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A Defense of Post-Viability Abortion

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ABSTRACT

It is often thought that Thomson's Violinist argument is only applicable before the point of viability. In this paper, I propose that this is not the case, offering a novel defense of post-viability abortion utilising Thomson's self-defense framework. I first set out Thomson's Violinist argument and how it interacts with viability. Then I defend the Invasiveness Claim: there is a stringent right not to have to go through childbirth (including the "safe removal procedures" of induction of labor and caesarian section) because of the level and nature of invasiveness. This is because unwanted childbirth can be seen as a harm in some ways akin to rape. Finally, I show that the Invasiveness Claim along with Thomson's view on self-defense leads to the conclusion that post-viability abortion is morally permissible. My conclusion is conditional: using a Thomsonian framework of abortion, if a third party may kill an innocent perpetrator in a case of "other-defense", then it is morally permissible for a pregnant person to choose to have an abortion (and a third party to provide abortion) to avoid having to give birth, even after the point of viability. This constitutes a significant moral defense of almost all post-viability abortions for those sympathetic to Thomson's defense of abortion and her view of self-defense, and one which I think is underexplored. There is much literature on abortion as self-defense to avoid pregnancy, but not much about abortion as self-defense to avoid childbirth, or about women having a stringent right not to undergo labor.

1 | Introduction

Despite its rarity, late-term abortion has attracted a great deal of attention in the public debate, particularly from anti-abortion activists and politicians. Judith Jarvis Thomson's Violinist argument [1] is one of the most widely discussed ideas in the philosophical literature on abortion, but her analogy is less apt when considering post-viability abortions because of the fetus' capacity to survive outside the pregnant person. Thus, it has been suggested that Thomson's argument cannot be extended past the point of viability [2]. However, this fails to take into account the invasive nature of removing the fetus from the womb. Caesarean sections, induction of labour, as well as spontaneously giving birth are all invasive and burdensome to the pregnant person [3, 4]. I shall argue that this means that it

cannot be straightforwardly claimed that Thomson's argument no longer works after viability.

In the second part of this paper, I take a closer look into the invasive nature of giving birth. I argue that giving birth, when unwanted, is a similar invasive harm to rape. To clarify, rape and unwanted birth are not morally similar in all ways—but are in at least two aspects. These are the extent and nature of invasion of the body. Both involve a significant extent of invasion of the body, involving great harm especially when unwanted. The nature of the invasion involves sexual organs, which we have reason to think should receive special consideration. Thus, I argue, there is a stringent right not to have to give birth, just as there is a stringent right not to be raped. So Thomson's account of self-defense can be used to defend post-viability abortions, as a third party may

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permissibly kill an innocent perpetrator in “other-defense”. In the case of abortion, the third party is a doctor, and the innocent perpetrator is the fetus. Self-defense has already been used in the literature to support an argument for the permissibility of abortion, but I apply this specifically to post-viability abortions in a Thomsonian framework.

2 | Background and Preliminaries

Let me begin by setting out definitions for some of the key terms that will be used in this essay. I will follow the literature in using the umbrella term “fetus” to refer to the human being in the womb throughout all stages of gestation (i.e., as including the more specific scientific terms zygote, blastocyst, embryo, fetus). I will define “abortion” as a deliberate early termination of pregnancy which involves feticide—the killing of a fetus.

In some of the literature, the term “extraction abortion” is used to refer to the termination of a pregnancy without feticide, where the procedure of removal from the womb preserves the life of the fetus. This might be through an early induced birth, caesarean section, or hysterectomy. It might strike some as strange to call such procedures an “abortion” as the fetus (normally) emerges living and healthy. In order to draw a sharp distinction between abortions that involve feticide and “abortions” which do not, I will call the latter a “safe removal procedure” (SRP).

For our purposes I will define “birth” as the removal of a live fetus from the womb—which will include spontaneous labour, caesarean sections and importantly SRPs (but not abortions). I adopt Heather Gert’s definition of viability: a fetus is viable when it is reasonably likely that it will survive outside its mother’s womb without suffering a serious handicap as a result of its removal [5].

