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THE RESPONSIBILITY OBJECTION TO ABORTION: REJECTING THE NOTION THAT THE RESPONSIBILITY OBJECTION SUCCESSFULLY REFUTES A WOMAN'S RIGHT TO CHOOSE

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ABSTRACT
This article considers the objection to abortion that a woman who voluntarily engages in sexual activity is responsible for her fetus and so cannot have an abortion. The conclusion argued for is that the conceptions of responsibility that can ground the objection that are considered do not necessitate a requirement on the part of a pregnant woman to carry her pregnancy to term. Thus, the iterations of the responsibility objection presented cannot be used to curtail reproductive choice.

I. INTRODUCTION

In response to Judith Jarvis Thomson's *A Defense of Abortion*, opponents of abortion often offer the so-called 'Responsibility Objection'; the goal of which is to refute Thomson's original claim that abortion in the case of unwanted pregnancy is permissible.[1] This objection to the permissibility of abortion has been expressed in a variety of forms over the last forty years.[2] As such, it is more difficult than expected to present the objection in a manner that is both suitably succinct and encompasses the breadth of the objection. Generally, the *Responsibility Objection* holds that a woman is responsible for the fetus now growing inside her body as a result of her willing participation in sexual activity.[3]

Three questions I will consider regarding this brief statement of the Responsibility Objection are:

1) What is the nature of the responsibility?
2) What is the source from which the responsibility derives?
3) What is the requirement for future actions, if any, on behalf of the responsible party?

For the first two questions, some answers include ideas about harm, demands for care, recognition of one's liability, claims about causality, proposals of one's consent, and finally, failures due to one's own negligence. For the third, the possible answers that some propose are

[1] Thomson's approach to defending reproductive choice is not the only view that is susceptible to the Responsibility Objection, but for the purposes of this paper I invoke Thomson in order to limit the scope of the argument to some degree. As Thomson limits her consideration to one's duty to render aid, the ensuing discussion will attempt to do likewise. See J.J. Thomson. A Defense of Abortion. *Philos Public Aff* 1971; 1(1): 47–66.

[2] See M. Tooley. *Abortion and Infanticide*. Oxford: Clarendon Press; 1983. p. 45; M.A. Warren. On the Moral and Legal Status of Abortion. In *Today's Moral Problems* 3rd ed. R.A. Wasserstrom, ed. New York, NY: MacMillan Publishing; 1985. pp. 438–440; R. Werner. Abortion: The Moral Status of the Unborn. *Soc Theory Pract* 1974–1975; 3: 211–214; L.S. Carrier. Abortion and the Right to Life. *Soc Theory Pract* 1974–1975; 3: 398–399; H. Silverstein. A Woman's 'Responsibility' for the Fetus. *Soc Theory Pract* 1987; 13: 103–104; R. Langer. Silverstein and the 'Responsibility Objection'. *Soc Theory Pract* 1993; 13: 345; D. Boonin-Vail. A Defense of 'A Defense of Abortion': On the Responsibility Objection to Thomson's Argument. *Ethics* 1997; 107: 288–290; D. Boonin. 2003. *A Defense of Abortion*. Cambridge: Cambridge University Press. pp. 167–188; J. McMahon. 2002. *The Ethics of Killing: Problems at the Margins of Life*. Oxford: Oxford University Press. pp. 362–398.

[3] Thus, this article is only interested in examining a woman's obligation to render aid to her fetus. No other individuals are involved in this discussion. Expanding the notion of responsibility beyond a woman's responsibility to her fetus to include a responsibility to others may provide an avenue for opponents of abortion to continue to object to the practice as immoral, but the argument here contends that they cannot continue to do so based on the grounds that a woman has a responsibility *to her fetus*. Considerations of a woman's responsibility to render aid to her fetus based on a responsibility to society or a responsibility to the father or to some other entity are outside the scope of this argument.

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familiar, ranging from the idea a woman is free to choose whether she wishes to continue the pregnancy to the idea that the only acceptable action is one that preserves the life of the fetus, regardless of the cost associated with preserving the pregnancy.[4]

In this work I argue that the connection between different versions of the Responsibility Objection and the conception of responsibility that is supposed to ground each version of the objection fails to obtain. Therefore, the demands that the Responsibility Objection attempts to place upon a woman, to provide care for her unborn fetus until the fetus can survive without her, are unsupported at best and potentially question begging at worst. To produce this conclusion I consider some conceptions of responsibility upon which the responsibility objection has been grounded, some of the various iterations of the Responsibility Objection (and attempt to clarify these iterations of the objection) and then demonstrate how each possible conception of responsibility fails as the principle foundation for a corresponding version of the Responsibility Objection.

2. CONCEPTIONS OF RESPONSIBILITY

A serious issue within the debate over the Responsibility Objection concerns our understanding of, and use of, the term 'responsibility'. Here I present four possible conceptions of responsibility.[5] Responsibility could present as either a *Liability Demand* or as a *Causal Responsibility*. Similarly, responsibility could present as either a *Harm Responsibility* or as a *Care Responsibility*.

