Toward a Consistent View of Unwanted Pregnancy and Abortion

By Courtney Williams

BEFORE THE FETUS IS VIABLE, ABORTING AN unwanted pregnancy necessarily effects two distinct consequences: terminating the relationship between the pregnant woman and the fetus in which the fetus lives and develops inside the body of the woman and killing the fetus.¹ In terms of action, though not in terms of motivation, it is impossible to separate terminating the pregnancy from terminating the biological existence of the fetus. Choosing not to be pregnant and taking measures to secure that choice, like any choice about how one’s life will go, is a positive liberty that is generally accorded to a person. How much moral weight this positive liberty carries is brought to issue when choosing and taking measures not to be pregnant entails killing an existent fetus. We have a negative duty with respect to killing certain kinds of things, namely persons. The moral status of persons is such that, because of the kind of thing a person is, not because of special circumstances or contingencies, we have a prima facie respect for persons’ lives such that our baseline moral behavior is to refrain from killing them. Killing a person is morally permissible only in cases in which there is a significant moral reason that justifies violating our negative duty. The fetus begins its existence as a uni-cellular organism and develops into an adult human being, the kind of thing that is unanimously recognized as a person. The possibility of killing the fetus in an abortion raises the question of whether we have a negative duty with respect to killing it and if so, how much moral weight that duty carries. The moral status of the fetus is at issue.

A comprehensive approach to all the issues at stake in the abortion case entails balancing the reasons we have to honor a duty not to kill the fetus with reasons we have to honor the positive liberty of the woman to choose not to be pregnant. The approach is formulated as a conflict between the interests of the fetus and the interests of the pregnant woman. It is in the interest of the pregnant woman that she have a positive liberty to choose and secure how her life will go. The fetus has no agency. It is up to a moral observer to accord the fetus the interest that its life be sustained. The fetus would be accorded this interest on account of the facts that it is alive, has a unique set of human genes, and thus is the kind of thing that, with great probability, will develop into a thing decidedly recognized as a person. The importance about the fetus’s being alive and having human genes is this: in the combination of these two characteristics lies the possibility that the coding on the genes will be biologically fulfilled and the fetus will evolve into a fully developed member of the species. It is because the fetus has the
potential to become a fully developed human being and indeed a person that we are concerned about it. If the fetus were dead or if it were to remain a clump, however aesthetically formed, of cells with the human gene code, we would not accord it an interest in the protection of its life.²

Judith Jarvis Thomson founded an approach to abortion that takes into consideration the interests of both the fetus and the pregnant woman. In her landmark 1971 article, she presents the following scenario:

You wake up in the morning to 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 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 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.”³

This scenario is supposed to be analogous to the situation in which a pregnant woman finds herself. You are the pregnant woman and the violinist is the fetus: “Is it morally incumbent on you to accede to this situation?”⁴ Thomson’s aim is to demonstrate that whether or not the fetus is a person, there may be circumstances under which it is morally permissible to kill it. She argues that the force of our moral duty not to kill the fetus is not greater than that of our duty not to kill persons and in a situation comparable to pregnancy, we would be justified in killing a person. Thomson’s approach is effective, but needs to be taken a step further.

Thomson’s aim is to justify abortion by proving that we do not always have a negative duty with respect to killing the fetus. She narrows the question of abortion down to whether or not killing the fetus is tantamount to the unjust killing of a person. Thompson takes issue with the following syllogism: “The fetus is a person; it is morally impermissible to kill persons; therefore, killing the fetus in an abortion is morally impermissible.” She aims to disprove the conclusion by showing that the major premise does not always hold true. In order to do this, Thomson expands the scope of moral considerations to include why the pregnant woman might be justified in killing the fetus, that is, why it might be permissible to honor her positive liberty to act. Actually, in the analogy, Thomson considers why you, the reader, would be justified in unplugging yourself from the violinist. After ascertaining that it is permissible to kill the biologically dependent party, she asserts that the conclusion of the syllogism is false and that abortion is not impermissible along its line of reasoning.

