

# *Three Errors in the Substance View's Defense*



ROB LOVERING

## ***Abstract***

According to the theory of intrinsic value and moral standing known as the “substance view,” all human beings have intrinsic value, full moral standing and, with these, a right to life. The substance view has been defended by numerous contemporary philosophers who use the theory to argue that the standard human fetus has a right to life and, ultimately, that abortion is *prima facie* seriously wrong. In this paper, I identify three important errors committed by some of these philosophers in their defense of the theory—what I refer to as the “extratheoretical-proposition error,” “quantitative-differences error,” and “non-normative-answer error”—and conclude that these errors render their defense inadequate.

**Keywords:** *substance view, intrinsic value, moral standing, basic capacity, human fetus*

## ***1 Introduction***

According to the theory of intrinsic value and moral standing known as the “substance view”—to be referred to here as “SV”—all human beings have intrinsic value, full moral standing and, with these, a right to life. SV has been defended by numerous contemporary philosophers—including Robert P. George, Patrick Lee, Christopher Tollefsen, Francis Beckwith, and Henry Friberg-Fernros—who use the theory to argue that the standard human fetus has a right to life and, ultimately, that abortion is *prima facie* seriously wrong.

In this paper, I identify three important errors committed by these philosophers in their defense of the theory. The first error, what I refer to as the “extratheoretical-proposition error,” is that of invoking extratheoretical propositions in an attempt to defend SV’s intratheoretical propositions. The second error, what I call the “quantitative-differences

error,” is that of overlooking that quantitative differences in property possession can give rise to qualitative differences in property possession which, in turn, can justify treating entities in radically different ways. The third error, what I refer to as the “non-normative-answer error,” is that of providing a non-normative answer to a potentially SV-undermining normative question. Each of these errors will be explained in much greater detail shortly. But first, a description of SV is in order.

## 2 On the Substance View

SV is presented here in terms of what I take to be the theory’s fundamental axiological and moral propositions (hereafter, simply “fundamental propositions”)—those propositions that collectively make the theory what it is and, relatedly, distinguish it from rival theories of intrinsic value and moral standing. The first proposition pertains to a property an entity’s possession of which is sufficient for intrinsic value. The second proposition pertains to the degree to which intrinsically valuable entities possess moral standing. And the third proposition pertains to the degree to which it is *prima facie* wrong—wrong *all else being equal*, for present purposes—to kill or let die entities that have full moral standing. SV’s fundamental propositions are as follows:

- (1) All entities possessing the essential property of the basic capacity for rational moral agency have intrinsic value.
- (2) All entities possessing intrinsic value have full moral standing.
- (3) It is *prima facie* seriously wrong to kill or let die any entity that has full moral standing.

To ensure that these fundamental propositions are properly understood, a number of clarifying comments about them are in order.

Regarding (1), one should know what is meant by “essential property,” “basic capacity,” “rational moral agency,” and “intrinsic value.” Since these terms—and the concepts invoked by them—are likely to be familiar to many readers, I’ll be brief. Beginning with the former, an essential property is a property without which it is impossible for the entity possessing said property to be what it fundamentally is. Essential properties are to be contrasted with accidental properties, properties without which it remains possible for the entity possessing said property to be what it fundamentally is. An essential property of, say, a Smith’s dwarf chameleon is the capacity to change its skin color—an entity cannot be

a Smith's dwarf chameleon while lacking the capacity to change its skin color. Whereas an accidental property of a Smith's dwarf chameleon is to have this or that skin color (green, for instance)—an entity can be a Smith's dwarf chameleon even if it is not presently green.

A basic capacity for something (X)—or a basic *potentiality* for X, since SV defenders use “capacity” and “potentiality” interchangeably—is a capacity for X that, due to lack of development, is not remotely, let alone immediately, exercisable.<sup>1</sup> A basic capacity for X is to be distinguished from what I call a “proximate capacity” for X—a capacity for X that is exercisable but, for whatever reason, not immediately so—and an “ultimate capacity” for X—a capacity for X that is immediately exercisable.<sup>2</sup> To illustrate the differences among these capacities, consider, for example, the capacity for reasoning. The standard human infant has the basic capacity for reasoning—a capacity for reasoning that, due to the infant's nascent brain development, is not remotely exercisable. The sleeping adult human being has the proximate capacity for reasoning—a capacity for reasoning that is exercisable but, due to temporary unconsciousness, is not immediately so. And the fully conscious standard adult human being has the ultimate capacity for reasoning—a capacity for reasoning that is immediately exercisable.

As for rational moral agency, it is the capacity to make, and act on the basis of, moral judgments. (It's worth observing that this capacity cannot be had *barely*. In order to have it, an entity must possess other capacities, such as the capacities for consciousness, rationality, concept possession, and so on.) The *basic* capacity for rational moral agency, then, is the not-remotely-exercisable capacity for making, and acting on the basis of, moral judgments. Or, to put it in terms of potentiality (again, SV defenders use “capacity” and “potentiality” interchangeably), the basic potentiality for rational moral agency is the not-remotely-actualizable potential for making, and acting on the basis of, moral judgments.

Finally, for an entity to have intrinsic value is for it to be valuable in and of itself—valuable, that is, in its own right. Intrinsic value is perhaps best understood when contrasted with extrinsic, particularly instrumental, value. For an entity to have instrumental value is for it to be valuable as a means to something else that is valuable, whatever it might be. With that in mind, one way to think about intrinsic value is that entities that have it are valuable even when they are not valuable as a means to anything else that is valuable.

With this understanding of intrinsic value in mind, one can see that it is possible for two entities to be intrinsically valuable without being

*equally* valuable. That is, it is possible for intrinsic value to admit of degrees and, in turn, for one intrinsically valuable entity to be more valuable than another intrinsically valuable entity. After all, that an entity is valuable in and of itself tells us nothing about just how valuable it is. That said, and as will be addressed in greater detail below, SV defenders hold that intrinsic value is not a degreed property—as Beckwith puts it, “you either have it or you don’t.”<sup>3</sup> Despite the appearance of contradiction, however, their position on intrinsic value is coherent. For SV defenders have a particular kind of intrinsic value in mind, one in virtue of which an entity is worthy of a high level of concern and respect.<sup>4</sup> In a word, it is a property in virtue of which an entity possesses *dignity*. SV defenders can grant, then, that two entities can be intrinsically valuable without being equally valuable—that is, they can grant that some kinds of intrinsic value admit of degrees—while, at the same time, maintain that a particular kind of intrinsic value, in virtue of which an entity possesses dignity, does not. All this to say, in the present context, for an entity to have intrinsic value is for it to be valuable in and of itself and in a dignity-conferring way.

As for (2), in order to understand it, one needs to know what it meant by “full moral standing.” Beginning with “moral standing” (or “moral *status*,” as some prefer to call it), to have it is to be morally considerable. It is, as Mary Anne Warren puts it,

to be an entity towards which moral agents have, or can have, moral obligations. If an entity has moral status, then we may not treat it in just any way we please; we are morally obliged to give weight in our deliberations to its needs, interests, or well-being. Furthermore, we are morally obliged to do this not merely because protecting it may benefit ourselves or other persons, but because its needs have moral importance in their own right.<sup>5</sup>

And to have “full” moral standing—or full moral “respect” or “worth,” as some SV defenders prefer—is to have the greatest degree of moral standing an entity can possess (earthly entities, at any rate) which, in turn, entails that moral agents have the greatest degree of moral obligation to those entities that have it. Moreover, with full moral standing comes a right to life—briefly, a right not to be killed or allowed to die unjustly—or so SV defenders hold.<sup>6</sup> (That they hold that a right to life involves the latter—a right not to be allowed to die unjustly—will be addressed shortly.) According to (2), then, entities that are intrinsically valuable have full moral standing and, with it, a right to life.

With respect to (3), and related to (2), the wrongness—the degree thereof, in particular—of killing or letting die an entity that has full moral standing is a function of the latter. More specifically, the degree of wrongness supervenes on the entity's degree of moral standing (and ultimately—as (1) and (2) indicate—on the entity's basic capacity for rational moral agency). Accordingly, for any two entities possessing full moral standing, it is just as *prima facie* seriously wrong to kill the one as it is to kill the other, and it is just as *prima facie* seriously wrong to let the one die as it is to let the other die. It is worth noting here that this is consistent with a position typically embraced by SV defenders: that killing is *prima facie* morally worse than letting die. After all, both killing and letting die can be *prima facie* seriously wrong even if the former is more so than the latter.