1. *Liability Demand*: one is ascribed liability for an act under a set of rules or customs that demand further action in response to the resulting circumstances.[6]
2. *Causal Responsibility*: one is said to be responsible for those acts one performs, even if no further ascription of liability to further action exists.
3. *Harm Responsibility*: one is often said to be responsible for an act when one's action results in a harm to another. Such responsibility usually attaches notions of *fault* or *blame* to the responsible party and often demands that the responsible party provide *care* to the harmed party.[7]
4. *Care Responsibility*: one could be responsible for providing care for another. Often such responsibility is the result of harm, though one could be responsible to care for another even if no harm is involved.[8]

It is worthwhile to note that these conceptions of responsibility overlap with one another. For example, one can have a liability demand as a result of having harmed another or as a result of having consented to care for another. Alternatively, one might have a liability demand even without having consented to the current conditions or harmed another.

If what follows in this work is correct, pregnancy would be a case in which one has a liability demand. In other words, further action is required on the part of the pregnant woman, even though she did not consent to the pregnancy or harm another in bringing the pregnancy about. However, this liability demand need not (and I will argue does not) include a requirement that the future action entail a responsibility to provide care.[9]

Conversely, one may be responsible for an act in a strictly causal sense of responsibility. On this understanding of responsibility, one is the cause of the act, but no harm has resulted, no demand for care independent of any harm exists and there are no other rules or customs that apply a demand for further action on behalf of the individual. I take it that the vast majority of our daily actions are of this sort.[10]

The conceptions of responsibility that seem most prominent in discussions of the Responsibility Objection are harm responsibility and care responsibility. As noted above, harm responsibility and care responsibility attach themselves to a liability demand. Whenever we recognize an individual as having a harm responsibility or a care responsibility, we recognize a demand for further action on behalf of such individuals. Harm responsibility is often the sort of responsibility that most individuals have in mind when they think of responsibility more generally. However, harm responsibility is also likely to be the source of much confusion and opacity when it comes to understanding the Responsibility Objection. Given its

[4] In this instance, the costs need not be strictly monetary, but can include demands that individual rights to self-determination be sacrificed, or even that the life of the mother (the right to self-preservation) must be sacrificed in order to preserve the life of the fetus.

[5] For this discussion I ignore contentious issues among free will, determinism and problems for moral responsibility. Such difficult issues I leave for better minds than my own. I will simply assume that we do in fact have free will and thus can have responsibility for our actions in accordance with such a doctrine.

[6] See Langer, *op. cit.* note 2, p. 354; J. Fienberg. Action and Responsibility. In *Doing and Deserving*. Princeton, NJ: Princeton University Press; 1970. pp. 130–137.

[7] See Langer, *op. cit.* note 2, p. 354. See also H. Silverstein. Reply to Langer. *Soc Theory Pract* 1993; 19: 359; Fienberg, *op. cit.* note 6, pp. 130–137; J.F. Beckwith. Personal Bodily Rights, Abortion, and Unplugging the Violinist. *Int Philoso Q* 1992; 32: 111–112; D. Marquis. Unpublished comments on Thomson's Defense of Abortion, July 2011.

[8] See Langer, *op. cit.* note 2, p. 354; Silverstein, *op cit.* note 7, p. 363.

[9] This demand for further action would be the result of the biological facts of pregnancy, namely, that the pregnant woman is attached to the fetus and so must act *in some fashion* relative to the fetus.

[10] It is perhaps the ubiquity of this sort of responsibility that has resulted in it being largely omitted from previous discussions of the responsibility objection.

connection to a demand for care, harm responsibility can also be confused with care responsibility. Similarly, given its connections to ideas about *fault* and *blame*, harm responsibility can be confused with a liability demand when one attaches a demand for future action on behalf of a responsible party to notions of fault or blame. Finally, since one cannot be responsible for a harm without causing said harm, harm responsibility can be confused with causal responsibility as well. It is therefore important to keep the conception of harm responsibility separate from the other sorts of responsibility.

Furthermore, as noted, one can be responsible for acts arising from issues other than harm. One can be responsible for another's care without having harmed anyone. This sort of responsibility can arise in cases when a parent has a responsibility to care for her [5 year old] child by providing for the child's basic needs.[11] The parent has not harmed the child, but we recognize a certain responsibility on the part of the parent to provide for the [post-birth] children under her care.

3. FOUR ITERATIONS OF THE RESPONSIBILITY OBJECTION

The first two iterations of the Responsibility Objection I will refer to as the *Harm Version* (due to a reliance on instantiations of harm) and the *Care Version* (due to a reliance on a demand for care without harm). Under the Harm Version of the Responsibility Objection an individual is causally responsible for producing a harmful situation and the situation was produced via voluntary acts which one either knew (or should have known) might result in the harmful situation. Thus the responsible individual is now charged with acting in a way to repair the harm done.[12] Similarly, the Care Version entails that (though you have not harmed another) you have an obligation to provide for another's welfare, even at great cost to yourself. One such example would be a parent whose young child is deathly ill and will die in a couple years unless the parent makes large personal sacrifices to save the child's life, in which case the child will live a long and healthy life.[13] The other two iterations of the Responsibility Objection to consider arise either because of the now pregnant woman's tacit consent to the consequence of pregnancy by engaging voluntarily in sexual intercourse (the *Tacit Consent Version*) or because of the negligence on the part of the now pregnant woman in failing to avoid the consequence of becoming pregnant (the *Negligence Version*).[14]

[11] Langer, *op. cit. note* 2, p. 354.
[12] Silverstein, *op. cit.* note 7, p. 359; Langer, *op cit.* note 2, p. 351.
[13] Silverstein, *op. cit.* note 7, p. 363. Langer, *op cit.* note 2, pp. 351–352.
[14] Boonin-Vail, *op. cit.* note 2, p. 288.

