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Abortion and Self-Defense

What I shall call the *Moderate* view about the morality of abortion is the view that abortion is often (though not necessarily always¹) morally defensible (even) in circumstances in which the continuation of the pregnancy does not pose a threat to the pregnant woman's life.² I wish to

1. There are many factors that bear on any particular abortion decision, thus the statement of the three positions must be qualified, and that is what the phrases in parentheses are meant to indicate. But recognizing the need for qualification should not incline us to suppose that none of the three positions (or my statements of them) can possibly be satisfactory since they are not meant to represent formulas that can be mechanically applied to cases, but rather (different) approaches to the question of how we are to determine the range of morally defensible abortions.

2. I shall refer to the prospective abortion candidate not as "the mother," but as "the pregnant woman," or, where context permits, "the woman." This encumbers both phraseology and syntax, but it seems to me that the benefits outweigh the costs. "Mother" is used to refer both to the person who is the female biological/genetic parent, and to the person who takes on the task of raising and nurturing a child. Since the person who bears a child may play no role whatsoever in raising it, it is clear that "mother" is ambiguous. In which of these senses—if either—is a pregnant woman accurately characterized as a mother? Not the first, for she does not become a biological mother until and unless the pregnancy issues in the live birth of a child: if abortion is performed, or the fetus simply dies *in utero*, this precludes her becoming a biological mother. Nor is it entirely accurate to describe her as a nurturing mother. For there are significant differences between nurturing a post-fetal *child*—something that one *does*, and does by *choice* (even if the choice is dictated by necessity, or made under duress)—and nurturing a *fetus*; for the fetus is a sort of parasite and the pregnant woman may be an unwilling—and even an unwitting—provider of fetal nurturance. Thus, since "mother" is an ambiguous term, and one whose criteria of application are not altogether clear, it is wise to avoid using it to refer to a pregnant woman. One does not want to charge the abortion dispute with more emotional high voltage than is necessary.

This point has not been taken to heart by philosophers who discuss abortion: even when the ambiguity is noted (and conceded to be obvious), the prospective abortion candidate is still deemed "the mother." See, for example, Steven L. Ross, "Abortion and the Death of the Fetus," *Philosophy & Public Affairs* 11, no. 3 (Summer 1982): 232–45; see especially pp. 232, 239, 241.

distinguish Moderate views from two rivals: *Restrictive* views, which hold that abortion is morally defensible only when (though not necessarily always when) the continuation of the pregnancy poses a threat to the woman's life;³ and *Permissive* views, which hold that abortion is generally morally defensible: although there may be (extreme) circumstances in which it should be overturned, there is a presumption that abortion is morally defensible.

The deepest, most intractable disagreement in the abortion dispute has been one that divides the Restrictives from the Moderates and Permissives, and the most difficult task confronting Moderates and Permissives has been that of producing a compelling defense of elective abortion. Permissives, Moderates, and Restrictives concur in the view that abortion is defensible when it is undertaken to preserve a pregnant woman's life, even when the performance of abortion would amount to the making of a choice between lives:⁴ that is, when the death of the woman would not occur until after the safe (live) delivery of the fetus. (When I do not specify otherwise, this is the sort of case that I shall be discussing.⁵)

3. How stringent the Restrictive view is is greatly affected by how the notion of a 'threat to life' is to be understood. If abortion is held to be defensible only when there is a clear and direct threat to a woman's life, then the Restrictive view will emerge as very strict indeed. On the other hand, if Restrictives allow abortion when the threat to life is marginal—a mere consequence of there being some risk to the woman's health—then the Restrictive view will emerge as much more liberal than it appears to be. It is probable that secular Restrictives favor a middle interpretation, but the characterization of the notion of a 'threat to life' is far from straightforward. There are conditions that pose a threat to health—for example, diabetes and kidney disease—that may have severe, even fatal, repercussions, but they cannot comfortably be regarded as threats to life. Does the secular Restrictive allow or disallow abortion in such cases? The division between threats to life and threats to health is not likely to be easy to characterize or to draw with any precision, but it appears to be a division that Restrictive must rely on. It may also be one that non-Restrictives must rely on. See below, note 17.

4. It is important to recognize that the 'choice between lives' situation is one that can arise at *any* stage of a pregnancy. Pace Baruch Brody ("Abortion and the Sanctity of Human Life," reprinted in *The Problem of Abortion*, ed. Joel Feinberg [Belmont, CA: Wadsworth, 1973], pp. 104–20), the situation is not one that is "possible only at the very end of pregnancy"; we can know early on that we are faced with a case in which "if we do nothing the fetus will survive and the mother will die" (p. 115). The clearest example of such a case is that in which a woman is diagnosed early in her pregnancy as suffering from cervical cancer. The cancer poses a threat to the woman's life, but it does not in itself constitute a threat to the well-being of the fetus. The danger to the woman consists largely in the fact that the pregnancy accelerates the growth of the cancer and contraindicates the preferred sorts of treatment (for they are dangerous to the fetus).

5. I am not, of course, suggesting that other sorts of cases present no problems. But I think that the 'choice between lives' cases are the most worrying: they are the most pressing and, in a sense, the clearest.

Although it is conceded that “abortion is never a *paradigm* case of justified self-defense,”⁶ it is supposed nonetheless that it is the woman’s right of self-defense that justifies abortion when it is undertaken to preserve her life.

That the *Restrictives*’ proposed defense of abortion in such cases involves the appeal to the woman’s right of self-defense appears to be obvious, for Restrictives make it clear that they do not think that a woman’s desire to control her own body, or her interest in resisting what she sees as an unwelcome encroachment upon her bodily integrity, can possibly outweigh the fetus’ right to life. They similarly reject more general appeals to the importance of personal autonomy and to individuals’ rights to decide when they shall incur hardship to render life-preserving assistance to other persons. While Moderates and Permissives think that considerations such as these may often have decisive force, Restrictives do not agree: *they* hold the view that there is a strict prohibition against the killing of the innocent, one which cannot be overridden by appeals to the woman’s autonomy. This is not to say that Restrictives suppose that the prohibition debars *all* killing as wrongful: we are not held to violate the prohibition when we kill another person in (justified) self-defense.⁷ Given these two facts—that the Restrictives reject the appeal to autonomy, and that they allow killing in self-defense while forbidding it in other circumstances—it is quite plausible to suppose that it is self-defense that Restrictives appeal to as justification for permitting abortion when it is undertaken to preserve a pregnant woman’s life.

What I shall argue is that it is doubtful that we can defend abortion—even in cases in which the woman’s life is clearly at stake—by appealing to the right of self-defense. I shall argue this on two grounds. First, the entitlement to self-defense is even more problematic than has been commonly supposed: its force in the abortion dispute has been misconstrued and overestimated because its structure has not been properly understood. Second, the abortion dispute is, in some ways, a special one: there are features of the relationship between the pregnant woman and the dependent fetus that effectively preclude our regarding the problem of

6. L. W. Sumner, *Abortion and Moral Theory* (Princeton: Princeton University Press, 1981), p. 108, emphasis added.

7. See Brody, “Abortion and the Sanctity of Human Life”; Philip E. Devine, *The Ethics of Homicide* (Ithaca: Cornell University Press, 1977), chap. 5, sec. 22; Alan Donagan, *The Theory of Morality* (Chicago: University of Chicago Press, 1977), chap. 5, sec. 3. See also Sumner’s helpful discussion of natural law theories in *Abortion and Moral Theory*, chap. 3.

abortion as yet another (albeit complicated) problem of trying to find a just balance between two persons' conflicting rights.

I certainly believe that abortion is defensible when it is undertaken to preserve a woman's life,⁸ and I believe that abortion can be justified without appealing to the right of self-defense; there are other options. But there may not be options that are readily available to the Restrictive, for it is not at all clear that one can produce a rationale for permitting abortion when it is undertaken to preserve a woman's life while forbidding it in all other circumstances. If I am correct in thinking this, then Restrictives face a dilemma: if they wish to allow abortions that are undertaken to preserve pregnant women's lives, then they must also allow them in less extreme circumstances. (Allowing this would effectively turn the Restrictive into some sort of Moderate.) On the other hand, if Restrictives wish to insist that abortion is indeed indefensible when the woman's *life* is not at stake, then I believe they must espouse an even more restrictive view, one that would deny the legitimacy of a woman's seeking to terminate her pregnancy even when she knows that continuing with it would kill her. This is a view that may have its advocates, but it is a hard view indeed and—at least on the face of it—an implausible one: we are entitled to ask that a strong, secular (that is, non-authoritarian) argument be mustered in its defense.⁹

My argument thus involves a direct attack on the Restrictive view of abortion. But it also has bearing on the tenability of the Moderate view, for it uncovers serious problems with one of the strategies that has been widely deployed in defense of the Moderate position, what I shall call the *Thomson-strategy*.¹⁰ Thomson-Moderates argue that even if the fetus is

8. I shall sometimes adopt a bit of shorthand and speak of the case in which abortion is undertaken to preserve the woman's life as 'abortion in self-defense.' Since I shall argue that 'abortion in self-defense' is not aptly characterized as a case of self-defense at all, I shall flag the expression with scare quotes.

9. The request is for an argument that is both strong and secular: it will not do simply to cite the longevity of the natural law tradition and point out that the 'natural law forbidding homicide' has been understood as applying only to the direct killing of the innocent, rather than as having a wider scope. Even if such an interpretation can be supported by historical evidence, and buttressed by the presentation of some sort of rationale, this is not enough. What is needed is not historical exegesis of a fundamentally religious perspective, or articulation of the rationale underlying it, but a defense of the substantive view that it embodies: an argument to the effect that the substantive view that it embodies is defensible.