It behooves me to note here that there is an alternate understanding of full moral standing and, with it, the degree of wrongness of killing or letting die entities that possess full moral standing available to SV defenders (my thanks to an anonymous referee for suggesting this). Some SV defenders might understand these things in the following way: though full moral standing does not allow one to differentiate morally between such entities with respect to their negative rights (briefly, their rights *against* being treated in certain ways, such as their right not to be killed unjustly), it *does* allow one to differentiate morally between the entities with respect to their positive rights (their rights *to* be treated in certain ways, as a right to be saved would be). More specifically, some SV defenders allegedly maintain that full moral standing provides entities that have it the negative right not to be killed unjustly and does so in such a way that one may not differentiate morally between two entities possessing this negative right (it is just as *prima facie* seriously wrong to kill the one as it is to kill the other), but that full moral standing does *not* provide entities that have it with the positive right to be saved, let alone provide it in such a way that one may not differentiate morally between two entities possessing this positive right. Consequently, one might think that there is room for differentiation with respect to how to defend the positive rights of entities that have full moral standing.

Though much could be said about this other understanding of full moral standing and, with it, the degree of wrongness of killing or letting die entities that possess full moral standing, for the sake of space, I must limit my comments on it to the following. To begin with, and as alluded to above, the right to be saved should not be confused with the right not to be allowed to die unjustly. The latter is a negative right while the

former is a positive right, the latter intrinsically regards an unjust death while the former does not, and so on. What's more, since SV defenders hold that one is not allowed to differentiate morally between entities that have full moral standing with respect to their negative rights, it follows that one is not allowed to differentiate morally between entities that have the negative right not to be allowed to die unjustly. (That entities with full moral standing have such a negative right, given SV, will be addressed shortly.) Hence my construal of SV as entailing that, for any two entities possessing full moral standing, it is just as *prima facie* seriously wrong to kill the one as it is to kill the other, and it is just as *prima facie* seriously wrong to let the one die as it is to let the other die. In sum, though moral differentiation when it comes to positive rights might be consistent with SV, the right under consideration here—the right not to be allowed to die unjustly—is a negative right and, as such, one that does not allow for moral differentiation, given SV.

But is it true that, according to SV, entities with full moral standing possess the negative right not to be allowed to die unjustly? After all, SV defenders usually only explicitly hold that such entities have the negative right not to be *killed* unjustly. But a convincing case can be made that they *implicitly* hold that entities with full moral standing also possess the negative right not to be allowed to die unjustly. Simply put, the grounds they provide for holding that entities with full moral standing have the right not to be killed unjustly serve equally as grounds for holding that entities with full moral standing have the right not to be allowed to die unjustly. To wit, while presenting their account of what suffices for humans to have full moral standing and, with it, dignity and rights—especially a right to life—George and Tollefsen write that

[b]y identifying a type of action as one that always involves damage or destruction to a basic good [e.g., life], we can identify an action type as being always incompatible with a will to integral human fulfillment. And if this type of action would therefore be always and everywhere wrong for anyone, then we can speak of a corresponding absolute and inviolable right.<sup>7</sup>

They then identify an action type of this sort—namely, “any choice to deliberately damage or destroy” a human, which constitutes “a violation of an inviolable right, the human right to life”—and conclude that humans with full moral standing have a right not to be killed unjustly.<sup>8</sup> As one can see, these claims provide equal support for the conclusion that humans with full moral standing have a right not to be allowed

to die unjustly. For “any” choice to deliberately damage or destroy a human includes the choice to deliberately destroy a human by allowing her to die (e.g., by deliberately starving her to death). Given their own grounds for holding that entities with full moral standing have dignity and rights, particularly the right to life, then, George and Tollefsen have reason to conclude, not only that such entities have a right not to be killed unjustly, but that such entities have a right not to be allowed to die unjustly as well.

Much more could be said about this alternate understanding of full moral standing and, with it, the degree of wrongness of killing or letting die entities that possess full moral standing that might be available to SV defenders (e.g., should we agree with such SV defenders that full moral standing allows one to differentiate morally between the entities with respect to their positive rights?). But this will have to do for now.

With these clarifying remarks about SV’s fundamental propositions out of the way, three questions naturally arise. First, which entities do SV defenders believe possess the essential property of the basic capacity for rational moral agency? As noted above, all human beings, including but not limited to:

- (a) the standard adult human being,
- (b) the reversibly comatose adult human being,
- (c) the suicidal adult human being,
- (d) the standard human infant, and
- (e) the standard human fetus (by which is meant a developing human organism from conception until birth).

In turn, they hold that each of these entities possesses intrinsic value and full moral standing, and that it is *prima facie* seriously wrong to kill any one of them or let any one of them die. (It is important to note that SV defenders do *not* believe that any of the nonhuman animals of which we are aware—even those that are rather intelligent, such as dolphins and ravens—possess the essential property of the basic capacity for rational moral agency and, with it, intrinsic value and full moral standing.)

Second, and related to the previous point regarding nonhuman animals, given that the full moral standing of (a)–(e) (among others) is a function of their basic capacity for rational moral agency, why is the theory called the “substance view”? Briefly, SV defenders hold that the basic capacity for rational moral agency is an essential property of a

particular substance sort—the human organism—and that (a)–(e) are essentially human organisms. That said, SV defenders contend that (a)–(e) have the intrinsic value and moral standing they do, not merely because they are members of the species *Homo sapiens*, but because of the human organism’s essential property of the basic capacity for rational moral agency. To state the point counterfactually, if the human organism did *not* possess the essential property of the basic capacity for rational moral agency, then (a)–(e) would not possess the intrinsic value and moral standing that they do.<sup>9</sup>

Finally, on what grounds do SV defenders embrace SV? Their primary argument for it is that of an inference to the best explanation. As do many moral philosophers arguing over theories of intrinsic value and moral standing—hereafter, simply “theories” (and its correlative, “theory”)—SV defenders begin by assuming that (a)–(d) have intrinsic value and, in turn, full moral standing. They then defend the claim introduced above that the intrinsic value and, with it, full moral standing of (a)–(d) must be a function of essential rather than accidental properties. Simply put, if the value and moral standing of (a)–(d) were a function of accidental properties, then—contrary to SV defenders’ initial assumption—(a)–(d) would *not* possess the same value and moral standing. For, unlike essential properties, accidental properties admit of degrees, and (a)–(d) do not possess their accidental properties to the same degree. Indeed, they don’t even possess all the same accidental properties. But (a)–(d) *do* possess the same value and moral standing—they all have dignity-conferring intrinsic value (again, the dignity-conferring kind) and full moral standing, or so SV defenders assume. Thus, intrinsic value and, with it, full moral standing cannot be a function of accidental properties but must, instead, be a function of essential properties.<sup>10</sup>

Next, they argue that a particular essential property—the basic capacity for rational moral agency—best accounts for the intrinsic value and full moral standing of (a)–(d). That is, they argue that SV is the best explanation of (a)–(d)’s intrinsic value and full moral standing. Of course, before one could agree that SV is, in fact, the best explanation of (a)–(d)’s intrinsic value and full moral standing, one would need to give alternate theories due consideration. Alas, such is beyond the scope of this paper. Suffice it to say that, as SV defenders see it, no other theory better explains the intrinsic value and full moral standing possessed (ex hypothesi) by (a)–(d).<sup>11</sup> And since SV defenders believe that (e) possesses the essential property of the basic capacity for rational moral agency as well, they infer that (e) also has intrinsic value and full moral

standing, and that it is *prima facie* seriously wrong to kill (e) or let (e) die. Hence Beckwith's claim regarding the standard human fetus that "one cannot deprive the standard unborn entity of her life without the sort of justification we would expect if we were depriving a standard 10-year-old of his rights."<sup>12</sup> (Beckwith's use of "deprive" is noteworthy, for one way one can deprive a human organism of her life is by deliberately allowing her to die.)

With this description of SV in mind, let us now turn to the eponymous errors.

### 3 *The Extratheoretical-Proposition Error*

I begin with the extratheoretical-proposition error, the comprehension of which requires an understanding of the difference between, as well as the import of, what I refer to as "intratheoretical" and "extratheoretical" propositions.