4. NEITHER HARM, NOR NEGLIGENCE, NOR TACIT CONSENT

Harm responsibility is not a suitable conception of a pregnant woman's responsibility to her fetus because the woman has not harmed her fetus by bringing it into existence in a condition in which it is now dependent upon her for its continued survival. In the discussion of the harm and care versions of the Responsibility Objection, Harry Silverstein presents a series of cases which seek to demonstrate how a woman cannot be said to be responsible for the fetus as a result of harm. The two cases which are most important for this discussion are as follows. Imagine you are a doctor and Thomson's famous violinist is before you with a disease which, if left untreated, is fatal. The only treatment for the disease is a drug, D-super, that is known to have the side effect of Thomson's famous kidney ailment in five to ten years. Furthermore, you alone have the right blood type to help the violinist when he contracts the disease in five to ten years time. You treat the violinist, saving his life, and sure enough, six years later he contracts the kidney ailment. The alternative to this case is one in which everything is exactly the same except that there is also another drug, D-SuperPlus, which lacks the unfortunate side effect of Thomson's kidney ailment.[15]

Silverstein asks the reader to consider the following three scenarios, where t is the point in time in which the violinist contracts the kidney ailment six years after treatment with D-Super in the first case and does not contract the kidney ailment six years after treatment with D-SuperPlus in the second case:[16]

(1) The violinist does not exist at time t
(2) The violinist exists at t but needs the use of your kidneys for nine months to survive beyond that time
(3) The violinist exists at t and does not need the use of your kidneys to survive beyond that time.

The difference between the two cases lies in the fact that all three scenarios are possible in the case of D-SuperPlus, but not in the case of D-Super. In the case of D-SuperPlus, you as the physician can refrain from treating the violinist, resulting in (1); you can treat with D-Super, resulting in (2); or you can treat with D-SuperPlus, resulting in (3). In the case where only D-Super is available, as the treating physician you can only choose between (1) and (2).

We can now see the crucial difference between these two cases. One cannot properly say that the doctor in case D-Super has harmed the violinist by treating him with D-Super, as there was no alternative scenario in

[15] See Silverstein, *op. cit.* note 2, pp. 106–107; Silverstein, *op. cit.* note 7, p. 360.
[16] Silverstein, *op. cit.* note 7, p. 361.

which the violinist would both exist at time *t* and exist in a state where he did not need the use of another's kidneys to prolong his existence. One can make the claim of a doctor in the case of D-SuperPlus who chooses (through laziness, carelessness, spite, etc.) to treat the violinist with D-Super rather than D-SuperPlus that the doctor has in fact harmed the violinist. We can say this because in case D-SuperPlus, there was alternative (3) in which the violinist would have both existed and been in a better condition had the doctor acted differently (by giving the superior drug with no side effect). The same cannot be said in the case of D-Super.[17]

Pregnancy is like the case of D-Super rather than D-SuperPlus. Early in pregnancy there is no alternative condition that a pregnant woman and her fetus can find themselves in that would equate to (3). Assume that you are a woman who is six weeks pregnant. There is no alternative condition that can be made manifest in order to achieve

> (3*) The fetus exists at *t** and does not need your body for continued survival (where *t** is the time you are six weeks pregnant).

Since there is no corresponding condition in which the fetus could both exist and could exist in a condition free of its dependence upon its mother's body, the case of pregnancy is like the case of D-Super.[18] In that case, the claim that the doctor has harmed the violinist by treating him with D-Super fails. As such, the claim that a pregnant woman is responsible to her fetus on the basis of having harmed it by bringing it into a condition of dependency upon her body also fails. From this discussion we can leave behind a consideration of harm as an appropriate understanding of the nature of a woman's responsibility to her fetus. Without a harm being imposed upon the fetus a woman cannot have a responsibility to her fetus based on having done it harm. Based upon this discussion, one can discard the Harm Version of the Responsibility Objection as an appropriate conception of the Responsibility Objection.

Like the Harm Version, the Negligence Version will fail as an appropriate conception of the Responsibility Objection on similar grounds. In introducing the Negligence Version, David Boonin makes reference to a driver who injures a pedestrian whilst driving.[19] Don Marquis makes use of a similar example, only the driver in his scenario is under the influence of alcohol at the time of the injury.[20] The point both of these examples propose is that, if you are the driver of the car, you did not intend to injury anyone, nor did you consent to the injuring of another person when you got behind the wheel. Your intent was to get where you were trying to go without causing another person injury. However, due to your negligence, another person is now in need of assistance and to make the case suitably like pregnancy, only you can provide the required aid in the form of blood transfusions, kidney dialysis, etc. until the pedestrian has recovered from the injuries you inflicted upon her. Other examples one might point to of negligent behavior will have a similar element of carelessness on the part of the individual actor that result in the harming of another and hence a responsibility to render aid to the injured party.

