

# A Defense of Abortion

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## *Chapter 1*

# **Framing the Debate**

### **1.0. OVERVIEW**

The moral problem of abortion is difficult because it is unusual. It is unusual both because the human fetus is so unlike other individuals and because the relationship between fetus and pregnant woman is so unlike other relationships. Its unusualness makes it difficult because we are accustomed to settling particular moral disputes by appealing to general moral principles, a procedure that presupposes a substantial degree of similarity between the question we wish to answer and other questions we feel we have, at least tentatively, resolved. As a result, people who find themselves substantially in agreement about what their moral duties to each other are often find themselves not only sharply divided over the problem of abortion, but uncertain about how to bridge the divide.

This feature of the abortion debate can give rise to the impression that the problem cannot be resolved rationally. If what is meant by this claim is that reasonable people will continue to disagree about abortion, then the claim is surely true. But the claim that the abortion controversy cannot be settled rationally is often taken to mean more than this. It is often taken to mean, as one writer has put it, that “each side of the abortion debate has an internally coherent and mutually shared view of the world that is . . . completely at odds with the world view held by their opponents,” and that “the two sides share almost no common premises” (Luker 1984: 159, 2). On this view, the question of the moral status of abortion is so far removed from any other moral question about which the two sides agree that neither side’s position can be shown to be more reasonable than the other’s on terms that the other side can accept. The debate about the morality of abortion, then, boils down

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to a mere exchange of conflicting normative assertions or to a clash of fundamental, and incommensurable, values.

If this is what is meant by the claim that the moral problem of abortion cannot be resolved rationally, then I believe that the claim is false. Most arguments against abortion rest on claims that defenders of abortion are unlikely to reject, such as the claim that killing people like you and me is wrong and the claim that the zygotes that are formed by the fusion of a sperm and an egg at conception eventually develop into people like you and me. If one or more of these arguments is successful, then critics of abortion can justifiably claim that their position has been shown to be more reasonable than the other's on terms that the other side can accept. And if none of these arguments are successful, then defenders of abortion can justifiably claim that they have successfully defended abortion from the challenge that its critics have mounted against it. I believe that many such arguments against abortion are substantially stronger than they are typically recognized to be, and that many people who argue in defense of abortion have failed to respond to them adequately. But I also believe that these arguments against abortion, although at times quite powerful, are ultimately unsuccessful. Indeed, it is the central thesis of this book that the moral case against abortion can be shown to be unsuccessful on terms that critics of abortion can, and already do, accept. I attempt to defend this thesis in the chapters that follow.

Before turning to this task, however, I must first say something about how a discussion of abortion must be framed in order to argue on terms that the critic of abortion accepts. Doing so is the purpose of this brief, introductory chapter. In Section 1.1, I specify what it means to call a practice morally permissible, and I explain why a defense of abortion that seeks to address critics of abortion on their own terms should focus on defending the claim that abortion, at least in typical cases, is permissible in this sense. In Section 1.2, I briefly describe the method of moral reasoning that I make use of in this work and attempt to show why it is not only a reasonable approach to addressing moral problems in general but, more importantly, why it is especially well suited to a discussion of abortion that attempts to engage critics of abortion on their own terms. In Section 1.3, I distinguish between two kinds of arguments that critics of abortion have offered, those that are based on the claim that the fetus has a right to life and those that are not, and emphasize that a satisfactory defense of abortion must address both.

In Chapters 2 and 3, I take up the central claim made by the first, rights-based, kind of argument against abortion: the claim that the fetus

## 1.1 *The Question*

has a right to life. In Chapter 2, I consider those arguments that have been offered in defense of the claim that the fetus acquires this right at the moment of its conception, and argue that none of them are successful. In Chapter 3, I examine arguments that have been offered in defense of the claim that the fetus acquires this right at various points after its conception, and argue that, by the abortion critic's own standards, the most reasonable view is the one in which the fetus acquires this right when its brain reaches a certain level of maturity. Since it turns out that the vast majority of abortions occur well before this point, the result of the discussion in Chapters 2 and 3 is that the central claim needed to sustain the rights-based argument against abortion must be rejected on the abortion critic's own terms.

