Recent Challenges to Fetal Personhood: A Critical Analysis*

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Over the past decade or so several challenges to the prolife understanding of fetal personhood have been published. Two of the authors who have contributed much to this critique are Jeff McMahon and Dean Stretton. The purpose of this paper is to respond to some of their arguments. My point of departure will be Stretton’s 2008 Journal of Medical Ethics review¹ of my 2007 book, Defending Life: A Moral and Legal Case Against Abortion Choice.² In his critique of my defense of fetal personhood Stretton relies heavily on McMahon’s work. I will first summarize the case I make for fetal personhood in Defending Life, and then respond to the challenges to my case offered in Stretton’s review.

In Defending Life I offer a defense of fetal personhood, which I call the substance view.³ According to the substance view, the human being is a particular type of living organism—a rational moral agent—that remains identical to itself as long as it exists, even if it is not presently exhibiting the functions, behaviors, or current ability to immediately engage the activities that we typically attribute to active and mature rational moral agents. Because the human being is a rational moral agent, it is a person of intrinsic moral value as long as it exists.

¹Paper presented at a session of the Bioethics Study Group at the 2010 Meeting of the Evangelical Theological Society (17-19 November) – Atlanta, Georgia. This is a pre-edited, draft, version of the book chapter, “The Human Being, a Person of Substance: A Response to Dean Stretton,” which will appear in Persons, Moral Worth, and Embryos: A Critical Analysis of Pro-Choice Arguments from Philosophy, Law, and Science, ed. Stephen Napier (Dordrecht, The Netherlands: Springer, 2011). For this reason, no portion of this paper may be republished in any form without the express written consent of its author, Francis J. Beckwith.


³Beckwith, Defending Life, chapters 4 and 6.

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When I say that the fetus is a person I mean to say that she is just as much a bearer of rights as any person whose rights-bearing status is uncontroversial, e.g., her mother, you, or me. That is, the fetus is entitled to all the rights to which free and equal persons are entitled by virtue of being free and equal persons. So, for example, one cannot deprive the standard fetus of her life without the sort of justification we would expect if we were depriving a standard ten-year-old of his rights. To illustrate, if it is wrong to kill a ten-year-old as a result of taking his kidneys and giving them to people the government thinks will benefit society (e.g., scientific geniuses on the verge of curing cancer or AIDS), it is wrong to kill a 20-week-old fetal-clone as a result of taking his kidneys and giving them to his genetic progenitor, a scientific genius, who needs them to survive so that he may continue his work on cures for cancer and AIDS.

Although it is my contention that the human substance begins its existence as a zygote and remains identical to itself as long as it exists from its prenatal origins through adulthood, my focus in this paper will not be on the early embryo prior to the 14th day after conception. Questions have been raised as to whether the early embryo during this time is a unified organism. 4 Because space constraints do not allow me to answer those questions here, I will focus on arguments that maintain that even though the unborn is a unified organism subsequent to the 14th day after conception, it is nevertheless not a person of intrinsic moral value until it achieves a certain level of development.

This paper is divided into two sections: (1) a brief summary of the substance view and how I

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defend it, (2) Stretton’s critique including analysis of his arguments concerning (a) degreed natural capacities, (b) developed psychological capacities, and (c) the moral permissibility of the intentional creation of mentally handicapped fetuses.

I. The Substance View

A substance is an individual being of a certain sort. So, for example, the substance Barack Obama is a human substance, a being with a particular nature that we call “human.” The substance Lassie too is an individual being, but she is a canine substance, a being with a particular nature that we call “canine.” W. Norris Clarke offers a four-part definition of what constitutes a human substance:

(1) it has the aptitude to exist in itself and not as a part of any other being; (2) it is the unifying center of all the various attributes and properties that belong to it at any one moment; (3) if the being persists as the same individual throughout a process of change, it is the substance which is the abiding, unifying center of the being across time; (4) it has an intrinsic dynamic orientation toward self-expressive action, toward self-communication with others, as the crown of its perfection, as its very raison d’etre. \(^6\)

Each kind of living organism or substance, including the human being, maintains identity through change as well as possessing a nature or essence that makes certain activities and functions possible. “A substance’s inner nature,” writes J. P. Moreland, “is its ordered structural unity of ultimate capacities. A substance cannot change in its ultimate capacities; that is, it cannot lose its ultimate nature and continue to exist.” \(^7\)

Another way to put it is to say that substances, including human beings, are ontologically prior to

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\(^5\) Some portions of this section are adapted from sections of chapter 6 of my *Defending Life*.


their parts, which means that the organism as a whole maintains absolute identity through time while it grows, develops, and undergoes numerous changes, largely as a result of the organism's nature that directs and informs these changes and their limits. The organs and parts of the organism, and their role in actualizing the intrinsic, basic capacities of the whole, acquire their purpose and function because of their roles in maintaining, sustaining, and perfecting the being as a whole. Organisms may lose and gain parts and yet remain identical to themselves over time. Consider the following illustration.

A domestic feline, because it has a particular nature, has the ultimate capacity to develop the ability to purr. It may die as a kitten and never exercise that ability. Regardless, it is still a feline as long as it exists, because it possesses a particular nature, even if it never acquires certain functions that by nature it has the ultimate capacity to develop. In contrast, a frog is not said to lack something if it cannot purr, for it is by nature not the sort of being that can have the ability to purr. A feline that lacks the ability to purr is still a feline because of its nature. A human being who lacks the ability to think rationally (either because she is too young or she suffers from a disability) is still a human person because of her nature. Consequently, a human being’s lack makes sense if and only if she is a being of a certain sort.

