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WHOSE BODY IS IT, ANYWAY?

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Opponents of abortion must typically establish two separate claims: first, that the fetus has a significant right to life, and second, that the fetus has the right to utilize its mother’s body for the support and nourishment of that life. One strategy sometimes used to bridge the gap between these two claims involves the general assertion that when an individual has a right to something, and another person can provide him with that thing at only moderate personal sacrifice, then the individual has a right to assistance from the second person. It is then asserted that pregnancy does not require too great a sacrifice on the part of the mother, so that she has an obligation to assist the fetus by allowing it to use her body for nourishment. But this strategy is a troubled one, since many reject the basic principle on which it relies. Cases such as Judith Thomson’s famous violinist example have convinced many either that the principle itself is false, or else that pregnancy involves too great a sacrifice to fall under it.

So opponents of abortion need some more effective way of arguing for the transition from the first claim to the second. One of the most common attempts to provide such an argument consists in showing that the pregnant woman has given the fetus that right by engaging in the act of sexual intercourse which created the fetus and made it dependent on her. But filling out this argument involves settling extremely complex issues about what counts as giving someone a right. How voluntary must the act of intercourse have been in order for it to count as the woman’s giving the fetus the right to her body? Is it necessary (or sufficient) that the woman knew at the time of intercourse that she might become pregnant? Does the degree of probability of her becoming pregnant affect whether or not she gave the right to the fetus? If she took steps to avoid becoming pregnant can she claim she did not give the fetus a right? Can the woman make her gift of the right conditional, for example, can she specify that it becomes void if the pregnancy threatens her life or health? Answering all these questions is very difficult,
and it is far from clear that the answers will support the right-to-life position on abortion.\(^3\)

However, opponents of abortion have available still another strategy that evades all these issues, since it contends that the fetus's right to use its mother's body does not depend on her giving it that right, or indeed on any act or mental state of hers at all. This argument contends that the fetus has a right by nature to use the woman's body, in precisely the same way that the woman has a natural right to the use of her own body. What, after all, is the woman's claim to her own body? Primarily, it would appear, that she has been endowed with it by nature; but the fetus can make the same claim with respect to the woman's body that she herself can—the mother's body is part of the life support system with which the fetus, too, is endowed by nature. The fetus, on this view, has the same right to that body that the mother does—quite regardless of whether her act of intercourse was voluntary, knowing, or qualified by attempts to avoid pregnancy. And unlike the alleged right to assistance previously mentioned, this natural right of the fetus's would not depend on the degree of sacrifice the mother must undergo to satisfy it. Of course, the natural right of the fetus to the mother's body will conflict with the natural right of the mother to her own body in cases where the pregnancy is unwanted. But this conflict can be resolved by techniques that have been developed in other areas for handling conflicting rights; the territory here is familiar (if difficult) moral ground.

In this paper, I will elaborate and examine this argument that the fetus has a natural right to its mother's body. To my knowledge it has only been discussed in print by three philosophers, Mark Wicclair, Harry Silverstein, and Jim Stone\(^4\), but a number of people find the argument to be a very natural expression of what seems wrong to them about abortion.

I shall use the term "person" in a minimalist way to designate the possessor of at least one moral right. Of course, one of the major arguments concerning abortion is whether or not the fetus is a person in this sense. I personally find it difficult to agree that at least a very early fetus is a person in this sense. But for purposes of this argument we must assume the fetus is a person. Otherwise our question would be answered before we started, since a creature that lacks rights entirely could have no right to its mother's body.

What kind of entities are persons? Most of the debates on this subject have focused on the question of which creatures besides adult human beings are persons—whether fetuses, infants, higher animals, sophisticated computers, and so forth, qualify. But my concern in asking the question is different. Even with respect to adult human beings we can ask precisely what part or aspect
of the adult is the right-bearer. Some would answer this question by saying that it is the whole human body, possessing the capacity to function in certain distinctive ways, that counts as the person and right-bearer. Others would say it is a psychological entity, typically associated with such a body, that is the right-bearer. It will streamline our discussion to adopt one or the other of these two views, although the issue of which one is correct cannot be resolved here. Probably the main questions can be formulated within either view, but since it appears they can be formulated more clearly if we assume the person is a psychological entity, I shall adopt this view. Note that this does not commit us to some form of non-materialism: one can hold that the entity in question consists (in the case of human beings) of psychological capacities that are identical with, or realized by, brain processes.

Of course a fetus, at least in its early stages, is not the kind of psychological entity typically envisioned when it is said that persons are psychological entities. Early fetuses, and probably late ones as well, do not have sufficiently complex mental lives. This is precisely what leads many, including myself, to deny that fetuses are persons. For purposes of our argument, then, we will have to assume that an entity can be a person despite absence of complex psychological characteristics. Since a very early fetus has no psychological characteristics, our remarks will only apply to fetuses at a later stage of development.

II.

The argument which we are examining contends that the fetus has a right by nature to use its mother’s body, in precisely the same way that its mother has a natural right to the use of her own body. To assess this argument, we must first investigate the basis of the natural right to its own body possessed by the mother, or indeed any adult.

Many authors have assumed that individuals have a right, often characterized as a property right, to their own bodies. Most famously, John Locke states that “every Man has a Property in his own Person.”5 The content of this right often remains vague. However, most of us assume that the right to our bodies includes the right to use our bodies, to dispose them as we see fit (within certain limitations concerning the effects on other persons of our doing so), to exclude others from the use, disposition, harm or expropriation of our bodies unless with our consent, and the second-order right to transfer (by gift or perhaps sale) the right to certain parts of our bodies, their activities, or their products.6 Some authors conceive of these rights as property rights, others deny they are property rights, while still others believe that they are a combination of personal and property rights.7 It is commonly believed that the right to one’s body is, in normal cases at least, stronger than one’s right to other external objects or possessions, such as land or artifacts. This means
that weightier claims are necessary to override someone's right to her body than are necessary to override her right to an ordinary possession. Thus, for example, many of us are willing that people be taxed in order to buy blood for the seriously ill, but we feel much less willing that anyone should be forced to give his own blood to the ill. Despite the commonly-felt centrality and strength of the right to one's body, few authors who acknowledge or rely on rights to one's body attempt to state the basis for these rights. Since the right to one's body is often seen as one of the most fundamental rights, the basis for this right is a deep issue in moral and political philosophy that deserves greater scrutiny that it standardly receives.

