

# Defense of abortion: A response to the tacit consent objection

By Mohan Li

## Author Biography

Mohan Li is currently a high school student in California. She was born and raised in Beijing, China; thus, she has been very interested in ancient Chinese history since she was little. After moving to the U.S., she started to dig into social sciences, developing her interest in fields such as philosophy, East Asian studies, sociology, criminology, and so on. By founding a non-profit organization to provide menstrual products and education to girls in her local community, Mohan gained more experience as well as strengthened her goal of helping the community by improving her abilities.

## Abstract

As abortion has been a debated moral issue, advocates and objectors held different opinions and stands. One of the most prominent defense of abortion is Judith Jarvis Thomson's violinist analogy, which has been challenged by the tacit consent objection. The latter states that a woman, by voluntarily engaging in sexual intercourse, tacitly gives the fetus the right to use her body. In responding to this objection, this paper highlights the ambiguous nature of tacit consent and underlines that such a consent should not be seen as unconditional or irrevocable. That is, as a process in continuous time, a consent given earlier may be revoked later. Overall, this paper defends and emphasizes a woman's right to bodily autonomy and self-determination by allowing her to withdraw her consent even in the case of a consensual pregnancy.

*Keywords: abortion, tacit consent, Judith Jarvis Thomson, violinist analogy, reproductive rights, consent revocation*

## Introduction

Abortion has always been a heated topic of debate, especially in the U.S., which accumulated even more attention from the public after the decision of the Supreme Court to overturn *Roe v. Wade* (1973) in 2022. A realized unplanned pregnancy may trigger many people to face tough questions, while these dilemmas still keep touching on personal and social concerns (Kaczor, 2022, p.1). Judith Jarvis Thomson, in her “A Defense of Abortion” (1971), used an influential thought experiment—known as the violinist analogy—to argue that a woman’s right to control her own body can outweigh a fetus’s right to life, even if we assume that the fetus is naturally entitled with a right to life. However, her defense was met with many objections. The tacit consent objection, one of the most influential among these, claims that when a woman voluntarily engages in sexual intercourse, she tacitly consents to the possibility of pregnancy and, thus, to the use of her body by the fetus.

This research will explore the validity of the tacit consent objection. By examining and exploring the core tenets of Thomson’s argument, focusing on her violinist analogy (Thomson, 1971), I will explain how this analogy extends to voluntary and non-voluntary pregnancies, as well as delving into the tacit consent objection. Then, I will respond to this tacit objection by questioning the ambiguity inherent in these consents, along with how the validity of irrevocable consent is interpreted. By delineating these two ideas, I argued that a woman has the right to withdraw her consent, even in the case of voluntary intercourse.

## Thomson’s defense of abortion and the tacit consent objections

Thomson (1971) argues that even if the fetus has a right to life, abortion can still be defended because the woman’s right to bodily self-determination outweighs the fetus’s right to life. Note that although Thomson’s argument assumes that the fetus is alive and has a right to life, which may be disputable in itself, this does not affect the validity of Thomson’s argument.

To help explain her idea, Thomson uses a thought experiment known as the violinist analogy. Imagine this: you wake up one day to find yourself connected to a famous violinist. This violinist has a fatal kidney disease, and the only way to keep him alive is by staying connected to your kidneys for nine months. So, in this case, you are kidnapped into this place and forced to give out your bodily autonomy to stay connected, and now is the time to choose whether to stop the connection or not. The question Thomson asks is: Are you morally obligated to stay connected to the violinist for those nine months, even if it means sacrificing your bodily autonomy?

In the above analogy, the violinist represents the fetus, and “you” represents the pregnant woman. Even if the violinist has a right to life, as mentioned concerning the fetus being an individual human being and is entitled to the right to life, this does not automatically give the violinist—and by analogy, the fetus—the right to use another person’s body to sustain life. Crucially, your bodily autonomy grants you the right to sever your relationship with the violinist despite the violinist’s dependence on you for survival. Using this analogy, Thomson argues that a woman has the right to stop supporting her fetus, even if this results in the termination of the fetus’s life.

Since Thomson's argument was aimed to defend abortion in general, it tries to explain the legitimization of abortion in both voluntary and involuntary cases using the same violinist analogy, which is when the connection to the violinist is being forced. For voluntary intercourse, the violinist analogy didn't list an exceptional scenario, which diluted the effectiveness of the general defense. In response to the worry that Thomson's analogy only provides a defense of abortion in circumstances such as rape, she raises a rhetorical question that since all people have a right to life, is an embryo only has a right to life if it was not conceived as a result of rape, or is the right to life of those who were devised as a result of rape is diminished? She points out that the claim that only the child caused by rape has the right to life while others from voluntary intercourse don't is inherently disturbing, given that no one's right to life is inferior to anyone else's (Thomson, 1971). In this case, if the fetus has a right to life, then there should be no difference between the fetus caused by rape or voluntary intercourse as a human being entrusted with the right to life.

