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ABORTION, AUTONOMY, AND CONTROL OVER ONE'S BODY*

By John Martin Fischer

I. Introduction

It is often thought that if a developing human being is considered a "person" from the beginning, then it would follow that abortion (at any time) would be impermissible. For, after all, a person has a stringent right to life, and because life is a prerequisite for enjoying any other goods, it is plausible that the right to life is a "basic" or "fundamental" one, not easily overridden by other considerations. The right to life, it would seem, could not be outweighed by another individual's preferences, even preferences about what should happen in or to her body.

Judith Jarvis Thomson, in her remarkable 1971 essay, "A Defense of Abortion," argues that even if we assume that a human fetus is a person, it does not follow that abortion is always impermissible.[1] Part of her argument is that, in some contexts, an individual's right to determine what happens in or to her body overrides another individual's right to life. To support this contention, Thomson offers her (now famous) "violinist example," which I shall describe in detail in the next section of this essay. The example raises subtle and difficult questions about the relationship between the right to life and the cluster of rights that constitute one's right to control over one's body. Furthermore, the example and its analysis raise important questions about the nature of autonomy.

In this essay I shall seek to show how certain ways of invoking autonomy cannot aid in a defense of Thomson's strategy of argumentation on behalf of the "pro-choice" position (according to which abortion is in some cases permissible). Ultimately, however, I shall argue that considerations of autonomy (and control of one's body) can be employed to

* I am grateful to Gideon Yaffe for various helpful conversations about the issues discussed in this essay. I have also benefited from the extremely knowledgeable and useful advice of David Boonin-Vail. David Hershenov has given me generous and useful comments. I have read versions of this essay to the philosophy departments at the University of Southern California and Utah State University; on both occasions I benefited from the discussions.

[1] Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1, no. 1 (1971): 47–66. Reprinted in William Parent, ed., *Rights, Restitution, and Risk: Essays in Moral Theory* (Cambridge, MA: Harvard University Press, 1986), 1–19. (Subsequent references will be to the essay reprinted in Parent, ed.) Thomson's essay has been widely reprinted and discussed in a voluminous literature. A good recent discussion is David Boonin-Vail, "A Defense of 'A Defense of Abortion': On the Responsibility Objection to Thomson's Argument," *Ethics* 107, no. 2 (1997): 286–313.

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support the pro-choice position. I shall argue that Thomson's violinist example is inadequate as it stands, but that it (together with Thomson's analysis) points us toward a more compelling defense of the pro-choice position.

II. A Puzzle

There are many cases in which it seems clear that we have to change our plans, or even allow our property to be used, in order to assist another person who needs help. If someone leaves a baby on my doorstep, or if I see a baby crawling toward a swimming pool, then I must (from a moral point of view) stop what I am doing and offer assistance. Of course, there are limits to what I am required to do; for example, I am not morally required to adopt the baby who has been dropped off on my doorstep. But I do have to help, and I think that there are cases in which most people would say that I can be morally required to change my plans considerably and to allow my property to be used in significant ways.

Consider an example given 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 in 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. . . .[2]

Of course, if you do these things, you acquire various obligations: you must explain to the owner what has happened, apologize for the intrusion and damage that you have caused, and make amends financially. But it would be a hard-hearted extremist who would deny that it is permissible for you to enter and use the cabin. If it is indeed permissible, then surely the owner could not legitimately prevent you from doing so. If members of the owner's security team were monitoring the cabin and could prevent you from entering, and if they actually took such steps, then their conduct would be outrageous and clearly unacceptable. Indeed, Thomson accepts such a conclusion about Feinberg's case.[3]

I think that it is not a significant step from the above judgment to the contention that the owner would have to allow you to enter, even if he (or

[2] Joel Feinberg, "Voluntary Euthanasia and the Inalienable Right to Life," *Philosophy and Public Affairs* 7, no. 2 (1978): 102.

[3] Judith Jarvis Thomson, "Rights and Compensation," *Nous* 14, no. 1 (1980): 3–15.

she) were actually in the cabin. Here, presumably, you would not need to smash a window to get in, nor to burn the furniture, and so forth. But it is also presumably true that you could be rescued soon, and you would only cause inconvenience to the owner briefly. Of course, here too, you would have to offer an explanation and an apology, and you would need to make amends.

Consider, now, a more extreme version of Feinberg's example. I originally presented this case a decade ago in a discussion of Thomson's argument for the pro-choice position:

> 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.[4]

Let us call this example the "cabin case." In this case it seems clear to me that it would be outrageous and unacceptable for you to prevent the innocent stranger from coming into or remaining in your cabin. After all, the stranger did not violate any of his duties in arriving at your doorstep. He was kidnapped. You do own the cabin, and it would cause you considerable inconvenience to allow the stranger to stay. But you must change or adjust your plans, put up with the significant inconvenience, and provide shelter and sustenance to a complete stranger. Or so it appears to me.

But now consider Thomson's well-known example:

> You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He

[4] John Martin Fischer, "Abortion and Self-Determination," *Journal of Social Philosophy* 22, no. 2 (1991): 5–13, esp. 6.

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> 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?[5]

Thomson thinks that it would be outrageous to suppose that you had to stay in a hospital room for nine months plugged into the violinist. (In contrast to the cabin case, where it seems impermissible to cast off the suddenly appearing stranger, here the outrage seems to be "on the other side," as it were.) Thomson thinks that it is clear that you need not continue to be plugged into the violinist, and thus you may unplug yourself or consent to having someone else unplug you, thereby bringing about the death of the violinist.