There seem to be two generic possibilities concerning the source of a natural right to a body: either the right to a body is a fundamental right, arising directly from some natural or metaphysical fact, or it is a derived right, arising from some underlying more fundamental right. In this paper I will limit my discussion to five sub-possibilities: four versions of the claim that the right to a body arises from a metaphysical fact, and one version of the claim that the right to a body arises from a more fundamental right. In each case, I will argue that the claim under scrutiny cannot ground a natural right of the fetus to the use of its mother's body. Since I will not have exhausted all the possible groundings for a natural right to a body, clearly I will not have decisively disposed of the thesis that the fetus does have a natural right to its mother's body. However, this discussion at the minimum should alert those who are opposed to abortion that they will have to seek arguments elsewhere to support their position, and it may provide at least suggestive grounds for believing that this general strategy for arguing against the moral permissibility of abortion is unlikely to succeed.

III.

In everyday conversation, people often talk about some piece of a human body as "belonging" to them. Thus one hears people say "That's my foot you're standing on," and in philosophical contexts people often talk about an entire body as belonging to them. Thus Descartes states "...I possess a body with which I am very intimately conjoined." Such talk tends to conflate two kinds of claim that we must keep distinct. On one hand, there is the metaphysical claim that a certain person (i.e., psychological entity) has a special metaphysical relationship, usually involving sensation and control, with a given body. On the other hand, there is the moral claim that a certain person has moral rights to the use and enjoyment of a given body. Clearly these two claims are conceptually distinct. One could be closely conjoined to a body without having special rights over it; Hobbes believed this was true in the state of nature. Similarly one could have rights over a body without
being closely conjoined to it. Or so it appears at first blush. However, it is plausible to think that the metaphysical claim forms the basis for the moral claim—that it is close conjunction that grounds the right to a body.

What constitutes “close conjunction” between a person and a body? The most natural proposal in this arena has been formulated by Sidney Shoemaker as a thesis about what it is for a person to be embodied in a certain body. According to Shoemaker, “volitional embodiment and sensory embodiment are together the primary criteria of, or constitutive factors in, embodiment simpliciter.” Shoemaker describes a person as “volitionally embodied in a certain body to the extent that volitions of that person produce in that body movements that conform to them or fulfill them, that is, movements that the person is trying to produce or which are constitutive of the actions he is trying to perform.” He describes a person as “sensorially embodied” in a certain body to the extent that the interactions of that body with its surroundings produce in the person sense experiences corresponding to, and constituting veridical perceptions of, aspects of those surroundings. Most people would hold that this account of “sensorial embodiment” needs to be expanded to include the person’s direct awareness of states of the body itself (by contrast with its surroundings): the body with which I am closely conjoined is, among other things, the body of whose states of cold, heat, pressure and pain I am directly aware.

This account is an attractive one. After all, your body is the one through whose eyes you see, whose injuries you feel, and whose movements you directly control. Moreover, the account handles certain hard cases in a satisfactory manner. For example it implies that split personality and split-brain cases are ones in which two (or more) persons are embodied in a single body, because each personality senses the world through that body, senses the states of that body, and is capable of directing that body’s activities (although on a “time-sharing” basis).

Using this account of what it is to be embodied in a given physical body, one could then say that the metaphysical relationship of embodiment grounds a person’s moral right to the body in which he or she is embodied. On this view, it is precisely because I sense through a certain body, am directly aware of its states, and control its movements, that I have a special moral right to control this body and determine what shall happen to it. As Cohen states, the factual truth that something is my arm provides a prima facie plausible basis for the claim that I alone am entitled to decide about the use of this arm and to benefit from its dexterity.

It is obvious that this thesis does not provide any basis for the claim that a fetus has a natural moral right to its mother’s body. The fetus does not detect its external surroundings through its mother’s body in the same sense that she detects her external surroundings through that body. (For one thing, the mother’s body constitutes part of the fetus’s external surroundings.) The fetus
does, of course, receive sensations of light, sound, and vibration through the interactions of the mother's body with the world external to the mother's body, and perhaps these give rise, in the fetus, to veridical perceptions of this external world. But this fact does not license us to say that the fetus is sensorially embodied in the mother's body, any more than the fact that a person enclosed in a flour sack receives sensations through its fabric licenses us to say that the person is sensorially embodied in the flour sack. The fetus is not directly aware of states of the mother's body in the same way that it is aware of states of its own body, or that she is aware of states of her body. And the fetus, even if it develops to the point of being able to initiate action rather than mere movement, does not act with the mother's body.

The most natural basis for the thesis that a person has a natural right to a given body—the metaphysical fact that the person is embodied in that body—cannot provide any support for the thesis that a fetus has a natural right to its mother's body. The mother alone is embodied in her body.

IV.

However, one could argue that embodiment in the sense just explained, although a sufficient condition for having a moral right to a body, is not a necessary condition. This view might receive motivation from the fact that there are certain physical objects that are not, properly speaking, natural parts of a given human body, and yet which may seem to come to have an analogous moral status to parts of the human body. For example, there are growing numbers of persons whose lives or health have been enhanced by organ transplants, or by artificial aids such as respirators, pacemakers, attachable insulin pumps, lens implants, kidney dialysis machines, and so forth. Consider Barney Clark and his implanted Jarvik-7 heart. Mr. Clark did not sense the world through his artificial heart; he was not directly aware of its states; and he could not directly control its movements in the same way that he could control the movements of his arms or legs. Nonetheless, if we ask ourselves what moral rights he had with respect to his artificial heart, we have some temptation—or at least I do—to say that his rights with respect to his artificial heart were no different (once it was plugged in and working) than my rights are to my natural heart.

