Abortion Bans and Cruelty

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Abstract: Abortion bans have been characterized as cruel especially in not allowing exceptions for rape or incest. The article first examines one approach to morally justifying bans based on the Doctrine of Double Effect (DDE) which distinguishes morally between killing or letting die intending death versus doing so only foreseeing death. It then presents some criticisms of the implications of the DDE but also argues that what the doctrine permits helps provide a ground for the permissibility of abortions even if the fetus is a person. Whether there are limits on applying this argument is also considered. In conclusion, the article considers whether and why not permitting exceptions to bans for rape and incest is cruel and whether cruelty is a ground for opposition to bans.

Key words: abortion bans, fetus, Doctrine of Double Effect, intentional killing, duty to aid, time limits on abortion, cruelty, rape

Introduction

The United States Supreme Court announced its decision in Dobbs v. Jackson Women's Health Organization on June 24, 2022. The ruling overturned the court's decision nearly 50 years prior in Roe v. Wade that women in the U.S. had a constitutional right to abortion, and several states immediately introduced legislation to ban abortions from conception on. Occurring as it did only a few months before the 2022 midterm elections, Dobbs featured heavily in political discourse. Some Democratic party ads described a ban on abortions even in cases of rape and incest as "cruel."

Legislation that bans abortions from conception onward is reminiscent of the Roman Catholic position on abortion as a moral matter, and so it could be useful to consider the possible rationale of such a ban by considering the Catholic position. It might also be useful to consider why opponents of such a ban find it cruel to not allow exceptions for pregnancies that result from rape and incest.

It is my hope that this article will help each side understand the point of view of the other, see where they agree and where they disagree, and facilitate respectful mutual engagement. I will sometimes employ unrealistic hypothetical cases: investigating the moral judgments we make about such cases can help us uncover what factors underlie our moral judgments in real life cases.

In Section 1, I examine the moral doctrine that underlies one approach to banning abortion yet permits other acts that would also result in the death of a fetus (even when it is considered to have the moral status of a person, a status that confers "maximum rights" on an entity). In Section 2 I consider criticisms of the doctrine based on some of its problematic implications. Then, in Section 3, I argue that based on the acts it seems to permit, the doctrine in fact provides a ground for the permissibility of abortions. In Section 4 I consider whether there are limits on applying this argument, and in Section 5 I consider whether and why not permitting exceptions

to abortion bans (for rape and incest) is cruel and whether cruelty is a ground for opposition to such bans.

1. The Doctrine of Double Effect and the morality of abortion

The ban on abortion in Catholic moral theology can be largely explained by one part of a principle that is known as the Doctrine of Double Effect (DDE). It claims that killing someone else (or intentionally refraining from action in order to let them die), whether as an end in itself or even as a means to achieve a greater good, is strictly prohibited. The DDE is a general philosophical view not explicitly tied to Catholicism and is well known for its role in traditional just war theory, which condemns intentionally killing civilians as a means to win a war. The doctrine supports a ban on abortion only if the conceptus at all stages of development, including the embryo and fetus,[i] is considered to have the moral status of a person.[ii] It would not support a ban on, for example, intentionally killing a bird if (in a hypothetical case) it were lodged in a woman's womb. This suggests that abortion bans attribute the moral status of persons to the fetus from conception.

The prohibition in Catholic moral theology on intentionally killing or letting die has been interpreted to imply that even if both the woman and the fetus would die unless an abortion is performed, one may not intentionally kill the fetus to save the woman. One must let them both die because foreseeing their deaths, even with certainty, is not the same as intending their deaths and intending death would make an act or omission morally wrong on this view.

It may be difficult to see the difference between foreseeing something (even with certainty) and intending it. Philosophers use what is known as the Counterfactual Test to distinguish between these concepts (even if imperfectly): Suppose that contrary to fact, some deadly effect of your act (including omission to act) would *not* occur holding others things constant. Would this provide a reason not to do your act? If not, then you didn't intend the effect. If the fact that the effect would no longer occur would provide a reason not to do your act, then you intend the effect itself. For example, consider a case where an abortion would save a woman's life. An effect of the procedure is that her fetus will die. Is the death of the fetus intended or merely foreseen? Apply the Counterfactual Test, imagining that the fetus would not die as a result of the abortion and could be raised to viability outside the woman's body. Knowing that the fetus would not die, would the woman still pursue the abortion? If she would not, then she intends the death of the fetus. If the fetus not dying would not give her a reason to refrain from the abortion, the fetal death is a mere side effect.[iii]