By a theory's intratheoretical propositions, I mean the theory's fundamental propositions—again, those axiological and moral propositions that collectively make the theory what it is—as well as the axiological and moral propositions that are deducible from them, either directly or after the latter are conjoined with at least one nonaxiological/nonmoral proposition. A theory's intratheoretical propositions are distinct from its (read: what are to it) extratheoretical propositions, axiological and moral propositions that are not among the theory's fundamental propositions or deducible from them. With this understanding of the difference between intratheoretical and extratheoretical propositions in mind, a few cursory observations about them should be noted immediately.

First, intratheoretical and extratheoretical propositions are theory-relative: what is an extratheoretical proposition to one theory can be an intratheoretical proposition to another and vice versa. Second, theories and their extratheoretical propositions need not be logically incompatible. Despite the fact that a given extratheoretical proposition is not deducible from a given theory, the former can still be logically compatible with the latter. However (and this is the final observation), that a given extratheoretical proposition is logically compatible with a given theory does not change the fact that the former is just that—an extratheoretical proposition—and, as such, not one of said theory's fundamental propositions or deducible from them. (This final observation is especially important to understanding the extratheoretical-proposition error, as will be made clear shortly.)

Having addressed the difference between intratheoretical and extratheoretical propositions, let us now discuss their import. Beginning with intratheoretical propositions, they are essential to assessing a theory's intrinsic plausibility—that is, to determining the plausibility of a theory *in and of itself*. For whether a theory is intrinsically plausible is a function of its fundamental propositions and the axiological and moral propositions that are deducible from them—in other words, it's a function of the theory's intratheoretical propositions. This is due to the fact that a theory's intratheoretical propositions are intrinsic to—or, as it might be better put, contained within (fundamentally or deducibly)—the theory itself. As such, they constitute the set of propositions determinative of the theory's intrinsic plausibility. Accordingly, when it comes to assessing the intrinsic plausibility of a theory, one way—indeed, the standard way—is to determine the plausibility of the theory's intratheoretical propositions.<sup>13</sup> If one or more of the theory's intratheoretical propositions are not plausible, then, to that extent, the theory is intrinsically implausible.

To be sure, the intrinsic plausibility of a theory is a function of other things as well. To take just one example, it's also a function of logical coherence: if a theory's fundamental propositions are logically contradictory, for instance, then the theory is intrinsically implausible. But one of the things of which a theory's intrinsic plausibility is *not* a function—and here is where the significance of the final observation made above arises—is its extratheoretical propositions. Why this is the case might be obvious: unlike a theory's intratheoretical propositions—which are contained within (fundamentally or deducibly) the theory itself—a theory's extratheoretical propositions are not so contained. They are, instead, extrinsic to the theory. By their very nature, then, extratheoretical propositions fall outside the set of propositions determinative of a theory's intrinsic plausibility.

To flesh all of this out a bit more, take, for example, a theory of Don Marquis's which we'll call the “future-like-ours (or future-of-value) view.” This theory's fundamental propositions are as follows:

- (i) All entities possessing a future like ours have a right to life.
- (ii) It is *prima facie* seriously wrong to kill any entity that has a right to life.

Since (i) and (ii) are the future-like-ours view's fundamental propositions, they are thereby intratheoretical propositions. But so are (iii) and

(iv) below, as each is deducible from the theory's fundamental propositions:

- (iii) It is prima facie seriously wrong to kill entities possessing a future like ours.
- (iv) It is prima facie seriously wrong to kill the standard human infant.

(The first of these additional intratheoretical propositions can be deduced directly from the theory's fundamental propositions. The second can be deduced after the theory's fundamental propositions are conjoined with the nonaxiological/nonmoral proposition "The standard human infant possesses a future like ours.")<sup>14</sup> And the standard way of assessing the intrinsic plausibility of this theory has been to determine the plausibility of the theory's intratheoretical propositions—more specifically, to determine whether some of the theory's intratheoretical propositions are implausible. For example, one critique of the future-like-ours view proceeds as follows:

- (i) Given the future-like-ours view, one may deduce that the standard ovum has a future like ours—and, with it, a right to life—and, thus, it is prima facie seriously wrong to kill the standard ovum.
- (ii) But that it is prima facie seriously wrong to kill the standard ovum is counterintuitive if not absurd.
- (iii) Therefore, the future-like-ours view is intrinsically implausible.<sup>15</sup>

(Lest there be any confusion, the preceding is *simply* an illustration of this way of assessing the intrinsic plausibility of a theory; it is not an endorsement of this particular critique.) Critiquing Marquis's theory in this way amounts to arguing that one of its (alleged) intratheoretical propositions is counterintuitive and, thus, the theory is, to that extent, intrinsically implausible.

And so it goes with assessments of the intrinsic plausibility of every other theory, ostensibly. Take, for instance, four other theories (generally construed), examined by Warren in her *Moral Status: Obligations to Persons and Other Living Things*:

- The life only view: the view that all and only biologically alive entities have full moral standing and, thus, it is prima facie seriously wrong to kill them.

- The sentience only view: the view that all and only sentient entities have full moral standing and, thus, it is prima facie seriously wrong to kill them.
- The personhood only view: the view that all and only persons have full moral standing and, thus, it is prima facie seriously wrong to kill them.
- The relationships only view: the view that all and only entities in morally relevant relationships have full moral standing and, thus, it is prima facie seriously wrong to kill them.<sup>16</sup>

The intrinsic plausibility of each of these theories has been assessed in this way. A common critique of the life only view, for instance, proceeds as follows:

- (i) Given the life only view, one may deduce that germs have full moral standing and, thus, it is prima facie seriously wrong to kill germs.
- (ii) But that it is prima facie seriously wrong to kill germs is counter-intuitive if not absurd.
- (iii) Therefore, the life only view is intrinsically implausible.

A common critique of the personhood only view proceeds similarly:

- (i) Given the personhood only view, one may deduce that two-week old human infants lack full moral standing and, thus, it is not prima facie seriously wrong to kill two-week old human infants.
- (ii) But that it is not prima facie seriously wrong to kill two-week old human infants is counterintuitive if not absurd.
- (iii) Therefore, the personhood only view is intrinsically implausible.

And so on. (As with the preceding critique of Marquis’s theory, these are mere illustrations—not endorsements—of these particular critiques.) Critiquing these theories amounts to arguing that one or more of their (alleged) intratheoretical propositions is counterintuitive and, thus, these theories are, to that extent, intrinsically implausible.

Indeed (and at the risk of triggering a Shakespearean “he doth protest too much” response), SV defenders *themselves* assess the intrinsic plausibility of theories in this way, at least those that stand in competition with their own. To take just one example, George and Tollefsen argue for the intrinsic implausibility of what they call the “developmental view” as follows:

- (i) Given the developmental view, one may deduce that six-week old human infants lack full moral standing and, thus, it is not *prima facie* seriously wrong to kill six-week old human infants.
- (ii) But that it is not *prima facie* seriously wrong to kill six-week old human infants is counterintuitive if not absurd.
- (iii) Therefore, the developmental view is intrinsically implausible.<sup>17</sup>

Critiquing the developmental view in this way amounts to arguing that one of its (alleged) intratheoretical propositions is counterintuitive and, thus, the theory is, in that respect, intrinsically implausible.

Having covered this way of assessing—specifically, critiquing—the intrinsic plausibility of theories, let us now address the way in which a theory so critiqued is to be defended. Because the critique—the counterintuition, in particular—is directed at one or more of the theory's intratheoretical propositions, the defender of the theory must do one of two things to rebut it: either demonstrate that the alleged intratheoretical proposition is *not* an intratheoretical proposition, or grant that it is but motivate the judgment that it is not counterintuitive much less absurd. Anything short of this skirts the issue and thereby renders the defense insufficient. This is usually well understood by defenders of theories so critiqued, incidentally. Hence, for instance, Marquis's reply to the aforementioned critique in which he argues that the alleged intratheoretical proposition—that it is *prima facie* seriously wrong to kill the standard ovum—is not, in fact, one of his theory's intratheoretical propositions, and Michael Tooley's reply to critiques of the personhood only view in which he motivates the judgment that the alleged intratheoretical proposition—that it is not *prima facie* seriously wrong to kill two-week old human infants—is not counterintuitive much less absurd.<sup>18</sup>

But sometimes this is not so well understood. And if, when it's not, the defenders of theories so critiqued do neither of these things—that is, if they neither demonstrate that the alleged intratheoretical proposition is not an intratheoretical proposition, nor grant that it is but motivate the judgment that it is not counterintuitive much less absurd—then their defense sidesteps what's at issue and thereby fails. So, for instance, if Marquis had merely invoked what he took to be a theory-saving extratheoretical proposition—such as, say, “It is not as wrong to kill entities that don't have strong time-relative interests in continued existence (such as ova) as it is to kill entities that do have strong time-relative interests in continued existence (such as conscious human fetuses)” —then his defense against such a critique would have skirted the issue

and, in turn, been inadequate. In short, he would have committed the extratheoretical-proposition error.

