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ARTICLE

Roe v. Wade and the Predatory State Interest in Protecting Future Cannon Fodder

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Abstract

The reversal of *Roe v. Wade* by the U.S. Supreme Court allowed the states to regulate terminations of pregnancy more autonomously than during 1973–2022. Those who think that women should be legally entitled to abortions at their own request are suggesting that annulling the reversal could be an option. This would mean continued reliance on the interpretation of privacy that *Roe v. Wade* stood on. The interpretation does not have the moral support that its supporters think. This can be shown by recalling the shortcomings of Judith Jarvis Thomson's famous violinist example and its application to abortion laws. Philosophically better reasons for not restricting access to abortion can be found in a simple principle of fairness and in sensible theories on the value of human life. Whether or not philosophy has any use in the debate is another matter. Legal decisions to regulate terminations are probably based on pronatalist state interests, shared by the apparently disagreeing parties and immune to rational argumentation.

Keywords: abortion; *Roe v. Wade*; *Dobbs v. Jackson*; Judith Jarvis Thomson; Finnish abortion law; fairness

> *If the arguments I have put forward are to be believed, abortion is morally permissible and must be allowed whenever a woman chooses it, knowing the consequences for the fetus, the environment, and herself—no one else can make the decision for her.*[1]

Those were the concluding words of my M.A. dissertation in Practical Philosophy at the University of Helsinki in the fall of 1984. They surprised me, because when I had started my work in the summer, I had thought that I would end up defending a "moderate" view with at least some caveats. This was the first time in my life when arguments forced me to a conclusion. It was an uncanny feeling.

I arrived at my conclusion, at least ostensibly, through an arduous process. I explicated, interpreted, and evaluated every philosophical view that I could find in the literature (a lot of library work, no Internet), and then forged them into a narrative to support the line that was (independently) beginning to brew in my head. During those 84 days (oh yes, I counted), I learned the tricks of my future trade in the nascent discipline of bioethics.

Recent developments in the United States prompted me to rethink the actual reasons that, back in the day, led me to my conclusion. They were, to put it shortly, a commitment to fairness and a conviction that there is no one there during the pregnancy. Although Finnish legislation was and is slightly more prohibitive than my view, I think that it rests, as far as morality is concerned, on comparable principles.

The U.S. law did not have a prominent role in my dissertation.[2] Why would it? I knew that there was a piece of legal fiction that had, in practice, led to conclusions not entirely unlike mine, and that was fine, but I did not think that the matter was worthy of further study. I now know that it is, so here are my personal and positional thoughts on it, 38 years on.

Privacy and Its Problems

The Situation in the United States, as Briefly as I Can

Terminations of pregnancy were, by and large, legally permitted everywhere in the United States from 1973. This was based on the precedent-setting decision *Roe v. Wade*,[3] which was overturned by the Supreme Court on 24 June 2022.[4,5]

The reversal had always been a matter of time. *Roe v. Wade*, and with it the legal permissibility of abortion in the United States, relied on a peculiar interpretation of the protection of individual privacy. It seemed to hold that a woman had an absolute right to decide what happened in and to her body, regardless of the effects of the decisions on others. Many people are so used to this idea that it seems obvious. But it is not. Even according to the 1973 court, an individual's privacy can be legitimately limited if its exercise threatens to harm others.

Let the Violinist through the Door…

The interpretation of privacy used in *Roe v. Wade* can be illustrated by the celebrated fictional example presented in 1971 by the American philosopher and bioethicist Judith Jarvis Thomson:

> You wake up in the morning and find yourself back to back in bed with an unconscious violinist. A famous unconscious violinist. He has been found to have a fatal kidney ailment, and the Society of Music Lovers has canvassed all the available medical records and found that you alone have the right blood type to help. They have therefore kidnapped you, and last night the violinist's circulatory system was plugged into yours, so that your kidneys can be used to extract poisons from his blood as well as your own. The director of the hospital now tells you, "Look, we are sorry the Society of Music Lovers did this to you—we would never have permitted it if we had known. But still, they did it, and the violinist is now plugged into you. To unplug you would be to kill him. But never mind, it's only for 9 months. By then he will have recovered from his ailment, and can safely be unplugged from you."[6]

Thomson used the example to show that even if an embryo or fetus in the womb has full moral status and full human rights, a woman must still be allowed to terminate her pregnancy in some circumstances. The right to privacy guarantees her the entitlement to decide. The embryo and the fetus can be separated from the woman just like the victim of the abduction can demand to be separated from the violinist.