The question of what rights individuals have to such artificial parts and aids is a difficult one. However, reflection on this issue, in the context of reflection on the issue of fetal rights to the mother's body, might lead one to adopt what I shall call the "Extension Thesis": the thesis that the factual relationship between the fetus's body and its mother's body is such that the mother's body is not fully separate from the fetus's body, but rather forms an extension of it. On this view, during pregnancy the mother's body is part
of the fetus's body. The view alleges that the boundaries we normally draw between the maternal and fetal bodies are misplaced: the fetus's body, instead of terminating at the periphery of the fetus's skin, actually extends through the mother's body and terminates with her skin. This claim certainly sounds bizarre. However, there is ample precedent for the claim that no true boundary exists between the maternal and fetal bodies, although historically this claim has more frequently taken the reverse form. For example, in Roman law and nineteenth century tort law in America, the fetus's body was conceived of as belonging to the mother—the fetus was considered a portion of the mother or her viscera. And early advocates of the pro-choice position in the second half of the present century often assimilated the status of the fetus's body to that of the woman's appendix. The Extension Thesis simply reverses these claims.

It might be tempting to reject this view offhand on the ground that where there are two persons there must be two bodies. But this rejection would be too cavalier. We have already seen that there are other instances where it is plausible to recognize the existence of two persons but only one body—split-brain and split-personality cases. Where these personalities are sufficiently complete, one cannot deny them moral personhood. And this raises the specter (not merely theoretical in the case of split-personalities) of both persons holding rights to the single body, rights that may conflict. Recent legal cases in which a man has been accused of raping a woman with a split personality, only one of whose personalities consented to intercourse, are dramatic instances of this possibility.

It might also be tempting to reject the Extension Thesis on the ground that bodies (unlike artificial spare parts) can be decisively individuated by reference to their genetic material. On such a view, two chunks of organic material count as parts of the same body if, and only if, they are genetically identical. Since the fetus and the mother are not genetically identical, of course it turns out that the mother's body cannot be an extension (and therefore part of) the fetus's. However, this criterion too runs afoul of counterexamples. It incorrectly implies that there is only one body, rather than two, in cases involving identical twins, or clones and their progenitors, or parthenogenetic offspring and their parents. It also incorrectly implies that there are two bodies, rather than one, in "chimera" cases in which innovative techniques have merged cells from three or more mouse embryos to produce a single mouse incorporating tissue masses having separate genetic materials. Perhaps most puzzlingly, it implies that each of our bodies is not a single body, since all our cells include small but essential parts, the mitochondria, which replicate themselves independently and have different RNA and DNA from that of the cell nucleus itself. Simple appeals to genetic differences are not going to provide a satisfactory assessment of the Extension Thesis.
A. (Mere) Organic Connection

What criterion could be used, then, to determine whether or not a given item counts as part of a given body? The most natural suggestion here, and the most promising one for a supporter of the Extension Thesis, is the claim that a chunk of living tissue counts as part of a given body if it is *organically connected* to that body.20 This idea is expressed by Stephen Jay Gould when he states that "...physical separation is the essence of our vernacular definition of individuality,"21 and it is certainly what first occurs to us when we ask why this finger or this toe counts as part of my body rather than someone else's—even when the finger or toe have suffered nerve damage, and I can neither feel them, or feel through them, or control their movements. Such a criterion implies that the Extension Thesis is true, since the fetal and maternal bodies are organically connected to each other in fairly elaborate ways, ways which permit the mother to provide the fetus with oxygen, nourishment, and waste disposal, and which allow chemical and hormonal signals to be sent from either side to the other, triggering an assortment of physiological responses.22

However, a closer look shows that organic connection does not provide a sufficient condition for bodily inclusion. The relevant examples are provided by the phenomenon of Siamese twinning. In some cases of Siamese twinning, it is quite plausible to regard the entity as one body with extra parts. For example, we would regard a creature with one head, two arms, and one trunk, but, say, four legs in this manner. But in other cases it is only plausible to regard the twins as having two bodies superficially joined. This can be seen in the original Siamese twins, Chang and Eng, who were physically complete human beings connected at the abdomen with a thin band of tissue, three and a quarter inches at its widest and one and five-eighths inches at its thickest.23 Precisely because Chang and Eng each had a full set of internal organs, limbs, etc., the mere fact of natural organic connection does not persuade us that there was only one body here rather than two (or persuade us that there were two bodies, each of which included the other as an extension). There is obviously a continuum of possible cases of Siamese twinning between the case I first described and that of Chang and Eng. We very likely do not know what to say about some of the cases that fall in the middle of this spectrum. But the existence of the Chang-Eng cases shows that *mere* organic connection is not sufficient to establish that the two connected parts are parts of one body.

B. Substantial Organic Connection

The proponent of the Extension Thesis might seek to circumvent this by enriching the organic-connection criterion to require, not *mere* organic connection, but *substantial* organic connection, where the required degree of
connection is set so as to decide all the Siamese twinning cases the right way (perhaps with some undecided cases). But even if this could be done, it seems dubious that the resulting criterion would imply that the mother's body is an extension of the fetus's body. The fetal-maternal case seems to fall closer to the Chang-Eng end of the organic-connection spectrum than it does to the other end, or even in the middle. Both the mother and the fetus have a full set of organs and limbs, or at least (in the early stages of fetal development) the potential for a full set.\textsuperscript{24} Granted, the connection between the fetus and mother is more substantial than the connection between Chang and Eng, since the mother's body performs some physiological functions for the fetus's body (although in later pregnancy the fetus's body is quite capable of performing these functions for itself). Nonetheless the connection is still pretty thin.\textsuperscript{25} Appeals to organic connection, then, whether bare connection or enriched connection, do not seem to provide support for the Extension thesis.

C. Part of Natural Life-Sustaining Biological System

One last variant of this idea has been proposed by Mark Wicclair.\textsuperscript{26} Wicclair suggests that a vital organ belongs to a person if that person was endowed with that organ by nature; or, as he sometimes puts it, if the organ is part of the biological system that naturally sustains the person's life. (Wicclair's discussion actually leaves it unclear whether he means the metaphysical or the moral sense of "belong." At this stage I shall interpret him as meaning the metaphysical sense.) This proposal has a number of virtues. For one thing, since it does not rely on mere organic connection, it avoids the unwanted implication that any crucial parts of Chang's body belongs to Eng, or vice versa. Moreover, it decides other cases in an intuitively acceptable manner. For example, we can imagine a Siamese twin case in which two body masses are readily discernable, but a single heart serves both bodies. On Wicclair's account, this heart belongs equally to both persons, and this conclusion seems apt.

