

## *Thomson's Violinist and Conjoined Twins*

KENNETH EINAR HIMMA

It is commonly taken for granted that abortion is necessarily impermissible if the fetus is a person with a right to life. In her influential essay "A Defense of Abortion,"<sup>1</sup> Judith Jarvis Thomson offers what I will call the violinist example to show that merely having a right to life does not in and of itself give rise in the fetus to a right to use the mother's body. On Thomson's view, if the fetus has a right to use the mother's body that precludes terminating its life by means of an abortion, it is because the mother did something to give the fetus that right. Thus she concludes that the proposition that the fetus is a person does not imply that abortion is morally impermissible.

In this essay, I argue that Thomson's violinist example establishes the general point that the right to life in and of itself does not imply a right to use another person's body, but not the more specific point that pertains to the relation between mother and fetus. In particular, I identify two morally significant differences between the case Thomson discusses in the violinist example and the case of fetus and mother. Accordingly, I conclude that the violinist example in and of itself does not refute the claim that if the fetus is a person with a right to life, then abortion is necessarily impermissible.<sup>2</sup>

Here is the example that is supposed to do the work. Suppose you wake up one morning to find that without your consent you are connected to a machine that is also connected to a famous violinist. As it happens, the violinist has a kidney disease that will kill him unless you both remain connected to the machine for nine months. The question is whether you are morally obligated to remain connected to the machine. On Thomson's view, and most people agree, it is morally permissible for you to disconnect yourself from the machine—even though it will cause the death of the violinist—because you did nothing to entitle the violinist to use your body:

[T]he fact that for continued life the violinist needs the continued use of your kidneys does not establish that he has a right to be given the continued use of your kidneys. He certainly has no right against you that *you* should give him continued use of your kidneys. For nobody has any right to use your kidneys unless you give him such a right—if you do allow him to go on using your kidneys, this is a kindness on your part, and not something he can claim from you as his due.<sup>3</sup>

Thomson concludes that "having a right to life does not guarantee having either a right to be given the use of or a right to be allowed continued use of another person's body—even if one needs it for life itself."<sup>4</sup> If A has a right to use B's body, it is because B has *done something* to give A that right; in the

absence of some affirmative act on the part of B, A cannot acquire a right to use B's body.

Whether abortion is permissible in any given instance, then, depends on whether the mother has done something to give the fetus a right to use her body. For example, Thomson argues that abortion is always permissible in the case of rape because "in a case of pregnancy due to rape the mother has not given the unborn person a right to use of her body for food and shelter."<sup>5</sup> But if abortion is permissible in the case of rape, then it follows that merely becoming pregnant does not constitute an affirmative act that gives rise to a right on the part of the fetus to use the mother's body. Thus Thomson concludes, "the right to life will not serve the opponents of abortion in the very simple and clear way in which they seem to have thought it would."<sup>6</sup>

Although the violinist example certainly establishes that there are instances in which one person A has a right to life but does not have a right to use the body of another person B to save A's life, there is nothing particularly surprising about this claim. After all, the inability of one person to survive without a new kidney in and of itself does not imply an obligation on the part of some other person to donate a kidney to save the life of the first. Indeed, you are no more obligated to remain plugged into the violinist than you are to donate one of your two healthy kidneys to the violinist. In either case, you would have to do something to give rise to a right on the part of the violinist to use your kidney—regardless of whether the violinist proposes to use your kidney while it remains in your body or after transplanted into hers.

In any event, the violinist example tells us nothing about the permissibility of abortion because there are morally significant differences between the case of you and the violinist and the case of mother and fetus. You and the violinist are two autonomous agents who are independent in the sense that it is clear where the body of one begins and the body of another leaves off. For this reason, it is plausible to view the complex of rights each has regarding use of the other's body from what I will call a contractarian point of view. According to this point of view, autonomous agents can enter into agreements with each other to create, modify, and extinguish obligations. For example, one autonomous agent A can, by means of an agreement, create in another B a right to an object belonging to A to which B had no prior claim. Similarly, A and B can modify or extinguish that right in B by means of a further agreement.