Second, the feline remains the same particular feline over time from the moment it comes into existence. Suppose you buy this feline as a kitten and name him “Coween.” When you first bring him home you notice that he is tiny in comparison to his parents and lacks their mental and physical abilities. But over time Coween develops these abilities, learns a number of things his parents never learned, sheds his hair, has his claws removed, becomes ten times larger than he

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8J. P. Moreland in *Body & Soul: Human Nature and the Crisis in Ethics* by J. P. Moreland and Scott B. Rae (Downers Grove, IL: InterVarsity, 2000), 206

9I am using the following terms interchangeably throughout this paper: “ultimate capacities,” “basic capacities,” “intrinsic basic capacities,” and “natural basic intrinsic capacities.” This is what I mean by ultimate capacities: those capacities that a substance is rationally ordered to actualize for the perfection of itself. For example, all human beings have the ultimate capacity for rational thought, even if it is never actualized due to illness, physical defect, or death.
was as a kitten, and undergoes significant development of his cellular structure, brain and cerebral cortex. Yet, this grown-up Coween is identical to the kitten Coween, even though he has gone through significant physical changes. Why? The reason is because living organisms, substances, maintain identity through change.

According to the substance view, since a human organism can only develop certain functions it has the capacity to develop by nature because of the sort of being it is, a human being, at every stage of her development it is never a potential person. That is, she is always a person with potential, even if that potential is never actualized due to premature death or the result of the absence or deformity of a physical state necessary to actualize that potential. For example, a human being without vocal chords in a society in which there are no artificial or transplant vocal chords never loses the ultimate capacity to speak, but she will in fact never speak because she lacks a physical state necessary to actualize that ultimate capacity.

The substance view is also perfectionist. That is, it sees the maturation of a human being’s ultimate capacities as perfections of its nature. So, for example, the whole human being is harmed if it’s brain is not allowed to develop as a consequence of ailment or assault. Thus, if the embryo’s brain development is intentionally obstructed so that it does not achieve higher brain function and thus cannot exercise its natural powers for rational thought and moral reflection, the human being has been morally harmed because a good to which it is entitled by nature has been prevented from coming to fruition. Or, suppose a human being is brought up by his parents in such a way that they indoctrinate him to believe that he is property that is not qualitatively different than a commercial product such as a television or a microwave oven. This human being has suffered at least two harms: his parents have not fulfilled their proper roles as loving parents to which their child is entitled, and he has been taught false things about his nature that diminish in his own mind his real moral worth as a person.

In my defense of the substance view I offer several illustrations. They are intended to show the
inadequacy of alternative accounts of the human person that maintain that the fetus does not become a moral subject (or “person”) until it acquires one or more characteristics, such as organized cortical brain activity (OCBA), self-conscious interest in its own existence, interests that presuppose desires, and/or rudimentary brain activity. I argue that these characteristics, though perhaps sufficient conditions for personhood, are not necessary, since we can easily conceive of cases in which human beings no longer possesses these characteristics while not ceasing to be persons. One illustration I use is the case of Uncle Jed.

Imagine that your Uncle Jed is in a car accident that results in him being in a coma for nine months. Suppose that at the beginning of the coma, his physician tells you this: “Your uncle Jed will come out of this coma in nine months. Initially, he will likely not remember anything, including the languages he knows as well as his ability to play the violin. But in time, roughly two years, he will likely regain all that he has lost.” During the nine months in which Uncle Jed is in a coma he is in a state not unlike that of the standard fetus. Nevertheless, it seems that the

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10David Boonin argues that the unborn human being does not become a moral subject until it acquires organized cortical brain activity (OCBA), which may occur as early as 25 weeks gestation or as late as 32 weeks. Writes Boonin: “[A]n individual cannot begin to acquire this special moral standing until it begins to have at least some actual desires…. A human fetus has no such desires prior to the point at which it has conscious experience, and it has no conscious experiences prior to the point at which it has organized electrical activity in its cerebral cortex. It therefore has no such desires prior to the point at which it has organized electrical activity in its cerebral cortex. One implication of this account of the wrongness of killing, then, is that the fetus does not acquire the moral standing that you and I have prior to the point at which it has such activity.” (David Boonin, A Defense of Abortion [New York: Cambridge University Press, 2002], 125-26)


12Ronald Dworkin writes that it is “very hard to make sense of the idea that a fetus has rights from the moment of conception. Having rights seems to presuppose having interests, which in turn seems to presuppose having wants, hopes, fears, likes and dislikes. But an early fetus lacks the physical constitution required for such psychological states.” (Ronald Dworkin, Life’s Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom [New York: Random House, 1993], 15)


14Clearly, this is a reasonable way to think about these things, since even the abortion choice advocate must claim to know something about what the typical fetus can and cannot do in order to maintain that the fetus is outside the scope of the moral community because it lacks certain presently exercisable abilities. In fact, knowledge of what constitutes the
denier of fetal personhood would maintain that it would be morally impermissible to kill Uncle Jed while in this state, since Uncle Jed will eventually “return.”