We cannot make sense out of Thomson’s analogy without reasoning in terms of her purpose to disprove the syllogism. The actual determination that she makes is why it is permissible for you to unplug yourself from the violinist. Without a connection through the syllogism, how that determination is relevant to the case of abortion is unintelligible. Of course, this connection is not difficult to make. Thomson’s reasoning goes as follows: because of the circumstances of the predicament, it is morally permissible for

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you to kill the violinist; the fetus is a thing, a person, just like the violinist and the circumstances of a woman pregnant from rape are analogous to the circumstances of your predicament. Therefore, it is permissible to kill the fetus in an abortion in the same way it is permissible for you to kill the violinist. My point is that Thomson’s reasoning by analogy does not give us any special reasons why killing the attached, dependent party is permissible in the case of abortion. We know that we might be able to apply reasoning about right action between persons to the question of abortion if we are willing to accept the premise that the fetus is a person. But we do not have a moral understanding of the fetus or the relationship of pregnancy that would enable us to explain Thomson’s considerations without the use of her analogy.

The problem with this approach is twofold. First, because the approach is structured to disprove the syllogism, the ultimate justification for the permissibility of abortion is that the pregnant woman is not disallowed from having an abortion: she does not have a negative duty with respect to killing the fetus. The ultimate decree is not that the pregnant woman has a positive liberty, but that she does not have a negative duty. What we take as moral considerations determines what kinds of reasons we give for moral decisions. Thomson takes the woman’s positive liberty to act into moral consideration, but this consideration is made behind the scenes. It functions instrumentally to disprove the syllogism. The part of Thomson’s argument that does all the work is the consideration of the woman’s positive liberty, but the positive force of that liberty is not represented in the justification of abortion. Secondly, Thomson’s approach does not provide us with an understanding about how the parties and their interests are to be conceived. We understand the determination of permissibility, but we do not have an intelligible description of the parties and their relationship and what makes this determination of permissibility directly applicable to them. We do not have an understanding of the case from which Thomson’s considerations derive.

I propose an approach to the abortion case in which we shape our understanding of the case by the considerations we can make about it without the use of allegedly analogous cases. I propose that we can build a moral status for the fetus and an intelligible understanding of the relationship of pregnancy if we make considerations about positive liberty and negative duty in the forefront of our approach such that both kinds of considerations contribute equally to the justification we give for the permissibility of abortion.

The cases of unwanted pregnancy in which the pregnancy threatens the life or health of the pregnant woman or in which the pregnancy results from rape most strongly bring to the forefront the reasons we have to honor the positive liberty of the pregnant woman to choose and take action not to be pregnant.
pregnancy. The case in which the pregnancy threatens the life of the pregnant woman illuminates the special considerations we make about the fetus, demonstrating what kind of moral status it has and what moral considerations we can make about the unique relationship of pregnancy. The case in which the pregnancy results from rape illuminates the kinds of considerations we make about how pregnancy comes about and the pregnant woman’s positive liberty to choose and take action not to be pregnant.

In the case of unwanted pregnancy in which the pregnancy threatens the life or health of the pregnant woman, extracting the fetus from the pregnant woman’s body would result in the death of the fetus. It is in the interest of the pregnant woman that her relationship to the fetus be terminated so that she will be saved from a threat to her life or health. It is in the interest of the fetus that its relationship to the pregnant woman be maintained so that its life will be sustained. The relationship of pregnancy is mortal to one party and vital to the other. The relationship poses an inescapable and extreme conflict of interests. It is not the life of the fetus that directly threatens the pregnant woman: what threatens her is the fetus’s attachment to her. If the fetus were dead, it would still be necessary to extract it. The point is that an abortion purposed to save the pregnant woman is not directly aimed at killing the fetus, but aimed at eliminating the threat of its continued existence in her body by removing it. The consequences of its removal, however, pose a choice between the life or health of the pregnant woman and the life of the fetus.

There are two distinct cases mentioned above: the case in which the pregnancy threatens the life of the pregnant woman and the case in which the pregnancy threatens the health of the pregnant woman. The life of the fetus is at stake in both cases. When the pregnant woman’s life is at risk, the conflict of interests is between the lives of two parties. Even though the lives may (or may not) be different sorts of lives, they are directly comparable when the dilemma is a question of which party will be morally allowed to continue living the kind of life it shows itself to have. On a continuum of the burden one might be morally expected to bear to preserve the life of another party, a threat to life is more extreme than a threat to health. Furthermore, it could be argued that a threat to life cannot even be counted along a continuum of burden: a threat to life is distinct from other burdens. Thus, it may seem as though a threat to the pregnant woman’s life provides a distinct justification for abortion. I will argue that we make the same sorts of considerations in the case in which the woman’s life is threatened as we make in the case in which her health is threatened and in other cases in which the burden placed upon the woman is even less extreme than a threat to her health. These considerations provide stronger reasons for sanctioning abortion in the first two cases, but do apply to the last.