Entering into an agreement is not the only way that independent, autonomous agents can alter their moral positions under the contractarian model. Sometimes one such agent can create a right in another without intending to do so. Suppose, for example, I negligently lead you to believe that I will take you to an important appointment and then do nothing while you lend your car to Sue on the strength of that belief. By allowing you to do so, I create in you a moral claim against me to a ride to that appointment. The idea here is that if I *culpably* allow you to rely to your detriment on an expectation that I will take you to the appointment, I thereby obligate myself to take you there. On this view, culpable behavior that reasonably induces reliance gives rise to what the law describes as an implied agreement.

The contractarian<sup>7</sup> model is certainly plausible as an account of how many rights and obligations arise among independent, autonomous agents (like you and the violinist), but its explanatory power is limited with respect to how rights and obligations arise among human beings who are not independent.

Suppose, for example, that a group of explorers on a newly discovered island comes across a pair of conjoined twins, whom the explorers name Joe and Tom. The twins appear to be 13 or 14 years old and have developed a rudimentary language that enables them to communicate with each other. Once the explorers learn the language, they realize that each of the two is alert and intelligent. A doctor examines the two and discovers that they are joined in such a way that all of the vital organs fall within the skeletal structure of Joe. On the basis of such observations, the doctor concludes that only Joe would survive a procedure to separate the twins, but that there is no need to separate them because they can live a long and healthy life joined together. When Joe comes to understand the situation, he demands that the doctor separate them immediately. Tom, quite understandably, objects.

Intuitively, it would be morally wrong for the doctor—or anybody else for that matter (including Joe)—to separate the twins on the strength of Joe's request.<sup>8</sup> Though joined together, Joe and Tom are distinct moral persons with distinct rights to life that apply not only against third parties, but also against each other. It is just as much a violation of Tom's right to life for Joe to kill Tom as it would be for a third party to kill Tom. Thus since it is known that the two cannot be separated without killing Tom and that the two can live a normal life span joined together, it would be wrong to separate them because doing so would violate Tom's right to life. But if it is impermissible to separate the two, then it follows, *contra* Thomson, that Tom has a right to use Joe's body despite the fact that Joe *did nothing* to give rise to such a right on the part of Tom.

What seems to distinguish this case from the case of you and the violinist is this: whereas you and the violinist are autonomous *and* independent, Tom and Joe are not. Of course, Tom and Joe are autonomous and thus capable of altering their moral positions relative to third parties by both express and implied agreements. Because they are both autonomous, Tom and Joe are perfectly capable, for example, of entering into a morally binding agreement to dispose of whatever property they hold. Likewise, they could incur an obligation by culpably inducing a third party to rely to her detriment on some expectation involving Tom and Joe. Indeed, Tom and Joe can probably do as much as you and the violinist can in the way of altering their moral positions relative to third parties by way of implied and express agreements.

But there is one important sense in which the situation of Tom and Joe is different from the situation of you and the violinist that appears to limit Tom's and Joe's contractual capacities in comparison to yours and the violinist's. Though Tom and Joe are each autonomous, they are not physically independent in the sense in which you and the violinist are. The moral and physical boundaries between your body and the violinist are clear; and for this reason, your and the violinist's contractual capacities relative to each other extend to being able to create, modify, and extinguish rights to use each other's body.<sup>9</sup> In contrast, while the physical boundaries between Tom and Joe may be clear, the moral boundaries are not. Though there is a sense in which we can characterize part of the physical entity constituting Tom and Joe as Tom's body and part as Joe's body, there is no clear *moral* sense in which part of that entity can be characterized as Joe's to dispose of as he pleases.<sup>10</sup>

No other person, of course, can acquire a right to use Joe's or Tom's body unless Joe or Tom (possibly both) does something to give that other person a right, but even in such instances each would have to consider the effect on the

other of granting such a right. Nevertheless, it is not true that Tom cannot acquire a right to use Joe's body unless Joe does something to give Tom such a right. Joe's *moral* claim on what is ostensibly his body *relative to Tom* is not strong enough to give rise to a right to dispose of it at Tom's expense. For this reason, Tom's and Joe's contractual capacities relative to each other do not extend to being able to create, modify, and extinguish rights to use each other's body.

