

subscriptions the British Medical Association (BMA) brushed aside any suggestion of such a scheme. This revelation undoubtedly uncovers the BMA's true reason for supporting a 'no-fault' scheme – more money for its members. The simple answer to the current debate seems to have escaped everyone. Those doctors operating in the market place should pass on the cost of malpractice insurance to their customers, but for those employed in the NHS, the employer should accept the tort as his own just as he does for nurses, physiotherapists and laboratory workers.

Lord Scarman has reviewed the impact on medical ethics of two separate court cases.

The Sidaway case demonstrated that the patient, save in exceptional circumstances, has a right in English law to know the material risks as well as the anticipated benefits of the treatment proposed. The Gillick case established the right of a minor, if of sufficient understanding, to give valid consent to treatment without the need to consult the parent.

And so to sex. Wendy Savage thinks that women are undervalued, under-represented, under-employed and under-promoted in medicine. Well, she would, wouldn't she? What I found surprising was the awe and reverence in which she holds the medical establishment – the teaching hospitals and Royal Colleges. Granted, they are the bastions of the pompous old buffers, but who wants to join them? Everyone knows that real medicine is practised at the periphery, and women are welcome there.

Robert Winston gives a clear account of *in vitro* fertilisation which helps to explain why there was so much opposition to Enoch Powell's Bill: the argument here all depends on the view one takes on the status of the newly fertilised ovum. As Mr Winston says, 'Either an embryo is an unborn child and therefore sacrosanct in all situations, or it isn't'. If you take the former view the chapter is superfluous. If you take the latter, there is no argument and the Warnock Committee's embryo of 14 days with a primitive streak is as arbitrary as the medieval 'quickening'.

Anthony Kenny tries to support the Warnock position by arguing that the pre-14 day embryo is not an actual identifiable human individual because part of its substance will form the (disposable) placenta and it might yet divide to form monozygotic twins. This argument seems to me as specious as to

argue that I am not an individual human being because part of my substance will become my (disposable) nails and hair. Perhaps I misrepresent him, he was difficult to follow in places. . . .

Finally, Ian Kennedy on confidentiality, competence and malpractice covers the Gillick, Savage and medical defence issues all over again. He stresses that not all teenage girls are competent to decide to have under-age sex, that formal inquiries are no way to settle personality difficulties, and that doctors are crying wolf over the high cost of malpractice insurance – after all, practising lawyers and perhaps even academic lawyers like Professor Kennedy have to pay far more.

PROFESSOR T J HAMBLIN  
*Department of Haematology  
Royal Victoria Hospital,  
Shelley Road, Bournemouth*

## **Rights, Restitution and Risk: Essays in Moral Theory**

Judith Jarvis Thomson, 269 pages, Cambridge, Massachusetts and London, £8.50, pbk, Harvard University Press, 1986.

This is an extremely rewarding collection of articles on moral philosophy. Only the first two articles, on abortion, the first of which is already widely known, are directly concerned with medical ethics, most of the others being in the field of philosophy of law; but there is much to be learned from the author's general approach, in particular her approach to the analysis of rights. Accordingly, rather than even pretending to try to summarise thirteen complex articles that range through abortion, self-defence, killing and letting die, privacy, preferential hiring, liability, and rights in general, among other topics, I will concentrate on what her account of rights has to offer medical ethics.

Ms Thomson's work does not so far deal with the justification of talking about moral rights, which in these articles she assumes, nor does she deal with the analysis of the concept of a right. Rather, she is concerned with the analysis of such notions as the 'right to life', and to argue that these are really 'bundles' or 'clusters' of more precisely defined rights, so that our entitlements from and duties to each other are more specific, and above all more complex, than the use of terms such as 'the right to life' or 'the right to freedom' would

suggest. Moreover, the way to discover the exact nature of these rights and duties is to consider a large number of situations, including ones which cannot in fact arise in practice, and ask what the rights of the parties involved would be.

For example, in *A defence of abortion*, she considers the question whether there is an absolute right to life held by all persons under all circumstances (for the purposes of argument, she grants that a fetus is a person). To test this, she considers the (impossible) case of a famous violinist with a kidney disease, whose friends kidnap a healthy person, into whom they plug the violinist's circulatory system, in order that for the nine months while the illness lasts the kidneys of the healthy person will do duty for both and thereby keep the violinist alive. She argues that in such a case the violinist's right to life, and by extension to what is necessary to sustain life, does not extend to a right to use another person's body for this purpose, and therefore, although it would be generous to remain plugged into the violinist, it would not be unjust, or a violation of his rights, to refuse to do so – still less would it be murder.