… And Soon the Whole Orchestra Will Follow

The strength and weakness of Thomson's argument is in the richness of the example. The music lovers who abduct their victim in the dark of night are obvious fanatics into whose hands no one would wish to fall. Detachment is clearly self-defense, justified by the objectification of the abductee and the compulsion that goes with it. The situation cannot be likened to most pregnancies. Some, but not most.

This was not Thomson's intention, either, but the principle of privacy that she outlined or reflected began to take on a life of its own and, in the ethical debate, expanded its scope to become all-encompassing. Whatever the particulars of the pregnancy, the woman has a right, based on her privacy, to decide.[7] Thomson's philosophy may or may not have directly influenced the legal minds of the 1973 Supreme Court, but the ideological similarity with its view on privacy is remarkable.

Conceptual issues aside, Thomson's example raises a severe normative question. Even if the situations were sufficiently similar, it is not clear what should be done in them. Perhaps sticking to the fiddle player would be the morally correct solution. A person is in distress and will die if I do not help him. I guess I can get my books and my computer to the hospital and keep working there. And I suppose they can make the wires connecting us long enough for me to maintain some privacy. A terrible inconvenience, of course, and too bad that this had to happen to me, but let us just carry on and deal with it now that it's happened. Cannot leave the guy to die, can I?

Such hesitation is based on the fact that the violinist's life clearly has value for himself. Thomson thought that this was insignificant. She conceded that it would be kind and helpful to stick with the violinist but denied that anyone could be duty bound to do so. Others have argued that a life that has intrinsic value must be preserved, and that legal restrictions can possibly be derived from this moral obligation. If the life of the embryo or the fetus is as precious as the life of the violinist, then abortions should not, at least not normally, be allowed.

Drawing the Line(s)

Value of Human Life On/Off

The simplest way of defending terminations of pregnancy in a post-*Roe v. Wade* world would be to say that embryos and fetuses do not have the kind of intrinsic value that human beings who are already born have. The U.S. Supreme Court of 1973 tried to get around this issue by arguing that the beginning of protectable human life is not defined in the constitution, nor can it be legitimately defined by state legislatures.

By ruling that states may interfere with terminations during the second and third trimesters but not during the first, however, the court drew the line (or two) itself. If a woman's right to privacy ends after 3 or 6 months of pregnancy, there must be a reason. The court cited state interest in the protection of potential human lives for the third trimester. Although the demarcation resonates with some concerns—the fetus is relatively developed and possibly viable—this is a dangerous, expressivist, reactionary, cynically pronatalist, and collectivist solution. I will return to these isms as my story unfolds. Right now, suffice it to say that the 6-month line is not necessarily tenable, and that the 3-month line was hardly justified at all.

A philosophically more obvious reason for drawing the line would be that the moral status of the fetus is decisively altered. But since no revolutionary biological changes occur in the fetus at 3 or 6 months, it is easy to criticize the time limits for being arbitrary and to suggest alternatives. Those calling for restrictive laws widely adopted the position defined by the Roman Catholic Church, according to which protectable human life begins at conception. On this basis, total or near-total bans on abortion would be called for, and many states are now enacting them.

