

# Judith Jarvis Thomson on Abortion; a Libertarian Perspective

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## Recommended Citation

Walter E. Block, *Judith Jarvis Thomson on Abortion; a Libertarian Perspective*, 19 DePaul J. Health Care L. (2018)

Available at: <http://via.library.depaul.edu/jhcl/vol19/iss1/3>

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# Judith Jarvis Thomson on abortion; a libertarian perspective<sup>1</sup>

## I. Introduction

Abortion is one of the most vexing issues faced by society. On the one hand, there are those who favor the pro-choice position. In their view, the woman, and she alone (along with the advice of her doctor – but the final decision must be hers), should be able to legally determine on what basis, and whether, her pregnancy should be conducted. She should be as free to end her pregnancy at any stage of the development of her fetus, or give birth to it after the usual term of nine months. On the other hand, there are those who favor what is called the pro-life position. In this perspective, the fetus, from the moment of conception, is a full rights-bearing human being. To abort this small person is to kill it, and to do so should be considered outright first-degree murder. Judith Jarvis Thomson is a highly respected philosopher who spent her career at MIT, and has taught at the University of Pittsburgh, the University of California at Berkeley Law School, and Yale Law School. Libertarianism is the philosophy based on private property rights and the non-aggression principle. The leader of this school of thought is Murray N. Rothbard. The present paper is an attempt to apply this outlook to the troublesome issue of abortion.

## II. Method

Thomson's views on abortion with those emanating from the libertarian political philosophy. The objective is to discern areas of agreement and disagreement. The discussion that will occur will be to quote sections of her paper, and then comment on them. Here is a preview of my conclusion: while there are important overlaps between her views and my libertarian ones, unexpectedly sharp and important ones, given that she does not operate in this tradition, cites nothing from this tradition, seems oblivious to it, there are also important differences. To wit, she partially, but does not fully, embrace the notion of evictionism, according to which the woman may at any time in her pregnancy evict the unwanted fetus from her body, she may never murder that small person.

In section II we introduce the players in this debate over abortion law. The burden of section III is to consider Thomson's Opening Statement. In section IV we discuss the right to life; in V, Thomson's violinist; in VI, killing versus letting die; in VII, third parties; in VIII, Thomson as libertarian; in IX, using another person's body; in X, abortion in the case of rape; and in XI, implicit contracts. We conclude in section XII.

## III. Discussion

The present essay is an attempt to analyze Judith Jarvis Thomson<sup>2</sup> (1971) from a libertarian perspective. In it I will review her excellent essay through the lens of this philosophy. Why do I undertake this task? For two reasons. One, I regard JJT (1971) as the single best written, well thought out, most magnificent analysis of abortion -- from a non-libertarian vantage

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<sup>1</sup> I wish to thank Bradley Warschauer and Andrew Collins for editorial assistance. All errors of course are my own responsibility.

<sup>2</sup> Judith Jarvis Thomson, *A Defense of Abortion*, 1 PHIL. & PUB. AFF. 47 (1971).

point. Second, the libertarian examinations of the pro-life, pro-choice controversy<sup>3</sup> are very similar to hers. I am here to explore the differences, not mainly the similarities, of which there are many, between the two treatments. I do so since I am an advocate of product differentiation, that is to say clarity. As my goal is the promotion of liberty, I shall attempt to show the differences between her views and those that fully espouse liberty on this vital issue.

There are two different philosophies publicly in contention over abortion: the pro-life and the pro-choice perspectives. Abortion consists of two separate acts; the failure to sharply distinguish between them has led, I contend, to more heat than light in this controversy. The

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<sup>3</sup> For libertarian publications on evictionism see Walter E. Block, *Should Abortion Be Criminalized? Rejoinder to Akers, Davies and Shaffer on Abortion*, 2 MGMT. EDUC. SCI. TECH. J. 33 (2014); Walter E. Block, *Evictionism and Libertarianism*, 35 J. MED. & PHIL. 290 (2014); Walter E. Block, Roy Whitehead, *Compromising the Uncompromisable: A Private Property Rights Approach to Resolving the Abortion Controversy*, 4 APPALACHIAN L. REV. 1 (2005); Jeremiah Dyke, Walter E. Block, *Explorations in Property Rights: Conjoined Twins*, 3 LIBERTARIAN PAPERS 38 (2011); For critiques of these libertarian views on this subject, see, Becky Akers, *Not My Definition - Or Webster's Either - of 'Trespassing,'* LEWROCKWELL WEBSITE (Sept. 6, 2012), <https://lewrockwell.com/lrc-blog/not-my-definition-or-websters-either-of-trespassing/>; Becky Akers, *What if the 'Fetus' Could Shoot Back?*, LEWROCKWELL WEBSITE (Sept. 12, 2012), <https://www.lewrockwell.com/lrc-blog/what-if-the-fetus-could-shoot-back/>; Jim Davies, *Abortion*, Strike The Root (Sept. 24, 2012), <http://strike-the-root.com/abortion/>; Sean Parr, *Departurism and the Libertarian Axiom of Gentleness*, 3 LIBERTARIAN PAPERS 34 (2011); Sharon Presley & Robert Cooke, *The Right to Abortion: A Libertarian Defense*, ASS'N OF LIBERTARIAN FEMINISTS, <http://www.alf.org/abortion.php> (1979); Butler Shaffer, *Of Children and Fetuses*, LEWROCKWELL WEBSITE (Sept. 17, 2012) <https://www.lewrockwell.com/2012/09/butler-shaffer/of-children-and-fetuses/>; Jakub Bozydar Wisniewski, *A Critique of Block on Abortion and Child Abandonment*, 2 LIBERTARIAN PAPERS 16 (2010); Jakub Bozydar Wisniewski, *Rejoinder to Block's Defense of Evictionism*, 2 LIBERTARIAN PAPERS 27 (2010); Jakub Bozydar Wisniewski, *Response to Block on Abortion, Round Three*, 3 LIBERTARIAN PAPERS 6 (2011); Jakub Bozydar Wisniewski, *Abortion, Libertarianism and Evictionism: A Last Word*, 5 LIBERTARIAN PAPERS 153; For rejoinders to these critiques see Walter E. Block, *Objections to the Libertarian Stem Cell Compromise*, 2 LIBERTARIAN PAPERS 34 (2010); Walter E. Block, *Rejoinder to Wisniewski on Abortion*, 3 LIBERTARIAN PAPERS 4 (2011); Walter E. Block, *Response to Wisniewski on Abortion, Round Two*, 3 LIBERTARIAN PAPERS 4 (2011); Walter E. Block, *Response to Wisniewski on Abortion, Round Three*, 3 LIBERTARIAN PAPERS 37 (2011); Walter E. Block, *Should Abortion Be Criminalized? Rejoinder to Akers, Davies and Shaffer on Abortion*, 2 MGMT. EDUC. SCI. TECH. J. 33 (2014); Walter E. Block, *Response to Wisniewski on Abortion, Round Four*, 2 MGMT. EDUC. SCI. TECH. J.1 (2014); Walter E. Block, *Evictionism is Libertarian; Departurism is not: Critical Comment on Parr*, 3 LIBERTARIAN PAPERS 36 (2011); Walter E. Block, *Toward a Libertarian Theory of Evictionism*, 35 J. FAM. & ECON. ISSUES 290 (2014); Walter E. Block, *Question and Response on Rape and Evictionism Theory*, LEW ROCKWELL WEBSITE (June 21, 2015), <https://www.lewrockwell.com/lrc-blog/question-and-response-on-rape-and-evictionism-theory/>.