In Chapter 4, I turn to the second claim needed to sustain the rights-based argument against abortion: the claim that if the fetus does have a right to life, then abortion is morally impermissible. I present an argument, first proposed by Judith Jarvis Thomson, that attempts to demonstrate that this claim is false. The argument compares a woman with an unwanted pregnancy to one who may permissibly refuse to perform an act of good samaritanism that is needed to keep an innocent person alive. Although the argument has been subject to a number of important objections, I argue that all of these objections ultimately fail on the abortion critic's own terms. The result of Chapter 4, then, is that even if my analysis in Chapters 2 and 3 is rejected, the rights-based argument against abortion must still be deemed unsuccessful for most (but not all) cases of abortion. Finally, in Chapter 5, I turn to those arguments against abortion that do not fit the model of the rights-based argument, including those that appeal to some version of the golden rule or to claims about our lack of certainty about the morality of abortion, as well as those that underlie the position that has come to be known as pro-life feminism. These arguments do not rely on either claim made by the rights-based argument, and so are not undermined by anything said in Chapters 2–4. I argue, however, that these arguments, too, can be shown to be unsuccessful on the abortion critic's own terms.

### 1.1. THE QUESTION

#### 1.1.1. *Framing the Question*

There are two different kinds of questions about which critics and defenders of abortion disagree: "Is abortion moral or immoral?" and

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“Should abortion be legal or illegal?” In principle, these are importantly distinct questions. There are actions, such as jaywalking, which we may think to be justifiably illegal and yet not immoral, and there are actions, such as adultery, which we may think to be immoral and yet not justifiably illegal. Still, as a practical matter, it is difficult to avoid the conclusion that, at least in the case of abortion, the moral question is the more fundamental. If almost everyone believed that abortion was perfectly moral, it is unlikely that there would be much public demand for laws criminalizing abortion or that such laws would be effectively enforced if they were passed.<sup>1</sup> And if almost everyone believed that abortion was morally on a par with murder, it is unlikely that women wishing to have abortions would find that they were easily available, even if they were technically legal.<sup>2</sup> Since the moral question of abortion is the more fundamental in this respect, an inquiry into the subject should begin with it. And since the moral question of abortion is a difficult enough question on its own, I will limit my focus in this book to it alone.

To refer to *the* moral question of abortion, however, is misleading. There is more than one moral question that can be asked. One can ask “Is abortion morally impermissible?” and “Is abortion morally criticizable?” Like many distinctions in ethics, this one is easier to recognize when it is seen than to characterize adequately in general, formal terms. So let me begin with an example: Consider an imaginary billionaire named Donald who has just unexpectedly won a million dollars from a one-dollar lottery ticket. He is trying to decide what to do with the money and has limited himself to the following options: (1) donating the money to several worthy charities, (2) putting it in his savings account, (3) buying a gold-plated Rolls Royce, (4) putting up billboards across the country that read “I hate Ivana,” and (5) hiring a hitman to kill Ivana. One thing we are likely to say about this list is that there is a morally relevant sense in which the choices become progressively worse. We would be entitled to aim more moral criticism at Donald for choosing (4), for example, than for choosing (3). This is what I mean by calling an action morally criticizable. But most of us will be inclined

<sup>1</sup> For evidence that abortion remained widespread in many communities in the United States when it was illegal, see Reagan (1997: esp. Chap. 2).

<sup>2</sup> Indeed, legalized abortion does not ensure availability of abortion even where moral opposition is far short of unanimous. Although abortion is legal in the United States, 83 percent of all counties in the United States have no abortion providers (cited by Hadley [1996: 15]).

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to say something more than this: It isn't just that (5) is worse than (4), which is worse than (3), which is worse than (2), which is worse than (1); it is that there is a difference in kind between (5) and the others. The difference might be put like this: Even though it is his money, and so there is some sense in which he is entitled to spend it in any way he wants, still he is not entitled to spend it in *that* way. This is the distinction I have in mind in saying that (5) is impermissible while (1)–(4) are permissible. I am not at all confident that I can provide a fully satisfactory formal account of this distinction, but for the purposes of this book, the following should suffice: To say that an action of mine is morally permissible is to say that no one has a valid claim against my doing it, that doing it violates nobody's moral rights. And in the case of (5), we presumably believe that there is someone, namely Ivana, who has such a claim against Donald's using his money in this way.