I will now set out Thomson’s violinist argument. Her point was to argue against claims that since a fetus has a right to life, killing it (in abortion) would be morally impermissible. She sets out a hypothetical case, which is analogous in morally relevant ways to abortion, in which it is permissible to kill someone with a right to life [1]. I have amended it slightly to make the agents easier to refer to. Consider:

2.1 | Violinist Scenario

Alice is kidnapped and wakes in a hospital room attached to an unconscious violinist, Bob. Bob is dying from a kidney ailment which requires the use of Alice’s kidneys for 9 months to filter the poisons out of his blood. For this period of 9 months, she must be attached by a cable to him, but after this period Bob will be healthy and can be detached. Alice is the only person whose kidneys “match” Bob’s—so she is the only person that can save his life. If she unplugs him before the 9 month period, he will die.

The intuition many have is that it is morally permissible for Alice to detach herself from Bob, even though this means he will die, since “no person is morally required to make large

sacrifices to sustain the life of another who has no right to demand them.” Bob, being a person with full moral status, has the right to life, but in unplugging and killing him you do not violate his right to life. For Alice to stay plugged into Bob for the whole 9 months would be an act of kindness beyond what is morally required. Thomson calls this a “Good Samaritan” act (following the story of the Good Samaritan from Luke 10:30–35), which is an act that requires a large cost (a cost larger than what can be deemed minimally decent¹) to help someone else.

Abortion is the analogical equivalent of detaching oneself from the violinist. Here, Alice is analogous to the pregnant woman, and Bob the fetus. Alice remaining attached to Bob would be analogous to the pregnant woman continuing the pregnancy—a “Good Samaritan” act which is not morally required. There cannot be a moral duty to continue a pregnancy if pregnancy is a “Good Samaritan” act. So, the argument goes, a pregnant person is not morally required to give the use of her womb and other bodily functions (as pregnancy requires more of the body than just the womb) in order to sustain the life of the fetus. Because of this, although in many cases abortion kills the fetus, it does not violate the fetus’ right to life. So Thomson takes many cases of abortion to be permissible.² There has been extensive literature discussing Thomson’s argument, and I cannot here discuss all the objections that have been raised.³ I hope that the reader will agree with me that it is at least reasonable to think that VS can provide a sufficient general defence of abortion, and for the rest of this essay I will explore the implications of this argument for abortions later in pregnancy.

3 | Viability and Thomson’s Violinist Argument

It has been argued that post-viability abortions are morally impermissible on a Thomsonian framework. This is because there is a significant disanalogy between abortion after viability and the Violinist scenario—that being the fetus’ possibility of survival outside the pregnant person.

Michael Hawking points out that Thomson’s argument can only show that it is permissible to detach Bob from Alice, but not to secure his death [2]. Thomson does acknowledge this difference in her original paper, saying “you have no right to be guaranteed [the violinist’s] death, by some other means, if unplugging yourself does not kill him.” So Hawking proposes a modified version of the Violinist scenario called the “Viable Violinist”. In this case, Alice has two options if she wants to unplug herself from Bob. Either she can have Bob be given a lethal injection to stop his heart before detaching him from her, or she can have Bob be detached from her after which Bob has a chance of surviving. Hawking concludes that only the second of the two detachments is morally permissible. Once there is another method of detachment that does not kill Bob, the method that kills him is morally impermissible. In Hawking’s modified scenario, the first procedure would be analogous to an abortion (involving feticide), and the second would be analogous to a safe removal procedure (SRP) in which the fetus is removed from the womb without being killed. This seems to suggest that once the fetus is viable, since there is an option to end the pregnancy without killing the fetus, Thomson’s argument cannot justify abortion.

Contra Hawking, it is possible to argue that post-viability abortion can be justified under a Thomsonian framework. Frances Kamm argues that not only does the fetus have no right to the bodily support it needs if it stays in the pregnant woman's body, but it also has no rights to a safe removal [3]. Because of the intrinsically intimate nature of pregnancy, any way of removing the fetus from the body of the pregnant woman will involve significant bodily invasion. So methods of safe removal themselves also require the bodily support of the pregnant woman—the fetus cannot miraculously be independent of the woman without any sort of bodily invasion of the woman. So Kamm claims that if the safe removal of the fetus is only possible at a cost higher than a removal involving its killing, it will “be no worse off by being killed than it has any right to be”. Since the fetus needs the woman's help to be free of her, it cannot retain its life independently of her. Because the woman's efforts to free the fetus safely from her is excessive, the fetus has no rights to those efforts. In other words, the fetus has no rights to a safe removal. Thus, Kamm has a response to Hawking's claim that Thomson's argument implies that only SRPs and not abortions are permissible after the point of viability. If the burdens of pregnancy are high enough to justify killing the fetus, and the burdens of an SRP are similarly high, this also may be a justification for killing the fetus. Kamm's response would be that Hawking does not acknowledge that an SRP is not a mere detachment - it is an involved procedure that is a considerable imposition on the woman's body.

