LIFE'S DOMINION

AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM

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nary, including us, and we protect examples of that production—mountains or rivers or forests or animals—in a special and more intense way because they are natural. The reciprocity between our admiration for processes and our admiration for product is complex, and its result, for most people, is not a single overarching principle from which all their convictions about the inviolable flow, but a complex network of feelings and intuitions.

It is not my present purpose to recommend or defend any of these widespread convictions about art and nature, in either their religious or secular form. Perhaps they are all, as some skeptics insist, inconsistent superstitions. I want only to call attention to their complexity and characteristic structure, because I hope to show that most people's convictions about abortion and euthanasia can be understood as resting on very similar, though in some important ways different, beliefs about how and why *individual* human life, in any form, is also inviolable.

THE SANCTITY OF EACH HUMAN LIFE

An obscure nineteenth-century Austrian philosopher, Joseph Popper-Lynkeus, said that the death of any human being, except of a murderer or a suicide, was "a far more important happening than any political or religious or national occurrence, or the sum total of the scientific and artistic and technological advances made throughout the ages by all the peoples of the world."[6] He added that anyone tempted to regard this extraordinary claim as an exaggeration should "imagine the individual concerned to be himself or his best beloved." His addition confuses the intrinsic value of human life with what I called its personal value. My life may be personally more important to me than anything else, but it does not follow that it is intrinsically more important, and once that distinction is made, it is ludicrous to suppose that even a premature and tragic death, let alone a natural death after a long life, is intrinsically a worse event than the destruction of all human art and knowledge would be. But Popper-Lynkeus's claim does capture, in hyperbolic form, a conviction that must now be our main concern: that in some circumstances the deliberate ending of a single human life is intrinsically bad—objectively a shame—in the same way as the destruction of great art or the loss of important knowledge would be.

We are now in a better position to appreciate that conviction. I said that we treat the preservation and prosperity of our own species as of capital importance because we believe that we are the highest achievements of God's creation, if we are conventionally religious, or of evolution, if we are not, and also because we know that all knowledge and art and culture would disappear if humanity did. That combination of nature and art—two traditions of the sacred—supports the further and more dramatic claim that each individual human life, on its own, is also inviolable, because each individual life, on its own, can be understood as the product of both creative traditions. The first of these traditions—the idea that nature is creative—has had a prominent role as a basis for that claim. The dominant Western religious traditions insist that God made humankind "in His own image," that each individual human being is a representation and not merely a product of a divine creator, and people who accept that article of faith will understandably think that each human being, not just the species as a whole, is a creative masterpiece. A secular form of the same idea, which assigns the masterpiece to nature rather than God, is also a staple of our culture—the image of a human being as the highest product of natural creation is one of Shakespeare's most powerful, for example. "What a piece of work is a man!" says Hamlet, and James Tyrrel, who arranges the murder of the princes in the Tower for Richard III, quotes a killer as being appalled at realizing that he has "smothered the most replenished sweet work of Nature that from the prime creation e'er she framed." In these and other ways, the idea that human beings are special among natural creations is offered to explain why it is horrible that even a single human individual life should be extinguished.

The role of the other tradition of the sacred in supporting the sanctity of life is less evident but equally crucial: each developed human being is the product not just of natural creation, but also of the kind of deliberative human creative force that we honor in honoring art. A mature woman, for example, is in her personality, training, capacity, interests, ambitions, and emotions, something like a work of art because in those respects she is the product of human creative intelligence, partly that of her parents and other people, partly that of her culture, and also, through the choices she has made, her *own* creation. The Greeks used two words for life that bring out the distinction: *zoe,* by which they meant physical or biological life, and *bios,* by which they

meant a life as *lived,* as made up of the actions, decisions, motives, and events that compose what we now call a biography.[7]

The idea that each individual human life is inviolable is therefore rooted, like our concern for the survival of our species as a whole, in two combined and intersecting bases of the sacred: natural *and* human creation. Any human creature, including the most immature embryo, is a triumph of divine or evolutionary creation, which produces a complex, reasoning being from, as it were, nothing, and also of what we often call the "miracle" of human reproduction, which makes each new human being both different from and yet a continuation of the human beings who created it. Levin—Tolstoy's fictional self-projection in *Anna Karenina*—is struck by wonder, in spite of himself, at the birth of his son:

> Meanwhile, at the foot of the bed, in Lizaveta Petrovna's skillful hands flickered the life of a human being, like the small uncertain flame of a night-light—a human being who had not existed a moment ago but who, with the same rights and importance to itself as the rest of humanity, would live and create others in its own image. . . . Whence, wherefore had it come, and who was it? He could not understand at all, nor accustom himself to the idea. It seemed to him too much, a superabundance, to which he was unable to get used for a long time.[8]