One might object that it is incorrect to characterize the physiological relationship between Joe and Tom as involving Tom's use of Joe's body. Since the twins are conjoined together in a fairly substantial way, it misdescribes the situation to characterize them as having two distinct bodies. One could not have a right to use the other's body because there is only one body—and it belongs to both of them. This is not an objection that I find especially plausible, but it is easy to modify the example so that Joe and Tom are joined in a far more tenuous way. Suppose that what has joined the two since birth is some sort of cord extending from Tom's navel to Joe's navel so that it is clear that each has a separate body and that Tom is using Joe's body. Suppose, further, that all parties understand that cutting the cord will cause Tom's death but not Joe's. Despite the fact that what binds Joe and Tom is only slightly less tenuous than what binds you to the violinist in the original example, it would still be wrong to separate them. And if this is correct, then Tom's right to life gives rise to a right to use Joe's body—even though Joe did nothing to give Tom that right.

The case of fetus and mother is characterized by the same sort of physical interdependence that distinguishes the case of Joe and Tom from the violinist example. Joe and Tom never led physically independent lives because they came into existence joined together in an accidental but wholly natural way—though the occurrence of whatever happened to cause them to be joined was highly improbable.<sup>11</sup> Like Tom's physical dependence on Joe, there was never a time in the fetus's life when it was not physically joined to its mother, for the fetus came into existence conjoined by a natural process to the mother. In contrast, you and the violinist led physically independent lives until someone kidnapped you and artificially joined the two of you together.

And as we have seen, the contractarian model applies only to cases in which the relevant agents have a history of being physically independent. Part of the reason you do not owe the violinist use of your body is that the two of you have led lives physically independent of each other. Clearly, one independent autonomous being can acquire a right to use the body of another only if the latter does something to give the former that right. But this kind of analysis does not apply to Joe and Tom because their history of physical interdependence limits Joe's contractual capacity with respect to Tom's right to use Joe's body. Likewise, the history of physical interdependence of mother and fetus limits the mother's contractual capacity with respect to the fetus's right to use her body. The fetus has a right to use the mother's body (assuming, as Thomson does, that the fetus is a person) in virtue of the fetus's physical relation to the mother—just as Tom has a right to use Joe's body in virtue of his physical relation to Joe.

Of course, there is a sense in which the case of the mother and fetus is different from the case of Joe and Tom. Joe and Tom came into the world together and have never led a separate existence. For this reason, it seemed plausible that Joe's claim to his body did not include a moral entitlement to

dispose of it as he pleases regardless of how it affects Tom. Like you and the violinist, the mother had an independent existence that did not include the fetus until the point in time when the fetus and mother became plugged together. Thus one might think that the mother's claim to her body includes a moral claim that entitles her to treat it as she sees fit—regardless of how such treatment affects the fetus. If so, then it follows that the fetus has no claim to use the mother's body unless the mother does something to give it that claim, because the mother *is* independent of the fetus in a way that distinguishes her relation to the fetus from Joe's relation to Tom.

Nevertheless, it is implausible to think that this difference between the two cases has such profound moral significance. Suppose that Joe came into the world without Tom and lived as an independent person for an hour. After an hour, Tom sprouted, so to speak, from that part of Joe's body to which Tom was thereafter joined. It hardly seems plausible to think that the difference between coming into the world together and coming into the world one hour apart could possibly make any difference with respect to whether Tom needs express or implied consent from Joe to use his body. In the case of pregnancy, of course, the mother has lived a life, made plans, and developed certain expectations about the future. And one might argue that this distinguishes the case of mother and fetus from the modified case of Joe and Tom; it is unfair to the mother to require that an unplanned pregnancy frustrate her legitimate expectations—or so the argument might go.