Now let’s change the facts a bit. Suppose that same physician offers this prognosis: “Your uncle Jed (i.e., Uncle Jed₁) will come out of this coma in nine months. But when he does, he will have no memories and will have to relearn all his abilities, including his prolific violin playing. It will take him approximately three to five years to reacquire all his abilities, but his memories are gone forever. This means that he will have the opportunity to have new experiences and thus new memories. You should, of course, inform him and teach him about his family and friends. But it will be, in a sense, a new beginning for your Uncle Jed.” Uncle Jed₂, like Uncle Jed, will be like a standard newborn child when he awakes. And like Uncle Jed, Uncle Jed₂, during the next nine months in the coma, will be like a standard human fetus. Yet, unlike in the case of Uncle Jed, it seems that the denier of fetal personhood would have to conclude that it is morally permissible to kill Uncle Jed₂ while in this state, since he would be, after all, in the same position as the standard fetus without any prospect of the memories and abilities of the pre-coma mature Uncle Jed making a return.¹⁵ So, the difference between Uncle Jed and Uncle Jed₂ is this: the first will reacquire that which he temporarily lost access with while the latter will acquire something similar to what he had permanently lost. And it is on that basis alone that two similarly situated comatose patients may be morally distinguished as one not worthy of death and the other not worthy of life. This, frankly, seems like thin gruel on which to ground the difference between unjustified homicide and permissible killing.

“standard fetus” and its capacities, powers, and abilities during the entirety of its gestation is assumed in the cases made by Boonin, Tooley, Dworkin, and Himma references in notes 10-13.

¹⁵Boonin, for example, writes:
Of course, the critic might instead appeal to an imaginary case in which a temporarily comatose adult has had the entire contents in his brain destroyed so that there is no more information contained in his brain than is contained in that of the preconscious fetus. In this case, it seems right that my position does not imply that such an individual has the same right to life as you or I. But, as in the case of the adult who has never had conscious experiences, a critic of abortion cannot appeal to such a case as a means of rejecting my position because we cannot assume ahead of time that killing such individuals is seriously immoral. (Boonin, A Defense of Abortion, 78)
II. Stretton’s Critique

Stretton counters the substance view in several ways. In this section, I will cover his arguments concerning (a) degreed natural capacities, (B) developed psychological capacities, and (C) the moral permissibility of the intentional creation of mentally handicapped fetuses.

A. The Argument from Degreed Natural Capacities

In *Defending Life* I make the argument (following Patrick Lee) that because most abortion-choice thinkers attempt to ground a human being’s personhood in abilities that come in degrees—e.g., rationality, self-awareness, ability to communicate, and so forth—that means that personhood is a degreed property and thus cannot be the ground for believing that all human persons are equal in intrinsic moral worth. Stretton maintains that I am arguing that because natural capacities do not come in degrees while presently exercisable abilities do, and because the right to life cannot come in degrees (i.e., you either have it or you don’t), therefore, a human being’s right to life is grounded in its natural capacities and not in its presently exercisable abilities. Stretton responds by pointing out that natural capacities come in degrees as well,

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16 One “argument” that Stretton offers in response to my Uncle Jed2 illustration that I will not address in the text is this one: “This is unpersuasive, since many pro-choicers will simply deny that the foetal adult [Uncle Jed2] has a right to life.” (Stretton, “Critical Notice,”794). Finding an argument unpersuasive by denying the veracity of its conclusion is not the same as showing it to be unreasonable or flawed. What I am arguing is that the difference between Uncle Jed and Uncle Jed2 is arbitrary and thus has no moral import in establishing that the killing of the latter is not homicide. What, then, are the premises that unseat this charge of arbitrariness? Stretton does not say. He just makes the observation that some people will remain unpersuaded by my argument because they will deny its conclusion. But turnabout is fair play. For I am certain that most of my prolife allies will not be persuaded that Stretton’s observation is an adequate reason to abandon their belief that the Uncle Jed2 ought not to be killed.


18 Beckwith, *Defending Life*, 138-139.

19 Beckwith’s second argument… is that since the right to life is not a matter of degree, but developed capacities are a matter of degree (for example, some are more rational and intelligent than others), the right to life cannot be grounded, as pro-choicers seek to do, in developed capacities, but rather must, as the substance view claims, be grounded in natural capacities…” (citations omitted) (Stretton, “Critical Notice,” 794).
thus the substance view is in the very same predicament as the views that ground the right to life in presently exercisable abilities.  

Although Stretton is certainly correct that natural capacities come in degrees, being a human substance does not come in degrees. For it is in the latter, and not the former, that the defender of the substance view is locating a human person’s moral worth. In fact, I cannot think of any defender of the substance view, or any view similar to it, who thinks otherwise. Take, for example, a portion of the two pages of my book to which Stretton refers but from which he does not quote (The following includes changes from the original which I place in brackets, in order to be consistent with the use of language in this paper):

[T]he AEA [the Anti-Equality Advocate, i.e., someone who believes that all human beings are not equal in dignity and intrinsic moral worth] cannot explain why fundamental human rights [and moral worth] ought not to be distributed on the basis of native intellectual abilities and other value-giving properties, e.g., rationality, self-

20. “The obvious response…is that natural capacities also come in degrees, both within the human species (where some are naturally more rational and intelligent than others), and over the course of evolution (which we may assume involved imperceptibly gradual increases in natural capacities from our non-human ancestors to ourselves). Thus the substance view also grounds the right to life in degree capacities or properties. Being human is of course not a degree property—we are all equally human…; but on the substance view the reason humans are alleged to have a right to life is their natural capacity for rationality and communication (a degree property)—and so the substance view must also explain why the right to life is not a matter of degree. I submit we are all committed to positing some kind of threshold within a continuous range of degree properties or capacities.” (citations omitted) (Stretton, “Critical Notice,” 794)

