ABORTION AND SELF-DETERMINATION

John Martin Fischer

I

There are two main strands within the philosophical literature on abortion. The first strand deals primarily with the concept of a person. It seeks to understand the concept and to delineate its necessary features. On this first approach, one asks whether there is any point along the human developmental sequence (after conception and before birth) at which the human organism becomes a person and thus acquires the right to life. Some who take this approach assume that if it is determined that the fetus is indeed a person prior to birth and thus has a right to life, then the case against abortion is decisive.

Another strand focuses on the mother's interests, rights, and prerogatives. An interesting aspect of this approach is that it is willing to concede, for the sake of argument, that the fetus is (at some point in the developmental sequence prior to birth) a person (and thus possesses a right to life). But it maintains that this concession is not decisive with respect to the moral status of abortion. On this approach, the moral status of abortion is not to be determined solely by considerations pertinent to the developing organism (including its right to life); rather, the morality of abortion is a function of a variety of considerations (including both the rights and interests of the fetus and those of the mother).

One of the most salient and influential proponents of the second strategy is Judith Jarvis Thomson. In her fascinating and important essay, “A Defense of Abortion,” Thomson develops a version of this strategy. I wish to discuss Thomson’s claim that even if it is supposed that a fetus is a person and thus has a right to life, abortion is permissible under certain circumstances (in particular, pregnancy due to rape). More specifically, I shall explore the relationship between this claim and Thomson’s well-known “violinist” example, which she presents in “A Defense of Abortion.” Although this example is not the only consideration Thomson adduces in support of her claim, it is a central part of her argument. Here I shall raise some questions about whether the example provides much support for the claim. I shall not be directly assessing the claim, but I shall be evaluating the assertion that the example provides considerable support for the claim. I shall argue that the violinist case provides very weak support for the claim. Further, I shall suggest that if it is assumed that the fetus is a person, there is reason to suppose that the difference between rape and voluntary intercourse makes no difference to the moral status of abortion.

II

In this paper I am discussing what I above called the second strand of argumentation within the contemporary philosophical literature on abortion. Thus, I shall simply assume, for the sake of this discussion, that the fetus is a person and thus has a right to life. (This assumption should not be taken as an endorsement of the position, and I shall return to it below.) Let me now present Thomson’s own formulation of her example:

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? (Parent, [ed.], 2-3.)

Thomson thinks that it is not morally incumbent upon you to stay in the hospital room with
the violinist. Thus, she holds that it would be permissible for you to unplug yourself (or
consent to a doctor’s unplugging you) and thereby bring about the violinist’s death. Although
the violinist is a person and thus has a right to life, in these circumstances it is permissible for
you to bring about his death. Thomson’s point is that the fact that the violinist has a right to
life does not entail that it is impermissible for you to bring about his death in these
circumstances. By analogy, she wishes to argue that the fact that the fetus has a right to life
(if indeed this is a fact) does not entail that abortion is impermissible in all circumstances. In
particular, the violinist case suggests that even if the fetus has a right to life, abortion is
permissible in cases of rape.

But consider now another hypothetical case. Suppose you have planned for many years
to take a trip to a very remote place in the Himalaya mountains. You have secured a cabin in
an extremely remote and inaccessible place in the mountains. You wish to be alone; you have
enough supplies for yourself, and also some extras in case of an emergency. Unfortunately,
a very evil man has kidnapped an innocent person and brought him to die in the desolate
mountain country near your cabin. The innocent person wanders for hours and finally
happens upon your cabin.

You have the following problem. You can radio for help, but because of the remoteness
and inaccessibility of your cabin and the relatively primitive technology of the country in
which it is located, the rescue party will require nine months to reach your cabin. Thus, you
are faced with a choice. You can let the innocent stranger into your cabin and provide food
and shelter until the rescue party arrives in nine months, or you can forcibly prevent him from
entering your cabin (or staying there) and thus cause his death (or perhaps allow him to die).
(It is evident that he will die unless you allow him to stay in the cabin.)

It seems to me that it would be morally impermissible for you to prevent the innocent
stranger from coming into (or staying in) your cabin. Even though it is your cabin and
allowing the stranger in would cause considerable inconvenience, you may not let him die on
your doorstep. Perhaps the situation would be different if the stranger had somehow violated
his duties in being where he is—but we have supposed that this is not so. I shall call this the
“cabin case”.

