

## Why Pro-Lifers Are Not Committed to Assassinating Abortion Doctors

The pro-life movement in the last 50 years has, on very rare occasions, regretfully had to deal with members of its own undertaking violence against abortion providers. The leaders of the movement and the vast majority of its members consistently condemn such violence,<sup>1</sup> but the violence does not disappear. In his paper, “The Pro-Life Killing Machine: Why Pro-Lifers Are Committed to Assassinating Abortion Doctors,” Author<sup>2</sup> argues that the minority viewpoint does not disappear for good reason. Indeed, he says, assassinating abortion doctors is the only logically consistent position available to opponents of abortion. Author argues that, on the pro-life view, an abortion-doctor is a morally responsible attacker who plans to kill two or more innocent individuals. Since lethal violence against such attackers is normally viewed as justified in order to defend innocent parties, pro-lifers should also think so in the case of the abortion doctor.

In our paper, we defend the mainstream pro-life view against assassinating abortion doctors. Our general strategy is to focus on Author’s assumption that if a morally responsible attacker plans to kill two or more innocent individuals, then defensive violence against him is permissible. Our first section considers the possibility that the pro-life view can, in various ways, reject this assumption. The remaining sections try to challenge that this assumption, even if it were accepted, appropriately justifies assassinating abortion doctors.

### §1 Pacifism and Theoretical Consistency

Author and other critics of the pro-life position believe that consistency requires that pro-lifers be committed to assassinating abortion doctors. This is false for at least two reasons. First,

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<sup>1</sup> See, e.g., “Killing Abortionists: A Symposium,” in *First Things* 48 (December 1994): 24-31.

<sup>2</sup> Name withheld for refereeing purposes. We refer to the author of this paper as “Author” throughout our paper.

as Author realizes, because of the possibility of pro-life pacifism. A number of pro-lifers maintain that it is wrong to use violence at all, whether in abortion, the death penalty, or war.<sup>3</sup> This is sometimes called the “Consistent Life Ethic” or an ethic of “non-resistance”: the view that intentional killing of either the innocent or guilty is always wrong.

Author’s response to pacifism is that it is “rather implausible” because it “would rule out defensive war and lethal protection of children being slaughtered.” This hardly amounts to an argument against the plausibility of pacifism. Pacifists are aware that their positions rule out defensive war and other expressions of defensive violence and defend arguments in favor of the plausibility of such theses.<sup>4</sup> Whether these positions are in fact plausible obviously cannot be settled in this paper, but the very possibility of pacifism shows that consistency is easily attainable for the pro-lifer: she need only oppose all kinds of violence (as many pro-lifers appear to do). We should add here that it is important to remember that Author’s argument is addressed to pro-lifers and not merely pro-life philosophers. There may be a number of philosophical grounds on which pacifism is implausible, but such grounds might be ignored by or irrelevant for the average pro-life person. Whatever theoretical weaknesses pacifism might have, it at least shows that Author’s central argument can be easily sidestepped.

This leads to the second direct way in which one can consistently oppose pro-life violence without being a pacifist: suspend belief about a theory of lethal violence. The non-pacifist pro-lifer need not have formally inconsistent beliefs because it may be that he merely lacks a theoretical account of when lethal violence to defend himself or innocent individuals is

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<sup>3</sup> See, e.g., MacNair, R. M. & Zunes, S. J. (Eds), *Consistently Opposing Killing: From Abortion to Assisted Suicide, the Death Penalty, and War* (Westport, CT: Praeger, 2008); Joseph Bernardin, *The Seamless Garment: Writings on the Consistent Ethic of Life*, ed. Thomas Nairn (Orbis, 2008).

<sup>4</sup> See, e.g., Michael Allen Fox, *Understanding Peace: A Comprehensive Introduction* (New York/London: Routledge, 2014); Stanley Hauerwas, “Pacifism: Some Philosophical Considerations” *Faith and Philosophy* 2 (1985): 99-104.; Soran Reader, “Making Pacifism Plausible,” *Journal of Applied Philosophy*, 17 (2000): 169–80; Cheyney C. Ryan, “Self-Defense, Pacifism and Rights”, *Ethics*, 93 (1983): 508–24; David Cochran, “War-Pacifism,” *Social Theory and Practice* 22 (1996): 161-80.

justified. It is difficult to articulate an adequate theory of defensive violence (or associated principles of defensive violence) that explains everything we want it to. Jeff McMahan, for example, argues that a plausible theory of self-defense likely lacks a single, unified foundation and that instances are justified differently in different cases.<sup>5</sup> Larry Alexander argues, moreover, that providing an adequate theory of self-defense is enormously complicated, and should include such factors as relative numbers of deaths, relative moral fault, fair allocation of risks and incentives, nonappropriation of others, relative ages of the parties, incentive effects on productive and protective conduct, the benefits of easy-to-follow rules, and the relevance of risk, among others.<sup>6</sup> Despite the fact that many people believe that self-defense is justified, there is some question as to whether our intuitions on the matter are confused or incoherent given the difficulties and controversies involved in articulating an adequate theory of defensive violence. Or at least, given these difficulties, it would hardly be surprising if it turned out that most people do not have such a theory (or associated principles). If they do not, they are not inconsistent in refusing to assassinate abortion doctors. We might call this position “theoretical openness”: one can affirm that abortion is wrong, that lethal violence against Nazis is permissible, and that abortion doctors should not be assassinated, leaving open a theory or principle about when lethal violence is permissible. While such a position might be philosophically unsatisfying, it is not inconsistent.