Much has been written about whether this would or would not be a violation of rights, and also about whether the analogy holds at all – suppose, one writer suggests, that the person in question is the violinist's mother! There is no question that here and elsewhere Ms Thomson's work has proved extremely thought-provoking both for those who agree and for those who disagree. But perhaps more important is that it marks a very significant advance in the development of moral theory. This is the recognition of the complexity of questions about moral rights, so that, even if we agree that there is a right to life of some kind, we have to go on to ask what precisely are the claims that we may legitimately make on each other's resources, time, expertise or even actual bodies in order to remain alive, and in what ways these claims differ in different situations. We have a long way to go before we have more than provisional answers to these questions, and indeed before we have found a method for fully adequately tackling them; but a collection such as this one takes the vital step of opening up this area of moral theory to investigation and the further step of demonstrating one way in which the investigation can be launched.

HARRY LESSER  
*Department of Philosophy  
University of Manchester*

# Rights Restitution And Risk Essays In Moral Theory

**Jonathan H. Adler**



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## **Table of Contents Rights Restitution And Risk Essays In Moral Theory**

1. Understanding the eBook Rights Restitution And Risk Essays In Moral Theory
  - The Rise of Digital Reading Rights Restitution And Risk Essays In Moral Theory
  - Advantages of eBooks Over Traditional Books
2. Identifying Rights Restitution And Risk Essays In Moral Theory
  - Exploring Different Genres
  - Considering Fiction vs. Non-Fiction
  - Determining Your Reading Goals
3. Choosing the Right eBook Platform
  - Popular eBook Platforms
  - Features to Look for in a Rights Restitution And Risk Essays In Moral Theory
  - User-Friendly Interface
4. Exploring eBook Recommendations from Rights Restitution And Risk Essays In Moral Theory
  - Personalized Recommendations
  - Rights Restitution And Risk Essays In Moral Theory User Reviews and Ratings

- Rights Restitution And Risk Essays In Moral Theory and Bestseller Lists
- 5. Accessing Rights Restitution And Risk Essays In Moral Theory Free and Paid eBooks
  - Rights Restitution And Risk Essays In Moral Theory Public Domain eBooks
  - Rights Restitution And Risk Essays In Moral Theory eBook Subscription Services
  - Rights Restitution And Risk Essays In Moral Theory Budget-Friendly Options
- 6. Navigating Rights Restitution And Risk Essays In Moral Theory eBook Formats
  - ePub, PDF, MOBI, and More
  - Rights Restitution And Risk Essays In Moral Theory Compatibility with Devices
  - Rights Restitution And Risk Essays In Moral Theory Enhanced eBook Features
- 7. Enhancing Your Reading Experience
  - Adjustable Fonts and Text Sizes of Rights Restitution And Risk Essays In Moral Theory
  - Highlighting and Note-Taking Rights Restitution And Risk Essays In Moral Theory
  - Interactive Elements Rights Restitution And Risk Essays In Moral Theory
- 8. Staying Engaged with Rights Restitution And Risk Essays In Moral Theory
  - Joining Online Reading Communities
  - Participating in Virtual Book Clubs
  - Following Authors and Publishers Rights Restitution And Risk Essays In Moral Theory
- 9. Balancing eBooks and Physical Books Rights Restitution And Risk Essays In Moral Theory
  - Benefits of a Digital Library
  - Creating a Diverse Reading Collection Rights Restitution And Risk Essays In Moral Theory
- 10. Overcoming Reading Challenges
  - Dealing with Digital Eye Strain
  - Minimizing Distractions
  - Managing Screen Time
- 11. Cultivating a Reading Routine Rights Restitution And Risk Essays In Moral Theory
  - Setting Reading Goals Rights Restitution And Risk Essays In Moral Theory
  - Carving Out Dedicated Reading Time
- 12. Sourcing Reliable Information of Rights Restitution And Risk Essays In Moral Theory
  - Fact-Checking eBook Content of Rights Restitution And Risk Essays In Moral Theory
  - Distinguishing Credible Sources

13. Promoting Lifelong Learning
  - Utilizing eBooks for Skill Development
  - Exploring Educational eBooks
14. Embracing eBook Trends
  - Integration of Multimedia Elements
  - Interactive and Gamified eBooks

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