first element is removing the fetus from the womb; the second is killing it. The pro-choice side of this debate advocates that the pregnant woman be allowed to engage in both; the pro-life supporters say neither one is legitimate. Evictionism is a compromise between these two extreme positions. Devotees of this viewpoint maintain that the woman in question be allowed to evict her baby, at any stage of her pregnancy, but not, ever, to kill the fetus, since that would be murder. Given the present level of medical technology, evictionism in practice sides with the pro-life side of this debate in the last trimester, and with the pro-choice alternative in the first six months. Why? This is because, at present, the baby is viable outside of the womb only for the last three months of its sojourn in its mother's body, but not for the first half year. This stems from the fact that if the fetus is prematurely removed from the womb, it will perish, and the present dividing point between life and death for the evictee is at the end of six months. Of course, as medical techniques improve and the baby can survive earlier and earlier in its gestation period, as a practical matter, evictionism will more and more come to resemble the pro-life, and less and less the pro-choice side of this debate. When physicians can provide a safe haven for the fertilized egg (the "acorn" in JJT's analogy) at any stage of its development, the evictionist philosophy will fold into that of pro-life. But this viewpoint will always and ever remain one conceptually distinct from the other two on this issue, since unjust killing (murder) will always be an entirely separate matter from a mere change in geographical address. However, were evictionism to be adopted today, at one fell swoop all babies in their third trimester would be safeguarded. The brutal and despicable partial birth abortion and all such other murderous acts would be banned by law.

#### IV. Thomson's Opening Statement

JJT claims that the fetus is no more a human being than is an acorn an oak tree.<sup>4</sup> Therefore, it has no rights, at least not those of a person. This is problematic for several reasons. First, the real issue is not whether or not the fetus is a member of our species, although it is difficult to see how this can be denied. Rather, it is whether or not it (he!) is a rights bearing entity. Why might the very young baby<sup>5</sup> not be thought of as having rights? One possibility is that he is not conscious. But if there were the criterion, all of those of us who are asleep, or unconscious, or drunk, could be murdered or raped with impunity, and this simply will not do. Could it be that this agglomeration of cells is not entitled to rights because it is not (yet) a human being? This hypothesis, too, must be rejected, for they constitute a *human* fetus, not one of a different species, such as a horse or a pig. Another difficulty is that the acorn and the oak have precisely the same degree or rights. Namely, none at all. So, yes, an acorn is not an oak, but this distinction is ethically, legally, irrelevant.

Third, a practical matter. No one ever aborted an early stage fetus, at least not before the advent of the RU846 pill. This could not then be done until these a few cells were more developed than at the acorn level equivalent. They constituted a far too small amount of

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<sup>4</sup> Thomson, *supra* note 2, at 47.

<sup>5</sup> Putting matters thusly of course biases us in one direction on this issue.

protoplasm for that. No abortion could take place during this era<sup>6</sup> until weeks after conception. Let us return to the acorn -- a few weeks after it has been developed. It is, yet, an oak tree? No, not yet. But it is now an oak sapling. In JJT's analogy the oak tree in effect has "rights"<sup>7</sup> the acorn does not, but what of the sapling? Does it have *some* rights, perhaps more than the acorn but less than the tree? Again, no, since none of these entities have any right at all not to be aggressed against.<sup>8</sup> JJT seems to believe that the adult human being, and a member of this species after birth, a baby, have rights, but the one before birth, whether a fetus of eight and a half minutes or eight and a half months, have none. This seems to be arbitrary and capricious, since the human being one minute before or after birth seem to be very similar, at least biologically. The only real difference between the two would appear to be one of location, or geography or street address.

Why go on about all this? Is the present discussion not superfluous, since JJT is willing to deal with this situation hypothetically?<sup>9</sup> No. For the very last words of her essay are: "... it should be remembered that we have only been pretending throughout that the fetus is a human being from the moment of conception. A very early abortion is surely not the killing of a person, and so is not dealt with by anything I have said here."<sup>10</sup> This means that she favors *abortion*, not evictionism, something directly contrary to the libertarian position.

## V. Right to Life

Another quarrel I have with this author is that she states "every person has a right to life."<sup>11</sup> But there is no such thing, at least not for the libertarian. In this philosophy, there are only negative rights: the right not to be murdered, raped, kidnapped, stolen from, threatened with violence, etc. Since all rights logically imply obligations, everyone else has a duty not to murder, rape, enslave, etc. If there were a right to food, clothing, shelter, etc., then other people would have not merely a moral responsibility to supply these goods, but a legal one. How does this work out regarding a right to life? If it existed which it does not, it would oblige everyone else to be a Good Samaritan; they would be legally required to keep all needy persons alive. If someone is starving to death anywhere in the world, a constant occurrence unfortunately, all other people, even located 10,000 miles away, would not be just "in effect" murderers, but actually out and out

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<sup>6</sup> It is important to discuss the situation during this epoch, since libertarian theory applies to all time periods without exception.

<sup>7</sup> I am analogizing from her words. She denies rights to the fetus since it is not human. If the oak tree had rights, I infer from her, then the acorn would not, since it is not (yet) matured.

<sup>8</sup> There are of course some philosophers who maintain that animals have (at least partial) rights (Peter Singer, *PRACTICAL ETHICS* 48 (1979)), but none to my knowledge stretch this to flora.

<sup>9</sup> Thomson, *supra* note 2, at 48. "But I shall not discuss any of this. For it seems to me to be of great interest to ask what happens if, for the sake of argument, we allow the premise" that the fetus is a rights-bearing human being from the fertilized egg stage and onward.

<sup>10</sup> *Id.* at 66.