Gradually Progressive Value of Human Life

The idea of the value of embryonic and fetal human life has taken a commonly understood yet pragmatically indefinite shape in many other Western countries. According to this interpretation, valuable humanity and the need for its protection increase gradually during the pregnancy. A fertilized ovum has no status, and it can be safely removed by a contraceptive pill, an intrauterine device, or an abortifacient. Almost the same applies to the embryo and the fetus for some time. There is no one there. Later on, there is something if not someone in there, and terminations of pregnancy need to be justified more carefully. At the very late stages, abortions are no longer considered appropriate unless the woman's life or health is at risk. Some jurisdictions stipulate that the condition of the fetus (perceived future disability) provides a legitimation, but that has been contested. Anyway, few people think that a force or soul would at some point appear in the fetus and dictate that the woman's self-determination should from there on be interfered with.

Although the milestones of the gradual-development view resemble those of the *Roe v. Wade* decision, and although their precise definition is a matter of dispute, they are more firmly grounded for two interrelated reasons. They are a part of codified law, not based on a precedent that can be overturned by partisan judges without a democratic process. And they can have the backing, insofar as they are specified in the law, of a participatory consensus among the citizenry.

It would have been possible to create such a model by codifying something like this into federal law in the United States, too, if the pro-abortion-right members of Congress had so wished. It could have been just a rewording of *Roe v. Wade*, dropping out the privacy part. "We only protect what needs protection."

Facts about no long-term increase in abortion rates following the lift of bans in other countries and the reduction of health hazards caused by illegal abortions could have been used as auxiliary arguments. Opportunities would have existed over the decades, or so it seems. The courting of wider ranges of voters was a priority to politicians, though, and this kind of development was never seen. Now, then, liberals in the United States wonder how to move forward from here.

Quo Vadis, Abortum Americanum?

Some academic ethicists and lawyers in the United States are already sharpening their gender equality pens for further action. Since pregnancy is a women's issue, its regulation means controlling and managing specifically women, and this is something that Western societies have been officially trying to get rid of for some time. Perhaps this will set a new precedent, which will again freeze the situation for a while.

I would dig deeper. The gender equality card was already played, with alarming results. Women, especially women of scarce means, in the conservative states will now be forced by circumstances to carry their pregnancies to term or risk illegal abortions and their legal repercussions. A new Supreme Court *Roe v. Wade*-type success is unlikely in the foreseeable future—and it would give transitory relief at best. The matter could, and I submit should, be approached by keeping in mind the primary issue, the permissibility of terminating pregnancies. Privacy need not come into this. Sensible and sensitive narratives on fairness and life's value could suffice. Or so I thought.

Fairness and Moral Value

Simple Fairness

I think that such narratives forced me to my permissive conclusion 38 years ago. So, let me briefly recount what motivated me normatively (how we should see and treat one another) and axiologically (what we think is valuable).[8]

My normative principle was fairness, simple fairness. It can be illustrated by an opposite view. In the only course book on medical ethics in Finland during the 1950s and 1960s, titled *The Ethics of the Physician in a Changing World*, the authority in the field, A. J. Palmén, wrote:

> According to the traditional ethics of a physician, a woman who voluntarily surrenders to a sexual relationship takes on an irreversible responsibility that has a bearing on the lives of two individuals.[9,10]

Palmén thought that the idea expressed in the passage provides a justification for some severe restrictions on terminating pregnancies. I thought that the quote was, among other things, prescriptively flawed.[11]

My objection concerned the expression "a woman who voluntarily surrenders to a sexual relationship." Why "woman"? Why did Palmén exempt the man whom he understood to be a party to the sexual relationship, too? The answer is, of course, that he held conservative values concerning the roles of women and men—and those values are still around. I, however, was more in tune with the less traditional sexual and social ethos of the 1970s and 1980s and believed that sex is not a sin and that all people have similar obligations and entitlements. The latter defined, for me, simple fairness.[12,13]

These beliefs, combined with my hesitation about Thomson's violinist case (of which I already knew) and my ignorance concerning Finnish law, were the reasons why, in June 1984, I thought that I would be defending a "moderate" view on abortion. If we (women and men alike) have a duty to stay attached to the ailing musician under some circumstances and if the law reflects this moral line reasonably, then I and my partner may have a duty to bear the consequences of our unintendedly yet foreseeably reproductive activities. I was already thinking about technologies that would enable me to carry the pregnancy to term.[14]

