

QUESTIONS

- 1 If the wrongness of killing derives from the fact that the victim is deprived of the value of his or her future, does it follow that it is less wrong to kill someone fifty years old than it is to kill someone twenty years old? If so, does this implication suggest that there is some deficiency in Marquis's theory about the wrongness of killing?
- 2 Does Marquis provide a satisfactory response to the possible objection that his theory about the wrongness of killing implies that contraception is morally wrong?
- 3 If Marquis's basic approach is accepted, which abortions could still be considered morally justified?

A Defense of Abortion¹

Judith Jarvis Thomson

In an effort to moderate the conservative view, Thomson argues that the standard conservative claim about the moral impermissibility of abortion cannot be sustained even if (for the sake of argument) it is presumed that the fetus is a person from conception. Her central point is that the moral impermissibility of abortion does not follow simply from the admission that the fetus (as a person) has a right to life. In her view, the right to life is to be understood as the right not to be killed unjustly and does not entail the right to use another person's body. In cases where the pregnant woman has not extended to the fetus the right to use her body, most prominently in the case of rape, Thomson holds that abortion is not unjust killing and, thus, does not violate the fetus's right to life. Thomson acknowledges that there may be cases in which the fetus (presumed to be a person) has a right to the use of the pregnant woman's body and, thus, some cases where abortion would be unjust killing. She proceeds to distinguish between the moral demands of justice and the moral demands of decency. In some cases, she maintains, an abortion does no injustice (to the fetus) yet may be subject to moral criticism on the grounds that minimal standards of moral decency are transgressed.

Most opposition to abortion relies on the premise that the fetus is a human being, a person, from the moment of conception. The premise is argued for, but, as I think, not well. Take, for example, the most common argument. We are asked to notice that the development of a human being from conception through birth into childhood is continuous, then it is said that to draw a line, to choose a point in this development

and say "before this point the thing is not a person, after this point it is a person" is to make an arbitrary choice, a choice for which in the nature of things no good reason can be given. It is concluded that the fetus is, or anyway that we had better say it is, a person from the moment of conception. But this conclusion does not follow. Similar things might be said about the development of an acorn into an oak tree, and it does not follow that acorns are oak trees, or that we had better say they are. Arguments of this form are sometimes called "slippery slope arguments"—the phrase is perhaps self-explanatory—and it is dismaying that opponents of abortion rely on them so heavily and uncritically.

I am inclined to agree, however, that the prospects for "drawing a line" in the development of the fetus look dim. I am inclined to think also that we shall probably have to agree that the fetus has already become a human person well before birth. Indeed, it comes as a surprise when one first learns how early in its life it begins to acquire human characteristics. By the tenth week, for example, it already has a face, arms and legs, fingers and toes; it has internal organs, and brain activity is detectable.² On the other hand, I think that the premise is false, that the fetus is not a person from the moment of conception. A newly fertilized ovum, a newly implanted clump of cells, is no more a person than an acorn is an oak tree. But I shall not discuss any of this. For it seems to me to be of great interest to ask what happens if, for the sake of argument, we allow the premise. How, precisely, are we supposed to get from there to the conclusion that abortion is morally impermissible? Opponents of abortion commonly spend most of their time establishing that the fetus is a person, and hardly any time explaining the step from there to the impermissibility of abortion. Perhaps they think the step too simple and obvious to require much comment. Or perhaps instead they are simply being economical in argument. Many of those who defend abortion rely on the premise that the fetus is not a person, but only a bit of tissue that will become a person at birth; and why pay out more arguments than you have to? Whatever the explanation, I suggest that the step they take is neither easy nor obvious, that it calls for closer examination than it is commonly given, and that when we do give it this closer examination we shall feel inclined to reject it.

I propose, then, that we grant that the fetus is a person from the moment of conception. How does the argument go from here? Something like this, I take it. 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.