Of course, the violinist is an innocent person with a stringent right to life. But, according to Thomson, your right to determine what happens in or to your body outweighs the violinist's right to life in this situation. In general, the idea that an individual has a right to life does not entail that anyone else is required to give him or her whatever is needed to sustain life. And this is a context, on Thomson's view, in which you need not provide the violinist with what he needs in order to continue living. By analogy, she wishes to argue that even if we assume that a human fetus is a person (and thus has a stringent right to life) from the moment of conception, it does *not* follow that abortion is never permissible. The violinist example shows, according to Thomson, that abortion would be permissible in cases of rape; the pregnant woman's lack of consent to the sexual intercourse is parallel to your lack of consent to having the violinist connected to your kidneys. (Thomson also defends the permissibility of abortion in contexts other than rape, such as the context of voluntary intercourse when there is contraceptive failure; but she employs other examples and considerations in these contexts.)

When I first thought about Thomson's violinist case, I agreed with her intuition that it would be perfectly permissible for you to unplug yourself. As she points out, we have duties to be what she calls "Minimally

[5] Thomson, "A Defense of Abortion," 2–3.

Decent Samaritans"; thus we have a duty to perform easy rescues, such as saving a baby who is heading toward a swimming pool. But we do not have a duty to be "Good Samaritans," and remaining plugged into the violinist would seem to be an act of Good Samaritanship (and, thus, above and beyond the call of duty). I also accepted Thomson's suggestion that the violinist example is analogous to that of pregnancy due to rape. The problem, however, is that I also find it plausible in the cabin case that I must allow the stranger to stay for the nine months, as I stated above.

Here, then, is a puzzle: Why is it permissible in the violinist example but not the cabin case to act so that the innocent person dies? And here is a related puzzle: If indeed the examples are morally different in the way that I have suggested, which is more closely analogous to the context of pregnancy due to rape?

III. The Right to Control One's Body

Someone might think that there is a pretty clear difference between the violinist example and the cabin case that, in fact, makes the moral difference. In the violinist case, you are being asked to allow the violinist to remain in direct contact with your body. Additionally, parts of your body—your kidneys—are being used by the violinist to filter toxins out of his body. So there is direct contact with parts of your body, and parts of your body are being used by another, all without your consent. In contrast, in the cabin case you are asked to sacrifice your plans and your property, but not your body. There is no direct contact with your body, and your body or parts of it are not being used to provide assistance to someone else.

I think that the notion that we all have the right to control our bodies—that is, to determine what happens in or to our bodies—is a deeply important idea. Presumably, it is part of a cluster of rights that constitute the more abstract right to personal autonomy. It is not, however, a straightforward task to interpret or give content to the right to control one's body in the relevant way—namely, the right to determine what should happen in or to one's body. I shall begin by pointing out that on certain natural ways of understanding this right, it is not useful to our project of distinguishing between the cabin and violinist examples, because it is not plausible that the right, so understood, outweighs another person's right to life.

So, let us suppose that the right to determine what happens in or to our bodies is the right that someone else not be in contact with our bodies and use them without our permission. This formulation is very rough; we obviously need further specifications of the notions of "contact" and "use." For example, the violinist's contact with my kidneys is mediated by a set of tubes and a medical device, but this still is supposed to count as the relevant sort of contact. I think that it would not be easy to specify just the sorts of contact and use that are to be ruled out, but I shall leave these matters aside.

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To see the problem with this suggested interpretation of the right to control one's body, consider the following variant on Thomson's violinist case.[6] In the "surgery variant," you are in a terrible accident, and you must have major surgery. Because of the nature and extent of the surgery, you must stay in a hospital bed (hooked into a complicated medical apparatus) for nine months. Now the story proceeds just as in Thomson's violinist case: a representative of the Society of Music Lovers introduces himself one morning, saying that they have connected a great violinist to your kidneys. . . . In this thought experiment it was easy to connect the violinist up to you, as the apparatus had a ready-made kidney hookup.

My intuition in this variant on Thomson's original case is very different from my initial intuition about her violinist example. I am inclined to think that it would be impermissible for you to detach yourself from the violinist in this variant and thereby cause his death. And yet, here, the violinist would be in contact with and using your body in just the same way in which he used your body in the original violinist example.

We could imagine another version of the surgery case. Suppose, as above, that you have had surgery and must stay in a hospital bed for nine months. But now imagine that for some reason the violinist must be connected to an exotic medical device that, in turn, must be connected to a patch of your skin. The device scans the skin and uses the information to keep the violinist alive. The information from your skin is the only way that the violinist can be kept alive for nine months. Here, again, I think it would be impermissible for you to cause yourself to be unplugged from the violinist. So, under certain circumstances (such as if you are confined to the hospital already), it seems to me that you can be required to remain in contact with another person and allow that other person to use your body in order to stay alive.