Whether such an argument succeeds is an interesting question beyond the scope of this essay; the important point, for my purposes, is that this kind of argument abandons Thomson's reliance on the contractarian model in favor of a different strategy that relies on considerations of fairness. This argument does not rely on the claim that it follows from the mother's history of physical independence that the fetus has no right to use the mother's body unless she does something to give the fetus that right. Rather, it looks beyond that history to cite the unfairness of frustrating the mother's substantive expectations that were developed over a lifetime and paid for with sacrifices along the way. Whatever the merits of this line of reasoning (under the assumption that the fetus is a person), it is not the line that Thomson pursues.

In any event, there is a more important difference between the two cases that precludes the application of the contractarian model to the case of mother and fetus. As we have seen, where the contractarian model applies, one person cannot acquire a right to use another's body in the absence of some express or implied agreement giving the former that right. But it is crucial to realize this model applies only when *all* the relevant parties are autonomous agents capable of incurring obligations. For two agents to alter their moral positions relative to each other, they must each, obviously enough, have a moral position *relative to the other* that consists in terms of rights. Of course, rights are always *against* particular agents; they do not, so to speak, float around in logical space unanchored to individuals. To say, then, that one person X has a right to be free of physical battery is to say that X has that right against each member of some class of beings. And to say that X has a right against Y to be free of physical battery is, roughly, to say three things:

- 1) Other things being equal, Y is morally obligated to refrain from committing physical batteries against X;

- 2) Other things being equal, Y is morally obligated to compensate X for any physical batteries Y commits against X; and
- 3) Other things being equal, it is morally permissible for X to perform certain acts that would otherwise be impermissible if necessary to prevent Y from violating Y's obligation not to commit physical batteries against X.<sup>12</sup>

To say that X has a right against Y is thus necessarily to presuppose that Y is an *autonomous moral agent* in the sense that Y is capable of having moral obligations. Accordingly, the contractarian model of how beings can alter their moral positions against each other presupposes that each is capable of having moral obligations.

In general, a being must satisfy two conditions in order to be a moral agent capable of having moral obligations. First, the being must know the difference between right and wrong in the sense that it understands certain basic moral principles that distinguish morally acceptable from morally unacceptable behavior. For example, dogs are incapable of incurring moral obligations because they do not possess sufficient abilities to grasp the abstract concepts of right and wrong. Second, the being must possess the ability to conform its behavior to the requirements of the relevant basic moral principles. A being that lacks this ability is incapable of having moral obligations even if it understands the notions of right and wrong, as well as the basic moral principles. Each of these two requirements is a necessary condition for having moral obligations.

You and the violinist are both capable of incurring obligations because you both satisfy all of the conditions for moral agency; as a consequence, each of you has a moral position against the other. You have a right to control your body that applies against the violinist in the sense that the violinist has a moral obligation not to interfere, other things being equal, with your ability to control your body. For her part, the violinist has a right to life against you that consists in your having an obligation, other things being equal, not to take affirmative steps to terminate the violinist's life.<sup>13</sup> Thomson's application of the contractarian model to the violinist example is appropriate only because you and the violinist are full moral agents who have moral positions *against each other*.

Although you and the violinist are both moral agents capable of incurring obligations, the fetus is not because it lacks both of the above characteristics. Notice that this is true even under the assumption that the fetus is a moral person with a right to life, among other rights. Being the sort of being that has rights does not imply being the sort of being that has obligations; persons who are clinically insane or severely brain damaged and hence incapable of appreciating the difference between right and wrong continue to hold basic rights against other people. It would obviously be wrong, for example, to euthanize severely brain-damaged persons in order to reduce the cost to the public of caring for them.

But if the fetus is not a moral agent, then it follows that the mother does not—indeed, cannot—have any claims against the fetus. The mother's right to control her body is a right that she has against me, you, the violinist, Joe, and Tom, but it is not a right that she has against the fetus—any more than it is a right that she has against a bear, plant, or rock—because the fetus is not capable of incurring obligations. As we have seen, the claim that one being X has a right against another being Y implies that Y is under an obligation of some kind. Since the fetus is incapable of having any obligations, it follows that no

being, including the mother, has any rights against the fetus. Thus while the mother has a right to control her own body that operates against a very large number of individuals, the fetus is not one of them.

