Does Judith Jarvis Thomson Really Grant the Pro-Life View of Fetal Personhood in Her Defense of Abortion? A Rawlsian Assessment

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ABSTRACT: In her ground-breaking 1971 article, “A Defense of Abortion,” Judith Jarvis Thomson argues that even if one grants to the prolifer her most important premise—that the fetus is a person—the prolifer’s conclusion, the intrinsic wrongness of abortion, does not follow. However, in her 1995 article, “Abortion: Whose Right?,” Thomson employs Rawlsian liberalism to argue that even though the prolifer’s view of fetal personhood is not unreasonable, the prochoice advocate is not unreasonable in rejecting it. Thus, because we should err on the side of liberty, the right to abortion is vindicated. In this article, I argue that Thomson’s latter reliance on Rawlsian thinking suggests a way of re-reading her earlier essay that casts doubt on whether she really grants the dominant prolife account of unborn human life.

In 1971, Judith Jarvis Thomson published “A Defense of Abortion”—arguably the most influential and discussed article on the subject of the pregnant woman’s obligations and rights in relation to the nascent human life she carries in her womb. It is famous not only because of its ingenious use of several analogies, but most importantly because Thomson provides a case for abortion rights that grants abortion opponents (or pro-life advocates) their belief that the fetus is a person. In an article that Thomson published twenty-four years later entitled “Abortion: Whose Right?” she takes a different tack, making a case for abortion rights that relies on a Rawlsian account of political liberalism. I want to argue that Thomson’s 1995 essay suggests a way of re-reading her 1971 piece that calls into question whether she really grants the dominant understanding of the personhood of the fetus embraced by opponents of abortion.

2I am using the term “fetus” in the non-technical sense of “pre-born human being,” even when I am referring to what is technically an “embryo.”
In her 1995 essay, Thomson argues that the anti-abortion position on the morally
protected status of the fetus from conception is not unreasonable, but she denies
that reason requires that deniers of the position embrace it. This is because the pro-
choice view, that the fetus lacks a right to life (at least during the earliest stages of
pregnancy) is, according to Thomson, at least just as reasonable as the anti-abortion
point of view. Consequently, on the matter of the moral status of the fetus, no one
side of the issue definitively wins the day. Thomson, however, maintains that because
of this impasse and because the freedom of certain citizens (e.g., pregnant women)
hangs in the balance, we should err on the side of liberty and permit abortion.
This is because, according to Thomson, “severe constraints on liberty may not be
imposed in the name of considerations that the constrained are not unreasonable in
rejecting.” She writes:

One side says that the fetus has a right to life from the moment of conception, the other
side denies this. Neither side is able to prove its case. . . . [W]hy should the deniers win?
. . . The answer is that the situation is not symmetrical. What is in question here is not
which of two values we should promote, the deniers’ or the supporters’. What the sup-
porters want is a license to impose force; what the deniers want is a license to be free of
it. It is the former that needs justification.

This argument is a straightforward application of political liberalism, the term
coined by John Rawls for the view that includes the principle that the state may not
c coerce its citizens on matters of constitutional essentials or basic liberties unless
it can provide public justification that the coerced citizens would be unreasonable
in rejecting. It is, according to its supporters, what justice requires given the deep
disagreements between citizens on the nature of the good life that are rooted in
what Rawls calls reasonable comprehensive doctrines. “Political liberalism,” writes
Rawls, “counts many familiar and traditional doctrines—religious, philosophical,
and moral—as reasonable, even though we could not seriously entertain them for
ourselves.” Consequently, even if one is within one’s epistemic rights in believing
that a particular moral position is correct, one may not be justified in incorporating
that position in the law if its incorporation limits or inhibits the basic liberties of
other citizens who are not unreasonable in rejecting one’s position.

A DEFENSE OF ABORTION

In her 1971 article Thomson claims that she is “inclined to think . . . that we shall
probably have to agree that the fetus has already become a human person well
before birth,” even though she denies that it is a person early on in pregnancy. “A

5Thomson, “Abortion, Whose Right?”
6Ibid.
8Ibid., pp. 59–60.
newly fertilized ovum” she writes, “is no more a person than an acorn is an oak tree. . . . A very early abortion is surely not the killing of a person.”\textsuperscript{10} Nevertheless, she grants for the sake of argument that the fetus is a person throughout the entirety of pregnancy. She then proceeds to argue that the pro-lifer’s argument, even with its most important premise fully in place, has not established that abortion is unjustified homicide and thus ought to be proscribed by law.