<sup>11</sup> *Id.* at 48. She also avers: "... we must certainly grant that innocent persons have a right to life." *Id.* at 51.

guilty of this heinous crime. This claim would of course be rejected by all libertarians. JTT, in taking on this position,<sup>12</sup> thus reveals herself as an opponent of this perspective.

She continues as follows:

So the fetus has a right to life. No doubt the mother has a right to decide what shall happen in and to her body; everyone would grant that. But surely a person's right to life is stronger and more stringent than the mother's right to decide what happens in and to her body, and so outweighs it. So the fetus may not be killed; an abortion may not be performed.<sup>13</sup>

Of course, JTT is speaking hypothetically; she, as it turns out, favors the right to abort. But even at this level of the debate, difficulties crop up. For a basic premise of libertarianism is that rights do not, cannot, clash. If there appears to be a conflict between two different “rights” it is because one or the other (or both) are improperly specified. For example, suppose there are two drowning swimmers and there is but room for one in the (small) lifeboat. Only one can live, the other must die. It cannot be denied that there is some sort of an incompatibility in this scenario. But there is no conflict in rights such that we must “weigh” each of them to see which one should prevail, perhaps to what degree for each. Rather, at least in libertarian theory, there is a clear resolution: whichever of the two of them *owns* the row boat gets to decide its use. Suppose it is the private property of neither of them. Then, the conveyance goes to the one who rented it. If this tie-breaker does not apply, and the property has been abandoned (or the owner cannot be found) then the new legitimate holder of the title to this boat is he who seizes it first, and thus is considered to be the homesteader.<sup>14</sup> But suppose there is a tie, an exact one: two

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<sup>12</sup> She does not clearly do so. In some passages this appears to be her position, but not in others, see below.

<sup>13</sup> *Id.* at 48.

<sup>14</sup> For the libertarian theory on this process see Walter E. Block, *Earning Happiness Through Homesteading Unowned Land: A Comment on 'Buying Misery with Federal Land' by Richard Stroup*, 15 J. SOC. POL. & ECON. STUD. 237 (1990); Walter E. Block, Michael R. Edelstein, *Popsicle sticks and homesteading land for nature preserves*, 7 ROMANIAN ECON. & BUS. REV. 7 (2012); Walter E. Block, Richard Epstein, *Debate on Eminent Domain*, 1 NYU J. L. & LIBERTY 1144 (2005); Walter E. Block, Guillermo Yeatts, *The Economics and Ethics of Land Reform: A Critique of the Pontifical Council for Justice and Peace's 'Toward a Better Distribution of Land: The Challenge of Agrarian Reform.'*, 15 J. NAT'L. RES. & ENVTL. L. 37 (1999-2000); Per Bylund, *Man and Matter: How the Former Gains Ownership of the Latter*, 4 LIBERTARIAN PAPERS (2012); Hugo Grotius, *The Law of War and Peace* (A. C. Campbell trans., B Boothroyd 1814) (1625); Hans-Hermann Hoppe, *The Economics and Ethics of Private Property: Studies in Political Economy and Philosophy*, Boston: Kluwer; 1993; Hans-Hermann Hoppe, *Of Private, Common, and Public Property and the Rationale for Total Privatization*, 3 LIBERTARIAN PAPERS 1 (2011); Stephan Kinsella, *A Libertarian Theory of Contract: Title Transfer, Binding Promises, and Inalienability*, 17 J. LIBERTARIAN STUD. 11 (2003); Stephan Kinsella, *How We Come to Own Ourselves*, MISES.ORG (Sept. 7, 2006), <http://www.mises.org/story/2291>; Stephan Kinsella, *What Libertarianism Is*, MISES.COM (Aug. 21, 2009), <https://mises.org/library/what-libertarianism>;

people lay hands on this property at precisely the same time. Then and only then must we impose arbitrary rule.<sup>15</sup> This occurs in baseball when the runner and the ball arrive at first base instantaneously. The rule there is, the tie goes to the batter. When two motorists arrive at a four way stop sign together, the right of way goes to he who is on the right. The only difficulty arises when four drivers do so. But, this, along with the ties mentioned in the text, must occur only on rare occasions, and the law does not take account of trifles, the doctrine of *de minimus*. It cannot be too often, either, that two swimmers, adrift in the ocean, arrive at a life-sustaining plank at the same time either. Why has the common law not made any analogous determination in the life boat case? This can only be a surmise, but one possibility is that this occurs too rarely for the law to take account of it. Perhaps if the law merchant did address this question, and/or private road owners<sup>16</sup> did so regarding the question of four motorists arriving at stop signs simultaneously, they might arrive at some arbitrary rule as whoever arrives from the north gets first priority, from the south second, from the west third and fourth for the east.<sup>17</sup> In any case, there need not be any clash of rights in any of the situations under discussion.

## VI. Thomson's Violinist

We now arrive at JTT's famous violinist case. This is brilliant and insightful on her part, but marred by the fact that she accepts the "balancing" of rights fallacy. From the perspective of libertarianism, which favors evictionism and denies that rights, properly construed, can ever clash, the analysis is simple. The bed partner of the violinist may cut the cord that connects them at *any* time she wants to do so, even if the violinist would perish as a result.<sup>18</sup>

Next, consider this statement of hers:

In this case, of course, you were kidnapped, you didn't volunteer for the operation that plugged the violinist into your kidneys. Can those who oppose abortion on the ground I mentioned make an exception for a pregnancy due

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Stephan Kinsella, *Homesteading, Abandonment, and Unowned Land in the Civil Law*, MISES.ORG (May 22, 2009), <http://blog.mises.org/10004/homesteading-abandonment-and-unowned-land-in-the-civil-law/>; John Locke, *An Essay Concerning the True Origin, Extent and End of Civil Government* (1948); Ellen Frankel Paul, *Property Rights and Eminent Domain* (1987); Samuel Von Pufendorf, *Natural Law and the Law of Nations (De Officio Hominis Et Civis Prout Ipsi Praescribuntur Lege Naturali)* (1673); Murray N. Rothbard, *For a New Liberty* (1973); Michael S. Rozeff, *Original Appropriation and It's Critics*, LEWROCKWELL.COM (Sept. 1, 2005), <http://www.lewrockwell.com/rozeff/rozeff18.html>; Carl Watner, *The Proprietary Theory of Justice in the Libertarian Tradition*, 6 J. LIBERTARIAN STUD. 289 (1982).

<sup>15</sup> But never, perish the thought, "weigh" up the two different rights and attempt to mediate between them.

<sup>16</sup> Walter E. Block, *The Privatization of Roads and Highways: Human and Economics Factors*, THE MISES INST. (2009).

