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## **Violinists Run Amuck in South Dakota: Screen Doors Down in the Badlands!**

[I]magine this. You wake up in the morning and find yourself back to back in bed with ... [a] famous unconscious violinist .... the Society of Music Lovers has ... 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 .... To unplug you would be to kill him. But never mind, it's only for nine months. By then he will have recovered ... Is it morally incumbent on you to accede to this situation?... What if it were not nine months... What if the director of the hospital says, "Tough luck, I agree, but you've now 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... 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." (Thomson: 48-9)

### **I. Introduction**

Judith Jarvis Thomson's "A Defense of Abortion" was published in the first ever issue of *Philosophy and Public Affairs* (vol. 1, no. 1, 1971, 47-66).<sup>1</sup> It is quite likely that, not only is it the most widely reprinted and cited essay ever to appear in that journal, it is also one of the most influential academic essays ever to appear on the topic of abortion.<sup>2</sup> Almost every serious discussion of abortion in Anglo-American philosophy has made some reference to the essay, and to Thomson's central argument in it, since the essay was first published.<sup>3</sup> Perhaps more students have read, and so to some degree have been influenced by, Thomson's essay than any other on this topic. It was welcomed by some pro-choice advocates as an original and sound defense of the morality of at least many, though by no means all, cases of abortion. There was, however, something in it for anti-abortionists too. For, given its starting point (the assumption that a fetus is a human person), Thomson argues that many cases—perhaps most—are, in varying degrees,

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<sup>1</sup> Readers should stop in their tracks and read Thomson's essay before continuing.

<sup>2</sup> The most important responses to Thomson's essay include David Boonin-Vail (1997a and 1997b), Baruch Brody (1972), Nancy Davis (1984), John Finnis (1973), Doris Gordon (1999), R. M. Hare (1975), Rosalind Hursthouse (1991), F. M. Kamm (1992), Marguerite La Caze (2002), Steven L. Ross (1982), Michael Tooley (1983), and Mary Anne Warren (1973).

<sup>3</sup> See La Caze, M. (2002) for a compelling and nuanced account of how the central image of Thomson's essay works, both in the essay itself and through its reception history.

immoral. It is in view of the recent legislation passed in South Dakota, along with the religious and political right's clamour for a near total ban on abortion that we wish to reread Thomson's essay.<sup>4</sup>

Here is the thesis. Thomson's defense exacerbates anti-abortionist prejudices by assuming the humanity or personhood of the fetus, its right to life, and framing the issue in terms of a clash of rights. Framing the debate in this way has a number of highly unfortunate consequences. It has the effect of legitimating anti-abortionist rhetoric and drains the issue of its moral particularity. In the wake of Thomson's article, though not at all wholly the result of the article, general philosophical discussion of abortion has failed to focus on the moral response to circumstances and experiences unique to women, but has become, largely, a generic rights issue. Thomson attempts to carefully set out limitations to a women's responsibility for the life of a fetus; but she does so always in the context of the rights of a fetus. Overemphasis on rights talk accentuates rather mitigates feelings of guilt on the part of those who would obtain an abortion, and it fans the fires of prejudice in the guise of moral outrage.

In the essay, Thomson seeks to defend the morality of certain abortions even if the fully-fledged right to life of the fetus is accepted. She takes as her starting point the claim that "the fetus has already become a person well before birth"<sup>5</sup> (47). And, using a number of carefully constructed analogies, seeks to demonstrate a general thesis about rights.

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<sup>4</sup> Evelyn Nieves, Washington Post Staff Writer Thursday, February 23, 2006; Page A01. "S.D. Abortion Bill Takes Aim at 'Roe': Senate Ban Does Not Except Rape, Incest"

"South Dakota lawmakers yesterday approved the nation's most far-reaching ban on abortion, setting the stage for new legal challenges that its supporters say they hope lead to an overturning of *Roe v. Wade*. The measure, which passed the state Senate 23 to 12, makes it a felony for doctors to perform any abortion, except to save the life of a pregnant woman ... The bill was designed to challenge the Supreme Court's ruling in *Roe*, which in 1973 recognized a right of women to terminate pregnancies. Its sponsors want to force a re-examination of the ruling by the court, which now includes two justices appointed by President Bush."