Consider a related example presented by Joel Feinberg:

Suppose that you are on a backpacking trip in the high mountain country when an
unanticipated blizzard strikes the area with such ferocity that your life is imperiled.
Fortunately, you stumble onto an unoccupied cabin, locked and boarded up for the winter,
clearly somebody else’s private property. You smash a window, enter, and huddle in a
corner for three days until the storm abates. During this period you help yourself to your
unknown benefactor’s food supply and burn his wooden furniture in the fireplace to keep
warm. Surely you are justified in doing all these things....

Now if it is permissible for you to enter and use the cabin in this example, it would seem that
the owner could not permissibly prevent you from doing so. (Let us suppose that the owner
was scanning the cabin with a camera and he could stop you from entering.) Further, this
appears to be true, whether or not the cabin owner is actually inside the cabin. Finally, it
seems to be true that it would be permissible for you to enter and impermissible for the owner
to prevent you from entering, even if your rescue and removal would take rather a long time—
even nine months. Thus, it seems evident that in the cabin case I presented above it would be *impermissible* for you simply to allow the innocent stranger to die.

But now we have a puzzle. The violinist case and the cabin case tug us in different directions. It seems plausible in the violinist case to say that it would be permissible for you to unplug the violinist thus causing his death. And if there is a good analogy between the violinist case and certain pregnancies (induced involuntarily), then it would seem plausible to say that abortion is permissible in those cases, even though the fetus is taken to have a right to life. But it also seems reasonable in the cabin case to say that it would be impermissible for you to prevent the innocent stranger from entering your cabin thereby allowing him to die. And if there is a good analogy between the cabin case and certain pregnancies (induced involuntarily), then it would seem plausible to say that abortion is impermissible in those cases, given that the fetus is taken to have a right to life. This puzzling situation invites us to ask about the alleged analogies between the two hypothetical cases and pregnancy. Which is more like a pregnancy (induced involuntarily): the cabin case or the violinist case? Is either a good analogy? If one of the cases is genuinely a better analogy to a pregnancy caused by rape, why is this so?

It might be thought that the violinist case is obviously a better analogy to the case of pregnancy (caused by rape) insofar as in both cases (but not in the cabin case) there is a direct involvement with or use of the body. That is, someone might say (and this is Thomson’s suggestion) that the reason why it is permissible for you to unplug yourself from the violinist is that one possesses a right to decide what shall happen in and to one’s body and that this right is “weightier” than (or in some sense overrides or outbalances) the violinist’s right to life. If the right to decide what happens in and to your body is the pertinent consideration which opposes and successfully outbalances the violinist’s right to life, then it is plausible to say that this feature is what renders the violinist case (and not the cabin case) relevantly similar to cases of pregnancy caused by rape. It would follow that the violinist case gives support to the claim that even if the fetus is a person, abortion is permissible in cases of pregnancy due to rape.

But I am skeptical of the appeal here to the right to decide what happens in and to one’s body. That is, I do not think that it does the important work in the violinist case. To see this, consider a variant on the violinist case, the “surgery case.” Suppose you are in a hospital room recovering from major surgery. You were in a terrible accident, and you have had extensive surgery; because of the nature of the accident and the surgery, you must stay in the hospital room in bed for nine more months. Now the story goes just as in Thomson’s violinist case: a great violinist has been brought into your room and attached to your kidneys, and you are told that he needs to be attached for nine months...

I believe that in the surgery case it would be impermissible for you to detach yourself from the violinist and thereby cause his death. (In this respect, the surgery case is like the cabin case presented above.) And yet the violinist would be using your body in just the way in which he would be using your body in the violinist case presented by Thomson. If the important work is being done by the right to decide what happens in and to your body in the violinist case, then it should follow that it would be *permissible* to cause yourself to be detached from the violinist in the surgery case. Thus, I conclude that it is *not* the right to decide what happens in and to one’s body which is driving our intuitive judgments about the violinist case.