10. See Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1, no. 1 (Fall 1971): 47–66. I do not mean to imply that Thomson herself would agree with my formulation of the Thomson-strategy. Nor do I mean to suggest that those who espouse

to be regarded as a person from the earliest stages of its development, it cannot be inferred that abortion is generally morally indefensible, or that it is defensible only when it is undertaken to preserve a woman's life. Not all of the things that we do to other persons that kill them, or otherwise cut short their lives, constitute wrongful assaults upon them, or violations of their rights to life: the prohibition against the killing of the innocent is not an absolute or an overriding one. There are cases in which it is morally defensible to kill a person, just as there are cases in which it is morally defensible to let a person die.¹¹ These include not only cases of self-defense—and plausible extrapolations of such cases—but also cases in which one person justifiably terminates another person's life-support, and in particular those cases of justifiable termination of life-support in which one person chooses not to continue to bear the burden of providing life-support to another person, even though this choice has foreseeably fatal consequences for the person whose life-support is thus terminated. A fetus is not only dependent upon the pregnant woman for the sustaining of its life (as a child or a patient or an invalid may be dependent upon her), it is (in a sense) parasitic upon the woman: its life-support is pro-

a Thomson-Moderate position would agree among themselves, either on the finer points of their interpretation of Thomson's position, or in their own substantive conclusions.

11. There are cases of 'letting die' that are also cases of killing: for example, withholding food from one's infant child; and cases of 'killing' that are also cases of letting die: for example, turning off the life-support system of someone who is terminally ill to enable him or her to die of 'natural causes.' See Jonathan Bennett, "Morality and Consequences," in *The Tanner Lectures on Human Values*, Vol. II, ed. Sterling McMurrin (Cambridge: Cambridge University Press, 1981), pp. 45–116, especially Lectures I and III; Nancy Davis, "The Priority of Avoiding Harm," in *Killing and Letting Die*, ed. Bonnie Steinbock (Englewood Cliffs, NJ: Prentice-Hall, 1980), pp. 172–214; Jonathan Glover, *Causing Death and Saving Lives* (Harmondsworth: Penguin, 1977), chaps. 6 and 7; Susan Teft Nicholson, *Abortion and the Roman Catholic Church* (Knoxville: *Journal of Religious Ethics Monograph*, 1978), chaps. 4 and 5; Judith Jarvis Thomson, "A Defense of Abortion," and "Rights and Deaths," *Philosophy & Public Affairs* 2, no. 2 (Winter 1973): 146–59; and "Killing, Letting Die and the Trolley Problem," *The Monist* 59, no. 2 (1976): 204–17.

To say this is not, of course, to claim that cases of killing are *always* describable as cases of letting die (or *vice versa*), nor is it to say that killing and letting die are *always* on a par. It is merely to point out that "the" distinction between killing and letting die is problematic: it is not exhaustive, exclusive, or evaluatively neutral. Nor is there anything like one clear distinction: there are several rather muddled ones.

It is surprising how many people assume that the *denial* of the tenability of "the" distinction between killing and letting die (on the ground that we cannot find a clear distinction here, and so cannot posit an intrinsic, morally significant asymmetry between the two) is an assertion of the absolute and universal moral equivalence of killing and letting die. It is, of course, no such thing.

vided through the medium of the woman's own body.¹² The relationship between the woman and the fetus is thus one of asymmetrical dependency, and the termination of a pregnancy may be characterized as (or regarded as morally analogous to) the termination of life-support. We do not hold the view that people are, in general, under a strict obligation to undertake to provide life-support to other persons, or that they are not permitted to discontinue it when the burden of providing ongoing assistance proves to be onerous. It is therefore, on the face of it, quite implausible to suppose that pregnant women as a class constitute a special case, that *they* should be held to be under a strict obligation to provide the fetus with the necessary life-support. When a woman has sound reasons for wishing to cease providing life-support to the dependent fetus—reasons that would allow people in other life-support situations to discontinue providing it—then it would appear to be both unreasonable and unfair to deny her the right to terminate her pregnancy.¹³

I believe that Thomson-Moderates are able to offer a better explanation of why abortion is defensible when it is undertaken to preserve a woman's life than Restrictives are. I believe, moreover, their greater success in

12. People sometimes object to the use of "parasite" in this context. Three different objections are raised: that it involves the use of a term of opprobrium; that it involves a misrepresentation of the relationship between the fetus and the pregnant woman (on the ground that that relationship is better described as "symbiotic" than as "parasitic"); that it involves a misuse of the biological term "parasite" (on the ground that the term applies only when the two organisms involved are members of different species).

The first two objections simply fail. Those who take "parasite" to be a term of opprobrium are confusing the biological sense and the original sense ("one frequenting the tables of the rich and earning welcome by flattery," *Webster's New Collegiate Dictionary*, 7th ed. [Springfield, MA: Merriam, 1963], p. 611). Those who call the relationship between the woman and the fetus "symbiotic" are mistaken: when the continuation of the pregnancy poses a clear threat to a woman's life, the relationship between the woman and the fetus cannot be described as "symbiotic": this is simply a misuse of the biological term. The third objection is the most forceful. Some dictionaries and biological texts define "parasite" functionally in terms of the relationship between individual organisms, while others define it in terms of the relationship between members of two different species (that is, *a* is parasitic upon *b* versus *A*'s are parasitic upon *B*'s). To accommodate the discrepancy in usage, I have described the fetus as "(in a sense) parasitic upon the woman." It is worth noting, however, that my usage is the one preferred by many sources, and that Webster's offers a third entry that vindicates this usage entirely: "something that resembles a biological parasite in dependence upon something else without making a useful or adequate return" (p. 611).

13. See Thomson, "A Defense of Abortion." For legal argument that parallels Thomson's moral argument at many points, see Donald H. Regan, "Rewriting *Roe v. Wade*," *Michigan Law Review* 77, no. 7 (1979): 1569–1646, especially sec. III.

this regard derives from their emphasis on the fundamental asymmetry of the relationship between a pregnant woman and a dependent fetus, and not from an appeal to the woman's right of self-defense.¹⁴ But, although I believe the Thomson-strategy is superior to the Restrictives' strategy, I think there are serious problems with it. There is a tension between supposing—as Thomson-Moderates say they are supposing—that the fetus is a person and supposing that the asymmetry of the relationship between the woman and the fetus is in itself and by itself a morally substantive fact. There is also a tension between emphasizing the special nature of the relationship between the woman and the fetus—as Thomson-Moderates do—and attempting to defend elective abortion by modeling conflicts of interest between the woman and the fetus on conflicts of interest between post-fetal persons.¹⁵ If the relationship between the woman and the fetus is thought to be in itself a special one, then this undercuts the force of arguments by analogy: it is not at all clear that we can model conflicts of interest between the woman and the fetus on conflicts of interest between post-fetal persons. (I shall return to this point later.) If I am correct in my diagnosis of the Thomson-strategy's deficiency, then the Moderates' position too may require reformulation or emendation.

The line of argument that I wish to advance is complicated, and neither its comprehensive exposition nor its complete defense can be accomplished here. My aim in the present context is fairly limited: I shall argue that one cannot justify abortion undertaken to preserve a woman's life

14. Sometimes it is claimed that the appeal to self-defense is, or involves, an appeal to this asymmetry. Both Sumner and Regan explicitly make such claims. Thus Sumner says, "The appeal to self-defense stresses an asymmetry in the mother/fetus relation; since the fetus is the intruder and the parasite, it is the mother who is defending herself against a threat" (*Abortion and Moral Theory*, p. 121; see also p. 112). Regan says, "The law of self-defense is shaped in part by the notion that there is an asymmetry between the attacker and the attacked (even when the attacker is innocent) which justifies the attacked in protecting himself or herself even in some cases where the cost to the attacker is greater than the harm from which the attacked is spared" (Regan, p. 1618). But the asymmetry that distinguishes the attacked from the attacker in cases of justified self-defense is different from the asymmetry in the relationship between the woman and the fetus. I argue this point in the text. (See also George Fletcher, *Rethinking Criminal Law* [Boston: Little, Brown, 1978], p. 863; Sanford Kadish, "Respect for Life and Regard for Rights in the Criminal Law," *California Law Review* 64, no. 4 [1976]: 871–901, especially sec. I.)

15. In speaking of "post-fetal persons" I do not mean to be claiming categorically that the fetus is a person, but rather adopting a neutral way of speaking, one that neither asserts nor denies that the fetus is a person.

by appealing to the right of self-defense, and then indicate what are some of the important implications of this argument.

The crux of my argument is the claim that even in cases in which a woman seeks an abortion to preserve her own life, and is morally justified in so doing, it is not the right of self-defense that provides the ground of the justification. This may seem like a puzzling or even a paradoxical thing to say, especially since, as I have said, I mean to be attacking the Restrictive view of abortion: if Restrictives maintain that abortion is defensible only when the continuation of the pregnancy poses a threat to the woman's life, then is it not obvious that it is precisely the right of self-defense that is being advanced as the (only admissible) justification of abortion? Indeed, it might be thought that determining the range of defensible abortions *is* determining the bounds of the woman's right of self-defense, and so that the only real difference between the Thomson-Moderates and the Restrictives lies in their different understandings of precisely what entitlements the right of self-defense confers upon the woman. This conjecture is one that reflects claims that have been made in the literature. In *Abortion and Moral Theory*, L. W. Sumner, a Moderate, says, "The fetus' right to life is bounded by the mother's rights of self-defense and vice versa. To map the former is therefore also to map the latter" (p. 114).