<sup>17</sup> There is "biblical" precedence for this: the sign of the cross.

<sup>18</sup> Here we arrive at a sharp divergence between libertarianism and JTT, who appears to take the contrary point of view. *See* below.

to rape? Certainly. They can say that persons have a right to life only if they didn't come into existence because of rape; or they can say that all persons have a right to life, but that some have less of a right to life than others, in particular, that those who came into existence because of rape have less. But these statements have a rather unpleasant sound. Surely the question of whether you have a right to life at all, or how much of it you have, shouldn't turn on the question of whether or not you are a product of a rape.<sup>19</sup>

This is JTT's first attempt to wrestle with abortion in the case of rape. I find this to be highly problematic. Whether or not something has a "rather unpleasant sound" should not be determinative of any philosophical conclusion. And the "surely" sounds more like arm waving than a serious analysis of rights. We shall have to defer our exploration of where JTT and libertarianism diverge in the case of rape until she next considers it, below, since the present paper is an attempt to reply to every jot and tittle of her analysis, in the order in which she deals with these issues. And, she mentions rape and a few other controversies at several points.

Next, our authoress confronts the cases where "the mother has to spend the nine months of her pregnancy in bed," or, even, "a case in which, miraculously enough, the pregnancy went on for nine years, or even the rest of the mother's life."<sup>20</sup> Although JTT does not explicitly say this, reading in between the lines one can infer she would make exceptions in these cases. That is to say, this philosopher would then allow an abortion to occur. In sharp contrast, evictionism makes no such exception. In *all* of these instances, the mother may legally evict the fetus, but in none of them, whether her pregnancy takes "nine years, or even the rest of the mother's life" may she property abort; that is, both evict and also murder. Does this sound "rather unpleasant?" Not, at least, to (my) libertarian ears. After all, the woman is not at all condemned to almost a decade, or many decades, of pregnancy. She can end it at any time she desires. She is precluded, however, *only* from murdering her baby. What about when "continuation of the pregnancy is likely to shorten the mother's life,"<sup>21</sup> or even end it, forthwith? Here, JTT is explicit and adamant. These for her certainly constitute cases where abortion is entirely justified.<sup>22</sup> This is not so for the evictionist position, which remains steadfast (logically consistent?) throughout the analysis of all such examples: eviction is always justified no matter what are the specifics, whether it would kill the fetus or not, and murder never is defensible.

JTT calls "the view that abortion is impermissible even to save the mother's life 'the extreme view.'"<sup>23</sup> Her analysis of this case continues to be marred by her weighing of the importance or value of rights when they supposedly clash. This is exemplified by her following statement:

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<sup>19</sup> Thomson, *supra* note 2, at 49.

<sup>20</sup> *Id.* at 50.

<sup>21</sup> *Id.*

<sup>22</sup> Perhaps I should not say, here, "certainly," in view of the fact of the very last sentence of her essay, discussed above. But, at least at this point she seems pretty much of this view.

<sup>23</sup> *Id.*



If mother and child have an equal right to life, shouldn't we perhaps flip a coin? Or should we add to the mother's right to life her right to decide what happens in and to her body, which everybody seems to be ready to grant--the sum of her rights now outweighing the fetus's right to life?<sup>24</sup>

This remark “sounds” a big tongue in cheek, but it masks an important insight. There is no “weighing” to be done. The mother owns the womb. The unwanted fetus, no matter how it came to be there, is a trespasser. The pregnant women may properly expel this little innocent occupier of her private property who does so without her permission. She is only precluded from murdering it.

## VII. Killing Versus Letting Die

JJT takes a more serious stab at resolving the challenge of incompatible rights by examining the difference between killing and letting die. She avers, not unreasonably, that the former is worse than the latter. After all, right now, there are numerous people perishing in the poor nations of the world. These inhabitants of Africa and Asia and South America could be saved were we to bestir ourselves to do so. We are, then, “letting them die” as we go about our ordinary business, pretty much ignoring them for the most part. But are we murderers? Certainly not, at least this does not hold true for the libertarian, who disavows any positive rights, such as the “right” to life. For those, however, who do buy into this notion, all of us who allow the poverty-stricken of the world perish by not being Good Samaritans with regard to them are indeed guilty of murder. The libertarian finds this grotesque, and properly so, since we would *all* be guilty of this “crime,” even people who do their very best to address this horror.<sup>25</sup>

But JTT correctly rejects all this. She disagrees with this resolution of the (non-existent) conflict of rights challenge, writing: “If anything in the world is true, it is that you do not commit murder, you do not do what is impermissible, if you reach around to your back and unplug yourself from that violinist to save your life.”<sup>26</sup> But *why* not? Our author fails to answer this meta question. For the libertarian, the answer is simple. It is because we are all self-owners (slavery is an abominable violation of rights).<sup>27</sup> Thus, the violinist’s bed partner owns her own body, her

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<sup>24</sup> *Id.*

<sup>25</sup> For example, Mother Teresa. Even she would be guilty of murder for, despite her best efforts, many poor people still die before “their time.”

<sup>26</sup> *Id.* at 52.

<sup>27</sup> Unless of course it is voluntary. See Anna-Karin Andersson, *An alleged contradiction in Nozick’s entitlement theory*, 21 J. LIBERTARIAN STUD. 43 (2007); Walter E. Block, *Market Inalienability Once Again: Reply to Radin*, 22 THOMAS JEFFERSON L. J. 37 (1999); Danny Frederick, *Voluntary Slavery*, 4 LAS TORRES DE LUCCA 115 (2014); Stephen Kershnar, *A Liberal Argument for Slavery*, 34 J. SOC. PHILOSOPHY 510 (2003); J. C. Lester, *Escape from Leviathan* (2000); Bionic Mosquito, *The Sanctity of Contract*, BIONICMOSQUITO.BLOGSPOT.COM (Apr. 19, 2014 9:06 pm), <http://bionicosquito.blogspot.com/2014/04/the-sanctity-of-contract.html>; Robert Nozick, *Anarchy, State and Utopia* 58, 283, 331 (1974); Hillel Steiner, *An Essay on Rights* 232 (1994); Judith Jarvis Thomson, *The Realm of Rights* at 283 (1990).

own life. It is up to her, and her alone, to determine who may or may not plug into *her* kidney, a part of her body. For the evictionist position, the response is if anything even more clear-cut. When the victimized woman reaches around her back and unplugs her umbilical connection to the violinist, she is evicting him, not murdering him, even though he will necessarily die as a result of her properly legal action. The violinist, here, plays the role of the baby in the first two trimesters.