Finnish Law

As it turned out, my worries were, personally speaking, unwarranted. The Finnish abortion law of 1970,[15] still in force with minor adjustments, defines strict limits, but its official interpretation is more lenient. During the first 12 weeks of pregnancy termination is performed at the woman's reasoned request and the formal acceptance of two physicians. Anyone who is verbal and committed enough can require and get an abortion at that stage. Later on in the pregnancy, the conditions are tightened, but physicians can still satisfy requests that the medical and political establishments have seen as reasonable.[16]

I and my academically fluent partner were, then, in the clear. See two doctors and explain to them that having progeny right now does not fit our life plan and the procedure would have been performed.

There are, of course, further issues. The relative strenuousness of the process, especially for a young, inarticulate, and insecure person living in the more conservative regions, the two-physician requirement, and the adjacent bureaucracy continue to be debated. Different capabilities and circumstances raise questions of equality and justice that need attention. Furthermore, the limitation to what is seen as reasonable by the medical and political establishments makes the later criteria less than self-evidently valid. The Finnish parliament is currently processing a proposal to address these issues, and the law will probably be streamlined in the near future and possibly reformed during the next few years. The reform is partly prompted by the European Parliament, which is considering a continent-wide constitutional right to abortion.[17]

There is No One There

The present Finnish abortion restrictions concern second- and third-trimester pregnancies—those need to be justified by health risks to the woman or the fetus.[18] Why is such extra justification needed? In 1984, I believed that law-givers wanted to protect unborn human life for its own sake; and turned my attention to theories of value.

I have already mentioned two of them. The gradual development view holds that protectable value emerges in the fetus incrementally. This is probably the most sensible of the doctrines in terms of democratic acceptability. A nation or a community could negotiate the appropriate limits according to its own ethos. I resented this solution, because I saw it as unorderly and vulnerable to mob rule, but that was just conceptual purism. It may be the only feasible solution *if* the value of the early human life is paramount and *if* a consensus, however limited, is necessary. I will return to the "ifs."

The other view that I have mentioned states that an individual human life has protectable value since its beginning. This can mean a few things—fertilization, conception, or individuation—but in any case not more than 14 days after the sperm has entered the egg. I myself opted for the opposite psychological personhood view according to which only beings who are aware of themselves as subjects of mental states over time can have intrinsic protectable value in their continued existence.[19,20,21,22,23,24] The clash between these latter two views is unresolvable. The psychological personhood and gradual development accounts, on the other hand, can agree that, at the early stages of pregnancy, there is no one in the uterus in need of protection.

A Call for a Recalibration of the Debate

Philosophy Does Not Solve the Abortion Issue

My erstwhile conclusion was easy to make. Observe simple fairness and accept that there is no one there and abortion is always permissible. Problem solved, and philosophy saved the day. Except that I then spent the next 30 years struggling with the absurd implications of the axiology.[25] Psychological personhood makes way to abortions but also to infanticide.[26] Similar counterintuitive implications overshadow abortion policies based on the idea that protectable life begins at conception. If a very young victim of rape becomes pregnant, quite a few people think that termination should be a legal option.[27]

Seeing what was wrong in the picture took me a while, but it finally dawned on me. This has never been primarily about philosophical views. Practices are formed in the real world on economic and social

grounds, and philosophers are the last ones to enter the scene. By the time we arrive with our theories, the decisions have already been made, and they have most probably been made somehow balancing the interests that are at play.[28]

In the case of abortions, the historically and naturally first interest is the woman's well-being. Pregnancy is always a risk, and anyone concerned for women's health should take this as a starting point. And so societies and medical professionals did, for a long time. Even the supposed ban on abortions in the Hippocratic Oath was probably a prohibition to use dangerous drug-soaked tampons to induce terminations.[29] Apart from a very short religious episode at the end of the sixteenth century,[30] women's health has been paramount. But then, 300 years later, came the turn.