Insofar as this is correct, the contractarian model that Thomson applies in the violinist example has no application with respect to the case of mother and fetus. For if the fetus owes no obligations to the mother because the fetus is not capable of having obligations, then a fortiori it owes no obligation to the mother to refrain from using the mother's body unless the mother does something to entitle the fetus to use her body. As we have seen, the contractarian model applies only to cases in which all of the relevant parties are moral agents. Accordingly, the violinist example is morally distinguishable from the case of mother and fetus and hence provides no insight whatsoever into the question of whether abortion is permissible on the assumption that the fetus is a person.

In response, one might object that this line of argument falsely implies that abortion is impermissible even if the fetus is not a person. According to this objection, even if the fetus is not a person what would have to justify abortion is reference to some kind of right on the part of the mother, such as the right to control one's body or the right of self-defense. If the mother has no rights against the fetus, then there can be no justification for abortion, even if it turns out that the fetus is not a person. And any argument that has this counterintuitive result must be flawed.

The problem with this objection is that its underlying assumption that any justification for abortion must make reference to rights is false. No rights-based justification is necessary to explain why, for example, it is permissible to kill a poisonous weed growing in a garden. What makes the killing of a poisonous weed permissible is not the right of self-defense or any other kind of right; what makes it permissible is that weeds have little or no moral standing.<sup>14</sup> It is morally permissible to end the life of a being that lacks moral standing—as long as ending that being's life does not violate the rights of some other being<sup>15</sup>—because no obligations can be owed *to* such a being to refrain from ending its life. If there is no obligation to refrain from killing a being, then no special justification making reference to rights is needed to permissibly kill that being. If the fetus has no moral standing whatsoever because it is not a person, then abortion need not be justified in terms of some right on the part of the mother.<sup>16</sup>

In this essay, I have argued that there are two differences between the violinist example and the case of mother and fetus that preclude the application of Thomson's contractarian model to the case of mother and fetus. First, I have argued that the contractarian model applies only to cases where the relevant parties have a history of physical independence. For this reason, while the contractarian model applies to the violinist example, it does not apply to the case of mother and fetus. Second, I have argued that the contractarian model applies only to cases where the relevant parties are all autonomous moral agents capable of incurring moral obligations. Although you and violinist are moral agents, the fetus is not—and this fact about the fetus precludes the application of the contractarian model to the case of mother and fetus. Accordingly, Thomson's violinist example tells us nothing about whether abortion is permissible assuming the fetus is a person.