Kristen Hine makes a similar argument in a direct response to Hawking's *Viable Violinist* [4]. Her key claim is that the extent to which the body of the pregnant person is involved in the process of birth (any method of removing the fetus from the woman's body) has been underestimated by other philosophers (including Thomson). Both SRPs and continued attachment involve an unacceptable bodily autonomy right infringement, so neither is something that must be morally required. In Thomson's original defense, Alice is allowed to remove herself from Bob even if this results in his death, because staying attached would be a bodily invasion that cannot be required of her to save Bob's life. Similarly, an SRP would constitute a bodily invasion that cannot be required of her, since it uses her body in intimate and invasive ways that are similar to being pregnant: “the body of the pregnant person is as much a part of [birthing a fetus] as it is a part of the process of carrying a fetus during pregnancy”, “induced birth can constitute a significant infringement on your bodily autonomy, one that is similar to unwanted pregnancy.” So Hine concludes that Thomson's argument using autonomy rights implies more than simply a right to detach, but also a right to some control over the method of detachment. Since all methods of removing the fetus use the pregnant woman's body, it is up to the pregnant person to decide both how and when to end the pregnancy (unless she has given the fetus a right to a particular procedure).

The key insight present in Kamm and Hine is that any method of detachment involves unwanted bodily invasion. So Hawking is mistaken in saying that “[w]e saw that in order to achieve what Thomson says the woman can permissibly seek—an end to the unwanted invasion of her body—detachment would suffice to achieve this goal.” In post-viability pregnancies, detachment—through an SRP—involves significant bodily invasion because of

the intimate nature of the connection between the fetus and the mother. This bodily invasion, Kamm and Hine argue, cannot be morally required even to save a life.

4 | Bodily Invasion and the Invasiveness Claim

Two key questions here arise: (1) is it the case that all forms of bodily invasion can sometimes be morally required to save a life, and (2) is the bodily invasion involved in childbirth the kind that can sometimes be morally required of someone?

Because Hawking does not provide any reason to think that childbirth is a kind of invasion that can be morally required of someone, perhaps a hidden premise in Hawking's argument is that any form of bodily invasion can at least sometimes be morally required to save a life. In other words, his answer to question (1) would be “yes”. So although detachment through a safe removal procedure (SRP) involves bodily invasion, it can still sometimes be morally required—specifically when the life of the fetus is at stake. In this case, the claim that birth and SRPs involve a level of bodily invasion that cannot be morally required would be unconvincing to Hawking. However, I think the answer to question (1) cannot be a clear yes—that is, it is far from clear that all forms of bodily invasion can sometimes be morally required to save a life. At the very least, I think we should take rape to be a kind of bodily invasion that could *never* be morally required, even to save a life. For example, if a rapist threatens to shoot someone if you run away (to avoid being raped), it would be morally permissible for you to run away. You are not morally required to be raped to stop the rapist from killing someone. So there are at least some forms of bodily invasion that can never be morally required, even to save a life.

So instead, I will focus on the second question—whether childbirth can ever be morally required. Hine and Kamm have argued that it involves a level of invasion that means it cannot, and we have not been given any reason to think otherwise. I will go one step further in saying that giving birth (including SRPs) against the pregnant person's will is not only something that cannot be morally required, but it is also something that is a significant *harm* to the pregnant person. This harm is significant enough for there to be a stringent right not to have to go through it. This is what I call the Invasiveness Claim.

Invasiveness Claim: there is a stringent right not to have to go through unwanted childbirth (including the safe removal procedures of induction of labor and caesarian section) because of the level and nature of invasiveness.