The problem that arises at this stage of the discussion is that any claim of responsibility which is the result of negligence hinges on the causation of harm to another. Generally, this harm must also occur within a scenario where we already agree people are not supposed to be treated in such a fashion. In the case of the injured pedestrians cited by Boonin and Marquis, we already agree that pedestrians have a right not to be hit by careless automobile drivers.[21] We already recognize that to harm another person in this way is unacceptable. But in such cases it is not so much the negligence that is producing the responsibility requirement, but the fact that the harm inflicted is one we already agree should not be inflicted at all. The fact that the responsibility demand on the Negligence Version hinges on the harm inflicted, not the negligence, means that the applicability of this version of the Responsibility Objection falls along with the failure of harm responsibility.

The rejection of the Tacit Consent Version relies upon an analogy Boonin draws between sexual activity and the

[17] Ibid: 361.

[18] One might wish to raise the issue of ectogenesis at this stage. The suggestion being that if ectogenesis were to become available as an alternative for pregnant women, then there would exist a situation such that a fetus could exist and exist in a state that it is not dependent upon its mother's body for survival. In such a scenario, pregnancy would then be like the case of D-SuperPlus rather than D-Super. In the event that ectogenesis were to become widely available, the arguments made in this section would need to be reconsidered. Until such time, however, the prospect of ectogenesis cannot serve as a means of refuting the argument offered since there is still not a situation in which the pregnant woman's condition is like the case of D-SuperPlus. For her part, Thomson recognizes the distinction between securing the evacuation of the fetus and securing the death of the fetus and that, while a woman may detach the fetus from herself, she is not entitled to secure its death in the event the fetus were to survive. See Thomson, *op. cit.* note 1, p. 66. The conclusion then, if ectogenesis were reality and widely available, might be that a pregnant woman would be allowed to detach herself from a fetus but would then be required to give over the unwanted fetus for ectogenesis. Then there arise questions concerning the woman's obligation to care for the resultant child. Whether or not a woman has a responsibility to care for the resultant child of ectogenesis in the event that such a procedure is both widely available and morally obligatory is an issue far enough beyond the scope of this paper that I will not address it further here.

[19] Boonin-Vail, *op. cit.* note 2, p. 288.

[20] Marquis, *op. cit.* note 7.

[21] Boonin-Vail makes this same claim as well. See Boonin-Vail, *op. cit.* note 2, p. 301.

social convention of tipping after a meal.[22] The result is that, according to Boonin, one can engage in an activity such as sexual intercourse, in full knowledge of the possible outcomes, such as pregnancy, without consenting to any particular outcome that may obtain. To support this conclusion, Boonin offers the scenario of two dinners, Bill and Ted. Bill sits down to a nice meal in a restaurant and, after finishing his meal, leaves a pile of bills on the table as he exits. Bill's leaving the money arose as a result of Bill voluntarily leaving the money behind. Ted's case, however, is suitably, and subtly, different. In Ted's case, the money is left behind because Ted placed the money on the table when he sat down (presumably because he didn't like the way it felt in his pocket). Upon finishing his meal Ted rose from the table and left, forgetting to place the money back in his pocket. According to Boonin this is different from Bill's action in that in Ted's case the leaving of the money itself is not voluntary, but arose as a foreseeable consequence of a different voluntary act.

The issue that arises is that according to the proponent of Tacit Consent three criteria are typically acknowledged and defended as necessary to establish consent: voluntariness, causality, and foreseeability.[23] The first criterion is that the act must be voluntary. One cannot properly be said to have consented to a state of affairs under force or duress. Second, the act must cause the state of affairs to which one is supposed to have consented. Third, the state of affairs must be foreseeable or there must exist a reasonable expectation that the state of affairs could have been foreseen prior to the act occurring.

The problem is that these criteria, though seemingly met by both Bill and Ted, treat the two cases as being the same only as a result of confusing the distinction between (a) voluntarily bringing about a state of affairs S and (b) voluntarily doing an action foreseeing that this may bring about a state of affairs S.[24] Both Bill and Ted meet the broad criteria defended by the proponents of tacit consent, but only because the conception of voluntariness found within tacit consent does not recognize that one might bring about a state of affairs without consenting to that state of affairs. Ted's actions amounted to his consent for the money to be on the table while he ate, not consent for this money to be transferred to the waiter in the form of a tip. Thus, even though Ted voluntarily placed the money on the table, his placing the money caused the money to be left behind, and he could reasonably be expected to foresee such an outcome, Ted did not consent to the relinquishing of the money into the possession of the waiter.[25]

The case of a woman who has an unwanted pregnancy can be suitably compared to that of Ted rather than Bill. A woman in such a state of affairs did not consent to the state of affairs in which she is now pregnant. Rather, she consented to a state of affairs in which a man was having sex with her knowing that it could foreseeably lead to the state of affairs in which she now finds herself of being pregnant. As such, according to Boonin, arguments of tacit consent are insufficient to ground a responsibility demand upon a pregnant woman.[26] With Boonin's authoritative dismissal of the Tacit Consent Version available, the one remaining version of the Responsibility Objection is the Care Version.