In order to explain how my central claim is not paradoxical, I must explain why Sumner's claim is problematic. I believe that Sumner distorts both the right of self-defense and the right to life, and that this distortion renders the Thomson-Moderates' position unnecessarily problematic from the start. If we were to agree with Sumner, then we would have to suppose that Thomson-Moderates who assume that the fetus is a person, yet maintain that abortion is defensible in cases of rape or personal hardship, are putting forward at least one of two implausible claims: that the right of self-defense is (or includes) the right for us to kill other persons when not doing so would impose unwanted inconvenience or discomfort upon us; or that our having a right to life does not afford us protection against being killed by people who would have to endure discomfort or inconvenience if they were to refrain from killing us. Either of these claims might ultimately prove to be defensible, but neither seems at all acceptable *prima facie*: it is not plausible to claim that a woman who seeks an abortion to terminate a pregnancy arising from rape—automatically, and for that very reason—does not violate the fetus' right to life, or that she

can be said—automatically, and for that very reason—to be exercising a right of self-defense.¹⁶ It is reasonable to suppose that a right of self-defense entitles us to kill someone who is threatening our life,¹⁷ not someone whose presence causes us inconvenience or embarrassment (however acute). It is reasonable to suppose that a fetal right to life is not something that can be nullified by the illicit circumstances of a fetus' conception: if a fetus has a right to life, then it has it in virtue of being the sort of entity that it is¹⁸ (and the question of whether its existence

16. I think that both Regan and Sumner would disagree. But even if one agrees with Sumner in thinking that "The right of self-defense is a special case of the right to autonomy" (*Abortion and Moral Theory*, p. 114, note 46), and thinks also that abortion is defensible whenever pregnancy has arisen from rape, it is not plausible to suppose that one is thereby claiming that abortion (when the pregnancy has arisen from rape) is to be justified by an appeal to the woman's right of self-defense.

17. As I understand it, a right of self-defense is, in essence, a right of self-preservation: it entitles us to take action against someone who threatens to put an end to us without justification. To say this is not to say that we are entitled to kill an attacker only when the attacker threatens to *kill* us (there are, after all, other ways of effectively destroying people). Nor is it to say that we are entitled to kill whenever an attacker threatens to kill us. But since this does not bear on the text footnoted here, I shall not discuss it. See below, note 42.

How broad is the entitlement? When may we appeal to the right of self-defense to justify killing an attacker who is not threatening to kill us? As most writers on the subject point out, two things seem to be material: the nature of the threat, and the nature of the harm. Other things being equal, we are entitled to be more aggressive in repelling a threat that is a clear instance of hostile or malevolent conduct than we are in repelling an innocent threat. And other things being equal, we are entitled to adopt more drastic measures against attackers who threaten us with serious and abiding harm than we are against those who threaten to cause us (merely) annoyance, inconvenience, or embarrassment.

It is not altogether clear what counts as serious and abiding harm, and so it is difficult to say precisely what the entitlement to self-defense (or self-preservation) actually amounts to. This is a serious problem, but it does not undermine the point in the text. Unless it can be shown that *every* woman who is pregnant due to rape suffers a serious and abiding harm if she is obliged to carry the fetus to term, it cannot be maintained that *any* woman who seeks to terminate a pregnancy arising from rape is justified in doing so *by virtue of her right of self-defense*.

18. The view that we can explain a being's possession of rights by appealing to the sort of being it is (the individual's properties, or the essential properties of the class of which it is a member) is an attractive and natural view. Even if we think of rights as things that are conferred (rather than discovered), and thus reject the suggestion that a fetus could be determined to 'have' rights simply by virtue of its possession of certain biological properties, we are inclined to believe that the properties of the fetus (or of *Homo sapiens* as a class) form the basis of the conferral. That is, we look to see what sort of entity the fetus is, and justify or explain conferring rights upon it by appealing to these biological (or descriptive) properties. Although the view is natural and attractive, it is problematic in a number of ways. (See Derek Parfit, "Later Selves and Moral Principles," in *Philosophy and*

arose from rape surely does not decide *that* issue). Thus Sumner's claim seems unpersuasive. It appears to distort the right to life or the right of self-defense, and to disenfranchise the Thomson-Moderate from the start.

I am not objecting to what Sumner says simply on the ground that what he says renders implausible a view that is attractive and widely held, namely, the Thomson-Moderates' view, or that it seems to conflict with commonsense intuitions about what is and what is not a case of self-defense. I think that Sumner's claim would be problematic even if it were made in the context of the Restrictive view, which circumscribes the right of self-defense far more narrowly. I believe that it is a mistake to approach the abortion dispute with the assumption that a satisfactory strategy for its resolution is one that attempts to resolve the conflict between the woman and the fetus by seeking to balance the rights of the one against the rights of the other.¹⁹ Even if we believe—or assume for the sake of argument—that the fetus is a person, we should take seriously the suggestion that the relationship between the pregnant woman and the dependent fetus is, in important ways, a special one. But if we take such a suggestion seriously, then we must admit the possibility that it has repercussions on how the abortion dispute can be understood and gainfully discussed. We cannot insist that the relationship is a special one without calling into question the wisdom of seeking to resolve the abortion dispute by modeling conflicts of interest that arise between the woman and the fetus upon those that arise in other contexts between post-fetal persons. We should not, then, assume at the outset that the problem of abortion is (or is well characterized as) a problem of balancing the rights of the pregnant woman against the rights of the fetus.

I am not suggesting merely that we cannot be confident about the adequacy of an appeal to rights, or that we are unclear about the details

Personal Relations, ed. Alan Montefiore [London: Routledge and Kegan Paul, 1973], pp. 137–69.) And it still leaves us supposing that—somehow—it is the descriptive properties of the fetus that *determine* its personhood (or non-personhood), that necessitate our conferral of the rights and privileges of personhood upon it.

19. John Finnis remarks that, "It is convenient and appropriate to speak of 'rights' for [some] purposes and in [some] contexts . . . [but] it is most inconvenient and inappropriate when one is debating the moral permissibility of types of actions—types such as 'abortions performed without the desire to kill' . . ." ("The Rights and Wrongs of Abortion," *Philosophy & Public Affairs* 2, no. 2 [Winter 1973]: 117–45; p. 117). Presumably, then, there will be problems with speaking about rights not just in the case of abortion, but in any case that shares (what Finnis would agree to be) its relevant features: abortions are certainly not the only sorts of killings that may be, and often are, performed without the desire to kill.

of applying the machinery of rights and interests to the problem of abortion. I am also raising a deeper worry. If we cannot happily apply the existing machinery of rights and interests to the conflict between the woman and the fetus, then we might surmise that we must modify or supplement our current (inchoate!) theory of rights in order to apply it to the problem of abortion. But we should consider, also, another hypothesis: the possibility that we have unearthed problems that have lain dormant in our theory of rights, problems that may arise clearly in, but are not special to, the problem of abortion.²⁰ Although I do not count myself as someone who is generally sympathetic to appeals to rights, I am not here taking the opportunity to rehearse the familiar skeptical worries. I am suggesting, rather, that once we have considered the possibility that the relationship between the woman and the fetus is a special one, we should recognize that it would be unwise to commit ourselves *a priori* (as Sumner would have us do) to the view that the problem of abortion is, or can be gainfully characterized as, a problem of balancing the rights of the pregnant woman against the rights of the fetus.

I shall now go on to argue that even if we were to accept the view that the problem of abortion can or should be seen as a problem of balancing rights, it is not the woman's right of *self-defense* that belongs in the scales.

It is widely conceded that "abortion is never a paradigm case of justified self-defense,"²¹ but this is not thought to present an insurmountable obstacle to defending abortion when it is undertaken to preserve a woman's life. The deviations from the paradigm are not thought to be telling. Though there is not agreement on just how abortion differs from the clearest cases of justified self-defense, the following differences are often noted:

- (1) The fetus whose continued presence in the woman's body poses a threat to her life is neither an aggressor nor an assailant: that is, it

20. Some of the problems that have lain dormant within our theory of rights emerge with great force when we appeal to our framework of rights and interests to try to answer the question of what is owed to future generations. See Derek Parfit, "Future Generations: Further Problems," *Philosophy & Public Affairs* 11, no. 2 (Spring 1982): 113-72, and *Reasons and Persons* (forthcoming).

21. Sumner, *Abortion and Moral Theory*, p. 108. See also Brody, "Abortion and the Sanctity of Human Life"; Joel Feinberg, "Abortion," in *Matters of Life and Death*, ed. Tom Regan (New York: Random House, 1980), pp. 183-217, especially sec. II, part 7; Fletcher, *Rethinking Criminal Law*, p. 863; Kadish, "Respect for Life," p. 876; Regan, "Rewriting *Roe v. Wade*," sec. III.

does not intend or foresee the harm that its presence causes, and it is not in any way morally at fault for causing it.²² Nor does the threat that it poses to the woman's life even derive from any exercise of its agency, for the fetus is obviously not an agent at all.²³

(2) The clearest cases of justified self-defense are those in which the victim's response is quite spontaneous, and the deliberation, if there is any, is gone through under duress: there is not time to deliberate fully; there is no less violent response that is both effective and clearly available; and there is no readily apparent way for the victim to deflect the attack or evade it altogether. Although it is true that the pregnant woman whose life is threatened does not have the option of evading the attack or adopting less violent means in her own defense, her course of action is usually one that she has had time to deliberate about. The killing of the fetus is thus, in a sense, premeditated.²⁴ This connects with the third difference between abortion and paradigm cases of justified self-defense.