To be sure, had Marquis invoked this extratheoretical proposition, he would have gotten something arguably right—namely, that it is not as wrong to kill ova as it is to kill conscious human fetuses. But the issue here isn't whether Marquis can invoke some moral proposition or other in virtue of which he can get this right; it's whether Marquis's *theory itself*—the future-like-ours view—can get it right. More to the point, the issue here is whether the future-like-ours view contains within it, fundamentally or deducibly, any counterintuitive moral propositions. According to the critique at hand, it does. And whatever else they may be able to do, extratheoretical propositions cannot extract or otherwise jettison counterintuitive intratheoretical propositions from the theory within which they are contained.

With the distinction between and import of intratheoretical and extratheoretical propositions in mind—as well as the aforementioned ways of assessing and, in turn, defending a theory's intrinsic plausibility—let us turn to one of SV's intratheoretical propositions, namely:

- (4) It is just as *prima facie* seriously wrong to let a standard human fetus die as it is to let a standard adult human being die.

This is one of SV's intratheoretical propositions, as it is deducible from the conjunction of (1), (2), (3), and the SV-defender-approved nonaxiological/nonmoral proposition “Both the standard human fetus and the standard adult human being possess the essential property of the basic capacity for rational moral agency.”<sup>19</sup>

Now, some philosophers (including this one) argue that SV is intrinsically implausible on the grounds that (4) is counterintuitive if not absurd.<sup>20</sup> And because this objection—specifically, the counterintuition—is directed at one of SV's intratheoretical proposition and, with it, SV's intrinsic plausibility, SV defenders must either demonstrate that the alleged intratheoretical proposition, (4), is not actually an intratheoretical proposition, or grant that it is but motivate the judgment that it is not counterintuitive much less absurd. If they do neither of these things, then their defense of SV against the critique sidesteps the issue and, thus, fails.

This is where the extratheoretical-proposition error comes in. For various SV defenders do just that—neither of these things—opting instead to invoke what they take to be SV-saving extratheoretical propositions. But extratheoretical propositions are beside the point when what

is at issue is the plausibility of one of SV's intratheoretical propositions and, with it, SV's intrinsic plausibility.

Here's an example (for a second from another SV defender, see the following endnote).<sup>21</sup> In their book *Embryo: A Defense of Human Life*, SV defenders George and Tollefsen consider a case involving someone called "Jones" and his opportunity to save either a five-year-old girl or ten frozen human embryos from a burning building. In another critique of SV, I argue that, relying solely upon SV's intratheoretical propositions—especially those such as (4)—at best, Jones's decision to save either the five-year-old girl or the ten frozen human embryos ought to be based on an independent procedure and, at worst, Jones ought to save the ten frozen human embryos rather than the five-year-old girl.<sup>22</sup> But that either of these things is the case is, I submit, counterintuitive if not absurd.

Ostensibly in anticipation of such an objection, George and Tollefsen offer what they deem to be a SV-consistent way of choosing to save the five-year-old girl rather than the ten human embryos that does *not* depend upon an independent procedure. Specifically, they note that there are "differences between the embryos and the five-year-old girl that are or can be morally relevant to the decision concerning whom to rescue. For example, the five-year-old will suffer great terror and pain in the fire, but the embryos will not."<sup>23</sup> As George and Tollefsen see it, then, it's not the case that Jones's decision to save either the five-year-old girl or the ten human embryos ought to be based on an independent procedure. Rather, it may be based on a moral proposition, something along the lines of "It is not as *prima facie* wrong to let entities lacking sentience die as it is to let entities possessing sentience die." But this is not one of SV's intratheoretical propositions, for it is not one of SV's fundamental propositions or deducible from them. Rather, it is an extratheoretical proposition. Accordingly, in this instance, George and Tollefsen's defense of their theory involves merely invoking what is to SV an extratheoretical propositions. Thus, it sidesteps—and thereby fails to address—the aforementioned objection to SV's intrinsic plausibility, an objection (it bears repeating) that pertains to the counterintuitiveness of one of SV's intratheoretical propositions. It is, therefore, inadequate.<sup>24</sup>

Granted, George and Tollefsen have gotten something arguably right—namely, that it is not as wrong to let the embryos die as it is to let the five-year-old girl die. But, as with the Marquis example above, the issue here isn't whether George and Tollefsen can invoke some moral proposition or other in virtue of which they can get this right; it's

whether George and Tollefsen’s theory itself—SV—can get it right. More precisely, the issue here is whether SV contains within it, fundamentally or deducibly, any counterintuitive moral propositions. According to my critique, it does. And, again, whatever else they may be able to do, extratheoretical propositions cannot extract or otherwise discard counterintuitive intratheoretical propositions from the theory within which they are contained.

One possible reply to this charge of error is that, in deeming (4) counterintuitive if not absurd, I am relying upon an undisclosed extratheoretical proposition of one sort or another. In doing so, I am committing the same error that I accuse SV defenders of committing, namely, that of invoking an extratheoretical proposition as a way of assessing SV’s intrinsic plausibility. But this reply misses the mark. To begin with, the error SV defenders commit is that of attempting to defend SV’s intratheoretical propositions and, with them, intrinsic plausibility by way of, what are to SV, extratheoretical propositions. In order to commit such an error, I would need to be attempting to defend some *other* theory’s intratheoretical propositions and, with them, intrinsic plausibility by way of what are to said theory extratheoretical propositions. But I am not attempting to defend the intratheoretical propositions and intrinsic plausibility of some other theory, much less doing so by way of what are to it extratheoretical propositions.

Second, and more to the point, like SV defenders (and most other defenders of theories), I hold that an intrinsically plausible theory is one that, among other things, possesses plausible intratheoretical propositions. To the extent that a theory *lacks* plausible intratheoretical propositions—such as when a theory possesses counterintuitive if not absurd intratheoretical propositions—to that extent the theory is intrinsically implausible. Accordingly, regardless of whether my deeming (4) counterintuitive depends on some extratheoretical proposition—either to SV or to some other theory—my point is that SV possesses counterintuitive intratheoretical propositions and, thus, is intrinsically implausible.

I’ll conclude this section with another possible reply to this charge of error, which is that SV defenders could take what is to SV an extratheoretical proposition (but to some other theory an intratheoretical proposition), make it one of SV’s fundamental and, thus, intratheoretical propositions, and thereby accommodate (attempt to, at any rate) my strong counterintuitive response to SV. For example, SV defenders could take, say, the sentience only view’s intratheoretical proposition “It is not as *prima facie* wrong to let entities lacking sentience die as it is to

let entities possessing sentience die,” make it one of SV’s fundamental propositions, and thereby attempt to accommodate my strong counter-intuitive response to SV. But there are at least two problems with this possible reply.

First, and most obviously, doing so would amount to conceding that they have indeed committed the error which I have charged them of committing, namely, the extratheoretical-proposition error.

Second, and more importantly, doing so would involve replacing SV with a new—even if similar—theory of intrinsic value and moral standing. To wit, were SV defenders to incorporate one of the sentience only view’s intratheoretical propositions, as per the example above, they would be replacing SV with another theory, one that might be called the “substance and sentience view,” the “sentience and substance view,” or perhaps even simply the “sentience view.” In and of itself, such a move might not be problematic; indeed, it might be a move in the right theoretical direction. But SV, as construed by its defenders, would have to be discarded in order to make it.

