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Winter 2006

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Christopher Kaczor

Loyola Marymount University, Christopher.Kaczor@lmu.edu

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Recommended Citation

Christopher Kaczor, "The Violinist and Double Effect Reasoning," *National Catholic Bioethics Quarterly* 6.4 (Winter 2006): 661-669.

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The Violinist and Double-Effect Reasoning

Christopher Kaczor

In her often-reprinted article “A Defense of Abortion,” Judith Jarvis Thomson uses a series of analogies to defend her conclusion, the most famous of which is the familiar violinist analogy.¹ One can unplug oneself from the violinist without doing something that is morally impermissible. So, too, a pregnant woman can justifiably “unplug” herself from the human fetus, *even if* the human being in utero is, like the violinist, fully a person. In other words, the human fetus may have a right to life, but this right to life does not include the right to make use of a woman’s body. A woman has the right to disconnect herself from the human fetus, and this does not violate the fetus’s right to life, even if such disconnection ends the fetus’s life. In this essay, I will raise one classic objection to this line of argument, examine a rejoinder to this objection from David Boonin’s book *A Defense of Abortion*,² and finally offer a counter-rebuttal to Boonin.

In part, the violinist analogy relies on our intuition that when death is merely foreseen and not intended, allowed but not chosen, it may sometimes be justified. Unplugging in the violinist analogy suggests that the death of the violinist results from *his* illness rather than as an effect *you* intended. By being hooked up to him, you are forestalling his death, which you foresee will take place if you do not remain plugged

¹ Judith J. Thomson, “A Defense of Abortion,” *Journal of Philosophy and Public Affairs* 1.1 (1971): 48–49; reprinted in *Intervention and Reflection: Basic Issues in Medical Ethics*, 5th ed., ed. Ronald Munson (Belmont, CA: Wadsworth Publishing Co., 1996), 76.

² David Boonin, *A Defense of Abortion* (Cambridge: Cambridge University Press, 2003).

into him. Recall that the violinist has an underlying pathology and will die without your help. So when you “unplug” yourself from the violinist, it is rather akin to a medical team not taking extraordinary measures to save someone’s life. The medical team certainly may use such measures, and they may go above and beyond the call of duty to try to save human life, but there is no obligation to do so. Likewise, you certainly could have saved the violinist’s life, but since you did not go the extra mile, he will die from his own illness. Both you and the medical team foresee that the violinist will die, but his death is not intended. The analogy suggests that the death of the violinist is a foreseen but not intended result of your action, and often we can justify causing death to others in such cases.

However, one classic objection to the violinist analogy is that it is hard to imagine that the forms of abortion most frequently used (suction curettage, dilatation and evacuation, dilatation and extraction, partial birth, and induction) do not constitute intentional killing, at least on the part of the abortionist. If the child survives the abortion attempt, then the physician’s goal in the procedure has not been reached. This indicates that the death of the child is, indeed, an intended effect of the abortionist, rather than an effect that is merely foreseen.

In terms of the one requesting the abortion, often the actual condition of pregnancy is not the perceived problem by the mother but rather the responsibility for the child that will ensue from birth. Hence, many abortions are undertaken by women precisely to end the developing human life. In such cases, those seeking an abortion want the human fetus not to exist; they do not want merely a cessation of the pregnancy. In the words of Leslie Cannold, “what women intend in choosing abortion is not only to terminate their pregnancy, but to end *the life of their fetus*.”³ In fact, a woman—wanting *both* to end the pregnancy *and* to end the life of the human fetus—may have two intentions in the act, either one of which might alone be sufficient. If, however, the intention to end the life is present, then even if other sufficient intentions are also present, the act, as defined by intention, would be direct abortion.

It is possible for an act, considered from the exterior point of view, to have two proper moral characterizations based on two intentions. Taking some compromising photos out of someone’s desk drawer, where they had been hidden, could constitute both stealing from that person and violating privacy. If the action is not stealing but merely violating privacy, the action is still wrong. If one of the intentions is licit, but the other is not, the action is still wrong, since all the defining aspects of an action must be right for the action to be right. So, critics of the violinist argument have argued, one reason that unplugging from the violinist is acceptable, but abortions are not, is that in the case of the violinist the death is foreseen, but in the case of abortion fetal death is intended.