The natural miracle that so moved Levin begins much earlier than birth: it begins in the genetic identity of an embryo. The second form of sacred creation, the human as distinct from the natural investment, is also immediate when pregnancy is planned, because a deliberate decision of parents to have and bear a child is of course a creative one. Any surviving child is shaped in character and capacity by the decisions of parents and by the cultural background of community. As that child matures, in all but pathological cases, his own creative choices progressively determine his thoughts, personality, ambitions, emotions, connections, and achievements. He creates his life just as much as an artist creates a painting or a poem. I am not suggesting, as some nineteenth-century Romantic writers did, that a human life is literally a work of art. That is a dangerous idea, because it suggests that we should value a person in the same way that we value a painting or a poem, valuing him for beauty or style or originality rather than personal or moral or

intellectual qualities. But we can—and do—treat leading a life as itself a kind of creative activity, which we have at least as much reason to honor as artistic creation.

The life of a single human organism commands respect and protection, then, no matter in what form or shape, because of the complex creative investment it represents and because of our wonder at the divine or evolutionary processes that produce new lives from old ones, at the processes of nation and community and language through which a human being will come to absorb and continue hundreds of generations of cultures and forms of life and value, and, finally, when mental life has begun and flourishes, at the process of internal personal creation and judgment by which a person will make and remake himself, a mysterious, inescapable process in which we each participate, and which is therefore the most powerful and inevitable source of empathy and communion we have with every other creature who faces the same frightening challenge. The horror we feel in the willful destruction of a human life reflects our shared inarticulate sense of the intrinsic importance of each of these dimensions of investment.

THE METRIC OF DISRESPECT

I must now try to show how this understanding of the sacredness of human life allows us better to explain the two opposing attitudes toward abortion than does the traditional account, which supposes that these attitudes are based on different views about whether and when a fetus is a person with a right to life. I shall assume that conservatives and liberals all accept that in principle human life is inviolable in the sense I have defined, that any abortion involves a waste of human life and is therefore, in itself, a bad thing to happen, a shame. And I shall try to show how that assumption explains why the two sides both agree and disagree in the ways that they do.

I begin with their agreement. Conservatives and liberals both suppose, as I said, that though abortion is always morally problematic and often morally wrong, it is worse on some occasions than on others. They suppose, in other words, that there are degrees of badness in the waste of human life. What measure are they assuming in those judgments? Let us put that question in a more general form. We all assume that some

cases of premature death are greater tragedies than others, not only when we are puzzling about abortion, but in the context of many other events as well. Most of us would think it worse when a young woman dies in a plane crash than when an elderly man does, for example, or a boy than a middle-aged man. What measure of tragedy are we assuming when we think this? What measure should we assume?

This is not the question moral philosophers and medical ethicists often write about—the question of what *rights* different sorts of people have to live, or of how relatively wicked it is to deny them lifesaving resources or to kill them. We might believe that it is worse—that there has been a greater waste of life—when a young person dies than when an old one does, or when an emotionally healthy person dies than a suicidal one, or when a man with young children dies than a bachelor, without suggesting that it would be any less wicked to kill an old than a young person, or a depressive than a happy one, or a bachelor than a father. Nor even—though this is obviously a different and harder question—that it would be any fairer to deny an old man scarce lifesaving resources, like kidney machines, when there is not enough for everyone who needs them, or to deny those resources to depressives and bachelors so that they could be used for spirited fathers of six.

These judgments about murder and fairness belong to the system of rights and interests, the system of ideas I said could not explain our most common convictions about abortion. Most people think (and our laws certainly insist) that people have an equal right to life, and that the murder of a depressive handicapped octogenarian misanthrope is as heinous, and must be punished as seriously, as the murder of anyone younger or healthier or more valuable to others. Any other view would strike us as monstrous. It is more complicated, as I just conceded, how these differences between people should affect the distribution of scarce medical resources. Doctors in most countries assume that such resources should be devoted to younger rather than older people, and for many doctors, quality of life and value to others come into the equation as well. But even these questions of fairness are different from the question of the intrinsic goodness or badness of events that we are considering. We might insist, for example, that the interests of a seriously depressed and gravely handicapped person should be respected just as much as those of an emotionally healthy person in allocating scarce medical resources, and yet think (as some people might, though many do not)

that it is a greater tragedy when the latter dies young than the former. I am now asking, then, not about justice or rights or fairness, but about tragedy and the waste of life. How should we measure and compare the waste of life, and therefore the insult to the sanctity of life, on different occasions?