In an intriguing article, David B. Hershenov has presented a set of examples by means of which he also contends that it is evident that sometimes one must allow another individual to be in contact with and use one's body (and in Hershenov's examples the duration of the assistance is extensive).[7] Here is one of his examples:

> The . . . scenario . . . involves two people on a birdwatching trip who become entangled in ropes on an elevated platform that contains a trap door. If the door should open, they will fall twelve feet to the ground. Neither person is in any way responsible for his own or the other person's predicament. The cause of their bad luck is a sadist

[6] I presented this example in Fischer, "Abortion and Self-Determination," 7. The example was originally suggested to me by Alexander Rosenberg.

[7] David B. Hershenov, "Abortions and Distortions: An Analysis of Morally Irrelevant Factors in Thomson's Violinist Thought Experiment," *Social Theory and Practice* 27, no. 1 (2001): 129–48.

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> who has put his ropes above a hole he has dug in the forest floor just to torment strangers.
>
> Their luck is about to worsen, for they each know that in about fifteen minutes the trap door will indeed open and they will fall to the ground. Let's just assume that the two unfortunates can predict with the utmost certainty what will happen to them when they fall. Because of the way they are positioned, the much larger person will hit the ground first and his body will shield the smaller person from all injuries. The larger person knows that due to the way he will hit the ground, he will suffer nine months of intermittent back pain, nausea, and abdominal swelling comparable to what a pregnant woman bears. But if the larger person is released from the ropes, which can be done only with the help of a third party, then he will be free from harm. The larger man will not fall at all since he has been disentangled from the ropes, while the smaller man, instead of being cushioned and shielded by the former, will die upon impact due to the position his body will be in when he hits the ground.[8]

About this example, Hershenov says:

> I would be utterly aghast at the actions of any third party who, without even the pain-avoidance motivation of the larger person on the platform, enables the latter to escape some discomfort, which results in the death of the smaller person. My attitude is that it would also be very wrong for the larger person to deliberately maneuver out of the ropes and thus bring about the death of the other innocent person. . . . [T]he larger person doesn't seem to have the right to opt out of the burden that Thomson believes women who don't wish to continue a pregnancy are entitled to opt out of. Thomson obviously considers it horribly unfair that an abortion-seeking woman who insists, "This body is *my* body," will find her protests to be as futile as "shouting into the wind." Yet when these same words that Thomson puts in the mouth of the pregnant woman are uttered by the larger person entangled in ropes, they have little appeal. That such protests fall on deaf ears does not seem at all objectionable.[9]

Now I am inclined to agree with Hershenov that the larger person may not permissibly detach himself. I believe that this case buttresses the moral that I drew from the surgery cases discussed above: that the right to control one's body, interpreted as the right that another individual not be in contact with and use one's body, does not always outweigh an innocent person's right to life. Thus, this right cannot help to resolve the

[8] Ibid., 134.
[9] Ibid., 134–35.

puzzle of how to distinguish between the cabin and violinist cases. I should point out, however, that there is a further set of questions about how all of the above cases relate to abortion. As I shall argue below, Hershenov's suggestion that his case is relevantly similar to a case of a pregnancy due to rape is seriously misguided.

IV. Autonomy

In my previous essay, "Abortion and Self-Determination," I argued that the cabin case and the violinist case are crucially different because they involve different sorts of infringement of self-determination or autonomy. (I shall henceforth use the term "autonomy" to refer to the sorts of self-determination in question.) My argument was basically as follows.

Begin by noting that there is a "nonabsolute," as well as an "absolute," conception of autonomy. On the absolute conception, all cases in which one's plans or projects cannot be pursued, or one's preferences are not met, count as equally severe violations of the right to autonomy. I do not think that our ordinary notion of the right to autonomy, or the set of constraints that protect this right, is absolute in this sense. Or perhaps we have such an absolute conception, but also a nonabsolute conception, which play important roles in our moral views. On the nonabsolute view, autonomy admits of degrees, and there can be degrees of severity of violations of the right of autonomy.

The nonabsolute conception of autonomy needs some kind of relatively "objective" specification of "central" or "important" activities or choices. On this approach, one's actual preferences (and their degrees of strength) need not correspond to the objective ordering of centrality or importance of activities, and interferences with more central or important activities constitute more significant violations of the right to autonomy. By an "objective" account I mean an account that does not take as decisive the individual's point of view. The relatively objective account may be specified by the "reflective equilibrium" of the relevant community.

For example, on the one hand, we would take it as a significant restriction of our autonomy if the government prohibited individuals from driving cars with internal combustion engines. On the other hand, a requirement that cars be inspected regularly to make sure that they meet emissions standards would be a less significant restriction of one's autonomy, as would a requirement to install catalytic converters to reduce undesirable emissions. Also, the rule that prohibits driving faster than sixty-five miles per hour on a freeway in California may thwart one's preferences from time to time, but it is not a significant restriction of one's autonomy (especially as compared to a blanket prohibition on driving).

Rules prohibiting freedom to express oneself or to read what one wishes would significantly restrict our autonomy. But rules that regulate (in a reasonable way) the contexts in which expression is allowed need not be

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significant restrictions on autonomy (quite apart from some individuals' preferences). So, for example, a rule that proscribes the use of bullhorns in a residential neighborhood late at night is not nearly as significant a restriction on autonomy as a rule that, say, prohibits private reading of certain newspapers, magazines, or literature.

