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Fall 2011

Philosophy and Theology: Notes on the Violinist Analogy

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Recommended Citation

Christopher Kaczor, "Philosophy and Theology" Notes on the Violinist Analogy, *National Catholic Bioethics Quarterly* 11.3 (Autumn 2011): 579-585.

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PHILOSOPHY AND THEOLOGY

Judith Jarvis Thomson's violinist analogy defending abortion is something like an undead zombie. Although the zombie gets repeatedly killed, it keeps on coming back.¹ In her article "Rethinking *Roe v. Wade*: Defending the Abortion Right in the Face of Contemporary Opposition" (*American Journal of Bioethics*, December 2010), Bertha Alvarez Manninen points out that both public opinion and political tides have turned against *Roe v. Wade*. She intends to turn the tide by resuscitating the violinist argument. Though in theory *Roe* professed agnosticism about when a human person begins, in practice, *Roe* denies fetal personhood. Such denials have become less and less plausible both in terms of the scientific evidence that abortion kills a whole, living, unique, individual member of the human species and in terms of the moral discussion in which even staunch defenders of abortion, such as Frances Kissling, acknowledge that they are losing the debate.² In a startling admission on the front page of the *Washington Post*, Kissling writes,

In the nearly four decades since the Supreme Court ruled that women have a fundamental right to decide to have an abortion, the opposition to legal abortion has increased dramatically. Opponents use increasingly sophisticated arguments—focusing on advances in fetal medicine, stressing the rights of parents to have a say in their minor children's health care, linking opposition to abortion with opposition to war and capital punishment, seeking to make abortion not illegal but increasingly unavailable—and have succeeded in swinging public opinion toward their side.

¹For an early refutation of the violinist analogy, see John Finnis, "The Rights and Wrongs of Abortion: A Reply to Judith Thomson," *Philosophy and Public Affairs* 2.2 (Winter 1973): 117–145.

²For a summary of numerous attempts to justify abortion and why these attempts fail, see Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice* (New York: Routledge, 2011).

Meanwhile, those of us in the abortion-rights movement have barely changed our approach. We cling to the arguments that led to victory in *Roe v. Wade*. Abortion is a private decision, we say, and the state has no power over a woman's body. Those arguments may have worked in the 1970s, but today, they are failing us, and focusing on them only risks all the gains we've made.³

Manninen, following in the steps of Judith Jarvis Thomson, wants to defend the moral and legal right to abortion even if the human being in the womb is acknowledged to be a person from the beginning of life, a proposition denied by both Thomson and Manninen. One of the chief objections to Thomson's violinist argument is sometimes called the "weirdness" objection. To be attached to some famous violinist is utterly unrealistic, fantastic, and bizarre, whereas pregnancy is familiar, natural, and utterly common. The more surreal the example, the less reliable our intuitions will be about the example for adjudicating actual cases.

Manninen seeks to remedy this difficulty by providing "real life" examples of the violinist argument. In 1978, in *McFall v. Shimp*, the Tenth Pennsylvania District Court upheld that no person should be forced to give up a kidney or to have a blood transfusion even in order to save another person's life. Manninen notes that "no person's right to life entailed that another person had to forcibly submit to unwanted bodily intrusion in order to sustain the former's life."

On her view, defenders of unborn human life seek to establish that an unborn child "possesses an *additional right, one that no other extra-uterine person possesses*, to be given whatever it needs for survival, including access to a woman's womb, regardless of whether she is willing to voluntarily provide it. . . . There is no case (to my knowledge) in which one person's body was forcibly invaded in order to save another person."

Manninen provides a Kantian argument for the conclusion that no person should be forced to surrender her body in order to aid another. She continues, "To compel a pregnant woman to submit to an unwanted intrusion of her body to sustain the life of the fetus violates her autonomous decision to do otherwise, and uses her body as a mere means to saving the life of the fetus." Individual adults in need of blood transfusions, kidney transplants, or bone marrow donations are certainly persons, but other persons are under no obligation to provide the needed aid, even if this means that the persons in need will die. Similarly, even if it is conceded that the human being in the womb is a person with equal moral status to adults, pregnant women may still decline to allow their own bodies to be used in order to provide for fetal life.