### VIII. Third Parties

In the next section of her paper, JTT analyzes the actions of third parties. She does so on the basis of yet another brilliant philosophical story: she imagines an infant growing so big in a female's little house (e.g., the pregnant woman's body) that it crushes her to death.<sup>28</sup> Now, for evictionism, the solution is straight-forward: evict this ballooning baby; it if can live outside of the "house," well and good. If not, too bad, private property rights must take precedence. But for JTT this conundrum evolves into the highly irrelevant discussion of whether the mother may do so, or may a third party act in this way in her behalf:

[W]e cannot simply read off what a person may do from what a third party may do. Suppose you find yourself trapped in a tiny house with a growing child. I mean a very tiny house, and a rapidly growing child--you are already up against the wall of the house and in a few minutes you'll be crushed to death. The child on the other hand won't be crushed to death; if nothing is done to stop him from growing he'll be hurt, but in the end he'll simply burst open the house and walk out a free man. Now I could well understand it if a bystander were to say. "There's nothing we can do for you. We cannot choose between your life and his, we cannot be the ones to decide who is to live, we cannot intervene." But it cannot be concluded that you too can do nothing, that you cannot attack it to save your life. However innocent the child may be, you do not have to wait passively while it crushes you to death.<sup>29</sup>

This immediately preceding claim of Thomson's is problematic since if an action is just, it does not matter who does it, the principal, or an agent she appoints, asks, to undertake it; the mother in this case or a bystander, or someone she hires, such as a doctor. However, the evictionist would insist in this case that since<sup>30</sup> the mother's life may be saved from the threat of the ever-expanding gigantic baby merely by expelling him from her body she may do just that, but, not, additionally, kill him. She may only evict him. Libertarian law confines her to this act and allows her to go only this far, no further. Here, the analogy between the gigantic space-occupying baby and the ordinary fetus breaks down. The pregnant woman whose life is in danger from her fetus need never kill it, e.g., abort it. Her goal of self-preservation, self-defense, can always be met by mere eviction. But suppose this not to be the case. Posit, then, that the only way she could save her life was by committing an abortion; kill first, evict later: in effect a

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<sup>28</sup> Thomson, *supra* note 2, at 52.

<sup>29</sup> *Id.*

<sup>30</sup> Note, I do not say "if."

partial birth abortion. Then, we are back at the case of two men struggling for a life boat that can support only one. The nod goes to the owner/renter/first homesteader of the boat, as we have seen. Here, it is clearly the woman, not the baby, who owns the “house.”<sup>31</sup> No truer libertarian words were ever said about this than JJT’s: “... what we have to keep in mind is that the mother and the unborn child are not like two tenants in a small house which has, by an unfortunate mistake, been rented to both: the mother *owns* the house.”<sup>32</sup> Why is this libertarian? This is due to its emphasis on private property rights and ownership, the bedrock of this philosophy.

In the view of JJT:

In our case there are only two people involved, one whose life is threatened, and one who threatens it. Both are innocent: the one who is threatened is not threatened because of any fault, the one who threatens does not threaten because of any fault. For this reason we may feel that we bystanders cannot interfere. But the person threatened can (sic).<sup>33</sup>

No. The third party may also act. A is killing B. Both are innocent. But A is the initiator. Say, he is cleaning his gun and accidentally shoots B. Assume, even, that A is a young child. I am an outsider. I can only save B by killing A.<sup>34</sup> May I do so? B is entirely innocent; A, less so.<sup>35</sup>

The bystander has no more right to act than the mother (owner of the small house). She may delegate to him any right she holds herself.<sup>36</sup> But whoever acts in this scenario may not do any more than evict, not kill, assuming the former is sufficient for self or other defense.

## IX. Thomson as Libertarian

According to JJT: “My own view is that if a human being has any just, prior claim to anything at all, he has a just, prior claim to his own body.”<sup>37</sup> This places her in the highest reaches of libertarian theory. If she takes this to its ultimate logical conclusion, then, she

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<sup>31</sup> *Id.* at 53. (“stop(s) to say explicitly that I am not claiming that people have a right to do anything whatever to save their lives. I think, rather, that there are drastic limits to the right of self-defense. If someone threatens you with death unless you torture someone else to death, I think you have not the right, even to save your life, to do so.”). I heartily concur with her on this point. See Walter E. Block, *The Human Body Shield*, 22 J. OF LIBERTARIAN STUD. 625 (2011).

<sup>32</sup> Thomson, *supra* note 2, at 53.

<sup>33</sup> *Id.* Surely, the preceding word should be “may” not “can.” I regard this as a sort of typographical error on her part.

<sup>34</sup> Am I a police officer? I claim this does not matter. Cops have no more rights than anyone else, in libertarian theory.

<sup>35</sup> Better I should shoot A’s guardian if in this way I could save B. He is guiltier than either of the others, for letting this child anywhere near a loaded gun.

<sup>36</sup> A complication arises as to whether this delegation must be explicit or may be implicit. For a discussion of this concept, see below.

<sup>37</sup> *Id.*

embraces the purest form of that philosophy, anarcho-capitalism. That is, if she would allow not only that people own themselves, their own bodies, but also the products of them, their labor, and, in turn, what their work produces. This would suggest she opposes taxes not only on work, but on anything and everything, since we have not agreed to be so treated.<sup>38</sup> JJT even goes so far

