

Defense of Freedom of Abortion: An Analysis Based on the Case of Dobbs vs. Jackson Women's Health Organization

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Abstract: This paper delves into the great complexity of the right to abortion. The paper defends the freedom of abortion through perspectives of women's health, the premise that fetuses are human beings, and rights-based theory with reference to arguments by prominent philosophers. The paper discusses the famous thought experiment of the violinist analogy, claim rights, and liberty rights by Judith Jarvis Thomson to argue why abortion should be morally permissible. Moreover, the paper dissects objections to these arguments, revealing their inherent limitations by stating that traveling to other states for abortion is unjust. The paper also uses the minimal decent Samaritan argument to address possible objections. The paper strongly argues that the right to abortion is a legal and moral imperative to fulfill. The paper aims to justify the right to abortion and that people should recognize the current threat to the right to abortion with the case of Dobbes vs. Jackson Women's Health Organization.

Keywords: Rights, Justice, Autonomy

1. Introduction

The topic of abortion rights has always been the center of many discussions. Especially in recent days, the leak of Supreme Court decisions on Dobbs v. Jackson Women's Health Organization overturned the case Roe v. Wade. Abortion rights now are facing another level of challenge. The Supreme Court might overturn the precedent of Roe v. Wade; if so, no precedent can protect abortion rights in the judicial system. This paper will defend abortion based on social justice, analyze the issue of rights, and then talk about how to defend abortion rights even though admitting the fetus as a human being.

As the Supreme Court recently accepted the review of Dobbes vs. Jackson Women's Health Organization, the discussion of abortion has gained more public attention. The "Gestational Age Act," passed in Mississippi in 2018, prohibits all abortions after 15 weeks of gestational age with few exceptions. One of Jackson's Women's Health Organization doctors filed a lawsuit in federal district court challenging the law and requesting an emergency temporary restraining order (TRO). The district court granted the TRO, and the case moved to discovery. The district court granted the clinic's motion for summary judgment and enjoined Mississippi from enforcing the law after discovery [1].

In the famous Roe v. Wade decision, the Supreme Court decided that a woman has a constitutional right to an abortion in the first trimester of her pregnancy without state interference [2]. In the

landmark case *Planned Parenthood v. Casey*, the Supreme Court maintained a woman's right to an abortion. It overturned the prior trimester framework in favor of a fetal viability criterion, typically 24 weeks into pregnancy [3].

Recently, according to a POLITICO report published on May 2nd, the Supreme Court has voted to overturn the landmark *Roe v. Wade* decision based on an original draft majority opinion prepared by Justice Samuel Alito that was shared within the court and obtained by POLITICO. The draft opinion is an outright rejection of the 1973 judgment as well as a subsequent 1992 decision. Alito comments, "Roe was egregiously erroneous from the start." In summary, women's abortion rights in the United States are being attacked, and abortion rights protests have been staged around the country since the draft was leaked. The debate over abortion rights has resurfaced in the news [4].

Just as contraceptives, abortions also mark women's right to their bodies. Banning abortion undoubtedly deprives women's rights. If women are regarded as people without freedom of body, it cannot be imagined what will happen next in society. Many feminists' efforts will be wasted. As the public might only take abortion as a problem for a small part of people, especially women, society ignores how vital abortion is. It is not only for women but for the whole society. If society makes any compromises here, there will be more compromises. This time is women's right to abortion. Next time, it can be people's right to their lives.

2. Substantive argument

2.1. A defense of abortion based on women's health

Abortion as a fundamental human right is often discussed by the public because of its potential controversy. Many conservatives and Catholics are eager to stigmatize abortion to abandon it eventually. However, abolishing abortion destroys women's mental and physical health. The public has to admit the existence of involuntary or detrimental pregnancy. For instance, almost three million women experience rape-related pregnancy in the United States [5]. Abortion is necessary for them to erase the dark memory of sexual intercourse without consent. It is unfair for those victims of rape to experience the pain of giving birth to a criminal's child. On the other hand, many women suffer from severe mental or physical diseases such as depression. Having a child for them might be devastating, considering their health condition. For example, as pregnancy might already cause anxiety and fluctuations of emotions, it will probably push women to commit suicide.