However, in real life, we do think that whether an action is voluntary carries moral relevance. In an objection to Thomson's argument, the tacit consent objection mainly focuses on the situation of voluntary intercourse, and derives the consent from one's voluntary action. In my opinion, Steinbock (2011, p. 94) provides one of the best formulations of the tacit consent objection: "By engaging in intercourse, knowing that this may result in the creation of a person inside her body, she tacitly gives the resulting person a right to remain" (see also Boonin, 2002). This objection made the point that by voluntarily engaging in sexual intercourse, a woman implicitly consented to the possibility of pregnancy and, thus, the use of her body by the fetus since she is well aware that this action may involve a level of consent to the risk of pregnancy. It is well-known that sexual intercourse

itself inherently carries a risk of pregnancy regardless of precautions taken. Thus, as argued by Steinbock, voluntary participation in the sexual act implies a tacit consent to the use of her body by the fetus.

From the responsibility perspective, since the act of sexual intercourse is intrinsically related to the possibility of conception, the resulting pregnancy is regarded as a foreseeable consequence of which the woman herself should be aware and responsible. This responsibility is seen as an extension of the principle that a person must be responsible for the consequences of their choices, especially where another life is involved. In other words, obligations often arise from voluntary acts. For example, suppose a person voluntarily chooses to plant a tree. In that case, they are implicitly obligated to care for the tree, especially if its survival depends on their care. Similarly, a fetus, once conceived, is a dependent being whose existence is a direct result of the woman's actions. Thus, the tacit consent view holds that because the life of the fetus is entirely dependent on the woman's body, the woman has a moral duty to maintain the life of the fetus.

## **Responding to the tacit consent objection**

### **The ambiguity of the tacit consent**

When the objection states that because of the existence of tacit consent, Thomson's defense for abortion is not valid enough, tacit consent itself involves a certain level of ambiguity. This kind of 'tacit consent' is in many ways dissimilar to what we normally see as valid consent which is typically explicit. The latter is based on clear, mutually understood agreements, which may be given verbally or as signed documents. This explicitness ensures that all parties have a precise and unequivocal understanding of what is being consented to and the limits of that consent. However, in the context of pregnancy, tacit consent

implies an agreement that is not clearly expressed, which creates vagueness about what the consent actually covers. If a woman's consent to pregnancy is based on a tacit understanding, it is unclear whether she consented to the full range of pregnancy. This equivocation undermines the validity of such consent because of the absence of precision needed to establish an enforceable and clear agreement.

Furthermore, since the case of tacit consent to pregnancy involves no such explicit agreement, it leaves room for multiple interpretations. Who has the authority to interpret the meaning and extent of tacit consent? As only the women may know what this tacit consent covers, the consent content is completely based on individualized interpretation. This means that the consent is subjective and varies among individuals, with no standardized interpretation being given beforehand, which may lead to potentially unjust or inconsistent applications of the concept. The variability in interpreting tacit consent erodes its validity, as it does not provide a reliable basis for moral or legal obligations.

### **The revocable nature the tacit consent**

More importantly, even if we accept that valid tacit consent is given initially, it does not signify that this consent is irrevocable. The tacit consent objection assumed that consent is a one-time event that cannot be revoked once given. However, this ignores the nature of other conditions, such as environmental, emotional, and physical factors, that constantly change while accomplishing this purpose. In many cases, the conditions under which consent was originally given may change, requiring a reassessment of whether the initial agreement is still valid. It is also essential to provide conditions for revocation of the initial agreement, such as adding the consequences that will be faced if the initial consent is later reversed,

rather than leaving no room for operating at all. Therefore, in many contexts, valid consents can be conditional and subject to withdrawal. Even in the case of explicit consent, when the party signs the consent, it does not mean that every variability that might be happening in the future will be unconditionally applied to the party (Melham et al., 2014). For instance, in research studies, participants are typically allowed to withdraw their consent at any time, without penalty, despite the fact that they did give their full consent to participate in this experiment (University of Nevada, 2021).

In the case of pregnancy, especially given that this incident may change dramatically over time. While a woman may initially agree to become pregnant through consensual intercourse, the physical, emotional, and economic realities of pregnancy may change in ways she could not have anticipated. Health complications, personal difficulties, or changes in her financial status may all change and cause her to rethink whether it is in her best choice or desire to continue the pregnancy. Consent, particularly in such contexts, should allow for reconsideration in light of changing circumstances.