However, supposing that the human fetus is a person, this fetal person will also have the right to bodily integrity. The person in utero will likewise have the right not to be used simply as a means to realize someone else's desires, including the desire not to be pregnant and not to be a mother. The total violation of bodily integrity in abortion is a much more serious and irreversible loss than the partial

³Frances Kissling, "Abortion Rights Are under Attack, and Pro-choice Advocates Are Caught in a Time Warp," *Washington Post*, February 18, 2011.

violation of bodily integrity involved in donating a kidney or continuing pregnancy. Likewise, avoiding death is a more serious reason for allowing a side effect than avoiding the difficulties of unwanted pregnancy. Indeed, the fetus has two goods at stake, bodily integrity and life itself; in normal cases of pregnancy, the woman does not. *A fortiori*, if people have a right to bodily integrity and so do not have a duty to donate a kidney, then people in utero have a right not to have their bodily integrity fatally violated by abortion.

No one should be forced to donate a kidney to save a human life, so it is even more obvious that no fetal person should have his or her bodily integrity violated in a lethal manner so that someone else can avoid continuing to be a gestational mother. Indeed, the term “mother” is properly used for pregnant women. In his article, “Manninen’s Defense of Abortion Rights Is Unsuccessful” (*American Journal of Bioethics*, December 2010), Don Marquis notes,

All mammals have mothers. A fetus is a mammal. Therefore, a fetus has a mother. Only the pregnant woman qualifies to be the mother of the fetus within her. All mothers are parents. All parents (unless exceptional circumstances obtain) have serious, special duties of care to their children. (Think here of your reaction to deadbeat dads.) Therefore, all pregnant women have serious, special duties of care to their children. Fetuses are children. Therefore, all pregnant women have serious, special duties of care to their fetuses.

Parents have duties to their offspring whether they meant to conceive them or not. The fact that fathers are forced to pay child support is evidence of this widely shared intuition.⁴

Alex Rajczi objects: “It is unclear that the father’s potential sacrifices, over time, are equivalent to the intense sacrifices a mother must make over a nine-month period to carry a child to term” (“Abortion, Competing Entitlements, and Parental Responsibility,” *Journal of Applied Philosophy*, November 2009). Rajczi emphasizes the point even more strongly elsewhere: “We need to decide whether mothers have a duty to alleviate mortal needs created foreseeably but unintentionally—a duty that is strong enough to require her to sacrifice her body for nine months, etc.” Likewise, Manninen believes a pregnant woman “completely surrender[s] the use of her body, even if doing so goes against her will, for nine months.”

These kinds of descriptions unrealistically and unfairly exaggerate what takes place in pregnancy.⁵ It is not that the woman sacrifices her body or loses control of her

⁴This is disputed by Elizabeth Brake, who argues that because mothers do not have obligations to their unborn children, neither do fathers have obligations to provide child support. See her article “Fatherhood and Child Support: Do Men Have a Right to Choose?” *Journal of Applied Philosophy* 22.1 (March 2005): 55–73.

⁵As Rosalind Hursthouse points out, in the violinist case, “I cannot do my job, I cannot go visit my sick mother, I cannot go to my sister’s wedding, I cannot go to films, I cannot go swimming, I cannot read (well, perhaps the violinist is a great talker), I cannot have a confidential conversation with anyone and I cannot make love. And all of this for a whole nine months. But the usual pregnancy does not make one bed-ridden, and even when it does, very rarely for nine months; nor is the foetus, even assuming it to be a person, someone

body for nine months, as if she were in a prison camp or having continual epileptic seizures for thirty-eight weeks. An expectant mother does not have symptoms of advanced Parkinson's disease; she is not in a coma. Indeed, during the beginning of pregnancy, and sometimes even later into pregnancy, a woman may not be even aware that she is carrying a baby. Defenders of abortion use the language of "complete sacrifice" of the woman, which accurately describes, however, what happens to the fetal person who gives up use of his or her body not partially and for nine months but completely and forever.