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<sup>38</sup> See Terry Anderson, P.J. Hill, *An American Experiment in Anarcho-Capitalism: The Not So Wild, Wild West*, 3 J. LIBERTARIAN STUD. 9 (1979); Bruce L. Benson, *Enforcement of Private Property Rights in Primitive Societies: Law Without Government*, 9 J. LIBERTARIAN STUD. 1 (1989); Bruce L. Benson, *Customary Law with Private Means of Resolving Disputes and Dispensing Justice: A Description of a Modern System of Law and Order without State Coercion*, 9 J. LIBERTARIAN STUD. 25 (1990); Walter E. Block, *Anarchism and Minarchism; No Rapprochement Possible: Reply to Tibor Machan*, 21 J. LIBERTARIAN STUD. 91 (2007); Walter E. Block, Michael Fleischer, *How Would An Anarchist Society Handle Child Abuse*, LEWROCKWELL.COM (Oct. 13, 2010) 1; Doug Casey, *On Anarchy*, CASEYRESEARCH.COM (Mar. 31, 2010), <http://www.lewrockwell.com/blog/lewrw/archives/134782.html>; Gerard Casey, LIBERTARIAN ANARCHY: AGAINST THE STATE (2012); Thomas J. DiLorenzo, *The Culture of Violence in the American West: Myth versus Reality*, 15 THE INDEPENDENT REV. 227 (2010); R. England, *The state: what can we replace it with?*, LEWROCKWELL.COM (Mar. 31, 2013), <http://www.lewrockwell.com/blog/lewrw/archives/134782.html>; Anthony Gregory, *Abolish the Police*, LEWROCKWELL.COM (May 26, 2011), <http://www.lewrockwell.com/gregory/gregory213.html>; Gil Guillory, Patrick Tinsley, *The Role of Subscription-Based Patrol and Restitution in the Future of Liberty*, 1 LIBERTARIAN PAPERS 1 (2009); John Hasnas, *The Myth of the Rule of Law*, WIS. L. REV. (1995); David J. Heinrich, *Justice for All Without the State*, THE LIBERTARIAN STANDARD (MAY 6, 2010), <http://www.libertarianstandard.com/articles/david-j-heinrich/justice-for-all-without-the-state/>; Robert Higgs, *Why We Couldn't Abolish Slavery Then and Can't Abolish Government Now*, LEWROCKWELL.COM (Aug. 20, 2009), <http://www.lewrockwell.com/higgs/higgs128.html>; Robert Higgs, *What is the point of my libertarian anarchism?* LEWROCKWELL.COM (Jan. 16, 2012), <http://lewrockwell.com/higgs/higgs180.html>; Robert Higgs, *The State—Crown Jewel of Human Social Organization* LEWROCKWELL.COM (Apr. 3, 2013), <http://blog.independent.org/2013/04/03/the-state-crown-jewel-of-human-social-organization/>; Hans-Hermann Hoppe, *Reflections on the Origin and the Stability of the State*, LEWROCKWELL.COM (June 23, 2008), <http://www.lewrockwell.com/hoppe/hoppe18.html>; Hans-Hermann Hoppe, *State or Private Law Society*, LEWROCKWELL.COM (Apr. 10, 2011), <http://www.lewrockwell.com/hoppe/hoppe26.1.html>; Jacob H. Huebert, LIBERTARIANISM TODAY (2010); Seth King, *Daily Anarchist Interviews Walter E. Block*, LEWROCKWELL.COM (Sept. 9, 2010), <http://www.lewrockwell.com/block/block165.html>; Stephan Kinsella, *The Irrelevance of the Impossibility of Anarcho-Libertarianism*, STEPHANKINSELLA.COM (Aug. 20, 2009), <http://www.stephankinsella.com/2009/08/20/the-irrelevance-of-the-impossibility-of-anarcho-libertarianism/>; Roderick T. Long, *Libertarian Anarchism: Responses to Ten Objections*, LEWROCKWELL.COM (2004), <http://www.lewrockwell.com/long/long11.html>; Michael McConkey, *Anarchy, Sovereignty, and the State of Exception: Schmitt's Challenge*, 17 THE INDEPENDENT REV. 415 (2013); Stefan Molyneux, *The Stateless Society: An Examination of Alternatives*, LEWROCKWELL.COM (Oct. 24, 2005) <https://www.lewrockwell.com/2005/10/stefan-molyneux/the-stateless-society-an-examination->

as to apply this brilliant insight of hers to “coats”<sup>39</sup> of all things: “... at long last”<sup>40</sup> this author questions the right to life, a philosophical howler if ever there was one. She does so with yet another stupendous example. Does she have the right to the cool hand of Henry Fonda on her forehead if she needs it to sustain her own life? Quite properly JJT maintains it would be very, very nice if the movie actor complied in this manner, but that it would be supererogatory, over and above the call of duty.<sup>41</sup>

At this point, JJT returns to her misbegotten attempt to distinguish second and third party rights. She maintains properly that the bedmate has the right to pull the plug on the violinist; but she then ruins the analysis by expressing the opinion that no one else does. This author forgets that not only is self-defense justified, so is defense of others. Certainly, if the bed-mate asks some third party to act as her agent and pull the plug for her,<sup>42</sup> that would be entirely legitimate. She cannot for some reason reach all the way around her back to unplug herself from the

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of-alternatives/; Stefan Molyneux, Michael Badnarik, *How much government is necessary*, FREEDOMAINRADIO.COM (July 5, 2009), <http://www.freedomainradio.com/Videos.aspx>; Robert P. Murphy, *But Wouldn't Warlords Take Over?* MISES.ORG (July 7, 2005), <http://mises.org/library/wouldnt-warlords-take-over>. Robert P. Murphy, *Overrating Government Service*, MISES.ORG (Mar. 15, 2010), <https://mises.org/library/overrating-government-service>; Robert P. Murphy, *Where Are the Rothbardian Defense Agencies?*, MISES.CA (Dec. 14, 2013), <https://www.mises.ca/where-are-the-rothbardian-defense-agencies/>; Robert P. Murphy, *Drug Gangs and Private Law*, MISES.CA (Dec. 7, 2013), <http://mises.ca/posts/blog/drug-gangs-and-private-law/>; Robert P. Murphy, *Randians versus Rothbardians*, MISES.CA (Dec. 22, 2014), <http://mises.ca/posts/blog/randians-versus-rothbardians/>; Rockwell Jr., Llewellyn H., *Against the State: An Anarcho-Capitalist Manifesto* (2014); Rockwell Jr., Llewellyn H., *What Libertarianism Is, and Isn't*, LEWROCKWELL.COM (Mar. 31, 2014), <http://www.lewrockwell.com/2014/03/lew-rockwell/what-libertarianism-is-and-isnt/>; Murray N. Rothbard, *FOR A NEW LIBERTY* (1973); Murray N. Rothbard, *Society Without a State*, 7 THE LIBERTARIAN FORUM (1975); Murray N. Rothbard, *Do you hate the state?*, 10 THE LIBERTARIAN FORUM (1977); Murray N. Rothbard, *The Ethics of Liberty* (1982); Butler Shaffer, *The Wizards of Ozymandias: Reflections on the Decline and Fall* (2012); Peter Sloterdijk, *The Grasping Hand: The modern democratic state pillages its productive citizens*, THE CITY JOURNAL (2010); Lysander Spooner, *No Treason: The Constitution of No Authority and A Letter to Thomas F. Bayard* (1870); Edward P. Stringham, *Anarchy and the Law: The Political Economy of Choice* (2007); Morris And Linda Tannehill, THE MARKET FOR LIBERTY (1984); Patrick Tinsley, *With Liberty and Justice for All: A Case for Private Police*, 14 J. LIBERTARIAN STUD. 95 (1998-1999); Robert Wenzel, *Robert Ringer's Strawman Anarchist*, LEWROCKWELL.COM (February 2, 2013), <http://lewrockwell.com/wenzel/wenzel211.html>;

<sup>39</sup> Thomson, *supra* note 2, at 53.