If we consider a modified version of the violinist analogy, suppose I initially agreed to help save the violinist by consenting to be connected to him for nine months. However, after two months, I realized that the burden was too great or that my circumstances had changed. Given that it was voluntarily provided, it seems reasonable to withdraw my initial consent.

### **A potential rejoinder**

Conflicts between individual liberty and the public interest represent an interesting issue in the moral field, of which abortion and quarantine are preeminent examples. Arguments such as "for the common good, individuals morally make

concessions about some autonomy” are debatable in both cases. The quarantine example can be taken as a potential rebuttal to Thomson’s abortion argument when weighing the autonomy benefits of abortion against restrictions such as quarantine.

First, in the case of quarantine, a person is forced to refuse contact with others so as not to harm them. Here, the autonomy of the quarantined person is restricted in that whatever he or she does directly affects the health and well-being of others. Quarantined people are usually autonomous individuals whose lives do not depend on others. As social animals, the moral obligation to give up some of their freedoms based on a shared responsibility to protect vulnerable populations also leads to people in this part of the population being in voluntary quarantine.

On the contrary, interest in autonomy in abortion creates a special moral dilemma. The basic difference lies in the lives involved. In the case of abortion, the fetus’s life is entirely connected with the mother’s body. In other words, for its continued existence, the fetus is held hostage to the mother’s life. Therefore, the case differs significantly from that of the quarantined example. In both cases, we are weighing the individual’s autonomy against the lives of others, but the relationship between mother and fetus blurs the ethical outlook.

What differentiates these two cases is that the person being quarantined is an autonomous person with recognized rights, whereas the moral status of the fetus is still debated. Although we assume that the fetus has a right to life, because of its dependent nature, it can’t be considered as a fully developed and functioned human being at this time. It is this gray area that prevents the simplistic equation of sacrificing one’s autonomy for the sake of another. To summarize, quarantine, a potentially rejoinder, does not undermine the case for abortion rights because the

nature of dependency and moral agency are so different between these two. Whereas quarantine may permit the temporary restriction of some autonomy for the sake of collective safety, the special and complex interdependence between mother and fetus involves no one but themselves, and thus the mother’s autonomy can be expected to be paramount.

## Conclusion

This paper has examined the opposition of Thomson’s abortion defense to the tacit consent objection. As stated, the argument goes that intercourse being voluntary implies consent to pregnancy. However, as the above analysis proves, consent is neither clearly expressed nor irrevocable. Furthermore, particularly with one’s own body, one should be flexible and revocable, even when the initial action is voluntary. Where this moral responsibility relates to a consensual sexual act, it surely does not follow that this means lifetime support of another human being with all burdens to physical and emotional well-being.

In conclusion, while the tacit consent objection may raise some moral concerns, the fact is that it does not defuse Thomson’s argument: a woman’s right to bodily self-determination must be emphasized in keeping her in a position where she may withdraw consent, as long as pregnancy did occur.

## References

- Beckwith, F. (1993). *Politically Correct Death* (Chap. 7). Baker Publishing Group.
- Kaczor, C. (2022). Introduction. In *The ethics of abortion* (pp. 1-12), Routledge. <https://doi.org/10.4324/9781003305217-1>
- McMahan, J. (2002). *The ethics of killing : problems at the margins of life*. Oxford University Press.

Melham, K., Moraia, L. B., Mitchell, C., Morrison, M., Teare, H., & Kaye, J. (2014). The evolution of withdrawal: negotiating research relationships in biobanking. *Life Sciences, Society and Policy*, 10(1). <https://doi.org/10.1186/s40504-014-0016-5>

Roe v. Wade, 410 U.S. 113 (1973). (2019). Justia Law. <https://supreme.justia.com/cases/federal/us/410/113/>  
Steinbock, B. (1992). *Life Before Birth : The Moral and Legal Status of Embryos and Fetuses*. Oxford University Press.

Thomson, J. J. (1971). A defense of abortion. *Philosophy & Public Affairs*, 1(1). [https://doi.org/10.1007/978-1-4615-6561-1\\_6](https://doi.org/10.1007/978-1-4615-6561-1_6)

University of Nevada. (2021, July 1). 346. Consent and Early Withdrawal or Cessation of Participation | Research Integrity. University of Nevada, Reno. <https://www.unr.edu/research-integrity/human-research/human-research-protection-policy-manual/346-consent-and-early-withdrawal-or-cessation-of-participation>