Thomson characterizes the anti-abortion argument in this way: “Every person has a right to life. So the fetus has a right to life. No doubt the mother has a right to decide what shall happen in and to her body; everyone would grant that. But surely a person’s right to life is stronger and more stringent than the mother’s right to decide what happens in and to her body, and so outweighs it. So the fetus may not be killed; an abortion may not be performed.”\textsuperscript{11} Thomson then introduces us to her famous violinist analogy. In it you are asked to imagine that you have been kidnapped and rendered unconscious by a vigilante gang of classical music aficionados who have surgically connected you to an unconscious world-class violinist for whom you are alone anatomically suited to be his organic dialysis machine until he fully recovers nine months later. You awake and are told that the violinist will die if you unplug yourself from him. Thomson argues that even though the violinist is a person with a right to life, you nevertheless have a right to unplug yourself from him. This allows her to make the point that even if one person (X) has a right to life, that right by itself does not entitle X to coerce another person (Y) to provide bodily aid and sustenance to X, even if such assistance is necessary to keep X alive.

Is this the sort of entity that the vast majority of abortion opponents understand a person to be? It certainly seems so, since abortion opponents, as Thomson correctly points out, almost always claim that the pre-born human being has a right to life from conception (or perhaps soon afterwards). Nevertheless, once one begins to attend to the problem that Thomson’s 1995 article attempted to resolve, the problem of political liberalism, it becomes less clear that Thomson in her 1971 article really grants the most important premise held by virtually all abortion opponents.\textsuperscript{12}

\textbf{PERSONS AND PRO-LIFE PERSONS}

According to Rawls, the problem of political liberalism can be framed in the form of a question: “How is it possible that there may exist over time a stable and just society

\textsuperscript{10}Ibid., pp. 48, 66. So, it seems that her 1995 essay indicates a change in position, shifting from a strong denial of the early fetus’s personhood to an acknowledgment that it is not unreasonable to believe that it is a person.

\textsuperscript{11}Ibid., p. 48.

\textsuperscript{12}It may be, of course, that these two essays should not be read “together” in the way that I am suggesting. After all, it is possible that, in response to my analysis, Thomson might say that she has changed her mind over time, and thus my observations, though accurate, are not relevant to the position that she presently holds. Nevertheless, by showing that Thomson’s initial strategy is flawed—that granting mere personhood is not the same as pro-life personhood—this means that other philosophers who seek to take up her cause must address the question of what it means to grant to the pro-life advocate the personhood of the fetus. I owe this point to Chris Kaczor.
of free and equal citizens profoundly divided by reasonable religious, philosophical, and moral doctrines?" It is from these reasonable religious, philosophical, and moral doctrines that fellow citizens—deeply divided on issues such as abortion—derive their understandings of what it means to be a human person. So, when the abortion opponent claims that the fetus is a person with a right to life, that claim cannot be isolated from her other beliefs—including metaphysical beliefs—that inform her understanding of personhood. In order to appreciate this, we will assess three portions of Thomson’s 1971 article not already covered.

**Burglars and Trespassers**

Consider, first, Thomson’s burglar analogy. Like the violinist story, this one is employed by Thomson as an analogy to sex and pregnancy:

> 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.” It would be still more absurd to say this if I had had bars installed outside my windows, precisely to prevent burglars from getting in, and a burglar got in only because of a defect in the bars. It remains equally absurd if we imagine it is not a burglar who climbs in, but an innocent person who blunders or falls in.

Thomson is indeed correct that burglars burgle and that they are not entitled to their victims’ possessions or property even if the victims did not adequately secure their homes to prevent the invasions. Although Thomson concedes that the intruder may be an innocent blunderer, she does not consider the case of the innocent non-blunderer who is lured on to the property by the landowner’s actions, even though the landowner did not specifically intend for the trespass. For example, suppose the invaders were not adult burglars but underage children drawn to the home’s backyard swing set and swimming pool and subsequently harmed as a consequence of their mischief. In the common law the landowner could be liable for damages if he had not exercised reasonable care.