<sup>5</sup> Thomson says (47-48) "Indeed, it comes as surprise when one first learns how early in life it begins to acquire human characteristics. By the tenth week, for example, it already has a face, arms and legs, fingers and toes; it has internal organs, and brain activity is detectable." Why is any of this an indication that the fetus "has already become a human person well before birth?"

This is the thesis that a right to life does not entail a right to life-support. A right to life-support, where it exists, must be the product of a moral relationship other than dependency. Thus one cannot infer from the fact that a fetus has a right to life and is wholly dependent upon its mother that the mother has an obligation to continue to provide the fetus with life-support. This is all that Thomson can show, if indeed she can show even this, by the use of such analogies as the famous violinist (above) or the astonishing image of a cloud of “people seeds” floating uninvited through one’s window and taking root in the carpet (Thomson 59). Such a general thesis about rights and how they interact seems like a very unpromising basis for a discussion of what is surely a unique set of moral situations, situations faced fully only by women. Thomson’s defense of abortion is so restrictive that its plausibility as an argument in “defense of abortion” has become problematic. Those who are pro-choice regarding abortion will want to distance themselves from any such defense as Thomson’s on ethical as well as practical grounds. It gives up too much, in the wrong ways, and for the wrong reasons. It is not merely that it is inadequate and misconceived as a defense. Rather, it has people thinking about abortion in fundamentally misleading and harmful ways.

Thomson’s defense of abortion begins with a concession that has proved ruinous for defenders of choice. If we start with the assumption that a fetus is a fully-fledged person, with all the rights to life that this entails, then a presumption is automatically introduced against the intentional killing of any fetus. The insight that a right to life does not entail a right to life-support, even in cases of complete dependence, provides feeble support for pro-choice positions. Thomson’s presumption against the morality of abortion plays into the hands, theoretically and practically, of those opposing the right to an abortion. While the anti-abortion movement in the US has had little legislative success, until South Dakota, they have been successful in laying the necessary and very real

psychological groundwork to such legislation. What they have done is to create a theoretical and practical context in which even those who choose an abortion, and who believe and would argue that nothing is immoral in such a choice, are made to feel bad about it—are made to feel that they have done something wrong or at least extraordinarily regrettable. It is against this background, and only in this context, that the harsh and immoral anti-abortion laws now introduced can hope to succeed. Anti-abortionists have won a great victory, though not an ethical one, in enhancing and fostering the guilt, misery, regret and false-consciousness of many of those who choose an abortion even though there are no ethical grounds for such feelings. It would be unfair, and a gross exaggeration, to lay the blame for this situation on Thomson's essay. However, the essay has played an unintended role in fostering this situation. If abortions are thought of as killings of individuals with rights to life—as Thomson's essay accepts and therefore reinforces—then it is easy to portray abortion as an intrinsically guilt-inducing business.

## **II. Thomson's Defense of Abortion**

Thomson likens the case quoted at the beginning of this essay—being kidnapped and having the violinist plugged into you—to a case of pregnancy by rape. Does the fetus have a right to life in such a case? Like those in South Dakota, she does not think that the fact of rape affects the right to life. “Surely the question of whether you have a right to life .... shouldn't turn on the question of whether or not you are the product of a rape. And in fact the people who oppose abortion on the ground I mentioned [the right to life of the fetus combined with the view that this right trumps other lesser rights] do not make this distinction, and hence do not make an exception in case of rape” (49).