We should consider, first, a simple and perhaps natural answer to that question. Life is wasted, on this simple view, when life is lost, so that the question of how much has been wasted by a premature death is answered by estimating how long the life cut short would probably otherwise have lasted. This simple answer seems to fit many of our intuitive convictions. It seems to explain the opinion I just mentioned, for example: that the death of a young woman in an airplane crash is worse than the death of an old man would be. The young woman would probably otherwise have had many more years left to live.

The simple answer is incomplete, because we can measure life—and therefore loss of life—in different ways. Should we take into account only the duration of life lost with no regard to its quality? Or should we take quality into account as well? Should we say that the loss of the young woman who died in the crash would be greater if she had been looking forward to a life full of promise and pleasure than if she was physically or psychologically handicapped in some permanent and grave way? Should we also take into account the loss her death would cause to the lives of others? Is the death of a parent of young children, or of a brilliant employer of large numbers of people, or of a musical genius, a worse waste of life than the death at the same age of someone whose life was equally satisfying to himself but less valuable to others?

We should not puzzle over these alternatives, however, because this simple answer, which measures waste of life only in terms of life lost, is unacceptable whether we define that loss only as duration of life or include quality of life or benefit to others. It is unacceptable, in any of these forms, for two compelling reasons.

First, though the simple answer seems to fit some of our convictions, it contradicts other important and deeply held ones. If the waste of life were to be measured only in chronological terms, for example, then an early-stage abortion would be a worse insult to the sanctity of life, a worse instance of life being wasted, than a late-stage abortion. But almost everyone holds the contrary assumption: that the later the abortion—the more like a child the aborted fetus has already become—the

worse it is. We take a similar view about the death of young children. It is terrible when an infant dies but worse, most people think, when a three-year-old child dies and worse still when an adolescent does. Almost no one thinks that the tragedy of premature death decreases in a linear way as age increases. Most people's sense of that tragedy, if it were rendered as a graph relating the degree of tragedy to the age at which death occurs, would slope upward from birth to some point in late childhood or early adolescence, then follow a flat line until at least very early middle age, and then slope down again toward extreme old age. Richard's murder of the princes in the Tower could have no parallel, for horror, in any act of infanticide.

Nor does the simple interpretation of how death wastes life fit our feelings better in the more elaborate forms I mentioned. Our common view that it is worse when a late-stage fetus is aborted or miscarries than an early-stage one, and worse when a ten-year-old child dies than an infant, makes no assumptions about the quality of the lives lost or their value for others.

The simple view of wasted life fails for a second, equally important reason. It wholly fails to explain the important truth I have several times emphasized: that though we treat human life as sacred, we do not treat it as incrementally good; we do not believe abstractly that the more human lives that are lived the better. The simple claim that a premature death is tragic only because life is lost—only because some period of life that might have been lived by someone will not be—gives us no more reason to grieve over an abortion or any premature death than we have to grieve over contraception or any other form of birth control. In both cases, less human life is lived than might otherwise be.

The "simple loss" view we have been considering is inadequate because it focuses only on future possibilities, on what will or will not happen in the future. It ignores the crucial truth that waste of life is often greater and more tragic because of what has already happened in the past. The death of an adolescent girl is worse than the death of an infant girl because the adolescent's death frustrates the investments she and others have already made in her life—the ambitions and expectations she constructed, the plans and projects she made, the love and interest and emotional involvement she formed for and with others, and they for and with her.

I shall use "frustration" (though the word has other associations) to

describe this more complex measure of the waste of life because I can think of no better word to suggest the combination of past and future considerations that figure in our assessment of a tragic death. Most of us hold to something like the following set of instinctive assumptions about death and tragedy. We believe, as I said, that a successful human life has a certain natural course. It starts in mere biological development—conception, fetal development, and infancy—but it then extends into childhood, adolescence, and adult life in ways that are determined not just by biological formation but by social and individual training and choice, and that culminate in satisfying relationships and achievements of different kinds. It ends, after a normal life span, in a natural death. It is a waste of the natural and human creative investments that make up the story of a normal life when this normal progression is frustrated by premature death or in other ways. But how bad this is—how great the frustration—depends on the stage of life in which it occurs, because the frustration is greater if it takes places after rather than before the person has made a significant personal investment in his own life, and less if it occurs after any investment has been substantially fulfilled, or as substantially fulfilled as is anyway likely.

This more complex structure fits our convictions about tragedy better than the simple loss-of-life measure does. It explains why the death of an adolescent seems to us worse in most circumstances than the death of an infant. It also explains how we can consistently maintain that it is sometimes undesirable to create new human lives while still insisting that it is bad when any human life, once begun, ends prematurely. No frustration of life is involved when fewer rather than more human beings are born, because there is no creative investment in lives that never exist. But once a human life starts, a process has begun, and interrupting that process frustrates an adventure already under way.