Author seems to think, however, that the justification for lethal violence against an attacker is a bedrock belief. This might lead the critic of the pro-life view to doubt whether pro-lifers *really believe* that a fetus should not be killed in an abortion. As Jeff McMahan argues, the fact that most opponents of abortions do not engage in the killing of abortionists “suggests that

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<sup>5</sup> McMahan, “Self-Defense and the Problem of the Innocent Attacker,” *Ethics* (1994): 252-290.

<sup>6</sup> Alexander, “Self-Defense, Justification, and Excuse,” *Philosophy and Public Affairs* 22 (1993): 53-66.

they do not really believe that abortion is murder.”<sup>7</sup> We think this is an unlikely contention that pays more homage to the philosophical god of consistency than to first-person reports about what beliefs people actually have. In our view, people are much more likely to have inconsistent beliefs than not to believe what they claim. We are not unaware that experimental psychology sometimes tells us that people do not believe what they claim to believe. But there must be some evidence presented to refute first-person reports of beliefs and an appeal to inconsistency is not sufficient evidence. Only a philosopher would imagine that the person on the street has a set of consistent beliefs that he happens to be ignorant of.

But suppose it is true that individuals do generally (aim to) ensure consistency of their beliefs in a self-conscious way. Consider the following four claims:

1. Abortion is as wrong as killing adult innocent people.
2. An abortion-doctor is a morally responsible attacker who plans to commit abortion.
3. If a morally responsible attacker plans to kill two or more innocent individuals, then defensive violence against him is permissible.
4. One ought not to use defensive violence against abortion-doctors.

These four claims are formally inconsistent. McMahan thinks that this inconsistency shows that in fact pro-lifers do not really believe 1, that abortion is murder. We think, as we argued above, it is much more likely that pro-lifers do not really believe 3. It is perhaps true that most non-pacifists are likely to *assent*, if asked, to 3, which would commit them to the beginning of a theory of defensive violence. This assent is likely to be even more forthcoming if examples are provided of Nazis killing Jews or gun-wielding zealots invading elementary schools. However, we think that such assent should be viewed skeptically, since most pro-lifers who do assent to

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<sup>7</sup> McMahan, “Infanticide,” *Utilitas* 19(2), 131-159: 137. See also Ronald Dworkin, *Life’s Dominion: An Argument about Abortion, Euthanasia, and individual Freedom* (New York: Knopf, 1994): 13.

this assumption have not given it the same amount of careful consideration as they have their opposition to abortion. Moreover, it is likely that pro-lifers have never acted on a principle of defensive violence compared to the pro-life belief (perhaps they are likely, e.g., to have voted pro-life). And once it is pointed out that 3 entails that pro-lifers must give up 4, they would likely be quick to withdraw assent from 3. It would be mistaken to suppose that an abstract principle about defensive violence is more doxastically stable than what a pro-lifer would call to mind when she considers the issue of abortion itself.

In fact, the doxastic weakness of any theory or principle of defensive violence is evident when we consider other moral issues besides abortion. Individuals who oppose an unjust war waged by their own country are unlikely to use defensive violence against their country's political or military leaders.<sup>8</sup> Opponents of the death penalty do not typically use defensive violence against executioners. Animal rights activists do not typically use defensive violence against factory farm workers. In general, despite the apparent plausibility of using defensive violence against a morally responsible attacker, many people either do not practice such a principle or, what is more likely, do not actually believe it. This is probably in part because an adequate theory of defensive violence is more complicated than the assumption that we are justified in using lethal violence to defend innocent parties would seem to suggest. The next section considers some of these complications.

## §2 Defensive Violence

Author argues that it is permissible to assassinate abortion-doctors by assuming that it is permissible to use defensive violence against morally responsible attackers. Author recognizes

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<sup>8</sup> Christopher Kaczor, *The Ethics of Abortion*, (New York: Routledge, 2011): 203.

that there are constraints on such violence, but does not go far enough in taking seriously these constraints.

First, the use of lethal defensive violence against a morally responsible attacker does not permit one to “assassinate” the attacker. To assassinate or murder an attacker is to intend to commit premeditated murder against the attacker. But according to some theories of defensive violence, private citizens may be permitted to use lethal violence but not intend to kill.<sup>9</sup> In the event that the attacker is killed in the process, this is sometimes viewed as an application of the doctrine of double effect: the actions taken might allow an agent to foresee the death of the attacker but not intend his death. In short, the use of lethal force is not the same thing as intent to kill.

Author tries to get around this point by arguing that any acts of lethal violence can be redescribed to make the attacker’s death a side effect. On Author’s view, apparently, one can shoot an attacker in the head or use a ray gun to disintegrate an attacker’s body, but not be intending to kill the attacker; instead one is merely “disabling” the attack. We think it is unlikely that this redescription strategy is plausible. One cannot intend to blow up an individual and claim that that individual’s death is a side effect of one’s action. As Elizabeth Anscombe writes, “circumstances, and the immediate facts about the means you are choosing to your ends, dictate what descriptions of your intention you must admit.”<sup>10</sup> In any case, it is extremely implausible that one can “assassinate” an abortion doctor and claim that one does not intend the abortion doctor’s death.