However, there is a deep problem with Wicclair's approach. To see this, consider the case of parasites: for example tapeworms. A tapeworm makes its living by embedding its head in the intestinal wall of a large mammal, and then extracting nutrients from its blood. It appears that the mammal's intestine is part of the biological system that naturally sustains the tapeworm's life, and hence that Wicclair's account implies the mammal's intestine is part of the tapeworm's body. But clearly we not think that the mammal's intestine comprises part of the tapeworm's body. Unfortunately, Wicclair has no way to show this. For his argument to succeed, he would have to show (a) that the relevant sense of "biological system" excludes such systems as a parasite together with its hosts and vectors, and (b) that the features which exclude the parasite-host system do not rule out the fetus-mother system. Now clearly there is a distinction between the parasite-host system and the simpler kind
of system that involves, say, the parasite alone. But if we asked what the
difference is, the natural response is to say that the parasite-host system
involves two bodies while the parasite simpliciter system involves only one
body. This response of course is not available to Wicclair, since he is trying
to use the notion of a biological system in order to explicate the notion of
a single body. Wicclair might appeal to evolution at this point, and claim that
the mammal's intestine counts as part of the mammal's system, but not as
part of the tapeworm's system, because (crudely speaking) the intestine has
evolved in order to support the mammal, but has not evolved in order to
support the tapeworm. This would be correct in the case of tapeworms, and
handle the case of fetuses in the way Wicclair wants, since the mother's organs
have evolved precisely to support the fetus. But this criterion does not always
draw the line in the right place. For example, many plants and animals have
partners with which they live in mutualistic relationships. In many of these
cases, organs of one or both partners have evolved in order to support the
other partner. For instance, many flowers have evolved elaborate structures
to attract and guide insects to their pollen. But we do not conclude that these
floral structures are part of the insect's body; and similarly we cannot conclude
that the mother's organs are part of the fetus's body.

Wicclair does not directly address the question of what counts as the
relevant kind of biological system, but he does argue that there is no analogy
between a fetus and a parasite. He gives three reasons for this conclusion.
(1) Parasites are normally "foreign" organisms which "invade" the body.
Fetuses develop from eggs which are produced by natural processes within
the woman's body. (2) Parasites commonly destroy vital organs within their
hosts' bodies or deprive their hosts of essential nourishment. Hence, when
a parasite invades a body, the latter is considered to be an abnormal, diseased
condition. Pregnancy, on the other hand, is neither an abnormal condition
nor a disease. (3) Parasites always require some host or other. For fetuses,
on the other hand, occupying a host body is but one, relatively brief, stage
in their natural development.

Unfortunately, none of these alleged grounds for distinguishing between
fetuses and parasites is accurate. With regard to the first reason, it is false
that parasites are "foreign" organisms in any sense that excludes fetuses. A
parasite and its host need not be of different species. For example, there is
one species of anglerfish in which the male, who is considerably smaller than
the female, attaches his mouth permanently to the female's flesh. Many of
his internal organs then atrophy until finally he draws all his oxygen and
nourishment from the female's bloodstream, which circulates freely
throughout his body. His chief remaining independent function is to fertilize
her eggs. Clearly he counts as a parasite with respect to the female.
Typically a parasite is "foreign" to its host in the sense that the two are distinct
individuals in genetic and immunological terms. But the fetus is foreign to
the mother's body in the same terms. Indeed the mother's body must erect elaborate defenses to protect itself from the fetus's foreignness. Some parasitologists recognize two categories of parasites; the heteroparasites, which are phylogenetically distinct from their hosts, and the homoparasites, which are closely related to their hosts. Fetuses are explicitly included among the homoparasites. "Foreignness" does not provide a mark that can be used to exclude fetuses from the class of parasites.

With regard to Wicclair's second reason, it is a matter of controversy whether or not the term "parasite" should be restricted to those organisms that injure their hosts. But even among the harmful parasites the injury in question is often so slight as to be unnoticeable to the host. On the other hand, under certain conditions human fetuses deprive their mothers of essential nutrients, and their existence not infrequently gives rise to processes that injure the mother's health or even result in maternal death. In other species this can be even more clear-cut. For example, in one variety of gall midge, the offspring develop live within the mother's body, eating her tissues from the inside until she dies and the offspring emerge to start the cycle all over again. There is no interesting distinction between what these offspring do to their mothers and what many parasites do to their hosts. Finally, whether or not pregnancy is seen as an "abnormal, diseased condition" seems mostly to depend on fashions in medical and feminist thinking. Under any fashion, pregnancy can be unhealthy for the mother.

With regard to Wicclair's third reason, it is simply false that all parasites live their entire lives on their hosts. Many live only part of their lifespans on their host, and even must leave it in order to mature. Others, such as the tetanus bacillus, are facultative parasites: they can survive either on the body of a host, or by living freely in the soil. The short-lived dependency of the fetus on its mother's body does not distinguish it from more standard parasites.

In short, then, none of Wicclair's reasons for distinguishing fetuses from parasites succeeds. In general it appears that there are good reasons to view fetuses precisely as a sort of parasite. Thus whatever reasons may be found for saying that the host's body does not constitute part of the parasite's natural biological system (in the relevant sense) will also imply that the mother's body is not part of the fetus's natural biological system (in the relevant sense). We must conclude that Wicclair's argument fails to show that the mother's body must be considered as part of the fetus's body.

We have now looked at three arguments for the Extension Thesis, the thesis that the mother's body must be considered as a part, or extension, of the fetus's body. Three criteria have been advanced for determining when something counts as part of a given body: the mere organic connection criterion, the substantial organic connection criterion, and Wicclair's sustaining-biological-system criterion. None of these criteria provided a foundation adequate to establish the Extension Thesis. We must conclude that no reason
has been found to think that the mother's body belongs to the fetus in the metaphysical sense of "belonging," and hence no reason has been found to think that the fetus has a fundamental right to its mother's body arising directly from the natural or metaphysical relations between the fetus and its mother's body. Of course, it might be maintained that the fetus has a fundamental right to its mother's body arising from some different natural or metaphysical relation than any examined here. However, having reviewed the most salient proposals in this arena, I will now redirect our attention to the possibility that the fetus's right to its mother's body is not a fundamental right at all, but rather a derived right, arising indirectly from some more basic right.