Additionally, the abolition of abortion harms women's health despite the extreme circumstances. When abortions were illegal, abortions did not disappear but went underground instead. Women desperately seeking abortions had to ask people such as physicians and midwives who were not qualified to operate abortions or even have self-induced. Undoubtedly, health and safety issues emerged. For instance, during the 1950s, there were at least millions of criminal abortions [6]. Even though deaths and permanent harm were rare, many women still became victims of such "underground abortion." They suffered through their lives with severe medical problems or died because of abortion. It is not difficult to predict the future if abortion is illegalized. As abortions still are an essential need for some people, people will be willing to take the risk to accept unqualified abortions. In this case, women who should be able to access healthy medical treatments will have to put their life-long health in danger and risk their most basic right: the right to life.

2.2. A defense of abortion based on the premise that fetuses are human beings

According to Judith Jarvis Thomson, this work takes all fetuses as human beings, which means they have equal rights to life just as people do, and the right to abortion can still be right in this case [7]. In cases where the pregnancy threatens the mother's life, since every human has an equal right to life, the mother also has this right. This argument says that not performing an abortion deprives the

mother's right to life. If one sums the mother's right to life and the mother's right to decide what happens in and to her body, then it outweighs the fetus's right to life so that women can perform the abortion.

Thomson also uses an analogy of an unconscious violinist who suffers from severe disease to illustrate this point. Imagine the Society of Music Lovers kidnapped you and plugged your circulatory system into his. To unplug him would kill him, but he will have recovered from his ailment in only nine months and can safely be unplugged from you. In this situation, although it would be kind for you to be plugged into the violinist's circulatory system so that the violinist can sustain his life, you are still not morally required to save his life. Identical to the case of abortion, if the pregnancy is unwanted, the fetus is like the violinist, who is not entitled to your body. You also do not have a special responsibility to the fetus. People need to distinguish between good samaritan and minimally decent samaritan. People are morally required to be minimally decent samaritans but not good samaritans. The law of a country should only require the people to be the minimally decent samaritans rather than the good samaritans. It would also be double standards if the law only requires the mother to be a good samaritan but requires others to be minimally decent samaritans. However, the law is supposed to be equal for everyone [8].

The right to life does not consist of the right not to be killed but the right not to be killed unjustly [8]. The unborn person has a right to his mother's body only if the mother's pregnancy results from a voluntary act, and abortion for an unwanted pregnancy is not an unjust killing. Thomson uses another analogy to prove this: imagine you open the window of your room for air to circulate, knowing that a burglar could climb in, and you may also have set bars on the window, but still, the burglar could break it and come in [8]. One cannot expect people never to open their room windows because there might be burglars coming into their homes from the window. One cannot say that the burglar has the right to their house because they leave their window open. The same as the unwanted pregnancy, one cannot expect all women to take hysterectomies, to have an army with them all the time, or never to have any sexual activity just because there might be an unwanted pregnancy. This can also be related to the situation this work mentioned before, which is the inability to perform an abortion will hit the poorest and the most vulnerable women in social minority groups because they are the women who can't afford a "hysterectomies" or "a reliable army."

2.3. A defense of abortion in rights-based theory

In the case of abortion, accepting the concept of seeing the fetus as human. A common argument would be made against abortion is fetus, as a human, enjoys the right to life. And therefore, those rights should also be protected other than women's rights to liberty. It brings to the question of the value of those two rights. Because in the process of pregnancy, women and fetuses share the same room of living (or, more precisely, the fetus is borrowing the women's body to live.) Judith Jarvis Thomson used an analogy of a violinist attached to one's body to show this contradiction [8]. This analogy, which was stated in the former text, well-explained how women's hope to get an abortion could be a potential threat to the fetus's rights to life, and a fetus borrowing a women's body and sharing living space with women could be a threat to women's rights to liberty.

