

“Consensual Pregnancy: The Moral Permissibility of Abortion”

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Section 1

1. No person may use another person’s body for any reason without her consent. [P]
 2. A fetus is a person. [P]
 3. A fetus cannot use a woman’s body without her consent. [1, 2]
 4. It is morally permissible for a person to take the least aggressive action to terminate the unwanted use of her body. [1]
 5. Abortion is the least aggressive action in the case of the unwanted fetus. [P]
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6. Abortion is morally permissible. [3, 4, 5]

Section 2

The moral question of abortion has sparked a wide debate. Most anti-abortion arguments are based on how abortion violates a fetus's personhood or its potential for future personhood. Yet, these arguments fail to account for the woman's intimate role in pregnancy and her rights to her own bodily autonomy. In Section 1, I argue that no person may use another's body without her consent. Assuming for the sake of argument that a fetus is a person,¹ it does not have the right to use a woman's body without her consent. I also argue that a person has the right to take the least aggressive action² necessary to terminate the unwanted use of her body. In the case of ending the fetus's unwanted use of a woman's body, the least aggressive action is abortion. Therefore, I argue that abortion is morally permissible if the fetus is using a woman's body without her consent.³ The obvious counterargument to this claim is that the woman gave the fetus implied consent to use her body when she engaged in consensual sex being fully aware of the risk of pregnancy. However, I will show that a woman's awareness of the negligible risk of pregnancy, especially if the woman used contraception, does not equate to providing consent for the fetus's use of her body.

To illustrate the difference between being aware of a risk and actively giving consent, I will consider a young woman who decided to go to a bar on a Friday night in New York City.

¹ I assume that a fetus is a person because it makes my argument more difficult. Doing so allows me to argue that even if a fetus is a person, it still does not have a right to use a woman's body for survival against her will.

² I include "least aggressive action" to deal with the counterargument that my argument allows people to kill each other over minor transgressions. For example, if a child pokes you against your wishes, the least aggressive action would not be to kill the child. In the case of the fetus, there is no medical procedure or action less aggressive than abortion that can terminate the unwanted use of a woman's body.

³ I have decided to limit my argument to first trimester abortions. Since I am dealing with the unwanted use of a woman's body, I will assume that any reasonable and competent woman can decide that the fetus's use of her body is unwanted within the first three months of pregnancy.

Perhaps this woman arrived at the bar alone and began to flirt with a male bar-goer, perhaps she wore a tight dress and batted her eyelashes, perhaps she consumed several alcoholic drinks, and perhaps she even agreed to accompany him back to his apartment. Then consider that as he began to make sexual advances, she decided that she was not or was no longer interested in having physical relations with him. It was her right, regardless of her awareness of the risk that this man might want to have sex with her, to refuse his advances and leave the apartment. Even though the woman made the choice to go to the bar, to flirt with the man, and to accompany him back to his apartment, at no point did she give any sort of consent for his advances. Even if the two had already begun to engage in physical intimacy, the woman would still have had the right to withdraw the consent at any point and terminate all use of her body. The same principle applies to abortion: a woman who is aware of the risk of getting pregnant by engaging in consensual sex has still not given consent for the fetus to use her body.

Anti-abortionists would counter that this analogy does not apply because the woman withholding her consent for the sexual advances did not put the man's life at risk as abortion would with a fetus. However, it would still be morally permissible for the woman to kill the man if it was the least aggressive action available to terminate the unwanted use of her body. Say for instance that the man pushed the woman down onto the bed, and to ward off his advances she smashed him over the head with the lamp on the bedside table. Even though she was aware that her actions might injure or even kill the man, she was still within her moral rights to prevent the unwanted use of her body at the expense of his life. Certainly, the unwanted fetus is not guilty of ill-intent in the same way as the man, but it is using the woman's body against her will. In both situations, it is morally permissible for the woman to use the least aggressive means available to terminate the unwanted use of her body. In the original case, the woman would have been

permitted only to leave the apartment, but not inflict unnecessary violence against the man.