When the dilemma is formulated as a choice between the life of the fetus and the life of the pregnant woman, a very strong assumption about the empirical facts of the case are made. The assumption is that, were the life of the fetus chosen, the pregnant woman would deliver a live fetus even though she dies: either the pregnant woman would die in the course of or after a live birth or she would die and the fetus will be extracted live from her dead body. In order for this formulation of the dilemma to hold, it has to be the case that the fetus could be delivered live despite the death of the woman.
And this is a very limited case; the fetus must be viable and be somehow accessible to a third party so that it does not die inside of the body of the dead woman. Otherwise, the choice is between directly killing the fetus or letting both parties die.\(^5\) I point this out to recall the fact that until it is delivered, the fetus is dependent upon the pregnant woman’s life for its existence. The two parties are related not only because the vital interest of one brings about the death of the other, but they are in that predicament because one party keeps the other party alive.

Often the choice between the two lives is viewed as a choice between directly killing the fetus or letting the pregnant woman die. These are the two actions between which an intervening third party must choose: either to save the pregnant woman by sanctioning an abortion which entails killing the fetus or not to save the pregnant woman by disallowing an abortion and letting her die. This formulation is misleading because the case of unwanted pregnancy is not a simple case of incompatible obligations. What is special about the case is that saving the pregnant woman entails killing the fetus only because the fetus is dependent on her. The case cannot be reasoned by a consideration of third party action alone. This prevents consideration of the special reason the pregnant woman has that her life be saved.

The case is not analogous to the ordinary case of self-defense in a situation involving two autonomous persons.\(^6\) Like the threatened party in the ordinary case of self-defense, the pregnant woman, even if she purposely got pregnant, is innocent of the threat to her life. Unlike the threatening party in the ordinary case of self-defense, the fetus is innocent of the threat it poses. Though it is a threat, the fetus is not an aggressor. The fetus can be called a “passive threat.”\(^7\)

In the ordinary case of self-defense, in which the threatening party is an aggressor, the threatened party is justified in killing the threatening party because the threatening party attacks. Defense is a reaction against the threat posed and the action of the aggressor which warrants a defensive retaliation. Nancy Davis calls this a “moral asymmetry” between the parties.\(^8\) In the case in which neither party is to blame for the predicament, there is no asymmetry like that in the ordinary case of self-defense. There seems to be no reason why the life of the threatened party should be saved instead of the threatening party if both are equally innocent of the predicament. A third party has “inconsistent obligations” to save both of the parties.\(^9\) Each party has a justified interest in saving its own life rather than letting the other party live. The moral observer recognizes that the woman justly wants to save her own life, but also maintains that it is in the interest of the fetus that its life be preserved. What allows the third party to side with the interest of the pregnant woman is that there is a unique asymmetry between the two parties.

The fetus is dependent upon the pregnant woman for the continuation of its life. It lives inside her body. Her autonomy is completely subverted.\(^10\) Her physical self as well as her self as an active agent is infringed upon by the material existence of the fetus. The pregnant woman is not only threatened by the dependency of the fetus, she is compromised by it. The fetus is not compromised. Both parties are kept alive by the pregnant woman’s body. Thomson breaks down the burden on the woman into a threat to her life and something like a property infringement because the fetus uses her body, as if it were property, for the maintenance of its life.\(^11\) Thomson’s point could be taken to mean that more wrong is done to the pregnant woman

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than is done to the fetus because the woman suffers a property infringement that the fetus does not. But the burden on the pregnant woman is more complicated than this. The fetus is a threat to the pregnant woman because it uses her body. The threat is a function of the property infringement. Frances Kamm calls this a multiplicative, rather than an additive effect. The issue is whether or not one party should be morally obliged to allow the use of her own body just in case that use will kill her. I propose that she should not be morally obliged to do so. The negative duty we have with respect to killing the fetus does not hold up against the kind of sacrifice it demands from the pregnant woman. We do not have a duty to keep alive a thing that can only be kept alive by these means.