It sounds plausible. But now let me ask you to imagine this. You wake up in the morning and 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 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 now 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." Is it morally incumbent on you to accede to this situation? No doubt it would be very nice of you if you did, a great kindness. But do you *have* to accede to it? What if it were not nine months, but nine years? Or longer still? What if the director of the hospital says, "Tough luck, I agree, but you've now got to stay in bed, with the violinist plugged into you, for the rest of your life. Because remember this. All persons have a right to life, and violinists are persons. Granted you have a right to decide what happens in and to your body, but a person's right to life outweighs your right to decide what happens in and to your body. So you cannot ever be unplugged from him." I imagine you would regard this as outrageous, which suggests that something really is wrong with that plausible-sounding argument I mentioned a moment ago.

In this case, of course, you were kidnapped; you didn't volunteer for the operation that plugged the violinist into your kidneys. Can those who oppose abortion on the ground I mentioned make an exception for a pregnancy due to rape? Certainly. They can say that persons have a right to life only if they didn't come into existence because of rape; or they can say that all persons have a right to life, but that some have less of a right to life than others, in particular, that those who came into existence because of rape have less. But these statements have a rather unpleasant sound. Surely the question of whether you have a right to life at all, or how much of it you have, shouldn't turn on the question of whether or not you are the product of a rape. And in fact the people who oppose abortion on the ground I mentioned do not make this distinction, and hence do not make an exception in case of rape.

Nor do they make an exception for a case in which the mother has to spend the nine months of her pregnancy in bed. They would agree that would be a great pity, and hard on the mother; but all the same, all persons have a right to life, the fetus is a person, and so on. I suspect, in fact, that they would not make an exception for a case in which, miraculously enough, the pregnancy went on for nine years, or even the rest of the mother's life.

Some won't even make an exception for a case in which continuation of the pregnancy is likely to shorten the mother's life; they regard abortion as impermissible even to save the mother's life. Such cases are nowadays very rare, and many opponents of abortion do not accept this extreme view. . . .

[1] Where the mother's life is not at stake, the argument I mentioned at the outset seems to have a much stronger pull. "Everyone has a right to life, so the unborn person has a right to life." And isn't the child's right to life weightier than anything other than the mother's own right to life, which she might put forward as ground for an abortion?

This argument treats the right to life as if it were unproblematic. It is not, and this seems to me to be precisely the source of the mistake.

For we should now, at long last, ask what it comes to, to have a right to life. In some views having a right to life includes having a right to be given at least the bare minimum one needs for continued life. But suppose that what in fact is the bare min-

imum a man needs for continued life is something he has no right at all to be given? If I am sick unto death, and the only thing that will save my life is the touch of Henry Fonda's cool hand on my fevered brow, then all the same, I have no right to be given the touch of Henry Fonda's cool hand on my fevered brow. It would be frightfully nice of him to fly in from the West Coast to provide it. It would be less nice, though no doubt well meant, if my friends flew out to the West Coast and carried Henry Fonda back with them. But I have no right at all against anybody that he should do this for me. Or again, to return to the story I told earlier, the fact that for continued life that violinist needs the continued use of your kidneys does not establish that he has a right to be given the continued use of your kidneys. He certainly has no right against you that *you* should give him continued use of your kidneys. For nobody has any right to use your kidneys unless you give him such a right; and nobody has the right against you that you shall give him this right—if you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due. Nor has he any right against anybody else that *they* should give him continued use of your kidneys. Certainly he had no right against the Society of Music Lovers that they should plug him into you in the first place. And if you now start to unplug yourself, having learned that you will otherwise have to spend nine years in bed with him, there is nobody in the world who must try to prevent you, in order to see to it that he is given something he has a right to be given.

Some people are rather stricter about the right to life. In their view, it does not include the right to be given anything, but amounts to, and only to, the right not to be killed by anybody. But here a related difficulty arises. If everybody is to refrain from killing that violinist, then everybody must refrain from doing a great many different sorts of things. Everybody must refrain from slitting his throat, everybody must refrain from shooting him—and everybody must refrain from unplugging you from him. But does he have a right against everybody that they shall refrain from unplugging you from him? To refrain from doing this is to allow him to continue to use your kidneys. It could be argued that he has a right against us that we should allow him to continue to use your kidneys. That is, while he had no right against us that we should give him the use of your kidneys, it might be argued that he anyway has a right against us that we shall not now intervene and deprive him of the use of your kidneys. I shall come back to third-party interventions later. But certainly the violinist has no right against you that *you* shall allow him to continue to use your kidneys. As I said, if you do allow him to use them, it is a kindness on your part, and not something you owe him.