The question that this book addresses concerns the moral permissibility of abortion, not its moral criticizability. In claiming that it constitutes a defense of abortion, I mean that it offers a defense of the claim that abortion, at least in typical cases, is morally permissible, that, morally speaking, a woman's having an abortion violates no rights. The reason for this focus is simple: Virtually everyone who is morally opposed to abortion claims that abortion is morally impermissible in this sense, that it does violate rights, not merely that it is morally criticizable. Suppose that a woman is pregnant, does not wish to carry her pregnancy to term, and knows a couple who want very much to adopt and provide a secure, loving home for her child. Then the claim of such critics is not that her having an abortion rather than bringing her unwanted pregnancy to term is like Donald's buying a gold-plated car rather than contributing his winnings to charity; it is that it is like his hiring a hitman to kill his ex-wife. Since the claim that abortion is morally impermissible is clearly the central claim made by critics of abortion, and since calling a practice morally impermissible is qualitatively stronger than calling it morally criticizable, this is the claim that the defender of abortion must attempt to rebut. Since not all critics of abortion maintain that abortion is morally impermissible in all cases, the claim that the defender of abortion must attempt to rebut is the claim that abortion is morally impermissible at least in typical cases. And since critics of abortion attempt to press their case by appealing to claims that defenders of abortion are likely to accept, the defender of abortion must attempt to construct this rebuttal by appealing to considerations that

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critics of abortion can and do accept. Doing so is the central task of this book.

### *1.1.2. Three Objections*

Three objections, however, might be raised against framing the moral question of abortion in this way. One is that in defining the moral problem of abortion in terms of its permissibility and then defining the permissibility of an action in terms of someone's having a valid claim against its being done, it may seem that the deck has been stacked in favor of the defender of abortion. The fetus, after all, is in no position to stake a claim against anyone, and if the claim that abortion is a wrong against the fetus is ruled out ahead of time, then how can an argument against the permissibility of abortion be expected to get off the ground? This objection rests on a confusion between having a valid claim and making a valid claim. If Donald died and left all of his money to his six-week-old niece, then she would have a valid claim to the money even if she was not capable of demanding that the claim be respected. If the money was legitimately Donald's and was transferred to his niece in an appropriate manner, these facts would provide sufficient grounds for a third party or custodian to make the claim on her behalf, and this would be enough to warrant the conclusion that depriving her of the money would be morally impermissible. Similarly, if there is something about the act of aborting a human fetus that deprives the fetus of something to which the fetus is entitled, then the critic of abortion can use this to establish that the fetus has a valid claim against the abortion's taking place without having to maintain that the fetus itself is capable of making this claim, and this will suffice for establishing that the abortion would be morally impermissible.

A second concern that might be raised is that this formulation of the question blurs the distinction between abortion as a moral problem and abortion as a legal problem, a distinction that I said should remain in principle clear. If someone does have a valid claim against an abortion's being performed, after all, doesn't that simply amount to saying that the law should prevent it from taking place? And if no one has a valid claim against its being performed, then what grounds could there be for criminalizing it? But this objection is also misguided. The conclusion that no one has a valid claim against an abortion's being performed would undermine one kind of argument in favor of laws against abortion. But other sorts of considerations would remain open. Arguments can be

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made for laws restricting such forms of behavior as gambling, pornography, and drug use and for laws requiring such forms of behavior as jury duty or military service even if no one has a valid moral claim against one's engaging in (or refraining from engaging in) such activities. And the conclusion that someone (presumably the fetus) does have a valid moral claim against an abortion's being performed need not entail that abortion should be illegal. Not every valid moral claim is one we would wish to see enforced by the law. If I promise to help you move next week, or not to see anyone else while we are dating, then this provides you with a legitimate moral claim against me, but we may nonetheless think there is good reason not to treat it as one that the courts may enforce. My formulation of the moral question is thus compatible with acknowledging that although an argument against the moral permissibility of abortion may provide sufficient reasons for believing that abortion should be illegal, it need not do so, and that although an argument in defense of the moral permissibility of abortion may provide sufficient reasons for believing that abortion should be legal, it need not do so.

Finally, it may be complained that to limit the moral problem of abortion to the question of its moral permissibility renders the discussion unacceptably narrow. Indeed, at least one writer has gone so far as to insist that even if we grant that it is morally permissible for a woman to have an abortion, if we agree, that is, that her having an abortion is within her moral rights, "*nothing* follows from this supposition about the morality of abortion, . . . once it is noted . . . that in exercising a moral right I can do something cruel, or callous, or selfish, light-minded, self-righteous, stupid, inconsiderate, disloyal, dishonest – that is, act viciously" (Hursthouse 1991: 235). And if this objection is sustained, then even if the defense of abortion offered in this book is successful, it will do relatively little to vindicate the moral record of those who have and who perform abortions.