Given this admittedly rough and vague characterization of the non-absolute conception of autonomy, my contention in my earlier essay was that there is a significantly greater violation of the right to autonomy in the violinist example than in the cabin case. In the violinist example, if you are indeed required to stay in bed hooked into the violinist, then this may well interrupt plans and projects that are important to you. Let us say that you are a lawyer in the middle of a major trial, or a professor in the middle of a semester of teaching, or a psychotherapist who is giving therapy to many patients, and so forth. In all of these cases your sudden unavailability would be a major problem for you (as well as for others). Also, it would be a significant imposition on you if you were a parent in charge of a family. Being required to stay hooked into the violinist involves a significant disruption of your plans, projects, and commitments, and it is a disruption about which you had no prior warning. Here, it is helpful to contrast the original violinist example with the surgery variant: in the surgery variant the requirement to stay plugged into the violinist takes place against a different "baseline," one by reference to which there are already few opportunities to pursue your normal activities. As a result of the surgery your central projects and plans already have had to be adjusted.

I argued, further, that the cabin case is more similar to the surgery variant than to the original violinist example. I put the point as follows:

> 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.[10]

I concluded that the violinist example posits a more significant violation of your right of autonomy than does the cabin case, and thus the two cases are fundamentally different.

Upon further reflection I am now disinclined to think that the notion of autonomy can be invoked in this way to solve the puzzle of distinguishing the cabin case from the violinist example. To begin, note that (quite apart from any intentions of the Society of Music Lovers) you might

[10] Fischer, "Abortion and Self-Determination," 8.

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well have decided to take a "sabbatical" and to live a simple, meditative existence for nine months, not leaving your room (except to take care of certain necessities). You might have planned to read and reflect quietly for nine months. Even so, I doubt that anyone who believes that you do not have a duty to stay hooked up to the violinist in Thomson's original case will say that you do, in fact, have such a duty in my new version of the case. Thus, I am skeptical that what is doing the work in the original violinist case is the significant violation of autonomy to which I pointed in my earlier essay.

Further, one can also adjust the cabin case as follows. Suppose that the trip to the Himalayas is no "mere retreat." You are a writer, and given your (admittedly somewhat eccentric) character, you simply cannot write if there is anyone in your vicinity, especially a stranger literally living with you. Your ideas are finally ready to be written out, and you have devoted a good part of your professional life to preparing for this year of writing; you doubt whether you will ever have such an opportunity again.

In this revised version of the cabin case, it seems to me that you *still* need to take in the innocent person and allow him to live with you for nine months. And note that this would involve a significant violation of your autonomy insofar as your pursuit of your long-planned professional project would be stymied. Thus, it does not seem that we can invoke the notion of autonomy in the way that I sketched in my earlier work in order to solve the puzzle about the original violinist example and the cabin case.

Further support for this conclusion comes from another example presented by Hershenov:

> [The example] involves a dedicated marine biologist anchored on a research raft many miles from shore. He has made arrangements for a boat to pick him up in a number of months. His raft is crowded with necessities such as food, water, and medicine, as well as expensive equipment. The hundreds of thousands of dollars of equipment, which he spent years saving for, then assembling and modifying, as well as the preparatory data he has collected, are irreplaceable. He has spent most of his adult life saving and preparing for this project. It is fair to say that this project gives his life meaning.
>
> A cruise ship sails by the researcher, the passengers wave to him, and he hollers greetings in return. Suddenly the ship explodes and debris from the accident destroys the researcher's radar reading, preventing him from sending an SOS. No one on board the ship had any time to radio for help. Everyone on the ship died in the explosion or drowned, except for one small child who will soon succumb to the frigid waters if not pulled from the sea. But there is no room on the raft for the child unless all of the irreplaceable expensive equipment

> and data are thrown overboard and forever lost. Even then, the raft will still be so crowded that either the child will have to sit on the lap of the biologist, or the latter will have to sit and sleep in an awkward position pressed against the child. Either arrangement will cause the researcher months of discomfort equivalent to that of pregnancy or the predicament of the person supporting the violinist.[11]

This case seems to me parallel in relevant respects to the revised cabin case. Also, Hershenov goes on to say about his case:

> My intuition, and that of nearly all of those I have informally polled, is that the marine biologist *must* save the child even though it means abandoning his life's work, taking on months of physical discomfort, and facing a future in which his life's project goes unfulfilled since he doesn't have the time or resources to plan a second expedition.[12]

Hershenov's example of the researcher and the cruise ship involves both a significant violation of the researcher's autonomy and also direct contact with the researcher's body. Hershenov concludes from his examples and supporting analysis that you must stay hooked up to the violinist in Thomson's example.

In contrast to my view in my previous article, I am now inclined to agree with Hershenov. It seems to me that you must stay hooked up to the violinist. I start with a very strong and clear intuition that the owner of the cabin in Feinberg's example may not prevent you from entering the cabin (and using its contents). Further, I do not think that the owner's duties would be any different, if he were in the cabin and you could not be rescued for nine months. Additionally, it would make no difference to me if this constituted a significant violation of the owner's autonomy (if, for example, the owner could not pursue a central project because of your presence). Finally, I am not convinced that what distinguishes Thomson's violinist example from such cases is the fact that in Thomson's example you would be in direct contact with the violinist's body, and he would be using part of your body. After all, you must sacrifice some autonomy in the surgery variant and in Hershenov's two cases. Thus, I am inclined to conclude that my initial intuition about Thomson's violinist example was wrong, and that it is impermissible to unplug yourself from the violinist.