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<sup>9</sup> These theories are typically traced back to St. Thomas Aquinas; see esp. *Summa Theologiae*, II-II, q. 64, a. 7. For further discussion, see also, e.g., Elizabeth Anscombe, “War and Murder,” in *Ethics, Religion, and Politics* (Minneapolis: University of Minnesota Press, 1981): 51-61; Steven Jensen, “The Trouble with *Secunda Secundae*, 64, 7: Self-Defense,” *The Modern Schoolman* 83 (2006): 143-162; Gregory Reichberg, “Aquinas on Defensive Killing: A Case of Double Effect?” *The Thomist* 69 (2005): 341-70; and Whitley Kaufman, *Justified Killing: The Paradox of Self-Defense*, (Lexington Press, 2009).

<sup>10</sup> “Action, Intention, and ‘Double Effect,’” in *Human Life, Action, and Ethics: Essays by G.E.M. Anscombe*, ed. Mary Geach & Luke Gormally (Charlottesville, VA: Imprint Academic, 2005), 207-226, at 223.

Author is dubious of the relevance of double effect, arguing that “if...the doctrine of double effect were to allow lethal force so long as it is aimed at an individual qua threat or combatant rather than qua person, then it would allow pro-life resistance groups to assassinate abortion-doctors much as it allows British fighter pilots to target the Nazi bomber pilots.” This shows a deep misunderstanding of double effect. To our knowledge, nowhere do proponents of double effect suggest that lethal force can be used by making a distinction between an individual qua threat and an individual qua person. Instead, as suggested above, lethal force can be justified provided one does not intend to kill as an end or as a means (among other restrictions). To intend to kill an individual qua threat is still to intend to kill an individual and therefore, according to double effect, impermissible.

It should be added here that the same tradition that prohibits intent to kill in the act of self-defense typically makes an important distinction between acts of killing as carried out by a private citizen and that carried out by a state or an agent of the state (such as a police officer or soldier). While it is wrong *for a private citizen* to intend to kill in self-defense, it is not wrong for those acting with public authority to do so (blocking Author’s analogy between pro-life resistance groups and British fighter pilots). The reasoning for this has to do with a complex political philosophy, but even short of providing one, it is easy to see for the plain person that individuals and the state are appropriately held to different standards about permissible actions.<sup>11</sup> We do not let private citizens arrest others, execute them, declare war, and so on.

It is not only Thomistic or double-effect theories of self-defense that would problematize a justified assassination of an unjust aggressor. Justified defensive homicide is something of a modern invention; only relatively recently has it entered the western conscience that killing in

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<sup>11</sup> For more discussion of this distinction, see Anscombe, “War” and Jensen, “Trouble.” This point is overlooked even by some who roughly aim to adopt a Thomistic position; see Bernard Prusak, “Aquinas, Double-Effect Reasoning, and the Pauline Principle” *American Catholic Philosophical Quarterly* 89 (2015): 505-520, at 516.

the name of self-defense is obviously morally justified. One theorist observes that it is hard to know when we have exhausted options short of killing, putting the justification for defensive homicide on shaky ground.<sup>12</sup> Some contemporary legal theorists have argued that it is better not to see defensive violence as justified but rather excused.<sup>13</sup> On this view, defensive homicide escapes criminal (and, to some degree, moral) responsibility, but still views the act as something deplorable or regrettable. Moreover, it is sometimes thought according to the excuse view that defensive violence to protect innocent third parties is prohibited.<sup>14</sup> Even outside of the idea of excusing defensive homicide, there is a strong awareness about the moral seriousness of taking human life, even when necessary to defend oneself or an innocent third party. There is a presumption against doing so. Even when it is thought to be justified, it must only be used under certain conditions, such as when the threat is imminent and the defensive force is absolutely necessary to propel the attack. Author's argument for "assassination" blithely overlooks nearly all of these factors.

Second, justification for the use of lethal violence to defend innocent individuals often depends on the claim that such violence will or is likely to protect effectively such individuals.<sup>15</sup> But this can be seriously doubted in the case of killing abortionists. Assassinating abortion doctors does not do anything to reduce the demand for abortion. This is different from other cases where lethal violence might be justified to defend innocent parties where the threat is

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<sup>12</sup> Ryan, "Self-Defense, Pacifism, and Rights."

<sup>13</sup> Claire Finkelstein, "Self-Defense as a Rational Excuse" *University of Pittsburgh Law Review* 57 (1996): 213-262; Cathryn Jo Rosen, "The Excuse of Self-Defense," *American University Law Review* 36 (1986): 11-56; see also, Kaufman, *Justified Killing*, 127-133 and William Blackstone, *Commentaries on the Laws of England* (Philadelphia: J.B. Lippincott Co., 1893), Book I, Chapter 1, 130.

<sup>14</sup> George Fletcher, *Rethinking Criminal Law* (Boston: Little, Brown, and Co., 1978): 859.

<sup>15</sup> While success is not usually listed among the standard conditions for self-defense (alongside imminence, necessity, and proportionality), Daniel Statman shows it is implied by them; Statman, "On the Success Condition for Legitimate Self-Defense" *Ethics* 118 (2008): 659-686. Success does explicitly appear among the conditions for a just war.

effectively removed. But the innocent parties in the abortion case are still threatened by the mother's decision to seek an abortion.