#### 4 *The Quantitative-Differences Error*

The second error pertains to SV defenders’ claim that mere quantitative differences in property possession between entities do not justify treating them in radically different ways. The broader context of this claim is that of SV defenders’ argument (addressed above) for the claim that the intrinsic value and full moral standing of (a)–(e) must be a function of essential, rather than accidental, and thereby degreed, properties. As George and Tollefsen put it,

[T]he difference between a being that deserves full moral respect and a being that does not (and can therefore legitimately be disposed of as a means of benefiting others) cannot consist only in the fact that, while both have some feature, one has more of it than the other. In other words, a mere quantitative difference (having more or less of the same feature, such as the development of a basic natural capacity) cannot by itself be a justificatory basis for treating different entities in radically different ways.<sup>25</sup>

George and Tollefsen attempt to bolster these claims by way of the following analogy which, they contend, illustrates the type of error committed by some of their theoretical rivals:

A racist picks out shade of skin as a more important characteristic than common humanity in deciding the worth of human beings. Now, between human beings and all other nonhuman animals, there is a radical difference in kind; human beings, unlike every other animal species, have the basic natural capacity for reason and freedom. But between any two human beings, the difference in color will always be only a difference of degree, a difference that makes no difference to the sorts of being that each is. The racist is thus behaving radically unfairly toward those he regards as inferior by picking out a characteristic that should be irrelevant to moral respect. We hold that prejudice and discrimination against human beings at early developmental stages commits a species of the same error . . . <sup>26</sup>

Before moving on, it is important to note that these claims arise while George and Tollefsen are arguing against a specific rival theory, namely, the aforementioned developmental view. In other words, they arise while George and Tollefsen are arguing indirectly *for* SV. Accordingly, it should not be assumed in this context that SV has already been established or otherwise sufficiently defended; to do that, of course, would be to beg the question against defenders of the developmental view. Relatedly, George and Tollefsen’s intended conclusion—that mere quantitative differences in property possession between entities do not justify treating them in radically different ways—should not be taken for granted. With that said, let us consider the quantitative-differences error.

Given that my name for the error comes from the second sentence of the first blocked quotation above, that sentence will serve as our starting point. By focusing on the (alleged) moral impotence of *mere* quantitative differences in property possession between entities, George and Tollefsen overlook two important and related facts. First, quantitative differences in property possession can give rise to qualitative differences in property possession. Second, qualitative differences in property possession that arise from quantitative differences in property possession can justify treating entities in radically different ways. By overlooking these facts, George and Tollefsen commit what I am calling the quantitative-differences error.

To flesh this out a little more, consider, for example, two entities, one of whom—a standard human infant—has the basic capacity for rational moral agency, the other of whom—a standard adult human being—

has the ultimate capacity for rational moral agency. Using George and Tollefsen's language, though the standard human infant and the standard adult human being have the same feature—the capacity for rational moral agency—the latter has more of it than the former. In other words, the standard adult human being's capacity for rational moral agency is more developed than the standard human infant's capacity for rational moral agency, a fact represented, of course, by the terms “basic” and “ultimate.” (For present purposes, we may ignore considerations of the proximate capacity for rational moral agency.) Moreover, the quantitative difference between their respective capacities for rational moral agency gives rise to a qualitative difference. For instance, the standard adult human being's capacity for rational moral agency is immediately exercisable, while the standard human infant's is not. Accordingly, unlike the standard human infant, who is only *potentially* able to make, and act on the basis of, moral judgments, the standard adult human being is *actually* able to make, and act on the basis of, moral judgments. And this qualitative difference justifies treating the standard adult human being in ways radically different from those in which we treat the standard human infant. To wit, it justifies holding the standard adult human being accountable for her behavior toward other standard adult human beings (among others); being appreciative of and, when appropriate, rewarding her—perhaps even with an award à la the Aurora Prize—when she gives the respect morally owed to other standard adult human beings; being disappointed in and, when appropriate, punishing her—perhaps even with death à la capital punishment—when she fails to give the moral respect owed to other standard adult human beings; entering into special moral contracts with her à la professional duties; reasoning with her over moral matters; developing morality-guided public policies with her; and much more. Since treating the standard human infant in any of these ways would be extremely misguided if not altogether perverse, this difference in treatment can be reasonably characterized as radical in nature. Indeed, a plausible analysis of “radically different treatment” presents itself: if treating standard human infants and standard adult human beings in a way is such that said treatment would be extremely misguided if not perverse for the former but not for the latter, then to treat standard adult human beings in accordance with said treatment while refraining from treating standard human infants in accordance with said treatment constitutes radically different treatment. If this is, in fact, true—as it seems to be—then we sometimes justifiably treat standard human infants and standard adult human beings in radically different ways, and

we do so, ultimately, given the quantitative differences in their respective capacities for rational moral agency. Quantitative differences in property possession can, it appears, justify treating entities in radically different ways.

George and Tollefsen would counter, no doubt, that—despite what I contend above—the preceding does *not* involve treating entities in radically different ways. Specifically, they would argue that the proper meaning of treating entities in “radically different ways” is to be derived from the first sentence of the first blocked quotation, namely, that the “difference between a being that deserves full moral respect and a being that does not (and can therefore legitimately be disposed of as a means of benefiting others) cannot consist only in the fact that, while both have some feature, one has more of it than the other.” On this narrower understanding, to treat entities in radically different ways is to deem some of them as deserving of full moral respect and treat them accordingly (e.g., by respecting their right to life) and to deem others of them as *not* deserving of full moral respect and treat them accordingly (e.g., by using them as a mere means to the ends of others). Given this meaning of treating entities in “radically different ways,” their claim here would be that no mere quantitative difference in property possession between two entities can justify treating one of them in the former way and the other in the latter way.

But is this true? In order to determine whether it is, it’s important to state explicitly something that thus far has been merely implied: that the property in question makes no difference. Stated explicitly, their claim is that no mere quantitative difference in property possession between two entities can justify treating them in radically different ways *no matter what the property is*. Now, it is rather clear that no mere quantitative difference in property possession between two entities can justify treating them in radically different ways when it comes to *some* properties. The analogy above involving the racist is a case in point: that there is a quantitative difference in shade of skin between two human beings is no justification for deeming one of them as deserving of full moral respect and treating them accordingly and deeming the other as *not* deserving of full moral respect and treating them accordingly. After all—and as has been argued forcefully by other philosophers—the shade of one’s skin (whatever it might be) is not a moral-standing-conferring property, much less a full-moral-respect-conferring property.<sup>27</sup>

What’s not so clear is that no mere quantitative difference in property possession between two entities can justify treating them in radically dif-

ferent ways when it comes to *every* property (read, of course, as: every property that admits of degrees). To see this, let us revisit the property with which we began our discussion of the quantitative-differences error: the capacity for rational moral agency. As I argued above, that the standard adult human being possesses the ultimate capacity for rational moral agency while the standard human infant possesses merely the basic capacity for rational moral agency justifies treating them in radically different ways. Granted, I was employing a meaning of “radically different ways” that might be broader than what SV defenders intended. But employing the narrower meaning of “radically different ways” can generate this conclusion as well: that the standard adult human being possesses the ultimate capacity for rational moral agency while the standard human infant possesses merely the basic capacity for rational moral agency justifies deeming the former as deserving of full moral respect and treating her accordingly and deeming the latter as not deserving of full moral respect and treating him accordingly. For, unlike shade of skin, the capacity for rational moral agency *is* a moral-standing-conferring property, or so SV defenders and most other theorists would agree. Even more importantly, the ultimate capacity for rational moral agency arguably confers greater—indeed, much greater—moral standing on entities that possess it than does the mere basic capacity for rational moral agency. After all, entities that possess the former are entities whose capacity to make, and act on the basis of, moral judgments is immediately exercisable and, thus, are actually able to make, and act on the basis of, moral judgments. Whereas entities that possess the latter are entities whose capacity to make, and act on the basis of, moral judgments is not even remotely exercisable—let alone immediately so—and, thus, are only potentially able to make, and act on the basis of, moral judgments. And it’s very hard to believe that possession of the mere potential for the actual ability to make, and act on the basis of, moral judgments would be very morally valuable, let alone so morally valuable as to give entities possessing it dignity-conferring intrinsic value and full moral standing. To motivate this, suppose that, henceforth, all human infants will be born with an environmentally induced disease that prevents them from ever possessing the actual ability to make, and act on the basis of, moral judgments. Such infants would retain the potential for making, and acting on the basis of, moral judgments, arguably, since intrinsic to these infants would remain the plans for the proximate and ultimate capacity for rational moral agency, albeit plans that will never be realized due to the disease.<sup>28</sup> And yet, it’s really difficult to

believe that their possession of the mere potential for the actual ability to make, and act on the basis of, moral judgments would be very morally valuable, let alone so morally valuable as to give such infants dignity-conferring intrinsic value and full moral standing. This is not to suggest that the mere potential for the actual ability to make, and act on the basis of, moral judgments is utterly lacking in moral value. But it is to suggest that, whatever its moral value, it is inferior—and significantly so, ostensibly—to the value of the actual ability to make, and act on the basis of, moral judgments—an ability that is considered so valuable by SV defenders and most other theorists that they deem possession of it to be sufficient for dignity-conferring intrinsic value and full moral standing. With that in mind, one could argue that all entities possessing the ultimate capacity for rational moral agency deserve full moral respect, but entities possessing the mere basic capacity for rational moral agency do not—though, of course, they might deserve some level of moral respect.