21. Patrick Lee writes: “However, Stretton has misconstrued my argument and the criterion I (along with many others) propose for the right to life. I argued that defenders of abortion have no good reason to base the right to life on developed capacities for conceptual thought and free choice rather than on basic, natural capacities for such acts – capacities which are possessed by unborn, as well as more mature, human beings. However, the conclusion of my argument was not that the criterion for the right to life is natural capacities, but that it is, being a certain type of substance. I then proposed that the genuine criterion for having a right to life is being a person, that is, a distinct substance of a rational nature (the classic Boethian or Thomistic definition of ‘person’).” (Patrick Lee, “Substantial Identity and the Right to Life: A Rejoinder to Dean Stretton,” Bioethics21.2 [2007]:97) (note omitted)

22. “A substance’s capacities culminate in a set of its ultimate capacities that are possessed solely in virtue of the substance belonging to its natural kind: for example, Smith’s ultimate capacities are his because he belongs to the natural kind ‘being human.’” (Moreland in Body & Soul, 73)
awareness. This is because capacities are stages along a continuum, with some basic capacities being exercisable only as a result of other capacities first being actualized (e.g., the proximate capacity to learn a language requires a certain level of brain development) and the present exercisability of those capacities differ in their degrees (e.g., people have a wide range of language skills). Some adult human beings are more or less rational and more or less self-aware in comparison to others, and some human beings, because they are damaged or immature, are in the process of developing, and have not yet achieved, certain second-order capacities (e.g., the requisite brain structure to develop the capacity to learn algebra) that make certain first-order capacities possible (e.g., the present capacity to do algebraic problems if you know algebra). But if that is the case, then some [intrinsically valuable human persons] are more or less “intrinsically valuable” than others. But morally intrinsic value [MIV] is not a degreed property; you either have it or you don’t, and thus [MIV] cannot be conditioned upon the possession of a degreed property, for if you have more of it then you should have more moral worth. It would follow from this that the notion of the moral equality of human beings is not only illusory when applied to the [fetus] (which the AEA already believes) but to all human beings as well. But the AEA does not want to deny human equality among IVHBs [Intrinsically Valuable Human Beings, or “persons”]. Yet, the AEA can only reject this undesirable consequence if he embraces the notion that human beings [have intrinsic moral worth] because they are rational moral agents by nature from the moment they come into existence.  

My argument is that the human being is a particular sort of substance—a rational moral agent—that by its nature has certain natural basic intrinsic capacities that may or may not come to maturity and may or may not be lost and gained during the human being’s natural life. Unborn human beings, as do all human beings, are substances of this sort because of their nature. Clearly, 

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23Beckwith, 138-139, citing Moreland in Body & Soul, 202-204, in order to point the reader to a fuller explanation of the distinction between first-order and second-order capacities.
this nature entails certain natural basic intrinsic capacities, including the capacity to develop the abilities to reason and to engage in moral choice. But that means it is the human being’s nature that determines its natural basic intrinsic capacities, and it is that nature—rational moral agent—that grounds its moral worth as a person. Stretton, ironically, seems to see this as well: “Being human is of course not a degreed property—we are all equally human…; but on the substance view the reason humans are alleged to have a right to life is their natural capacity for rationality and communication (a degreed property)—and so the substance view must also explain why the right to life is not a matter of degree.”

Stretton is correct that all human beings are equally human. But for the supporter of the substance view, this means that all human beings share the same rational nature, which is not a degreed property. And it is because a human being has that nature that it has certain natural basic intrinsic capacities whose maturity and flourishing contribute to its perfection (or proper end). But if the human being is immature or ill and its natural basic intrinsic capacities cannot develop as they are supposed to, that human being still possesses full moral worth and is thus equal in dignity to his fellow human beings precisely because he is a substance of a particular nature and that nature is not a degreed property. As Christopher Kaczor points out,

A mentally retarded human being and a normal hedgehog are equally incapable of exercising distinctly human reasoning and freedom, but the handicap of the human is tragic while the rational incapacity [of] a hedgehog is inconsequential. This difference rests on the fact that the human, but not the hedgehog cannot exercise his or her species-specific form of flourishing. Since even mentally handicapped human beings share in a species-specific form of flourishing ordered to the goods of rationality and freedom, they are human persons.

In the cases of Uncle Jed and Uncle Jed₂, both lost their abilities to immediately exercise rational and moral choice, with the former, Uncle Jed, having the prospect of regaining his past

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achievements that resulted from the exercise of these abilities. But this does not change the fact that both Uncle Jed and Uncle Jed₂ are substances of a particular sort, rational moral agents. And it is because they share that nature—and not because of any abilities that they may regain or lose—that determines whether they are human persons. The purpose of the Uncle Jed stories is to illustrate why a human being’s nature rather than its presently exercisable powers and abilities better grounds its personhood. Thus, Stretton is wrong in thinking that I am grounding personhood in natural basic intrinsic capacities. Rather, I am grounding natural basic intrinsic capacities in human nature, something equally shared by all human beings regardless of their size, level of development, environment, dependency, or health.

So, contra Stretton, the substance view is not in the same position as alternatives that attempt to ground personhood in degreed properties. But this, not surprisingly, leaves some proponents of the latter views not entirely comfortable with its non-egalitarian implications. For instance, Jeffrey McMahan, in his careful and thoughtful analysis of the difficulties of grounding human equality on degreed properties, laments that “all this leaves me profoundly uncomfortable. It seems virtually unthinkable to abandon our egalitarian commitments…. Yet the challenges to the equal wrongness thesis, which is a central element of liberal egalitarian morality, support… skepticism about the compatibility of our all-or-nothing egalitarian beliefs with the fact that the properties on which our moral status appears to supervene are all matters of degree. It is hard to avoid the sense that our egalitarian commitments rest on distressingly insecure foundations.”