5. REJECTING THE CARE VERSION OF THE RESPONSIBILITY OBJECTION

Of the four versions on the Responsibility Objection previously stated, the one remaining version of the objection left to consider is the Care Version. To reiterate, on this version of the objection, one can have a responsibility to care for another and that this responsibility for care can arise without a corresponding harm to generate the responsibility. The case used as an exemplar of this sort of responsibility is one a parent has toward her [post birth] child to provide certain basics of care. The claim that the proponent of the Care Version of the Responsibility Objection then wishes to make is that a fetus is merely a very immature child. Therefore, just as one can have a responsibility to older children to provide care, one can also have an obligation to very immature children (i.e. fetuses) to provide care as well. In the case of a pregnant woman, she and she alone is in such a position to provide the care the fetus requires. As such, she is responsible for the care of that fetus until such time as the fetus can be cared for by others (or can survive on its own).

The problem with this argument is that the analogy between these two cases on behalf of the Care Version overlooks certain elements present in the case of parental obligations to care for [post birth] children that cannot be properly said to exist with fetuses without begging the question. The question that needs to be answered here is what motivation exists for the responsibility to provide care in each case? In the case of the [post birth] child, one possible answer seems to be consent.[27] In the case of the

[22] I offer a brief account of Boonin's argument here. For a fuller discussion see Boonin-Vail, *op. cit.* note 2, pp. 290–300; Boonin, *op. cit.* 2, pp. 148–166.

[23] See Boonin-Vail, *op. cit.* note 2, pp. 291–292; R. Langer. Abortion and the Right to Privacy. *J Soc Philos* 1992; 23: 23–51.

[24] Boonin-Vail, *op. cit.* note 2, p. 291.

[25] Or any other particular employee of the restaurant, dishwasher, kitchen staff, hostess, etc.

[26] Boonin-Vail, *op. cit.* note 2, pp. 293–300.

[27] If the demand for care were motivated by issues of harm, then this scenario would fall within the prevue of that conception of responsibility. Having already assessed the potential of that conception of

[post birth] child, we recognize in the actions of parents who take their children home from the hospital after they are born (or who adopt children) a level of consent to care for that child. This consent may be tacit or explicit depending upon the scenario.[28] We recognize that these elements of consent take place within a previously established social convention[29] that governs the recognition of our responsibilities as new parents to provide for the children under our supervision.[30] In such scenarios, our consent to the care of [post birth] children is like the case of Bill, who leaves the money on the table in accordance with a previously established social convention on tipping. But if the case of care for [post birth] children is like the case of Bill and the case of unwanted pregnancy is like the case of Ted, then the same problem that presented itself under the Tacit Consent Version has manifest again under the Care Version. If the responsibility to care for [post birth] children rests on consent, then the analogy of [post birth] children to fetuses is of no use to the Care Version of the Responsibility Objection, given Boonin's dismissal of tacit consent as appropriate to ground a responsibility on the part of the pregnant woman to her fetus.[31]

Rather than consent, the proponent of the Responsibility Objection may wish to ground the Care Version on a conception of care responsibility (that exists without having consented to care for the fetus). However, even if the proponent of the Care Version can get around the problem of consent in the case of the [post birth] child, the care responsibility, as mentioned, exists within previously established social conventions on the matter. These social conventions on care for fetuses are exactly what are currently at issue.[32] Thus to demand that a mother care for her unborn fetus as if the same social conventions that apply to [post birth] children apply to the fetus, is to beg the question. As such, if the Care Version is grounded on a conception of consent, the proponent of the Responsibility Objection who upholds the Care Version of the Responsibility Objection presents a demand for care from the pregnant woman that cannot be supported. Alternatively, if the Care Version is grounded on a conception of care responsibility, the proponent of the Responsibility Objection who upholds the Care Version of the Responsibility Objection begs the question.

6. CERTAIN OBJECTIONS AND REPLIES

The first objection I will consider is in response to issues raised during the discussion of the Care Version of the

responsibility and found it inapplicable to the case of abortion, the Care Version cannot be based on harm if it is to apply to abortion. Furthermore, as the discussion shows, although consent may not be appropriate in the case of abortion, that does not mean consent is not an appropriate conception of responsibility in other cases.

[28] Presumptively, parents who take their biological children home from the hospital at the very least tacitly consent to the care of their children. That said, one might argue that parents have explicitly consented to the care of their children. Like adoptive parents who must file formal documents with the state agreeing to take on the role and responsibility of parenting for a child, biological parents must file formal documents with the institutions that report the birth of infants to the state. In such instances, before leaving the hospital with their child, even biological parents could be said to have explicitly, not just tacitly, agreed to the care of their infant by literally signing for the child. Whether or not this aside is correct, the main point is that parents of born children seem to have consented to the care of such children in some fashion. However, this sort of consent is not applicable to the case of pregnancy and abortion, as evidenced by the work of Boonin discussed previously.