Thompson argues that the “extreme view”—“the view that abortion is impermissible even to save the mother's life ... does not issue from the ... [right to life of

a fetus] without the addition of some fairly powerful premises” (50).<sup>6</sup> In the case where a mother’s life is threatened and the only way to save the mother is to abort the fetus, then, as Thompson argues, unless one assumes that the fetus’s right to life is greater than the mother’s, or some other objectionable premises are supposed, abortion may be permissible. Even if one accepts the view that the right to life of the fetus may override other less important rights, it is in no way obvious that the fetus’s right should override the mother’s own right to life. This takes care of the “extreme” view, but it does nothing to support the permissibility of abortion in other extreme cases—rape for example—nor in any case where the mother’s life is not threatened. In these cases it seems on the face of it that the fetus’s right to life might often win out. It is not at all obvious how the permissibility of abortion where the mother’s life is at risk can be broadened to encompass morally permissible abortion in non-life threatening situations.

Thomson’s famous analogies are introduced to do this work. They are meant facilitate or justify the move from the permissibility of abortion in the extreme case to cases where the mother’s life is not at stake. Thomson (55) says

In some views having a right to life includes having a right to be given at least the bare minimum one needs for continued life. But suppose that what in fact is the bare minimum a man needs for continued life is something he has no right at all to be given? If I am sick unto death, and the only thing that will save my life is the cool touch of Henry Fonda's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow. It would be frightfully nice of him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West Coast and carried Henry Fonda back with them. But I have no right at all against anybody that he should do this for me.

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<sup>6</sup> Here are the objectionable premises: “(1) But as directly killing an innocent person is always and absolutely impermissible, an abortion may not be performed. Or, (2) as directly killing an innocent person is murder, and murder is always and absolutely impermissible, an abortion may not be performed.’ Or, (3) as one's duty to refrain from directly killing an innocent person is more stringent than one's duty to keep a person from dying, an abortion may not be performed. Or, (4) if one's only options are directly killing an innocent person or letting a person die, one must prefer letting the person die, and thus an abortion may not be performed.” (176).

Thomson is right about Fonda. Is this lack of a right to his cool hand analogous to cases of pregnancy/abortion? Henry Fonda is a stranger to Thomson. He is nobody's mother—and no amount of precautionary birth control on any mother's part will turn her *analogously* into Henry or any of the other Fonda's. There are connections between the mother and fetus that simply do not exist between Henry and Thomson. However, Thomson summarily rejects any alleged special relation between mother and fetus constituted by pregnancy. She says "It may be said that what is important is not merely the fact that the fetus is a person, but that it is a person for whom the woman has a special kind of responsibility issuing from the fact that she is its mother .... Surely we do not have any such "special responsibility" for a person unless we have assumed it, explicitly or implicitly" (65). What constitutes implicitly or explicitly assuming responsibility is a point at issue, but it is not the only one. For even if a case cannot be made for supposing the mother to have assumed any such responsibility, there may be other reasons to advance such a view of her responsibility. These may perhaps be grounded non-circularly in the nature of the relation between mother and fetus, even taking into account the mother's right to her body and what happens to it.

The anti-abortionist can claim the infant's prima facie right to life is linked to the bare minimum needed to survive and will override even severe conflicts of rights and inconveniences that may occur in seeing to it that this minimum is granted. They are likely to say that, without access to the minimum, the fetus's right to life is empty or meaningless. Such access is constitutive of the right in this case. Even in the case of rape, adoption is possible and so nothing more than the bare minimum may have to be rendered. Thomson says that the violinist who is plugged in to you has "no right against you that you should give him continued use of your kidneys" (55) although he needs them to survive. But for one who thinks that the right to life is more important than other rights

this does not follow. And even if one does agree that the violinist has no such right against you, it is not clear that one can argue successfully by analogy that a fetus has no such right against the mother—even perhaps if the fetus is there as a result of rape—and more so if the fetus is there as result of willing sex, whether or not one used contraception. (Thomson allows the fetus may have a claim if contraception was not used since this is tantamount to explicitly or at least implicitly “inviting” the fetus in.) What in the world, the anti-abortionist asks, does the violinist case have to do with pregnancy? The violinist is no less a stranger to you than Henry Fonda. And abortion—as John Finnis argues graphically—is not an unplugging (Finnis, 1973). The analogy of the violinist has proved fertile ground for anti-abortionist reconception. The point, then, that Thomson can make through these analogies is only a very general and abstract claim about the logic of rights. Her analogies are not materials for compelling arguments by analogy; they are *illustrations* of general points about rights whose relevance to the case of abortion is far from clear and is highly controversial.