V.

A derived right is one that derives from some more fundamental right. Thus it might be claimed that a creature has a derived right to food, because it has a fundamental right to life, and food is necessary for life. Unfortunately, although many of the rights important in political and moral discourse are clearly derived rights, very little is understood about the principles by which more concrete rights are legitimately derived from the abstract or generic rights that are generally held to be fundamental. We will have to proceed as best we can despite this lack in necessary theoretical apparatus.

The thesis to be examined asserts that the right to a body is not a fundamental right, but rather a derived right. There are various possibilities here, but perhaps the most natural position would be to hold that the right to a body is derived from the right to life, together with the proposition that control over a body is essential for continued life. Samuel Wheeler has proposed something like this view in maintaining that the fundamental right is the right to exist as an agent (which he connects with the right to exist simpliciter), and that the exclusive right to move and use our bodies derives from this right.34

A. Deriving Rights from the Right to Life

What is the content of the right to life, and how can we derive other rights from it? I shall take it that the right to life is the right to continued existence as a psychological being. Such a right has traditionally been thought to have two components: the right not to have one's life terminated by others without one's consent, and the right to maintain one's life without interference from others. From these two sub-rights we could derive bodily rights by the following pair of arguments. The first argument invokes the following general principle:
P₁. If a person P has a right that someone else S do x, then P has a derivative right that S do anything y that is a necessary and sufficient condition for S's doing x.

For example, if Peterson has a right that Smith return a borrowed book, and the only way to return the book is to mail it, then Peterson has a derivative right that Smith mail the book. We have just seen that P has a fundamental right that S not terminate P's existence as a psychological entity. But P's existence as a psychological entity is closely bound up with what happens to the body with which he is closely conjoined. Hence P has a derivative right that S not interfere with P's body in ways that would result in the termination of P's existence. The exact content of this right is specified by the actions that are necessary and sufficient conditions for any S's not terminating P's existence.

The second argument starts from a slightly different general principle:

P₂. If a person P has the right to do x himself, then P has a derivative right to do anything y that is a necessary and sufficient condition for P's doing x.

For example, if Peterson has a right to sell his land, then Peterson has a derivative right to sign the documents necessary and sufficient for selling his land. We have just seen that P has a fundamental right to maintain his existence without interference. But under most circumstances, it is a necessary and sufficient condition that P move his body in various ways in order to maintain his existence. Hence by the second principle, P has a derivative right to move and use his body in various ways without interference by others. The exact content of this right is specified by the movements that are necessary and sufficient to maintain his existence.

Taken together, principles P₁ and P₂ establish important components of the right to one's body as it was earlier characterized: they give each of us a right that others not interfere with one's body in ways that would terminate one's existence, and a right to move and use one's body in ways that are necessary and sufficient to maintain one's existence. In particular, these principles give a pregnant woman these rights with respect to her body. But they also give the fetus these rights with respect to its mother's body, since the fetus depends on the mother's body for its life just as it depends on its own body. Thus the fetus has a derivative right that no one (including the mother herself) interfere with its mother's body in ways that would terminate the fetus's existence, and it also has a right to use its mother's body (for example, for nourishment) in ways that are necessary and sufficient for the maintenance of its own existence. Of course the rights of the mother and those of the fetus may conflict with each other, for example in cases where pregnancy would be lethal to the mother. But this kind of conflict must be
settled in whatever way such conflicts are normally settled: the important point is that the fetus's right will be just as strong as the mother's right in such cases.

Before proceeding, it is important to note two caveats regarding this derivation of bodily rights from the right to life. First, this derivation is not sufficient to establish bodily rights of the full scope that we normally assume such rights have. For example, the derived rights will not prohibit interferences with one's body that would not affect one's existence—even though such interferences would result in pain, injury, destruction of bodily parts, frustration of will, and so forth. By the same token, the derivation is insufficient to secure any right to use one's body to obtain any good less important than life itself—no right to use one's body to obtain comfort, good health, affectionate relations with others, better tasting food, and so forth. Indeed, these derived rights would license no complaint at all against a powerful but benign oppressor who assumed complete control of one's body and used it entirely for his own purposes—so long as those purposes were compatible with one's continued existence. What this shows is that the right to one's body that we believe ourselves to have cannot be derived completely from our right to life, but must be derived from other fundamental rights as well, such as the right to be free from pain, to experience pleasure, to have rewarding interpersonal relationships, and so on. Whether or not deriving a right to one's body from a larger range of fundamental rights would secure the requisite scope for that right is a matter that cannot be pursued here. 35

The second caveat concerns the two principles used for deriving a right to one's body from the right to life. Both these principles are suspect. Neither accommodates the fact that what is necessary and sufficient for fulfillment of a fundamental right may already have moral claims on it that preclude derivation of a right to its use. For example, in one case described above, Peterson is described as having a right that Smith return a borrowed book, and therefore a right that Smith mail the book by way of returning it. But suppose the only stamp available for mailing the book belongs to Brown, who doesn't consent to Smith's using it to return Peterson's book. Does Peterson have a right nonetheless that Smith use Brown's stamp, because doing so is necessary and sufficient for Smith's returning the book? Clearly not, yet Principle P1 implies that he does. We could deal with this problem by denying that (in these circumstances) Peterson has a right that Smith return the book; or by qualifying Principle P1 to accommodate such cases. Or perhaps we need some rather different principle for deriving rights. This is too large a problem to be settled in the context of this paper. Rather than attempting to do so, since something like principles P1 and P2 must be true, I will make use of these principles as stated, and attempt to frame cases in such a way as to avoid this kind of problem.
B. Problems with Deriving Bodily Rights from the Right to Life

We have now formulated a way of deriving bodily rights from the right to life, and seen how it implies that the fetus has a right to use its mother's body as necessary to sustain its life, and a right not to have its mother's body interfered with in ways that would be detrimental to the fetus's continued existence. The existence of such rights, clearly, would be very helpful to opponents of abortion.

However, I will now argue that deriving the right to one's body from one's right to life does not provide an acceptable ground for the right to one's body, and hence must be rejected. If we reject it, we have not found any acceptable foundation for the right to a body that supports the thesis that the fetus has a natural right to its mother's body.