³ Leslie Cannold, *The Abortion Myth: Feminism, Morality, and the Hard Choices Women Make* (Hanover, NH: Wesleyan University Press, 2000), 60 (original emphasis).

Boonin's Argument

In his book, *A Defense of Abortion*, David Boonin has provided a rebuttal to this argument by offering an account of the importance and parsing of the intention/foresight distinction suggested by Warren Quinn.⁴ Rather than attempting to deny the ethical importance of the distinction, Boonin argues that even if one does accept it, abortion conceived as unplugging from the violinist is still permissible. On Quinn's account of the intention/foresight distinction, what makes it wrong to intend some harm and permissible, in certain cases, to foresee but not prevent the same harm is that in the former case an agent uses another simply as a means to his end, but in the latter the agent does not use another person as a means to an end. On this view, the intention/foresight distinction rests on and specifies one way of violating Immanuel Kant's categorical imperative to respect humanity in oneself or in another, always as an end in itself and never simply as a means.

In order to understand Quinn's account better and to simplify the examples Boonin gives,⁵ imagine two bombers, A and B, who have a legitimate target, a munitions factory, in a just war. Suppose bomber A has a newly developed bomb that for technical reasons cannot be successfully detonated in the presence of living human beings. So, on finding some civilians who happen to be sleeping on the roof of the factory, he first kills them and then drops his new bomb on the factory. This is akin to intentional killing or direct abortion. Bomber B does not intentionally kill the civilians before bombing the munitions plant, although, regrettably, they die during the bombing, but as a result he places himself in much greater danger, since the civilians can, before they die, notify others who can then target him. Bomber B's actions are akin to indirect abortion—like hysterectomy of a gravid cancerous uterus.

Everyone agrees that the actions of bomber B are permissible. But if this is granted, then bomber A's actions should also be permissible, for two reasons: "In killing the civilians in this case, bomber [A] does not view the civilians as if they exist for his own purposes. If there were a way for him to safely remove them from the roof before destroying the plant, he would do so."⁶ Since bomber A would not kill the civilians if there were some possible situation in which he could obtain the goal without killing, bomber A is not violating the purpose of the intention/foresight distinction, which precludes using persons as if they exist for one's own purposes. In other words, one might say that since he would not kill them if there were another means to secure the legitimate goal, either their deaths are not really intended as a means, or their deaths are an intended means but acceptable, since the intention/foresight distinction is only relevant in cases when one intends to *use* others as a means (which does not take place in the given example).

⁴Boonin, *Defense of Abortion*; Warren Quinn, "Actions, Intentions, and Consequences: The Doctrine of Double Effect" in *Morality and Action*, ed. Warren Quinn (Cambridge: Cambridge University Press, 1993), 175–193.

⁵Boonin, *Defense of Abortion*, 223.

⁶Ibid.

Boonin offers a second rationale for considering the actions of bomber A and bomber B morally equivalent: "It is extremely difficult to see how causing a person to die by one means rather than causing him to die by another, in cases where it is permissible to cause the death by the first means and the cause of death makes no difference to him, is using him as a means, or failing to respect him as an end."⁷ Bomber A and bomber B both cause the death of civilians, and since causing the death of the civilians is not in itself impermissible, and since the way in which they die makes no difference to the civilians, bomber A's decision is permissible. It is an acceptable choice since it preserves the only good which can in this situation be preserved, namely, by not placing the bomber in greater danger than he needs to be in to obtain his legitimate goal. So if bomber B's action is acceptable, then bomber A's action is too, and if bomber A's action is permissible so is abortion.

Responses to Boonin's Argument

How then might one respond to Boonin's critique of the intention/foresight objection to the violinist argument? One possible objection to Boonin's argument would be to deny Quinn's account of intention, on which the argument depends.⁸ Boonin's argument requires not only that Quinn's account is correct, but also that other (compatible) accounts of the intention/foresight distinction, which do not rely on Kant's categorical imperative, must be mistaken.⁹ For if these other accounts are not mistaken, then even if the actions of bomber B do not use their victims as a means, they might still constitute intentional killing. Yet Boonin does not even attempt to show that such alternative accounts are mistaken.