V. Rape, Abortion, and the Special Status of Pregnancy

I now want to turn to the second puzzle that I mentioned above at the end of Section II, that is: What is the relationship between cases such as

[11] Hershenov, "Abortions and Distortions," 133.
[12] Ibid.

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the violinist example and the cabin case (and, for that matter, Hershenov's cases of the birdwatchers caught in ropes and the researcher and the cruise ship), on the one hand, and pregnancy and the permissibility of abortion, on the other? Most critics of Thomson have argued that although it is permissible to unplug yourself in the violinist example, it is *not* permissible to have an abortion. Thus, they have argued that there are important disanalogies between the violinist example and the context of pregnancy. As Hershenov puts it, "Rarely found is a critic of Thomson who argues that since one *must* support the violinist, one therefore must support the fetus."[13] Hershenov goes on to say, "However, in this paper I shall defend just such an unpopular view. I will try to convince the reader that to disconnect the violinist would be an injustice."[14] What is striking about this passage is Hershenov's contention that it is obvious that, if it is an injustice to disconnect the violinist, then it would similarly be an injustice to have an abortion (given that a human fetus is assumed to be a person).[15] I shall argue that Hershenov's contention is problematic. Thus, although I now believe that one must not unplug oneself from Thomson's violinist, I do not think that this implies that abortion would always be impermissible, even on the assumption that the fetus is a person. So I will join some of Thomson's critics in contending that there are disanalogies between the violinist case and the context of pregnancy, but the disanalogies that I identify will point in precisely the opposite direction: they show that even if one must remain plugged into the violinist, it need not follow that abortion is impermissible.[16]

I want to emphasize at this point that I am not here presenting what I take to be an argument for the permissibility, all things considered, of abortion; I am simply pointing to various factors in virtue of which I contend that the context of pregnancy due to rape differs from the violinist case. Further, I do not claim that all of these factors are of equal moral significance. My contention here is simply that *it does not follow* from the necessity of remaining plugged into the violinist that abortion is impermissible.

Thomson's violinist example is plausibly thought to be analogous to a case of pregnancy due to rape. But there are differences between the two contexts. As Rosalind Hursthouse has emphasized, rape is almost always a violent, brutal, and physically and psychologically painful experience

[13] Ibid., 131.

[14] Ibid.

[15] Hershenov is not arguing for the pro-life position. Rather, his view is that abortion cannot be defended by the sorts of considerations that are invoked by Thomson, on her assumption (which Hershenov elsewhere denies) that a human fetus is a person from conception. Hershenov, 148.

[16] Rosalind Hursthouse develops many of the same disanalogies. See Rosalind Hursthouse, *Beginning Lives* (Oxford: Blackwell Publishers, 1987), 178–216. Although we identify some similar disanalogies, Hursthouse focuses primarily on what I shall call "standard" cases of rape. Also, I shall point out in the text that our analyses of their significance differ.

for the woman who is raped. Let us begin with a typical rape, in which there is violent and painful nonconsensual imposition of sex on the woman. If pregnancy results, the woman now has in her body a developing human being with her genetic material conjoined with that of the rapist. Thus, to force the woman to carry this pregnancy to term would be to force her to bring into the world a child with her genes; this may well be something to which she deeply and legitimately objects, especially given that she may not want to keep the baby. Even if a mother plans to put a baby up for adoption, she may well object to being forced to bring into being a child with her genes—a child whom she cannot or will not care for, but about whom she would naturally have deep concerns.

Worse yet, to force the mother to carry this fetus to term would be to force her to bring into the world a child who has both her genes and those of the man who brutally victimized her. Again, she may object to having to bring into being a child that is in this way partly hers and partly his. I believe that she has a right that her genetic material not be fused with his in this way. The entire process of nurturing the fetus in pregnancy could not help but remind the mother of the brutal and painful rape. Further, if she should come into contact with or hear about the child (or adult) in the future, this would typically remind her of the pain and violation to which she was subjected. The mere knowledge that this individual exists, quite apart from any contact with him or her, would be likely to produce such feelings. And yet there would also be natural feelings of affection and identification with the developing fetus and then the child (and adult), should the mother be forced to carry the pregnancy to term. These ambivalent feelings would likely create a kind of mental torture that would be inflicted upon a mother, if she is not allowed to have an abortion.

I agree with Hursthouse, then, that in a case of pregnancy due to rape, typically there are features that are not present in the violinist case or the other cases discussed above. In the rape case, there is a distinctively brutal kind of sexual violation that then issues in a fetus with the genetic material of the mother fused with that of the rapist. If an abortion is not permitted, then the mother will have to nurture inside her—in the distinctive ways that a mother biologically supports a developing human organism—a being with her own genetic material and that of the rapist. Further, she will be forced to bring into the world such a being. Of course, there is nothing like this in the cases discussed above: the violinist does not have your genetic material (and your genes are not fused with those of a brutal victimizer). Although in the violinist case you are seriously inconvenienced, you are not painfully assaulted sexually. Future awareness of the violinist (perhaps attending his concerts or hearing his music on a compact disc) would certainly remind you of a period of some discomfort and inconvenience, but it would not evoke memories of the distinctively horrible kind of pain and victimization involved in rape.