However, once the situation escalated, the least aggressive action required her to use violence to protect her own body. In the case of the unwanted fetus, abortion is the least aggressive option.

I've argued that taking the risk of pregnancy does not equate to giving consent for the fetus's use of your body. But, many anti-abortion supporters also argue that being aware of the risk makes you responsible for its consequences. To refute this, I will draw from Judith Jarvis Thomson's person-seed example.⁴ In this characteristically esoteric example, Thomson posits that a person-seed drifts in through a homeowner's open window and "takes root in [her] carpet."⁵ The person-seed subsequently develops into a person-plant living in the homeowner's house. According to anti-abortionist arguments, the person-plant has a right to use the woman's house because she was aware of the risk of people-seeds when she left her window open and must therefore accept the consequences. Though this example is far-fetched, it shows that awareness of risk does not entail assumption of responsibility. Certainly, a person must be responsible for the consequences of her actions when the situation is in her control. However, when outside circumstances and negligible risk come together to produce an undesired outcome, the woman cannot be held responsible for the consequences of the supposed risk she took. The risk of a person-seed drifting in through the open window does not give it the right to use the woman's house, nor does the risk of pregnancy from consensual sex give the fetus the right to use the woman's body.

Thomson's example further illustrates the problem with the supposed "risk" of pregnancy. In a variation of the example, she notes that the homeowner had purchased a special

⁴ Judith Jarvis Thomson, "A Defense of Abortion," *Philosophy & Public Affairs* 1, no. 1 (Fall 1971): 59.

⁵ Ibid.

screen to keep people-seeds from floating in through her window.⁶ In the incredibly rare case that a person-seed did manage to enter despite the reasonable precautions the woman took, she still would not have given consent to the person-seed to use her home. Similarly, we cannot reasonably enforce the “responsibility for risk” principle in the case of pregnancy when a woman uses contraception. Indeed, a study performed by the National Center for Health Statistics in 2002 found that only 0.3% of women effectively using the birth control pill experienced an unintended pregnancy.⁷

The “responsibility for risk” principle also fails when we examine a more realistic example: the risk of driving a passenger in the car knowing that one’s brakes could fail. A 2000 Carnegie Mellon study found that women in the U.S. have a 1.3% chance of dying in a car accident in their lifetime, similar to the chance of getting pregnant despite properly using the birth control pill.⁸ Many of these accidents are caused by unpreventable mechanical malfunctions. If a woman knew she was going to be driving a car with a passenger, went to a trusted mechanic to have her brakes checked, but still got into a car crash due to brake failure, we would not hold her responsible for the passenger’s death. Just as a safe driver cannot be held responsible for her passenger’s death despite being aware of the risk of brake failure, a woman cannot be held responsible for getting pregnant despite taking standard precautions.

While anti-abortion supporters make a good argument for the “responsibility for risk” principle, it ultimately fails when we consider the difference between assuming a risk and giving

⁶ Ibid.

⁷ J. Trussell and K. Guthrie, "Choosing a contraceptive: efficacy, safety, and personal considerations," In *Contraceptive Technology*, ed. by R.A Hatcher, et al. (New York: Ardent Media, Inc., 2008), 24.

⁸ Hiroshi Hayakawa, Paul S. Fischbeck, and Baruch Fischhoff, “Traffic accident statistics and risk perceptions in Japan and the United States,” *Accident Analysis & Prevention* 32, no. 6 (2000): 831.

consent. Though a woman may assume the risk of pregnancy when not using contraception, this does not equate to giving the fetus consent to use her body. Moreover, a woman who uses appropriate contraception and still experiences an unintended pregnancy has taken every reasonable precaution against the risk and cannot be forced to accept the so-called “responsibility” for doing so. Ultimately, abortion is morally permissible because a woman has a right to take the least aggressive action necessary to terminate the unwanted and non-consensual use of her body.

Bibliography

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