Called the *attractive nuisance tort*, it affirms that a landowner “is subject to liability for physical harm to children trespassing thereon caused by an artificial

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14One could think the fetus worth protecting and argue that virtually all abortions are deeply immoral, without claiming the fetus is a person or even addressing the question of personhood. See, for example, Michael Gorman, “Personhood, Potentiality, and Normativity,” *American Catholic Philosophical Quarterly* 85, no. 3 (2011): 483–98; Donald Marquis, “Why Abortion Is Immoral,” *Journal of Philosophy* 86 (April 1989): 183–202.


16Here are all the conditions for attractive nuisance tort liability according to §339 of the Restatement (Second) of Torts, “Artificial Conditions Highly Dangerous to Trespassing Children”: “A possessor of land is subject to liability for physical harm to children trespassing thereon caused by an artificial condition upon the land if (a) the place where the condition exists is one upon which the possessor knows or has reason to know that children are likely to trespass, and (b) the condition is one of which the possessor knows or
condition upon the land if” the landowner, among other things, “knows or has rea-
son to know that children are likely to trespass,” and if the children are too young
to detect or understand the risk, and if it is a condition he “knows or has reason
to know or should realize will involve a reasonable risk of death or serious bodily
harm to such children.”17 So, the law acknowledges—what our moral intuitions
seem to confirm—that intruders come in a variety of types, including those whose
trespassing may not be entirely their responsibility because of their immaturity and/
or the nature of the landowner’s action or inaction. In pregnancy, however, the fetus
is not an intruding minor who should have known better, having nevertheless been
lured into a position of vulnerability by an attractive nuisance. Rather, the fetus is
a non-willing inhabitant of the only environment that is designed to shelter, feed,
and sustain him, with his presence there being the consequence of agents having
engaged in an act intrinsically ordered to bring such beings into existence.18 Thus,
if the landowner is responsible for the nuisance attracted minor on his property, a
fortiori the parents of a fetus are at least just as responsible.19

People Seeds
Thomson supplements her case by offering yet another analogy, one that likens
the unplanned arrival of pre-born progeny in one’s life to “people-seeds [that] 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.”20 Despite your best efforts to prevent the
embedding of people seeds in your home, occasionally one takes root, resulting in
a developing person-plant. Thomson believes that you are not morally required to
allow the person-plant to reside in your home. You may uproot it without violating
its rights.

But suppose that the people-seeds found their way into your home because you
sowed them there, even though you had no intention of becoming a pod-parent. In
this possible world, seed-sowing, as it is called, is a deeply emotional and plea-
surable activity engaged in by two people who are attracted to each other. Being
adept at the nuances of anthropo-horticulture, some couples employ the requisite

has reason to know and which he realizes or should realize will involve an unreasonable risk of death or
serious bodily harm to such children, and (c) the children because of their youth do not discover the condi-
tion or realize the risk involved in meddling with it or in coming within the area made dangerous by
it, and (d) the utility to the possessor of maintaining the condition and the burden involved of eliminat-
ing the danger are slight as compared with the risk to children involved, and (e) the possessor fails to exercise
reasonable care to eliminate the danger or otherwise to protect the children.” Quoted in James A. Henderson
17Ibid.
18Someone may bring up cases of pregnancy resulting from rape. Because they make up such a tiny per-
centage of pregnancies, I will not address such cases here. Having said that, I do not believe that Thomson’s
argument justifies abortion in cases of rape, assuming, as she does, that the fetus is a person. See Francis J.
19I owe the point in this sentence to Chris Kaczor.
seedicide provided to them by their local Planned Parenthood, because they in fact know and understand that the activity of seed-sowing is intrinsically ordered toward the begetting of people-seeds, even though people often engage in it because of the pleasant and desirable sensations and emotions that accompany that activity. But a generative act remains a generative act even if those participating in it desire only its accompanying effects and do not explicitly intend that the act achieve its intrinsic purpose. In this revised version of the people-seed scenario, it does not seem at all clear that one is not responsible for the people-seeds that result from one’s seed sowing.21

Non-Consensual Moral Obligations
Consider now Thomson’s rebuttal to the suggestion by abortion opponents 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.”