How much pain, effort, and struggle are involved in pregnancy, and how does this compare to the sacrifices demanded of fathers?⁶ The answer varies from mother to mother and from father to father, but we can estimate the average amount of sacrifice in financial terms by considering how much you would have to pay to get the support in question. How much would you have to pay a woman to get pregnant, gestate a child for nine months, and then place the child in another family via adoption? In his "Surrogate Mother Case," Rajczi estimates the cost of pregnancy, gestation, childbirth, and placing the child in a family via adoption at \$100,000. His estimate is greatly exaggerated in comparison to the actual "cost" of pregnancy. In fact, in the United States, "surrogate mothers are typically paid \$15,000."⁷ In other words, this figure represents the average burden of pregnancy measured in financial terms.

Do we then require less of fathers than we do of expectant mothers? In 2002, the average amount of child support paid in the United States was \$4,243 per year, or more than \$89,000 until the child is age twenty-one.⁸ Although the burden for the gestational mother is greater in the short term (\$15,000), over time the burden for fathers is greater. Measured in average financial terms, the father has provided more support for the child than the expectant mother after just four years. Of course, any minimally morally decent father must do *much more* than provide a check each month, as must any minimally morally decent mother. Most especially, neither parent should ever intentionally harm their own child or even allow a foreseeable but preventable harm, save for the most serious moral justifications.

When defenders of the violinist argument, such as Rajczi and Manninen, speak of the right to decide what happens in and to one's body, what exactly does the term "right" mean? The equivocality of the term "right" was pointed out long

whose presence rules out reading, private conversations, and sex." See her *Beginning Lives* (Oxford: Oxford University Press, 1987), 203.

⁶For a discussion of the link between abortion and parental duties, see Bernard G. Prusak, "Breaking the Bond: Abortion and the Grounds of Parental Obligations," *Social Theory and Practice* 37.2 (2011): 311–332. The abstract for this article appears on page 590.

⁷Anuj Chopra, "Childless Couples Look to India for Surrogate Mothers," *Christian Science Monitor*, April 3, 2006.

⁸U.S. Census Bureau, *Support Providers: 2002—Household Economic Studies* (Washington, DC: US Census Bureau, 2005), 2, available at <http://www.census.gov/prod/2005pubs/p70-99.pdf>.

ago by John Finnis, who utilizes the work of Wesley Hohfeld to disambiguate the term.⁹ A Hohfeldian “liberty right” to X is the claim that the agent has no duty not to X. For example, if a person has a right to free speech, this means that the person has no legal or ethical duty to refrain from speaking. By contrast, if a person has a “claim right,” then *other* people have a duty to aid, provide, or do something or to refrain from doing something with respect to the person with that right. An agent’s right to live is a claim right which means that other people have the duty not to intentionally kill the agent.

How do these various kinds of rights apply to abortion? Let’s first look at abortion understood as a claim right. All people have duties not to interfere with other people’s bodies. This duty readily connects to the violinist analogy, for doctors have a duty not to hook up unconsenting people to violinists. In his article, “Can Technology Fix the Abortion Problem? Ectogenesis and the Real Issues of Abortion” (*International Journal of Applied Philosophy*, 2008), Patrick Hopkins notes that “the fetus has no right to occupy its mother’s (or anyone else’s) body.” So, does the fetal person violate the claim rights of women to control their bodies?

People do indeed have a duty not to occupy the body of other persons. But a human fetus, like a human newborn or a human adult with serious mental handicap, has no duties, so the supposition that the “fetus has no right to occupy its mother’s body” is false. Just as winds, water, or animals cannot violate someone’s rights (since these beings have no duties in virtue of not being capable of acting knowingly and freely), so too it is literally impossible for any human fetus, any human newborn, or any human adult with a serious mental handicap to violate anyone’s rights. Abortion cannot therefore be justified in terms of a mother’s claim right against her unborn child or the child’s lack of a right to occupy the mother’s body.

The “right to control one’s body” could itself also be understood as a liberty right. A right to control what happens in and to one’s body may be understood to mean, analytically, that the agent has no duty not to have an abortion. But if the right to control one’s body is understood in this sense, then the assertion of this right to justify abortion begs the question, since precisely what is at issue is whether or not there is a duty to refrain from abortion. If one asks why abortion is permissible, the question remains unanswered if we assert a “right to control one’s body” understood in this sense.