The difficulty I point to here is not peculiar to the right to life. It reappears in connection with all the other natural rights; and it is something which an adequate account of rights must deal with. For present purposes it is enough just to draw attention to it. But I would stress that I am not arguing that people do not have a right to life—quite to the contrary, it seems to me that the primary control we must place on the acceptability of an account of rights is that it should turn out in that account to be a truth that all persons have a right to life. I am arguing only that having a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person's body—even if one needs it for life itself.

So the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would.

[2] There is another way to bring out the difficulty. In the most ordinary sort of case, to deprive someone of what he has a right to is to treat him unjustly. Suppose a boy and his small brother are jointly given a box of chocolates for Christmas. If the older boy takes the box and refuses to give his brother any of the chocolates, he is unjust to him, for the brother has been given a right to half of them. But suppose that, having learned that otherwise it means nine years in bed with that violinist, you unplug yourself from him. You surely are not being unjust to him, for you gave him no right to use your kidneys, and no one else can have given him any such right. But we have to notice that in unplugging yourself, you are killing him; and violinists, like everybody else, have a right to life, and thus in the view we were considering just now, the right not to be killed. So here you do what he supposedly has a right you shall not do, but you do not act unjustly to him in doing it.

The emendation which may be made at this point is this: the right to life consists not in the right not to be killed, but rather in the right not to be killed unjustly. This runs a risk of circularity, but never mind: it would enable us to square the fact that the violinist has a right to life with the fact that you do not act unjustly toward him in unplugging yourself, thereby killing him. For if you do not kill him unjustly, you do not violate his right to life, and so it is no wonder you do him no injustice.

But if this emendation is accepted, the gap in the argument against abortion stares us plainly in the face: it is by no means enough to show that the fetus is a person, and to remind us that all persons have a right to life—we need to be shown also that killing the fetus violates its right to life, i.e., that abortion is unjust killing. And is it? I suppose we may take it as a datum that in a case of pregnancy due to rape the mother has not given the unborn person a right to the use of her body for food and shelter. Indeed, in what pregnancy could it be supposed that the mother has given the unborn person such a right? It is not as if there were unborn persons drifting about the world, to whom a woman who wants a child says "I invite you in."

But it might be argued that there are other ways one can have acquired a right to the use of another person's body than by having been invited to use it by that person. Suppose a woman voluntarily indulges in intercourse, knowing of the chance it will issue in pregnancy, and then she does become pregnant; is she not in part responsible for the presence, in fact the very existence, of the unborn person inside her? No doubt she did not invite it in. But doesn't her partial responsibility for its being there itself give it a right to the use of her body? If so, then her aborting it would be more like the boy's taking away the chocolates, and less like your unplugging yourself from the violinist—doing so would be depriving it of what it does have a right to, and thus would be doing it an injustice.

And then, too, it might be asked whether or not she can kill it even to save her own life: If she voluntarily called it into existence, how can she now kill it, even in self-defense?

The first thing to be said about this is that it is something new. Opponents of abortion have been so concerned to make out the independence of the fetus, in order to establish that it has a right to life, just as its mother does, that they have tended to

overlook the possible support they might gain from making out that the fetus is *dependent* on the mother, in order to establish that she has a special kind of responsibility for it, a responsibility that gives it rights against her which are not possessed by any independent person—such as an ailing violinist who is a stranger to her.

On the other hand, this argument would give the unborn person a right to its mother's body only if her pregnancy resulted from a voluntary act, undertaken in full knowledge of the chance a pregnancy might result from it. It would leave out entirely the unborn person whose existence is due to rape. Pending the availability of some further argument, then, we would be left with the conclusion that unborn persons whose existence is due to rape have no right to the use of their mothers' bodies, and thus that aborting them is not depriving them of anything they have a right to and hence is not unjust killing.