I believe that in one important respect this objection must be accepted, and for two reasons. The first is that it follows from the way that I have framed and analyzed the question that the claim that an action is permissible does not justify the conclusion that it should be performed. So even if we conclude that it is morally permissible for a woman to have an abortion, it will not follow that having an abortion is what she ought to do. The second is that it also follows from my analysis that the claim that an action is permissible does not justify the conclusion that it is not morally criticizable. To say that an action is permissible is not to say that there are no moral reasons against doing the action, but only

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that it is a candidate from which one is morally permitted to choose. In then choosing from the set of permissible possibilities, there may well be moral reasons to refrain from doing the act. The reasons may include such considerations as that doing the act would produce less overall happiness or social equality than some alternative, or would disappoint someone, or leave someone worse off, and so on. If you choose to do the action, no one will be able to say that they (or anyone else) had a legitimate claim against your doing it, or that you had violated their (or anyone else's) rights, but they may be entitled to aim moral criticism at you nonetheless.<sup>3</sup> To say that an action is impermissible, on the other hand, is to say that it is not one of the eligible candidates for consideration. If torturing an innocent person is impermissible, for example, then even in cases where torturing someone would be ranked higher than not torturing him by such standards as promoting overall happiness, still you must not choose to torture him.

The moves from "I have the right to do it" to "It is right for me to do it" or to "I cannot be morally criticized for doing it" are simply invalid. This is an elementary point, but one that is frequently overlooked in popular discussions of moral issues. It is all too common to hear people defend their decision to do something by insisting that they had the right to do it: the right to broadcast their sleazy shows, to take advantage of their neighbors' misfortunes, to exclude women from their private clubs, and so on, as if their having the right to do something ensures that their doing it is not only permissible but immune to moral criticism.<sup>4</sup> But establishing that an action would be morally permissible should represent only the beginning of one's moral deliberation, not the end it is too often taken to represent. And in this sense, the objection to focusing exclusively on the permissibility of abortion is an important one. Even if we end up

<sup>3</sup> Similarly, if Donald chooses (4), we may well be right to call him cruel, mean, nasty, vindictive, and hateful; and if he chooses (3), we may be right to call him selfish, insensitive, and vain, all of which are terms of moral criticism.

<sup>4</sup> Relatedly, when critics of abortion complain about those who want abortion to be "safe, available, and rare," they proceed as if those who believe that abortion is permissible must also believe that it is never a bad thing that an abortion occur. How, they ask, can you think that abortion should be rare if you think it is morally defensible? If a practice is morally defensible, then one shouldn't care how often it occurs. But this, too, is to overlook the distinction between an act's being permissible and its being criticizable. It is perfectly consistent to believe that abortion (or prostitution, or pornography, and so on) should be safely available because it is permissible, but rare because it is (or is often) criticizable (though one could, of course, also believe that it is not morally criticizable either, but should be rare merely because it is undesirable from a purely prudential point of view).

## 1.2 *The Method*

agreeing that abortion is morally permissible, much more would need to be said about when, if ever, abortion is the morally best course of action available and when, in those cases in which it is not, it is not only *not* the morally best course of action but a morally criticizable one as well.

But even though all of this is true, there is nonetheless good reason to focus in great detail on what is admittedly this relatively narrow question. For even if relatively little about the morality of abortion follows from concluding that it is permissible, something absolutely crucial about the morality of abortion would follow from concluding that it is impermissible. If a particular abortion would be impermissible, then it follows that a woman would have no moral right to choose to have it performed even if having the abortion would rank high by other morally relevant standards of evaluation such as promoting overall happiness or equality. It is the claim that abortion is impermissible in this sense that is advanced by virtually every critic of abortion, and, as we will see, attempting to respond to this claim on the abortion critic's own terms is a difficult enough task in itself.

### 1.2. THE METHOD

Let us now assume that we are clear about the question I pose in this book. How should we go about answering it? The method of moral argument I propose to employ is a version of the method made famous by John Rawls as "reflective equilibrium" (1971: 20ff.), which has since been embraced in one form or another by writers on both theoretical issues (e.g., Gowans 1994: Chap. 2) and such specific issues as the moral status of animals (e.g., Reagan 1983: 133ff.; Carruthers 1992: 6–8, 21–4), though it may differ from Rawls's approach in some ways that are not trivial. A detailed explanation and defense of this method must remain beyond the scope of this work, but in this section I will offer a brief account of reflective equilibrium, at least as I understand it, and will explain why it seems to be an appropriate method for addressing moral problems in general, and, more importantly, why it is particularly well suited to constructing a defense of abortion that seeks to address critics of abortion on their own terms.