Thomson argues that if the fetus can be removed from the womb viably, then abortion would not be warranted given the fetus’s right to life. However, many opting for an abortion do not want the fetus to live even if it could do so independently of the mother. If medical advances allowed us to remove the fetus from the mother’s body shortly after conception and raise them to an artificial birth and beyond, many women would not want this to occur. They would still regard the fetus and the person it grows into as in a sense their child—a child they did not want. Here too Thomson’s view is extraordinary for one who is seeking to defend the morality of abortion beyond the case where a mother’s life is at stake. She says, “while I am arguing for the permissibility of abortion in some cases, I am not arguing for the right to secure the death of the unborn child. It is easy to confuse these two things in that up to a certain point in the life of the



fetus it is not able to survive outside the mother's body; hence removing it from her body guarantees its death. But they are importantly different .... The desire for the child's death is not one which anyone may gratify, should it turn out to be possible to detach the child alive" (66). This view suggests that as medical science and viability of the fetus outside the mother's body advances, the number of morally permissible abortions will dwindle to nothing. It also suggests that Thomson misunderstands a large part of the motivation for abortion. It is not only or primarily the inconvenience of the pregnancy the person who wants an abortion is objecting to. That may bother them only a little or not at all. It is having someone alive, at that time in their lives, who stands in that relationship to them of child to mother—and this concern is not reducible to a concern about the prospect of caring for a child.

Thompson's arguments from analogy have gone some way to convincing generations of women that to the extent they engage in voluntary unprotected sex they may be responsible for a fetus such that aborting it is probably immoral. She considers the view that unprotected sex is like "inviting" the fetus to the use of one's body—in which case it has a right not to be aborted. She says "this argument would give the unborn person a right to its mother's body only if her pregnancy resulted from a voluntary act, undertaken in full knowledge of the chance a pregnancy might result from it" (58). But, she says "there are cases and cases, and the details make a difference" (58). Finally we get to screen mesh windows and also to just how utterly circumscribed Thomson's alleged defense of abortion is—how very few cases it applies to.

Here is the central analogy employed by that Thomson.

"If the room is stuffy, and I therefore open a window to air it, and a burglar climbs in, it would be absurd to say, "Ah, now he can stay, she's given him a right to the use of her house—for she is partially responsible for his presence there, having voluntarily done what enabled him to get in, in full knowledge that there are such things as burglars, and that burglars burgle" .... Again, suppose it were like this: people-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? Surely not—despite the fact that you voluntarily opened your windows, you knowingly kept carpets and upholstered furniture, and you knew that screens were sometimes defective” (59).

But suppose one is plain careless, even utterly careless, as in the vast majority of cases no doubt. Then appears to hold Thomson that one is responsible and barring other overriding morally relevant features, an abortion is morally impermissible. Thomson says “It seems to me that the argument we are looking at can establish at most that there are some cases in which the unborn person has a right to the use of its mother's body, and therefore some cases in which abortion is unjust killing” (59). But it is not just *some* cases she is talking about. It is most cases. What does Thomson think the failure rate on properly used contraception is? For it is almost exclusively to cases of such failures that her defense applies. One might argue about whether this does pertain to the vast majority of cases, but Thomson would presumably say that if it does then so be it. Her aim, after all, is not to argue that abortion is always or usually permissible but to determine the conditions under which it might be morally permissible. And on her account, in affluent countries, they turn out to be a minority of cases.