[29] Here, the term 'social convention' is being used to reflect a societal understanding of expectations and habits that are recognized as reasonable expectations of acceptable behavior. The term is not intended to invoke the usage of legally binding international conventions from the United Nations (such as the Convention on the Rights of the Child). However, even if one wishes to include such conventions as part of the societal expectations and habits, it is unclear whether such legal conventions are intended to apply to fetuses or merely [post birth] children. Different countries that are signatories to the Convention on Human Rights and the Convention on the Rights of the Child have differing laws regarding abortion. Mere acceptance of the convention on child rights does not automatically entail the inclusion of 'fetuses' in the category of covered 'children'. Thus, whether one is thinking of conventions in either case (as either legally binding conventions like the Convention on the Rights of the Child, or as 'social expectations and habits') the point is that neither can be used to establish an obligation of care to fetuses as that is exactly what is at issue here.

[30] Home births and other less common practices regarding the entrance of children into industrialized society may require further argumentation on the aspect of one's consent to care for a [post-birth] child. However, I think the general point about consent post birth still applies. By keeping the child in one's home, one consents to the care of said child in accordance with our previously established social conventions on the matter.

[31] Explicit consent might still remain within the abortion debate and may present other interesting problems, but I leave such issues aside for the time being as I assume that the majority of people who explicitly consent to pregnancies desire to see the matter through. The only obvious problem I see being cases where an explicit consent pregnancy becomes life threatening for the mother. In such cases, I find self-defense suitably compelling to warrant termination (whether generated via Thomson's analogy or another argument).

[32] One may wish to ask how such social conventions are established and recognized, because we all have an understanding that over time social conventions seem to change. This is an important concern in that it suggests that if the rejection of a care responsibility hinges on the existence or lack thereof of a social convention, that a change in the convention would necessitate a change in the responsibility. As such, whether or not the responsibility exists will have to be continually reevaluated. But then, the question of whether a woman has a responsibility to care for her fetus is 'simply': has the social convention on this matter changed [however we evaluate and recognize that change]? I take it that there is no established social convention on the obligation to care for fetuses, so I will not consider the matter further here. However, further discussion of how such social conventions are established may be a useful endeavor for proponents of the Responsibility Objection who wish to undercut my argument here. To do so, a proponent of the Responsibility Objection would need to provide the criteria which establish the existence of such a social convention on the obligation to care for fetuses.

Responsibility Objection. One might wish to object to the suggestion that the care responsibility arises as a result of consent (tacit or otherwise). One might argue that refusing to care for their [post-birth] child by refusing to take the child home post-birth is child neglect and that the law does not give parents the right to refuse to care for their children. The issue here is that the law, at least in some countries, seemingly allows parents to do exactly what the proponent of the Responsibility Objection wishes to deny. At least as far as the United States of America is concerned, the existence of 'Safe Haven' laws seemingly allows parents to choose whether or not they wish to care for their newly born children or give up their rights/responsibility as parents to the state.[33] Safe Haven laws in general allow an individual to leave a newly born infant at designated public institutions (often hospitals, police and fire stations, and rescue squads). These designated institutions will then assume the responsibility to care for the child until such time as the child can be placed into the custody of the appropriate state agency.[34] In such situations, the act of leaving the child with the state institution is usually treated as a surrendering of parental rights (adoption surrender) on the part of the parent. Provided the adult has acted in accordance with the edicts of the particular state statute, which usually have to do with the age of the child and the general physical condition of the infant at the time it is left with the state, the adult is no longer responsible for the care of the child and is not punished by the state for child abuse or neglect as a result of forfeiting his/her parental rights.

The second objection I will consider, which one might try to raise to the argument as presented, is that the discussion of Harm Responsibility and the Harm Version misrepresents the argument presented by proponents of the Responsibility Objection on the subject of harm. Rather than making the claim that the fetus has been harmed and thus is owed care, proponents of the Responsibility Objection could instead be attempting to argue that abortion intentionally harms the fetus, intentionally inflicting harm upon innocent persons is immoral and the fetus is an innocent person, thus an abortion cannot be performed. This version of the argument would utilize a negative duty to avoid harm to generate its opposition to abortion.[35] However, the purpose of this work was to explore the potential for the Responsibility Objection to generate a demand for care based on a duty or responsibility to render aid, not a responsibility to avoid future harm. As shown, the duty to render aid would only arise in situations where one has previously inflicted harm upon another. In response, one might attempt to argue that avoiding future harms is an important element of the obligation to render aid. Such an account would seemingly be obligated to invoke Peter Singer's account of one's obligation to render aid [that one is obligated to render aid in situations where doing so can be accomplished without sacrificing something of comparable moral worth] in order to generate opposition to abortion.[36] The concern that arises from such a move by the proponents of the Responsibility Objection is that the responsibility to render aid in the case of a mother and her fetus is only generated in this case at the cost of placing a demand for the supererogatory rendering of aid onto every individual.[37]

A further objection one might offer to the argument presented is the idea that abortion is not simply a case where one refrains from rendering care, but rather a case in which an individual is actively engaged in the practice of killing another.[38] This objection claims that a woman is either actively killing her own child or (more likely) is asking healthcare professionals to do so on her behalf.[39] This objection to the argument presented therefore rests on a distinction between killing and letting die. In brief, the objector to the argument would maintain that it may be permissible to allow an innocent to die but it is never acceptable to intentionally kill an innocent.[40] Since the

[33] As of 2008, each US state had some version of a 'Safe Haven' law.The US Department of Health and Human Services. 2013. *Infant Safe Haven Laws*. https://www.childwelfare.gov/systemwide/laws_policies/statutes/safehaven.cfm [cited 20013 Oct 28].