Now let us consider another part of the DDE which is based on the conceptual distinction between intentionally killing and killing with mere foresight to a death. According to this second part, if one acts with the intention to produce a greater good and someone dies as a side effect, that death need not make the act morally impermissible. Yet the very same death would make an act impermissible if it were brought about intentionally as an end in itself or even as a means to a greater good. On this ground, Catholic moral theology permits the removal of a pregnant woman's cancerous uterus though it is foreseen that doing this will result in the fetus' death, even if the fetus would be born alive before the woman dies of cancer were the uterus not removed. (Similarly, in war causing foreseen collateral deaths of civilians can sometimes be permissible when intentional deaths are not. This can include bombing military sites when it is

foreseen but not intended that some of the bombs will also hit people nearby, killing them.) One view of the cancerous uterus case is that removing the uterus kills the fetus as a side effect. Another construal is that, since there is no attack (even unintended) on the fetus, removing the uterus ends life support the woman is providing and so lets the fetus die (rather than killing it) as an unintended foreseen side effect. Actively terminating life support one is providing is typically thought, as a conceptual matter, to be a letting die (whether or not it is permissible) rather than a killing. Just as killing may involve either a foreseen or intended death, so letting die may involve either a foreseen or intended death.[iv]

Some revisionists have attempted to construe the death of the fetus in some abortions as an unintended side effect and so possibly consistent with the DDE. For example, in a craniotomy crushing the fetus' skull involves an intended attack on the fetus, but the fact that it consequently dies is said to be only a side effect of a necessary means to its removal perhaps for the further end of saving the pregnant woman's life. One could use the Counterfactual Test to try to show this: There would still be a reason to crush the skull to remove the fetus if, counterfactually, the fetus survived after removal from the woman's womb. Because this understanding of a craniotomy seems implausible, another approach has been to revise the DDE so that it also rules out intending the involvement of the fetus (as in crushing its skull) in a way that foreseeably results in its death. Some philosophers make more fundamental criticisms of the DDE, denying that intention determines an act's permissibility and offering other grounds to account for the impermissibility of many of the acts that the DDE condemns.[v] In this article, I will just focus on the DDE as traditionally understood.

State bans on abortion may depart in some ways from the uses of the DDE we have considered. For example, we have looked at the Catholic view of what the DDE implies about abortions involving a fetus that would otherwise die. However, notably, some abortion bans in public policy—departing from the Catholic view—do allow intentional killing of the fetus in this circumstance. But what about cases in which it is not certain that the fetus would otherwise die, and yet the pregnant woman's life is at stake? It is not clear whether the state laws that would ban all abortions would permit, for example, the removal of a pregnant woman's cancerous uterus on the grounds that the death of a fetus that might survive were the cancer to remain untreated is only foreseen and not intended. Insofar as state laws, unlike the Catholic view, permit abortions to save the pregnant woman from a threat to her life caused by the pregnancy, they presumably would also permit removal of the cancerous uterus.

2. Problematic implications of the DDE

So far we have considered the DDE in conjunction with the view that the fetus has the status of a person. We've seen how the principle can be used as a defense for prohibiting abortion and at the same time, how it can permit other procedures that also result in the death of a fetus. Now let's take a closer look at how it may be difficult to draw conclusions about the morality of abortion based on the DDE.

The DDE permits killing as a side effect only if one's act will produce a good that outweighs that bad effect. Hence, if it were permissible to remove the cancerous uterus and in doing so kill the fetus (that would otherwise survive to viability) as a side effect, this would be because saving the woman is seen as a greater good and the death of the fetus a lesser bad. However, if both the

woman and the fetus have the status of persons, and if in leaving the cancer untreated the woman would die while the fetus would survive, it is not clear why this should be so. To see this, imagine that the removal of a woman's cancerous uterus (hypothetically) had the unintended side effect of killing a person outside her womb who was in no way dependent on her.[vi] The DDE would not permit the removal of the uterus that causes the death given that the woman's living is not a greater good than the other person's living. Furthermore, if there were twin fetuses who had the status of persons in the woman's cancerous uterus, the greater good would seem to be the survival of two people rather than one person.