So the idea that we deplore the frustration of life, not its mere absence, seems adequately to fit our general convictions about life, death, and tragedy. It also explains much of what we think about the particular tragedy of abortion. Both conservatives and liberals assume that in some circumstances abortion is more serious and more likely to be unjustifiable than in others. Notably, both agree that a late-term abortion is graver than an early-term one. We cannot explain this shared conviction simply on the ground that fetuses more closely resemble

infants as pregnancy continues. People believe that abortion is not just emotionally more difficult but morally worse the later in pregnancy it occurs, and increasing resemblance alone has no moral significance. Nor can we explain the shared conviction by noticing that at some point in pregnancy a fetus becomes sentient. Most people think that abortion is morally worse early in the second trimester—well before sentience is possible—than early in the first one (several European nations, which permit abortion in the first but not the second trimester, have made that distinction part of their criminal law). And though that widely shared belief cannot be explained by the simple lost-life theory, the frustration thesis gives us a natural and compelling justification of it. Fetal development is a continuing creative process, a process that has barely begun at the instant of conception. Indeed, since genetic individuation is not yet complete at that point, we might say that the development of a unique human being has not started until approximately fourteen days later, at implantation. But after implantation, as fetal growth continues, the natural investment that would be wasted in an abortion grows steadily larger and more significant.

HUMAN AND DIVINE

So our sense that frustration rather than just loss compromises the inviolability of human life does seem helpful in explaining what unites most people about abortion. The more difficult question is whether it also helps in explaining what divides them. Let us begin our answer by posing another question. I just described a natural course of human life—beginning in conception, extending through birth and childhood, culminating in successful and engaged adulthood in which the natural biological investment and the personal human investment in that life are realized, and finally ending in natural death after a normal span of years. Life so understood can be frustrated in two main ways. It can be frustrated by premature death, which leaves any previous natural and personal investment unrealized. Or it can be frustrated by other forms of failure: by handicaps or poverty or misconceived projects or irredeemable mistakes or lack of training or even brute bad luck; any one of these may in different ways frustrate a person's opportunity to redeem

his ambitions or otherwise to lead a full and flourishing life. Is premature death always, inevitably, a more serious frustration of life than any of these other forms of failure?

Decisions about abortion often raise this question. Suppose parents discover, early in the mother's pregnancy, that the fetus is genetically so deformed that the life it would lead after birth will inevitably be both short and sharply limited. They must decide whether it is a worse frustration of life if the gravely deformed fetus were to die at once—wasting the miracle of its creation and its development so far—or if it were to continue to grow in utero, to be born, and to live only a short and crippled life. We know that people divide about that question, and we now have a way to describe the division. On one view, immediate death of the fetus, even in a case like this one, is a more terrible frustration of the miracle of life than even a sharply diminished and brief infant life would be, for the latter would at least redeem some small part, however limited, of the natural investment. On the rival view, it would be a worse frustration of life to allow this fetal life to continue because that would add, to the sad waste of a deformed human's biological creation, the further, heartbreaking waste of personal emotional investments made in that life by others but principally by the child himself before his inevitable early death.

We should therefore consider this hypothesis: though almost everyone accepts the abstract principle that it is intrinsically bad when human life, once begun, is frustrated, people disagree about the best answer to the question of whether avoidable premature death is always or invariably the most serious possible frustration of life. Very conservative opinion, on this hypothesis, is grounded in the conviction that immediate death is inevitably a more serious frustration than any option that postpones death, even at the cost of greater frustration in other respects. Liberal opinion, on the same hypothesis, is grounded in the opposite conviction: that in some cases, at least, a choice for premature death minimizes the frustration of life and is therefore not a compromise of the principle that human life is sacred but, on the contrary, best respects that principle.

What reasons do people have for embracing one rather than the other of these positions? It seems plain that whatever they are, they are deep reasons, drawn consciously or unconsciously from a great network of other convictions about the point of life and the moral significance of

death. If the hypothesis I just described holds—if conservatives and liberals disagree on whether premature death is always the worst frustration of life—then the disagreement must be in virtue of a more general contrast between religious and philosophical orientations.

So I offer another hypothesis. Almost everyone recognizes, as I have suggested, that a normal, successful human life is the product of two morally significant modes of creative investment in that life, the natural and the human. But people disagree about the relative importance of these modes, not just when abortion is in question but on many other mortal occasions as well. If you believe that the natural investment in a human life is transcendently important, that the gift of life itself is infinitely more significant than anything the person whose life it is may do for himself, important though that may be, you will also believe that a deliberate, premature death is the greatest frustration of life possible, no matter how limited or cramped or unsuccessful the continued life would be.[9] On the other hand, if you assign much greater relative importance to the human contribution to life's creative value, then you will consider the frustration of that contribution to be a more serious evil, and will accordingly see more point in deciding that life should end before further significant human investment is doomed to frustration.