Everybody Else's Business

When terminations of pregnancy—previously accepted, at least in the early stages, almost everywhere—became illegal, the reasons were anything but philosophical. The U.S. regulation preceding *Roe v. Wade* is a case in point.

Abortion laws were passed in the United States in the nineteenth century for three unrelated reasons. First, the women's movement was on the rise and its opponents felt that it had to be suppressed lest societies become dominated by women. Second, the white Protestant Anglo-Saxon men in power—and presumably at least some of their white Protestant Anglo-Saxon wives—wanted white Protestant women—of the lower classes—to have more children so that the proportion of black and Catholic people in the population would not become too high. And third, the emerging medical profession, seeking its professional identity, wanted to stifle midwives' and pharmacists' attempts to compete in the growing health market.[31,32,33]

The Catholic Church woke up to the situation during the nineteenth century, too. Its stance on abortion had always been prohibitive, but the teaching had stopped short of eternally condemning women who terminated their early pregnancies. This came to an end when Pope Pius IX declared in 1869 all abortion murder. The decisive point was that the soul enters the embryo at conception. This had already been doctrine in 1588–91, during the reign of Sixtus V, but it had been promptly reversed by his successor.[34]

I have no wish to question the intellectual integrity of the scholars who after serious study reconfirmed the view. For all I know, their arguments may have forced them to their conclusion like my arguments forced me to mine in 1984. I doubt, however, that the pontifical declaration was made only because the truth had finally been revealed after a millennium and a half of investigation. I suspect that the ideological interests behind abortion regulation worldwide have resembled the U.S. nineteenth-century calls for preemptive antifeminism, eugenic pronatalism, and hegemony-seeking medical paternalism. These are probably still at work, more or less visibly.

Workers, Consumers, and Cannon Food

Even more importantly, however, there are material interests that demand reproductive regulation. The economic system in which most of the world lives, capitalism, requires perpetual growth, and perpetual growth requires more workers and consumers. A particular part of the system, the military-industrial complex, also needs soldiers, cannon food.

This observation opens the door for an alternative, and more apt, reading of the "state's interest in protecting potential human life" cited in *Woe v. Wade* as a justification for third-trimester restrictions.[35] In 1984, I naively assumed that the need to protect potential human life is based on the intrinsic value of that life. Many colleagues, no doubt, still believe that this is the case. A more natural interpretation is that it is based on instrumental value. The state has a duty to guarantee the size of its future population for the purposes of economy and warfare. I said earlier that the principle is dangerous, expressivist, reactionary, cynically pronatalist, and collectivist, and promised to explain these isms as my narrative unfolds. So, here goes.

All abortion restrictions are *dangerous*, because pregnancy is a health risk, a medical condition in need of medical attention. If the cure, termination at the patient's request, is denied, women's well-being is jeopardized. Many abortion restrictions are also *expressivist* rather than functional. They declare a moral stand but do not reduce terminations like sex education and the availability of contraception do. Most current abortion restrictions are *reactionary*. They remove rights that women have already had. Abortion restrictions based on the state's need to have more workers, consumers, and soldiers are *cynically pronatalist*. They treat pregnant women and the fetuses they carry as a means to an external end. They are also *collectivist* in that they put the needs of the public body before the needs of individuals.

Tacking Forward

Insofar as regulations on terminating pregnancies aim to produce more citizens for the state, they rest, I think, on dubious grounds. Not everyone agrees, though.

Some see pregnancies as more than a medical condition, maybe a magical, mystical event, the emergence of the miracle of life. They may also regard expressions of indignation as more important than the eventual number of abortions. And they can hold that women's only proper role is to bear children and nurture them. Others may wish to point out that people are the backbone of the nation and that the state does indeed have a legitimate interest in birth rates at the expense of the choices of individual citizens.