Naturally, SV defenders will disagree. But identifying the fundamental grounds on which they will do so bears much dialectical fruit. For the sake of space, I'll cut to the chase: they will do so, ultimately, on intuitive grounds. That the standard human infant does not deserve full moral respect is deemed strongly counterintuitive by SV defenders—indeed, so strongly counterintuitive that, as discussed during my initial presentation of SV, they simply take it for granted that the standard human infant deserves full moral respect. Whether they *should* simply take this for granted is paper-length issue unto itself, so I will limit myself to the following. Retaining, by way of SV, the intuition that the standard human infant deserves full moral respect requires SV defenders to adopt views that, I have argued, are counterintuitive if not absurd, such as (4)—again, that it is just as *prima facie* seriously wrong to let a standard human fetus die as it is to let a standard adult human being die. Accordingly, even if we all agreed with SV defenders that the standard human infant deserves full moral respect, we would not thereby commit ourselves to agreeing that we ought to retain that intuition through SV. After all, some of SV's intratheoretical propositions are strongly counterintuitive as well—so strongly counterintuitive, in fact, that, as SV defenders do with the developmental view, some philosophers (including this one) reject SV on the basis of them. Indeed, even if we all agreed that SV accounts for the intrinsic value and full moral standing of (a)–(d) better than all of the theories of which we are aware, we would not thereby commit ourselves to agreeing that we ought to embrace SV,

counterintuitive intratheoretical propositions and all. That a theory accounts for the intrinsic value and full moral standing of (a)–(d) better than all of the theories of which we are aware does not entail—or, for that matter, even suggest—that an even better theory is not waiting in the wings, as it were. And given SV's intrinsic implausibility, we're better off looking for such a theory rather than biting SV's counterintuitive bullets—or so it seems to me at any rate.

With the preceding in mind, and coming full circle, if SV defenders defend against the quantitative-differences error by way of their intuition regarding the standard human infant's moral standing—and, with that intuition, SV—they avoid one possible counterintuition (that the standard human infant does not deserve full moral respect) only to acquire another (that it is just as *prima facie* seriously wrong to let a standard human fetus die as it is to let a standard adult human being die). To be sure, *they* might not find the latter counterintuitive—at least, they might not find it to be *as* counterintuitive as the former. But I and others do—strongly so, in fact—which is enough for us to deem SV intrinsically implausible. What's more, SV defenders would (or, at least, should, on pain of inconsistency) agree that our finding it so is enough for *us* to deem SV intrinsically implausible. For they also reject rival theories in one fell counterintuitive swoop. They reject the developmental view in this way, for instance, maintaining that it cannot accommodate their intuition that the standard human infant deserves full moral respect.

Before bringing this discussion of the quantitative-differences error to a close, a final dialectical complication is worth noting. There is some evidence that, contrary to what was suggested above, George and Tollefsen *themselves* find (4) counterintuitive. To see this, let us revisit the case they introduced—that of Jones and his opportunity to save either one five-year-old girl or ten frozen human embryos from a burning building. As addressed while discussing the extratheoretical-proposition error, George and Tollefsen offer what they deem to be a SV-consistent way of choosing to save the girl rather than the embryos, a way to which I have raised objections. But the problems with George and Tollefsen's take on this case do not stop there, as is evident once one attempts to answer the following questions: If George and Tollefsen don't find (4) counterintuitive—as they would claim, presumably—why did they characterize Jones' decision as that of saving either *one* five-year-old girl or *ten* human embryos? Why didn't they characterize Jones' decision as that of saving either one five-year-old girl or *one* human embryo? After all, according to their theory of choice—SV—the human embryo

possesses the intrinsic value and moral standing that the five-year-old girl possesses, so why stack the embryonic and, in turn, argumentative deck, so to speak? There might have been numerous reasons for doing so, of course. But I would be quite surprised if the following was not one of them: that characterizing Jones' decision as that of saving either one five-year-old girl or one human embryo fails to generate SV-favorable intuitions—specifically, it generates instead the intuition that Jones should save the five-year-old girl. If this is in fact one of their reasons, then it serves as some evidence that—despite any claims to the contrary—George and Tollefsen find (4) counterintuitive, at least to some degree.

To motivate the preceding further, let us modify the Jones case. Suppose that Jones' decision was that of saving either one five-year-old girl or—not ten human embryos—but ten *five-year-old girls*. I am quite certain that most people, including George and Tollefsen, would hold that Jones ought to save the ten five-year-old girls rather than just the one five-year-old girl. For each five-year-old girl is intrinsically valuable and possesses full moral standing and, everything else being equal, saving ten intrinsically valuable entities possessing full moral standing is better than saving only one intrinsically valuable entity possessing full moral standing.

But if human embryos have the same intrinsic value and moral standing as five-year-old girls, then one would think that George and Tollefsen would have argued that, just as Jones ought to save the ten five-year-old girls rather than just the one five-year-old girl in the modified case, so Jones ought to save the ten human embryos rather than just the one five-year-old girl in the original case. Alas, they do not argue so. Instead, rather than addressing the issue of what Jones *ought* to do, they take (as alluded to above) a far less ambitious path and address what Jones *might* do. After George and Tollefsen present the SV-consistent way of choosing to save the girl rather than the embryos, they then attempt to bolster SV by offering what they deem to be SV-consistent ways of choosing to save the *embryos* and concluding that there could be circumstances in which “people could agree . . .” (not: *will likely* agree) “that it would be reasonable for a particular person to save the embryos” (not: that it would be *right* for a particular person to save the embryos), that “Jones might well choose to rescue them” (not: that Jones *ought* to choose to rescue them), and that the choice to save the embryos “is not necessarily fanciful or unreasonable” (not: is the *right* thing to do).<sup>29</sup> One cannot help but wonder why George and Tollefsen

took such a guarded path. After all, the language they employ would be considered excessively cautious, if not timorous, in the modified case (just imagine someone saying that the choice to save the ten five-year-old girls rather than just the one five-year-old girl “is not necessarily fanciful or unreasonable”). And if human embryos have the same intrinsic value and moral standing as five-year-old girls, then such language should be considered excessively cautious if not timorous in the original case as well. So, again, whence the less ambitious path? I cannot help but think that, claims to the contrary notwithstanding, George and Tollefsen doubt, intuitively, that human embryos really do possess the same intrinsic value and moral standing as five-year-old girls. (Either that or they doubt that their readers will find it intuitive that human embryos possess the same intrinsic value and moral standing as five-year-old girls. But this would present a problem for George and Tollefsen as well. For if their readers will not find it intuitive that human embryos possess the same intrinsic value and moral standing as five-year-old girls, then they might reject SV on those grounds alone.)