The right in IC, being at its core a bodily integrity right, is a claim-right which the pregnant person holds against everyone, including the fetus.⁴ I borrow Thomson's terminology when I say that the right not to have to go through childbirth is a stringent one. For my purposes, when I say that a right is stringent I mean that it is a right that when violated would be particularly bad for you—comparably as bad as killing. This presupposes that it is worse to violate some rights than others, which I think is reasonable to assume. After all, when we talk of proportionality in self-defense it seems that not all violations of rights warrant killing in self-defense, suggesting there is a difference in seriousness to violate certain rights vs. others.

In the rest of this section, I aim to show that this Invasiveness Claim is plausible. As I mentioned earlier, I take it that rape is a kind of bodily invasion that could *never* be required of someone, even if to save a life. Similarly, sex cannot be morally required to save a life. When there is a life at stake, there is a level of coercion involved that makes the consent to sex insufficient for valid consent [7]. This is why we can aptly describe a situation in which a person decides to have unwanted sex with a gunman under a threat of another person being killed as rape. I aim to show that giving birth and sex involve similar bodily invasion, so unwanted birth can never be morally required for similar reasons to unwanted sex.

A preliminary case for unwanted birth being like rape can be made by showing that the experience of giving birth is sometimes like rape. In their qualitative research about women's accounts of distressing birth experiences, Sheila Kitzinger says that women often use the words “rape”, “abuse”, “assault” or “violence” to describe their experiences [8]. She concludes that there is a similarity between the experience of rape and of powerlessness in childbirth, and that many women experience disempowerment and lack of control of their bodies when in childbirth—in labour and delivery and in caesarean section. As mentioned earlier, safe removal procedures can be done either by early induced labour or an early caesarean section—so we can group induced childbirth and SRPs as being relevantly similar.

Not only is the subjective experience of giving birth sometimes similar to that of rape, but there are also at least two moral similarities present in the invasion involved in childbirth and sex. The first is the *level* of invasion of the body. Sex and labour (in childbirth) are much more invasive of the body than something like taking blood for a blood test. Caesarean sections similarly involve a high level of bodily invasion, being a major abdominal surgery. It is not just the fact of unwanted bodily invasion that makes rape and unwanted birth morally wrong, but that it involves a *high* level of unwanted bodily invasion.

The second is the *nature* of invasion of the body: giving birth and sex both involve invasion of sexual organs. This is more obvious in induced and spontaneous labour and sex, but Caesarian Sections involve the incision of a sexual organ (the uterus) which counts as an invasion of a sexual organ. It does intuitively seem that bodily invasions of sexual organs are importantly different from other kinds of bodily invasion. Though it might be plausible for someone to be morally blamed for refusing, for example, a pen up his nose if that meant it could save another person's life, it is much less plausible to blame someone for refusing sex if it meant it could save another's life. As Elseijn Kingma points out, touching a knee without permission is quite different from touching a vagina without permission, so obtaining proper, valid consent becomes much more important in medical procedures that involve sexual organs, such as those in pregnancy and childbirth [9]. As such, one of the reasons we would find unwanted sex or unwanted birth to never be morally required is because it involves the intrusion of sexual organs.

It would be reasonable to conclude from this that the bodily invasion in childbirth against one's will is analogous to the bodily invasion in rape. Kingma and Porter have elsewhere

claimed that unwanted Caesarian Sections are a grievous violation of bodily integrity [10], and I would add that unwanted spontaneous birth would thus also be. The level and nature of unwanted bodily invasion is part of the source of the moral wrongness of rape. So just as there is a stringent right not to be raped, there is a stringent right not to have to go through childbirth.

One might argue that Thomson herself would disagree with this claim. She claimed in her original paper that it would be indecent for a pregnant woman to have an abortion if pregnancy were to last just 1-h, suggesting that very short periods of pregnancy and childbirth can sometimes be morally required. However, it might be that a 1-h attachment to the violinist with a quick and easy detachment (like the original Violinist scenario) would be morally wrong to reject, but would it really be wrong to reject a 1-h attachment *then* an invasive surgery for detachment? In moving from thinking of a 1-h attachment to 1-h pregnancy, perhaps Thomson had not properly accounted for the cost of giving birth. As I have argued, the act of giving birth itself is a significant cost to the pregnant person, not only because of physical exertion and pain, but because of the level and nature of bodily intrusion involved. When saying that it would be indecent to refuse a 1-h pregnancy, perhaps Thomson was thinking only of the bodily intrusion of the pregnancy itself, and not the added invasion of giving birth—after all, *childbirth itself* normally lasts longer than an hour. So I take it that Thomson would think that while an hour of pregnancy alone could be morally required, an hour of pregnancy *plus* childbirth would not.