(3) The fact that the killing is premeditated undermines the characterization of it as an indirect, or merely-foreseen-but-not-intended, killing. If one agrees that the killing of the fetus is premeditated, then it does not seem that one can plausibly maintain that the death of the fetus lies outside of the scope of the woman's intention: one cannot plausibly claim that the woman merely foresees the death, but does not intend it as a means or an end.²⁵ A case in which a woman seeks an abortion to preserve her life is thus not like a case of self-defense in which a victim shoots and kills an attacker who cannot effectively be repulsed by other means. It is more like a case in which we foresee

22. As I am using the terms, one who does not intend or foresee the harm that he or she will cause, and bears no moral fault for causing it (or being in the position of causing it), is merely an *attacker*, not an aggressor or an assailant.

23. See Feinberg, "Abortion," sec. II, part 7, especially pp. 207–8; Fletcher, *Rethinking Criminal Law*, p. 863; Kadish, "Respect for Life," p. 876.

24. See Regan, "Rewriting *Roe v. Wade*," pp. 1617–8.

25. This is very slippery ground, for as critical discussion of the Doctrine of Double Effect has shown, we are really not clear how the distinction between intended means and merely foreseen concomitant is to be drawn. The issue has been further obscured by a widespread tendency to confuse the question of whether a *death* is a means with the question of whether a *killing* is a means. (I argue that there are two different notions of 'means' at work in our thinking in "Means, Ends, and Double Effect," unpublished.) My suspicion is that those who hold the view that the death of the fetus is not a means (on the ground that the woman who undergoes abortion may not actually want the fetus dead) are confusing questions of intention with questions of motivation. But, again, this is very slippery ground.

that we will be attacked by a (temporarily) crazed assailant and—since escape is impossible—choose to poison the would-be attacker in order to forestall a confrontation that would be fatal to us. Whatever may be said about the defensibility of such conduct, it is not conduct that is comfortably characterized as justified self-defense.

(4) The clearest cases of justified self-defense are those in which victims do not bear responsibility for their predicament. However, when victims find themselves in life-threatening circumstances because they have negligently or recklessly engaged in conduct that could have been foreseen to lead to such an outcome, then their entitlement to kill to preserve their own lives is less clear-cut. When a woman is pregnant because she has voluntarily engaged in sexual intercourse without taking contraceptive measures, then she may bear some responsibility for her predicament. Although she may be entitled to seek an abortion to preserve her own life, it cannot be said that her doing so is clearly a case of justified self-defense.²⁶

(5) A pregnant woman does not perform the abortion herself; she engages a third party—a physician—to perform it for her. It may often be permissible for a third party to kill an assailant to assist an innocent victim—thus supporting the victim's desire not to succumb to a life-threatening attack—but it is not plausible to describe the *third party's* actions as undertaken in or justified by an appeal to self-defense. Perhaps the victim of a wrongful attack can claim some entitlement to assistance in repulsing it, but this is a claim to a corollary right, not just a claim to the right of self-defense. If a third party is justified in assisting the victim, the justification comes from an appeal to that corollary right, not (only) from the victim's right of self-defense.

Although there is not a consensus between Moderates and Restrictives—or, for that matter, among Restrictives themselves—about which of these features create the most serious problems for the classification of abortion as justified self-defense, there is widespread confidence that

26. Although this may be relevant to the question of whether abortion in such circumstances is justified or merely excused, it does not seem relevant to the question of whether or not it is defensible. A woman bears some responsibility for being pregnant if she negligently or recklessly engages in voluntary intercourse without taking contraceptive precautions. But unless she knew beforehand that pregnancy would pose a threat to her life, she cannot be said to be responsible for her predicament: that is, being pregnant when pregnancy poses a threat to her life. So the objection embodied in (3) does not straightforwardly apply to the case at hand.

it is not (5) that is the source of the difficulty. Says Baruch Brody, a staunch (ultra-) Restrictive, "To be sure, it is the abortionist, and not the mother, who will destroy the fetus, but this is irrelevant."²⁷ Sumner, a Moderate, claims that "if a woman has the right to defend herself against the fetus, then she has the right to invoke third-party assistance" (p. 112).²⁸ Donald Regan, whom I take to be a Permissive, says, "Surely if a woman can defend herself against the fetus, a doctor may help."²⁹

I believe that this confidence is unwarranted. Even if we suppose that there is clearly a moral right of self-defense, when we apply it to the situation in which a woman wishes to abort a fetus whose continued presence in her body poses a threat to her life, we find that it is not a strong enough entitlement to support the claim that the woman is entitled to the doctor's (third-party) assistance. We cannot conclude even that it would be *permissible* for the doctor to choose to assist her. In saying this, I do not mean to cast doubt on the moral defensibility of a woman's seeking an abortion to preserve her life, or on the defensibility of a doctor's rendering her the necessary assistance. What I am doing, rather, is pointing out that there is a problem with appealing to the right of self-defense to justify the woman's and the doctor's course of action.

To see why this is so, we should look more closely at the question of the innocence of the fetus. It has been claimed that it is not the *moral* innocence of an attacker that is relevant to the question of whether or not we can claim justification in killing another person to preserve our own life. What matters is what has been termed *causal or technical innocence*: attackers are not technically innocent when their actions, behavior, or (in some instances) mere movements *qua* physical objects, or mere presence constitutes a threat to another person's life.³⁰ Thus we

27. "Abortion and the Sanctity of Human Life," p. 105.

28. *Abortion and Moral Theory*, p. 112. I am not sure whether Sumner wishes this claim to be understood within the narrow context of the case that he has just been discussing (a case in which the woman is pregnant due to rape, the pregnancy will kill the woman, and the fetus cannot survive in any case), or more generally. Others make similar claims about the woman's right to third-party assistance, but qualify them. Cf. Thomson, "A Defense of Abortion," pp. 52–6; Nicholson, *Abortion and the Roman Catholic Church*, pp. 52, 64, 71; Regan, "Rewriting *Roe v. Wade*," p. 1613.

29. *Ibid.* It should be noted that Regan's principal argument is not a self-defense argument, but a 'no duty to aid' argument. I think it is doubtful that the two arguments are as independent as Regan thinks they are, but this is a point that requires detailed argument, and I cannot pursue it here.

30. See Brody, "Abortion and the Sanctity of Human Life"; Devine, *The Ethics of Homicide*, chap. 5; Donagan, *The Theory of Morality*, chap. 3; Robert Nozick, *Anarchy, State and Utopia* (New York: Basic Books, 1974), pp. 34–5; Thomson, "Rights and Deaths."

would be permitted to kill, and be justified in so doing by the right of self-defense, not only the morally guilty hostile aggressor, but also the following morally innocent persons: a psychotic assailant, a child who is about to trip the fuse wire of a dangerous explosive, and an epileptic whose violent convulsions threaten our life because we are confined together in a very small space and the epileptic is holding a sharp cleaver.³¹ All of these attackers are morally innocent, but technically guilty: each is a threat to another person's life.

It is an interesting question why it should ever be thought justifiable for us to kill another person to preserve our own life.³² Once it has been said that it is not attackers' *moral* innocence, but only their *technical* innocence, that is at issue, it becomes difficult to see why it should be *justifiable* for us to kill the person who (inadvertently) threatens our life. A person can pose a threat to another person's life and be deemed technically guilty without having done anything wrong—indeed, without having done anything at all. How then could the mere fact of posing a threat to another person's life be thought to be of any moral significance whatsoever? If we think that it is justifiable to kill in self-defense, then must we not be supposing that we can point to some morally relevant difference between the person who happens to be posing the merely technical threat and the person who happens to be the victim of it? What might such a difference be?

In some (but by no means in all) cases of self-defense, it seems that we can identify an asymmetry between attacker and victim. When the attacker is a hostile aggressor or a psychotic assailant, I can justify killing in self-defense by pointing out that there is in each case a difference between myself and the attacker that can be seen to be morally relevant. The aggressor is hostile (and thus has malign motives or bad intentions, however ineffective the aggressor may be in realizing them in action); the psychotic is dangerous (and thus more likely to go on to harm other people than I am).³³ In both of these cases, it can be argued that my choice is clearly morally justified, for the grounds upon which it is defended—that the death of the attacker represents the lesser of two evils, or the smaller injustice³⁴—are such that, if I am justified in making my

31. The example is a slight adaptation of an example of Regan's: "Rewriting *Roe v. Wade*," p. 1611.

32. See Kadish, "Respect for Life."

33. There is, of course, a tacit "other things being equal" clause here.

34. Feinberg says that ". . . if it comes down to an inescapable choice between the innocent party suffering a serious harm or the culpable party suffering a still more serious

choice, then any disinterested person would be justified in making the same choice: preferring my survival to that of my attacker.³⁵ These killings can be defended by any disinterested person, and justified by an appeal to a neutral moral point of view.

