Defending Life is arguably the most comprehensive defense of the pro-life position on abortion – morally, legally, and politically — that has ever been published in an academic monograph. It offers a detailed and critical analysis of Roe v. Wade and Casey v. Planned Parenthood as well as arguments by those who defend a Rawlsian case for abortion choice, such as J. J. Thomson. The author defends the substance view of persons as the view with the most explanatory power. The substance view entails that the unborn is a subject of moral rights from conception. While defending this view, the author responds to the arguments of thinkers such as Boonin, Dworkin, Stretton, Ford, and Brody. He also critiques Thomson’s famous violinist argument and its revisions by Boonin and McDonagh. Defending Life includes chapters critiquing arguments found in popular politics and the controversy over cloning and stem cell research.

To Frankie
DEFENDING LIFE

A Moral and Legal Case against Abortion Choice

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INTRODUCTION

Who and What Are We and Can We Know It?

The primary purpose of this book is to provide a thorough defense of the pro-life position on abortion and its grounding in a particular view of the human person, a view I will argue is the most rational and coherent one that is at the same time consistent with our deeply held intuitions about human equality. A secondary purpose of this book is to offer an analysis of the abortion question as it touches on law, politics, and public discourse. This book’s third purpose is to examine the extent to which our political and legal disagreements on abortion do not adequately capture, and seem almost deliberately framed not to capture, the narrow questions of philosophical anthropology and political theory that are the only ones that really matter if we have any hope of resolving a dispute some believe is intractable. This book is, in a sense, then, not really a book about abortion, but rather, a book about human equality, one that makes the argument that the project that began centuries ago – having its metaphysical roots in the biblical notion of the imagio dei (image of God) that provided the intellectual scaffolding for the Declaration of Independence, the abolitionist movement, Abraham Lincoln’s second inaugural address, and Martin Luther King Jr.’s speech on the steps of the Lincoln Memorial – can be, and ought to be, extended to include the true wideness of our human community, that is, to include the unborn. The climate of America and of the world has changed since the U.S. Supreme Court reaffirmed Roe v. Wade (1973) in its 1992 decision, Casey v. Planned Parenthood (1992). The enthusiasm for moral relativism that seemed to be in ascendancy in those days has been disciplined by the terrorist atrocities of September 11, 2001, and those that followed in Spain (2003), the United Kingdom (2005), and India (2006). With the attendant questions about war and national security that these events raise, moving to the forefront of our public discourse is an acute
Introduction

awareness of the fragility and preciousness of life, the importance of ethical clarity, and the need to require moral justification when the taking of another’s life may be required. In addition, the debates over partial-birth abortion, stem-cell research, and human cloning in the mid-to-late 1990s and early 21st century have served to underscore that the question often skirted by jurists, politicians, and professional bioethicists – what is the scope of the human community? – can no longer be ignored. After all, if Christopher Reeve was identical to his embryonic self, then we were no more justified in killing an embryo to acquire its stem cells so that Mr. Reeve might walk again than we would be in stealing Mr. Reeve’s eyes so that Stevie Wonder might see again.

The pro-life position I defend in this book can be outlined by the following argument:

1. The unborn entity, from the moment of conception, is a full-fledged member of the human community.
2. It is prima facie morally wrong to kill any member of that community.
3. Every successful abortion kills an unborn entity, a full-fledged member of the human community.
4. Therefore, every successful abortion is prima facie morally wrong.¹

I intend to show that each one of the premises of this argument is at best true or at least more likely true than not. In Chapter 9 I review this argument-outline and summarize the conclusions I reach in Chapters 4 through 8. These conclusions are the basis on which I support the premises of my argument.

It is important that I define some terms. First, when I say that the unborn entity is a full-fledged member of the human community (or fully human for short) I mean to say that she is just as much a bearer of rights as any human being whose rights-bearing status is uncontroversial, for example, her mother, you, or me. That is, the unborn entity is entitled to all the rights to which free and equal persons are entitled by virtue of being free and equal persons. So, for example, one cannot deprive the standard unborn entity of her life without the sort of justification we would expect if we were depriving a standard 10-year-old of his rights. To illustrate, if it is wrong to kill a 10-year-old as a result of taking his kidneys and giving them to people the government thinks will benefit society (e.g., scientific geniuses on the verge of curing cancer or AIDS), it is wrong to kill a 20-week-old fetal-clone as a result of taking his kidneys and giving them to his genetic progenitor, a scientific genius, who needs...
them to survive so that he may continue his work on cures for cancer and AIDS.