The difference between Thomson’s original violinist case and the surgery case is instructive. In the surgery case, the “baseline” against which the “violinist scenario” develops is one in which you are already confined to your bed in the hospital. Further, the insertion
of the violinist would make very little, if any, difference to your life (given the relevant baseline): you can still pursue your recuperative activities, read, rest, and so forth. But in the original violinist case, the baseline is importantly different: but for the kidnapping and the attachment to the violinist, you would be able to pursue your ordinary activities. Further, you had no warning of the disruption in your life, and hence you could not "plan around it." Thus, the kidnapping and attachment to the violinist is particularly intrusive and disruptive. Whatever career and avocational plans, projects, and commitments you had must simply be abandoned or at least interrupted. This sudden interruption with its concomitant disruption in your life is (at least in part) what makes Thomson's original violinist case so disturbing, and it is what differentiates it from the surgery case.

I shall call the differentiating factor the power of "self-determination". Whereas there is some diminution of the power of self-determination in both the violinist case and the surgery case, the intrusion is more severe and the attendant diminution of the power of self-determination is more significant in the violinist case. The lesson I derive from a consideration of the violinist and surgery cases is that in Thomson's violinist case, it is not the violation of the right to decide what shall happen in and to your body that is so disturbing, but rather, it is the violation of the right of self-determination. In general, the right of self-determination is a more "basic" right than the right to determine what shall happen in and to one's body: the first right grounds the second right. In most contexts, we would appeal to (something like) the right of self-determination to explain and justify ascriptions of the right to decide what shall happen in and to one's body. But there are contexts in which the two rights "pull apart". That is, in a case such as the surgery case, the right to self-determination cannot be invoked to generate a strong right to decide what shall happen in and to one's body. This sort of consideration appears to imply that in the original violinist case it is the right to self-determination that is doing the important moral work and which is driving our intuitive judgment that it would be permissible for you to unplug yourself from the violinist.

If what I've said above is (roughly) correct, then I should be able to distinguish the violinist case from the cabin case by reference to disparate impacts on the right of self-determination. This is precisely what I wish to say. That is, there is a more severe disruption of the power of self-determination and thus a greater violation of the right to self-determination in the violinist case than in the cabin case. The violinist case is importantly different from both the surgery case and the cabin case in virtue of considerations pertinent to self-determination.

I elaborate. The insertion of the violinist into Thomson's original violinist case involves a significant disruption of one's plans, projects, and commitments for which one had no prior warning. Although some adjustments can be made and some plans simply postponed, the disruptions to career, family, and vacation plans can be significant. In some cases, one would suffer substantial and irreversible losses. In contrast, the insertion of the violinist into the surgery case does not involve this sort of disruption, insofar as it occurs against a background in which there are few opportunities for the pursuit of one's normal activities. The relevant baseline for purposes of comparison is crucially different in the two cases. Further, I would suggest that the cabin case is more like the surgery case than the violinist case. In the cabin case, you have planned a certain sort of "retreat" in the Himalayas, and the insertion of the innocent stranger does indeed disrupt your plans. After all, you had planned to be alone, and you had wanted your solitude. But nevertheless the presence of the stranger is compatible with your pursuing the fundamentals of your plan: you can still stay in your mountain cabin, take long contemplative walks, study and read, and so forth.

My claim, then, is that the violinist case posits a more significant violation of your right of self-determination than the cabin case. Let me say a bit more about this. I believe that the power of self-determination (relevant to this discussion) is not "absolute" or "all-or-nothing"; rather, it is a matter of degree. On the absolute picture of self-determination, all intrusions into
the power of self-determination are equally significant, and all violations of the right of self-determination are equally severe. In contrast, on the approach I favor there can be degrees of severity to the constraints placed upon the power of self-determination and associated differences in the violations of the right of self-determination. Just as there can be a relatively "objective" specification of a person's "needs" which departs in certain ways from the person's actual preferences, so there can be a relatively objective specification of the power of self-determination.

Here is an example. A relatively important constituent of the power of self-determination is the power to distribute one's time and other resources between work and leisure as one wishes. Another important part of self-determination is the power to choose one's favorite leisure and avocational activities. Thus, a proscription of all hunting would be a relatively significant diminution of certain individuals' powers of self-determination. In particular, this sort of proscription would be a significantly greater diminution of self-determination than a rule which requires the wearing of clothes of a certain color while hunting. Similarly, prohibiting all motorcycle riding would be a greater constraint on self-determination than requiring motorcycle-riders to wear helmets. In general, I believe that we do in fact make distinctions in the degree of intrusions upon or restrictions of the power of self-determination; we feel that some constraints are greater than others and the right-violations associated with some such constraints are greater than those associated with others.