[34] The agency in question is usually a state run department of Health and Human Services/department of Child Welfare.

[35] I am perhaps sympathetic to the potential for such an approach [an obligation to prevent harm to others] as a viable alternative for proponents of the Responsibility Objection to demonstrate the immorality of abortion. However, I maintain that such an approach is fundamentally different from the approach taken by the most common or prominent forms of the Responsibility Objection as presented here.

[36] See P. Singer. Famine, Affluence and Morality. *Philos Public Aff* 1972; 1(1): 229–243.

[37] There is a great deal of discussion of the issue of supererogation and Singer's original arguments in *Famine.* However, such discussions are well enough beyond the scope of this article that I must leave those concerns aside for the time being.

[38] This objection is not unique to the argument I have presented here, but is one that has been discussed at great length by many thinkers engaged in the debate on abortion. For a fuller account of the killing/letting die distinction see B. Brody. Thomson on Abortion. *Philos Public Aff* 1972; 1(3): 335–340; J. Finnis. The Rights and Wrongs of Abortion: A Reply to Judith Thomson. *Philos Public Aff* 1973; 2(2): 117–145; J.J. Thomson. Rights and Death. *Philos Public Aff* 1973; 2(2): 146–159; P. Foot. Killing and Letting Die, In *Abortion: Moral and Legal Perspectives*. J. Garfield, ed. Amherst, MA: University of Massachusetts Press; 1985. pp. 177–185; J.J. Thomson. Turning the Trolley. *Philos Public Aff* 2003; 36(4): 359–374; Boonin, *op. cit.* note 2, pp. 188–211.

[39] The question of what obligations a mother has to her fetus is already so complicated that I cannot address every aspect of the debate in this work. The issue of what obligations healthcare professionals have to a woman seeking an abortion (even assuming that a woman is morally permitted an abortion) is an issue too complicated to discuss adequately here. It may be the case that even though a woman can have or is entitled to have an abortion, a healthcare professional may not be obligated to provide one.

[40] This argument also assumes that the objector is willing to allow the individual in Thomson's famous violinist example to unplug herself from the violinist, even if unwilling (at this stage of the argument) to

fetus is an innocent, it cannot be intentionally killed and because abortion is intentional killing (or so the objector claims) then an abortion cannot be performed.

The response to the objection that abortion is killing rather than letting die can take one of two forms. The first form is to deny the claim that there is a morally relevant distinction between killing and letting die. This is the choice that Thomson makes.[41] The second form is to accept the distinction and allow that killing is substantially worse than letting die, but that abortion can be justified. This is the approach I will consider more fully.

One approach to take in attempting to justify abortion in the face of the killing/letting die distinction is to find an abortion procedure that is letting die rather than killing.[42] One plausible abortion procedure which could be construed as letting die is the case of hysterotomy. In hysterotomy, the fetus is removed from the woman's uterus, whole and intact. The fetus then dies as a result of its own body's inability to sustain its life. This practice is akin to the case of Thomson's violinist in which you 'unplug' yourself from the violinist. In Thomson's example, assuming that when you unplug yourself from the violinist you let him die rather than kill him, then the same would hold in the case of hysterotomy.[43] Thus, even if one accepts the killing/letting die distinction, there is a plausible procedure that would allow for abortion on the grounds that it is not killing the fetus, but letting the fetus die.

At this point the objector may deny the conclusion that hysterotomy is letting die, but is instead killing. The concern now is what constitutes killing in a way that can justify the claim that hysterotomy is killing. Phillippa Foot's account that the real concern with the killing/letting die distinction is a concern over initiating a fatal sequence of events rather than allowing a fatal sequence of events to run its course is one option that could justify the view that hysterotomy is killing and not merely letting die.[44] On Foot's account, it is permissible to allow a fatal sequence of events to take its course, but it is not permissible to initiate a fatal sequence of events. The objector would have to claim that the problem with hysterotomy is that it is the initiation of a new fatal sequence of events and so is impermissible. Conversely, Thomson's violinist would then have to be a case in which the fatal sequence of events is allowed to run its course when the violinist is unplugged because he dies from his preexisting fatal kidney ailment.