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I suppose someone might say that in a case such as Hershenov's example of the researcher and the cruise ship, the researcher might be significantly traumatized by the explosion of the ship and the subsequent deaths of many innocent people (which he might have witnessed). The child might always remind him of these terrible events. Perhaps this sort of trauma could be as horrible as the distinctively personal and sexual brutality of rape, but I am not sure of this. In any case, Hershenov's example would lack the feature of a being coming into existence with the mother's genetic material fused with that of her victimizer.

Indeed, Hershenov constructs his examples in such a way as to focus on what he takes to be parallel levels of sacrifice, pain, or burden between a pregnant woman and the relevant individuals in his thought experiments. Recall that he says about the researcher and the child:

> Even then, the raft will still be so crowded that either the child will have to sit on the lap of the biologist, or the latter will have to sit and sleep in an awkward position pressed against the child. Either arrangement will cause the researcher months of discomfort equivalent to that of pregnancy or the predicament of the person supporting the violinist.[17]

And Hershenov says about the birdwatchers entangled in ropes:

> Because of the way they are positioned, the much larger person will hit the ground first and his body will shield the smaller person from all injuries. The larger person knows that due to the way he will hit the ground, he will suffer nine months of intermittent back pain, nausea, and abdominal swelling comparable to what a pregnant woman bears.[18]

It is striking in these passages that Hershenov focuses on alleged parallels between the levels of pain, discomfort, and inconvenience that are suffered by the individuals in his examples and by pregnant women. I think that he may too easily assume that such parallels exist, especially when pregnancy is due to rape. Whereas a parallel of this sort may in fact be present in some elaborate examples, an exclusive focus on this set of dimensions leaves out crucial *differences* between the examples and pregnancy due to rape. Hershenov, thus, loses sight of the special problems stemming from the existence of a fetus who has the mother's genetic material together with that of her rapist.

My previous discussion of these issues was mistaken in a similar way. In "Abortion and Self-Determination" I wrote:

[17] Hershenov, "Abortions and Distortions," 133.
[18] Ibid., 134.

> 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.[19]

Again, the focus on the "difficulty" of the pregnancy hides other relevant differences between *all* of the cases (violinist, surgery, and cabin) and pregnancy due to rape.

There may be other cases of rape that are a bit different from what might be called the "standard" kind of case. I am now thinking of the phenomenon of "date rape," in which someone surreptitiously, say, slips into a woman's drink a drug that renders her unconscious and thus vulnerable to sexual exploitation. The drug may induce subsequent amnesia or only partial memory of the episode. Let us suppose that a woman becomes pregnant as a result of date rape of roughly the kind that I have just described. It might now be suggested that she would not have the same sort of traumatic associations that would be present in a woman who was forced to carry a pregnancy to term in a standard case of rape. But this suggestion is too facile.

Although the resonances would no doubt be different, they still would be significant and disturbing. The woman would still know that she had been exploited and victimized, even if she had been unaware of this victimization as it happened. Further, she now knows that her genetic material is fused with that of her victimizer. If she is prevented from terminating the pregnancy, then she would be forced to bring into the world a baby who is in this way both hers and that of her victimizer. No one should be forced to do this, in my view. Her inevitable awareness of the child (and the adult) in the future could not help but remind her of her victimization, and I believe that she has the right to decide whether or not she wishes such a being to come into the world.

VI. Autonomy and the Right to Control One's Body Revisited

As far as I know, Rosalind Hursthouse is the only other philosopher who has defended the claim that whereas it may well be unacceptable to detach oneself from the violinist in Thomson's original example, it does not follow that it would be impermissible to have an abortion in the case

[19] Fischer, "Abortion and Self-Determination," 10.

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of rape.[20] I have considerable admiration for Hursthouse's description of the ways in which the context of pregnancy due to rape differs from the violinist example, a description that focuses on many of the same features that I have identified above. We do, however, have a difference of opinion about how ultimately to interpret the relevant phenomena.

Hursthouse criticizes Thomson for what Hursthouse takes to be an exclusive focus on moral rights; she believes that the conceptual scheme of rights is insufficiently nuanced to capture all the relevant facts about abortion. Hursthouse says:

> [Thomson's article discusses] abortion in terms of the right to determine what happens in or to one's own body. No other real case of killing involves the exercise of this right; abortion does and is thereby unique. However, that abortion, as a case of killing, uniquely involves the exercise of the right is far from being its only special feature, and I would maintain that the fundamental flaw in Thomson's article is that this is the only special feature she clearly recognizes. This flaw underlies her singular concentration on rights. . . .[21]

In a later passage, Hursthouse says:

> That pregnancy is utterly unlike the violinist situation in these different ways is, of course, perfectly obvious, though all too easily forgotten in the context of abstract philosophy. What is not so obvious is why they are morally relevant. They are relevant because abortions are sought for reasons which connect with these facts.
>
> It is a notable aspect of Thomson's article that very little is said about women's reasons for wanting abortions. . . . Now this is once again the result of the preoccupation with rights and hence with acts which are unjust; for the injustice of an act is largely determined by whether or not it violates rights, independently of the agent's reasons for acting so.[22]

Hursthouse then takes it that an "abstract philosophy" that focuses on rights cannot account for the subtle and complex reasons why women would want abortions. She is thus inclined away from a rights-based moral philosophy and toward some sort of Neo-Aristotelian, virtue-based approach.[23]

In contrast to Hursthouse, I am not inclined to think that the disanalogies between such cases as the violinist example and pregnancy due to

[20] Hursthouse, *Beginning Lives*.
[21] Ibid., 204–5.
[22] Ibid., 207–8.
[23] Ibid., esp. 218–37.

rape can only be captured by moving away from a rights-based morality. Actually, I think that they point us back toward the ideas of autonomy and the right to control one's body—the right to determine what happens in or to one's body. Perhaps above interpretations or uses of the notions of autonomy or the right to control one's body were too crude, and a more refined analysis of these ideas is called for. Although I cannot give a systematic or detailed refinement, I shall sketch the direction in which such an approach might go.