Thomson seems to recognize, and I believe correctly, that this anti-abortion claim assumes that there are particular cases of moral obligation that do not require consent. Thomson, of course, does not deny that there are universal cases of moral obligation that do not require consent, e.g., everyone has a moral obligation not to interfere with a woman’s right to abortion. What she denies is that there are any particular moral obligations that do not require consent. Consequently, she rejects the anti-abortion claim because it is inconsistent with a moral belief that she considers basic. Thomson writes:

Surely we do not have any such “special responsibility” for a person unless we have assumed it, explicitly or implicitly. If a set of parents do not try to prevent pregnancy, do not obtain an abortion, and then at the time of birth of the child do not put it out for adoption, but rather take it home with them, then they have assumed responsibility for it, they have given it rights, and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it. But if they have taken all reasonable precautions against having a child, they do not simply by virtue of their biological relationship to the child who comes into existence have a special responsibility for it. They may wish to assume responsibility for it, or they may not wish to. And I am suggesting that if assuming responsibility for it would require large sacrifices, then they may refuse.24

21 Nevertheless, Thomson seems to be fudging a bit in her people-seed story. Remember, she grants that fetuses are persons, not potential persons. So, she should have said that it was people, and not “people seeds,” that find their way into your home. Calling these creatures “people seeds” seems as if she were saying they are “potential persons,” which is not the premise that she said she was granting to her adversary. After all, as Chris Kaczor suggested to me in a private correspondence: what is one’s moral responsibility if actual people involuntarily drift into one’s home? If a parachutist crashes into my living room because unexpected winds took him off course, do I, all things being equal, now have a right to kill him?


This passage is rich with philosophical assumptions, each of which has been challenged in the literature. For this reason, Thomson seems to beg the question, since she is assuming as correct a controversial understanding of moral responsibility without which her case fails. Consequently, I want to draw the reader’s attention to the assumption that seems most relevant to the specific issue in question: The only procreative consequences of sex that place moral demands on sexual partners are those to which they explicitly consent. That is, when one engages in an act of sexual intercourse without the explicit intent to procreate a child, there is no tacit, implicit, or explicit consent to caring for, or at least not to terminate, the fetus that results. For Thomson, sex qua sex has no final or formal causes. The point of sex is not discovered by answering what it is. Rather, the point of sex is constructed on a case-by-case basis by asking any set of partners what sex is to them. For this reason, and unsurprisingly, she depicts sex as an act not unlike the opening of your home’s screened-window for fresh air from an environment in which people-seeds drift freely and may accidentally embed themselves in your carpet and upholstery. Her pro-life critics, however, see sex as an act not unlike seed sowing, a generative activity, initiated by human volition, intrinsically ordered to the production of people-seeds.

In Thomson’s seed-drifting world, one has no special responsibility to the seeds and to the people-plants they generate. The acquisition of people-seeds is not the intelligible point of opening up a window, just as being hit by a meteor is not the intelligible point of leaving your home in the morning. The connections between the acts and the events are accidental. On the other hand, in the seed-sowing world, an essential property (in the Aristotelian sense) of a sowed seed is the generation of a mature version of itself as a plant-person. Thus, in this world, it does not seem at all obvious that there is no special responsibility for seed-sowers who generate plant-people that they did not explicitly or implicitly intend to bring into existence. In this world, to use Thomson’s language, the seed-sowers invited (however tacitly) the plant-person into their home once they engaged in seed-sowing because seed-sowing is an act that is intrinsically ordered toward the generation of plant-people. The purpose of the act is found, not in the intent of the participating actors, but in the nature of the act itself.

Thomson’s assumption—the only procreative consequences of sex that place moral demands on sexual partners are those to which they explicitly consent—seems plausible to her precisely because she either explicitly or implicitly rejects a philosophical anthropology, along with its Aristotelian assumptions, embraced by virtually all opponents of abortion. Unsurprisingly, then, this pro-life philosophi-

25For example, Thomson’s claim that “we do not have any such ‘special responsibility’ for a person unless we have assumed it, explicitly or implicitly” has been challenged, and I believe affectively, by Kaczor, who argues that adult children have obligations to their parents even though the former did not ask to be born. See Christopher Kaczor, The Ethics of Abortion: Women’s Rights, Human Life, and the Question of Justice (New York NY: Routledge, 2010), pp. 165–68. See, more generally, Sandel, Justice, pp. 223–43.