Suppose the removal of the cancerous uterus would nevertheless be permitted even when it causes two fetal side effect deaths. This might be because the fetuses do not have the moral status of persons, or because, unlike the person wholly external to the woman, the fetuses are imposing on her and they stand to lose life that they only have due to this imposition. The permissibility of removing the uterus in this case might also be because the deaths, while a foreseen side effect of the procedure, would be a letting die rather than a killing since there is no direct attack (intended, as in the case of the craniotomy, or merely foreseen) on the fetus. After all, it would be implausible if the DDE permitted a letting die with foreseen death only if a greater good results. If that were the case, I couldn't permissibly let someone die rather than sacrifice my arm to save them since retaining my arm wouldn't be a greater good than that person surviving. But while it could be an admirable act beyond the call of duty (known as supererogatory) to do so, I have no such moral obligation.

Any or all of these factors could morally distinguish a fetus (that dies when the uterus sustaining it is removed from the woman's body) from an external person (unconnected to the woman's body yet who would be killed as a result of her uterine removal) and could make removal of the uterus permissible in one case and not the other.

Some of these factors may also open the door to permissible abortions. For example, traditional Catholic moral theology permits lethal self-defense against an aggressor so long as one does not intend his death as an end or means (as when one pushes an aggressor away merely foreseeing he will fall over a cliff and die). Although the fetus is not a willing aggressor, it might be seen as what is called a "morally innocent threat" because through no fault of its own it presents an imposition on the woman's body or additional threats to her well-being. This is in contrast to a person outside her womb. The threatened woman might therefore, by this reasoning, be entitled to defend herself (or seek another's help to defend her) against the threat—whether the threat is a cancerous uterus (where nullifying the threat results in a fetal death as a side effect) or the fetus itself against which one may need to act. Further, it is an implausible implication of the DDE that one may not intentionally kill a willing aggressor if that is necessary to protect oneself or others. Hence, it may even be permissible to intentionally kill a morally innocent threat, especially if the life it loses is one it only has due to imposing on the person who intends the killing to end the imposition. I'll discuss how this can be so further in Section 3.

3. How the DDE might bear on the permissibility of abortions

In Section 2 we considered the possibility that some factors (such as stopping an aggressive threat) may sometimes make even intentional killing morally permissible. Now we'll consider in

more detail whether intentionally killing a morally innocent fetus in an abortion could be permissible.

That the DDE permits removing a pregnant woman's cancerous uterus is of significance in this regard. It shows that abortion bans that use DDE reasoning and consider the fetus to have the moral status of a person do not rely on two other distinct views: (i) a pregnant woman has a duty to provide the use of her body to the fetus at great cost to herself or on the flip side, (ii) a fetus has a right to use the woman's body when it needs it. If it did have such a right, the woman would not be permitted to have her cancerous uterus removed when doing so leads to the death of a fetus that would otherwise survive. Imagine that a woman's fetus were initially growing outside her body and would die if not transferred to her body. A ban on abortion based on the DDE does not imply that the woman has a duty to transfer it rather than let it die. And while the cancerous uterus case does not imply that the woman may refuse to let the fetus use her body when the cost to her would be much less than death, Catholic moral theology does not claim that the woman has a *duty* to do so and it does not base an abortion ban on there being such a duty.[vii] Suppose actively terminating life-saving aid (e.g., one removes a person from a breathing tube) is a case of letting die rather than killing. Then if abortion involved only preventing or terminating assistance to a fetus to avoid the same lesser costs to the woman, it might be permissible according to the DDE even if it foreseeably leads to the fetus' death.[viii]

In this respect, at least some supporters of a ban on abortion agree (surprisingly) with some claims emphasized by Judith Thomson in her groundbreaking 1971 article "A Defense of Abortion." In that article, Thomson assumes only for the sake of argument that the fetus is a person. She then argues that a person has no right to use another's body even to save their life. This is consistent with the view that one does not have a duty to always bear a lesser loss to save someone else from a greater loss (e.g., one is not morally obligated to give up one's arm to save someone's life). Thomson thinks this implies that one may detach another person if they are already using one's body even when one's life or health is not at stake and when doing so will foreseeably lead to this other person's death. She sees such detachment as a permissible killing. We have already seen that detachment may be an active form of letting die rather than a killing; it involves neither a deliberate attack on the fetus nor an intention to kill it as a means of removal. It is only in a follow-up article, "Rights and Deaths," that Thomson explicitly says that she means to justify intentionally killing even an innocent person by either the woman or someone who chooses to help her if this is necessary to stop the person's use of the woman's body against her will.[ix]