But even if Quinn's account of the moral importance of the distinction were accepted, and even if it were the only justification for the intention/foresight distinction, the counter-factual way of accounting for the purpose of the distinction is problematic. Even if it were true that bomber A would destroy the munitions plant without having to kill the civilians, if he could, it hardly follows that he does not use their deaths for his own purposes. Suppose a man has a legitimate reason to want a woman not to reveal an important secret of his. She says she is going to reveal it anyway, and he has every reason to believe that she will. He decides to kill her as the only way to make sure that his important secret remains safe. If there were any other way to make sure she would not reveal this secret, he would use it. Unfortunately, such methods do not exist and the only way to ensure her silence on this matter is to kill her. Although the man really would not kill her if any other options were available

⁷ Ibid.

⁸ D. Marquis, "Four Versions of Double Effect," *Journal of Medicine and Philosophy* 16.5 (October 1991): 515–544; J. Fischer, M. Ravizza, and D. Copp, "Quinn on Double Effect: The Problem of 'Closeness,'" *Ethics* 103.4 (July 1993): 707–725.

⁹ Such as those provided by, for example, T. Cavanaugh, "The Ethical Relevance of the Intended/Foreseen Distinction," *Philosophical Papers* 25.3 (November 1996) 179–188; J. Finnis, G. Grisez, and J. Boyle, "'Direct' and 'Indirect': A Reply to Critics of Our Action Theory," *Thomist* 65 (2001) 1–44; and M. Aulisio, "On the Importance of the Intention/Foresight Distinction," *American Catholic Philosophical Quarterly* 72.2 (Spring 1996): 189–205.

to securing his legitimate end, he nevertheless uses her death as a means to his end and does not view the woman as if she exists for her own purposes. So even if an agent would not choose direct abortion if other options were available, the agent nevertheless uses the death of the fetus as a means to the agent's end, and treats the human fetus as if he or she exists for the agent's own purposes. In other words, even if we adopt Quinn's account of the intention/foresight distinction, the fetus is still being used simply as a means to an end.

Let us turn now to Boonin's second rationale. Bomber A chooses to intentionally kill innocent persons as a means to better secure his safety. Bomber B avoids intentionally killing innocent persons and therefore puts himself at greater risk. According to Boonin, in standard cases of double effect:

We compare a case where a person chooses intentionally causing death over not causing death to the one who chooses foreseeably causing death over not causing death. And, if we accept the moral relevance of the distinction, we affirm that the permissibility of the latter does not imply the permissibility of the former. But if bomber [A] chooses to gas the sleeping civilians and then drop bomb A, he does not choose intentionally causing death over not causing death. Rather, he chooses intentionally causing death over foreseeably causing death, in a context where the choice between the two makes no difference to the ones who will die but does make a difference to him in terms of the degree of risk of harm he will face. This is a fundamentally different kind of choice.¹⁰

The civilians will die by either means—the choice of means makes a significant difference for the bomber and no difference to the ones who are killed—and so the choice of intentionally killing in this context is a different kind of choice than intentional killing in other contexts, such as when the choice is between intentional killing and not causing death.

What might be said in response? First, it is not at all clear that the distinction between intentionally being killed and being killed as a foreseen but unintended side effect is always irrelevant even from the victim's perspective. In his book, *The Last Sunrise*, holocaust survivor Harold Gordon talks about nearly dying by bombs dropped by Allied air forces, and notes that it mattered to him whether he was killed (intentionally) by the Nazis or (unintentionally) by the Allies. In a horrifying scene, he describes what took place as Allied bombing began:

The German guards left the scene and abandoned us in the locked box cars. I knew that soon our train would be hit and would ignite like all the other trains around us. The bombs continued hitting their mark, causing one explosion right after another. Steel and wooden objects were flying through the air, igniting other trains, and puncturing cars as they landed. We didn't care so much about dying at the hands of the Allies, but we didn't want to die in the gas chamber... This was not the way we would have chosen to die. I felt that since death was just around the corner, I would rather die by Allied bombs than at the hands of the Germans.¹¹

¹⁰ Boonin, *Defense of Abortion*, 224.

¹¹ Harold Gordon, *The Last Sunrise: A True Story* (Salinas, CA: H & J Publishing, 1992), ch. 10.