It is considerably less obvious how we are to justify killing to preserve our own life when the attacker has done nothing at all to threaten us but is, instead, a *passive threat*: someone whose mere movements *qua* physical object or mere presence constitutes a threat to our life.³⁶ To see just why this is so, it will be helpful to bear some cases in mind: the one that we have been focusing on—the case in which the woman's life is threatened by the continuation of her pregnancy—and the following case:

Alice and Ben are mountain climbing when a rockslide occurs that threatens to sweep Ben off the ledge that he has been standing on. If Ben falls straight down—as he is virtually certain to do—he will fall onto Alice, for she is standing on the narrow ledge beneath his, and surely kill her. If Ben manages to land on Alice's ledge, however, he

harm, then the latter is the lesser of two evils" ("Abortion," p. 207). He thus conflates the question of whether some choice represents the lesser injustice with the question of whether it represents the lesser of two evils. Many people—consequentialists especially, but not exclusively—would prefer to separate these questions.

35. To say this is not to say that any person would be obliged to make that choice. If we have a special obligation or stand in a special relation to one of the parties, then we may be permitted or even obligated not to act as a purely disinterested bystander would be obliged to act: we may be permitted—or even obligated—to support our friend's claim even though a disinterested third party would not be permitted to do so. Exactly what is the content, or the force, of our "agent-relative permissions" is, of course, of great importance to moral theory and moral life. But it is a complicated and highly controversial matter that I cannot pursue here. See Davis, "Utilitarianism and Responsibility"; Thomas Nagel, "The Limits of Objectivity," in *The Tanner Lectures on Human Values*, Vol. I, ed. Sterling McMurrin (Cambridge: Cambridge University Press, 1980), pp. 77–139; Derek Parfit, "Innumerate Ethics," *Philosophy & Public Affairs* 7, no. 4 (Summer 1978): 285–301, and "Prudence, Morality, and the Prisoner's Dilemma," *Proceedings of the British Academy for 1979* (London: Oxford University Press, 1981), pp. 539–64; Amartya Sen, "Rights and Agency," *Philosophy & Public Affairs* 11, no. 1 (Winter 1982): 3–39; John Taurek, "Should the Numbers Count?" *Philosophy & Public Affairs* 6, no. 4 (Summer 1977): 293–316.

36. What renders someone a passive threat is not his or her immobility or inactivity, but his or her lack of agency: at least at the time of the attack, the person whose movements or presence poses a threat to someone's life is not an agent, but (in the old terminology) a patient. I think it is the lack of agency and not the mere lack of movement or activity that is relevant to the question of the moral permissibility of killing someone who poses a threat to our life. On the basis of conversation and correspondence (respectively), I think that Thomson and Regan would disagree (though the real disagreement may be over how the notion of agency is to be understood).

is unlikely to be killed: indeed, he is unlikely even to be seriously hurt. Alice can determine how Ben falls, for she can manipulate his rope if she chooses to do so. If she gives his rope a tug, she will deflect Ben's fall and thus preserve her life. But she will kill Ben in the process, for if he does not land on Alice's ledge, then he will tumble down the side of the mountain to his death. Alice cannot survive unless she deflects Ben's fall; Ben cannot survive if she does.³⁷

We saw, in the cases of the hostile aggressor and the psychotic assailant, that we could point to a difference between the victim and the attacker, and argue that the difference would provide anyone with a reason for preferring the victim's survival. Moreover, since the difference in question constitutes a *moral* asymmetry, we might be able to appeal to it to explain why someone who chose to assist the victim would be acting rightly—or at least permissibly—while someone who chose to aid the attacker would not be; for it could be said that the very thing that supports the victim's right of self-defense also generates the victim's claim to preferential assistance. But this rationale fails on both counts when it is applied to the case of an attacker who is merely a passive threat.

It cannot plausibly be argued that Alice's entitlement to kill Ben derives from, or is to be explained by, the fact that it would be morally preferable that she should be the one to survive—that her survival would represent either the lesser of two evils or the fairer choice (by the lights of any disinterested person, from an impartial moral point of view). (The same holds true when we substitute “the pregnant woman” for “Alice,” and “the fetus” for “Ben.”) It is Ben who is falling on Alice, and thus Ben who is deemed to be technically guilty. But this is not in itself a sound basis upon which to claim that it is Alice rather than Ben who should survive, that there is a *morally* significant asymmetry between Alice and Ben.³⁸ We cannot reasonably suppose that people who happen to be falling

37. Some people may think that the mountain-climbers case is special and atypical, for mountain climbing is a highly dangerous activity, and one in which the participants can be said to have ‘assumed the risk.’ While this may affect some peoples’ intuitions, it does not affect mine: I would be inclined to say the same things about the case of Alice and Ben as I would about the case of Claire and David: Claire is a pedestrian who is about to be crushed by the falling David, who has been swept off a roof by a sudden explosion or freak gust of wind. David can survive his fall only if he lands squarely on Claire; Claire can survive only if she succeeds in deflecting David's fall by tugging on an available bit of rope (or shrubbery). I gather from conversation with Judith Thomson that she would not be inclined to say the same thing about the two cases.

38. This seems to me to be a corollary of Thomson's denial of the Principle of Moral

through the air are generally more dangerous or more hostile or less deserving than people who are standing still (and being fallen upon). Since who poses a passive threat to whom may have nothing whatsoever to do with the morality of either person's conduct (or, for that matter, with the morality of anyone else's conduct either) and is, indeed, just a question of luck, we cannot reasonably suppose that the victims of passive attacks have, as such, a stronger claim to the preservation of their lives than their (merely passive) attackers do. If it is defensible for Alice to kill Ben to preserve her own life, then the justification must derive from a different source, and have a different structure, from the one that was outlined above as a possible account of why a victim is justified in killing a hostile aggressor or a psychotic assailant. For there is, in general, no reason to suppose that it is morally preferable (from a neutral or disinterested standpoint) that it should be the *victim* who survives when the attacker poses merely a passive threat to the victim's life. (To say this is not to foreclose the possibility that we should reject the explanation of the defensibility of killing the assailant and the aggressor that is outlined above. The point is rather that the rationale for killing the assailant and the aggressor is not one that applies in the case of an attacker who poses a passive threat.)

When I claim that I may be justified in killing a person who poses a passive threat to my life, I am not claiming that my life has, or should be thought to have, greater value than that of my attacker. Nor am I claiming that it would be (more) unjust if I am the one who is killed. I am, instead, merely calling for other peoples' recognition of the fact that (by my lights) my life has the greater value to me. The entitlement to defend our life against a passive threat is thus what has been called an *agent-relative permission*.³⁹ Because of the greater value that each of us understandably attaches to the continuation of his or her own life, we are (in certain circumstances)⁴⁰ permitted to kill another person to preserve our own life, even though we acknowledge that the other person's

Inertia. Says Thomson, "There is no Principle of Moral Inertia: there is no duty to refrain from interfering with existing states of affairs just because they are existing states of affairs" ("Killing, Letting Die and the Trolley Problem," p. 209).

39. See Davis, "Utilitarianism and Responsibility"; Nagel, "The Limits of Objectivity"; Parfit, "Innumerate Ethics," and "Prudence, Morality, and the Prisoner's Dilemma"; Sen, "Rights and Agency."

40. Exactly what circumstances is, of course, a burning question, but not one that can be pursued here (see note 35).

claim to life is not weaker than our own. Even when I acknowledge that my preference is not one that would be endorsed from a neutral moral standpoint—it is not better or fairer that *I* should be the one to survive—it is permissible for me to kill another person to preserve my own life.

Since the agent-relative permission to preserve one's own life appears to be derived from the value that each person assigns to his or her own life, and not from whatever value may be assigned to its preservation from some impartial point of view, it is obvious that peoples' agent-relative permissions may often conflict. When neither the victim nor the attacker is constrained by a special obligation, and neither is an aggressor, a psychotic assailant, or a criminal being justly punished for a crime,⁴¹ then both may claim entitlement to preserve their lives at the expense of the other person's life. Each can defend this choice on the same ground: a person's life is of special value to the person whose life it is. Thus there may arise circumstances in which each person's entitlement effectively thwarts the other's; each is entitled to attempt to kill the other person in the interest of securing his or her own preservation. It would be permissible for Alice to maneuver Ben's rope so that Ben falls down the mountain rather than directly onto her, and it would be permissible for Ben to try to bring it about that he falls directly onto Alice's ledge (and thus directly onto Alice) rather than down the mountain to his death.⁴² In itself, this

41. This is not to say that these are the only relevant factors; it is merely to point to a set of factors that are—at least on the face of it—relevant.

42. I am here discussing effective conflicts between Alice's and Ben's permissions; I am not suggesting that their permissions must be formulated in just the way that I have formulated them. It is difficult to determine the boundaries of our agent-relative permissions, and more difficult still to produce compelling explanations of the boundaries that one finds intuitively plausible. Some people would see the scope of Ben's permission as determined by the fine details of the example's causal structure (perhaps because they see these details as bearing on the form of Ben's intention). Thus it might be said that what matters is what is needed to break Ben's fall: does he need (only) to land on Alice's *ledge*, or does he need actually to land on *Alice*? Even when it is understood that the two are causally bound together—Ben cannot do the one without doing the other—Ben's agent-relative permission may divide them: he may be permitted to try to land on Alice's ledge, but not permitted to try to land on Alice. I am not inclined to share these intuitions, and I believe, moreover, that the attempt to appeal to them leads straight to the quagmire of double effect. But I am not suggesting that the agent-relative permission to preserve our own lives should be interpreted extensionally as granting us license to do whatever is causally necessary to preserve our own lives. Suppose that Ben's fall causes Alice injury but—miraculously!—does not kill her. It is far from obvious that Ben could appeal to the agent-relative permission to preserve his life to justify hastening Alice's death by (for example) appropriating her warm clothing or her share of the food. Nor would he be permitted to leave her injuries untended if his fall left him capable of rendering her assistance.

is not unduly problematic, for we recognize that permissions can conflict, and we do not think that the fact that we are unable to succeed in doing what we are permitted to do is morally worrying when we have not been wrongly prevented, or wrongly undermined in our attempts. (*Ex hypothesi*, since Ben and Alice may each appeal to the [same] agent-relative permission to preserve his or her own life at another person's expense [*the other person's expense*], neither is wrongfully undermining the other.) Morally worrying difficulties emerge when we consider the role of third-party intervention: there are problems with supposing that third parties are obliged to assist victims against attackers who pose merely a passive threat to the victims' lives, and problems, too, with supposing even that third parties are permitted to render assistance to such victims.