26Thanks to Pat Lee for pointing out that the original version of this assumption was unnecessarily wordy.


cal anthropology not only maintains that our sexual powers are ordered toward the generation of offspring (e.g., the seed-sowing world) but also that the nature of the offspring’s maturation provides grounds for concluding that adults whose actions or inactions draw immature persons into positions of vulnerability are specially responsible to those children (e.g., attractive nuisance tort). This is why for the dominant pro-life view of personhood, the responsibilities of mother, father, and child (and institutions such as marriage and family that developed in order to secure and protect the unique roles of each) arise as a consequence of the sort of beings we are.

Thus, it seems that what Thomson is granting is not the pro-life view of personhood as it has been understood by its leading advocates but a view of personhood consistent with the pro-life position only insofar as its Aristotelian premises are absent. For the success of Thomson’s case depends on her assuming a view of the person as one who has no particular moral obligations that do not arise out of consent. It is, in the words of Michael Sandel, the “image of the self as free and independent, unencumbered by aims and attachments it did not choose for itself. . .”29 But, if this is Thomson’s understanding of personhood, as it seems to be, then it is this understanding that she is stipulating when she grants to the abortion opponent for the sake of argument that the fetus is a person. But that is not the pro-life view of personhood.

CONCLUSION

The strength of Thomson’s 1971 article relies on her apparent concession to the pro-life advocate for the sake of argument his most important premise, the personhood of the fetus. On the other hand, the strength of Thomson’s 1995 article relies on the insights of political liberalism and its understanding of reasonable comprehensive doctrines and the role they play in shaping a citizen’s beliefs about human persons and their proper ends. This understanding seems difficult to dispute. Consequently, because the comprehensive doctrine that informs the dominant pro-life view of the person depends on Aristotelian premises,30 and because these premises are absent


29Michael Sandel, Democracy’s Discontent: America In Search of a Public Philosophy (Cambridge MA: Harvard Univ. Press, 1996), p. 12. Although Sandel is not explicitly writing about Thomson, it is fair to say that he is addressing a view of the person or self that her 1971 argument assumes as correct.

30Of course, one need not embrace an Aristotelian metaphysics in order to oppose abortion. Don Marquis’s work is evidence of that. In this article, my focus is on the view of personhood held by the vast majority of pro-life philosophers.

One could certainly argue that Aristotelian metaphysics is mistaken, and thus the dominant view of personhood held by pro-lifers is mistaken as well, which was a point raised to me by Alastair Norcross (University of Colorado) in a conversation that we had after I delivered an earlier version of this article as a paper at the event I mention in n31. Although Norcross is certainly correct that one could make that argument, doing so would miss the point of this article. Its purpose is to critically assess whether Thomson accomplishes what she set out to do: to grant pro-life advocates their most important premise, the personhood of the fetus. Whether or not the pro-lifer’s metaphysical view is correct is another question altogether, even though I think it is correct, as I have argued in Defending Life and most recently in “The Human Being, a Person of Substance: A Response to Dean Stretton” in Persons, Moral Worth, and Embryos, pp. 67–83; and
from Thomson’s presentation of the pro-life position in her 1971 article, it seems reasonable to conclude that she does not in fact concede for the sake of argument the pro-life view of the person as it is understood by its leading advocates.31


31 This article is a significantly revised version of the paper “Thomson v. Thomson” that I delivered at the symposium (3 August 2011) “Judith Jarvis Thomson’s ‘A Defense of Abortion’ After Forty Years: A Critical Appreciation,” held at the University of Colorado in conjunction with the fourth annual Rocky Mountain Ethics Conference. I am most grateful for the feedback and critique I received from the other members of the symposium: David Boonin (University of Colorado), John Martin Fisher (University California, Riverside), and Don Marquis (University of Kansas). As I noted to the audience that evening, if the symposium were the Beatles, I would be Ringo. I would like to also thank Charles Camosy (Fordham University), Christopher Kaczor (Loyola Marymount University), Patrick Lee (Francican University), and Scott Klusendorf (Life Training International) for offering valuable critiques of the penultimate version of this article. However, I take full responsibility for its shortcomings.