Note that in claiming that self-determination admits of degrees one need not be committed to the idea that there is some notion of "freedom" or "liberty" that can be quantified and which is differentially connected with the different degrees of diminution of the power of self-determination. That is, ultimately one's judgments about the relative severity of different constraints placed upon self-determination may depend not so much on a metric of freedom or liberty, but on assessments of the relative importance of the activities proscribed or protected. Thus, we think that certain decisions pertain to relatively important features of life: what career to pursue, how to distribute one's time between career and personal life, whether to marry and raise a family, whether to practice a religion, whether and how to participate in political activities, how to spend one's leisure time, what sorts of friends to have, and so forth. Diminutions of the power to make and act on such decisions diminish one's power of self-determination to a greater degree than restrictions placed on less important, more peripheral choices and activities.

Of course, I do not claim that judgments of relative importance will be agreed upon across cultures or even within a single culture. Further, there will be difficult and "close" cases even relative to a shared set of assumptions about relative importance. My claim (at this point) is simply that within our culture we do tend to have a certain rough consensus which allows us to sort at least some cases in regard to their relative degree of diminution of self-determination (and attendant infringement of the right of self-determination.)

Given the admittedly sketchy and vague considerations developed above, it can be argued that the violinist case involves a significantly greater intrusion into self-determination than the cabin case. In contrast to the violinist case, the basic features of your life-plan can be pursued in the cabin case: your plan to spend some time in the mountains hiking, reading, and resting is not jeopardized. Neither are your basic decisions about your career, family, avocation, and so forth in any way superseded or threatened. True, an aspect of your plan is thwarted—you are not alone, as you had planned. But this is a relatively minor restriction (although certainly not entirely insignificant); similarly, aspects of the plans of certain hunters and motorcyclists are thwarted when they are required to wear clothes of a certain color or helmets. In contrast, in the violinist case one's career goals or family plans or avocational projects may be put into considerable jeopardy by the sudden and unanticipated need to spend nine months in the hospital room.

Much more needs to be said about the admittedly delicate and difficult issues of relative
importance and "centrality" of choices and activities, and also about the related notion of self-
determination. But I hope that I have said enough at least to provide some prima facie
plausibility to my explanation of the intuitive judgment that the violinist case is importantly
different from both the surgery and cabin cases.

IV

In the previous section I argued that the cabin and surgery cases should be distinguished from
the violinist case by reference to the notion of self-determination. Now I must face the critical
issue of the impact of pregnancy upon self-determination. Is the impact of pregnancy upon
self-determination more like the insertion of the violinist into Thomson's case? Or is it more
like the insertion of the violinist into the surgery case and the presence of the innocent stranger
in the cabin case?

This is the hard part. It is particularly difficult because pregnancy is most definitely not
uniform in its effects. Clearly, there are extremely easy, uncomplicated pregnancies, and
extremely difficult, complicated pregnancies, and a range of cases in between. Intuitively, the
very easy pregnancies are in the relevant respects rather like the surgery and cabin cases,
whereas the difficult pregnancies are more like the violinist case. Because of the variation in
the difficulty (and thus intrusive and disruptive nature) of pregnancy, it is difficult to say
whether it is, on balance, more like the violinist case or the surgery and cabin cases.

The minimal point I wish to make is that it is not evident that pregnancy is properly
treated as relevantly similar to the violinist case rather than the surgery and cabin cases. Thus,
because it is at least controversial whether pregnancy is more similar to the violinist case, this
d example can provide only relatively weak support for the conclusion that even if the fetus is
a person, abortion is nevertheless permissible in certain contexts (in particular, rape). This
minimal point seems relatively uncontentious, and it is enough to cast considerable doubt on
Thomson's strategy.

But I believe that it is not unreasonable to think that the "normal" pregnancy is much
more like the cabin and surgery cases than the violinist case. And many women have insisted
upon a related point: they have rightly argued that their being pregnant should not interfere
with their conducting their normal activities, including pursuing their professional activities.
If this is so, then despite the undeniable disruptions entailed by pregnancy, the normal
pregnancy would seem to be more like the cabin and surgery cases than the violinist case.