By contrast, as we have already seen, some argue for a ban on abortion because in their view it involves intentionally killing a fetus as a means to remove it from a woman's body. This is so even while agreeing that she doesn't have a duty in general to provide such support to save the life of someone outside her body. The question is whether these two positions are in tension with each other. In what follows, I aim to show that it is possible to make the grounds for the permissibility of intentionally killing the fetus in an abortion more precise if bans are not based on women having a duty to sacrifice themselves for the fetus or the fetus having rights to use her body to save its life per se.

Suppose the woman has no duty to provide the fetus with use of her womb merely to save its life. Then when she is pregnant she is providing life support to the fetus to which it has no right even to save its life. This means that any right the fetus has to continue receiving life support would

have to be based on the possibility that intentionally killing it to remove it is impermissible (since not being killed is not the same as having one's life actively saved).[x] But (i) it is a mistake of the DDE to imply that it is never permissible to intentionally kill (as discussed earlier), and (ii) since in being killed the fetus would lose only life it is getting from imposition on the woman to which it has no right merely to get that life, intentionally killing it (which deprives it of that life) in order to end that imposition can be permissible. This argument (which I first presented in my *Creation and Abortion*[xi]) does not merely point to the fact that the fetus is imposing on the woman's body in a way that she need not permit even to save someone's life as this could be true even when the imposition is not in fact saving someone's life.[xii] It emphasizes that she is in fact providing it with life support and so killing the fetus deprives it of no more than the benefit of an imposition that is not justified by the benefit it produces.

Suppose this argument for the permissibility of intentionally killing the fetus (even if it is a person) in order to stop providing it with some types of life-saving aid is correct. Killing in order to stop all supererogatory aid (i.e., aid we don't have a duty to provide), even when it is saving life, might still be impermissible. For example, suppose one needn't give someone a large sum of money to save their life. It is still impermissible to deliberately kill the person whose life is being saved by the money even if that is the only way to get the money back. Hence, it is the seriousness of imposition on someone's body that also plays a role in the justification of killing as a means to stop the bodily imposition that provides life support.

4. Possible limits on this argument for permitting abortion?

In Section 3, I offered an argument for the permissibility of abortion even if the fetus is a person. Now I'll consider whether there might be limits to its applicability. Some argue that abortion can only be permissible if the fetus is not a person. Thomson, by contrast, argues that abortion is permissible even if the fetus is a person from conception onward (although her own view is that the fetus becomes a person at a late stage of pregnancy). It might be thought that if abortion is permissible when the fetus does not have the status of a person and it is permissible even if it is always a person, then abortion is permissible whether or not the fetus is a person. However, this might not be true in virtue of the following issue that Thomson does not discuss: If a fetus is not a person from conception onward and only achieves personhood at a certain latter point of development, there may be a moral difference between aborting it before versus after it reaches that point. Presumably it is a less serious moral matter to kill a nonperson than a person. If one is morally responsible for failing to do the less serious act within a certain time frame and for then putting oneself in the position of having to do the more serious act of killing a person, is it still permissible to abort a person or should there be a time limit on abortion?[xiii] This ground for a time limit does not depend on the moral significance of a fetus' stage of development per se. This is because if the fetus were a person from conception onwards, there would have been no time at which one could have aborted a nonperson, so killing a person in an abortion would still be permitted.[xiv] This ground for a time limit depends on whether or not abortion at an earlier, nonperson stage is possible.