And we should also notice that it is not at all plain that this argument really does go even as far as it purports to. For there are cases and cases, and the details make a difference. 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. Again, suppose it were like this: people-seeds drift about in the air like pollen, and if you open your windows, one may drift in and take root in your carpets or upholstery. You don't want children, so you fix up your windows with fine mesh screens, the very best you can buy. As can happen, however, and on very, very rare occasions does happen, one of the screens is defective; and a seed drifts in and takes root. Does the person-plant who now develops have a right to the use of your house? Surely not—despite the fact that you voluntarily opened your windows, you knowingly kept carpets and upholstered furniture, and you knew that screens were sometimes defective. Someone may argue that you are responsible for its rooting, that it does have a right to your house, because after all you *could* have lived out your life with bare floors and furniture, or with sealed windows and doors. But this won't do—for by the same token anyone can avoid a pregnancy due to rape by having a hysterectomy, or anyway by never leaving home without a (reliable!) army.

It seems to me that the argument we are looking at can establish at most that there are *some* cases in which the unborn person has a right to the use of its mother's body, and therefore *some* cases in which abortion is unjust killing. There is room for much discussion and argument as to precisely which, if any. But I think we should sidestep this issue and leave it open, for at any rate the argument certainly does not establish that all abortion is unjust killing.

[3] There is room for yet another argument here, however. We surely must all grant that there may be cases in which it would be morally indecent to detach a person from your body at the cost of his life. Suppose you learn that what the violinist needs

is not nine years of your life, but only one hour: all you need do to save his life is to spend one hour in that bed with him. Suppose also that letting him use your kidneys for that one hour would not affect your health in the slightest. Admittedly you were kidnapped. Admittedly you did not give anyone permission to plug him into you. Nevertheless it seems to me plain you *ought* to allow him to use your kidneys for that hour—it would be indecent to refuse.

Again, suppose pregnancy lasted only an hour, and constituted no threat to life or health. And suppose that a woman becomes pregnant as a result of rape. Admittedly she did not voluntarily do anything to bring about the existence of a child. Admittedly she did nothing at all which would give the unborn person a right to the use of her body. All the same it might well be said, as in the newly emended violinist story, that she *ought* to allow it to remain for that hour—that it would be indecent in her to refuse.

Now some people are inclined to use the term "right" in such a way that it follows from the fact that you ought to allow a person to use your body for the hour he needs, that he has a right to use your body for the hour he needs, even though he has not been given that right by any person or act. They may say that it follows also that if you refuse, you act unjustly toward him. This use of the term is perhaps so common that it cannot be called wrong; nevertheless it seems to me to be an unfortunate loosening of what we would do better to keep a tight rein on. Suppose that box of chocolates I mentioned earlier had not been given to both boys jointly, but was given only to the older boy. There he sits, stolidly eating his way through the box, his small brother watching enviously. Here we are likely to say "You ought not to be so mean. You ought to give your brother some of those chocolates." My own view is that it just does not follow from the truth of this that the brother has any right to any of the chocolates. If the boy refuses to give his brother any, he is greedy, stingy, callous—but not unjust. I suppose that the people I have in mind will say it does follow that the brother has a right to some of the chocolates, and thus that the boy does act unjustly if he refuses to give his brother any. But the effect of saying this is to obscure what we should keep distinct, namely the difference between the boy's refusal in this case and the boy's refusal in the earlier case, in which the box was given to both boys jointly, and in which the small brother thus had what was from any point of view clear title to half.