These pronatalist views are not necessarily partisan. In the United States, both critics and defenders of abortion rights lean on at least some of them, albeit that their suggested strategies for reaching the goal—more workers, consumers, and cannon fodder—differ. Those who are opposed to women's legal right to make the choice may bank on potential mothers of limited means to carry their pregnancies to term and produce cheap laborers and soldiers. Those who root for women's legal right to make the choice want to safeguard the reproductive health (emphasis on reproductive) of future childbearers. Neither makes the health of women, pure and simple, their priority.

I may be wrong. Perhaps this is a question of the intrinsic value of unborn human life, after all. In that case, I would have to return to the two ifs that I left hanging earlier. If the value of early human life is paramount and if a consensus is needed, I would suggest the gradual development view. Let us allow early terminations, no questions asked, and discuss the later ones separately. A possible way forward would then be that nations or communities negotiate the appropriate limits and enforce them.

Alternatively, we could recognize the difference between moral and legal considerations. Late-pregnancy decisions are difficult. It may be morally wrong to terminate them, but women who make the choice have reasons that the rest of us cannot fully fathom. We can, as per my 1984 conclusion, make sure that the woman knows the consequences for the fetus, the social environment, and herself. If we think that some women, under permissive laws, make the morally wrong decision, we can try to answer the root questions. Why are they choosing abortion? Is it because they live in a hostile situation that will not make their child's life good? If so, let us improve their living conditions. Why do they have to make the choice in the first place? Is it because they did not have adequate sex education or access to contraception? If so, let us make sure that they have it in the future.

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Notes

1. Häyry M, Häyry H. *Love, Suffer, and Forget (Rakasta kärsi ja unhoita,* in Finnish*)*. Helsinki: Kirjayhtymä; 1987, at 95.
2. See note 1, Häyry, Häyry 1987, at 24.
3. *Roe v. Wade*, 410 U.S. 113 (1973); available at https://tile.loc.gov/storage-services/service/ll/usrep/usrep410/usrep410113/usrep410113.pdf (last accessed 13 Aug 2022).