The first difficulty with the strategy of deriving one's bodily right from one's right to life arises because the strategy implies (contrary to our earlier assumption) that one's right to one's own body has no different status from one's right to certain external objects.

To see the problem, consider a case in which you are dangling by one hand over a vat of boiling oil. Since falling into the vat would cause your death, you have a (bodily) right that no one cut off your hand and send you to destruction below. But now suppose you are dangling from a rope over the vat of boiling oil. (We can assume that you own this rope, or that no one owns it.) In this case you have a right that no one cut the rope in two and send you to your death below. On the account of rights we are examining, your right with respect to your hand in the first case is precisely analogous to your right with respect to the rope in the second case. The two rights derive from the same source, and so are of equal strength and importance. But this violates our assumption that the right to one's body is importantly different from, and stronger than, the right to other objects.

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It is difficult to know how decisive an objection is raised by this case. On the one hand, it is true that we believe one has a stronger right to one's body than one has to other, external objects. On the other hand, we certainly feel that it would be very wrong for anyone to cut the rope. But if we analyze this reaction, it seems plain to me that what underlies the reaction is not the feeling that the wrongness in cutting the rope derives from your property rights to the rope. Rather what makes cutting the rope wrong is the fact that it would be very wrong for anyone to kill you, and cutting the rope in these circumstances is killing you. It would be just as wrong to cut the rope if someone else besides you owned it, and even consented to its being cut. These feelings contrast with our feelings in the case where your hand is cut: here, too, it is wrong to cut your hand because doing so would be killing you. But it is also wrong because your hand belongs to you, and that means you have a right that it not be interfered with without your consent. We do not feel
this additional wrong is present in the case where the rope is cut.36

The rope case should at least raise suspicion that deriving bodily rights from the right to life may result in judgments that fail to accord with our normal moral views. That suspicion can be strengthened by considering the following case. Suppose you are starving, and there are apples hanging from a branch in front of you. You have a right to move your hand to secure the apples, since if you do not, you will die, whereas if you do, you will live. Now suppose you can’t reach the apples by yourself, but could knock them within your grasp by swinging the arm of a taller person at them. The taller person has no particular need to use his arm at the moment. Then, on the account of rights we are examining, you have a derivative right to swing the arm of the taller person to secure the apples. Your right to his arm is precisely parallel to your right to your own arm in a case in which you need only reach out to grasp the apples. This violates our normal assumption that bodily rights are exclusive rights, or that each person has primary rights to his or her own body that supersede those of other persons. If bodily rights are derived from each person’s right to life, then no one has a greater right to his own body than he does to anyone else’s body that might prove useful for sustaining his life; and he has no prior right to his own body if his body proves useful for sustaining another’s life. Each person’s body will have numerous claims on it during its history, none of them weaker or less important than the claim of the person whose body it is. All this violates our ordinary assumption that bodily rights are normally exclusive. And of course it is precisely this feature that makes it possible to derive a fetal right to the use of its mother’s body.37

These cases show that the attempt to derive one’s right to one’s body from one’s right to life results in rights that run afoul of two of our central assumptions about the nature of a right to one’s body—the assumption that this right is importantly different from, and stronger than, one’s right to other objects, and the assumption that one’s right to one’s body is normally an exclusive right. But there is a third, and perhaps more damaging, consequence of deriving bodily rights from the right to life. Such rights do not have the correct normative import. To see this we need to develop a slightly longer story. The first thing to note is that the two components of the right to life that were mentioned originally, the right not to have one’s existence terminated, and the right to maintain one’s existence, can easily come into conflict with each other. To take a standard example, to maintain my life I might need to extract your heart and transplant it to my body. But of course doing so would kill you, so there is a conflict between my right to maintain my life and your right not to have your life terminated. Such conflicts must be resolved by some sort of priority rule. It is sometimes suggested that the relevant priority rule in such cases is one that gives priority to the right to the individual whose body is needed, since that individual has not only a
right to life but also an additional right to control his or her body. Clearly such a priority rule is unavailable to the theorist who believes rights to the body are simply derived from rights to life, since on this view bodily rights are not importantly distinct from rights to life, and each individual in the case just described has the same right to the bodily part that is necessary and sufficient for the continued life of each of them. Thus in the context of our discussion, the only available priority rules for resolving such conflicts (in cases where other moral considerations do not bear on the problem) are the rule that (A) the right not to be terminated always outweighs the right to maintain oneself, and (B) the right to maintain oneself always outweighs the right not to be terminated. To see which, if either, of these two rules is acceptable, let us consider two further cases.

In the first case, you are hiking along a precipitous trail when a severe earthquake hits the area. The tremor throws your body over the precipice, where luckily it lodges in the branches of a tree growing below the trail. You are wedged into the branches in such a way that you cannot extricate yourself. Meanwhile, another hiker, a complete stranger to you who was hiking in the same area at the time of the earthquake, has similarly been thrown off the precipice. Luckily for her, her jacket became hooked over your foot as she hurtled past, and she is now dangling there. If she falls, she will be killed on the rocks below. Unfortunately, her weight is such a strain on your body that if she continues to hang from your foot, your backbone will snap and you will be killed before help arrives. However, even if you die, your corpse will remain wedged in the tree, and the other hiker will remained hooked over your foot and eventually be rescued. On the other hand, you could kick her off before the strain on your back proves too great. In other words, it’s a straight conflict between your right to life and hers. You have a right to maintain your life by kicking her off, and she has a right not to be killed by your kicking her off.