B. Argument from Developed Psychological Capacities

Stretton, relying on the work of McMahan, suggests that there could be other reasons as to why Uncle Jed₂ ought not to be killed: (1) the argument from respect and (2) the argument from developed psychological capacities. Because the second is the stronger of the two and relies on McMahan’s more detailed work, I will briefly address the first before moving on to the second. Stretton writes, “[T]he adult’s [Uncle Jed₂’s] past mental states may ground duties of respect

even though they have been erased in roughly the way we may owe duties of respect to the dead even though their past mental states have been erased.”

This is hardly to the point, since the question is whether Uncle Jed₂ while in the coma has a right not to be turned into a corpse. To suggest that we should respect him like we respect the dead is no real solution to the conundrum. After all, if the morgue were to discover a pulse emanating from what they presumed was the corpse of Uncle Jed₂ (with all the same prospects as in the story above) it seems incredible to suggest that the medical examiner would instruct his staff, “The only duties we owe him are those we owe a corpse.”

Stretton’s other argument goes like this: “the continuation of developed psychological capacities—even primitive ones like the fetus has—may provide a sufficient psychological connection between the foetal adult and its future self to ground a right to life…”

It is difficult to know what Stretton means by developed psychological capacities (DPCs). However, because he refers the reader to McMahan’s work, that is the place to look. Because Stretton’s “foetal adult” is undoubtedly Uncle Jed₂, he is likely referring to McMahan’s view that one’s egoistic concern about the future grounds one’s right to life. Writes McMahan:

I suggest that the basis for an individual’s egoistic concern about the future—that which is both necessary and sufficient for rational egoistic concern—is the physical and functional continuity of enough of those areas of the individual’s brain in which consciousness is realized to preserve the capacity to support consciousness or mental activity. Usually the functional continuity of these areas of the brain involves broad psychological continuity, but in the very earliest phases of an individual’s life and in some instances near the end, the same mind or consciousness persists in the absence of any degree of psychological connectedness from day to day. And as we have seen, what

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29 McMahan, The Ethics of Killing, 73-75
matters may be present in these cases, at least to some minimal degree.\textsuperscript{30}

Thus, what Stretton seems to be suggesting is that pre-coma Uncle Jed\textsubscript{2} in possession of DPCs has an egoistic concern about his future and thus an interest in “the physical and functional continuity of enough of those areas of … [his] brain in which consciousness is realized to preserve the capacity to support consciousness or mental activity.”\textsuperscript{31} For this reason, comatose and post-coma Uncle Jed\textsubscript{2}, also in possession of the same (or at least some of pre-coma Uncle Jed\textsubscript{2}’s) DPCs, may have a right to life.

It’s not clear, however, how this counts against the substance view, even if the DPC account does adequately account for the wrongness of killing Uncle Jed\textsubscript{2}. For the defender of the substance view is not saying that there could not be other reasons aside from the substance view for believing a human being has a right to life. Rather, she is arguing that the substance view has, in comparison to other views, greater explanatory power in accounting for why we believe certain human beings are intrinsically valuable persons and why we should believe that of all other human beings as well. For example, if I say it is wrong to kill Jon because he is an innocent human person, but you say that it is wrong to kill Jon because he is handsome, the latter reason does not show the former to be inferior or false, even if it turns out that you restrain yourself from killing Jon because he is handsome. Moreover, Stretton’s suggested alternative, the DPC account, ironically, may serve as a reason \emph{not} to abandon the substance view, since the substance view does definitively ground the right to life of Uncle Jed\textsubscript{2} while Stretton admits that the DPC account only \emph{may ground} his right to life.

Nevertheless, it seems to me that one can reject the DPC account on two grounds: (1) egoistic concern cannot ground moral worth, and (2) it relies on an artifactual account of cerebral architecture that can be plausibly challenged.

\textsuperscript{30} Ibid., 66.
\textsuperscript{31} Ibid.
Egoistic Concern. As I noted above, Stretton seems to be suggesting that pre-coma Uncle Jed in possession of DPCs has an egoistic concern about his future and thus an interest in “the physical and functional continuity of enough of those areas of … [his] brain in which consciousness is realized to preserve the capacity to support consciousness or mental activity.” But appealing to a human being’s egoistic concern to resolve a moral question seems to get things backwards. For objects of concern are either good or bad. That is, the morality of concerns, desires, projects, and interests are assessed by whether they are true goods for a being of this sort and not merely whether they are the being’s own. Tony Soprano, for example, may have an egoistic concern for his future because he desires to “rub out” Johnny Sacramoni a week from Monday. Or, Mr. Jones, after hearing of his wife’s affair may lose any interest in life and seek to end his own as soon as possible. In neither case is one’s egoistic concern remotely adequate to ground the person’s moral worth, since it is the moral worth of human persons qua human persons that is in question, and the concerns of the individual ego, as in the cases of Tony and Mr. Jones, may be directed toward immoral ends inconsistent with a basic good for human beings as such. Thus, because one’s egoistic concern about one’s future may not advance one’s good or the good of other persons, and because moral worth is always good, therefore, egoistic concern about one’s future cannot ground moral worth.