What is illuminated about the fetus is that even though we have a baseline duty not to kill it without sufficient reason, it does not have the autonomous means to sustain its own life. Killing the fetus is not the same as killing a thing that has those means. As the fetus is only conditionally alive, killing it in an abortion is a matter of taking from it the means that sustain its life. This is not just a matter of letting the fetus die, but a matter of the pregnant woman’s liberty to act that incidentally includes not giving life-support. The force of the consideration lies in the fact that keeping the fetus alive demands a sacrifice of life, health, or autonomy.

What arises from this argument is the observation that the asymmetry between the fetus and the pregnant woman always exists. The fetus is always dependent upon the pregnant woman and she is always compromised by that dependency. What should be noticed about the fetus is that this dependency arises from its empirical nature. Compare the fetus to Thomson’s violinist. The fetus is “attached” to the pregnant woman because that is the only way (at present) that an adult member of the *homo sapien* species can come into existence. The fetus depends on the body of another human being because of the kind of physical thing it is. This is not the case with the violinist. The celebrated musician needs biological support because of a random contingency within the kind of physical thing it is. We make considerations about the burden the fetus places on the pregnant woman because of the kind of empirical thing it is.

PROPPOSE THAT THE MORAL STATUS OF THE FETUS should take into account these empirical facts. The fetus is what I will call an intrinsically dependent being. It does not exist without the biological support of another thing, so that whenever we see the intrinsically dependent being, we always see it with the thing upon which it depends. Let this mean that we have a *prima facie* duty not to kill the being, but because the thing upon which the being depends is undoubtedly a person, the force of that duty is balanced against the force of the considerations we make about the person upon which the being depends. The moral status of an intrinsically dependent being is constituted by a balance of considerations of its interests and the interests of the person upon which it depends. In this picture, the pregnant woman retains the moral status of a person. She shows up as a term which contributes to the moral status of the fetus. Thus, the reasons we give for the permissibility of abortion are grounded in the negative duty we have with respect to killing the fetus, in the pregnant woman’s positive liberty, and the relationship of dependency the fetus necessarily effects.

This approach provides a description of the kind of moral apparatus we
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THOMSON’S ANALOGY OF THE VIOLINIST BEST depicts what is striking about unwanted pregnancy due to rape. All of a sudden by no act of volition or even by recourse of refusal or defense, the woman is burdened by the life of another human creature. In this case, as in all cases of unwanted pregnancy, the purpose of abortion is to terminate the relationship between the fetus and the pregnant woman, not to kill the fetus. The wrong does not lie in the existence of the fetus. The wrong lies in the fact that the relationship has been forced upon the woman. It is not reasonable that she should be morally required to accept the burden of that relationship when she has no control over the imposition. Because the fetus is the kind of thing that cannot exist without the relationship, it will be killed.

If the woman was not raped, but engaged in sexual intercourse freely, should she be obligated to remain in the relationship in which she sustains the life of the fetus? If we answer yes, we assert that the choice to become pregnant is made when one chooses to have (hetero-sexual) sexual intercourse. If a woman’s choice of whether or not to give birth must be made before conception, then the choice is about whether or not sexual intercourse should be purposed for activity other than procreation.

The purpose of contraception is to separate purposes of sexuality from purposes of reproduction, but it reveals itself to be a fairly random place at which to draw a moral line. On the one hand, a woman’s positive liberty to choose not to be pregnant might be subverted by the effectiveness of contraceptive methods. On the other hand, the duty not to kill the fetus might not be honored because of the ineffectiveness of contraceptive methods. Abortion and contraception are morally distinct because the former involves killing the fetus and the latter simply prevents the existence of the fetus. If a woman’s positive liberty to choose and take means not to be pregnant is taken seriously as a reason for contraception use, then it should not be subverted when contraception fails. Just as in the case of rape, though there is no violence involved, the consideration we make is that
a woman should not be morally obliged to remain in the relationship that arises out of her control.