## Notes

1. Thomson JJ. A defense of abortion. *Philosophy and Public Affairs* 1971;1(1):47-66.
2. In this essay I do not take a position with respect to either the question of whether the fetus is a person or the question whether abortion is permissible.
3. See note 1, Thomson 1971:55.
4. See note 1, Thomson 1971:56.
5. See note 1, Thomson 1971:57.
6. See note 1, Thomson 1971:56.
7. I am using "contractarian model" to refer only to the ways in which obligations can be created, modified, and extinguished by means of implied and express agreements. It should not be construed as referring to any general moral theory.
8. The reader who anticipates where this is going may worry that I have loaded the deck by stipulating that the twins are 13 or 14 years of age. Many people would find it less objectionable to separate younger conjoined twins than to separate older conjoined twins. Now I am not sure how one can justify the distinction apart from saying somehow that the younger twins have less of a right to life than the older twins. In any event, my rationale for considering an older pair of twins is that I wanted a clear case in which the twins had a full right to life. The anti-abortion position that Thomson is seeking to evaluate assumes that from the moment of conception the fetus has a full right to life that is equal to that of any adult. I have deliberately structured the example so that there would be no doubt that the twins have such a right.
9. Of course, there are limits on what you and the violinist can do in the way of creating rights to use of the other's body. Consent to allow one to use one's body is necessary, but probably not sufficient, to create a moral right in another person to do so. Thus, for example, one might think that prostitution is wrong even if the sexual transactions are mutually and meaningfully consensual.
10. For example, it would be wrong for Joe to cut off a finger if doing so would result in his and Tom's death, in part because it would result in Tom's death. Such an act appears to involve both suicide and homicide.
11. Nevertheless, it is important to emphasize here that it is not merely the fact that the two were joined in a natural way that accounts for why it would be wrong to separate the conjoined twins. If by some improbable but wholly natural accident you and the violinist came to be joined together, it would still be permissible for you to disconnect yourself from the violinist because up to the moment of the accident you and the violinist led physically independent lives.
12. This is just the Hohfeldian view of rights that Thomson defends elsewhere. See Thomson JJ. *The Realm of Rights*. Cambridge, Massachusetts: Harvard University Press, 1990.
13. Thomson, of course, would point out that unplugging the violinist does not violate the violinist's right to life because other things are *not* equal. As we have seen, Thomson convincingly argues that the violinist's right to life does not imply a right on her part to use of *your* body.
14. To say that a being X has moral standing is to say that it has morally significant interests that must be considered in deliberations involving X. A being that has rights clearly has moral standing. It may also be possible for beings that lack rights to have moral standing. For example, Peter Singer believes that animals have moral standing but not moral rights. See Singer P. *Animal Liberation*. New York: Avon Books, 1977. Nothing of importance in my argument turns on this issue.
15. For example, it would be wrong for me to kill weeds growing on my neighbor's property without her permission.
16. Of course, it might be that the fetus has some moral standing, perhaps in virtue of being a potential person, even though it does not have any rights. See note 14.

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## Commentary

John K. Davis

Judith Thomson argues that a fetus may have a right to life yet lack the right to

use its mother's body to stay alive. According to Kenneth Einar Himma, Thomson's argument applies only to cases where the parties meet two conditions. First, they must "have a history of physical independence" and,



second, they must be “autonomous moral agents, capable of incurring obligations.” Himma devises a case involving conjoined twins to show why the mother–fetus case does not meet these conditions.

I shall raise two concerns for Himma. First, I argue that Himma’s conjoined twins case does not turn on “physical independence” but on other factors and therefore the lack of “physical independence” in the mother–fetus case does not defeat Thomson’s argument. Second, I argue that one can have rights against a being who lacks the capacity to incur obligations and therefore a mother can have rights against her fetus.<sup>1</sup>

### **First Difference: Physical Interdependence**

Himma’s argument concerning physical independence is grounded in the case of conjoined twins named Joe and Tom. All the vital organs are in Joe’s skeletal structure and Joe wants to be separated. That will kill Tom, who objects. We are to conclude that separating them is wrong. Himma argues that because Joe and Tom are not physically independent “there is no clear moral sense in which part of that entity is Joe’s to dispose of as he pleases.” For Joe to have a right to separation at the expense of Tom’s life, Joe must have a right to the exclusive use of something to which Tom does not have a right. Normally, one has an exclusive right to the use of one’s body. However, Joe and Tom do not have such rights, for they are “physically *interdependent*” (emphasis added).

“Physical interdependence” does not mean sharing a single body.<sup>2</sup> Rather, “physical interdependence” is a function of history: there was never a time when Joe and Tom both existed and were physically separate, so there was never a time when Joe had exclusive rights to the use of “his” body (or “his”

part of the conjoined body, if you will). Because there was never a time when any part of the body was exclusively his and not Tom’s, there is nothing he has a right to take back from Tom. Himma argues that this concept of physical interdependence is the explanatory factor in the conjoined twins case—the factor which explains the reader’s moral judgment that Joe has no right to separation.

I will introduce a modified version of the conjoined twins case and walk the reader through four possible judgments one may make concerning both versions. I believe the fourth and most likely response to both versions of this case leads the reader to reject physical interdependence as the explanatory factor. I will discuss one initially attractive but ultimately unsuccessful explanation for the fourth judgment, and then discuss a better explanation for the fourth judgment.