Nevertheless, it does seem to be the case that it is a good to be concerned about one’s future, but only because of the role it plays in the actualization of the perfections to which a human being is ordered by virtue of its rational nature. According to the substance view, the goodness of one’s concern for one’s future means that life itself is a basic good and that being alive allows one to participate in a variety of other goods such as friendship, love of neighbor, the honing of talents and skills, engaging in acts of charity, serving the Lord, appreciating fine art and music, etc. These goods contribute to the flourishing of the human person because he is an individual substance of a rational nature ordered toward these goods. Thus, one’s egoistic concern for the

32Ibid.
future is not what grounds one’s moral worth. Rather, it is on the basis of one’s moral worth by which one assesses the moral quality of one’s egoistic concern for the future. That is, the question is whether or not one’s egoistic concern aligns with the proper exercise of the powers of moral and rational choice for one’s good appropriate for the sort of being one is. Therefore, the question of how we should treat Uncle Jed₂ while he is in the coma is not, “Did he have an egoistic concern for his future prior to entering the coma?,” but rather, “What sorts of actions toward Uncle Jed₂ would show proper respect for the good to which such a being is ordered by virtue of its nature?”

**Cerebral Architecture.** Although it seems that egoistic concern by itself cannot ground moral worth, McMahan’s case is much richer than that. Recall, he argues that “the basis for an individual’s egoistic concern about the future…is the physical and functional continuity of enough of those areas of the individual’s brain in which consciousness is realized to preserve the capacity to support consciousness or mental activity.”³³ (emphasis added). So, it is by observing Uncle Jed₂’s cerebral architecture (CA) that we are able to detect whether he has the developed psychological capacities (DPCs) that may ground his right to life. Consequently, by conscripting McMahan’s argument, Stretton seems to be saying that Uncle Jed₂, while subsisting through precoma, comatose, and post-coma states, possessed DPCs because he had the CA of a mature rational agent. Nevertheless, Uncle Jed₂’s inability to employ a mature CA for the exercise of his moral and rational powers that he possesses as a consequence of being a rational moral agent by nature is a lack possessed by both the standard fetus, which like Uncle Jed₂, according to Stretton,³⁴ may have a right to life because it has primitive developed psychological capacities (pDPCs) as well as the standard embryo that Stretton does not think has a right to life because its psychological capacities are undeveloped (uDPCs).³⁵ Thus, if I am reading Stretton correctly

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³³McMahan, *The Ethics of Killing*, 66,
³⁴Recall his argument: “the continuation of developed psychological capacities—even primitive ones like the fetus has—may provide a sufficient psychological connection between the foetal adult and its future self to ground a right to life…” (Stretton, “Critical Notice,”794) (emphasis added)
³⁵See Ibid., 794-795. See also, Dean Stretton, “Kreeft Debunked: A Critique of Peter Kreeft’s Essay ‘Human...
(through McMahan), it is the temporal continuity of CA between pre-coma, comatose, and post-coma Uncle Jed₂ that *may ground* his right to life. I do not think this succeeds *vis-à-vis* the substance view.

When Stretton writes of "the continuation of developed psychological capacities," what does he mean by "continuation"? He clearly does not mean that these capacities continue as a sort of independent cluster, an individual substance, that subsists through time while losing and gaining parts and properties. For these DPCs are themselves properties *had by* a being of a certain sort that may lose and gain DPCs while it subsists through time. After all, when these developed psychological capacities are functioning properly, they work in concert with other properties and abilities for the good of the whole being, or substance, that owns them. Thus, the only way that DPCs can continue through time is as properties or powers had by a substance. So, if Stretton is correct that the temporal continuation of these DPCs is what gives (or may give) Uncle Jed₂ the right to life, this account requires that we think of both Uncle Jed₂ as a substance of a certain sort, a rational moral agent, for which the continuation of developed psychological capacities is a good that contributes to the being’s perfection. In that case, it is the human being as a whole that is the proper subject of moral concern, since it is its good and proper end for which DPCs, as well as the being’s other potencies, capacities and powers, acquire their meaning and purpose.

But in the case of Uncle Jed₂ the DPCs cannot be exercised because he is damaged in such a way that he lacks a necessary physical condition or state that the exercise of these capacities requires. For this reason, Uncle Jed₂ while in a comatose state is in the same position as the standard embryo, though, as Stretton implies, the standard embryo lacks DPCs. So, it is the embryo’s

Personhood Begins at Conception,” available at http://eileen.250x.com/Main/KreeftBeckwith/KreeftBeckwith.html. Because I am not sure what Stretton means when he uses the term “fetus”—whether he is using it in the popular sense to mean an unborn human being during its entire gestation in the womb or in its more technical sense as an unborn human being in its 9th week after conception or later—I am assuming he means it in the latter sense. Prior to the 9th week, the appropriate technical term is “embryo.” Thus, I am using “fetus” and “embryo” in the text with those technical definitions in mind.

lack of DPCs that morally permits one to kill it. But the embryo does possess from the moment it comes into being, and as it subsists through time, undeveloped psychological capacities (uDPCs). That is, from at least by the time the primitive streak arises about 14 days after conception the human being subsists through time with the ultimate capacity to develop developed psychological capacities because it is a being of a rational nature intrinsically ordered to do so. Thus, for the embryo, the development of psychological capacities, like in the case of Uncle Jed₂’s developed, though impotent, psychological capacities, acquire their meaning and purpose because of the role they play in the good of the substance as a whole. So, both the embryo and Uncle Jed₂ are substances who possess the same ultimate capacities though they presently cannot exercise them, with the embryo requiring further development while Uncle Jed₂ needs healing. So, the only difference between the two is that one possesses the CA of a mature rational moral agent (DPCs) while the other does not (uDPCs). Thus, according to Stretton, a human being that subsists through time with DPCs may be a person who may not be killed without overwhelming reason while a human being that subsists through time with uDPCs is not a person and thus may be killed for a variety of lesser reasons. But the basis for this serious moral distinction—possessing a developed CA—seems arbitrary. For why should the possession or absence of that physical property make a moral difference if both beings share the same rational nature and the same unexpressed intrinsic powers? Why precisely is the physical shape and maturity of a dormant organ system by which a being’s cognitive powers may be exercised relevant to assessing a being’s moral worth? Stretton does not say.