Obviously, death is death, whether it comes about as a foreseen result of an action or whether it is intentionally sought in an action. However, I think Gordon points to an important truth—that even from the perspective of the one who is killed, it makes a difference whether one’s death is sought by another as an end or a means (that is, intentionally), or whether one’s death is a side effect of an agent seeking a proportionate good. Indeed, one difference between the Nazis and the Allies is that the Nazis intentionally killed Jews, whereas the Allies foresaw but did not intend the killing of Jews by their bombings. This difference was morally relevant even to those who were the potential victims.

Second, most contexts of early discussions of the intention/foresight distinction recognize that the distinction does have moral relevance even in contexts where the choice is between foreseeably causing death and intentionally causing death, such as killing in self-defense in the treatment of St. Thomas Aquinas. Famously, Aquinas forbids intentional killing of another in self-defense, but allows foreseen but unintended killing.¹² In such cases, the choice may be between intending to kill at less risk to the one defending himself and, on the other hand, not intending to kill but merely foreseeing that death will result by means of a kind of foreseeably but not intentionally lethal defense that puts the defender at greater risk. Boonin himself may reject the intention/foresight distinction as morally relevant in such situations. On his undeveloped (at least in *A Defense of Abortion*) account of moral action, such actions may constitute a “fundamentally different kind of choice,” but then his project of showing that abortion is morally permissible on premises acceptable to opponents of abortion does not succeed.

If intentionally killing an innocent person is wrong (as virtually all the opponents of abortion hold), then the fact that someone who does not do wrong must take greater risks in achieving his objective than does someone who is willing to do wrong, is merely a reminder that avoiding moral wrongdoing is not always easy, rather than a factor which constitutes such an action as a fundamentally different kind of choice. One lesson from Socrates in the *Crito* is that abstaining from wrongdoing can be costly. The intention/foresight distinction is meant to determine what aspects of the effects of an action constitute one’s choice, so the fact that abstaining from choosing evil involves a greater risk to an agent would not thereby make the choice to do evil in such circumstances into a different kind of choice.

Abortion and Double-Effect Reasoning

Some abortions, however, may not fall into the category of killing as a means or as an end. Imagine a model who wants to terminate her pregnancy, not because she fears the responsibility a newborn entails (whether through raising the child or through placing the child in another family through adoption) but because it is the condition of pregnancy itself she wishes to avoid. It is not that she wishes to destroy the human fetus, but rather that she seeks to avoid the condition of pregnancy, which would endanger her svelte figure. Although some fashion magazines

¹² Thomas Aquinas, *Summa theologiae*, II-II, Q 64, article 7.

do cater to pregnant women, one seldom sees a woman near the end of pregnancy on the catwalk. Imagine further that the method of abortion is hysterotomy or hysterectomy, so that the body of the human fetus will be removed or “unplugged” from the mother rather than directly destroyed. Is abortion ethically permissible in such cases?

In response to this variation of the argument, a critic may argue that surely such an agent, even though not intending the death of the human fetus, accepts an evil consequence that is grossly disproportionate to the good preserved. It is wrong to accept such a significant harm to another for the sake of a less than significant good. For example, Patrick Lee cites the case of a father who works with massive amounts of toxic chemicals. Even though his work situation gravely harms his daughter, he refuses to change jobs, because to do so would disadvantage him professionally. In fact, he is willing to accept the death of his child rather than incur such a professional disadvantage. In Lee’s words,

If he does not use the chemicals he simply must get a new career. He tells his wife he is sorry but their child will just have to die, because he will not change his career. Here we would say that change in occupation is not comparable to a child’s death. Even though in both actions there is a harm to a real and basic human good, still, the fact that shifting careers is not as total and irreparable a loss as death makes the action unjust or unfair.¹³

Surely, such a father acts wrongly, and hence so would a mother who chooses an “indirect abortion” without a proportionately serious reason.

The lack of a proportionate reason, another difference between abortion and the bomber analogies offered by Boonin, is also evident from a different perspective. Following Rosalind Hursthouse,¹⁴ critics have also argued that Thomson overestimates the burden of pregnancy in her use of the violinist analogy, which actually bears little resemblance to the reality of pregnancy. A pregnancy does not at least in the vast majority of cases, impose anything like the burden the violinist imposes. Indeed, some women report feeling better than normal both psychologically and physically during pregnancy.

