right, such that both parents have to agree on the death of the child.⁴⁰ If true, this might introduce some asymmetry into which family members can kill which... but

³⁸ Räsänen, *op. cit.* note 5, p. 699.

³⁹ Joel Feinberg. The child's right to an open future. in *Whose Child? Children's Rights, Parental Authority, and State Power*, William Aiken, Hugh LaFollette (eds.), Totowa, NJ: Rowman and Littlefield, 1980.

⁴⁰ Räsänen, *op. cit.* note 5, p. 700.

this is utterly inconsistent with his previous contentions regarding parental autonomy – suppose that the mad scientist doesn't clone Räsänen, but instead genetically engineers a child using half of Räsänen's nDNA, and half the nDNA of someone who had consented to releasing her private genetic information – perhaps someone with unique genetical features that she hoped would lead to medical breakthroughs. If Räsänen's right to the death of his genetically engineered genetic offspring is collective in this sense, then to exercise this right he can only kill his child if he gets the consent of the other genetic parent! Note that this means that if Räsänen *does not want* to divulge his genetic information, he ought to prefer that a mad scientist clone him, rather than just use his genetics to genetically engineer a child.

But, of course, all this is ridiculous. Much as Thomson asks us to imagine a conflict of rights between you and a famous violinist who has been attached to you without your permission that will die if disconnected; in *One Lie and One Clone* we're asked to imagine a conflict of rights between an agent and their adult person genetic child. Thomson contends that it would be outrageous to think that the violinist has a right to use your body without your permission.⁴¹ The violinist uncontroversially has a right to life, but this right to life doesn't give him a right to continue using your body. However, it is similarly outrageous to think that genetic parents have the license (collective or otherwise) to kill their adult genetically related offspring.

This disparity in our intuitions between these cases is easy to explain – in Thomson's case, your right to liberty has been violated – the society of music lovers have abducted you and attached you to a violinist without your consent. Being forced to stay attached to the violinist would be a continuous violation of that liberty. In contrast, the rights violations in *One Lie and One Clone* are transitory. – In *One Lie*, Jill violates Jack's right to procreative liberty once. His son might remind Jack of this violation, but his son's continued existence doesn't constitute a further violation of this right).

The same is true in *One Clone*; the mix up at the lab violates Donald's right to keep his genetic predisposition to baldness secret. However, now that this information has been disclosed, Donald's right to privacy isn't being continuously violated. Of course, Donald might suffer further indignities because of this; perhaps Hank shares his genetic heritage with the world, proudly proclaiming he is bald and that he is a clone. These revelations might inconvenience Donald; prospective dates might refuse to date a bald man, date a father, or might "opt for the younger model," much to his dismay. But these harms are not themselves violations of his right to privacy. The idea Donald can kill Hank to keep his private information private is on par with the idea that he can kill anyone who accidentally overheard his physician talking about his genetic predisposition to baldness.

Note, though, that our intuitions about these cases might be biased by unnecessary features of the cases; to avoid these consider the following case:

Twins: Alice and Alyce are (poorly named) genetically identical twins. One day, Alice kills Alyce, claiming that she "knew too much" about Alice's private genetic information.

⁴¹ Thomson, *op. cit.* note 2, p. 49.

No clones; no theft. By assumption Alice has a right to genetic privacy. Alyce has access to Alice's private genetic information without her consent. Despite this, it is absurd to conclude that this entitles her to kill her sister. Thus, it is absurd to conclude that one's right to genetic privacy gives them the right to secure the death of anyone sharing their genes.

Most of us would agree that we have a right to genetic privacy. Violation of this right generally involves willful or negligent sharing of private genetic information, as illustrated by the cases of physician misconduct above. The problem is that Räsänen would have us believe that there mere possibility that children, or others, could come to learn facts about their genetic heritage is sufficient to violate this right *and* that such a violation is sufficient to justify the killing, effectively leading to the absurd conclusion that people can kill all of their genetic relatives to protect their genetic privacy.

V. Conclusion

At times the abortion debate seems intractable; but developments like ectogenesis promise a solution that will satisfy both sides; women seeking abortion can disconnect from a fetus, and prolife theorists can provide ectogenesis.

Räsänen argues that the availability of ectogenesis may not end the abortion controversy, as genetic parents may wish to do more than disconnect from a fetus, they may wish to kill that thing. He argues that the right to terminate a fetus outside the womb can be derived from a right to property, a right to parental liberty, and/or a right to privacy.