One possible response to this concern is to consider whether a time limit would similarly apply to letting a fetus die (rather than killing it). That is, suppose a woman had to take a harmless pill every month to keep a pregnancy going. If she was able to stop taking the pill early on before the fetus was a person but didn't, is it permissible for her to stop taking the pill when the fetus is a

person? Suppose it's permissible to omit taking the pill even though taking it is so easy that doing so in order to save a person would ordinarily be her moral duty (since in general the easier it is to do an act that saves a person the more likely one has a duty to perform it). Omitting it could be permissible because the fetus still has no right to the use of her body despite her not having withdrawn aid earlier. This would imply that in the case of delayed abortion in which the fetus has become a person, it still would have no right to the use of the woman's body to save its life. This would make its abortion permissible since in being killed it would only lose life it gets from use of her body to which it has no right for purposes of retaining its life, and killing the fetus is the only way to stop such use (as argued in Section 3).[xv]

5. What constitutes cruelty in abortion bans, and can that be ground for opposing them?

Now let us consider why some think it is especially cruel not to have a rape exception to a ban on abortion.[xvi] The impression given by the ads in which this claim was made is that the cruelty is a reason why a complete ban is wrong. In what follows, I will use hypothetical cases to help tease apart factors that are typically combined in discussion of pregnancies that result from rape. This will enable us to see which factors (alone or in some combination) might be sufficient or necessary to ground an exception to an abortion ban and how cruelty bears on this.

(A) The question of the woman's moral responsibility for her pregnancy, and thus for the fetus, is different for victims of rape than for participants in consensual sex. A rape victim does not bear any moral responsibility for her pregnancy since (i) she did not consent to the sexual act, and (ii) she is not required to use contraception merely because it is possible that she could be raped. We could imagine cases besides rape in which the pregnant woman would not be morally responsible for the presence of the fetus. For example, suppose a woman with a cognitive disability consents to sex without realizing that she could become pregnant as a result.[xvii] Then if the absence of responsibility for pregnancy grounded the rape exception, abortion might also be permissible in this case. However, that someone is not responsible for being in a situation that is bad for them (such as unwanted pregnancy) does not yet show that there is a permissible way of getting them out of that situation (nor that abortion is such a way).

Emphasizing the nonresponsibility ground for the rape exception might suggest that engaging in voluntary sex (even with contraception), which gives a woman at least partial responsibility for her pregnancy, makes it harder to justify having an abortion. If this were so, it would probably imply that responsibility also gives her a duty to provide the fetus with the use of her womb independently of having a duty not to kill it to remove it. Unlike the ground for the ban on abortion we have already considered, this view about the role of moral responsibility for pregnancy connects (i) a duty not to intentionally kill the fetus to remove it from the womb with (ii) a duty to provide costly aid to the fetus rather than let it die. Thus it might imply, where the DDE does not, that it is wrong to abort a fetus when doing so would involve its merely foreseen death.[xviii] That a ban based on the DDE does not permit a rape exception—because an abortion in those circumstances would still intentionally kill a fetus as a means—itself suggests that a ban based on the DDE need not be connected with judging the morality of women's sexual activity.

(B) One thing that focusing on nonresponsibility for pregnancy omits is the use of force against a woman in rape. It also omits that another person is acting on her body against her will or without her consent which could occur even without force (e.g., when she is drugged so as to be unable

to resist sex). All these factors could also be present in a case of nonvoluntary artificial insemination; the absence of sexual intercourse would not reduce the strength of the ground (if there is any) for an exception. All these cases involve wrongful involvement by another person in addition to the woman's pure nonresponsibility for the pregnancy. This means that the woman who is raped is the victim of wrongdoing and has been wronged (which is not true of the woman with the cognitive disability who becomes pregnant in our earlier example).[xix] The consequences of being wronged should be corrected when it is possible and permissible to do so. However, that abortion would correct the consequences of being wronged is not enough to show that it is a permissible means of doing so.

(C) When the rape exception is raised, some refer to how horrible it is to be required to bear the biological offspring of one's rapist. (The emphasis is placed on "bearing" it, being complicit in its development, rather than the fact of such an offspring existing.) This concern would be void if the rapist used the semen of an innocent party to impregnate the woman, yet doing so would not undermine the case for a rape exception. The fetus would still be developing in her body due to the rapist's act. Hence, bearing the rapist's offspring would not be a necessary condition for a rape exception to the ban.[xx]

Opposition to the rape exception even to eliminate carrying the rapist's offspring might again be based on the DDE claim that it is always morally wrong to intentionally kill a person, especially one that is morally innocent (assuming the fetus has the moral status of a person), even to correct the wrong that was done to another morally innocent person (the woman impregnated by her rapist).