4. Dobbs *v.* Jackson Women's Health Institution, 597 U.S. ___ (2022); available at https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf (last accessed 13 Aug 2022).
5. The Dobbs *v.* Jackson decision, annotated. *The New York Times* 2022 June 24; available at https://www.nytimes.com/interactive/2022/06/24/us/politics/supreme-court-dobbs-jackson-analysis-roe-wade.html (last accessed 13 Aug 2022).
6. Thomson JJ. A defense of abortion. *Philosophy and Public Affairs* 1971;**1**:47–66, at 48–9; available at https://www.jstor.org/stable/pdf/2265091.pdf (last accessed 13 Aug 2022).
7. I will eventually reach the same normative conclusion—that it is a woman's choice and hers alone—but on different grounds.
8. I do not mean to impose my own "we" here. Anyone can define the word.
9. Palmén AJ. *The Ethics of the Physician in a Changing World* (*Lääkärin etiikka muuttuvassa maailmassa*, in Finnish). Tapiola: Weilin+Göös; 1968, at 74.
10. See note 1, Häyry, Häyry 1987, at 27.
11. I also thought that it was conceptually flawed. In my thesis, I first focused on this. (Conceptual wisecracking was a requisite for the degree). I pointed out that microorganisms that cause sexually transmitted diseases (STDs) can be removed from our bodies without any complaints from the "traditional ethics of a physician." In the case of STDs, the person who "voluntarily surrenders to a sexual relationship" is not seen to take on an "irreversible responsibility" for the life of the disease-causing organism. Why would the embryo or the fetus be treated differently? The answer, of course, is that embryos and fetuses are special kinds of organisms, or so people think, so after showing off my cleverness I settled down to discuss the issue of moral status.
12. Häyry M. Doctrines and dimensions of justice: Their historical backgrounds and ideological underpinnings. *Cambridge Quarterly of Healthcare Ethics* 2018;27:188–216. doi:10.1017/S096318011700055X (last accessed 13 Aug 2022).
13. Häyry M. *Roles of Justice in Bioethics*. Cambridge: Cambridge University Press; 2022. doi:10.1017/9781009104364 (last accessed 13 Aug 2022).
14. Let me emphasize that this was not, on my part, altruistic solidarity or radical feminism. I and my partner had sex. Neither wanted children. In making sure that the sex did not result in a pregnancy both did their part. Had a pregnancy ensued, both would have had the same responsibility. I was prepared to take on mine, provided that a way can be found.
15. *The Law on Terminating Pregnancies—Abortion Law.* (Laki raskauden keskeyttämisestä—Abortti-laki 239/1970, in Finnish); available at https://www.finlex.fi/fi/laki/ajantasa/1970/19700239 (last accessed 13 Aug 2022).
16. See note 15, *The Law on Terminating Pregnancies—Abortion Law.*
17. I am following these developments with some trepidation. The relative lenience of the 1970 law and particularly its interpretation was prompted by practical concerns. Illegal abortions were an unnecessary health hazard and their high numbers dented general respect for the law. These considerations, coupled with something like my view on simple fairness, eased the law through the parliament by a wide margin—113 for, 56 against, 2 abstained, 28 absent. The rights approach evoked by the European Parliament, however, represents a different, divisive ethos. I would not like to see Finland go down the *Roe v. Wade* and its reversal way. The parliamentary debate preceding the passing of the law can be found, in Finnish, at 3475; available at https://avoindata.eduskunta.fi/digitoidut/view/ptk_1969_iii_1100?language=suomi&year=1969&page=24&query=3474&pageOfWholeBook=1124 (last accessed 13 Aug 2022).
18. See note 15, *The Law on Terminating Pregnancies—Abortion Law.*
19. One formulation of this is that we cannot hurt the interest to live of beings who have no such interest. Furthermore, beings can have an interest to live only if they are aware that they exist. Embryos and fetuses are not aware that they exist. They do not conceive themselves as continuous subjects of mental states over time. Ending their lives cannot, therefore, violate their interests. I borrowed this view from Peter Singer. It does make terminations of pregnancy permissible without any reference to privacy and rights, but it has no inbuilt mechanism that would prevent its application to infanticide. Psychological personhood, if it does not emerge during the pregnancy, does not emerge at birth or

any time soon thereafter, either. The consequentialists who championed the view, notably Michael Tooley, saw no problem in this, and for others there were recovery plans. I particularly liked Mary Ann Warren's take that the fetus is inside the woman, whereas the newborn is not, and this makes the difference. The problem, however, persisted. To say that a pregnancy can be lethally terminated at the woman's request when the fetus is fully viable is to say that a being that could already be a prospective member of the human community can be killed inside the womb but not outside it. Seen from the angle of the intrinsic value of the being itself, this looks like an arbitrary demarcation. Later on, Alberto Giubilini and Francesca Minerva used this observation to justify "after-birth abortions" at the woman's request. Even I, with my sensitivities muted by a lifetime of philosophical bioethics, saw that this kind of thinking cannot provide a palatable solution. But this was a later revelation.

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26. See notes 19–25.
27. Hutzler A, Flaherty A, Gomez J. Biden signs executive order on abortion access amid pressure from Democrats. *ABC News* 2022 July 8; available at https://abcnews.go.com/Politics/biden-signs-executive-order-abortion-access-amid-pressure/story?id=86447547 (last accessed 13 Aug 2022).
28. This is saying that Thomson did not dictate *Roe v. Wade*. That makes sense to me. She merely sniffed the same scent of "liberation" that the Supreme Court did.
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30. Hovey G. Abortion: A history. *Planned Parenthood Review* 1985;**5**:18–21; available at https://pubmed.ncbi.nlm.nih.gov/12340403/ (last accessed 13 Aug 2022).
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33. See note 13, Häyry 2022.
34. See note 30, Hovey 1985.
35. See note 3, *Roe v. Wade*.

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