### **5 *The Non-Normative-Answer Error***

This brings us to the third and final error, the description of which is more straightforward than those of the first two. In short, when confronted with a potentially SV-undermining normative question, some SV defenders provide a non-normative answer rather than what is, in fact, the relevant type of answer: a normative one. More specifically, given that, according to SV, it is just as *prima facie* seriously wrong to kill (e) as it is to kill (a)—the standard human fetus and the standard adult human being, respectively—a normative question naturally arises: What, given SV, should be the legal punishment (if any) for intentionally killing (e) through an abortion? In another critique of SV, I argue that, when SV’s intratheoretical propositions are conjoined with two extratheoretical (and quite plausible) propositions—namely, “Morally similar cases should be treated morally similarly” and “The legal penalty for intentionally killing (a)–(d) should be severe (i.e., lengthy incarceration, at the very least)” —one may deduce that the legal punishment for intentionally killing (e) through an abortion should be as severe as the legal punishment for intentionally killing (a)–(d). Whether or not SV defenders agree with this, however, is unclear. For rather than providing a normative answer to this normative question, various SV defenders provide a non-normative answer instead, the gist of which is that the legal

punishment for intentionally killing (e) through an abortion would not be as severe as the legal punishment for intentionally killing entities (a)–(d). But such an answer is neither here nor there, since the question at hand is what *should* the legal punishment be, given SV, not what *would* it be. Even if their non-normative answer happens to be correct, then, it skirts—and thereby fails to address—the issue.

Here’s an example. In his *Defending Life: A Moral and Legal Case Against Abortion*, Beckwith addresses the question of what the legal punishment for intentionally killing (e) through an abortion should be, given SV. He contends that, even given SV, physicians who performed abortions and women who procured them would not be punished as severely as those who intentionally killed entities (a)–(d) or procured such killings. For, when making judgments of sentencing, legislatures would have to take into consideration various “facts” (I employ scare quotes merely to express my uncertainty as to whether they are indeed facts), including:

- Unborn human beings are full-fledged members of the human community and to kill them with no justification is unjustified homicide.
- Because of a general lack of understanding of the true nature of the unborn child ... most citizens who procure abortions will do so out of well-meaning ignorance.
- Women who seek illegal abortions will probably do so out of desperation.
- [T]he illegal abortionist will not be ignorant of the demands and purposes of the law and the nature of the being that the abortion kills. However, because juries may be reluctant to sentence such a physician to decades in prison let alone the death penalty, a lighter penalty may be easier to secure.
- The government has an interest in preventing unjustified and premeditated killing of human beings, whether born or unborn, who live within its jurisdiction.<sup>30</sup>

And there is “no doubt,” Beckwith writes, “that the law will reflect these sentiments if abortion is made illegal again.”<sup>31</sup>

Now, notice, if you will, that Beckwith’s reply involves providing a non-normative answer to what is, as indicated above, a normative question. To the question, “What, given SV, *should* be the legal punishment

for intentionally killing (e) through an abortion?," Beckwith effectively responds, "It *would not* be equal in severity to the legal punishment for intentionally killing (a)–(d)." But this answer is, at bottom, irrelevant. For the question at hand is what should the legal punishment be, given SV, not what would it be. Even granting that the law will reflect the aforementioned sentiments and, in turn, that physicians who performed abortions and women who procured them would not be punished as severely as those who intentionally killed entities (a)–(d) or procured such killings, Beckwith's reply is ultimately irrelevant.<sup>32</sup>

Here's another example, this time involving Friberg-Fernros. Friberg-Fernros contends that those who intentionally kill (e) through an abortion should be punished severely. However, he does not judge this to be counterintuitive much less absurd. His reasoning behind this is as follows:

[I]t is important to note that the classification of abortion as a murder does not clearly imply a specific punishment; it can vary between a few years in prison to a life sentence or capital punishment. If abortion was considered as a murder, I think it would be most like infanticide rather than any other kind of homicide. I think it is reasonable to assume that proponents of the substance view might consider the fetus in the same way that most societies consider infants. And the punishment for infanticide is generally much lower than the punishment for other kinds of murder. In many countries the maximum penalty is five years [sic] imprisonment.<sup>33</sup>

Like Beckwith's, Friberg-Fernros's reply involves providing a non-normative answer to what is, as indicated above, a normative question. To the question, "What, given SV, *should* be the legal punishment for intentionally killing (e) through an abortion?," Friberg-Fernros effectively responds, "It *would* be equal in severity to the legal punishment for intentionally killing (d), but not (a)–(c)." And, as with Beckwith's, Friberg-Fernros's answer is ultimately irrelevant. For, again, the question at hand is what should the legal punishment be, given SV, not what would it be. Even if his non-normative answer regarding what would be the case happens to be correct, then, Friberg-Fernros fails to address the issue.

To be sure, one might argue that both Beckwith and Friberg-Fernros could grant my critique and respond to it by changing their non-normative answers to normative answers—in other words, by changing their "would" claims to "should" claims.<sup>34</sup> So, rather than claiming

that the legal punishment for intentionally killing (e) through an abortion *would not* be as severe as the legal punishment for intentionally killing entities (a)–(d) (or, in Friberg’s case, just (a)–(c)), they could claim that the legal punishment for intentionally killing (e) through an abortion *should not* be as severe as the legal punishment for intentionally killing entities (a)–(d). But doing so would produce problems of its own. To begin with, in what, exactly, would their new “should” claims be grounded? They wouldn’t—indeed couldn’t, on pain of giving up SV—be grounded in the claim that (e) has weaker moral standing than (a)–(d), since, according to SV, (e) has full moral standing just as (a)–(d) do. They also couldn’t be grounded in extratheoretical propositions—such as “It is not as wrong to kill entities that have weak time-relative interests in continued existence (such as conscious human fetuses) as it is to kill entities that have strong time-relative interests in continued existence (such as standard adult human beings)” —since this would involve committing the extratheoretical-proposition error. (Similar to claims I made while discussing that error, the issue here is what, given SV, should be the legal punishment for intentionally killing (e) through an abortion.)

Perhaps their new “should” claims would be grounded in the rejection of one or both of the aforementioned extratheoretical propositions (“Morally similar cases should be treated morally similarly” and “The legal penalty for intentionally killing (a)–(d) should be severe”). But this would be misguided—or so it seems to me—since, as stated above, each of these extratheoretical propositions is quite plausible; indeed, by my lights, much more plausible than SV’s fundamental propositions. Perhaps instead—and, given Beckwith’s and Friberg-Fernros’s respective defenses of their “would” claims, most obviously—they would be grounded in a socio-political claim of one sort or another, such as those made by Beckwith containing the aforementioned “facts” and those made by Friberg-Fernros regarding the punishment for infanticide and how it is lower than the punishment for other kinds of killing. But there are problems here as well.

In Beckwith’s case, grounding this new “should” claim in his socio-political claims containing the previous “facts” would not successfully defend against my contention that, given SV plus the two aforementioned extratheoretical propositions, the legal punishment for intentionally killing (e) through an abortion should be as severe as the legal punishment for intentionally killing (a)–(d). To see this, consider contract killings. Some women (for example) have hired contract killers

to kill their spouses. Clearly, their spouses are “full-fledged members of the human community and to kill them with no justification is unjustified homicide.” Just as clearly, the “government has an interest in preventing unjustified and premeditated” contract killings within its jurisdiction. Furthermore, it’s safe to assume that many of the women who do this probably “do so out of desperation.” It’s also safe to assume that the contract killer “will not be ignorant of the demands and purposes of the law and the nature of the being” that he kills. Even so, the law dictates that contract killings are instances of murder and that both the killer and the one who hired the killer should be punished severely. If Beckwith does not think that induced abortions should be treated similarly to contract killings, he should provide a reason for thinking so—something that, as far as I can tell, he has not done.

One significant disanalogy, of course, pertains to the second listed “fact”: there isn’t a general lack of understanding of the true nature of spouses and, thus, most people who procure contract killings will not do so out of well-meaning ignorance. But one reason there isn’t a general lack of understanding of the true nature of spouses—more to the point, of standard adult human beings—is that the punishment for murdering them is as severe as it is. Among other purposes, the law serves that of educating people—quickly and effectively, I might add—on the true nature of standard adult human beings (at least, on what society *deems* the true nature of standard adult human beings). Given just this, let alone his SV-supported judgment that abortion is a “great moral evil,” Beckwith has reason to agree with me that, given SV, the legal punishment for intentionally killing (e) through an abortion should be as severe as the legal punishment for intentionally killing (a)–(d).<sup>35</sup> Indeed, to advocate for a weaker punishment would not merely sustain but likely reinforce a view that Beckwith deems gravely erroneous, namely, that standard human fetuses do not possess intrinsic value and moral standing equal to that of (a)–(d).