A further objection to so using the term "right" that from the fact that A ought to do a thing for B, it follows that B has a right against A that A do it for him, is that it is going to make the question of whether or not a man has a right to a thing turn on how easy it is to provide him with it, and this seems not merely unfortunate, but morally unacceptable. Take the case of Henry Fonda again. I said earlier that I had no right to the touch of his cool hand on my fevered brow, even though I needed it to save my life. I said it would be frightfully nice of him to fly in from the West Coast to provide me with it, but that I had no right against him that he should do so. But suppose he isn't on the West Coast. Suppose he has only to walk across the room, place a hand briefly on my brow—and lo, my life is saved. Then surely he ought to do it, it would be indecent to refuse. Is it to be said "Ah, well, it follows that in this case she has a right to the touch of his hand on her brow, and so it would

be an injustice in him to refuse?" So that I have a right to it when it is easy for him to provide it, though no right when it's hard? It's rather a shocking idea that anyone's rights should fade away and disappear as it gets harder and harder to accord them to him.

So my own view is that even though you ought to let the violinist use your kidneys for the one hour he needs, we should not conclude that he has a right to do so—we would say that if you refuse, you are, like the boy who owns all the chocolates and will give none away, self-centered and callous, indecent in fact, but not unjust. And similarly, that even supposing a case in which a woman pregnant due to rape ought to allow the unborn person to use her body for the hour he needs, we should not conclude that he has a right to do so; we should conclude that she is self-centered, callous, indecent, but not unjust, if she refuses. The complaints are no less grave; they are just different. However, there is no need to insist on this point. If anyone does wish to deduce "he has a right" from "you ought," then all the same he must surely grant that there are cases in which it is not morally required of you that you allow that violinist to use your kidneys, and in which he does not have a right to use them, and in which you do not do him an injustice if you refuse. And so also for mother and unborn child. Except in such cases as the unborn person has a right to demand it—and we were leaving open the possibility that there may be such cases—nobody is morally *required* to make large sacrifices, of health, of all other interests and concerns, of all other duties and commitments, for nine years, or even for nine months, in order to keep another person alive.

[4] We have in fact to distinguish between two kinds of Samaritan: the Good Samaritan and what we might call the Minimally Decent Samaritan. The story of the Good Samaritan, you will remember, goes like this:

A certain man went down from Jerusalem to Jericho, and fell among thieves, which stripped him of his raiment, and wounded him, and departed, leaving him half dead.

And by chance there came down a certain priest that way; and when he saw him, he passed by on the other side.

And likewise a Levite, when he was at the place, came and looked on him, and passed by on the other side.

But a certain Samaritan, as he journeyed, came where he was; and when he saw him he had compassion on him.

And went to him, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn, and took care of him.

And on the morrow, when he departed, he took out two pence, and gave them to the host, and said unto him, "Take care of him; and whatsoever thou spendest more, when I come again, I will repay thee."

(Luke 10:30-35)

The Good Samaritan went out of his way, at some cost to himself, to help one in need of it. We are not told what the options were, that is, whether or not the priest and the Levite could have helped by doing less than the Good Samaritan did, but assuming they could have, then the fact they did nothing at all shows they were not even Minimally Decent Samaritans, not because they were not Samaritans, but because they were not even minimally decent.

These things are a matter of degree, of course, but there is a difference, and it comes out perhaps most clearly in the story of Kitty Genovese, who, as you will remember, was murdered while thirty-eight people watched or listened, and did nothing at all to help her. A Good Samaritan would have rushed out to give direct assistance against the murderer. Or perhaps we had better allow that it would have been a Splendid Samaritan who did this, on the ground that it would have involved a risk of death for himself. But the thirty-eight not only did not do this, they did not even trouble to pick up a phone to call the police. Minimally Decent Samaritanism would call for doing at least that, and their not having done it was monstrous.

After telling the story of the Good Samaritan, Jesus said "Go, and do thou likewise." Perhaps he meant that we are morally required to act as the Good Samaritan did. Perhaps he was urging people to do more than is morally required of them. At all events it seems plain that it was not morally required of any of the thirty-eight morally required of anyone that he give long stretches of his life—nine years or nine months—to sustaining the life of a person who has no special right (we were leaving open the possibility of this) to demand it.