### **Modified Version of the Conjoined Twins Case**

In the modified version the twins are connected in the same way, but now Tom has a localized and progressive dementia that makes death attractive to him and he wants to be separated in order to die. Joe opposes separation because he fears and wishes to delay his psychological adjustment to life apart from Tom. Is it permissible to separate them at Tom’s request and over Joe’s objection?

*First judgment: Neither Joe or Tom has a right to separation*

Setting aside concerns about physician-assisted suicide, if physical interdependence means that Joe has no right to separation, then it means Tom has no such right either. The first judgment is that neither twin has a right to separation.

*Second judgment: Tom has a right to separation*

Does that sound right? If the reader insists it does, fair enough, but I suspect it sounds wrong to most people. Why shouldn't Tom have a right to separation? Surely his interest in self-determination outweighs Joe's interest in emotional security, at least on these facts.

If this is right, then physical interdependence does not do the work in the conjoined twins case, for the twins are physically interdependent in both the original and modified cases, yet Tom has a right to separation. Therefore, if Joe has no right to separation, it cannot be physical interdependence that prevents him from having that right, for physical interdependence does not prevent Tom from having that right.

The second judgment says that Tom has a right to separation but leaves open whether Joe has a right to separation. This judgment is compatible with (and included within) both the third and the fourth judgments below, but they are not compatible with each other.

*Third judgment: Both Tom and Joe have a right to separation*

If physical interdependence does not prevent Tom from having a right to be separate, then it does not prevent Joe from having a right to be separate either. At this point the reader may make the third judgment and conclude that both Tom and Joe have a right to separation.

*Fourth judgment: Tom has a right to separation but Joe does not*<sup>3</sup>

Then again, the reader may make the fourth judgment and conclude that Tom has a right to separation but, nonetheless, Joe does not. I believe this is probably the most popular judgment about both versions of the conjoined twins

cases, but to back it up one must explain why Tom has this right and Joe does not. Physical interdependence does not imply that conclusion, for they are both physically interdependent. Some other factor must account for this asymmetry.

*First explanation of the fourth judgment.* One may be tempted to say that Tom has a right to separation because separating will not kill Joe, while Joe has no right to separation because separating will kill Tom. This explanation works, but it implies that the victim in Thomson's violinist example has no right to unplug himself and walk away from the dying violinist. The reader is welcome to endorse this explanation, but I believe that few can reconcile themselves to the judgment that the victim has no right to separation from the violinist. For the majority of readers another explanation is needed.

*Second explanation of the fourth judgment.* A second, better explanation for why Tom has the right to be separated from Joe but not vice versa is that they share a single body. This explanation has two parts. First, it must be shown that the conjoined twins do share a single body—which Himma denies. Second, it must be shown that their sharing a single body is the factor that explains why Tom has a right to separation but Joe does not.

I believe it is plausible to see the conjoined twins as sharing a single body. Granted, physical interdependence is not a matter of sharing a single body, but that does not mean that physically interdependent people *cannot* share a single body. Whether the conjoined twins share one may ultimately be a matter of judgment, but if they do not, who does? They live on the same vital organs, and, as I understand the case, have partially merged torsos and one pair of legs.<sup>4</sup>

If the conjoined twins *do* share a single body, that explains why Tom has a right to separation but Joe does not. Separation involves splitting a body to which more than one person has a proprietary claim. What settles whether to split a body in which both Joe and Tom have a claim? We cannot do what both people want done with that body, therefore we decide between their equal claims to that body by weighing their other rights and interests: Tom's right to die may, in the right circumstances, be weightier than Joe's right to avoid emotional upheaval at Tom's death. Joe's right to self-determination, however, is less weighty than Tom's right to life. That is what accounts for the asymmetry in the fourth judgment.

One may object that the victim's right to self-determination was less weighty than the violinist's right to life, yet the victim had a right to separate. However, Joe is different from the victim for Joe cannot exercise his right to self-determination without cutting up what is also Tom's body—he is trying to exercise his right of self-determination over something that belongs equally to Tom. Because their rights are being exercised over a body to which they have equal claims, their claims must be adjudicated by weighing their rights and interests. The right of self-determination is not normally weighed in this manner, but shared body cases are special—normally one determines one's own bodily self and not someone else's bodily self as well.