#### 1.2.1. *Reflective Equilibrium*

The method of reflective equilibrium, at least as I mean to be using this term, can be described roughly as follows: We begin by accepting, at

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least provisionally, our moral intuitions about a variety of types of actions, giving more initial weight to those which seem especially clear or forceful. We then attempt to develop a credible moral theory that would serve to unify and underwrite these various judgments. We ask: What sort of more basic principle or set of principles would have to be true in order for these sorts of more particular judgments to prove to be correct? This procedure can appear to be circular, and in its most naive application it would be. For we could easily generate a basic principle that would match all of our judgments about more specific classes of actions by simply inventing a complex principle that endorsed the conjunction of all the particular judgments. And inventing such a convoluted principle would of course do nothing to provide support for those judgments. But the method of reflective equilibrium does not warrant such a move. In seeking principles to underwrite our considered moral judgments about particular types of actions, the method directs us to give preference to those principles that are more general and more fundamental and which more fully exemplify the general theoretical virtues. I cannot provide an exhaustive list of those virtues here, or present a formula for weighting them, but they would include, at the least, such factors as parsimony, salience, coherence, and explanatory power, and they would be constrained by an overriding requirement of logical consistency.

Of course, it is unlikely that a theory will be found that does perfectly well by all such standards while at the same time accommodating every single one of our initial moral judgments about the entire range of specific types of actions about which we have moral intuitions. So the process to this point produces only what we might think of as our first candidates for an acceptable moral position. We may identify moral principles that provide a better or worse fit, but not a perfect fit, with our initial judgments. And in those cases in which our theory fails to conform to our intuitions, the intuitions themselves will seem to constitute counterexamples to the theory. A theory that does a generally satisfactory job of accounting for our obligation to keep our promises, for example, might fail to justify an obligation to keep our promises to those who have since died; and to the extent that we think it is still wrong to break our promises in such cases, this will seem to demonstrate that the theory itself is flawed.

When confronted with an apparent counterexample of this sort, there are essentially two options, each of which can be thought of as providing some benefit in terms of rendering our system of thought as a whole more consistent and coherent, but at some cost. One option is to revise

## 1.2 *The Method*

our proposed theory so that it produces the “correct” answers to some of the questions it initially got “wrong.” This might be done by taking a general principle and adding some restrictions or exceptions to it. The cost here is in terms of making the theory as a whole less attractive in terms of simplicity, generality, salience, and so on. The more drastic the revisions are and the more difficult it is to motivate them in terms of the more basic principles of the theory, the more the resulting theory will seem to be arbitrary or ad hoc, or at least unparsimonious. The other option is to abandon or revise some of our initial judgments. The cost here is that in order to accept the theory as a whole, we will have to accept certain implications that, at least initially, seemed independently objectionable.

It is possible, of course, that in some cases the considerations that favor a given theory will at the same time change our initial intuitions, so that what at first seemed to be a counterintuitive implication will no longer seem counterintuitive. While it might at first seem, for example, that it is wrong to break a promise you made to someone even if that person is now dead, reflection on the best reasons for thinking that promise breaking in general is wrong might lead us to see promise breaking as permissible in such cases after all. In other cases, initial intuitions to the contrary might be dissolved in other ways. It might turn out, for example, that someone’s belief in an obligation to keep promises to the dead was dependent upon a nonmoral belief to the effect that people have souls that survive the deaths of their bodies and which are then distressed by the knowledge that promises made to them during their earthly existence have since been broken. Moral intuitions that arise at least in part from nonmoral beliefs in this way can be uprooted by rebutting the nonmoral beliefs at their foundation, and when this is accomplished, the fact that one initially had a different moral reaction to a particular sort of case need no longer carry any moral weight. Finally, in at least some cases, one may find that the force of one’s initial moral intuition can be effected by considering how one thinks one acquired the intuition in the first place, and how likely one thinks it is that one would have roughly the same belief if one had, for example, been raised in a different culture or by different parents. And so, in at least some cases, the fact that a theory conflicts with our initial judgments need not count against it. But there seems to be no guarantee that these sorts of considerations will be available in every case, and in cases in which they are not, accepting a theory will still seem objectionable to the extent that some of its implications continue

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to seem objectionable. In such cases, then, one must attempt to strike the most reasonable balance between the merits of the theory on the one hand and the drawbacks of its implications on the other.