We can best understand some of our serious disagreements about abortion, in other words, as reflecting deep differences about the relative moral importance of the natural and human contributions to the inviolability of individual human lives. In fact, we can make a bolder version of that claim: we can best understand the full range of opinion about abortion, from the most conservative to the most liberal, by ranking each opinion about the relative gravity of the two forms of frustration along a range extending from one extreme position to the other—from treating any frustration of the biological investment as worse than any possible frustration of human investment, through more moderate and complex balances, to the opinion that frustrating mere biological investment in human life barely matters and that frustrating a human investment is always worse.

If we look at the controversy this way, it is hardly surprising that many people who hold views on the natural or biological end of that spectrum are fundamentalist or Roman Catholic or strongly religious in some other orthodox religious faith—people who believe that God is the author of everything natural and that each human fetus is a distinct

instance of his most sublime achievement. Our hypothesis explains how orthodox religion can play a crucial role in forming people's opinions about abortion even if they do not believe that a fetus is a person with its own right to life.

That is a significant point. It is widely thought that religious opposition to abortion is premised on the conviction that every human fetus is a person with rights and interests of its own. It is therefore important to see that religious opposition to abortion need not be based on that assumption. I said that many religious traditions, including Roman Catholicism for most of its history, based their opposition to abortion on the different assumption that human life has intrinsic value. The present hypothesis shows how that assumption can ground very fierce, even absolute, opposition to abortion. A strongly orthodox or fundamentalist person can insist that abortion is always morally wrong because the deliberate destruction of something created as sacred by God can never be redeemed by any human benefit.

This is not to suggest, however, that only conventionally religious people who believe in a creator God are conservatives about abortion. Many other people stand in awe of human reproduction as a natural miracle. Some of them, as I said, embrace the mysterious but apparently powerful idea that the natural order is in itself purposive and commands respect as sacred. Some prominent conservationists, for example, though hardly religious in the conventional sense, seem to be deeply religious in that one and may be drawn a considerable distance toward the conservative end of the spectrum of opinion I described. They may well think that any frustration of the natural investment in human life is so grave a matter that it is rarely if ever justified—that the pulse in the mud is more profound than any other source of life's value. They might therefore be just as firmly opposed to aborting a seriously deformed fetus as any religiously orthodox conservative would be.

Nor does it follow, on the other hand, that everyone who is religious in an orthodox way or everyone who reveres nature is therefore conservative about abortion. As we have seen, many such people, who agree that unnecessary death is a great evil, are also sensitive to and emphatic about the intrinsic badness of the waste of human investment in life. They believe that the frustration of that contribution—for example, in the birth of a grievously deformed fetus whose investment in its own life is doomed to be frustrated—may in some circumstances be the worse of

two evils, and they believe that their religious conviction or reverence for nature is not only consistent with but actually requires that position. Some of them take the same view about what many believe to be an even more problematic case: they say that their religious convictions entail that a woman should choose abortion rather than bear a child when that would jeopardize her investment in her *own* life.

I described extreme positions at two ends of the spectrum: that only natural investment counts in deciding whether abortion wastes human life, and that only human investment counts. In fact, very few people take either of these extreme positions. For most people, the balance is more complex and involves compromise and accommodation rather than giving absolute priority to avoiding frustration of either the natural or the human investment. People's opinions become progressively less conservative and more liberal as the balance they strike gives more weight to the importance of not frustrating the human investment in life; more liberal views emphasize, in various degrees, that a human life is created not just by divine or natural forces but also, in a different but still central way, by personal choice, training, commitment, and decision. The shift in emphasis leads liberals to see the crucial creative investment in life, the investment that must not be frustrated if at all possible, as extending far beyond conception and biological growth and well into a human being's adult life. On that liberal opinion, as I have already suggested, it may be more frustrating of life's miracle when an adult's ambitions, talents, training, and expectations are wasted because of an unforeseen and unwanted pregnancy than when a fetus dies before any significant investment of that kind has been made.