Second, when I say that killing a member of the human community is prima facie morally wrong I mean to say that in ordinary circumstances no one is morally justified in killing another human being. However, this does not mean that it is always wrong in every circumstance to kill someone who is fully human. There could be circumstances in which killing is justified, such as in cases of self-defense or just war. In the case of abortion, the killing of an unborn entity is justified if her presence in her mother’s womb poses a significant threat to her mother’s life. For if the unborn entity is not surgically removed (which will undoubtedly result in her death if performed early on in the pregnancy), then both mother and child will die. The specific intention is not to kill the unborn entity but to save the life of the mother. The child’s death is an unfortunate, though anticipated, consequence that cannot be avoided unless one is willing to let both mother and child die. Such a decision is the result of applying pro-life principles: it is prima facie a higher good that one human being should live rather than two die if one cannot save both.

This book is divided into three parts. Part I, which contains three chapters, concerns moral reasoning, abortion law, and politics. Chapter 1 is a brief defense of the possibility and importance of moral reasoning. I offer a case against moral relativism, arguing that there are objective moral principles that apply to all persons, in all times, and in all places. As part of my case against relativism I make the point that the disagreement over abortion is not a dispute over moral principles per se, but a clash over the question of who counts as a member of the human community (i.e., whether it includes the unborn) and/or how we ought to apply our moral principles. Chapter 2 deals with the current state of abortion law in the United States. I correct the general public’s misunderstanding on the nature of that law by presenting, explaining, and critiquing the reasoning of the Supreme Court’s majority opinion in Roe v. Wade (1973). I also address how court cases since Roe have shaped the constitutional right to abortion. In Chapter 3 I address the objection that the pro-life position on abortion – even if it is the morally correct point of view – cannot be reflected in our laws because it is “religious” and hence would violate the First Amendment’s prohibition of religious establishment.

Part II is the core of my case. In Chapter 4, I present the scientific facts of prenatal development as well as the different methods physicians use in performing abortions. In Chapters 5 through 7, I critique many arguments that are used to justify abortion at some stage during
pregnancy. There are three questions fundamental to the abortion debate that I answer in these chapters. (1) Do the popular arguments for the abortion-choice position really support abortion as a fundamental right (Chapter 5)? (2) Is there any decisive moment in the unborn’s development at which it becomes “fully human” or a “person” (Chapter 6)? (3) Even if the unborn entity is fully human, is it possible that abortion is still morally justified and thus legally permissible (Chapter 7)?

Part III contains two chapters. In Chapter 8, I address the issue of human cloning, whose moral and legal difficulties are similar to those found in the abortion question. Although contemporary bioethical debate is dominated by this and other issues (e.g., embryonic stem-cell research) that are perceived as more pressing than abortion, the answer to the philosophical question lurking behind abortion – who and what are we? – turns out to be the key that unlocks the ethical quandaries posed by these other issues. After all, if human persons ought not to be either subjects of research or killed without justification, and if the unborn from conception is a full-fledged member of the human community, then killing embryos to use their stem cells or to perfect human cloning is prima facie morally wrong. In Chapter 9, my concluding chapter, I sum up my case for the pro-life position by briefly reviewing the conclusions arrived at in Chapters 1 through 8.

I do not argue for the pro-life position by appealing to theological reasoning or the authoritative writings of any particular religious tradition. The main thrust of this book is philosophical and jurisprudential. Hence, if my arguments are sound, an atheist, agnostic, or humanist is intellectually obligated to become pro-life. Consequently, those who want to label and dismiss the pro-life position as a merely “religious view” (an argument with which I deal in some detail in Chapter 3) will be disappointed by my strategy to ground the pro-life perspective in an array of arguments that can be apprehended by engaging in reasoning unaided by anyone’s holy scripture and/or divine revelation. This is not to say, of course, that a citizen may not be fully warranted in holding a pro-life position even if her only basis for doing so is theological. For I am not saying that theological reasons are de facto epistemologically inferior to so-called secular reasons. In fact, I have, on occasion, defended theological arguments for the pro-life position. But because the immediate discounting of religious reasons, or religiously motivated reasons, is not considered bad form among many in our public and academic cultures, I have chosen not to employ theological arguments in this book and thus not to tempt fate.
Who and What Are We and Can We Know It?

To make the text more readable, I have dealt with some technical arguments in the endnotes rather than in the text of each chapter. To cite just two instances. In Chapter 2, I relegate to the endnotes an analysis of David Boonin’s assessment of using the Supreme Court’s viability standard as an argument for denying personhood to pre-viable fetuses. Also in Chapter 2, I critique in the endnotes Justice Blackmun’s argument that the severity of punishments found in pre-Roe anti-abortion statutes demonstrates that these statutes did not recognize the unborn as a constitutional person or a full-fledged member of the human community. So, the reader may want to consult the endnotes on occasion.

At the end of the day, the abortion debate is about who and what we are and whether we can know it. The cultural conflict over the permissibility of abortion is really a dispute over whether we are justified in extending our nation’s moral progress toward the elimination of unjust discrimination to include those who are the most vulnerable in the human family, the unborn. It is, in the end, whether we like it or not, a testimony to that inescapable truth penned by Aristotle more than two millennia ago, “Statecraft is soulcraft.”