Why should one attempt to answer substantive moral questions in the way that I have described? The answer is simple: There seems to be no plausible alternative. Perhaps someone can produce a deductively valid argument that settles the abortion debate as conclusively as formal proofs settle debates in mathematics and makes no use whatsoever of our moral intuitions about particular kinds of cases, but this is extremely difficult to believe. What could such an argument look like? Perhaps we can reach a satisfactory position on the subject simply by appealing to our particular intuitive responses on a case-by-case basis, but this, too, seems difficult to imagine. What could make such a position reasonable when the position itself leaves no room for appeals to reasons? Yet if it is difficult to imagine relying exclusively on either theoretical or intuitive considerations, it is even more difficult to picture doing entirely without either of them. What else, after all, is left? Playing the two sets of considerations off of each other until one arrives at the most satisfactory balance between them seems to be the only plausible way of making use of both, and this is what reflective equilibrium, at least as I am using the term, directs us to do. Indeed, to some extent the reason for accepting reflective equilibrium so understood is simply that this is what we do, and all that we can do, when we think about moral problems.

For many readers, this approach will seem natural and appropriate. If you are one such reader, then the methodological assumptions behind this work should pose no problems, and you need worry only about whether I have made use of this approach faithfully and effectively in the chapters that follow. For other readers, however, the method employed here may itself seem to provide a subject of concern. If you are one such reader, I would like to believe that you still have reason to read on. Perhaps you should think of the question posed by this book as a purely theoretical one: What position on abortion would it be more reasonable for you to accept if you began with the judgments about certain types of actions that I will attribute to you in what follows and you wanted your position on abortion to mesh most coherently with them? This is essentially how I view the book's project; though for me, of course, these are not purely theoretical concerns since the particular judgments I will attribute to you are my particular judgments as well, since it does matter to me that my view of abortion be brought into line

## 1.2 *The Method*

with these judgments, and since I have found that doing so is no small task.

### 1.2.2. *Reflective Equilibrium and Abortion*

Even if you remain skeptical of the reflective equilibrium approach to ethics in general, however, there seems to me to be an additional and powerful reason to think it important to exploit it in an inquiry about the moral problem of abortion in particular, especially one that seeks to engage critics of abortion on their own terms. The reason is simply that reflective equilibrium, or something very much like it, has largely been adopted, at least implicitly, by those who argue against the moral permissibility of abortion. One of the most common argumentative strategies among critics of abortion, for example, is the attempt to demonstrate that arguments which purport to vindicate the moral permissibility of abortion would, if accepted, also entail that killing newborn infants is equally permissible. Another is the attempt to demonstrate that if we do not agree that the killing of the fetus is impermissible from the moment of conception on, there is no reason to draw the line at which killing it becomes impermissible at any one point rather than at any other. The appeal to such arguments presupposes not only that the claim that killing newborn infants is permissible violates extremely deep moral intuitions or that lines drawn without reasons are arbitrary, but that it is a legitimate requirement of a moral position both that it not yield results that are so strongly counterintuitive and that it not attempt to accommodate our moral intuitions simply by abandoning such theoretical virtues as salience, coherence, and parsimony. Critics of abortion, that is, are best understood as arguing that their position on the moral permissibility of abortion should be accepted because it better enables not only them but also their opponents to achieve an equilibrium between the general theoretical considerations and intuitive responses to certain types of actions that not only they but, more importantly, their opponents already accept.<sup>5</sup>

One could, of course, attempt to offer a defense of abortion that does not take place within the methodological framework that critics of abortion presuppose. One could, for example, offer an argument in defense

<sup>5</sup> That there is an important sense in which each side of the abortion controversy claims that its position best coheres with the values of the other has been recognized by a number of critics of abortion (e.g., Beckwith 1993: 27–8).

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of abortion, agree that it implies that killing newborn infants is also permissible, agree that this implication is extremely counterintuitive, and simply deny that the existence of extremely counterintuitive implications should count as an objection to moral arguments. I have already registered my doubts about the plausibility of such an approach to moral argument in general. But even if such an approach could be sustained at a theoretical level, it would be a serious mistake for defenders of abortion to rely upon it in practice. A defense of abortion that proceeds on methodological terms that the critic of abortion rejects leaves the debate at a standstill. It reinforces the impression that the controversy over abortion arises from a simple clash of incommensurable viewpoints. It fails to address critics of abortion on their own terms. But a defense of abortion that succeeds on the critic of abortion's own methodological terms does none of these things. It justifies the claim that abortion, at least in typical cases, is morally permissible on terms that the critic of abortion can, indeed already does, accept. Only this kind of argument can contribute to resolving the abortion controversy, and it is this kind of defense of abortion that I propose to develop in the chapters that follow.