Author thinks it is obvious that assassinating abortion doctors and harassing abortion clinics reduces the frequency of abortions. He points out, for example, that in many states there are few abortion providers and they are far apart. However, Author's speculation here does not withstand the scrutiny of one social scientific study, which found that demand for abortions tends to move to where the supply is. The researchers contend that "roughly 90 percent of the fall in abortions in targeted areas is balanced by a rise in abortions in nearby areas. Thus, the main consequence of this violence is a displacement rather than an elimination of abortions, a presumed goal of this terrorism."<sup>16</sup> If one can reduce only a small number of abortions by killing abortionists, then one must weigh the benefits of this strategy against non-violent tactics that also reduce a small number of abortions. Moreover, if fewer abortionists are available to perform surgical abortions, the demand for abortion may be met by the use of non-surgical abortions.

Author thinks that when something becomes more expensive and less convenient, there will be less of it. So the more abortion doctors one kills, the fewer abortions will be performed. Interestingly, however, some studies show that making abortions illegal (which is, of course, another way to make something more expensive and less convenient) does not seem to reduce their frequency.<sup>17</sup> This suggests that the demand for abortion is great indeed and reducing the number of abortions is not so easy without addressing this demand.

The relationship between the law and the number of abortions is obviously complicated as is the relationship between assassinating abortionists and the number of abortions. In fact, we

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<sup>16</sup> "Aftershocks: The Impact of Clinic Violence on Abortion Services," June 2, 2010, <http://users.nber.org/~jacobson/JacobsonRoyer6.2.10.pdf>.

<sup>17</sup> Gilda Sedgh, et al., "Induced Abortion: Incidence and Trends Worldwide from 1995 to 2008," *The Lancet* 379 (2012): 625-632; Sedgh, et al., "Induced Abortion: Estimated Rates and Trends Worldwide," *The Lancet* 370 (2007): 1338-1345.

do not have very good evidence about either of these relationships and we believe the empirical work so far should be viewed with some suspicion. We think it is likely that the long-term and even short-term effects of pro-life violence are not very well established. Nor do we want the question about pro-life violence to depend on an empirical matter that might conceivably commit pro-lifers to violence, so it is important not to put too much emphasis on our argument here. But we are suggesting that Author has not provided sufficient evidence that pro-life violence is likely to protect the innocent individuals it is intended to protect.

Moreover, Author's evaluation of the consequences of pro-life violence are wildly skewed in favor of its accomplishing allegedly good things from the pro-life perspective. He creatively alleges, for example, that more utility will be produced by killing abortionists "because, on average, aborted fetuses have demographic features...that suggest that they will have more children than abortion-doctors and will reproduce at a younger age (thus shortening reproductive cycles)." Yet, aside from the loss of life and associated utility of the abortionist, there is no mention of potential negative consequences that will come about from killing abortion doctors. We might imagine the potential for: the waning of the legal and rational pro-life movement, the opening of more abortion clinics, increased security for abortion clinics, the proliferation of violence for other political causes, and the defense of abortion doctors (who will be viewed as martyrs) as the next civil rights movement. We are not saying that Author's speculation about the reproductive cycles of aborted fetuses is mistaken but that his view about the effects of assassinating abortionists is very narrowly circumscribed.

### §3 The Impermissibility of Killing Those who Kill to Avoid Providing Life-Saving Aid

It is typically held that a third party can lethally intervene to stop an unjustified aggressor who is threatening the life of an innocent. Author claims that surely we can kill a Nazi bringing poison gas to the concentration camp or a Star Chamber vigilante about to exact private lethal “justice.” He insists that if pro-lifers believe that lethal violence can be used to protect infants or other innocents from unjust deadly aggression, then they should find abortionists to be legitimate targets. Author takes this as a *reductio* of the pro-life view that killing fetuses is as wrong as say killing infants.

How should pro-lifers respond? We believe that a plausible answer to why abortionists can’t be killed even though they are unjustly killing innocents will involve recognizing the structural similarities between abortion and letting someone die who needs your help to stay alive. This will render abortion morally akin to letting someone die. Our claim draws heavily upon Frances Kamm’s work.<sup>18</sup> She argues that there are certain features that are conceptual truths about letting die that are properties of some killings such as abortion, making such killings less wrong than those that don’t share such features.<sup>19</sup> The definitional property of letting die that is crucial to this thesis is that the victim loses out on a life that he only would have had via the agent who lets him die. In doing so, the non-saver exercises control over what is his (body, efforts, property).<sup>20</sup>

It is not essential to a killing that the victim lose out on a future that he could only have with the lethal agent’s assistance. When an agent kills, his action is either “(i) the original cause

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<sup>18</sup> See Frances Kamm, *Creation and Abortion: A Study in Moral and Legal Philosophy* (Oxford: Oxford University Press, 1991): 30 and her *Morality, Mortality Vol II. Rights, Duties and Status*, (Oxford: Oxford University Press, 1996): esp. 17-120 for a discussion of structural similarities. Although we draw heavily on Kamm’s appropriation of the morality of killing in abortion to the morality of letting someone die, she doesn’t consider our topic of the morality of killing abortion doctors.