The problem with this response by the objector that hysterotomy is actually killing and not merely letting die, is that it is unclear why it is that the case of abortion is different from the case of the violinist in regards to initiating a fatal sequence of events versus allowing a fatal sequence to run its course. Taking the view that hysterotomy is killing because it is the initiation of a fatal sequence, then the concern is that what constitutes the creation of a new fatal sequence is unclear. The argument that hysterotomy is the initiation of a fatal sequence seemingly rests on the idea that the fetus is not in any danger of imminent death from its underdeveloped condition, which prevents it from being able to sustain its own life if it were removed from the womb, as long as it remains attached and inside the womb. Furthermore, while in the womb, provided it is not interfered with, it will continue in that state. But then, as long as the violinist is connected to you and you remain connected to him and the violinist is not otherwise interfered with, then the violinist is also not in any danger of imminent death from his kidney ailment (which prevents him from being able to sustain his own life if he were disconnected from you). Thus, if hysterotomy is killing the fetus, then unplugging the violinist is killing the violinist. This result seems difficult to accept. Similarly, if we accept that unplugging the violinist is letting the violinist die, we must do so on the basis that unplugging the violinist is allowing his preexisting kidney condition, that renders the kidneys incapable of sustaining his life to run its course. However, this would also suggest that unplugging the fetus is allowing the fetus's preexisting condition of lungs that are incapable of sustaining its life to run its course and so we must also be letting the fetus die.[45] Similar attempts to clarify what constitutes initiating a fatal sequence as opposed to allowing a fatal sequence to continue seem equally problematic. As a result, the distinction the objector needs in order to maintain that hysterotomy is killing seems unlikely to obtain. Therefore, it seems there is at least one version of abortion procedure that should be acceptable on the grounds that it is not killing the fetus but merely allowing it to die and so the

grant that one can likewise 'unplug' oneself from a fetus. If the objector is unwilling to grant this assumption and instead claim that the individual in Thomson's argument cannot unplug herself from the ailing violinist, then I can only respond that the objector's conceptions of our responsibilities in this regard strike me as being stronger than those of our established social conventions and further argumentation along this line is rendered unfeasible.

[41] Thomson argues that the distinction is not only false, but shown to be false by the story of you and the violinist. See Thomson, *op. cit*. note 38 (1973), 156–157; Boonin, *op. cit.* note 2, p. 190.

[42] Much of the following argument is a reflection of Boonin's account of the same problem, from which I drew much inspiration in dealing with this objection myself. I offer a greatly shortened version of that argument and focus on the most prominent aspects of this debate here. For a fuller discussion, see Boonin, *op. cit.* note 2, pp. 188–199.

[43] Boonin discusses the practice of hysterotomy as a plausible case of letting die. Ibid: 193–199.

[44] See Foot, *op. cit* note 38, p. 181.

[45] At this stage, I worry that perhaps Thomson's approach of simply denying the killing/letting die distinction may be the correct approach, though I am inclined to accept the view that there is in fact a morally relevant difference between killing and letting die, even if the distinction remains, as of yet, unclear.

opponent of abortion cannot object to all abortion procedures on the grounds that abortion is killing the fetus.[46]

7. CONCLUSION

It seems at this stage that the only possible conceptions of responsibility that can ground the Responsibility Objection are the liability demand and causal responsibility. As initially presented, the liability demand could have included either a demand to provide care or a demand to rectify harm. However, given that neither of those conceptions of responsibility survived the previous discussion as suitably applicable to the case of abortion, all the liability demand can produce is a requirement on the part of the pregnant woman to do 'something' about her pregnancy. That 'something' can seemingly allow for the care of the fetus if the woman so chooses, but could equally allow for termination of the pregnancy, though particular abortion procedures may require further argumentation if they are to be deemed acceptable methods of abortion. Without previously established conventions on the matter, a requirement to further action can include a wide array of potential actions. In a similar fashion, being causally responsible for the fetus, but without any demand for particular further action leaves a pregnant woman with the same variety of options.

It is my contention that the only conceptions of responsibility that can ground the Responsibility Objection which have thus far been presented are either liability or causality. If the preceding discussion in this work is correct, then it is incumbent upon the proponent of the Responsibility Objection to offer either alternative conceptions of responsibility or alternative iterations of the Responsibility Objection such that these alternatives are suitably distinct from those considered here.[47] Furthermore, the proponent of the Responsibility Objection must also demonstrate how it is that these alternatives can succeed in grounding these alternative iterations of the Responsibility Objection in light of what has been said here. Without such an argument, and given that neither the liability demand nor causal responsibility can generate a demand for a woman to provide care for her fetus until such time as it can survive without her assistance, the charge that a pregnant woman has a responsibility to her fetus only generates a requirement to perform *some* action, which includes termination of the pregnancy. As such, the Responsibility Objection ceases to be a serious objection to a woman's reproductive freedom.

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[46] Boonin takes the argument further and attempts to argue that other types of abortion are permissible as well, even if they do constitute killing the fetus. I do not wish to engage such arguments here. However, it is worth noting that the success or failure of such arguments may necessitate certain changes in abortion procedures, making abortion a more dangerous prospect for women seeking to terminate unwanted pregnancies. For more on such arguments see Boonin, *op. cit.* note 2, pp. 199–204 and a response by A. Tupa. Killing, Letting Die and the Morality of Abortion. *J Appl Philos* 2009; 26(1): 16–22.

[47] Arguments from vulnerability may be one such avenue. In general, an argument from vulnerability claims that because fetuses are vulnerable they are deserving of special levels of care and protection not afforded to other members of society. My concern here is that while this may be a way of salvaging the responsibility objection by presenting it in a new light, such an approach may simply be repackaging care responsibility with its associated problems under a different title.