That is an exceptionally abstract description of my understanding of the controversy between conservative and liberal opinion. But it will become less abstract, for I shall try to show how the familiar differences between conservative and liberal views on abortion can be explained by the hypothesis that conservatives and liberals rank the two forms of frustration differently. We must not exaggerate that difference, however. It is a difference in emphasis, though an important one. Most people who take what I call a liberal view of abortion do not deny that the conception of a human life and its steady fetal development toward recognizable human form are matters of great moral importance that count as creative investments. That is why they agree with conservatives that as this natural investment continues, and the fetus develops toward the

shape and capacity of an infant, abortion, which wastes that investment, is progressively an event more to be avoided or regretted. Many people who hold conservative opinions about abortion, for their part, recognize the importance of personal creative contributions to a human life; they, too, recognize that a premature death is worse when it occurs not in early infancy but after distinctly human investments of ambition and expectation and love have been made. Conservatives and liberals disagree not because one side wholly rejects a value the other thinks cardinal, but because they take different—sometimes dramatically different—positions about the relative importance of these values, which both recognize as fundamental and profound.

CONSERVATIVE EXCEPTIONS: RECONSIDERING THE NATURAL

I am defending the view that the debate over abortion should be understood as essentially about the following philosophical issue: is the frustration of a biological life, which wastes human life, nevertheless sometimes justified in order to avoid frustrating a human contribution to that life or to other people's lives, which would be a different kind of waste? If so, when and why? People who are very conservative about abortion answer the first of these questions No.

There is an even more extreme position, which holds that abortion is never justified, even when necessary to save the life of the mother. Though that is the official view of the Catholic church and of some other religious groups, only a small minority even of devout Catholics accept it, and even Justice Rehnquist, who dissented in *Roe* v. *Wade,* said that he had little doubt that it would be unconstitutional for states to prohibit abortion when a mother's life was at stake. So I have defined "very conservative" opinion to permit abortion in this circumstance. This exceedingly popular exception would be unacceptable to all conservatives, as I have said, if they really thought that a fetus is a person with protected rights and interests. It is morally and legally impermissible for any third party, such as a doctor, to murder one innocent person even to save the life of another one. But the exception is easily explicable if we understand conservative opinion as based on a view of the sanctity of life that gives strict priority to the divine or natural investment in life.

If either the mother or the fetus must die, then the tragedy of avoidable death and the loss of nature's investment in life is inevitable. But a choice in favor of the mother may well seem justified to very conservative people on the ground that a choice against her would in addition frustrate the personal and social investments in her life; even they want only to minimize the overall frustration of human life, and that requires saving the mother's life in this terrible situation.

The important debate is therefore between people who believe that abortion is permissible *only* when it is necessary to save the mother's life and people who believe that abortion may be morally permissible in other circumstances as well. I shall consider the further exceptions the latter group of people claim, beginning with those that are accepted even by people who regard themselves as moderately conservative about abortion and continuing to those associated with a distinctly liberal position.

Moderate conservatives believe that abortion is morally permissible to end a pregnancy that began in rape. Governor Buddy Roemer of Louisiana, for example, who has declared himself in favor of a ban on abortion, nevertheless vetoed an anti-abortion statute in 1991 because it excepted rape victims only in a manner that he said "dishonors women ... and unduly traumatizes victims of rape."[10] On the a-fetus-is-a-person view, an exception for rape is even harder to justify than an exception to protect the life of the mother. Why should a fetus be made to forfeit its right to live, and pay with its life, for the wrongdoing of someone else? But once again, the exception is much easier to understand when we shift from the claim of fetal personhood to a concern for protecting the divine or natural investment in human life. Very conservative people, who believe that the divine contribution to a human life is everything and the human contribution almost nothing beside it, believe that abortion is automatically and in every case the worst possible compromise of life's inviolability, and they do not recognize an exception for rape. But moderately conservative people, who believe that the natural contribution normally *outweighs* the human contribution, will find two features of rape that argue for an exception.

First, according to every prominent religion, rape is itself a brutal violation of God's law and will, and abortion may well seem less insulting to God's creative power when the life it ends itself began in such an insult. Though rape would not justify violating the rights of an innocent

person, it could well diminish the horror conservatives feel at an abortion's deliberate frustration of God's investment in life. In his opinion in *McRae* v. *Califano,* the Hyde amendment case I described in chapter 2, Judge John Dooling summarized testimony by Rabbi David Feldman: "In the stricter Jewish view abortion is a very serious matter permitted only where there is a threat to life, or to sanity, or a grave threat to mental health and physical well-being. Abortion for rape victims would be allowed, using a field and seed analogy: involuntary implantation of the seed imposes no duty to nourish the alien seed."[11]

Second, rape is a terrible desecration of its victim's investment in her own life, and even those who count a human investment in life as less important than God's or nature's may nevertheless recoil from so violent a frustration of that human investment. Rape is sickeningly, comprehensively contemptuous because it reduces a woman to a physical convenience, a creature whose importance is exhausted by her genital use, someone whose love and sense of self—aspects of personality particularly at stake in sex—have no significance whatsoever except as vehicles for sadistic degradation.