There is also suggestion in the literature that unwanted pregnancy is a similar intrusion to rape. Stephen Kershnar likens pregnancy to rape—“If the prevention of rape warrants lethal force and an unconsented-to pregnancy is a rights-infringement as severe as rape, then the prevention of unconsented-to pregnancy warrants lethal force” [11]. Olivia Margaret Little suggests that unwanted pregnancy is a kind of bodily invasion that is a similar type of harm to unwanted sex (i.e., rape) [12]. She talks of gestation as a first-order liberty harm—pregnancy in itself is an invasion of the body and even if there is no physical pain. So unwanted gestation is a harm that should never be forced on someone. Even if the medical risks of pregnancy and childbirth are ignored, the invasion (or intimacy in Little's words) is something that can never be morally required of someone because of the level of intertwinement of the pregnant woman and the fetus' body. As she writes: “Gestation, I've claimed, is an intimacy of the first order—it is even more intimate than donating an organ, for it involves an intertwinement and on-going occupation.” Perhaps one of the reasons why sexual contact or intrusion is so morally different to other kinds of bodily contact or intrusion is because of the intimacy that is involved. Gunkel talks about the wrong of forced intimacy—which is a part of unwanted sex, unwanted pregnancy and unwanted childbirth [13]. It is plausible that this forced intimacy is where the difference stems from.

Thomson of course agrees that a typical 9 month pregnancy is something that cannot be morally required—hence her original Violinist argument. But since Little claims that there is no duty (at all) to gestate, perhaps she would disagree with Thomson on

the 1-h pregnancy case. Little does not say much about childbirth itself. But it seems reasonable to think that if nobody has the duty to go through even a 1-h pregnancy, there also is no duty to have to go through childbirth. Even if an unwanted pregnancy and childbirth involved no pain or physical damage, the harm of such a high level of unwanted bodily intrusion (because of the intrinsic intertwinement of the mother and fetus) means that it cannot be required of someone, just as rape is still a bodily intrusion harm even if it results in no physical pain or damage.

It could be objected that it would be a perversion to refer to pregnancy and childbirth as an invasion, as this demeans and distorts the meaningfulness of pregnancy and childbirth. However, this misses the point: the claim is not that all pregnancy and childbirth involves a harm of bodily invasion, but that it is a harmful invasion when the pregnancy or childbirth is unwanted. This would be analogous to how consensual sex is not a harmful invasion, but when sex is unwanted (rape), it is clearly a type of harmful bodily invasion. Pointing out that unwanted pregnancy and childbirth is invasive does not undermine the beauty of pregnancy and childbirth that many women experience.

Another point of clarification is that although there are some kinds of bodily invasion that no one has a moral duty to have to *choose to go through* (even to save a life), perhaps we might still be required to *allow* such invasion. In other words, although it would be wrong to force someone to do *x*, it would not be morally permissible for that person to refuse *x* if it is already happening. However, I take it that if you are not morally required to use your body in a specific way to save another's life, you also do not have a moral duty to use your own body against your will to sustain another's life. And if you don't have a moral duty to do something, it is permissible to refuse it. So for instance, if you are not morally required to have sex to save another's life, it is morally permissible to refuse sex even if it would save another's life.

So in sum, childbirth and safe removal procedures (SRPs), like rape, cannot ever be morally required of someone, not simply because they involve bodily invasion, but because of the specific sexual *nature* and high *level* of invasion involved. Furthermore, we have a stringent right not to be harmed in ways such as rape—and there is reason to think unwanted pregnancy and unwanted childbirth are a similar type of invasive harm. Since unwanted sex (rape) is something that we have a stringent right not to have to do (or be done to us), it is reasonable to think that giving birth is also something that we have a stringent right not to have to go through.⁵

5 | Self-Defense and Post-Viability Abortion

I will now show that if the Invasiveness Claim is true, Thomson's self-defense account also applies to post-viability abortions.

First, let us take a brief look at what Thomson's account of self-defense amounts to. For Thomson, the reason it is permissible to harm others in an act of self-defense is because the perpetrator is about to violate the victim's right not to be harmed [14].