If you conclude that they have a single, shared body in the conjoined case and you are persuaded that that is the explanatory factor, then you must conclude that Joe has a right to be separated from Tom when they do not share a single body, as in the corded case. (This also explains the violinist example.)

Himma denies that the conjoined twins share a single body, but his argument does not turn on persuading oth-

ers to see the conjoined case that way, for he also claims to show that Joe has no right to separation in cases where everyone would agree they do not share a single body. For example, when Joe and Tom are connected by something like an umbilical cord (with all the vital organs in Joe), they have separate bodies but still Joe has no right to be separated at the expense of Tom's life. Joe has no such right because he and Tom are physically interdependent even in the corded case.

However, the reader who judges that Tom has a right to separation in the modified conjoined case must reject physical interdependence as the explanatory factor in the original conjoined case. Such readers have no reason to agree with Himma that Joe has no right to separation in the corded case.

To summarize, the reader who judges that Tom has a right to be separated when he and Tom are conjoined, but that Joe has no such right, must reach two conclusions. First, Joe has a right to be separated at the expense of Tom's life when they are corded but not when they are joined. Second, Tom has a right to be separated whether they are joined or corded, for Tom's exercise of that right does not kill Joe either way.

Applied to the mother and fetus this means that the mother has a right to separate herself from the fetus, for their bodies are separate and connected by a cord. If she shared a single body with the fetus, she would lose that right (though the fetus would not, provided the fetus could separate without killing the mother). However, on the usual reading of mothers and fetuses, their bodies are separate and not shared: another kind of corded case.

Yet as Himma notes, the conjoined twins case differs from mother-fetus cases in that Joe and Tom were always connected, while there was a time when the mother was separate. Some readers might object to Himma's argument

by distinguishing the conjoined twins case from the mother–fetus case on this basis. Himma says such distinctions assume a false premise: that because the mother once was separate she has rights against the fetus.

### **Second Difference: The Fetus Cannot Incur Moral Obligations**

Himma argues that a mother does not have rights against her fetus. On Himma's definition of moral agency, the fetus is not a moral agent and therefore cannot have moral obligations. On Thomson's view of rights one cannot have rights against a being who cannot have obligations. Therefore, a mother does not have rights against her fetus any more than she has rights against weeds in her yard.

But consider the case of an endangered species of elephant. The elephant, like the fetus, lacks moral agency but still has a right to life: we cannot kill one just because we feel like it. Now suppose the elephant feels like killing us, or that it threatens to trample a valuable store of grain. If killing the elephant is our only means of protection, can't we kill it? And don't we justify our actions in terms of our right to protect important interests? It seems that the same justification for protecting our important interests against the elephant also applies to the mother and her fetus. It seems natural to speak of these concerns in terms of a right to protect our interests.

Himma may respond that although this seems reasonable, Thomson's theory of rights is Hohfeldian: one can only have rights against a being who can have obligations. This may be true of Thomson's theory of rights, but there are other theories of rights without this limitation. The issue concerns not Thomson's view of rights but whether, on the correct theory of rights, a mother can have a right to separate from her fetus at the cost of its life. The elephant case illustrates the plausibility of a non-Hohfeldian theory of rights.

### **Notes**

1. I am strongly indebted to Paul A. Glezen for his critical comments. In particular, the arguments concerning a mother's rights against her fetus originated with Paul, for which I thank him.
2. Though all people who share a single body are physically interdependent, not all people who are physically interdependent share a single body.
3. There is another possible judgment—that Joe has a right to separation but Tom does not. That judgment is so implausible that I will not discuss it.
4. Readers who disagree that the twins share a single body but nonetheless endorse the fourth judgment must find a third explanation for that judgment, and if they do, it cannot be based on physical interdependence. If it is not, then it may not apply to the mother–fetus case.

Ken Himma responds in the next issue of *CQ*.