Indeed, with one rather striking class of exceptions, no one in any country in the world is *legally* required to do anywhere near as much as this for anyone else. The class of exceptions is obvious. My main concern here is not the state of the law in respect to abortion, but it is worth drawing attention to the fact that in no state in this country is any man compelled by law to be even a Minimally Decent Samaritan to any person; there is no law under which charges could be brought against the thirty-eight who stood by while Kitty Genovese died. By contrast, in most states in this country women are compelled by law to be not merely Minimally Decent Samaritans, but Good Samaritans to unborn persons inside them. This doesn't by itself settle anything one way or the other, because it may well be argued that there should be laws in this country—as there are in many European countries—compelling at least Minimally Decent Samaritanism.⁴ But it does show that there is a gross injustice in the existing state of the law. And it shows also that the groups currently working against liberalization of abortion laws, in fact working toward having it declared unconstitutional for a state to permit abortion, had better start working for the adoption of Good Samaritan laws generally, or earn the charge that they are acting in bad faith.

I should think, myself, that Minimally Decent Samaritan laws would be one thing, Good Samaritan laws quite another, and in fact highly improper. But we are not here concerned with the law. What we should ask is not whether anybody should be compelled by law to be a Good Samaritan, but whether we must accede to a situation in which somebody is being compelled—by nature, perhaps—to be a Good Samaritan. We have, in other words, to look now at third-party interventions. I have been arguing that no person is morally required to make large sacrifices to sustain the life of another who has no right to demand them, and this even where the sacrifices do not include life itself; we are not morally required to be Good Samaritans or anyway Very Good Samaritans to one another. But what if a man cannot extricate himself from such a situation? What if he appeals to us to extricate him? It seems to me plain that

there are cases in which we can, cases in which a Good Samaritan would extricate him. There you are, you were kidnapped, and nine years in bed with that violinist lie ahead of you. You have your own life to lead. You are sorry, but you simply cannot see giving up so much of your life to the sustaining of this. You cannot extricate yourself, and ask us to do so. I should have thought that—in light of his having no right to the use of your body—it was obvious that we do not have to accede to your being forced to give up so much. We can do what you ask. There is no injustice to the violinist in our doing so.

[5] Following the lead of the opponents of abortion, I have throughout been speaking of the fetus merely as a person, and what I have been asking is whether or not the argument we began with, which proceeds only from the fetus' being a person, really does establish its conclusion. I have argued that it does not.

But of course there are arguments and arguments, and it may be said that I have simply fastened on the wrong one. It may be said that what is important is not merely the fact that the fetus is a person, but that it is a person for whom the woman has a special kind of responsibility issuing from the fact that she is its mother. And it might be argued that all my analogies are therefore irrelevant—for you do not have that special kind of responsibility for that violinist. Henry Fonda does not have that special kind of responsibility for me. And our attention might be drawn to the fact that men and women both *are* compelled by law to provide support for their children.

I have in effect dealt (briefly) with this argument in section [2] above; but a (still briefer) recapitulation now may be in order. 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. A Good Samaritan would not refuse—or anyway, a Splendid Samaritan, if the sacrifices that had to be made were enormous. But then so would a Good Samaritan assume responsibility for that violinist; so would Henry Fonda, if he is a Good Samaritan, fly in from the West Coast and assume responsibility for me.

[6] My argument will be found unsatisfactory on two counts by many of those who want to regard abortion as morally permissible. First, while I do argue that abortion is not impermissible, I do not argue that it is always permissible. There may well be cases in which carrying the child to term requires only Minimally Decent Samaritanism of the mother, and this is a standard we must not fall below. I am inclined to think it a merit of my account precisely that it does *not* give a general yes or a general no. It allows for and supports our sense that, for example, a sick and desperately frightened

fourteen-year-old schoolgirl, pregnant due to rape, may of course choose abortion, and that any law which rules this out is an insane law. And it also allows for and supports our sense that in other cases resort to abortion is even positively indecent. It would be indecent in the woman to request an abortion, and indecent in a doctor to perform it, if she is in her seventh month, and wants the abortion just to avoid the nuisance of postponing a trip abroad. The very fact that the arguments I have been drawing attention to treat all cases of abortion, or even all cases of abortion in which the mother's life is not at stake, as morally on a par ought to have made them suspect at the outset.