Start with the basic idea that persons have a right to autonomy. Now this right is an abstract right, composed of a bundle of more specific rights. One of these rights, presumably, is the right to control one's body: the right (as Thomson puts it) to determine what happens in or to one's body. One interpretation of this right is the right that someone else not be in contact with one's body, thereby using some part of it. The discussion above suggests that this is not the correct interpretation of this right, insofar as this right is supposed to outweigh another individual's right to life. An alternative interpretation, suggested by the above discussion, includes the right not to be forced to carry to term—to nourish and biologically sustain in the distinctively human way—an entity in which one's genetic material is fused with that of someone who has victimized one in certain ways. I think that it is plausible that a woman has the right to control her body, interpreted in this way. So understood, we do not yet have any example in which another's right to life outweighs this right.

I have suggested what I have called an interpretation of the content of the right to control one's body. Alternatively, the proposal could be that we need properly to specify the members of the bundle of more specific rights that compose the right to control one's body. Presumably there is a hierarchy of rights, with the right to autonomy being relatively abstract or general. It is composed of a bundle of more concrete or specific rights, including the right to control one's body. This right, in turn, is composed of a bundle of more specific rights, including the right not to be forced to have one's genetic essence fused with that of one's victimizer and allowed to become the blueprint of a being that is nurtured and brought into the world in the distinctive way in which a mother nurtures a developing fetus and brings it into the world.

By refining one's analysis or interpretation of autonomy, Thomson's basic idea can be defended, and one need not depart from a rights-based approach in order to capture her fundamental, intuitive ideas. She started with the idea that even if a fetus has a stringent right to life from conception, there are certain circumstances (such as rape) in which abortion would be permissible. Further, she explained the permissibility of abortion in those circumstances in terms of a woman's right to determine what happens in or to her body. I think that this points us in exactly the right direction. It may be that the violinist case does not capture the specific way in which it is unacceptable to use or violate another's body,

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but it does not follow that human beings do not have the right, suitably interpreted, to determine what happens in and to our bodies. More specifically, it does not follow that a woman does not have a right to determine whether she brings to term—nourishes and biologically sustains—an entity whose genetic material is fused with that of someone who has victimized her in certain ways, a right that is arguably stronger than the fetus's right to life.

VII. An Objection

I believe that something like the above rudimentary sketch of an autonomy- and rights-based account can adequately support Thomson's basic intuition about the permissibility of abortion in cases of rape. One might, however, feel a residual dissatisfaction with my account. Let us suppose that we could involuntarily render a woman unconscious (perhaps using the "date rape" drug that I referred to above) and then implant in her a fertilized egg, which, in this case, is someone else's. Now it would surely be just as objectionable to require this woman to carry the pregnancy to term here as it would be in the two previous rape cases. And yet the woman's right to control her DNA—that is, the right that she not be forced to allow her DNA to be fused with that of her victimizer and to bring the new being into the world—does not apply here.

I still would want to say that abortion is permissible in a context such as this. Recall what I said above about a previous case: "If an abortion is not permitted, then the mother will have to nurture inside her—in the distinctive ways that a mother biologically and emotionally supports the developing human organism—a being with her own genetic material and that of the rapist." The case now under consideration shows how the various elements of this quotation can pull apart: a woman could (hypothetically at least) be forced to nurture inside her—in the distinctive ways that a mother biologically supports the developing organism—a being who does not possess her genetic material. And a woman may find this also unacceptable.

I think that this case shows that another more concrete right in the cluster of rights that constitutes the right to control one's body must include the right not to have one's body used against one's will to nurture a developing organism in the distinctive way that a mother biologically supports the developing human organism. Even if the genetic material is not the mother's own, there is a natural tendency to develop feelings of identification with the organism developing inside her. These feelings and emotional identifications are deep. A woman who was forced to be subject to these feelings, knowing that she was exploited and victimized in the implantation of a fertilized egg from which an organism developed, would typically have feelings of ambivalence and resentment not unlike those that I sketched above. I believe that it is unacceptable to require a

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woman to be tortured in this way. Note that, as above, the torture would not stop once the child was born, for the memories of exploitation in this particularly personal and "biologically deep" way would likely persist throughout her life. Again, I believe that the proper analysis of this admittedly somewhat far-fetched and difficult kind of case will start with the notions of autonomy and the right to control one's body. Here, as with the other cases of rape, what emerges is the need for a more refined interpretation of the right to control one's body. The problems stem from the distinct sort of victimization that is involved in rape (or, more broadly, the involuntary causation of pregnancy).