### **III. Anti-abortionism: Prejudice, Vilification and Hate**

In the tradition of Analytic Philosophy, Thomson's article is thoroughly dialectical. Her aim is primarily directed at certain arguments of anti-abortionists: those that proffer *no more* than an appeal to right to life as a trump card. To read the essay charitably would be to accept this limited aim and recognise the value of refuting what, after all, are a very weak set of arguments. Trouble sets in when highly limited, dialectically focused essays

become major position statements. And this is the tragedy of Thomson's essay. It has seldom been read as a dialectical sortie against ill-equipped opponents. It has been read, and continues to be read, as an attempted map of the fundamental moral landscape of the abortion issue. The issue is framed in terms of a clash of rights: the right of self-defense against the fetus, the right to allow persons to die (though not necessarily with a clear conscience) if you have not voluntarily assumed a special responsibility towards them.

This is a disastrous situation for pro-choice advocates. It plays into the hands of conservative opponents of choice and does so in ways that are completely at odds with Thomson's explicit intentions. It does so in two ways. First, as we have already argued, it helps frame the debate in terms that are highly circumscribed, ineffectual, and open to ready anti-abortionist reply. Second, and perhaps more significantly, it helps frame the debate in terms which provide fertile ground for prejudicial and moralistic prosecution of the case against choice. It is this latter aspect of the fate of Thomson's paper that we wish to examine in this section.

Thomson's so-called defense of abortion is secular, and it plays into the hands of those anti-pro-choice people who claim to have, in addition to religious grounds, purely secular grounds for opposing abortion. It speaks, after all, of the personhood of the fetus and of its rights. The anti-abortion movement is predominantly religiously inspired. However, if the attempt to deny women the right to choose an abortion were made in purely religious terms, it should be unacceptable in a free and democratic State. The existence of secular arguments against abortion is therefore central to the feasibility of the anti-abortionists cause.

However, there is more to the extreme, right-wing, religious anti-abortion lobby than meets the eye. The case against choice has been prosecuted by this group with a fervour and a sense of moral righteousness, sometimes with murder in the heart and in the

hand, that is hard to explain by appeal to motivations generated by either secular or religious belief. To understand the social and psychological phenomenon of extreme, sometimes violent, invariably moralistic, opposition and attack on women's choice, we may have to look beyond arguments traded and convictions advanced, to underlying motivations and their prejudicial character. The motivation underlying the anti-choice movement may have its source alongside other racial, gender and religious prejudices, all of whose function it is to protect one from perceived threats (phantasised or real), including one's own moral, religious, sexual and other shortcomings. On this view, prejudices are fundamentally styles of ego-defense.<sup>7</sup> Anti-abortionists may often be motivated, not by an effort to save the lives of what they take to be the unborn persons, but by garden variety prejudices and hate in an effort to offload perceived shortcomings on to a scapegoat "other." The anti-abortion movement in the US may be predominantly enacting a kind of prejudice, one that functions essentially as racism, religious and ethnic prejudice, homophobia, misogyny and a host of other prejudices function. The explanatory value of this hypothesis lies in its power to explain the moralistic fervour of the attack on choice: its implacability, its utter inflexibility, and its verbally and physically violent character.

According to our explanatory hypothesis, rabid anti-abortionism is grounded in prejudices tailor-made to protect self-images and egos. The beliefs and feelings (eg. hate, disdain, superiority) in question are grounded in prejudices and include those about alleged values (freedom, democracy, self-determination, the value of life). These are judged essential to the image and identity of the anti-abortionist religious right, but they are often motivated by feelings of moral, sexual and other kinds of inferiority. Such alleged values—false, hypocritical and self-serving—are psychically and politically

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<sup>7</sup> See Young-Bruehl (1996) for an account of prejudice along these lines.

employed as a justification for aggression and domination. They are in the service of ego-protection and offer a variety of character types feelings of enhanced moral (and other) superiority. Prejudices cannot always be finely delineated and the anti-abortion legislation in South Dakota is also likely motivated by a degree of racism. Those that will predictably be hurt are those that cannot go elsewhere for an abortion—that is the indigenous (Indian) population, and the other non-white and white poor.<sup>8</sup>

Invoking prejudice, and the projections and violence it may unleash, is a way of protecting oneself against perceived threats. The threats of course need not be, and rarely are, external, but are psychically real. However, if one kind of ego-defence, a particular prejudice, becomes untenable for whatever reason, then a host of others may take its place and perform more or less the same function. So, if historical circumstances make anti-black racism untenable in the U.S. for example, violence rooted in other forms of prejudice, substituted forms, can quickly be found. Prejudices are usually over-determined. And the conditions in which prejudices are situated can conveniently be played upon and exacerbated. The Australian government, for example, continues to do this in relation to refugees. It has consistently tried to link the arrival of defenceless boat people on Australian shores to a potential terrorist threat to national security. There is thus a sense in which racism is not so much about race as it is about psychic defence.