Second, and related to the previous reply, given SV-guided changes in law, public policy, education (and the like) in conjunction with the passage of time, the general lack of understanding of the “true” nature of fetuses would eventually dissipate, as is evidenced by—among other things—the histories of previously marginalized peoples. And with the dissipation of the general lack of understanding of the “true” nature of fetuses would go the aforementioned disanalogy.

In Friberg-Fernros’s case, grounding this new “should” claim in the socio-political claims regarding the punishment for infanticide and how

it is lower than the punishment for other kinds of killing would also fail to defend against my argument here. For such claims just push the problem back, raising the question: What, given SV, should be the legal punishment for intentionally killing (d)? And similar to before, one could argue that, by conjoining SV's intratheoretical propositions with the aforementioned extratheoretical propositions, one may deduce that the legal punishment for intentionally killing (d) should be as severe as the legal punishment for intentionally killing (a)–(c). And whatever that might be, five years' imprisonment does not seem to be nearly severe enough, given SV.

## 6 Conclusion

In this paper, I identified three significant errors committed by various philosophers in their defense of the theory of intrinsic value and moral standing known as the “substance view,” namely:

- the extratheoretical-proposition error: that of invoking extratheoretical propositions in an attempt to defend the substance view's intratheoretical propositions and, with them, intrinsic plausibility,
- the quantitative-differences error: that of overlooking that quantitative differences in property possession can give rise to qualitative differences in property possession which, in turn, can justify treating entities in radically different ways, and
- the non-normative-answer error: that of providing a non-normative answer to a potentially substance-view-undermining normative question.

It may be that the substance view can be defended without committing these errors. But whether this is so remains to be seen.<sup>36</sup>

## Notes

1 As SV defenders Robert P. George and Christopher Tollefsen write, “we must distinguish two senses of the capacity (or, as it is sometimes called, the potentiality) for mental functions, psychological states, and so on” [3, 80].

2 See [6, 264ff].

3 [1, 139].

4 For more on this understanding of intrinsic value, see [12, chapters 1 and 3].

- 
- 5 [13, 3].
- 6 For more on full moral standing, see [13, 4ff] and [5, 509-30].
- 7 [3, 105].
- 8 [3, 109].
- 9 As Patrick Lee and Robert P. George write, “While membership in the species *Homo sapiens* is sufficient for full moral worth, it is not in any direct sense the criterion for moral worth. If we discovered extraterrestrial beings of a rational nature, or that some other terrestrial species did have a rational nature, then we would owe such beings full respect. Still, all members of the human species do have full moral worth because all of them do have a rational nature and are moral agents . . .”[4, 82].
- 10 [3, 117ff]; [4, 253ff].
- 11 To motivate their position, consider just two other possible theories of (a)–(d)’s intrinsic value and full moral standing: one according to which possessing the accidental property of the proximate capacity for rational moral agency is required for intrinsic value and full moral standing, the other according to which possessing the accidental property of the ultimate capacity for rational moral agency is required for intrinsic value and full moral standing. Given either of these theories, one or more of (a)–(d)—such as (d)—lacks intrinsic value and full moral standing. These two theories fail, then, to account for the intrinsic value and full moral standing of (a)–(d). And so it is, SV defenders maintain, with every theory save for SV. Only SV, they argue, succeeds in accounting for the intrinsic value and full moral standing of (a)–(d), since (a)–(d) possess the essential property of the basic capacity for rational moral agency.
- 12 [1, xii].
- 13 To be sure, the language of “intratheoretical” propositions might be new. But assessing theories in this way is not.
- 14 That this is a nonmoral claim may be demonstrated by analyzing “future like ours.” Beginning with “future,” by it Marquis means the life one will live if one lives out one’s natural life span. And by future “like ours,” Marquis means a future constituted by personal goods of consciousness, goods that one will (or would) value when one will (or would) experience them. To claim that someone has a future like ours, then, is to claim that the life she will live if she lives out her natural life span is constituted by personal goods of consciousness. And this is a nonaxiological/nonmoral claim. (Were the claim changed to “It is good that the life she will live if she lives out her natural life span is constituted by personal goods of consciousness,” it would become an axiological/moral claim.)
- 15 This objection was anticipated and briefly addressed by Marquis himself, and more fully developed and pressed by Alastair Norcross. See [8, 183-202] and [9, 268-77].
- 16 [13, 3ff].
- 17 See [3, 119].
- 18 [11, chapter 10].
- 19 More explicitly, from (1), (2), (3), and the nonaxiological/nonmoral proposition (“Both the standard human fetus and the standard adult human being possess the essential property of the basic capacity for rational moral agency”), one may deduce that it is *prima facie* seriously wrong to let a standard human fetus die

- as well as to let a standard adult human being die. Since the serious wrongness of letting each of these entities die supervenes on their moral standing, and since both possess full moral standing, one may deduce it is just as *prima facie* seriously wrong to let a standard human fetus die as it is to let a standard adult human being die.
- 20 [6, 269ff].
- 21 [2, 211-16].
- 22 [6, 269ff].
- 23 [3, 140].
- 24 To motivate further the inadequacy of the preceding defense, consider the following addition to Jones's case: the five-year-old girl is deeply, but reversibly, comatose and, thus, will not suffer. This addition precludes invoking a suffering-based extratheoretical proposition like the preceding in SV's defense and lays bare what I and others take to be SV's counterintuitive if not absurd intratheoretical propositions.
- 25 *Ibid.*, 120.
- 26 *Ibid.*, 120-21.
- 27 See [12] as well as [10, chapter 1].
- 28 See [7, 380-82] for a more developed argument for the claim that such infants would retain the potential for making, and acting on the basis of, moral judgments.
- 29 [3, 140].
- 30 [1, 110].
- 31 *Ibid.*, 110.
- 32 It's worth noting that, in the process of committing this error, Beckwith commits another one as well, that of invoking extratheoretical propositions in defense of SV's intratheoretical propositions. See [1, 110].
- 33 *Ibid.* 216.
- 34 I owe this point to an anonymous referee.
- 35 [1, 108].
- 36 I would like to thank two anonymous referees for their comments on earlier drafts of this paper.

*Rob Lovering*  
*City University of New York*  
*College of Staten Island*  
*2800 Victory Blvd*  
*Staten Island, NY 10314*  
*United States of America*  
<[rob.lovering@csi.cuny.edu](mailto:rob.lovering@csi.cuny.edu)>

## References

- [1] Beckwith, Francis (2007): *Defending Life: A Moral and Legal Case Against Abortion Choice*. New York, NY: Cambridge University Press.
- [2] Friberg-Fernros, Henrik (2015): "A Critique of Rob Lovering's Criticism of the Substance View," *Bioethics* Vol. 29, No. 3.
- [3] George, Robert P. and Tollefsen, Christopher (2008): *Embryo: A Defense of Human Life*. New York, NY: Doubleday.
- [4] Lee, Patrick and George, Robert P. (2008): "The Nature and Basis of Human Dignity," *Ratio Juris*, Vol. 21, No. 2.
- [5] Lovering, Rob (2004): "Mary Anne Warren on 'Full' Moral Status," *Southern Journal of Philosophy* Vol. 42, No. 4.
- [6] Lovering, Rob (2013): "The Substance View: A Critique," *Bioethics* Vol. 27, No. 5.
- [7] Lovering, Rob (2014): "The Substance View: A Critique (Part 2)," *Bioethics* Vol. 28, No. 7.
- [8] Marquis, Don (1989): "Why Abortion Is Immoral," *Journal of Philosophy* Vol. 86, No. 4.
- [9] Norcross, Alastair (1990): "Killing, Abortion, and Contraception: A Reply to Marquis," *Journal of Philosophy* Vol. 87, No. 5.
- [10] Singer, Peter (2009): *Animal Liberation*, Updated Edition. New York: Harper Perennial.
- [11] Tooley, Michael (1983): *Abortion and Infanticide*. New York: Oxford University Press.
- [12] Waldron, Jeremy (2017): *One Another's Equals: The Basis of Human Equality*. Cambridge, MA: The Belknap Press of Harvard University Press.
- [13] Warren, Mary Anne (2000): *Moral Status: Obligations to Persons and Other Living Things*. Oxford: Clarendon Press.