Suppose an armed robber is about to kill you, and just before he does, you kill him in self defense. In Thomson's view, such a killing would not count as a violation of the right to life, because the perpetrator (the robber) would have otherwise violated the victim's (your) right not to be killed. Such a right not to be killed is a very stringent right—unlike, for example, the right not to have your wallet taken against your will. It would be wrong to kill another person because they stole your wallet, because there is no *stringent* right not to have your wallet taken from you. To use my description from earlier, it would not be particularly bad for you to have your wallet stolen, not nearly as bad as being killed. Another example of a stringent right would be the right not to be raped. There is good reason to say that it would be permissible for a victim to kill the perpetrator in order to stop a rape (given that was the only way to stop it). Thomson's self-defense account applies to innocent perpetrators too. Even if the perpetrator was an innocent bystander who had happened to be hypnotised by someone else to rape, the victim's stringent right not to be raped would still be violated. So killing the innocent perpetrator still does not violate the perpetrator's right to life, and thus is permissible.

With regards to “other-defense” (as opposed to “self-defense”), including when the perpetrator is innocent, Thomson says that a third party can intervene for the same reason that acting in self-defense is permissible. The perpetrator, no matter how innocent, is about to violate your rights. This gives permission for action by a third party as well as by you.⁶ So both you or a third party may kill an innocent perpetrator if that is the only way to stop them from killing you. Similarly, it would be permissible not only for you to kill the perpetrator to stop yourself from being raped, but it would also be permissible for a third party to act on your behalf to stop it.

I should note here that while it is widely held that killing in self-defense can be permissible when the perpetrator is acting maliciously, it is controversial as to whether the same holds when the perpetrator is innocent. For example, Otsuka suggests that a person is liable for posing an unjust threat only if they are morally responsible for doing so, and since innocent perpetrators are not morally responsible for violating (or threatening to violate) a victim's right, an innocent perpetrator retains their right against harm [15]. Thus killing an innocent perpetrator in self defense, even if the perpetrator is about to violate your rights, is impermissible. I take this to be too restrictive a view of self defense, but it is outside the scope of my essay to provide a detailed defense of innocent perpetrator self-defense killings. I will now show that if such killings are permissible, then so are post-viability abortions.

In the case of a pregnant person (post-viability) who does not wish to give birth or continue the pregnancy, the only way for the pregnant person to avoid childbirth (including SRPs) is for the fetus to be killed. Unwanted childbirth—whether spontaneous, induced, or surgical—is an act of harm caused by the fetus (no matter how innocent) to the mother. By the Invasiveness Claim, there is a stringent right not to have such harm done to us. Since birth violates the pregnant person's stringent right, killing would not count as a violation of the perpetrator's right to life. So killing the fetus to avoid childbirth (including SRPs) would count as a permissible act of self-defense.

Third-party defense is especially relevant with regards to post-viability abortion, as it is infeasible for the pregnant person to kill the fetus herself. Instead, in abortion, there is a third person (i.e., a doctor) who must perform the abortion. On Thomson's account of self-defense, a third party may kill an innocent perpetrator if that is the only way to stop the stringent right from being violated. After the point of viability, there is an option other than abortion to stop pregnancy and spontaneous childbirth—an SRP. But SRPs too, like spontaneous childbirth, when unwanted, are just as much a significant harm to the pregnant person. The only way to stop any stringent right from being violated (unwanted childbirth) is killing the innocent perpetrator (the fetus). Additionally, if a third person has special duties with regards to the well-being of the pregnant woman (i.e., a doctor), then not only would it be *permissible* to perform an abortion, but it might also be their moral *duty* to do so, although I will not press this point here.

An objection to consider here is whether the fetus can really be thought of as an innocent *perpetrator* of childbirth. It may strike you as odd to consider childbirth as an act that the fetus *does to* the pregnant person. Presumably childbirth is merely a natural process of the body expelling the fetus from the womb, while the fetus remains passive. After all, most childbirth involves *labor* on the part of the pregnant person. However, the fetus is not completely passive throughout the process - he moves through the womb and birth canal, albeit with the aid of the mother. Without the fetus, there would be no such thing as labor or childbirth. While childbirth is not something that the fetus does to the mother in the most ordinary sense of the term, it can reasonably be thought of as an act perpetrated by him, in that it is carried out because of and partially by the fetus.