<sup>19</sup> That killing becomes less bad when it has properties that are conceptually tied to letting die indicates that letting die is not as bad as killing someone. We’re assuming throughout this paper that killing and letting die are not morally equivalent. See Kamm, *Morality*, 17-120 for a thorough and nuanced defense of this non-equivalence.

<sup>20</sup> Kamm, *Morality*, 31.

of death, whether the victim is dependent or independent of him or (ii) the removal of a defense against death from someone independent of him.”<sup>21</sup> When someone is allowed to die, the agent’s action is “(i) not the original cause of death, but may be (ii) the removal of the defense the agent provides from one dependent upon him.”<sup>22</sup> We follow Kamm in suggesting that the original-cause killings of those people dependent upon the killers, unlike original-cause or removal-of-defense killings of people independent relative to the killers, sometimes have practically the same moral weight as cases of letting someone die.<sup>23</sup>

Let’s look at some examples. David is a person innocent of any wrongdoing and he is not an innocent threat to another. He possesses a right to life. David’s right to life doesn’t mean that others are obligated to die to save David even if they are obligated to take on considerable but less burdens to save him. However, Stephanie’s failure to do what she should to save David doesn’t mean that Stephanie can be killed to save David even if Stephanie’s extricating herself from saving David necessarily requires the death of David. Stephanie’s letting David die involves him losing out on future life that David could have only with the assistance of Stephanie. If Stephanie kills David to extricate herself from saving or sustaining David then that killing is structurally analogous and (roughly) morally akin to letting someone die. David cannot kill Stephanie when Stephanie is doing something structurally and morally similar to letting someone die. So Author’s claim that those wrongfully killing another can themselves be killed doesn’t work in cases where the killers are extricating themselves from providing immense life-saving burdens. Abortion is such a case. The pregnant woman who herself aborts a fetus is killing someone whose life she was saving, i.e., sustaining.

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<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

We contend that this principle about the impermissibility of killing those who kill to avoid providing life-sustaining aid can be extended to the agents of David such as Phil and to the agents of Stephanie such as Marie-Claire. Marie-Claire (an abortion doctor) can't be killed by Phil (a pro-lifer) as she extricates pregnant Stephanie from providing burdensome life-saving aid to fetal David. So the killing of abortion doctors is thus not analogous to Author's cases of the Nazi worker and Star Chamber killers since they are not killing those who are saving others from immense physical impositions. Killing abortion doctors is roughly akin to killing the agent of the person with the healthy kidney supporting Judith Thomson's famous violinist when that agent is extricating the healthy person from the violinist at the expense of the violinist's life.<sup>24</sup>

We think that Judith Thomson is correct that someone's right to life doesn't mean that everyone else must do everything in their power to keep that individual alive.<sup>25</sup> But she is wrong about how much others must do to save a life. Her famous violinist scenario doesn't capture the fact that morality is very demanding and we must take on considerable burdens to save another's life. Consider the example of an adult blown up onto a hurricane-damaged roof with a premature newborn (a nonperson) landing on top of him.<sup>26</sup> The baby is wiggling which will cause the roof to give way and the adult and baby will fall to the ground but the adult's body will cushion the baby, saving its life. However, the impact causes the adult pain that is equivalent to the discomfort of giving birth and also suffers nine months of back pain, abdominal swelling, and nausea equivalent to a pregnancy. If the adult rotates so the baby is beneath him rather than on top of him, then the baby will hit the ground first and the adult will land safely on his feet but the

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<sup>24</sup> Judith Thomson, "A Defense of Abortion," *Philosophy and Public Affairs* 1:1 (1971): 47-66.

<sup>25</sup> *Ibid.*

<sup>26</sup> Thomson assumes the fetus is a person from conception. Her reasoning is that if a person can be killed, then surely so could merely potential persons. Our example of a premature newborn shows how morally demanding morality is towards even a non-person who is but a potential person in the Neo-Lockean sense of personhood requiring self-consciousness and a sense of one's past and future.

baby will die from the impact of the ground below and the adult above. It seems intuitive that the adult can't rotate and cause the crushing of the baby but must take on a considerable burden to save the life of the baby. It is even more obvious that a third party should not help the adult disentangle himself.<sup>27</sup>

However, if the adult would have died without rotating, well, that is a different matter. *So the right to life of X (fetus, violinist, roof baby, David) doesn't obligate Y (mother, person supporting the violinist, roof adult, Stephanie) to save X's life at the expense of Y's life – even though Y should take on considerable but less burdens to save X's life.* For example, if X is in shark-infested waters, X's right to life doesn't mean that Y must jump in and distract the sharks at the cost of Y's own life. But X should be saved at a lesser cost to Y.

*X's right to life doesn't allow him to save his own life by killing Y when Y refuses to take on burdens that she is supposed to take on to save X.* A supporting illustration of this principle is as follows: Y should throw a life ring to X who is drowning but Y doesn't. X can't shoot and kill Y so Y falls into the water bringing the life-saving flotation device within the reach of X.