Perhaps the “right to control one’s body” should be understood as a premise in an argument to justify the conclusion that abortion is permissible. However, the right to control what happens in and to one’s body admits of many exceptions both legally and morally. This right does not include the right to take heroin for fun, the right to undress in public, or the right to shout fire in a crowded theatre. So, taken as a universal exceptionlessly true premise, there simply is no such thing as the right to control what happens in and to one’s body. This premise, since it is false, cannot be used to justify abortion.

⁹See John Finnis, “The Rights and Wrongs of Abortion: A Reply to Judith Thomson” *Philosophy and Public Affairs* 2.2 (Winter 1973): 117–145.

Another problem with justifying abortion via a liberty right to control one's body is the rights of the fetal person. All human persons have claim rights not to be intentionally killed. But if the human fetus is a person, he or she also has a claim right not to be killed. (I say "he or she" deliberately, for it is a matter of biology that every human fetus is either male or female, and on the supposition of the violinist argument, the human fetus is not an "it" but a person.) If we grant the supposition of the violinist argument, a liberty right to intentionally kill the human fetus cannot exist, since the claim right of the unborn child not to be killed means that all other people have a duty not to intentionally kill the fetal person. So the claim right to life of the fetal person means that there is no liberty right to abortion, where abortion means intentionally killing the human being prior to birth as a means or as an end.

In response, Thomson's argument could be understood as defending the proposition that abortion ought to be understood not as intentional killing but rather as removal of the developing person with the side effect of fetal demise. Thomson is defending not termination abortions but only evacuation abortions with the foreseen but not intended death of the unborn.

Thomson may indeed be defending only the foreseen death of the unborn. If so, she has provided no defense of the reality of abortion as practiced. Abortionists have the *intention* of ending the life of the human being in utero. For this reason, when the baby survives the abortion, it is accounted by the abortionist, and others, as a "botched" or "attempted" abortion, a failure in what was intended. Indeed, sometimes when the baby is born alive, abortionists will finish the job they set out to do in procuring the abortion, namely, killing the child. For example, it was reported that "a doctor whose abortion clinic was described as a filthy, foul-smelling 'house of horrors' that was overlooked by regulators for years was charged . . . with murder, accused of delivering seven babies alive and then using scissors to kill them."¹⁰ Later in pregnancy, following viability, when there is indeed a choice between removing the baby alive or dead, abortionists attempt to secure death. The same intention to kill is true of many women who choose abortion. In his article, Hopkins notes that, for many women,

what is most important about the right to have an abortion in the first place is that one could avoid "having a child," *not* that one could avoid *pregnancy*. A situation in which pregnancy could be ended but the fetus still grew into "their" child somewhere else would not suffice. What was most important was that there not be a child who was "theirs" at all. In fact, for many who hold this position, *their first choice would be to kill the fetus; their second choice would be to continue the pregnancy and keep the child; their last choice would be to give the fetus up for adoption*. Typically, the reason given is that it would be an unacceptable emotional burden to know that "my" child was somewhere "out there."

Surely this desire to kill one's offspring ought not to be gratified. There are men with similar desires, desires that could only be satisfied by killing the child. In some

¹⁰Patrick Walters and Maryclaire Dale, "DA: West Philadelphia Abortion Doctor Killed 7 Babies with Scissors," *ABC Action News*, January 21, 2011.

cases, such a man will have created a new human being with a woman who does not share his desire and so refuses to get an abortion. For men, the right to gratify the desire not to continue to be a genetic parent does not justify abortion, since this would interfere with the bodily integrity of the mother, but it rather justifies infanticide. Indeed, the “right not to be a genetic parent” exercised after one has already become a genetic parent, leads to a denial of the right to life of even adult children. Of course, if being a person voids the right not to continue to be a genetic parent, then adult children, as well as fetal children, ought not to ever be intentionally killed by their parents or anyone else. In any case, the intention of the abortionist, and sometimes the mother, to kill renders Thomson’s defense of foreseen but not intended fetal demise as irrelevant to abortion as practiced.

The latest resurrections of the violinist argument fail, but it is not difficult to predict that there will be sequels.

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