There is no violation of will in consensual sexual intercourse, but there is an inequality between the participating parties that often goes unrecognized. I propose that we make special considerations for women because they can, unlike men, become pregnant from sexual intercourse. John Hart Ely specifies that special consideration for parties “that do not receive adequate consideration” applies only to “those interests which, as compared with the interest to which they have been subordinated, constitute minorities unusually incapable of protecting themselves.”14 A woman is “unusually incapable” of protecting herself from becoming pregnant in sexual intercourse. That is, she is unusual in comparison to a man, the other party involved. Ely directs his comment at the abortion issue continuing, “Compared with men, women may constitute such a ‘minority’; compared with the unborn, they do not.”15 The fetus is unable to protect itself against the interests of the pregnant woman, but this is not a newly introduced concern. What is newly introduced is that the woman is also a minority because for her sexuality is not easily separated from reproduction.16 The philosophically interesting issue that is often overlooked is that unwanted pregnancy is a dilemma of competing interests in which both parties are minorities “unusually unable” to protect their interests.

Of course men and women are just physically different. They have to be so that the species can reproduce. But moral reasoning rarely makes this consideration. The moral category of “person” is a non–gendered, autonomous, sometimes rational, being. Decisions about action based on considerations about this neutral being do not take an accurate account of what is at stake in the case of unwanted pregnancy and abortion. A woman is a person, but there are special considerations about her that provide reasons for action that would be overlooked if she were understood as the non–gendered “person.” The fetus is not accurately described if we can only understand it as being a “person” or as having no individual moral status. The quandary about abortion comes down to a conflict of interests between two parties whose interests are different from those of the non–gendered, autonomous “person.” The idea of the intrinsically dependent being and the woman upon which it depends provides a conception of both parties from which derives the kinds of considerations we make about them.

Ethical philosophy does not recommend what we can and cannot do and then toss us out into the street with two lists in our hands, one enumerating permissible actions and the other innumerating impermissible actions. Ethical philosophy functions to guide how we execute action. The approach I suggest provides a framework in which the moral issue of abortion does not have to end with permissibility. This approach allows us to reason in terms of a woman’s positive liberty to choose and take action not to be pregnant. This reasoning recommends that an abortion policy should secure a woman’s ability to exercise this liberty. Access to abortion is not morally insignificant. This approach gives the fetus a unique moral status. That killing the fetus is morally and legally permissible does not mean that it is morally insignificant. Abortion is a life and death decision, even though it does not concern the life or death of a “person.” Instead of providing a fixed determination of permissibility, this approach provides a framework for making moral decisions about abortion. φ
I will call the material cause of pregnancy the “fetus.” There are technical names that specify its biological status at each stage of development, but because I have not presently given each stage a unique moral consideration, I will refer to the thing about which I am morally concerned by one name. I will call the individual carrying the pregnancy the “pregnant woman” and not the “mother” because “mother” refers to a female who has a child. A woman who has not given birth does not yet have a child. Consider, for example, that it is unlikely that we would call a woman who had a miscarried pregnancy a “mother.”

I am not committed to holding the view that a physically separate sperm and egg will become a person in the same way that a fetus will. The fetus is a single entity that along both a spatial and temporal continuum will become a person. A sperm and egg might be said to become a person along a temporal continuum, but it cannot be said that they become a person along a spatial continuum. The two parts join each other randomly: what becomes a person is not necessarily determined by the two objects under consideration. Thus, I do not link abortion with contraception through considerations of the development of organic mass into persons.


In this case, it seems safe to say that given the choice of the death of two out of two or the death of one out of two, the death of one out of two is better.

For a nearly exhaustive comparison of the two cases, see Nancy Davis, “Abortion And Self-Defense,” Philosophy And Public Affairs, 13, 3, (Summer, 1984), pp.175–207. I say a case “involving two autonomous persons” because I do not intend to imply that self-defense is always warranted, that is, that it is permissible to kill an innocent bystander because another party threatens your life. I am talking about the case in which one party directly threatens another’s life and the only way in which the threatened party can protect itself is to kill the threatening party. Defensive retaliation should only be sanctioned if it is proportional to the threat posed. I do hold that if we did decide that the fetus was a person, this would be a case of self-defense in which we could sanction killing the fetus.


Notice that I link contraception to abortion through the fact that woman can get pregnant from having sexual intercourse, as opposed to linking them through a principle about organic mass turning into persons. For a discussion of gender, sexuality, and reproduction see Catharine MacKinnon, Toward A Feminist Theory Of The State. Cambridge: Harvard University Press, 1989, pp.184–194.