Race is, at it were, an excuse for racism, and gender or sexuality, an excuse for misogyny

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<sup>8</sup> “South Dakota has only one abortion provider the Planned Parenthood clinic in Sioux Falls, on the eastern side of the state. The clinic serves about 2,000 patients a year, and provides about 800 abortions. Two-thirds of its patients are near or below the federal poverty level (\$14,000 for a single person), and three-fourths are uninsured. In South Dakota, one in six women aged 15-44 have incomes under the federal poverty level and one in seven have no health insurance. According to a 2005 Rural School and Community Trust report, South Dakotas rural communities have the eighth lowest rural per capita income in the nation, ninth highest child poverty rates and sixth highest percentage of rural households headed by women with pre-school age children living in poverty. Native Americans, 8.3 percent of South Dakotas population, are among the states poorest. Charon Asetoyer, executive director of the Native American Womens Health Education Resource Center on the Yankton Sioux Indian Reservation, told the World, This bill hurts the poorest of the poor. In this state, a lot of us fit into that category. Because of federal downsizing and privatization of Indian health care, she said, Native Americans increasingly have to travel to the Planned Parenthood clinic for reproductive complications and abortions.” *People’s Weekly World Newspaper Online*, 03/09/06 Author Susan Webb. [suewebb@pww.org](mailto:suewebb@pww.org).

or homophobia. The issue of abortion represents, we believe, an excuse for the exercise of a type of prejudice and ego-defense: the self-righteous indignation of those who seek to deny others and the right to opposing moral views.

This brings us back to this paper's thesis. How does Thomson's essay fare in this highly charged and prejudicial environment? The essay frames the abortion issue in terms of a clash of rights. However, rights talk operates at more than one level. When we introduce a class of rights, we have an effect on moral imagination as well as on explicit moral discourse. To imagine a right is to encourage the kinds of imaginative identification which provide prejudicial processes vast expressive resources. Rights talk ups the ante in an obvious and dramatic way. Failure to respect a right is imagined, not as an impermissible action, but as an act of moral violence. Rights are *violated*. The rights of the purely innocent are *violated doubly*. Today, moralistic outrage exploits the language of rights in ways that earlier generations exploited the language of evil. And where this outrage is cover for prejudice, the language not only implies moral violence, its use *becomes* a kind of violence: the verbal violence of those who assault women with accusations of unnumbered killings.

If we are right about the underlying prejudicial character of the anti-abortion movement, then the abortion debate is not really functioning at a rational level. What rational debate can inadvertently do—and we think Thomson's famous essay has done—is help legitimate rhetoric that expresses prejudicial psychological processes, processes that are largely immune to the force of a philosopher's arguments. When we discuss abortion in terms of a clash of rights, we have already lost the debate at a motivational level. When we use images of kidnapped violinists and people seeds infesting the carpet, and giant babies crushing women in small houses (Thomson 52)—images that have absolutely nothing specific about women and their moral experience in them—we have

lost sight of what is important in the question. The opponents of choice don't listen to the argument. They latch hold of the idea that abortion is killing a person with a right to life and this gives them the appearance of common ground on which to rant about the killing of innocents. This is the risk with philosophical intervention in prejudice-driven debate. Prejudices have to be understood, defused, worked around. Arguments are often enough just not effective ways of combating prejudice. Ill-framed arguments in defense of abortion, like those propounded so memorably in Thomson's essay, can make the situation worse.

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