Of course, there are many pregnancies that are more difficult than the "normal"
pregnancy, and many of these are more like the violinist case in their degree of intrusiveness
and disruptiveness. How does this fact bear upon the analysis developed here? I can see (at
least) two possible ways of coming to grips with the undeniable variability of pregnancies.

First, one could (in an admittedly quite arbitrary fashion) divide pregnancies into
relatively "normal" and relatively "difficult" cases. Then the conclusion would be that
Thomson's violinist case provides support for her contention about the permissibility of
abortion only in regard to the relatively difficult cases. So, it would not follow from the
violinist case (together with ancillary considerations) that in general abortion is permissible in
cases of rape, even if the fetus is a person. This significantly attenuates the contention. (Of
course, it is not at all clear how this analysis could be applied, since the difficulty of the
pregnancy is not always evident when the decision about abortion is to be made.)

Alternatively, one could (in a somewhat procrustean fashion) lump together all pregnan-
cies and make some "on balance" judgment as to whether pregnancy is more like the violinist
case or the surgery and cabin cases. On this approach, I believe the fair thing to say is that
pregnancy falls somewhere in between the violinist case, on the one hand, and the surgery and
cabin cases, on the other. If this is so, then it is unclear what exactly to say about the moral status
of abortion (based upon the examples in question). What is clear is this: the violinist case in
itself does not provide strong and unambiguous support for the contention that abortion is permissible in certain cases, even if the fetus is a person: the analogy between pregnancy and the violinist case is not sufficiently strong to provide significant support for the contention. Indeed, in my view it is at least as plausible (if not more) to say that pregnancy is on balance more like the surgery and cabin cases than the violinist case (although this is admittedly a difficult and complex matter). So, on the first way of coming to grips with the variability of pregnancy, the contention for which there is strong support (provided by the example adduced by Thomson) is significantly attenuated. And on the second approach, the support for the (unattenuated) claim is significantly vitiated.

Consideration of the cabin case is also useful in the following way. It is plausible to suppose that Thomson's violinist case shows that (or at least suggests that) there is an important difference in respect of the moral status of abortion between cases of pregnancy due to rape and cases of pregnancy due to voluntary intercourse. Some might argue that there is this sort of difference between cases of rape and cases of voluntary intercourse using contraception (which fails). Others might argue that there is this sort of difference between cases of rape and cases of voluntary intercourse without the use of any sort of contraception. But I believe that the cabin case shows that this alleged difference does not exist, on the assumption that the fetus is a person.

To see this, remember that in the cabin case you do not in any way voluntarily undertake to subject yourself to the innocent stranger. If the violinist case is taken to be a case in which you have not voluntarily undertaken the risk of being hooked into a violinist, then equally the cabin case must be taken to be a case in which you have not voluntarily undertaken the risk of having to accommodate the innocent stranger. I suppose it could be argued that anyone who goes to a cabin in the Himalayas voluntarily undertakes the risk of accommodating strangers; but if this is so, then equally it could be argued that anyone who goes to sleep without proper security is subject to the necessity to accommodate violinists in distress. As regards voluntariness, there is no relevant difference between the violinist case and the cabin case.

Further, if there is a strong analogy between the cabin case and pregnancy, it would follow that even in cases of rape, abortion is impermissible, given that the fetus is taken to be a person. Even if one believes that the analogy is tenuous, this would be on the basis of considerations pertinent to self-determination (as discussed above), and not voluntariness. If the crucial issue in ascertaining the strength of the analogy between the cabin case and pregnancy is self-determination, this would indicate that the permissibility of abortion (given that the fetus is taken to be a person) does not depend on whether the pregnancy was induced voluntarily. Thus, whatever one concludes about the permissibility of abortion (based on the sorts of examples discussed above), one should not say that there is a difference in regard to the moral status of abortions based on whether they are caused by rape or by voluntary intercourse, given that the fetus is taken to be a person. Some philosophers who have considered the violinist case have argued that when the mother engages in voluntary intercourse she is responsible for the existence of the fetus and thus that the moral status of abortion in those cases would be fundamentally different from the moral status of abortion in the case of rape. It should be evident however from the above discussion that I believe that the violinist case does not establish or suggest any asymmetry between the moral status of abortion in the case of rape and in the case of voluntary intercourse; the violinist case is intuitively no more like pregnancy than the cabin case, and the cabin case lacks voluntariness in precisely the same way as the violinist case.