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<sup>27</sup> Why the different reactions to Thomson's violinist case and the roof cases? Which one should we trust? We would conjecture that our response to the roof case better illustrates our deepest moral commitments. There are various aspects of Thomson's case that distort our judgments. Unger has speculated in his *Living High and Letting Die* (New York: Oxford University Press, 1996) that how we group people in need often determines our sense of what aid is owed. The child and adult are in the same bad situation on the roof. Thomson's kidnapped person with the healthy kidney is seen as uninvolved in the violinist's predicament. See David Hershenov, "Abortions and Distortions," *Social Theory and Practice* 27:1 (2001): 129-148, for an extension to abortion of Unger's ideas about grouping those in need. Patrick Lee suggests that the wrongdoing of the society of music lovers may taint the violinist and thus remove his innocence, see his *Abortion and Unborn Human Life* (Washington: Catholic University Press, 1996): 127. We also suspect that the way Thomson tells the story leads readers to identify with the kidnapped and perhaps the improbability of ever being in the violinist's predicament prevents readers from recognizing their duty to aid. Thomson doesn't say consider that you could be the ailing violinist or the healthy kidnapped person. Imagine, if she had just said that everyone a year from their present age will need nine months of kidney support that only a unique person can provide. This makes life saving kidney support more like pregnancy – something we all need once. The universality and the future timing of the need offset our identifying with just the kidnapped and keep us from making self-interested decisions based on the probability that we would be unlikely to ever be the one in need. We suspect that people will be less inclined to think refusal is within their right when the likelihood they will need support is not rare and they aren't identifying with just the person giving the support.

*X's right to life doesn't allow him to kill Y when Y's extricating herself from saving X's life necessarily occurs by the taking of X's life – even though Y should save X.* For example, consider Y, a great swimmer and one time life-guard, is in the water carrying the drowning X to shore and who then decides, without good reason, to stop supporting X. But X clings onto Y for dear life. Assume that the only way for Y to remove X is through lethal violence. If Y punches and fatally pushes X to get X off her body, X cannot kill Y to stay afloat even though Y was wrong to stop saving X.<sup>28</sup>

*Y's lethal extraction of herself from X is structurally similar and morally akin to letting someone die.* Letting someone die involves failing to provide them the aid they need to stay alive. Typically, killings don't bring about the cessation of life saving aid and so are not akin to allowing death. But when Y kills someone that she was saving, then that makes Y roughly akin to a "death-allower." *So Y's wrongfully killing X in order to cease saving X's life doesn't entitle X to use lethal force upon Y to make Y do what Y is obligated to do.*

Author's assumption that those innocents being targeted for wrongful killing can kill their attacker, or have a third party provide them with lethal protection, is true in most scenarios where innocents are being threatened. However, it doesn't apply to abortion. This is because the unjust killer is structurally and morally akin to a death allower and can't be killed even though she is getting out of a life-saving burden that she is morally obligated to provide. Author's killers in the Zyclon B poison gas and Star Chamber vigilante cases are not killing innocent people that they were using their bodies to support. Thus they are legitimate targets for lethal self-defense, while those aborting are not. So Author's examples are not analogous to abortion in the morally relevant way.

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<sup>28</sup> We ask that the reader just assume that even a dead Y will serve to keep X afloat.

Readers may worry that our approach makes abortion much less wrong than pro-lifers typically maintain and thus seeking a ban on abortion won't be justified. However, we are not asserting a precise moral equivalence of killing and letting die in such cases, just that they become morally much more alike. It is important to realize that killing the dependent is still a rejection or violation of the separateness of persons which is not the case for letting someone die. When one lets someone else die, the dying are not imposed upon, a new threat is not initiated that interferes with their lives, the boundaries that separate them from other persons are not transgressed. Even letting someone die by withdrawing bodily support, which is an action rather than an omission, still isn't a transgression that initiates a new threat that ends a separate life. It restores (or creates for the first time) a separateness that is fatal because the separated can't support themselves. We think it is better to speak of an earlier lack of *independence* than a lack of *separateness*.<sup>29</sup> Withdrawing aid from the attached renders independent those who were dependent. But those who die when detached always had separate lives. Their lives were dependent upon the support of others but as a matter of individuation and identity, there were already two separate lives. Even when attached, since one life could end while the other could survive, that entails that there were two numerically distinct and separate lives. Therefore withdrawing aid renders separate lives independent. Intentionally killing someone who is attached would still deliberately violate the separateness of persons for the victim had a distinct life. Assuming that killing is worse than letting die because it violates the separateness of persons, killing the detached is still worse than letting them die, all other things being equal.<sup>30</sup> But since such killings involve a property that is definitional of letting die – the deceased could

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<sup>29</sup> See Kamm, *Morality*, 37 and 66-67, for a discussion of the difference between separateness and independence.

<sup>30</sup> To see what is involved in "other things being equal," consult Kamm, *Morality*.

have only lived with the assistance of what belonged to someone else – the killing becomes morally much more like letting someone die.<sup>31</sup>

Readers might be thinking that even if we have successfully showed that someone obtaining an abortion can't be killed to save the fetus, most abortions are done by doctors who are not supporting the fetus whose life they end. So let's now consider a modification of the above claims which creates a transfer principle to an Agent: *Neither X nor his agent (The Society of Music Lovers, pro-lifers) can use lethal force to prevent Y or Y's agent (abortion doctors) from ceasing to save X by a means that is necessarily fatal to X - even though Y should save X.*<sup>32</sup> For example, if Y, the person with the healthy kidney supporting Thomson's violinist, wrongly stopped supporting the violinist then that would be a case of wrongfully letting someone die. If the violinist's archenemy disconnected the healthy person without the permission of Y (or the violinist's) then that would be a case of wrongfully killing, for the archenemy was not providing the aid. But if Y asked someone to disconnect her then Y's agent would inherit Y's immunity as a death-allower and couldn't be killed even though neither Y nor her agent should disconnect the violinist. So Y's agent inherits Y's immunity against being killed when the killing is aimed at making Y continue to save X.