### **1.3. THE ARGUMENTS**

In framing the question to be addressed in this book, and in selecting a methodology for evaluating the various arguments that purport to answer it, I have attempted as much as possible to allow the critic of abortion to frame the debate. The same should be done when it comes to determining which arguments merit consideration in attempting to apply this method to this question. A fully satisfactory defense of abortion must attempt to respond not only to those arguments against abortion that defenders of abortion may find particularly challenging, but to the entire range of arguments against abortion that critics of abortion have developed.

#### *1.3.1. The Rights-Based Argument*

The most familiar argument against abortion rests on the claim that the human fetus, or at least the typical human fetus, has a right to life. Conjoined with the assumption that if the fetus has such a right, then abortion, at least in typical circumstances, is morally impermissible, this claim generates the conclusion that the critic of abortion seeks to justify, that is, the claim that abortion, at least in typical circumstances,

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is morally impermissible. I will call this argument the rights-based argument:

- P1: The (typical) human fetus has a right to life.
- P2: If the (typical) human fetus has a right to life, then abortion (at least in typical circumstances) is morally impermissible.
- C: Abortion (at least of a typical human fetus in typical circumstances) is morally impermissible.

This rights-based argument is sometimes presented in terms of the claims that the fetus is a person and that all persons have a right to life. Put in this way, the argument looks like this:

- P1: The (typical) human fetus is a person.
- P2: Every person has a right to life.
- C1: The (typical) human fetus has a right to life.
- P3: If the (typical) human fetus has a right to life, then abortion (at least in typical circumstances) is morally impermissible.
- C2: Abortion (at least of a typical human fetus in typical circumstances) is morally impermissible.

But presenting the rights-based argument against abortion in terms of the claim that the fetus is a person is neither necessary nor illuminating. This is so because the term *person* is ambiguous. On the one hand, *person* can be used in a purely normative sense. So understood, the claim that the fetus is a person simply *means* that the fetus has a right to life. On this construal of the term, any reason for believing that the fetus is a person just is a reason for believing that the fetus has a right to life. The claim that the fetus is a person in this sense plays no substantive role in justifying the claim that it has a right to life, and so there is no reason to consider it as a distinct claim. On the other hand, *person* can be used in a purely descriptive sense that has no normative implications. So understood, for example, the claim that the fetus is a person may merely be a claim that it possesses certain biological features. On this construal of the term, any reason for believing that the fetus is a person will do nothing to justify the claim that the fetus has a right to life, since the claim that the fetus is a person in this sense will have no normative implications. So, again, there will be no reason to put the rights-based argument in terms of the claim that the fetus is a person.

It might be suggested, of course, that there is a third possibility: The term *person* might be used in some kind of intermediate way so that there could be one set of reasons for believing that the fetus is a person

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in this sense and then a second set of reasons for believing that every individual who is a person in this sense has a right to life. But even if *person* is construed in such a third way, its use is still superfluous. We can simply consider the conjunction of the two sets of reasons as a set of reasons for believing that the fetus has a right to life and then ask whether they are good reasons for believing this. There is again no reason to treat the claim that the fetus is a person as an independent claim warranting consideration.<sup>6</sup> Since the use of the term *person* as a means of explicating the rights-based argument against abortion is unnecessary and potentially confusing, I will generally avoid it. I will analyze the rights-based argument as the conjunction of the claim that the (typical) human fetus has a right to life and the claim that if the (typical) human fetus has a right to life, then abortion (at least in typical circumstances) is morally impermissible.

A defender of abortion could respond to the first claim made by the rights-based argument, the claim that the typical human fetus has a right to life, in a number of ways. He could, for example, deny that anyone has a right to life. If no one has a right to life, then fetuses, in particular, do not have a right to life, and the rights-based argument against abortion will fail for that reason. I do not want to insist that such a response to the rights-based argument cannot be sustained. Perhaps it can. But it would be a serious mistake for the defender of abortion to depend upon such a response. A defense of abortion will be more effective the more it can work from premises that critics of abortion accept, and surely most critics of abortion believe that you and I do have a right to life. In arguing against the first claim made by the rights-based argument in Chapters 2 and 3, I will therefore simply assume that you and I do, in fact, have a right to life. If this assumption proves to be mistaken, then the rights-based argument against abortion will fail for that reason. My concern is to demonstrate that

<sup>6</sup> This is not to say that there is never a good reason to break up a particular set of reasons given for believing that the fetus has a right to life into two distinct sets of reasons. For purposes of philosophical analysis, it may often be useful to do so. It may be helpful, for example, to break a particular argument down into such terms as "P1: The (typical) human fetus has a future-like-ours (or has a certain kind of potential, or is a member of a certain species, etc.). P2: If something has a future-like-ours (or has a certain kind of potential, or is a member of a certain species, etc.), then it has a right to life. C: The (typical) human fetus has a right to life." The point is simply that there is no reason to insist on using the term *person* in doing so, and, given the ambiguous and potentially misleading nature of the term, good reason not to.