In exploring whether there is a moral difference between Thomson's violinist example and his birdwatchers case, Hershenov says:

> Could the difference be due to the distinction between being dependent on the inside rather than the outside of someone's body? I don't think this distinction is psychologically or morally pertinent. The irrelevance of any inner-outer distinction can be highlighted by the fact that the burdens that the larger person suffers from the impact turn out to be internal in nature—nausea, spinal problems, and abdominal swelling—though the latter can also be classified as an external effect. So while an internal organ is not used in the way the kidney is, it is internal organs, tissues, and bones that are adversely affected by the fall.[24]

But the morally relevant factors are not *simply* "internal." I have suggested that they pertain to one's biological essence and also the distinctively human process of biological development—the way in which a mother biologically supports the developing organism and is deeply emotionally affected by this process. Internal organs, tissues, and bones may be adversely affected by the larger birdwatcher's fall, and this may result in serious pain and suffering. But I would contend that this suffering is of an importantly different nature than the specific form of suffering that is endured by a woman who is forced to carry to term a pregnancy induced in the ways that we have envisaged—by brutal victimization or even insidious victimization. The "internal/external" distinction is not sufficiently refined to capture this difference. What is at stake, at the most fundamental level, is the woman's right to control her reproductive capacity.

VIII. A Further Clarification

Consider the following modification of the researcher and raft scenario proposed by Hershenov (who, now, substitutes a female for the original male researcher):

[24] Hershenov, "Abortions and Distortions," 136.

> Years earlier, the researcher had one of her eggs involuntarily taken from her body. She was aware of and horrified by this invasion. Then the egg was fertilized by the man responsible for the invasion of the woman's body. Assume that a second woman voluntarily carried the fetus to term. The resulting child, genetically tied to the wronged woman researcher and the man who wronged her, is on the cruise ship. The tremendous blast of the cruise ship sends the child onto the research raft, where it imposes on the woman's body. (The researcher knows that this child is genetically her own.) The researcher must push into the water either the child or her irreplaceable equipment since there isn't room on the raft for both.[25]

Hershenov asks whether my intuition is that the woman does not have to support the child. As Hershenov points out, the researcher is faced with providing nine months of bodily support to the child of the man who violated her bodily integrity. The child, unlike the fetus, may even look like the evil man. One can similarly ask whether one's intuitions about the cabin case would change, if the individual who arrives at one's doorstep had been created as the result of the sort of process described above, or, say, the theft of one's sperm.

I reply that my view is not that one has some sort of right to destroy—or to fail to assist—any person who was created as a result of one's genetic material having been involuntarily taken, whether egg or sperm. Surely, even if a man's sperm has been stolen from a sperm bank and used, without his consent, to fertilize an egg, the man has no right to kill the resulting child. Rather, my view is that a woman has the right to control her reproductive capacity: she has the right not to be forced to nourish and sustain and bring into the world a baby who was conceived as a result of rape. Because of the intimate and distinctive nature and meaning of this biological process, and the typical physical and emotional changes that it induces in a woman, she has the right to control it. But once such a child has been brought into the world, the structure of one's rights and obligations changes.[26]

[25] Hershenov, personal correspondence to the author, August 23, 2001.

[26] It might be thought that if a woman has the right to control her reproductive capacity in the way that I have suggested in the text, then it should not matter whether the pregnancy was due to rape. Even if the pregnancy were due to voluntary intercourse without the use of contraception, it would seem that the mother's right to control her reproductive capacity would imply the permissibility of abortion. After all, the fact of rape does not in any way diminish the fetus's rights or status.

I am not in fact committed to the contention that the fact of rape makes the sort of difference that I have indicated above in the text. But I would point out that, although rape does not in any way diminish the fetus's status or right to life, it may well change how we weigh the totality of factors that go into our all-things-considered judgment about the permissibility of abortion. Given that the fetus is assumed to be a person, it may be that a woman's right to control her reproductive capacity does not imply the permissibility of abortion, given that she has not used contraceptive measures and has had voluntary intercourse. This is a delicate and difficult issue.

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IX. Conclusion

Some critics have contended that Thomson's well-known violinist example is disanalogous in an important way to the context of pregnancy. They have typically thought that, whereas it is permissible to unplug yourself from Thomson's violinist, it is *not* permissible to have an abortion. They have suggested that abortion is a case of killing, whereas unplugging yourself would merely be a case of letting die, or that abortion is intentional killing, whereas unplugging yourself is merely unintended but foreseeable killing, and so forth. Many other alleged asymmetries have been suggested by Thomson's critics. I too have highlighted asymmetries, but they have been in service of precisely the opposite conclusion: Although it is not permissible to unplug yourself from the violinist, it is permissible to have an abortion in certain circumstances, in particular, in the context of rape.

I have contended that other critiques either fail to take note of the distinctive wrongness of forcing a woman to bring into the world a baby conceived as a result of rape, or they too quickly conclude that this distinctive wrongness cannot be understood in terms of the right to autonomy and, thus, the right to control one's body. Thomson's violinist example may be crude in certain ways, but it points us in the right direction. Surely it *is* outrageous to force a woman to acquiesce to her most essential biological feature—her DNA—being used in the way in which it is used in a case of pregnancy due to rape. It is, surely, equally outrageous to force a woman to allow her reproductive capacity to be used against her will. So, even if a fetus is assumed to be a person from conception (an assumption that I am not inclined to make), and even if it is unacceptable to unplug yourself from the violinist, it would *not* follow that abortion is in all contexts impermissible.

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