If having an agent-relative permission to preserve our life at the expense of another person's could, by itself, generate an obligation for a disinterested third party or bystander to intervene and render us assistance, then there could be circumstances in which bystanders would be faced with conflicting and even inconsistent obligations. A bystander would be obliged to help Alice deflect Ben, and also obliged to help Ben resist Alice's attempt. Although we are not disquieted by the observation that *two or more individuals* could find themselves in circumstances in which their agent-relative permissions conflict (and thus make it impossible for both to do what each is permitted to do), we are very much disturbed by the suggestion that *one person*—a disinterested third party—could have *inconsistent obligations*.⁴³ If so, then we must recognize that a victim's agent-relative permission to preserve his or her own life at the expense of the other person's life cannot by itself generate an obligation for a third party to intervene to render assistance to the victim.

There is another route to the same conclusion. While there is considerable disagreement on the question of its ultimate significance and on the details of its interpretation, most of the people who posit the existence of moral rights reject the view that the possession of a right is, in and of itself, something that devolves strong positive obligations on third parties. We may possess a right to life, but we cannot thereby claim entitlement to whatever it is that we need to stay alive.⁴⁴ If *rights* do not in and of

43. See Thomas Nagel, "War and Massacre," *Philosophy & Public Affairs* 1, no. 2 (Winter 1972): 123-44.

44. Thomson makes this claim explicitly in "Rights and Deaths" (p. 148). Obviously it is a view that Restrictives—who think that the fetus has a right to life but also suppose that the pregnant woman has *some* right of self-determination—also accept.

themselves yield strong entitlements to positive assistance, then surely *permissions*—which are much weaker—do not do so. If the entitlement to kill a person who poses merely a passive threat to our life is, as I have been arguing, merely an agent-relative permission, then we cannot suppose that it devolves upon third parties the obligation to render assistance to the victims of such threats.

It is not much less problematic to suppose that agent-relative permissions, in and of themselves, yield *permissions* for third parties or bystanders to intervene to render assistance. Even when a third party has, in fact, a strong and morally unexceptionable preference that I not be killed by the person who is posing a passive threat to my life, the bystander cannot claim to have the same reason for his or her preference that I do. There is a logical point here (which is not to say that there is a deep one): a third party might not *want* to go on living if I am the one who is killed, but I *cannot* go on living if I am killed. A disinterested third party cannot justify rendering me assistance simply by appealing to my agent-relative permission. If a bystander is permitted to intervene to render assistance to someone who is the victim of a passive threat, this must be justified on some other ground.

There is another reason for being unhappy with the suggestion that, if we are permitted to kill to preserve our own lives, then a third party must be permitted to render us the assistance that we need to secure our own survival. If it were permissible for a bystander to help Alice defend herself against Ben simply in virtue of her agent-relative permission to assign special importance to the preservation of her own life, then it seems that it would be permissible, for the same reason, for the bystander to help Ben defend himself against Alice. When the threat that is posed to a person's life is merely a passive threat, we cannot infer that there is any morally relevant difference between attacker and victim in virtue of which the victim can automatically be said to have the stronger claim. Ben has done nothing to impugn his status as Alice's moral peer; there is no difference between Ben and Alice in virtue of which the one person's agent-relative permission should be deemed any weaker than the other's. On the basis of this reasoning, we might be inclined to conclude that it would be permissible for a bystander to assist either Alice or Ben. But I am not at all sure that this is the proper conclusion to draw. When there are (on the face of it) equally strong reasons for helping *A* to thwart *B* and for helping *B* to thwart *A*, then we may doubt that a disinterested third party would be justified in choosing to help one of them rather than

the other. If Ben's and Alice's agent-relative permissions are of equal weight (as they would appear to be), then it would seem to be *wrong* for us actively to prefer the one to the other.⁴⁵ To say this is not to suggest that morality requires that a disinterested third party refrain from intervention altogether; it is to suggest that any choice between a victim and an attacker who poses a passive threat must be shown to be a morally defensible one. (Where the claims of the victim and the attacker are of equal strength, then a disinterested third party might be obliged to decide whom to help by [for example] tossing a coin.) If this is right, then we must recognize that the role of third parties is not at all a transparent one. Even when we move from the question of what a victim may be entitled to request or receive to the question of what a disinterested third party may be permitted to supply, we cannot infer that the victim has (as such) a stronger claim than the attacker who poses merely a passive threat to the victim's life. When an attacker's technical guilt consists simply in the fact that the attacker poses a passive threat to another person's life, there may be no morally relevant asymmetry between the attacker and the victim, and so disinterested third parties cannot claim to have a moral reason for systematically favoring the victim's claim to survival. We cannot conclude, then, that a bystander would be permitted to intervene on the victim's behalf.

The application of this reasoning to the case of 'abortion in self-defense' is straightforward enough. If this sort of case is thought to fall under the rubric of self-defense at all, then it must be because the fetus can be understood to be technically guilty. Since the fetus is obviously unlike a hostile aggressor or a deranged assailant, its technical guilt could only lie (at most) in its being a passive threat to the pregnant woman's life. I have suggested that when we seek permission to defend our life against a person who poses merely a passive threat to it, we can claim no stronger entitlement than an agent-relative permission to assign special weight to the preservation of our own life. And I have argued that this is, in itself, too weak a basis upon which to conclude that a disinterested third party would be permitted to intervene to render us assistance. It will thus be

45. To say this is not to say that it must be wrong to actively prefer one to the other, but to point out that when it is agreed that two persons' moral claims are of equal weight, any basis that is used for discriminating between the two people must be shown to be one that morality endorses. Cf. Elizabeth Anscombe, "Who is Wronged?" *The Oxford Review* 5 (Trinity 1967): 16–7; Taurek, "Should the Numbers Count?"

defensible for a physician to perform an abortion to save a pregnant woman's life just in case it can be argued that there is some other, stronger ground for the woman's claim than the agent-relative permission to preserve her own life. (For that is, indeed, all that her 'right of self-defense' comes to if she is thought to be seeking license to kill an attacker whose technical guilt consists merely in posing a passive threat to her life.) There certainly appear to be cases of self-defense in which one can appeal to some other, stronger ground than the victim's agent-relative permission to preserve his or her own life: when the attacker is a hostile aggressor or a deranged assailant, then one can argue that there is a morally relevant asymmetry that justifies our rendering assistance to the victim and our denying it to the attacker. But I have argued that this line of defense is closed to us in cases in which an attacker poses merely a passive threat to a victim's life. An attacker's right to life is not forfeited, nor is his or her status as moral peer undermined, by the fact of the attacker's posing a passive threat to another person's life. It would thus appear that we cannot explain a woman's entitlement to terminate a pregnancy that threatens her life by appealing to the right of self-defense. Or, to put the point another way, the appeal to the right of self-defense will not support the claim that abortion is virtually always, if not always, a defensible course of action for a woman and her doctor when the continuation of the pregnancy poses a threat to the woman's life.

If my argument is sound, then Restrictives are faced with what they may well regard as an unpalatable choice: they must adopt either a view that is quite a bit stricter than the Restrictive view or one that may be considerably less strict. If they agree that the appeal to self-defense is unsuccessful, then they can simply accept the conclusion that a woman is not entitled to terminate a pregnancy that threatens her life; although there may be cases in which it would be permissible for a woman to have an abortion (with the necessary medical assistance) in order to preserve her own life, this is not a course of action that can be defended generally, or on the basis of principle.

Although this conclusion is repugnant to common sense, it is a conclusion that some people would accept. Brody has argued that since there is no morally relevant asymmetry between the woman and the fetus, and since the fetus as a person has the same right to life that any other person has (and hence the same right to life that the woman has), it is not defensible for us to favor the woman's life over that of the fetus as a

matter of course (or policy). What we should do instead is adopt a “fair random method”⁴⁶ to determine, on a case-by-case basis, whose life is to be saved and whose sacrificed: when the woman’s life is threatened by the continuation of the pregnancy, but the fetus could survive and be born alive if the abortion is not performed, then what we should do is toss a coin to decide between them.

This view is sterner than the Restrictive view and, it seems to me, it is a doctrine that is difficult to defend on purely secular grounds. It is a very hard doctrine indeed if it is argued for as Brody argues for it. As we have seen, Brody thinks it does not matter morally that it is a third party—the doctor—and not the woman herself who performs the abortion. Brody’s view thus has the consequence that it would be impermissible for a woman to abort the fetus to save her own life even if this were something that she could do by herself. She, like the physician, would be obliged to toss a coin. This is, I think, a most implausible view.