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even if the assumption is correct, the argument against abortion is still unsuccessful.

A defender of abortion could also offer a less extreme response to the first claim made by the rights-based argument. He could agree that you and I have a right to life but deny that newborn infants do. If newborn infants do not have a right to life, then it will again be a simple matter to establish that fetuses lack such a right, and the rights-based argument against abortion will again be defeated. This suggestion is likely to strike most readers as hardly more attractive than the first. In the popular debate about abortion, at least, to say that abortion is morally on a par with killing newborn babies is simply to say that abortion is morally impermissible. It is therefore worth emphasizing that within the philosophical literature on abortion, at least, there is less agreement on this subject. A number of philosophers, including such prominent figures as Peter Singer and Michael Tooley, have argued that human infants do not have a right to life. And these arguments deserve to be taken seriously on their own terms.

But they need not be taken seriously here. For the purposes of this book, arguments for the claim that human infants do not have a right to life can simply be set aside. If it turns out that one or more of these arguments can be sustained, then the claim that abortion is morally permissible in typical cases will follow easily enough. But a defense of abortion that attempts to engage critics of abortion on their own terms will again do best simply to accept this belief, even if only for the sake of the argument. In arguing against the first claim made by the rights-based argument against abortion, I will therefore also assume, at least for the sake of the argument, that newborn human infants have a right to life. The claim that I will argue for in Chapters 2 and 3, therefore, may best be understood as a conditional one: if the critic of abortion is correct in maintaining that you and I have a right to life and that newborn human infants do as well, then the moral theory that would best account for this assumption entails that it is not true that the typical human fetus has such a right.

The second claim made by the rights-based argument against abortion maintains that if the (typical) human fetus does have a right to life, then abortion (at least in typical circumstances) is morally impermissible. A defender of abortion could also respond to this claim in a number of ways. He could argue, for example, that there is not one right to life but many, ranging from the very strong right to life that you and I have to a much weaker version of this right that might be attributed, for example, to some nonhuman animals. He could agree that if the fetus had

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a right to life in the strong sense that you and I have a right to life, then abortion (at least in typical cases) would be morally impermissible, but maintain that if the fetus has any right to life at all it has only the much weaker sort of right to life and that having this relatively weak right to life fails to render abortion morally impermissible. Or, he could maintain that even if the fetus does have the very same right to life that you and I have, there is some even more pressing moral consideration that justifies violating it in the case of abortion. He might argue, for example, that abortion is needed in order to prevent catastrophic overpopulation. Or he might argue that it is needed in order to ensure social, political, and economic equality for women. I will not argue against such claims in this work, but I will not rely on them either. A defense of abortion that depends on such claims will again do less to engage critics of abortion on their own terms than one that does not. In Chapter 4, I will argue against the claim that if the fetus has a right to life, then abortion is morally impermissible. But in doing so, I will therefore assume, at least for the sake of the argument, that if the fetus has a right to life, it has the very same right to life that you and I have, and that abortion is not needed in order to achieve such pressing goals as population control or sexual equality (or that if it is needed, that such goals do not justify violating the right to life). I will attempt to show that the second claim needed to sustain the rights-based argument against abortion can be shown to be unacceptable on terms that critics of abortion can and already do accept.

### *1.3.2. Non-Rights-Based Arguments*

While the rights-based argument against abortion is almost certainly the most familiar argument, it is not the only one. Arguments that appeal to some version of the golden rule or to our uncertainty about the moral status of the fetus, as well as many of the arguments that are identified with the position known as pro-life feminism, are all capable of being sustained without appealing to the claim that the fetus has a right to life. Many critics of abortion believe that one or another of these arguments are successful, and thus even if the defender of abortion succeeds in undermining the rights-based argument, a defense of abortion that seeks to engage critics of abortion on their own terms must also address these arguments, and on terms that critics of abortion accept. Doing so will be the task of Chapter 5.