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Abstract:

Abortion, one of the most hotly contested debates in contemporary philosophy, has garnered a large amount of discussion over time. One of the most influential writings on this topic is Judith Jarvis Thomson's *A Defense of Abortion*. In this essay, I present Thomson's influential thought experiments and attempt to create an argument that supports the well-known tacit consent objection to suggest that in situations where the actions of an actor place another in a state of total dependence on the actor, the actor is morally responsible for sustaining that individual unless doing so would cause substantial harm to the actor. I analyze arguments from authors on both sides of the debate, including Alcorn and Boonin, and offer a small piece of personal contribution to formulate premises and come to my final conclusion that abortion is an immoral act.

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When Rights are Wrong; Tacit Consent and Bodily Autonomy

Moral disagreements are central to the study of ethics. Rarely are these conflicts more polarizing and vitriolic than in the case of abortion. According to Gallup, American adults are evenly split on their identifying between pro-life and pro-choice positions (1). Furthermore, many Americans also hold staunchly partisan views on abortion, meaning that even "extreme positions" carry political and social influence. Much of the discussion regarding the moral status of abortion attempts to either establish or refute the personhood of the fetus; pro-life advocates often argue that if the fetus has personhood, abortion is morally impermissible, and their pro-choice adversaries often accept this premise. Judith Jarvis Thomson proposes an argument that sidesteps this question entirely. In her 1971 essay "A Defense of Abortion", she argues for the moral permissibility of abortion even if one grants that the fetus has full personhood rights. She makes this argument by utilizing a thought experiment regarding the involuntary use of one's organs. Judith Jarvis Thomson's *A Defense of Abortion* is excellent at reframing the abortion debate away from the rights of the fetus. However, even if her argument succeeds at showing a fetus has no right over the mother's body, it cannot escape the reality that a mother is ultimately acting immoral in aborting a fetus with full personhood rights (except in extraordinary cases) due to the strength of the tacit consent objection.

Judith Jarvis Thomson (JJT) published an essay in the fall 1971 issue of *Philosophy & Public Affairs* titled *A Defense of Abortion*. She begins her essay by noting that many pro-life

arguments attempt to establish the full personhood and human rights of the fetus. After briefly giving some reasons that she rejects those claims, she introduces her most famous and influential argument. JTT invokes a thought experiment that attempts to demonstrate the fetus's lack of a right to avoid abortion after granting for the sake of discussion that the human fetus possesses a right to life equivalent to the mother's. JTT presents her scenario:

You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we're sorry the Society of Music Lovers did this to you--we would never have permitted it if we had known. But still, they did it, and the violinist is now plugged into you. To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered from his ailment, and can safely be unplugged from you."... What if the director of the hospital says. "Tough luck. I agree. but now you've got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous, which suggests that

something really is wrong with that plausible-sounding argument I mentioned a moment ago.

The analogy JTT implies is obvious. Her thought experiment puts “you” in the situation of having another individual being entirely dependent on your body for survival. In this case, however, she is not discussing a pregnant woman and a fetus, but a fully grown man who happens to be a violinist. Furthermore, it is indisputable that the violinist has a right to life completely equal to your own. By using this analogy, JTT is attempting to isolate and challenge people’s intuitions regarding both bodily autonomy and the right to life. She holds that it is fairly obvious that it is morally permissible to protect your bodily autonomy and unplug the violinist, which unfortunately leads to his death. Since the violinist is analogous to the fetus, JTT concludes that abortion, even of a fetus fully endowed with human rights, is morally permissible. JTT then considers objections to unplugging the violinist that are identical to what the pro-life camp employs when it argues against abortion. She rebuts that it is false one has the right to commandeer another’s body for the sustainment of his own. Thus, JTT reinforces her conclusion that one is not morally wrong for denying either the violinist or a fetus the use of her body, even if the result of the enforcement of this right results in the death of another person.