<sup>40</sup> *Id.* at 55.

<sup>41</sup> Query for JJT: Suppose that all that were needed to save someone's life was not that he “fly in from the West Coast” (*Id.* at 55), to provide it, but merely pay some taxes to support a hospital or socialized medicine. This would be a litmus test to determine whether she embraces libertarianism to the extent maintained in the text above.

<sup>42</sup> Posit she is too weak to do so for having been forced to share her kidney with the violinist

musician. May she hire someone else to do so for her? Of course she may, at least if the criterion for righteous behavior is adherence to the libertarian non-aggression principle (NAP). Later in her essay, JTT avails herself of the Kitty Genovese example, a woman who was murdered in the face of dozens of onlookers who did not even bestir themselves to call the police to aid her, much less do so themselves at some risk. But if we take seriously this view of our author, and how else should we consider her prose, then it would be impermissible for any third party to protect Kitty from her assailant, something repulsive to all men of good will, certainly including JTT who opines:

But does he have a right against everybody that they shall refrain from unplugging you from him? To refrain from doing this is to allow him to continue to use your kidneys. It could be argued that he has a right against us that we should allow him to continue to use your kidneys. That is, while he had no right against us that we should give him the use of your kidneys, it might be argued that he anyway has a right against us that we shall not now intervene and deprive him of the use of your kidneys.<sup>43</sup>

Our author is caught in a bit of a logical contradiction here. Yes, the violinist is an innocent passerby; he lacks mens rea. But he is still a trespasser, albeit unintentionally. Thus, the bed-mate has a right to disconnect, as do all third parties such as all those now reading this article. If the violinist is in the wrong, and he is, he is, then *anyone* may put things right by unhooking him.<sup>44</sup>

#### X. Using Another Person's Body

Next, consider this contribution of hers:

I would stress that I am not arguing that people do not have a right to life--quite to the contrary, it seems to me that the primary control we must place on the acceptability of an account of rights is that it should turn out in that account to be a truth that all persons have a right to life. I am arguing only 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>45</sup>

It seems that JTT is here treading very close to committing a logical contradiction and is only barely saved from completely going over this precipice by unusual cases. As we have seen

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<sup>43</sup> *Id.* at 56.

<sup>44</sup> This holds true except of course if the kidney-source woman now allows the musician to stay connected to her. Then trespass is converted to the placing out of the welcome mat. But the same thing can apply to Kitty Genovese. If she changes her mind and now regards her (previous) murderer positively, he is changed from a murderer into a person who is helping her commit suicide.

<sup>45</sup> *Id.*

above, all rights imply obligations incumbent upon other people. If I have a right not to be murdered, raped, enslaved, then the entire rest of humanity have a duty not to perpetuate these unwarranted acts upon me. So far, there is no problem. But, if I have a right to life, and need for that purpose food, clothing, shelter, etc., then everyone else is thereby obliged to provide these things for me. The only exception<sup>46</sup> would be if other people also need precisely these things to stay alive, surely a rare case in a modern western economy. Then we arrive at the case of two drowning people, each with a right to life, and a row boat which can accommodate only one of them.

## XI. Abortion in the Case of Rape

Next, we consider the case of the child who is the product of rape; this gives rise to the widest divergence between evictionism and the views of JJT. In the former perspective, all babies have equal rights not to be unjustifiably killed, that is, murdered. They are all innocent, and precisely to the same degree. In the latter, this is not so. But is there not a relevant difference, in that in the ordinary pregnancy, the woman has in effect “invited” her baby into her small “house” or womb, while this does not at all apply to the infant who results from rape? Not a bit of it. JJT slams the door shut to this possible interpretation with yet another brilliant insight of hers, which is worth quoting extensively:

If the room is stuffy, and I therefore open a window to air it, and a burglar climbs in, it would be absurd to say, “Ah, now he can stay, she's given him a right to the use of her house--for she is partially responsible for his presence there, having voluntarily done what enabled him to get in, in full knowledge that there are such things as burglars, and that burglars burgle.” It would be still more absurd to say this if I had had bars installed outside my windows, precisely to prevent burglars from getting in, and a burglar got in only because of a defect in the bars. It remains equally absurd if we imagine it is not a burglar who climbs in, but an innocent person who blunders or falls in. Again, suppose it were like this: people-seeds drift about in the air like pollen, and if you open your windows, one may drift in and take root in your carpets or upholstery. You don't want children, so you fix up your windows with fine mesh screens, the very best you can buy. As can happen, however, and on very, very rare occasions does happen, one of the screens is defective, and a seed drifts in and takes root. Does the person-plant who now develops have a right to the use of your house? Surely not--despite the fact that you voluntarily opened your windows, you knowingly kept carpets and upholstered furniture, and you knew that screens were sometimes defective. Someone may argue that you are responsible for its rooting, that it does have a right to your house, because after all you could have lived out your life with bare floors and furniture, or with sealed windows and doors. But this won't do--for by the same token anyone can avoid a pregnancy due to rape by

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<sup>46</sup> And this provides JJT an out from the charge of logical contradiction.

having a hysterectomy, or anyway by never leaving home without a (reliable!) army.<sup>47</sup>

So, no, even a woman who engages in voluntary sexual intercourse can in no way be interpreted as “inviting” anyone anywhere. Further, an “invitation” logically involves two persons: an inviter<sup>48</sup> and an invitee. Yet, at the time of intercourse, forgetting about the father, there is only *one* person in existence, the soon-to-be mother. There is not yet any invitee; he has not yet come into existence. It takes *time* for the sperm to reach the egg and enter it. No one, no one at all, maintains that the human being can be said to exist *before* the advent of the fertilized egg. The debate is concerned, solely, with when the human “acorn” can become an oak; then, or some time afterwards.

But let us, arguendo, ignore these considerations which put paid to the notion that the mother owes some special consideration to her child due to any “invitation.” Let us now assume that all pregnant women<sup>49</sup> did indeed “invite” their babies into their bodies. It still by no means logically follows that the duration of the visit should be nine months. Why not nine or ninety years, if gestation took that long? Or, how can we possibly rule out “invitations” of nine weeks, days, hours, minutes or seconds? If the “invitation” is for anything (significantly) less than nine months, evictionism once again cannot be ruled out of court.