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<sup>31</sup> We write "more like", not identical for the reasons given above about separateness. Moreover, abortion is standardly worse than typical cases of letting someone die in a far off land from say malnutrition because in such cases the non-saver isn't responsible for their predicament nor has a special obligation as a relative to aid them, and hopes someone else will save them. These features are all absent in a typical abortion. Abortion standardly involves a woman deciding to kill a child who is in a state of precarious dependence upon her because of her earlier decision to engage in consensual sex. It also involves killing one's own child to whom one has special obligations. Moreover, those aborting do not want the child saved. As Patrick Lee observes "In most abortions, if by some miracle the baby did survive and the attendants at the clinic brought the baby into the mother, all of those involved in choosing the abortion would no doubt protest that the abortion clinic had not done their job," Lee, *Abortion*, 115 n. 15.

<sup>32</sup> For an informative discussion of when withdrawing aid is to be classified as killing and when it is to be classified as letting die, see Jeff McMahan, "Killing, Letting Die, and Withdrawing Aid," *Ethics* (1993): 250-279. McMahan argues that when the person providing the life-saving aid, ceases to do so, the result is letting someone die. The life support can be maintained by different persons assuming the same role, say, that of medical care provider. So one doctor of a medical team providing life support can withdraw the life-saving aid even if the aid-withdrawing doctor isn't one of the earlier aid-providing doctors. However, if the aid is withdrawn by someone who wasn't part of a team and fulfilling a role in providing the aid, the act is a killing.

We can accept that the doctor who acts as an agent for the involuntary support system is engaged in a killing that lacks any properties that are definitional properties of letting die.<sup>33</sup> An analogy might be helpful. The owners of a hospital or medical practice are morally protected against lethal threat when they cease to allow a patient to use the life support equipment that they own. Likewise, a newly hired ICU technician is protected against lethal threat when he has permission to disconnect life support machinery belonging to the hospital employer without his having first maintained the equipment and assisted in the life support. The same protection should apply to the newly hired physician or abortion provider who has the mother's consent to terminate her fetus.

Perhaps the lethal agent even inherits some of the mitigating factors of Y's great burdens when it comes to blameworthiness.<sup>34</sup> While the agent is not under the duress of the physically burdened Y, the agent may be motivated by alleviating that duress. So while abortion doctors don't have the excuse of the greatly burdened pregnant woman and thus might face a penalty, the woman doesn't; nevertheless, their duress-removing motivation could be a mitigating factor.

#### §4 Public Reason Limitations on Violence

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<sup>33</sup> McMahan would disagree. He offers his own version of a transfer principle rendering the actions of the agent who detaches another upon the latter's request as instance of letting die rather than killing. He writes about a case called *Involuntary Donor 3* where the person using his body to keep another alive asks someone else to disconnect him. "To understand why this is a case of letting die rather than killing, we must distinguish between the decision to withdraw aid and the execution of that decision. What is important, in determining whether an act of terminating aid or protection counts as killing or letting die, is who decides to terminate it, not who physically implements the decision. In *Involuntary Donor 3*, it is the person who has been providing the aid who decides to terminate it" ("Killing," 265). Kamm would disagree and claim the authorized doctor is killing "which is not to say the killing is impermissible" (*Morality*, 29). But if McMahan is right about a doctor in *Involuntary Donor 3* just letting someone die, then if the doctor had instead killed at the donor's request, then the doctor's killing would have inherited the moral properties of letting someone die. We think McMahan is conflating the transfer of immunity with the sharing of death-allowing properties in *Involuntary Donor 3*.

<sup>34</sup> The wrongness of an action and being blameworthy for performing it are different. One can do the right act for the wrong reason and one can do the wrong deed for reasons that leave one blameless. One can also do the wrong deed for reasons that mitigate one's blameworthiness.

Let's now assume for the sake of argument that the above claim about abortion sharing the mitigating features of letting someone die is false and the innocent target X of an unjustified killing by Y can kill Y to save his life even though Y was keeping X alive.<sup>35</sup> It doesn't follow that a third party Z can *always* kill Y who is the unjustified threat to X. For instance, assume the death penalty is justified for some murders but not others. Or at least assume that there are very good reasons for the death penalty even if all things considered, the weight of reasons supports the abolition of capital punishment. If a convicted murderer scheduled to be executed in Attica prison is the type of murderer who deserves life in prison rather than execution, then he is being unjustly executed. Perhaps he can save his life by killing his executioner but it isn't clear that third parties like ourselves can.