The obvious objection to her argument is that it only correlates to reality in the case of rape; a proponent of this objection would argue that a woman who engages in consensual intercourse “assumes the risk” of a pregnancy, and thus her situation is sufficiently disanalogous to the victim in JTT’s argument. JTT responds by saying that the circumstances of one’s conception do not strengthen or diminish one’s right to life. Thus, the product of a rape has an equal right to life as one who was conceived through consensual intercourse. JTT holds that this line of thinking applies to the mother’s bodily autonomy as well; just as a rape fetus has no more

or less of a right to life than a consensually fertilized fetus, a rape fetus has no more right to commandeer its mother's body than a consensually fertilized fetus.

Furthermore, JTT employs another thought experiment to show that consensual sex with contraception does not “assume the risk” of a pregnancy as most pro-life advocates argue. She asks the reader to imagine **that**:

[P]eople-seeds drift about in the air like pollen, and if you open your windows, one may drift in and take root in your carpets or upholstery. You don't want children, so you fix up your windows with fine mesh screens, the very best you can buy. As can happen, however, and on very, very rare occasions does happen, one of the screens is defective, and a seed drifts in and takes root. Does the person-plant who now develops have a right to the use of your house?

The intuition is clear, at least as JTT sees it: the fact that you took reasonable and necessary precautions against having a person seed germinate negates your responsibility to sustain it. In other words, JTT argues that proper use of contraception drives a wedge between consensual sex and the responsibility of pregnancy.

JTT goes on to consider issues where a woman would be “morally indecent” to have an abortion performed. She holds that if pregnancy only lasted for an hour, a woman would be “morally indecent” to abort the fetus. However, she argues that because it is right for a woman to keep a child in that circumstance, it does not follow that the fetus has a right to use the woman’s body. At the end of the essay, JTT concedes that is likely that many abortions performed are “morally indecent”, but that none of them actually, or even could theoretically treat the fetus unjustly, even if one grants it full personhood and human rights status.

Robyn Waller 11/10/13 2:07 PM

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Dylan Bukaweski 11/12/13 9:09 AM

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Unsurprisingly, in the thirty years since JTT published her paper, scholars have produced many written comments, criticisms, support, and opinions on a variety of issues she discussed. Even today, her argument remains one of the prominent intellectual prongs in the pro-choice mindset. Predictably, pro-life advocates have responded to JTT's argument by attempting to highlight what they feel are underlying weakness and disanalogies to reality. One such respondent is Randy Alcorn. In his book Pro-Life Answers to Pro-Choice Arguments, he lists what he believes to be six fallacies of her argument. Only two of Alcorn's objections are consequential to the crux of JTT's argument. He argues that "[o]ver 99 percent of all pregnancies are the result of sexual relations in which both partners have willingly participated... No one is going around forcing people to get pregnant" (108). Though Alcorn does not state it specifically, a charitable reading of his objection seems to imply that consensual sex assumes the risk of pregnancy, and thus the vast majority of pregnancies result from circumstances disanalogous to the ones in JTT's argument. Alcorn's other allegation of a fallacy argues that "moral responsibility toward saving a life" sometimes does require minor inconvenience or risk.

Alcorn's strongest objection is the one which attempts to argue that JTT's thought experiment is analogous to reality only in the case of rape. Though doubtlessly JTT's argument is stronger in the case of a rape pregnancy, I suspect she would defend her argument in situations where a pregnancy was the unintended result of consensual intercourse. JTT would likely argue that consensual sexual intercourse does not "assume the necessary risk" of a pregnancy in a way that would require a woman to give up dominion and sovereignty of her body, regarding Alcorn's second argument. It is indisputably true that pregnancy from the result of consensual sex, especially consensual sex with no contraception, is more the responsibility of the woman than a pregnancy resulting from rape. Alcorn takes this truth and attempts to make his final

point: that people generally, and mothers specifically, do have obligations to save a person's life if it only results in minor risk or inconvenience for them. JJT responds to this notion by saying that "it would be indecent to refuse the use of your body at such nominal cost to you." (98) However, she makes an important distinction between it being right for you to allow the use of your body and someone else possessing the right to use your body.