There are two substantial problems with Räsänen's approach. First, it's not clear that the right to terminate a fetus outside the womb can be so easily derived from the rights in question. Second, his discussion suffers by ignoring the moral status of the fetus.

If we assume the fetus has full moral status, then killing a fetus undergoing ectogenesis would be morally comparable to killing an adult human person with full moral status. It would be absurd to conclude that genetic parents have a right to kill their adult human offspring. One might try to ground the wrongness of killing an adult human person in something other than its moral status, as Friberg-Fernros does when discussing rescue cases⁴², but this would merely trivialize moral status with little to show for it.

Meanwhile, if we assume the fetus lacks moral status, at least early on, then killing a fetus undergoing ectogenesis is morally trivial, perhaps akin to breaking one's own property or keeping a secret. The right to secure the death of your fetus would be comparable to the right to break your own garden gnome and face little moral opposition. Even if we assume a fetus has partial moral status, then the right to secure the death of your fetus would be of relatively little interest, perhaps on par with the right to kill your own pet, though it's far from obvious that pet owners have such a right

I've argued the right to kill one's fetus likely stands or falls on its moral status. If we assume a human fetus has a moral status comparable the moral status of beings like

⁴² Friberg-Fernros *op. cit.* 8 note p 216.

you or I, it would be absurd to think that parents have a right to secure their child's death. But if we assume a human fetuses lack a moral status, the topic is trivial.

William Simkulet, Park University
simkuletwm@yahoo.com

Bibliography

- Annas, George. A French Homunculus in a tennessee Court. *Hastings Center Report* 1989; 19(6): 20-22.
- Beckwith, Francis J.. *Defending Life: A Moral and Legal Case Against Abortion Choice*. New York, NY:Cambridge University Press. 2007.
- Bennett, Jonathan. The Conscience of Huckleberry Finn. *Philosophy* 1974; 49: 123-134
- Feinberg, Joel. The child's right to an open future. in *Whose Child? Children's Rights, Parental Authority, and State Power*, W. Aiken, H. LaFollette (eds.), Totowa, NJ: Rowman and Littlefield, 1980.
- Friberg-Fernros, Henrik. A Critique of Rob Lovering's Criticism of the Substance View. *Bioethics* 2015; 29(3): 211-216.
- George, Robert P. & Tollefsen, Christopher. *Embryo: A Defense of Human Life*. New York, NY: Doubleday. 2008.
- Harris, George W.. Fathers and Fetuses. *Ethics* 1986; 96(3): 594-603.
- Lee, Patrick & George Robert P. The Wrong of Abortion. in *Contemporary Debates in Applied Ethics*. Andrew I. Cohen & Christopher Health Wellman eds., 2005.
- Lovering, Rob. The Substance View A Critique. *Bioethics* 2012; 27(5): 263-270.
- McIntyre, Allison. Is Akratic Action Always Irrational? in *Identity, Character, and Morality*. , O. Flanagan and A. Rorty (eds.), Cambridge, MA: MIT Press, 1990; 379-400.
- Marquis, Don. Why abortion is immoral. *The Journal of Philosophy* 1989; 86: 183-202.
- Marquis, Don. A defence of the potential future of value theory. *Journal of Medical Ethics* 2002; 28, 198-201.
- Marquis, Don. Manninen's defense of abortion rights is unsuccessful. *American Journal of Bioethics* 2010; 10(12), 56-57.
- Mathison, Eric & Davis, Jeremy. Is there a right to the death of the foetus? *Bioethics* 2017; 31(4): 313-320.
- Mulder, Jack. A Short Argument against Abortion Rights. *Think* 2013;12(34): 57-68.
- Rachels, James. Active and Passive Euthanasia. *The New England Journal of Medicine* 1975; 292: 78-80.
- Rachels, James. Why Privacy is Important. *Philosophy and Public Affairs* 1975; 4(4): 323-333.
- Räsänen, Joonas. Ectogenesis, abortion and a right to the death of the fetus. *Bioethics* 2017; 31: 697-702.
- Räsänen, Joonas. Why Pro-Life Arguments Still are not Convincing: A reply to my critics. *Bioethics* 2018: 32(9): 628-633.
- Sandel, Michael J. The Ethical Implications of Human Cloning. *Perspectives in Biology and Medicine* 2005 48(2): 241-247.

Simkulet, William. The Parenthood Argument. *Bioethics* 2018; 32(1), 10-15.

Thomson, Judith Jarvis. A defense of abortion. *Philosophy & Public Affairs* 1971; 1(1): 47-66.