Undoubtedly, the burdens of pregnancy are tremendously significant, and although they vary from woman to woman, it is true that pregnancy, especially a crisis pregnancy, can be the most serious challenge a person may face in life. In assessing the burdens before making the choice to abort or give birth, however, one must weigh not only the burdens of carrying and giving birth to the baby, but also the burdens of having an abortion.

Does the burdensomeness of abortion make a difference in determining whether abortion is morally permissible? After all, as Boonin notes, “if it would be permissible to unplug yourself painlessly, it is difficult to see why it would not also be permissible

¹³ Patrick Lee, *Abortion and Unborn Human Life* (Washington D.C.: Catholic University of America Press, 1996), 117.

¹⁴ Rosalind Hursthouse, *Beginning Lives* (New York: Basil Blackwell, 1987), 203.

to unplug yourself at some cost to yourself.”¹⁵ However, if one accepts the premise of Thomson’s original article, the nature of the burden *does* make a difference—indeed, all the difference—in assessing the morality of abortion. If we consider the case of the violinist, Thomson agrees that if the violinist will fully recover in one hour, then you ought to allow him to remain plugged in, and it would be indecent of you to unplug yourself from him and cause his death since the burden to you is slight.¹⁶ However, being plugged into the violinist for nine months *is* a tremendous burden, so you may unplug yourself.

Let us change the violinist analogy slightly. What if you had to endure the nine months burden *regardless* of whether or not you caused the violinist to die? Imagine you must remain plugged into a machine for the next nine months, a machine whose operation can, if you choose, also help the violinist to survive until he overcomes his illness. You must endure a substantial burden either way, so the only choice you really have is whether to help the violinist (with no substantially greater cost to you) or not to help him. To cause the violinist to die in *this case* is to cause gratuitous harm to an innocent person without relieving yourself of a substantial burden, and this is obviously wrong. In other words, if the burden to you of keeping the violinist alive, though great, is not substantially *greater* than the burden you would have to endure if you caused his death, then causing his death is impermissible.

Indeed, such is the case with abortion. That abortion itself is sometimes burdensome is noted even by defenders of abortion. As Boonin notes, “To set the [violinist] analogy straight, then, we must specify that the process of unplugging yourself from the violinist also imposes a variety of costs or risks of costs, and of comparable magnitude.”¹⁷ The physical costs of abortion can include (but are not limited to) swelling, vomiting, cramps, sterilization, excessive bleeding, and pain. Of course, like bringing a pregnancy to term, these costs are not endured at all or to the same degree by every woman who has an abortion. Similarly, the psychological costs of continuing with a pregnancy until live birth are significant and can include mood swings, irritability, low libido, and weepiness. However, the same thing may be said of terminating a pregnancy via abortion. The psychological costs that many women experience from abortion can be great, as acknowledged also by those who nevertheless defend abortion.¹⁸ If the costs or the risk of costs to women in both choosing abortion and choosing to give live birth are of a similar magnitude, then women in such situations will, *whatever they choose*, have (or risk having) significant burdens. Costs or the risk of costs for women with crisis pregnancies are realities that cannot be avoided by abortion.

In sum, Boonin’s rejoinder to the intention/foresight objection to the violinist argument is unsuccessful. Not only is his account of the intention/foresight distinc-

¹⁵ Boonin, *Defense of Abortion*, 241.

¹⁶ Thomson, “Defense of Abortion,” 76.

¹⁷ Boonin, *A Defense of Abortion*, 241.

¹⁸ *Ibid.*

tion problematic, but the proportionate-reason condition of double-effect reasoning is not met. If both having an abortion and continuing a crisis pregnancy impose (or risk imposing) substantial burdens on the woman, then *substantial burdens cannot be avoided*. Aborting a person is causing harm to another for no (overall) substantial gain, even if *only* the well-being of the pregnant woman is considered. Of course, *if* two persons are involved, as Thomson's argument presupposes, both merit consideration. Costs or the risk of costs to pregnant women are realities that cannot be avoided by abortion, so ending the life of the human being in utero is akin to ending the life of the violinist, even though you had to remain plugged into the machine that could save his life anyway.