Now consider a second case. The initial scenario is the same: you and a stranger are both hiking in a remote area when an earthquake flings the two of you over a precipice. In this case, each of you is caught in a branch of a single tree below the trail. Neither of you can move from her position. Eventually help will arrive. However, the tree is not strong enough to bear the weight of both of you, and even now is starting to split down the middle. If it splits, your side of the tree will rip away and plunge you to your death in the abyss below. The remainder of the tree will remain rooted to the cliff wall, and the other hiker will survive. On the other hand, her entanglement in the tree is fairly insecure (unlike yours). If you kick and thrash, you will knock her off into the abyss, at which point the splitting process will halt and you will survive. In other words, it’s a straight conflict between your right to life and hers. You have a right to maintain your life by kicking her off, and she has a right not to be killed by your kicking her off.
How are these conflicts to be resolved? Within the context of the theory we are examining, we saw that there are only two possibilities: either one person's right not to be terminated always outweighs the other person's right to maintain her existence, or else one person's right to maintain herself always outweighs the other person's right not to be terminated. Whichever of these rules is correct, both cases must be handled the same way. Either you have a right in both cases to maintain your life by kicking the other hiker into the abyss below, or else she has the right in both cases not to have her life terminated by being kicked off, and you must die. But does this agree with our intuitions about what is right and wrong in these cases?

It must be admitted from the start that it is hard to have clear intuitions about these cases. They are extreme and bizarre examples of the sort about which it is always difficult to marshal firm convictions. The problem is compounded by the fact that any beliefs about what it is right or wrong to do are easily overwhelmed by our knowledge of what we personally would be likely to do anyway in order to save our lives, regardless of whether it is right or wrong. Despite all this I have intuitions about these cases, and my feeling is that they are not morally equivalent. I think you have the right to kick the other hiker off your foot in the first case, but do not have the right to shake her out of the tree in the second case. Or to put it more accurately, I am more inclined to believe you have the right in the foot-hanging case than I am inclined to believe you do in the splitting-tree case. Perhaps a better way to tease out this intuition from those who do not immediately share it has been suggested by John Deigh. Suppose someone proposed, in the splitting-tree case, that the two hikers use some sort of lottery to settle which of them would get to use the tree to save herself. They might, for example, flip a coin. This would seem to be a cold-blooded but reasonable and appropriate method for settling a horrible dilemma. Indeed judges have proposed exactly this sort of solution in analogous real life cases. But suppose someone suggested that a lottery be used to resolve the foot-hanging case: heads you get to kick the other hiker off your foot, killing her but saving yourself; tails she gets to continue hanging from your foot, killing you but saving herself. Using a lottery to settle this conflict seems far less reasonable and appropriate.

I think the reason we have different intuitions about the two cases can be understood as follows. You and the other hiker are in symmetrical moral positions in the splitting-tree case, but you are not in symmetrical positions in the foot-hanging case. In the splitting-tree case, you and the other hiker each depend on a third object, the tree, to save your lives, and your relations to that object are the same: neither of you has any special or prior claim to it. But in the foot-hanging case, the third object on which both your lives depend is your body, and your respective relations to that object are not the same. You have a special, morally prior claim on it. If anyone gets to use
your body to save her life, it should be you, not some stranger who adventitiously comes to need it. For this reason, it is permissible for you to dislodge the other person when her using your body will result in your death. But since you have no special claim on the tree, it is not permissible for you to dislodge the other person when her using the tree will result in your death. And for this reason you need not accede to the use of a lottery in deciding who gets to use your body to save herself: you already have a claim on that body. But it is suitable to use the lottery in deciding who gets to use the tree, since neither of you has a claim on the tree.40

If this is correct, it completely undermines the theory under examination. That theory asserts that a person's right to his body is derived from his right to life, and hence that his right to his body cannot be distinguished from his right to any other vitally important object. For this reason the theory cannot distinguish your right to your body from your right to the tree, and so entails that our two cases must be handled alike: either you have the right in both cases to kick the other hiker off, or you have the right in neither case to kick the other hiker off. But this disagrees with my intuitions, and I presume those of other people, that the two cases should be handled differently, and in particular with the feeling that the reason for this difference is that you have a different kind of claim on your body than your claim on the tree, and that your claim on your body is prior to the other hiker's claim on your body. It follows that the right to one's body cannot derive solely from one's right to life. Indeed, the right to one's body, rather than deriving from the right to life, must be independent from the latter, since the right to one's body helps specify what one may do to save one's own life, and sets limits on how much others may do to your body in order to save their lives.

We have found, then, three serious defects in the theory that one's right to one's own body derives from one's right to life: the strength of the derived bodily right fails to exceed that of one's right to other objects or possessions; one's right to one's body fails to be an exclusive right in the normal case; and the derived right fails to yield the correct normative judgments in cases where rights conflict. I conclude the theory is mistaken. Since it is mistaken, it cannot be used to provide a foundation for a natural fetal right to the use of its mother's body. Opponents of abortion can find no help in this quarter.

Still, it might be claimed that even though the theory itself is incorrect as an account of the nature and genesis of bodily rights, nonetheless it relies on two general principles for deriving rights that may be of assistance. As yet no direct suspicion has been cast on the utility of these general principles, and they can be used to derive a fetal right to the mother's body—a right, since it is merely derived, that may have a different status or strength from the mother's own right, but a right nonetheless.

But such a derived right appears to be of little help to opponents of abortion, since it is evidently secondary to the mother's own fundamental right. And
we cannot be sure as yet that there is such a derived fetal right, since it remains to be shown whether one can derive a right in this fashion to something on which there is already a prior claim. This is precisely the problem in the kind of case where one person needs the stamp belonging to another in order to receive a book to which he has a right, and where we said that the implications of the principles seemed incorrect. It is just such debates that opponents of abortion hoped to avoid by showing that the fetus and the mother have parallel and equal natural rights to the mother's body. Of course it is possible that the right to one's body can be derived from some different fundamental right or rights, and that this derivation would support the anti-abortion case. But I am not optimistic that any such derivations will succeed; most of the obvious candidates for the relevant fundamental right, such as the right to be free from pain, can be shown to succumb to the same problems that vitiate the attempt to derive bodily rights from the right to life. Barring future arguments to the contrary, our conclusion must be that the strategy of deriving bodily rights from more fundamental rights fails, and so can afford no support to those who wish to show that the fetus has a derived right to its mother's body equal in stature to her own right.

VI.

In this paper I have examined the thesis that a fetus has a natural right to its mother's body, a right commensurate with the mother's own right, and in no way dependent on her choices or mental states at the time of conception. We have looked at several different ways of spelling out this idea: the thesis that the fetus has a right to the mother's body because the fetus is embodied in the mother's body, the thesis that the fetus has this right because the mother's body is organically connected to the fetus's body, the thesis that the fetus has this right because the mother's body has a substantial organic connection to the fetus's body, the thesis that the fetus has this right because the mother's body is part of a biological system that naturally sustains the fetus's life, and finally the thesis that the fetus has a derived right to its mother's body because it has a right to life and use of its mother's body is necessary and sufficient for maintaining that life. None of these theses has proved convincing. If the fetus has an equal, natural right to its mother's body, that fact still remains to be shown.