It is worth pointing out that Brody’s conclusion does not gain any support from what I have said thus far, for I have been arguing that third-party permissions and entitlements may differ from those of the principals. I have suggested, moreover, that the case of ‘self-defense against a passive threat’ is one that presents us with an instance in which they clearly do differ. Although it is not a view that I hold (for reasons that will be made clearer as we proceed), I think that one could maintain that a woman would be entitled to perform an abortion upon herself while denying that a doctor would be permitted to help her.

The other alternative is to argue that abortion is a defensible course of action when the woman’s life is at stake, but to claim that, although the fetus presents (only) a passive threat to a pregnant woman’s life, there is nevertheless a morally relevant asymmetry between the woman and the fetus. This seems the more attractive line to take, but it is not one that Restrictives can readily opt for, since it is far from clear that it can be rendered consistent with the Restrictives’ fundamental outlook—that the fetus is a person and is thus fully protected by the ‘natural law’ forbidding homicide.

In *The Theory of Morality*, Alan Donagan suggests that the asymmetry might lie in the fact that the fetus “owes a debt of gratitude to its parents, in particular to its mother, for its very life” (p. 162). Since the pregnant

46. “Abortion and the Sanctity of Human Life,” p. 119.

woman is, of course, in no way beholden to the fetus, “in any threat to the mother’s life arising out of her pregnancy, her status as victim is beyond serious question” (p. 163).⁴⁷ In *The Ethics of Homicide*, Philip Devine proposes that one might seek to justify abortion undertaken to preserve a woman’s life by appealing to “the closer ties obtaining between the physician and the woman than between the physician and the unborn child” (p. 153).⁴⁸ Neither Devine’s nor Donagan’s proposal seems to me to resolve the Restrictives’ dilemma satisfactorily.

Devine’s proposal attempts to disadvantage the fetus systematically—to handicap fetuses as a class—on a basis that is both weak and arbitrary. A pregnant woman who needs an abortion to preserve her life might not have any significant ties with the physician who performs the surgery; she might, for example, be brought to a strange hospital in a coma. More to the point, however, is the fact that a fetus, in virtue of being what it is, is never in a position to have close ties with a physician or, for that matter, with anyone. Thus the appeal to the woman’s closer ties to the physician seems neither decisive nor fair. It is wrongheaded in another way as well. Although we think that it is sometimes defensible to appeal to the closeness of our ties to another person to justify our giving that person’s preferences and interests special weight (even when we admit that, from an impartial point of view, that person’s claims are equal to a rival’s), we are most reluctant to allow this sort of favoritism when the ties in question may be entirely financial or purely professional ones. We would not think that physicians would be acting rightly if they decided to let a pregnant woman die rather than perform the abortion that was needed to save her life because they had powerful senior colleagues serving on the local branch of the “Friends of the Fetus” committee. Nor would we think that they were acting rightly if they agreed to perform the abortion simply because they were offered a fee for doing so (whereas no one offered them a ‘fee’ for refusing⁴⁹). If pregnant women, as such, have a stronger claim to the preservation of their lives than dependent

47. It is not clear that what Donagan says here is consistent with what he says in other places in the book. See Sumner’s criticism, *Abortion and Moral Theory*, pp. 109–10.

48. The fetus has close *biological* ties with the pregnant woman, of course—but this cannot be the sort of thing that Devine has in mind when he speaks of close ties. Perhaps Devine’s suggestion is as vague (and as weak) as it is because the view that he attempts to rationalize is not one that he himself seems at all inclined to hold. This is more evident in the tone of his discussion than it is in any easily quotable extract, but see p. 153.

49. Indeed, this seems rather like blackmail.

fetuses do, it is not Devine's proposal that provides the foundation for the claim.

There is a different problem with the suggestion Donagan puts forward: it offers support to the Moderate rather than to the Restrictive view of abortion.⁵⁰ If we think the fetus owes the woman a debt of gratitude, then it appears that we are regarding pregnancy as a continuing act of supererogation: when a woman prefers to discontinue the pregnancy because the burden of providing fetal life-support has become too onerous, then she does not wrong the fetus, for she is merely declining to continue doing it a favor. This sort of reasoning will obviously permit abortion in a wide range of cases, not just those in which the woman's life is in danger. (Indeed, it is widely thought to be just the reasoning that underlies the Thomson-Moderates' position.) For it cannot plausibly be claimed that abortion violates a fetus' right to life if continuing with a pregnancy is regarded as an act of supererogation.

I believe it is problematic to regard the fetus as owing a debt of any kind to anyone. But if we ask ourselves what is plausible in the view that it does owe a debt to the woman who carries it, then I think that we find ourselves appealing to the very features of the relationship between the pregnant woman and the dependent fetus that many Moderates and Permissives have been at pains to stress.⁵¹ A pregnant woman provides life-support to the developing fetus through her body, and the fetus is, in turn, parasitic upon her: a fetus thus survives off a woman (that is, at her expense), not in partnership with her. Since the life and well-being of the fetus are sustained through its physical dependence on the woman's body, the very fact of being pregnant undermines a woman's autonomy. She cannot choose what she shall do without thereby choosing for someone else, and she must therefore take into account the possible risks of even the most mundane sorts of activities: driving a car, lifting a bucket, taking an aspirin.⁵² While providing assistance to a post-fetal person may involve a significant reduction of a benefactor's freedom of choice and action, pregnancy involves a physical invasion of the body. A pregnant

50. Since Donagan seems in other respects to be a Restrictive, this is not a result that he would welcome. (But see note 47.)

51. See Feinberg, "Abortion," sec. II; Nicholson, *Abortion and the Roman Catholic Church*, chaps. 3 and 4; Regan, "Rewriting *Roe v. Wade*," sec. I; Thomson, "A Defense of Abortion."

52. Pregnant women in California were recently urged to stay out of hot tubs during the first trimester of pregnancy. (What next?)

woman is thus not in the position of someone who is (merely) reluctantly providing a time-consuming and exhausting service to another person. Nor is she (merely) in the position of someone whose body is regarded by others as a resource of the community, in the way that the possessor of a rare blood type might be so regarded in an emergency, or the possessor of two healthy kidneys might be regarded in a society beset by hereditary kidney disease. Pregnancy is, by its nature, a more intimate invasion, for it modifies a woman's *self*: it takes *her* over by hormonal alteration, as well as in more subtle ways.⁵³

The relationship between the pregnant woman and the dependent fetus can thus be seen to be inherently asymmetrical. Given the nature of the connection, and how this connection affects the pregnant woman, it seems reasonable to suppose that the asymmetry is relevant and, indeed, morally significant. The supposition that the asymmetry is of moral significance may well underlie the widespread conviction that abortion is defensible whenever the pregnancy poses a threat to the woman's life. And it may figure in proposed justifications of preferring the woman's life to the fetus' life whenever it is necessary to choose between them. It is implausible, however, to suppose that this is all that can be justified by an appeal to the asymmetry. For the appeal to the special asymmetrical nature of the relationship between the woman and the fetus is not an argument that characterizes 'abortion in self-defense' as justified self-defense (for it does not involve characterizing it as self-defense at all). This may well pose a problem for a Restrictive who appeals to the asymmetry, for it is doubtful that this appeal provides a basis for defending abortion only when it is necessary to preserve a woman's life. It may have considerably more permissive implications.

The strategy that we have been considering—the appeal to the special asymmetrical nature of the relationship between the woman and the fetus—is not one that proceeds via any general argument to the effect that victims of passive threats have, as such, a stronger claim to third-party assistance than their attackers do. The asymmetry between the woman and the fetus is supposed (somehow) to be a special one,⁵⁴ a

53. See Regan, "Rewriting *Roe v. Wade*," sec. IB1, and Nicholson, *Abortion and the Roman Catholic Church*, chaps. 3 and 4.

54. To say this is not to say that the asymmetry between the woman and the fetus is so special that nothing could possibly be morally analogous; it is rather to remind us that while other sorts of situations may exhibit features that render them to some degree morally parallel to pregnancy, pregnancy is *characterized* by these features.

feature of the fetus' intimate biological dependence, not one that simply obtains in virtue of a person's posing a passive threat to another person's life. And the appeal to this special asymmetry is supposed to yield the conclusion that a woman whose life is threatened by the continuation of the pregnancy has a strong claim to the assistance of disinterested third parties, while, as I have argued, victims of passive threats do not generally have a claim to preferential assistance. In defending 'abortion in self-defense' by appealing to the asymmetrical relationship between the fetus and the woman, one is not involved in defending a *policy* of providing preferential assistance to the persons who are the victims of passive threats.

Nor can the appeal to this asymmetry be fit into the other model of self-defense sketched above. Although the appeal to the asymmetry is supposed to yield the conclusion that a pregnant woman may be entitled to preserve her life by aborting (and thus killing) the fetus and have a strong claim to the third-party assistance that she needs to preserve her life—a claim that is much stronger than the claim that victims of passive threats generally have—it does not subsume 'abortion in self-defense' under the model of self-defense that applies in the case of the hostile aggressor or deranged assailant. For the sort of asymmetry that is in question is importantly unlike the one that characterizes the relationship between an aggressor or an assailant and the persons who are their victims. As we have seen, the aggressor and the assailant have in some sense done something that has weakened, forfeited, or undermined their prior claims to full moral parity with the persons who are now their victims. But a fetus cannot be so regarded, for a fetus has done nothing of the kind. Since the fetus has done nothing at all, any attribution of agency—however slight—seems problematic. (Perhaps this constitutes a partial explanation of why we encounter difficulties in supposing that a fetus owes its 'parents' a debt of gratitude, and in regarding the fetus who threatens the pregnant woman's life as a 'pursuer.'⁵⁵) When the fetus poses a threat to the pregnant woman's life, it does not forfeit moral standing that it previously had. The appeal to the special asymmetrical nature of the relationship between the pregnant woman and the dependent fetus appears to be a rival to, and not a mere extension of, the

55. See Brody, "Abortion and the Sanctity of Human Life," and Devine, *The Ethics of Homicide*, chap. 5, sec. 22.

argument that characterizes 'abortion in self-defense' as a case of self-defense.