Dan Gaskill provides a more formal argument for implicit consent to pregnancy. He says: In a *typical* case of unwanted pregnancy, the pregnant woman (A) Engaged in an activity (sexual intercourse) that is known to cause pregnancy, and in fact is the usual way in which people get pregnant. (B) The now pregnant woman knew this at the time. (C) Either (i) she was not using birth control, and she knew this, or (ii) She was using birth control, but she knew that birth control sometimes fails. (D) The woman voluntarily chose to have sex.

The conjunction of A, B, C, and D entails that the woman voluntarily chose to engage in an activity that is known to cause pregnancy. Gaskill holds that engaging in activities known to have possible outcomes is in fact consenting to those outcomes, even if the consent is only tacit.¹ This notion of tacit consent is both intuitive and powerful, and proponents of abortion must take it seriously if they wish to defend their position. David Boonin has done this in his book *A Defense of Abortion*. Boonin acknowledges that initial plausibility of the tacit consent argument, and goes on to say,

But I want to argue that this appearance arises from a confusion between a person's (a) voluntarily bringing about a certain state of affairs, and (b) voluntarily doing

¹ Gaskill establishes this earlier in his essay by arguing that patrons of a bar or students in a classroom have consented to the expectations that such places established.

an action foreseeing that this may lead to a certain state of affairs. My claim is that only (a) is a plausible candidate for grounding tacit consent in the relation between an agent and a state of affairs she is (or is partly) responsible for having brought about, and that any plausible attempt to apply tacit consent to non-rape cases of pregnancy must appeal to (b).

Boonin acknowledges that tacit consent is applicable in some cases, such as his example of leaving cash on a table for a waiter. He argues that the idea of intent is of primary importance, displayed in his example of Bill and Ted, two men who leave money on a restaurant table after leaving, Bill intentionally and Ted on accident. He argues that Bill's tacit consent is sufficient for the loss of the money while Ted's is insufficient. In a nod to JTT's example, he quotes Richard Langer's example where a woman joins the Society of Music Lovers with the knowledge that there was a 1 in 100 possibility she would be selected to be plugged into the violinist. Boonin argues that in Langer's example, contra Langer, the selected woman has not in fact given up the right to the use of her own body. His rationale for this is that agreeing to engage in activity with a possible outcome is not equivalent to consenting to that outcome. To further bolster this intuition, he employs the example of a woman walking through a dangerous part of town at night as a woman being aware of the possibility of sexual assault but not consenting to the possibility. Boonin's argument relies on divorcing the notion of consenting to a situation with the notion of consenting to a possible outcome of the situation.

An analysis of the principal of tacit consent is crucial to the overall soundness of Judith Jarvis Thomson's argument. Here I will argue that Boonin's position, at least with respect to abortion, is unsound. As convenient as it would be for a person to be able to engage in activities

and not be responsible for their consequences, the moral nature of the world in which we live seems to preclude this possibility. My argument for this is as follows:

Premise One: If an actor voluntarily engages in an activity that has a reasonably foreseeable consequence of causing another person to be in a situation of total dependence on the actor, then the actor is responsible for sustaining the affected individual, unless doing so would likely cause substantial harm to the actor.

Premise Two: Voluntary intercourse is an activity that has a reasonably foreseeable consequence of causing another person to be in a situation of total dependence on the actor.

Conclusion: Voluntarily engaging in intercourse causes the actor to be responsible for sustaining any individual affected as a result of intercourse.

In defending this argument, I will attempt to demonstrate the soundness of each premises. Before I do this however, I must rigorously define any potentially ambiguous terms in the syllogism. By “situation of total dependence”, I refer to a state of affairs in which one person will die without intervention (either active or passive) from another person. “Sustaining” means either taking an action or allowing a naturally occurring state of affairs to continue which attempts to save or extend the life of a person in a state of dependence. A “reasonably foreseeable consequence” is a direct effect of a cause that is likely to occur at a non-negligible rate. “Substantial harm” is a circumstance that will or has a reasonably high likelihood of leading to permanent and debilitating injury or death. Lastly, to be thorough, my argument is logically valid, as it follows the *modus ponens* form directly.