Requiring a woman to bear a child conceived in such an assault is especially destructive to her self-realization because it frustrates her creative choice not only in sex but in reproduction as well. In the ideal case, reproduction is a joint decision rooted in love and in a desire to continue one's life mixed with the life of another person. In Catholic tradition, and in the imagination of many people who are not Catholics, it is itself an offense against the sanctity of life to make love without that desire: that is the basis of many people's moral opposition to contraception. But we can dispute that sex is valuable only for reproduction, or creative only in that way—as most people do—while yet believing that sex is maximally creative when reproduction is contemplated and desired, and that reproduction frustrates creative power when it is neither. Of course, people in love often conceive by accident, and people not in love sometimes conceive deliberately, perhaps out of a misguided hope of finding love through children. Rape is not just the absence of contemplation and desire, however. For the victim, rape is the direct opposite of these, and if a child is conceived, it will be not only without the victim's desire to reproduce but in circumstances made especially horrible because of that possibility.

Moderate conservatives therefore find it difficult to insist that abor-

tion is impermissible in cases of rape. It is sometimes said that conservatives who allow the rape exception but not, for example, an exception for unmarried teenagers whose lives would be ruined by childbirth must be motivated by a desire to punish unmarried women who have sex voluntarily. Though some conservatives may indeed believe that pregnancy is a fit punishment for sexual immorality, our hypothesis shows why conservatives who make only the rape exception do not necessarily hold that appalling view. The grounds on which I said conservatives might make an exception for rape do not extend so forcefully to pregnancies that follow voluntary intercourse. Though many religious people do think that unmarried sex also violates God's will, few consider it as grave as rape, and the argument that an unwanted pregnancy grotesquely frustrates a woman's creative role in framing her own life is weaker when the pregnancy follows voluntary sex. Of course, the difference would not be pertinent at all, as I said, if a fetus were a person with rights and interests of its own, because that person would be completely innocent whatever the nature or level of its mother's guilt.

LIBERAL EXCEPTIONS: PROTECTING LIFE IN EARNEST

Other, more permissive exceptions to the principle that abortion is wrong are associated with a generally liberal attitude toward abortion, and we should therefore expect, on the basis of the hypothesis we are testing, that they will reflect a greater respect for the human contribution to life and a correspondingly diminished concern with the natural. But we must not forget that people's attitudes about abortion range over a gradually changing spectrum from one extreme to the other, and that any sharp distinction between conservative and liberal camps is just an expository convenience.

Liberals think that abortion is permissible when the birth of a fetus would have a very bad effect on the quality of lives. The exceptions liberals recognize on that ground fall into two main groups: those that seek to avoid frustration of the life of the child, and those that seek to prevent frustration of the life of the mother and other family members.

Liberals believe that abortion is justified when it seems inevitable that the fetus, if born, will have a seriously frustrated life. That kind of

justification is strongest, according to most liberals, when the frustration is caused by a very grave physical deformity that would make any life deprived, painful, frustrating for both child and parent, and, in any case, short. But many liberals also believe that abortion is justified when the family circumstances are so economically barren, or otherwise so unpromising, that any new life would be seriously stunted for that reason. It is important to understand that these exceptions are not based, as they might seem to be, on concern for the rights or interests of the fetus. It is a mistake to suppose that an early fetus has interests of its own; it especially makes no sense to argue that it might have an interest in being aborted. Perhaps we could understand that latter argument to mean that if the fetus does develop into a child, that child would be better off dead. But many liberals find abortion justified even when this is not so. I do not mean to deny that sometimes people would be better off dead—when they are in great and terminal pain, for example, or because their lives are otherwise irremediably frustrated. (We shall be considering the problems posed in such cases later in this book.) But this is rarely true of children born into even very great poverty. Nor is it necessarily true even of children born with terrible, crippling handicaps who are doomed shortly to die; sometimes such children establish relationships and manage achievements that give content and meaning to their lives, and it becomes plain that it is in their interests, and in the interests of those who love and care for them, that they continue living as long as possible. The liberal judgment that abortion is justified when the prospects for life are especially bleak is based on a more impersonal judgment: that the child's existence would be intrinsically a bad thing, that it is regrettable that such a deprived and difficult life must be lived.