## XII. Implicit Contracts

Next ponder JJT’s view on a somewhat peripheral (but fascinating) issue. She writes:

If a set of parents do not try to prevent pregnancy, do not obtain an abortion, but rather take it home with them, then they have assumed responsibility for it, they have given it rights, and they cannot now withdraw support from it at the cost of its life because they now find it difficult to go on providing for it.<sup>50</sup>

There is some truth to this, but not the whole truth and nothing but the truth. In order to defend this criticism, we must take a slight detour.

We must all of us be cautious regarding implicit contracts and responsibilities.<sup>51</sup> Nevertheless, the libertarian may not reject implicit contracts in their entirety. You order a cup of

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<sup>47</sup> *Id.* at 58-59.

<sup>48</sup> Sort of like George Bush’s “decider.”

<sup>49</sup> Of course apart from rape victims. We must maintain at least some semblance of rationality even in hypothetical situations.

<sup>50</sup> Thomson, *supra* note 2, at 65.

<sup>51</sup> This goes in spades for those who wish to defend the anarcho-capitalist position, for our intellectual enemies are forever trying to shoe-horn us into acquiescing in the notion that we have all of us implicitly agreed to be subject to governmental authority. They do so on the ground that we all pay taxes, live in territory it claims, vote in its democratic elections, use its roads and highways, etc. For a refutation of this notion *see supra* note 23.



coffee and quickly drink it down. Where-upon you are presented with a bill for \$1 million. Must you pay? No. There is an implicit contract that if there is anything unusual about a commercial interaction, the person imposing it<sup>52</sup> must make it crystal clear that something out of the ordinary is taking place. Why? This is because a valid contract must contain a meeting of the minds of the two parties. Otherwise, there is no real voluntary interaction, the essence of laissez faire capitalist trade, a bed-rock of libertarianism. Take another case. You sign a check and hand it over to me. You may not later cancel it on the ground that you were only practicing your penmanship. One more. There is a drowning person in the lake. There are a bunch of us on the shore, ready to jump in and save him. You dive in first, and strongly swim in his direction. Others were ready to do so, but deferred to you, since you took the initiative in this regard. You may not now swim to within a few feet of the drowning person otherwise ignoring him, and later explain that you had no intention of saving him, but merely enjoy watching people drown from up close.<sup>53</sup> In striking out toward the drowning person, you in effect implicitly announced you were going to (at least make a good faith attempt) save him.

In like manner, JJT is correct in thinking that when parents take their baby home from the hospital, they have implicitly assumed at least some sort of responsibility toward him. But it by no means follows that they “cannot (sic)<sup>54</sup> now withdraw support from it at the cost of its life.”<sup>55</sup> They may, indeed, do precisely that. However, they are required, at least by libertarian law, to notify a relevant authority (orphanage, hospital, church, etc.) of their intention. Nor is this mandate demanded of them due to any implicit contract. Rather, it stems from the fact that if they refuse to do so, they would be guilty of forestalling or precluding.<sup>56</sup> They would be in effect *preventing someone else* from rescuing the drowning swimmer.<sup>57</sup> However, suppose there are no orphanages, hospitals, etc., willing to care for the now unwanted baby. Stipulate that there is not a single solitary soul on the entire planet willing to do so (analogously, no one wants to rescue the drowning swimmer, or come to the aid of Kitty Genovese). Then and only then may this infant be allowed to die<sup>58</sup> with no crime being committed. Unwanted babies and drowning swimmers and Kitty Genovese have no (positive) rights to be kept alive any more than does JJT have a right to the cool hand on her brow of movie actors, even though her death will ensue from its lack. In similar manner, suppose the lifeguard succeeds in rescuing the drowning person, and

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<sup>52</sup> In this case, of course, the coffee shop owner

<sup>53</sup> Assume only one rescuer can save the drowning man; too many cooks spoil the broth and would get in each other’s way.

<sup>54</sup> Should this for all love be, instead, “may” not?

<sup>55</sup> Thomson, *supra* note 2, at 65.

<sup>56</sup> Walter E. Block, *Homesteading, Ad Coelum, Owning Views and Forestalling*, 3 THE SOC. SCI. 96-103 (2008), [http://papers.ssrn.com/sol3/papers.cfm?abstract\\_id=1890872](http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1890872); Walter E. Block & Joseph A. Butt, Block, *Forestalling, Positive Obligations and the Lockean and Blockian Provisos: Rejoinder to Stephan Kinsella*, 22 EKONOMIA WROCLAW ECON. REV. 27-41 (2016), <http://ekon.sjol.eu/category/22-3-2016-529>.

<sup>57</sup> In libertarian theory, no one may prevent anyone else from homesteading unowned land (*supra* note 10), nor from taking over the guardianship rights of unwanted children. This is precisely the act of which this couple is guilty.

<sup>58</sup> And even mercy killed if the only alternative is a long painful death due to starvation

brings him back to shore. But this rescued individual is in dire straits, and no one wants to nurse him back to health, without which he will die. Any implicit contract between the two, to the extent that there is any at all, surely does stretch so far as for legally require that the former is still responsible for the health and well-being of the latter after rescuing him from drowning.

### XIII. Conclusion

Let us conclude by considering the case in which JJT most radically and explicitly deviates from libertarian theory. She states: "...a sick and desperately frightened fourteen-year-old schoolgirl, pregnant due to rape, may of course choose abortion, and that any law which rules this out is an insane law."<sup>59</sup> But why is this author not content with a "mere" eviction? It, too, would relieve this unfortunate teenager of her unwanted burden that has been forced upon her. Moreover, given that abortion equals eviction plus killing, and that this baby, however conceived, is as innocent as any other, JJT blatantly contradicts herself when she writes "...I agree that the desire for the child's death is not one which anybody may gratify, should it turn out to be possible to detach the child alive."<sup>60</sup> The author of this otherwise magnificent essay cannot be allowed to have it both ways. It is illogical for her to support that an abortion may properly take place under these circumstances, and, also, that this may occur even "...should it turn out to be possible to detach the child alive."<sup>61</sup> Which is it, JJT? Why not embrace evictionism, the only way to reconcile your two contradictory statements?<sup>62</sup>

My summary of the present essay is that JJT (1971) is akin to moving the football to the one-yard line. Unhappily, she does not score a libertarian touchdown. But, for a scholar who is not herself a libertarian, she comes mighty close.

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<sup>59</sup> Thomson, *supra* note 2, at 65.

<sup>60</sup> *Id.* at 66.

<sup>61</sup> *Id.*

<sup>62</sup> Here is yet another difference between Thomson and libertarianism. The latter does not concern itself with morality, decency, ethics, etc., a main focus of JJT. Rather, only, with just law, a subset of the former. JJT ranges over both, while libertarians, perforce, must necessarily confine themselves to the latter, a proper legal system.