It seems to me that the confusion lurking behind Stretton’s reliance on mature CA is a crude physicalism that treats organisms as if they were artifacts rather than living substances. Consider this example. Imagine if two airline passengers were debating whether the object on the ground that they were viewing through their windows at 30,000 feet is a Catholic Cathedral or the Playboy Mansion. The building’s external and internal architecture would be relevant to resolving this dispute. This is because the architecture of a building, whether a cathedral or a mansion, is not something intrinsically had by the building, as if the building were a unified
substance over and above the sum total of its parts that acquire their meaning in relation to the whole and work in concert for the good of the whole. For the building is an artifact whose purpose is the result of an external mind imposing a pattern on bits of inert matter.

There is no “building substance” that subsists through time with its own intrinsic capacities and natural powers that may be actualized for the perfection of the building. For a building, or any artifact, present architecture is everything, since there is no substance that subsists through time intrinsically ordered to a particular end. For a living organism, the development of its architecture, cerebral or otherwise, is suggestive of the sort of being it is. So, when it comes to a living substance, its nature is everything, for it reveals to us its intrinsically ordered ends, its architectonic hierarchy of powers, properties and potencies.

This is why, as Aristotle points out, if you own a bed made out of wood and then plant a piece of the bed in the ground, “it would not be a bed that would come up, but wood.”37 This “shows that the arrangement in accordance with the rules of the art is merely an incidental attribute, whereas the real nature is the other, which, further, persists continuously through the process of making.”38 In other words, the form and finality of the bed is imposed from without (an “arrangement in accordance with the rules of art”) while the form and finality of the wood is intrinsic to the nature of the tree from which it was taken (“the real nature” that “persists continuously through the process of making”). In the words of Etienne Gilson: “The artist is external to his work; the work of art is consequently external to the art which produces it. The end of living nature is, on the contrary, cosubstantial with it. The embryo is the law of its own development. It is already of its nature to be what will be later on an adult capable of reproducing itself.”39 Consequently, Stretton’s appeal to cerebral architecture as possibly

38Ibid.
dispositive to a being’s right to life assumes a controversial understanding of living organisms that some, especially metaphysical realists, will find unconvincing. ④₀

C. The Argument from the Moral Permissibility of the Intentional Creation of Mentally Handicapped Fetuses

In *Defending Life* I argue that given the dominant understandings of personhood in the literature, understandings that connect a human being’s moral worth to certain presently exercisable mental abilities, it is difficult to account for the wrongness of intentionally creating mentally handicapped fetuses. ④₁ For example, suppose that Mr. Jones clones himself. ④₂ That clone, X, is then implanted into a womb and it begins to develop normally. However, at a certain point in its gestation Mr. Jones orders that X’s neural tube be stopped from developing so that X may not acquire the higher brain functions that are necessary for X to exercise its rational and moral powers. That is, a healthy embryo is manipulated so that it develops into an anencephalic child. ④₃ Mr. Jones issues that order because he wants to harvest X’s body (which has Mr. Jones’s genome) so that if and when any of Mr. Jones’ organs become diseased or less functional, he can replace those organs with X’s healthy

④₀Obviously, the view I am defending, the substance view, is no less controversial. But this means that how one views an organism’s development will be shaped not only by the facts on the ground but how those facts cohere with one’s metaphysics and the arguments one offers for it. My point is this: the force of Stretton’s counterargument depends on his own prior metaphysical commitment to what appears to be an artifactual understanding of organisms. But if one rejects that metaphysics for a variety of other reasons, then the counterargument loses much of its force.

④₁Beckwith, *Defending Life*, 139-140, 148-149, 158-159, 212

④₂The following is similar to a scenario suggested in Carol Kahn, “Can We Achieve Immortality?: The Ethics of Cloning and Other Life Extension Technologies,” *Free Inquiry* (Spring 1989), 14-18.

④₃The National Institutes for Health provide this definition of anencephaly:

Anencephaly is a defect in the closure of the neural tube during fetal development. The neural tube is a narrow channel that folds and closes between the 3rd and 4th weeks of pregnancy to form the brain and spinal cord of the embryo. Anencephaly occurs when the "cephalic" or head end of the neural tube fails to close, resulting in the absence of a major portion of the brain, skull, and scalp. Infants with this disorder are born without a forebrain (the front part of the brain) and a cerebrum (the thinking and coordinating part of the brain). The remaining brain tissue is often exposed—not covered by bone or skin. A baby born with anencephaly is usually blind, deaf, unconscious, and unable to feel pain. Although some individuals with anencephaly may be born with a rudimentary brain stem, the lack of a functioning cerebrum permanently rules out the possibility of ever gaining consciousness. Reflex actions such as breathing and responses to sound or touch may occur.

(http://www.ninds.nih.gov/disorders/anencephaly/anencephaly.htm)
ones.