In light of the difficulties that have been raised regarding the attempt to apply the notions of self-defense to the case of abortion, I think that Restrictives would do better to agree that 'abortion in self-defense' is not a case of self-defense at all than to maintain that it is a case of self-defense that merely deviates somewhat from more familiar cases. For we do not have a model that fits the case of 'abortion in self-defense': the passive-threat model does not return conclusions that are strong enough to support 'abortion in self-defense' as a principle or policy, and the aggressor-assailant model mischaracterizes the nature and the role of the fetus' threat. Nor is it obvious that we could construct a workable model (by emendation, extrapolation, or some other non-*ad hoc* reasoning) without significantly distorting our views about the nature and structure of our entitlement to defend ourselves (and, perhaps, the nature and structure of rights in general). This may make an appeal to the special asymmetrical nature of the relationship between the woman and the fetus a more attractive strategy to Restrictives who recognize the difficulties of characterizing 'abortion in self-defense' as a case of justified self-defense, yet want to hold to the Restrictive view that abortion is permissible only when it is necessary to preserve the pregnant woman's life. But this attraction can be only superficial.

If we wish to maintain that the appeal to the asymmetry is powerful enough to yield the conclusion that abortion is defensible whenever the continuation of the pregnancy poses a threat to a woman's life, then we must be able to explain *how* it is that the appeal yields *this* conclusion—how (exactly) the appeal provides support for the view that the claims of the woman outweigh the claims of the fetus when it is necessary to choose between them. As we saw in discussing self-defense, the supposition that the woman's claims are stronger is not based on the belief that anyone has done anything that can be construed as eroding the fetus' claims or as bolstering the woman's. The threat to the woman's life is not produced by the malign, incomplete, or defective exercise of the fetus' agency (for it is doubtful that the fetus [in its present stage of development] can be characterized as an agent at all). Nor can it properly be said that the threat to the woman's life arises from anything that the fetus does, for it is (merely) the ongoing connection of the fetus to the woman that poses

the threat to her life. The appeal to the special asymmetrical nature of the relationship between the woman and the fetus seems to involve the view that it is the fetus' ongoing dependency that itself provides a basis for thinking that the fetus has the less substantial claim to have its life preserved. And so, if the appeal to the asymmetry between the woman and the fetus yields the conclusion that the woman's claims are stronger, it must do so by drawing upon a substantive moral view. It must embody the supposition that, because the fetus is (unilaterally) dependent upon the pregnant woman, different relative strengths are to be assigned to the woman's claims and the fetus' claims *ab initio*: the fetus is not (for it never was) the woman's moral peer.⁵⁶

To say this is not to assert categorically that the woman and the fetus are not moral peers, but to suggest that the argument that appeals to the asymmetry between the woman and the fetus to defend 'abortion in self-defense' may well involve the assumption that the woman and the fetus are not moral peers. (Nothing else that we have considered thus far has allowed us to maintain that the woman is *entitled* to terminate a pregnancy in order to preserve her life and is *entitled* to receive assistance in killing a fetus who [passively] threatens her life; other avenues to defending 'abortion in self-defense' appear to be closed.) If this suggestion is correct, then we can see why the appeal to the asymmetry between the woman and the fetus is not likely to be a strategy that can be called upon to help defend the Restrictive view of abortion.

If it is necessary to posit some sort of moral asymmetry between the woman and the fetus in order to explain how 'abortion in self-defense' can be morally defensible as a policy, then we should recognize that there may be no reason to suppose that the case in which a woman seeks an abortion to preserve her life is morally exceptional: although it may be the clearest sort of case in which abortion is defensible, it need not be

56. I am not maintaining that the admission that the claims of one person are weaker than the claims of another requires the admission that the two are not moral peers. It matters why someone's claims are thought to be weaker. The claims of the fetus are held to be weaker *ab initio*: their assessment as such is in no way related to anything that the fetus has done (and, quite possibly, in no way related to anything that anyone has done). In this case, then, it seems that the relative weakness of the claims of the fetus is predicated on the belief that the fetus simply is not the woman's moral peer: What content is there to the claim that the fetus is a person if its claims are *systematically* discounted? The question is obviously one that requires more sustained treatment than can be given here.

the only sort of case. The exact size of the gap (in moral status) between the woman and the fetus—the exact difference in the strengths of their competing claims—is certainly not something that non-Restrictives have made clear, nor is there any doubt that attempts at greater clarity and precision will continue to be the subject of much controversy. But Restrictives are not justified in assuming *a priori* that the gap is one that *must* be minimal; there is no reason in principle to suppose that the difference can only be great enough to decide a tie in the woman's favor. If the woman's claims are strong enough to justify abortion—with the assistance of a third party—when it is undertaken to preserve her life, then they *may* be strong enough to justify it in other cases as well. Although this is a view that Restrictives will reject, this rejection is something that must be argued for. If the line of argument that I have been developing has force, then I believe that it succeeds in shifting the burden of proof onto those who would espouse a Restrictive view. For—as I hope I have shown—we should be wary of supposing that we can defend 'abortion in self-defense' by appealing to our usual models of justified self-defense, and skeptical of the claim that the appeal to the special asymmetrical nature of the relationship between the woman and the fetus yields the conclusion that the woman is to be accorded only marginal preference—that the woman's entitlement to preserve her life is strong enough to allow for 'abortion in self-defense,' but no stronger.

I have been focusing on the problems that confront Restrictives who appeal to the asymmetry between the woman and the fetus to defend 'abortion in self-defense,' but the conclusions I have reached have wider implications, for the appeal to the special asymmetrical nature of the relationship between the woman and the fetus is central to the Thomson-Moderates' position. Thomson-Moderates wish to appeal to this asymmetry, but also to maintain—if only for the sake of argument—that the fetus is a person, and hence the woman's moral peer. But it is far from obvious that these are compatible aims, for it is not at all clear that one can place the requisite moral weight—enough to return the conclusion that 'abortion in self-defense' is defensible as a policy—without calling into question the assumption that the fetus is the woman's moral peer. If there is such a tension in the Thomson-Moderates' position, then it may represent a serious problem. For it may undercut the rationale behind the adoption of the Thomson-strategy: that of showing that Moderate

conclusions about the morality of abortion can be derived (even) from Restrictive assumptions about the moral status, indeed, the personhood of the fetus.

The difficulty that confronts Restrictives and Thomson-Moderates—that of explaining how the special asymmetrical nature of the relationship between the woman and the fetus provides support for the view that the woman's claims outweigh the claims of the fetus—is, I believe, a deep and serious one. The belief in the justifiability of 'abortion in self-defense' seems ultimately to involve—or to reflect—the conviction that the claims of the fetus are, as such, weaker than those of the pregnant woman, and that it is the special asymmetrical nature of the relationship between the woman and the fetus that (somehow) accounts for the moral disparity between them. But how these convictions are related is puzzlingly obscure, for it is not clear why the fact of fetal dependency should be thought to bear on the strength of the fetus' claims (and, ultimately, on the moral status of the fetus itself). We are inclined to think that a being's moral status depends, in some fundamental way, on what kind of thing it is,⁵⁷ and though we recognize that a fetus *is* a dependent (in this stage of its development), its dependence upon the pregnant woman is something that we recognize to be both temporary and contingent. Why, then, should the fact of the fetus' dependency be thought to be so important to the determination of its moral status? It is not the dependency in itself that can account for why the claims of the fetus count for less: a fetus developing *in vitro* is not dependent in the way that a fetus developing inside a pregnant woman is, but we do not suppose that the claims of the *in vitro* fetus are any stronger.⁵⁸ (Nor is it obvious that we would take the claims of the *in vitro* fetus to be on a par with those of any other [post-fetal] person.)

More to the point, perhaps, is the question of *how* the dependency of the fetus is relevant. It does not seem to figure in the sort of case that we have been considering (that is, a case in which we must choose between the woman and the fetus), for it is a case in which either the woman or the fetus could survive, and (henceforth) do so independently of the other. Although our belief in the defensibility of 'abortion in self-

57. See note 18.

58. Indeed, the *in vitro* fetus may be less of a dependent than a house pet is: if the fetus is supplied with the proper conditions, it can develop on its own (though it requires monitoring, it does not necessarily require tending).

defense' may involve the conviction that there is a moral disparity between the woman and the fetus which is to be explained by appealing to the special asymmetrical nature of the relationship between them, it is not a conviction that is firmly grounded, for it is an explanation that is really quite obscure.

I have not tried to show that abortion is morally defensible whenever it is undertaken to preserve a woman's life (though it is certainly a view that I hold). What I have tried to show is that, although this is a view that is widely held, it is one whose defense is neither straightforward nor unproblematic.

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