Abortion would hardly be described as a zero-sum situation. Even after abortion, women will gain the right to liberty, and the fetus will lose its right to life because the rights women and fetus each have are unequal. In a zero-sum situation, chips on both sides of the scale would be equal or very close to an equal amount [9]. The chips in the case of abortion, on one side, are women's rights to liberty, and on another side are fetuses' rights to life. If two sides are equal in a zero-sum situation, then the best way of deciding whether to perform an abortion surgery is to flip a coin simply. This proposal of coin flipping is strongly against people's intuition. However, coin-flipping is not the best

way of deciding whether to perform an abortion surgery or, in a general sense, ban abortion, and this proved the inequality in women's rights to liberty and fetuses' rights to life.

Adding upon the previous argument, how can people decide whether to perform an abortion surgery or, even in a more general sense, ban abortion is the question. This paper will introduce Judith Jarvis Thomson's theory about claim rights and liberty rights to defend abortion rights. A claim right, in many senses, has a stronger sense of restraining others from intervention. For example, if one has a claim right about owning properties, the others have a duty not to interfere with such a right. A liberty right, unlike a claim right, correlates with no duty. For example, if a certain person has a liberty right to open a shop, others can still open a shop of the same business next to that certain person, which takes away part of the customers (hence interfering), because others have no duty to not interfere since that certain person only has a liberty right [10].

When the concept of claim right and liberty right has been placed in the case of abortion, for women, the right to liberty should be classified as claim rights since (at least in the United States under the protection of the Constitution) everyone has a duty to not interfere with such a right and there shall be no exceptions included. Some might argue that if women's right to liberty is a claim right, then the process of pregnancy and giving birth itself is a violation of women's rights to liberty, and thus, should the concept of seeing women's rights to liberty as a claim right be challenged? However, pregnancy and giving birth should be women's voluntary action of giving up part of their claim rights, a good-samaritan action. But this should not be a forced action which indicates law enforcement of carrying the whole term of pregnancy or rape and incest etc. For fetuses' rights to life, not everyone has a duty to not interfere. For example, when a woman is facing a dangerous pregnancy complication this specific pregnancy complication is threatening both the woman and fetus's life. The only solution to resolving the symptoms is to terminate the pregnancy. In this case, people have no duty to not interfere with the fetus's right to life. So, in many senses, a fetus' right to life should be seen as a liberty life rather than a claim right.

Women's right to liberty is more of a claim right and should matter more than fetuses' right to life as a liberty right. Thus, the belief of pro-life supporters that fetuses as human being's rights to life should also be protected can be further challenged because women's right to liberty is a right that everybody has a duty to not interfere with, but fetus' right to life does not require such interference.

2.4. Addressing objections

Reasons for not abolishing abortions are listed above. However, objections to those theories still emerge. Based on the current situation in the United States, even though Jackson Women's Health Organization lost the case, abortion might still be available in some states. Therefore, people seeking the abolition of abortion might state that the argument related to women's rights under extreme circumstances is not worth discussing. The reason is that even though the Supreme Court illegalizes the abolition of abortion, women who get pregnant with criminal sexual intercourse or mental issues can still have access to legal abortions due to the freedom of the states to establish their laws. As some people argue, some states, especially the liberal ones, might still choose to keep abortions legal. Hence, society does not have to consider the potential harm the illegalization might create for women who get pregnant involuntarily since people can always go to another state.

However, this objection might seem sound even though giving some states the right to abortion while depriving some people's rights is already unfair. Legalizing an abortion ban is not just a challenge to the rigor of the law but also aggravates social inequality. Legislative differences between states should not serve as an excuse for the irrationality of one legal statute. The legislative branch would lose the dignity and rigor of the law if women had to flee the state where they lived to get an abortion. Laws should not be the invisible hand that pushes people away from the land they live in. Instead, the law should protect people. If a law forces people to escape from a place, society has to

consider if this law should be published in the first place. In addition, society has to recognize that not everyone can afford to travel to another state for an abortion. This limitation may be due to economic conditions or social status. Therefore, the illegality of abortion is a society statement that only those with the privilege are allowed to do so. The last time was before the Declaration of Independence, when enslavers forced African-American women to give birth and raise children for enslavers. Such crime was practical because abortions were illegal in United Kindom. The abolition of abortion, even without the slave system, will still intensify the social inequality because people can not afford to go to another state where people already struggle with livelihood. In many cases, those people are racial minority groups and people with disabilities. Hence, what's the difference between a bill that abolished abortion and enslavers who used the fact that abortion was illegal to force black women to give birth?[11].