What is the difference between the third party Z killing the executioner in an American prison and a third party killing the Nazi worker who brings the poison gas to the concentration camp? There are two possibilities of an epistemic nature that distinguish the executioner and the abortion doctors from the Nazi, even if we hypothesize that the Nazi is blameless given the arguments that have been made available to him in his environment. The first is that with the death penalty (like abortion) there are good reasons for the practices that can be recognized by those in a philosophically idealized setting; and we are assuming that it is far more likely that we are in such a state than is the Nazi. The idealized epistemic possibility that the abortion and capital punishment may be permissible might make those who still lean towards them being wrong to hesitate to use lethal force. Second, capital punishment and abortion can be put forth in a way compatible with Rawlsian Public Reason while the illiberal barbarism of the Nazi

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<sup>35</sup> If the claim in the previous section is true instead, as we believe, then the arguments should be understood as over-determining that conclusion. For what it is worth, we have more confidence in the arguments of the previous section than in this section because of some lingering doubts that Public Reason overly constrains bioethical discussions.

cannot.<sup>36</sup> It may be that we third parties must tolerate and work to politically change wrongful killings that are compatible with political liberalism but shouldn't tolerate illiberal wrongful killings.

Rawls calls our attention to the *fact of reasonable pluralism*. He writes that the plurality of conflicting comprehensive religious, philosophical and moral doctrines is the normal result of its culture of free institutions. Citizens realize that they cannot reach agreement on the basis of their irreconcilable comprehensive doctrines. As a result, they recognize that comprehensive philosophical, religious and moral doctrines must be withheld from public sphere discussions of political justice and constitutional fundamentals; instead, the debate must take place within the parameters of the idea of the politically reasonable. Rawls insists that it would be a form of disrespect of their fellow citizens if the majority legally imposed their comprehensive views on others. So someone opposed to abortion say because they believe that God ensouls a fetus at fertilization could recognize that many of their fellow citizens can reasonably be expected to reject their ensoulment views as incompatible with public reason. They then should not seek to legislate their comprehensive pro-life (religious) doctrine nor condemn in public/political settings their fellow citizens who argue there for abortion rights in terms endorsed by public reason.

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<sup>36</sup> See Rawls's two famous footnotes on abortion; *Political Liberalism*, Expanded Edition (New York: Columbia University Press, 2005). He earlier wrote "on any reasonable balance of these three values give the woman a duly qualified right to decide whether or not to end her pregnancy during the first trimester...any comprehensive doctrine that leads to a balance of political values excluding that duly qualified right in the first trimester is to that extent unreasonable..." (243 nt. 32.) Rawls later offered a clarification of his earlier abortion comments. He there stated that he earlier was providing his personal opinion not giving an argument (479 nt. 80). He was trying to explain what he meant by political values (and he admits there are more than the three he mentioned) and how they could apply to the 'troubled issue of the right to abortion where it might seem improbable that political values could apply' (479). He suggests that a more detailed development in public reason of those values might provide a reasonable argument for abortion rights. But he adds that he is not claiming "that it would be the most reasonable or decisive argument" (479). He even admits that there can be an argument against abortion which "make its case in public reason." He suggests that is just what Cardinal Joseph Bernardin did in his "The Consistent Ethics: What Sort of Framework?," *Origins*, 16 (1986): 345-350, by appealing to commonly accepted standards of moral behavior in a community of law, public peace, essential protection of human rights. Rawls adds that he "doesn't assess his (Bernardin's) argument here, except to say that it clearly cast in some form of public reason" (480 nt. 83).

Rawls is fond of using the type of reasons that a Supreme Court judge must rely upon to demonstrate public reason.<sup>37</sup> He calls the Court the “exemplar of public reason.”<sup>38</sup> The judges can’t decide cases, even standoffs, by recourse to their personal philosophy. They must speak the language of the constitution and precedents. The justifications of public reason may be compatible with the comprehensive doctrines, but they must be presented independently from comprehensive doctrines of any kind. The ideas must be seen as worked out from the fundamental ideas seen as implicit in the public political culture of a constitutional regime such as the conceptions of citizens as free and equal persons and of society as a fair system of cooperation.

Rawls points out that pro-lifers who lose out in the political realm to pro-choicers “...may in line with public reason, continue to argue against abortion.”<sup>39</sup> We would add that they must limit their advocacy to Public Reason.<sup>40</sup> They can’t violently produce a political change. Abortion doesn’t warrant a violent revolution. As with the unjust death penalty, those who are not the target of violence must respect those who disagree within the limits of liberal public reason. In conclusion, it is worth returning to our argument of the previous section to note that executioners are not like pregnant women or their agents that kill to prevent someone from continuing to take on immense burdens to save those killed.

### Conclusion

Author provides a provocative argument that the pro-life view, if taken seriously, commits itself to lethal violence against abortion providers. We have argued that his argument

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<sup>37</sup> Rawls, *Political Liberalism*, 478-9.

<sup>38</sup> *Ibid.*, 235.

<sup>39</sup> *Ibid.*, 480.

<sup>40</sup> This doesn’t mean that in other settings (books, journals, churches, schools) that they can’t put forth arguments against abortion based in comprehensive doctrines. Rawls even adds a proviso that comprehensive doctrines such as supported by Civil rights activists can be put forward as long as there is an effort later made to reformulate them in the language of Public Reason. Rawls, *Political Liberalism*, 462-466.

inadequately accounts for the grounds of lethal violence to protect the innocent and that his comparison between abortion on the one hand and other scenarios where innocent life is at stake on the other overlooks significant moral disanalogies. Abortion providers, while committing a serious moral wrong, ought not to be killed.<sup>41</sup>

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<sup>41</sup> [acknowledgments]