Premise one is the crucial premise of my argument, as it is the most controversial and directly contradicts Boonin. I believe, however, that thought experiments suffice to defend it quite well. Take for example a driver whose willingly reckless actions result in another driver being on life support. It stands to reason that the driver who put the other driver on life support is responsible for doing everything in his power to save the life of the injured party, and if he does not, he is morally responsible for the death of the driver. Another example would be an individual who decides to play a joke on his friend at a lake house. After throwing his friend in the lake, he learns that his companion does not know how to swim.² Having placed his friend in a state of total dependence, it seems obvious that the one who tossed his friend does have a responsibility to rescue his friend, lest he carry the moral guilt resulting from his death. One might argue that a careful driver or a person who does research to ensure that his friend can swim would be less responsible for the resulting state of dependency. While this may mitigate the individual's responsibility, it does not seem to completely eliminate it. Thus, actors who place someone else in a state of dependency seem responsible for sustaining them afterwards.

Some people may argue that the examples listed above do not involve the use of a person's body and are therefore disanalogous to Judith Jarvis Thomson's argument. This difference, while perhaps of some emotional significance, seems utterly devoid of logical force. The obligation to sustain a person whom an individual has endangered does not seem dependent on how said individual must accomplish this task (other than the already discussed exception for substantial danger to one's self.) If one must use his body to rescue his friend from the lake, it seems that one not similarly be obligated to donate blood if he stabbed a person who's only chance of survival was through a transfusion of his attackers blood. In the discussion of a topic

² This example is adapted from Jeff McMahan's "Accidental Nudge Analogy" in his book *The Ethics of Killing: Problems at the Margins of Life*.

that has been heavily debated over a long period of time, this is the contribution the argument brings to the table that may not have been present before.

The second premise is more obviously true and therefore less in need of defense. It is a well-accepted biological fact that sexual intercourse leads to pregnancy. It is also uncontroversial that a fetus (at least before the third trimester) is in a state of total dependency on the mother; if the mother removes it or otherwise denies it the use of her body, it will die. The personhood of the fetus is assumed in JJT's original argument and my rebuttal to it. The truth of the second premise is therefore confirmed with a high degree of certainty. The conjunction of premises one and two logically entail the conclusion.

There are still some issues a person could raise with my argument. To begin with, it does not address the issue of rape pregnancies at all, as it discusses only voluntary intercourse. This omission is purposeful, as the issues surrounding involuntary intercourse and subsequent responsibility are more complex and nuanced. Also, pregnancies resulting from rape are fairly rare. Furthermore, one might argue that the use of contraception makes pregnancy resulting from voluntary intercourse not "reasonably foreseeable". Though contraception use does lower the chance of pregnancy, contraception is often improperly used and occasionally fails even with perfect use. Despite making pregnancy less likely, it is still reasonably foreseeable that one can get pregnant with perfect use of contraception.

If my argument is sound, the implications are vast. A mother has a moral responsibility to sustain the life of a child who was produced as the result of voluntary intercourse, provided she does not suffer substantial harm in the process. At the very least, most elective abortions would be immoral. Whether or not they should be legal is a question for a scholar in another discipline.

The issue of abortion is both complexed and nuanced and the fact that individuals' intuitions and their emotions fluctuate greatly is unsurprising. JJT made a significant contribution to the philosophical discussions regarding abortion with her paper. Her arguing past the personhood of the fetus helped reframe the discussion and shed light on issues which were previously drowned out by the intense focus on fetal personhood. Her thought experiment is both intuitively powerful and seemingly analogous. For this reason, it is fair to say that JJT's contributions have been monumental. However, a deeper analysis of her argument reveals that our moral obligations actually still make abortion immoral, despite the assumed success of her thought experiment. For this reason I conclude that her argument, despite succeeding at demonstrating the mother's bodily autonomy, does not demonstrate the moral permissibility of abortion in the case of consensual sex and pregnancy.

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