Even if this view is incorrect, another hypothetical example can help make clear that ending pregnancy due to rape is not always sufficient to justify killing. Suppose that removing a fetus produced by rape from the woman's womb would (somehow) require intentionally killing a second fetus of that rape that is outside of and not dependent on the woman's body. If fetuses had the status of persons, it would be clearly wrong to kill the outside nondependent fetus—and it would be wrong to characterize the choice *not* to kill it as being cruel to the pregnant woman, even if by refraining from killing it we denied the rape victim her only chance to have the other, dependent fetus removed from her body. This is so despite the nonresponsibility of the pregnant woman, the attack on her, her having to bear a rapist's fetus, and that the fetus to be killed would also be the rapist's. If it made no difference to the permissibility of killing the fetus in an ordinary abortion that it is imposing and dependent for life on the woman's body, then the impermissibility of killing the outside nondependent fetus resulting from rape would undermine the rape exception to the ban on abortion.

This case in which aborting the dependent fetus involves killing the nondependent fetus shows that we must demonstrate the permissibility of intentional killing before we can argue that it is cruel to refuse to so kill. (If an act is impermissible, refusal to perform it can't be cruel.) It also suggests that we need to draw a distinction between (i) a state of affairs being cruel and (ii) it being cruel not to stop that states of affairs. For example, the U.S. Constitution does not permit "cruel and unusual punishments." Suppose that someone being tortured by a mechanical device is a cruel punishment (and so constitutes a cruel state of affairs) but the only way to stop this happening is to kill several innocent people. That the punishment is cruel does not show that it is cruel not to stop it by the only means available. Similarly, it might be a cruel fate to be carrying the offspring of one's rapist, but that's not sufficient to show that refusal to terminate the

pregnancy is cruel. It is only after abortion has been found permissible that refusal to permit it could be considered cruel. However, suppose one argues that abortion is permissible on the ground that the fetus is imposing on the woman, would lose only the benefit of that imposition, and being killed is the only way to end that imposition. Then adding to that argument that having to bear the offspring of rape is a cruel state of affairs can help show that the imposition is significant enough to justify killing to end it.

After providing such an argument for permissibility, the cruelty of not allowing an abortion comes to the fore. Denying permission for an impermissible act is not cruel but denying permission for a permissible act *can* be. Hence, once it has been shown that abortion in a particular case is permissible, the decision not to allow the abortion (which would end what may be a cruel state of affairs) can be characterized as cruel. The cruelty of the state of affairs is not sufficient alone to ground the permissibility of abortion, but those who claim it is cruel not to permit abortion in rape cases could be correct even if they are incorrect in claiming that it being cruel not to permit abortions is an argument *for* the permissibility of abortion when in fact it only follows *from* already established permissibility.

Conclusion

In discussing points of agreement between some opponents and proponents of the moral permissibility of abortion (e.g., about whether a woman has a duty to share her body in order to save a fetus) and also arguing that contrary to the DDE intentional killing is sometimes permissible, I introduced potential grounds for defending a woman's right to seek an abortion. I also argued that the truth of claims about the cruelty of denying abortions (even to end cruel states of affairs) depends on first showing that those abortions are permissible. This is by contrast to the permissibility of abortions depending on the cruelty of not permitting them. If what I have said is correct, banning abortion is not a morally justified policy and so can be cruel even if the fetus is taken to have the moral status of a person.[xxi]

Notes and References

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[i] Henceforth, I shall use "fetus" to refer to all stages of the product of conception.
[ii] I leave it open that something other than an actual person could have the moral status of a person.
[iii] Here is a further example from war: Suppose (contrary to fact) that if one bombed a munitions facility no civilians would be killed. Would this give one a reason not to bomb? If not (is said), their deaths are shown to be mere foreseen side effects whose absence would not interfere with the purpose of one's bombing mission. But if their deaths were required as a means to terrorize the population, one would have a reason to call off one's mission showing that in the actual bombing case one intended their deaths.