But, as Dan W. Brock points out, “Most people would likely find this practice appalling and immoral, in part because here the cloned later twin’s capacity for conscious life is destroyed *solely as a means* for the benefit of another.”44 What I suggest is that this intuition is best grounded in the substance view of persons. That is, only if the fetus is entitled to his higher brain functions does it make sense to say that the cloned twin has been wronged. Remember, the substance view is a perfectionist view, which means, as I noted above, it sees the maturation of a human being’s intrinsic ends or purposes as perfections of its nature. So, for example, the whole human being is harmed if it’s brain is not allowed to develop as a consequence of ailment or assault. Thus, if the embryo’s brain development is intentionally obstructed so that it does not achieve higher brain function and thus cannot exercise its natural powers for rational thought and moral reflection, the human being has been morally harmed because a good to which it is entitled has been prevented from coming to fruition. But if that’s the case, then any act intended to disrupt or compromise the human being’s proper end, including abortion, is prima facie immoral. After all, if it’s wrong to prevent the embryo from acquiring its higher brain function by blocking its neural tube, it’s wrong to do so by killing it via abortion.

In response to my argument, Stretton writes:

To the contrary, this case seems to *refute* the substance view. To render a normal *adult* anencephalic would be tantamount to murder; surely then the same is true of *unborn* human beings, on the substance view? Yet our intuition is *not* that the creation of anencephalic clones is tantamount to murder. Our sense is rather that the deliberate creation of disabled beings is *prima facie* wrong (though well short of murder) even where those beings are not

harmed by being created….This intuition, however, provides no support for the substance view. 45

Stretton, again, is misconstruing my argument. He reads into it something I do not defend. In no place in which I offer this argument do I suggest, imply, or claim that creating an anencephalic child is tantamount to murder. That belief plays no role in the argument’s logic nor in the reason why I offered it. What then was I trying to accomplish with the argument?

Let us start with the moral claim “it is a prima facie wrong to intentionally create an anencephalic human being.” For someone who holds the substance view this moral claim make sense, for the human being whose brain is intentionally obstructed from normal development is being denied that which he is by nature entitled, since a functioning brain is a perfection of its nature. Stretton, however, concedes that intentionally creating an anencephalic human being is a prima facie wrong even if the intervention to alter the human being’s brain development occurs before it develops what Stretton and others (like McMahan, Boonin, and Dworkin) consider the properties that impart personhood to the human being. So, what precisely are the grounds by which Stretton issues this judgment? He does not say. Is it because the fetus is entitled to its higher brain functions? If so, then abortion is unjustified, since it too robs the fetus of its higher brain functions (in addition to all of its bodily functions including the use of mature versions of its heart, lungs, legs, harms, ears, nose, eyes, etc.)

So, here’s the problem: almost everyone agrees that it is a prima facie wrong to intentionally create an anencephalic human being. I, then, ask the question: what account of the human person best accounts for this intuition? It seems to me that the substance view has the best resources to do so, since views like those held by Stretton, McMahan, Boonin, and Dworkin affirm that it is morally permissible to destroy the fetus, including its developing brain, prior to its acquisition of certain value-making properties. So, if one can destroy the fetus for the apparent good of another (the

pregnant woman) prior to it becoming a person, why cannot one use the fetus’s body parts for the
good of another (the cloned twin’s progenitor) by making sure it does not become a person?

Let me offer another twist to this thought experiment. Suppose that the creating of anencephalic
clones for organ harvesting becomes widespread. In response, millions of citizens rise up in protest,
calling for the liberation of the clones. These citizens call their movement, clone-choice (CC), since
they believe that it is morally wrong for the clones to have their moral and rational powers—i.e.,
their choice—obstructed from maturing by cerebral mutilation. Those that support the practice
respond, calling their movement, clone-life (CL), since they believe that it is morally wrong to
interfere with a person’s reproductive powers to create non-person human beings (anencephalic
clones) for the preservation of the lives of “real” persons. CL, with the assistance of the government,
sets up thousands of “Life Centers” throughout North America in which cloning and harvesting
procedures are offered to the public at a low cost. In these centers are millions of adult-looking
human clones without higher brain functions resting in suspended animation. It turns out that some
scientists working with CC have discovered a surgical procedure that will allow the adult clones to
develop their higher brain functions. Suppose that some of these scientists break into several Life
Centers, perform this surgery on about fifty of the adult clones, take these clones to safe houses
where they are nourished, cared for, and sheltered, and over the course of nine months the clones do
in fact develop higher brain functions. If you think what the scientists did was not only good but an
act that justice requires, it seems that you must believe that the clones are beings of a rational nature
ordered toward certain perfections that when obstructed results in a wrong.

The strength of my argument does not depend on the claim, nor conclude that, the creation of
anencephalic human beings is tantamount to murder. Rather, its strength depends on the inability of
views contrary to the substance view—those embraced by Stretton and others—to account for the
wrongness of an act for which the substance view can easily account.
III. Conclusion

In this paper I offered a modest defense of the substance view of persons—that the human being is a substance with a rational nature—by responding to several criticisms of it offered by the bioethicist Dean Stretton. Although Stretton’s critique raises important questions with which the defender of the substance view must wrestle, I do not believe his critique succeeds in undermining my contention that the substance view has far more explanatory power than its rivals. 46

46 A special thanks to my graduate assistant, Logan Gage (PhD cand., Baylor University), for proofreading this paper as well as making some good suggestions. Thank you also to Scott Klusendorf (Life Training Institute) for his comments. But I am most indebted to an anonymous referee who really took me to task for an earlier version of this paper. He (or she) forced me to write with greater clarity, rigor, and precision, though any faults in this final version are entirely my own. Thank you.