Secondly, while I am arguing for the permissibility of abortion in some cases, I am not arguing for the right to secure the death of the unborn child. It is easy to confuse these two things in that up to a certain point in the life of the fetus it is not able to survive outside the mother's body; hence removing it from her body guarantees its death. But they are importantly different. I have argued that you are not morally required to spend nine months in bed, sustaining the life of that violinist; but to say this is by no means to say that if, when you unplug yourself, there is a miracle and he survives, you then have a right to turn round and slit his throat. You may detach yourself even if this costs him his life: you have no right to be guaranteed his death, by some other means, if unplugging yourself does not kill him. There are some people who will feel dissatisfied by this feature of my argument. A woman may be utterly devastated by the thought of a child, a bit of herself, put out for adoption and never seen or heard of again. She may therefore want not merely that the child be detached from her, but more, that it die. Some opponents of abortion are inclined to regard this as beneath contempt—thereby showing insensitivity to what is surely a powerful source of despair. All the same, I agree that the desire for the child's death is not one which any body may gratify, should it turn out to be possible to detach the child alive.

At this place, however, it should be remembered that we have only been pretending throughout that the fetus is a human being from the moment of conception. A very early abortion is surely not the killing of a person, and so is not dealt with by anything I have said here.

NOTES

- 1 I am very much indebted to James Thomson for discussion, criticism, and many helpful suggestions.
- 2 Daniel Callahan, *Abortion: Law, Choice and Morality* (New York, 1970), p. 373. This book gives a fascinating survey of the available information on abortion. The Jewish tradition is surveyed in David M. Feldman, *Birth Control in Jewish Law* (New York, 1968), Part 5, the Catholic tradition in John T. Noonan, Jr., "An Almost Absolute Value in History," in *The Morality of Abortion*, ed. John T. Noonan, Jr. (Cambridge, Mass., 1970).
- 3 The need for a discussion of this argument was brought home to me by members of the Society for Ethical and Legal Philosophy, to whom this paper was originally presented.
- 4 For a discussion of the difficulties involved, and a survey of the European experience with such laws, see *The Good Samaritan and the Law*, ed. James M. Ratcliffe (New York, 1966).

QUESTIONS

- 1 To what extent, if at all, does Thomson succeed in her effort to moderate the conservative view on abortion?
- 2 Does Thomson provide a defensible account of the right to life?
- 3 Thomson's overall analysis culminates in a moderate view on abortion, but does her moderate view incline more in a conservative direction or more in a liberal direction?

Majority Opinion in *Roe v. Wade* Justice Harry A. Blackmun

In this case, a pregnant single woman, suing under the fictitious name of Jane Roe, challenged the constitutionality of the existing Texas criminal abortion law. According to the Texas Penal Code, the performance of an abortion, except to save the life of the pregnant woman, constituted a crime punishable by a prison sentence of two to five years. At the time this case was finally resolved by the United States Supreme Court, abortion legislation varied widely from state to state. Some states, principally New York, had already legalized abortion on demand. Most other states, however, had legalized various forms of therapeutic abortion but had retained some measure of restrictive abortion legislation.

Justice Blackmun, writing an opinion concurred in by six other justices, argues that a woman's decision to terminate a pregnancy is encompassed by a *right to privacy*—but only up to a certain point in the development of the fetus. As the right to privacy is not an absolute right, it must yield at some point to the state's legitimate interests. Justice Blackmun contends that the state has a legitimate interest in protecting the health of the pregnant woman and that this interest becomes compelling at approximately the end of the first trimester in the development of the fetus. He also contends that the state has a legitimate interest in protecting potential life and that this interest becomes compelling at the point of viability.

It is . . . apparent that at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than under most American statutes currently in effect. Phrasing it another way, a woman enjoyed a substantially broader right to terminate a pregnancy than she does