[iv] Hence, one can draw a two by two square:

	Kill	Let die
Intend	K/I	LD/I
Foresee	K/F	LD/F

[v] For example, J.J.Thomson in "Physician Assisted Suicide: Two Moral Arguments," 1999 *Ethics* 109 (3):497-518; "T.M. Scanlon in *Moral Dimensions: Permissibility, Meaning, Blame* (Cambridge, MA: Harvard University Press, 2010), and F.M. Kamm, "Terrorism and Intending Evil," *Philosophy & Public Affairs,* Vol. 36, No. 2 (Spring 2008), 157-186.
[vivi] Being outside her body should be distinguished from imposing on and being dependent on her. This is because we could imagine a hypothetical form of pregnancy in which the fetus imposed on and was dependent on the woman by growing *around* rather than *in* her.
[vii] However, according to the DDE, it would be morally impermissible to let the fetus die because she intended its death rather than merely foreseeing its death as an unintended side effect.
[viii] On Dec. 23 2022 an announcement was made that the contraceptive pill Plan B prevents ovulation and does not prevent a fertilized egg (a zygote) from implanting in the uterus (a process which some referred to as an abortion). Suppose a pill did prevent a fertilized egg from implanting in the uterus by, for example, blocking the route of the zygote to the uterus or making it inhospitable to the zygote. This Revised Plan B would be comparable to blocking the route to the uterus of the fetus growing externally without any attack on the fetus. If the latter were permissible according to the DDE, it is not clear why Revised Plan B should not be permissible as well according to the DDE.
[ix] See J.J. Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1(1), 1971:47-66 and "Rights and Deaths," *Philosophy & Public Affairs* 2(2), 1973:146-159 which was her response to John Finnis, "The Rights and Wrongs of Abortion: A Reply to Judith Thomson" *Philosophy & Public Affairs,* 2 (2), 1973: 117-145. Many may fail to see the need to complete the argument given in her first paper so as to justify a deliberate attack on the fetus in abortion. Different ways of removing the fetus are discussed in my *Creation and Abortion* (N.Y.: Oxford University Press, 1992).
[x] One does not save someone's life merely because one doesn't kill them.
[xi] For more on this particular argument which focuses on the fetus losing only the benefit of an imposition to which it has no right merely to save its life see *Creation and Abortion*.
[xii] Thomson's cases often involve someone receiving life support. However, her argument speaks of ending use of one's body that one needn't provide even to save a life. This leaves it open that one might end use of one's body when it wasn't actually saving someone's life. She does note that when someone is receiving life support from using someone else's body if one may not remove them, then they will wind up getting support it was agreed they had no right to have merely to save their life. But this is not sufficient to show that they may not have a right to keep the support as a way to avoid being killed rather

than merely in order to save their life. My argument aims to show why their losing only life they get from support makes it unnecessary to avoid killing them.

[xiii] I raised this issue in "Creation and Abortion Short" in my *Bioethical Prescriptions* (N.Y.: Oxford University Press, 2013).

[xiv] By contrast the decision in Roe v. Wade placed emphasis on stages per se in altering requirements for permissible abortions in different trimesters.

[xv] There being other ways of removing the fetus that do not involve killing it and do not require considerably more imposition on the woman than an abortion could also limit the argument for abortion. For example, if the means of removing the fetus to an external gestation device imposed on her no more than removing it in an abortion, the former means may be required if the fetus has the status of a person. I first discussed how real and hypothetical external gestation devices could affect the right to seek an abortion in *Creation and Abortion.*

[xvi] Cruelty is here not being considered as a person's motivation but rather as a characterization of an act, a refusal to act, or even a state of affairs independent of motivation (as we shall see). Incest may usually involve rape but its involving abuse by a parent or sibling may be thought to make it worse. I will consider it a variation on rape.

[xvii] Science fiction type cases could also provide examples of nonresponsibility. For example, suppose a woman unavoidably became pregnant by cloning when she menstruates and this was either (a) an inexplicable unusual occurrence or (b) a part of women's natural biology that sometimes happens.

[xviii] For detailed consideration of how various forms of responsibility (including intentional pregnancy) might or might not affect the permissibility of abortion see *Creation and Abortion.*

[xix] Notice that she would also be a victim of a wrong if (in especially odd hypothetical cases) impermissibly twisting her arm or cheating her out of money made her pregnant against her will. Presumably the worse the wrong that results in pregnancy, the more important the correction of the wrong would be (other things equal).

[xx] Nevertheless, having her body nourish an entity that conjoins the rapist's sperm with her egg may be particularly repellent to the pregnant woman. Would it be worse or better if the rapist had managed to clone his embryo and inserted it into the unwilling woman so there would be no mixing in the embryo of the woman's and rapist's genetic material?

[xxi] I thank Thomas Douglas and two anonymous reviewers for comments on earlier versions of this article. I also thank Margaret Collins for help in making the article more accessible.