Sometimes this liberal judgment is wrongly taken to imply contempt for the lives of handicapped children or adults, or even as a suggestion, associated with loathsome Nazi eugenics, that society would be improved by the death of such people. That is a mistake twice over. First, as I insisted earlier in this chapter, the general question of the relative intrinsic tragedy of different events is very different from any question about the *rights* of people now living or about how they should be treated. The former is a question about the intrinsic goodness or evil of events, the latter about rights and fairness. Second, in any case, the liberal opinion about abortion of deformed fetuses in no way implies that it would be better if even grievously handicapped people were now

to die. On the contrary, the very concern the liberal judgment embodies—respect for the human contribution to life and anxiety that it not be frustrated—normally sponsors exactly the opposite conclusion. The investment a seriously handicapped person makes in his own life, in his struggle to overcome his handicap as best he can, is intense, and the investment his family and others make is likely to be intense as well. The liberal position insists that these investments in life should be realized as fully as possible, for as long and as successfully as the handicapped person and his community together can manage; and liberals are even more likely than conservatives to support social legislation that promotes that end. One may think that in the worst of such cases it would have been better had the life in question never begun, that the investment we are so eager to redeem should never have been necessary. But that judgment does not detract from concern for handicapped people; on the contrary, it is rooted in the same fundamental respect for human investment in human life, the same horror at the investment being wasted.

The second distinctly liberal group of exceptions, which take into account the effects of pregnancy and childbirth on the lives of mothers and other family members, are even harder to justify on any presumption that includes the idea that a fetus is a person with rights and interests. But the popularity of these exceptions is immediately explicable once we recognize that they are based on respect for the intrinsic value of human life. Liberals are especially concerned about the waste of the human contribution to that value, and they believe that the waste of life, measured in frustration rather than mere loss, is very much greater when a teenage single mother's life is wrecked than when an early-stage fetus, in whose life human investment has thus far been negligible, ceases to live. That judgment does not, of course, depend on comparing the quality of the mother's life, if her fetus is aborted, with that of the child, had it been allowed to live. Recognizing the sanctity of life does not mean attempting to engineer fate so that the best possible lives are lived overall; it means, rather, not frustrating investments in life that have already been made. For that reason, liberal opinion cares more about the lives that people are now leading, lives in earnest, than about the possibility of other lives to come.

The prospects of a child and of its mother for a fulfilling life obviously each depend very much on the prospects of the other. A child whose

birth frustrates the chances of its mother to redeem her own life or jeopardizes her ability to care for the rest of her family is likely, just for that reason, to have a more frustrating life itself. And though many people have become superb parents to disabled or disadvantaged children, and some extraordinary ones have found a special vocation in that responsibility, it will sometimes be a devastating blow to a parent's prospects to have a crippled child rather than a normal one, or a child whose bearing and care will seriously strain family resources.

This is only another instance of the difficulty any theoretical analysis of an intricate personal and social problem, like abortion, must face. Analysis can proceed only by abstraction, but abstraction, which ignores the complexity and interdependencies of real life, obscures much of the content on which each actual, concrete decision is made. So we have no formulas for actual decision but only, at best, a schema for understanding the arguments and decisions that we and other people make in real life. I have argued that we do badly, in understanding and evaluating these decisions and arguments, if we try to match them to procrustean assumptions about fetal personhood or rights. We do better to see them as reflecting more nuanced and individual judgments about how and why human life is sacred, and about which decision of life and death, in all the concrete circumstances, most respects what is really important about life.

There will be disagreement in these judgments, not only between large parties of opinion, like those I have been calling conservative and liberal, but within these parties as well. Indeed, very few people, even those who share the same religion and social and intellectual background, will agree in every case. Nor is it possible for anyone to compose a general theory of abortion, some careful weighing of different kinds or modes of life's frustration from which particular decisions could be generated to fit every concrete case. On the contrary, we discover what we think about these grave matters not in advance of having to decide on particular occasions, but in the course of and by making them.

Where do we stand? I began this book by suggesting that we must redesign our explanation of the great abortion controversy, our sense of what the argument is an argument about. I have now completed my proposal for that redesign. I said that our new explanation would have important implications for political morality and for constitutional law.

I said that it would allow us to see the legal argument about the role of the United States Constitution in a new light, and even cautiously to raise our hopes that Americans and people in other countries where liberty is prized might find a collective solution to the political controversy that all sides could accept with dignity. I shall try to redeem those high promises in the next three chapters. But I shall anticipate my most important conclusion. Seeing the abortion controversy in the fresh light I described will not, of course, end our disagreements about the morality of abortion, because these disagreements are deep and may be perpetual. But if that fresh light helps us to identify those disagreements as at bottom *spiritual,* that should help bring us together, because we have grown used to the idea, as I said, that real community is possible across deep religious divisions. We might hope for even more—not just for greater tolerance but for a more positive and healing realization: that what we share—our common commitment to the sanctity of life—is itself precious, a unifying ideal we can rescue from the decades of hate.