Notes

1. Some opponents of abortion base their view on reasons with quite a different structure, e.g., obedience to a purported direct Divine injunction against abortion.
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I (Fall 1971), pp. 47-66. The argument in this article has come under significant attack since its publication. See, for example, Ann Davis, "Abortion and Self-Defence," *Philosophy and Public Affairs*, 13 (Summer 1984), pp. 175-207.


6. Some theorists would place severe restrictions on these rights, for example by denying that one has the right to destroy one's body, or permanently to alienate it to the control of another person (as in slavery).


9. Rene Descartes, "Meditation VI," from "Meditations on First Philosophy."


15. One issue: is one's right to items that merely enhance one's functioning (eyeglasses, hearing aids) different from one's right to items that are critical to essential functions (implantable insulin pumps, pacemakers, etc.)?


20. Note that this suggestion provides no help in the case of non-organic artificial body parts. Samuel Wheeler III argues that any kind of attachment is unnecessary for moral rights to a bodily part. See Wheeler, *op. cit.*, pp. 176-178.


22. Note that on this criterion, the fetus’s body is just as much an extension of the mother’s body as her body is of the fetus’s. Her rights to its body would be equivalent to its rights to hers.


24. Note the somewhat bizarre implications of the “substantial organic connection” thesis for abortion policy: as the fetus acquires more and more fully developed organs as the pregnancy continues, its organic connection with its mother decreases, so that the claim her body is part of the fetus’s body decreases, and the fetus’s moral claim to the use of her body decreases (and, presumably, abortion becomes more acceptable) in late pregnancy. Normally we suppose late abortions are less acceptable.

25. As Robert Cummins has pointed out to me, the more plausible it is to view the fetus as a person (as it develops in later pregnancy), the less plausible it is to view the mother’s body as an extension of the fetus’s body, since the latter body becomes more and more complete and self-sufficient. On the other hand, the more plausible it is to view the mother’s body as an extension of the fetus (in early pregnancy), the less plausible it is to view the fetus as a person. So even a decision that the mother’s body does count as an extension of the fetus’s body, say in early pregnancy, would tend to be associated with a concurrent denial that the fetus is a person with any rights.

26. Wicclair, *op. cit.*, p. 341. A similar idea has been proposed independently by Jim Stone, *op. cit.*, pp. 82-83, and by Harry Silverstein, *op. cit.*, p. 115. However, both these authors propose direct moral theses concerning the fetus’s rights to use of its mother’s body, on grounds that such use is part of the natural and normal course of human development, without any intermediate thesis that the mother’s body is (factually) a part of the fetus’s body. Hence I shall not directly discuss their theses here.

27. It might be claimed that the case of flowers and insects is not apt, since the floral structures have evolved to benefit the insects but ultimately to serve the flower itself through dispersion of its pollen. But better cases of unqualified altruism could be adduced to make the same point. For example, when the antelope flashes its white tail to warn other herd members of danger, we do not conclude that the tail belongs to the other herd members.


29. Stephen Jay Gould, *Hen’s Teeth and Horse’s Toes* (New York: W.W. Norton and Company, 1983), Chapter 1. Gould himself denies the male is a parasite (although most accounts refer to it as such), since he holds that parasites must injure their hosts.


31. See P.C.C. Garnham, *Progress in Parasitology* (The University of London, The
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35. The artificiality of deriving a right to one's body from the other rights mentioned in the text suggests to me that the derivation may be proceeding in the wrong direction: perhaps our right to our bodies is fundamental, while our rights to be free from pain, experience pleasure, and so forth, derive from that right.

36. Unfortunately there are disanalogies between the rope case and the hand case that prevent them from providing fully decisive arguments here. Your life depends on the rope only on this rare occasion, so you have no continuing right to the rope, whereas (arguably) your life depends on your hand on many occasions, so your right to your hand continues (albeit intermittently). Cutting the rope only results in your death, so your right to the rope only derives from your right to life; whereas cutting your hand results in significant (if brief) pain, so your right not to have the hand cut also results from your right not to be in pain.

37. Note that on this view, the fetus's right to its mother's body will fade at the time of viability (since it no longer needs to use its mother's body in order to maintain its own life). Thus "abortion" in late term would be morally permissible even though earlier abortion might not be. This consequence might depend on the availability of artificial support systems for use in providing the fetus with whatever it needs to survive. This is another example of a case in which pinning the moral status of abortion on the fetus's natural right to its mother's body gives us a moral result very different from the one many people assume is correct.

38. In conversation.


41. One prominent suggestion must be dealt with differently. Some theorists have wanted to view the right to freedom of action as the basis for all other rights, or at least the right to one's body. But this suggestion is of little help. To see why, notice that one can distinguish three different types of actions: mental actions, basic actions, and non-basic actions. The right to perform mental actions (such as making decisions or choices), provides no support for rights to one's body. One has the right to desire, and even decide to do, many things, without having the right to carry out those desires or decisions. On the other hand, the right to perform non-basic actions (such as the right to open a door) might be thought to entail the right to control any objects, such as one's body, involved in the doing of those actions. But this would place one's right to one's body on the same footing as one's right to external objects involved in the action, such as the door itself. Hence this would not form a derivation for the sort of right to one's body we want. Finally, the right to perform basic actions just *is* one aspect of the right to one's body, so we cannot say that the bodily right is *derived from* the right to perform basic actions. For discussion by theorists who have suggested the right to free action as the basis for other rights, see Wheeler, *ibid.*; H.L.A. Hart, "Are There Any Natural Rights?" in David Lyons, ed., *Rights* (Belmont, Ca.: Wadsworth Publishing Co., 1979), pp 14-25; and Jan Narveson, *The Libertarian Idea*
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42. I am grateful to Marcia Baron, Stephen R. Munzer, and Harry Silverstein for helpful comments on earlier versions of this paper.