In sum, if a third party may permissibly kill an innocent perpetrator to stop the violation of a stringent right, then a doctor can permissibly abort a fetus in order for the pregnant person to avoid spontaneous childbirth or an SRP. Thus, even after the point of viability, where SRPs are available, it is morally permissible for a pregnant woman to choose to have an abortion (and for a doctor to perform it) to avoid the bodily invasion of either continued pregnancy and childbirth, induced labor, or caesarian section.

6 | Conclusion

The purpose of this paper was to defend post-viability abortion on a Thomsonian framework of abortion and self-defense. I have done so by defending what I call the Invasiveness Claim. On this basis, I argued that the fetus, as an innocent perpetrator, may permissibly be killed without violating his right to life.

We started by examining the claim that abortion is impermissible after the point of viability on a Thomsonian framework. To this, it can be responded that a detachment (safe removal procedure) cannot suffice to achieve the goal of avoiding unwanted invasion of the pregnant person's body because the detachment itself is an unwanted invasion of her body that cannot be morally required. However, even if giving birth (including safe removal procedures) is a kind of bodily invasion that can never be morally required, there is still a considerable gap between an act never being morally required of someone, and someone having a

stringent right (as strong as the stringent right not to be killed or raped) not to have to give birth. This stronger claim is what would be needed for Thomson's argument for other-defense to apply to the case of post-viability abortion, and I have given reasons to think this is the case if we consider childbirth as, in relevant respects, a similar harm to rape.

My overall conclusion is a conditional one:

If a third party may kill an innocent perpetrator in a case of "other-defense", then even after the point of viability, it is morally permissible for a pregnant person to have an abortion that involves killing the fetus to avoid giving birth through labour or caesarean section.

This would constitute a significant moral defense of almost all post-viability abortions, and one which, I believe, is still underexplored in the literature. There is much literature on abortion as self-defense in order to avoid pregnancy, but not much about abortion as self-defense to avoid childbirth or induced labor, or about women having a stringent right not to have to undergo labor. I hope to have shown that considerations about giving birth are very relevant to the ethics of abortion.

My conclusion relies on the Invasiveness Claim, which says that unwanted birth is an invasive harm. One consequence of this view would be that if there were future medical procedures that were somehow able to remove the fetus safely without an invasion of the pregnant person's body, post-viability abortion would be *prima facie* impermissible. But with the current state of medical technology, and the inherent position of the fetus in the woman's body, it seems extremely unlikely that there can be a method of removal of the fetus without such harms.

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Conflicts of Interest

The author declares no conflicts of interest.

Data Availability Statement

The author has nothing to report.

Endnotes

¹Thomson is not clear as to whether she thinks someone failing to do a minimally decent act would be acting immorally. She says that if the cost to offer aid is low, it would be indecent to refuse—I will take this to mean there is a duty to aid if the cost is sufficiently low.

²Although again, she does not explicitly present her discussion in terms of permissibility. She presents some examples of abortion which would be "indecent", but it is not entirely clear that she views them as impermissible. It seems that she still thinks such indecent abortions should be legally permissible.

³Boonin (2003) [6] provides an extensive defense of Thomson's argument and defends against many of the common objections.

⁴To clarify, this does not mean that in an unwanted childbirth, the fetus is acting wrongly or is at fault. First of all, it is unclear whether a

fetus is a moral agent, just as it is unclear whether a 1-year-old is a moral agent. Second, a fetus does not act with intent during childbirth. The right violation involved in a natural unwanted childbirth would be akin to the right violation involved in being punched by a mindless robot. Your claim-right against being punched has been violated, but it is not clear whether there is a moral agent that has violated it.

⁵It may be strange to think of a “right not to have to go through childbirth”—especially since childbirth is a natural process that happens spontaneously, rather than something done maliciously by a conscious agent. I contend that it is at least plausible to think of unwanted childbirth as being caused by the fetus, even if not malicious or conscious. We would still have a stringent right not to be raped even if the perpetrator was an unconscious robot with no malicious intent, for example.

⁶Thomson notes: “Not that the third party must intervene: I should think he may prefer to do nothing at all. (Just as [the victim] may prefer to do nothing at all.)”

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