Some people might say that if an abortion can be performed even if one takes fetuses as human beings, there are no restrictions for women to perform an abortion. This is incorrect because one agreed that all people should be required to be minimally decent samaritan, which means that if a pregnancy only requires the mother to have minimal decency, then women should not perform an abortion. For instance, if the mother is not undergoing any health problems or financial hardships, and the pregnancy is a voluntary act, it would be indecent for her to perform an abortion in her late pregnancy just because she wants to wear good clothes or to travel to another country. In this scenario, abortion should not be performed (Mother and child).

It is also not to say that the mother could guarantee the fetus's death, as long as the fetus can be viable without the mother's body and it somehow survived. Then, any act of killing is not just killing [8].

Some people may also say that using the violinist analogy can be inaccurate because the relationship between the mother and the fetus is not the same as between one citizen and another random citizen. It is morally required for the mother to have a special responsibility to their fetus. However, as this paper mentioned, it depends on whether a pregnancy is voluntary. In cases of rape, for instance, the mother does not have this responsibility because she is forced to have an unwanted pregnancy. This is more than just not her will; this is a whole traumatic experience of being deposited. It would be indecent to force the mother to have the unique responsibility, just as mothers with voluntary pregnancies do.

In Ronald Dorkin's work *What Rights Do We Have*, he solidly argues that there's no such thing as general rights to liberty [12]. This argument of no general rights to liberty can be seen as a solid objection to this paper's defense of abortion through the right theory of seeing women's rights to liberty as a claim right because if there are no rights to liberty, women should also have no claim rights among such things. However, there could be a narrow sense of right to liberty.

When Dworkin talked about the right to liberty in his work *What Rights Do We Have*, he pointed out that everyone wants the right to liberty, but people's interests often contradict each other. Therefore, if seeing the right to liberty as a formal human right, laws also need to be made to guarantee protection for everyone's right to liberty. Dworkin also believes restrictions given by the law violate the right to liberty; thus, the existence of the law itself is a violation of the right to liberty. So, Dworkin concluded that there's no general rights to liberty [13].

The argument of seeing women's rights to liberty as a claim of rights has been made in the former work. However, when it comes to abortion rights, women's rights to liberty only appoint to not being forced to live together (or let someone else live inside of you) and sharing essential life resources with another human being for a specific time. Unlike Dworkin, who says laws give protection to general rights to liberty [13], in the case of abortion, laws are often given restrictions on women's rights to liberty of not forced to live together (or let someone else live inside of you) and sharing

essential life resources to another human being for a specific amount of time. There are only laws that reject those restrictions (undue burden), but no law directly gives any protection to abortion rights.

3. Conclusion

The right to abortion is a right that is undeniable and essential. Numerous attempts to abolish abortion have led to harm and pain throughout history. The importance of abortion rights is shown in its protection of women's health, its emphasis on women in the balance between the fetus's life and the woman herself, and the philosophical distinction between women's claim right and liberty right.

Objections to the above arguments still exist: people will question the necessity of abortion. Even if the abolition of abortion is legally passed, women who need an abortion because of extreme circumstances will still have access to abortion. In addition, the permission to operate abortions with admitting the fetus is human is a kind of acquiescence to unrestricted abortion. Also, even from a philosophical point of view, as Dworkin said, there is no general right in the world [13].

However, all of these objections have their defaults. Forcing women to go to some states for abortion in the first place would exacerbate social inequality and challenge justice. Secondly, it is immoral to ask an involuntarily pregnant mother to be responsible for her child with too high moral standards. Besides, as mothers, women naturally have minimal decency to restrain their abortion behavior. Again, there is no general right, but in special cases, there is a narrow sense of rights to liberty, such as not sharing essential life resources with another human being.

In a nutshell, the right to abortion is undoubtedly essential and indispensable. The future of abortion rights is uncertain due to the Supreme Court's review in *Dobbs vs. Jackson Women's Health Organization*. Society should always know that abortion is the cornerstone of human beings, both from the legal and moral levels. If abortion is abolished, people will face unprecedented injustice and darkness.

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