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LIFE'S SACRED VALUE — COMMON GROUND OR BATTLEGROUND?

*Alexander Morgan Capron**

LIFE'S DOMINION: AN ARGUMENT ABOUT ABORTION, EUTHANASIA, AND INDIVIDUAL FREEDOM. By *Ronald Dworkin*. New York: Alfred A. Knopf. 1993. Pp. 273. \$23.

Reading Ronald Dworkin's¹ ambitious and fascinating attempt to find a middle way out of the increasingly heated public battles over the legal regulation of abortion and euthanasia,² I found myself thinking — for reasons that I trust will presently become apparent — of an automobile accident a little more than a decade ago. That accident threw a young woman named Nancy Beth Cruzan into a ditch where rescue workers found her unconscious. After restoring her vital functions, they took her to a nearby hospital, where doctors further stabilized her condition and eventually transferred her to a state rehabilitation facility.³

Over the next several years, as she failed to regain her mental fac-

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1. Professor of Law, New York University; University Professor of Jurisprudence, Oxford University.

2. As some participants in these debates will take exception to Dworkin's definitions of these terms, it is important to keep in mind how he uses them: "Abortion, which means deliberately killing a developing human embryo, and euthanasia, which means deliberately killing a person out of kindness, are both choices for death. The first chooses death before life in earnest has begun, the second after it has ended." P. 3. Some proponents of the right to abortion emphasize that abortion "means" the termination of pregnancy and the avoidance of parenthood; if one could accomplish those goals without killing an embryo, Dworkin's definition would not apply. His definition, however, seems to convey adequately the common usage of the term.

The same cannot be said for his definition of euthanasia, especially because his own use of the term makes clear that by "deliberately killing a person out of kindness" he intends to encompass not only active euthanasia of the sort Janet Adkins achieved with Dr. Jack Kevorkian's assistance but also the withdrawal of respirators or tubes providing hydration and nutrition and apparently even the acceleration of death brought about by narcotics used to relieve severe pain. Although one could argue that all of these practices amount to "deliberate killing" in the sense of being done intentionally with a known likelihood of bringing about death, lumping all together under the heading "deliberate killing" is likely to confuse the issue — and possibly, to distort public policy formulation — whatever one may say for its logical consistency. Furthermore, to say that euthanasia involves causing death "after [life] has ended" either takes a very strong position on the "quality of life" issue — equating a range of impairments with nonlife — or draws a line that would exclude from the purview of euthanasia several conditions — such as AIDS and cancer — that many cite as strong cases for voluntary, active euthanasia or "physician assistance in dying."

3. *Cruzan v. Harmon*, 760 S.W.2d 408, 411 (Mo. 1988), *affd. sub nom. Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261 (1990).

ulties and slid into what physicians call a persistent vegetative state, her parents slowly and reluctantly concluded that she would not have wished to be sustained in her condition by feeding tubes or other medical intervention. When hospital officials rejected their request to withdraw treatment, her parents sought — and a court awarded — formal guardianship with authority to order termination of all life support.⁴ The Missouri Supreme Court reversed the trial judge's order on the ground that the state's "interest in preservation of life" overrode any interest that Ms. Cruzan might have in being free of such death-delaying interventions. The state's interest, held the court, "embraces two separate concerns: an interest in the prolongation of the life of the individual patient and an interest in the sanctity of life itself."⁵

The U.S. Supreme Court affirmed the Missouri ruling, holding that a state does not violate the Due Process Clause when it refuses to allow the forgoing of a patient's life support, absent clear and convincing evidence that the patient had expressed such a wish while still competent.⁶ The Court also reasoned that the state's interest in protecting human life was sufficiently strong to outweigh a guardian's conclusion that further treatment is not in the patient's best interest.⁷ The notion that the state has an interest in the "preservation of human life" independent of the patient's own interests drew stinging dissents from Justices Brennan and Stevens:

[T]he State has no legitimate general interest in someone's life, completely abstracted from the interest of the person living that life, that could outweigh the person's choice to avoid medical treatment.⁸

....

4. 760 S.W.2d at 411-12.

5. 760 S.W.2d at 419.

6. *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 284 (1990).

7.

Missouri relies on its interest in the protection and preservation of human life, and there can be no gainsaying this interest. As a general matter, the States — indeed, all civilized nations — demonstrate their commitment to life by treating homicide as a serious crime. . . .

. . . Finally, we think a State may properly decline to make judgments about the "quality" of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual.

497 U.S. at 280, 282.

8. 497 U.S. at 313 (Brennan, J., joined by Marshall and Blackmun, JJ., dissenting). Disagreeing with the evidentiary standard as adopted and applied in the case, Justice Brennan addressed the claim that the state was justified in its allocation of the "risk of error" in a way that favored "the status quo":

An erroneous decision [that is, one that did not reflect the patient's true wishes] to terminate artificial nutrition and hydration, to be sure, will lead to failure of that last remnant of physiological life, the brain stem, and result in complete brain death. An erroneous decision not to terminate life support, however, robs a patient of the very qualities protected by the right to avoid unwanted medical treatment. His own degraded existence is perpetuated; his family's suffering is protracted; the memory he leaves behind becomes more and more distorted.

Even a later decision to grant him his wish cannot undo the intervening harm.
497 U.S. at 320.

However commendable may be the State's interest in human life, it cannot pursue that interest by appropriating Nancy Cruzan's life as a symbol for its own purposes. Lives do not exist in abstraction from persons, and to pretend otherwise is not to honor but to desecrate the State's responsibility for protecting life.⁹

Given the degree to which the dispute in *Cruzan* involved the sacred value of human life, one is not immediately encouraged to find that this concept is central to *Life's Dominion*, in which Dworkin proposes to offer an escape from the overheated rhetoric of the abortion and euthanasia debates. At first, Dworkin's alternative analysis — replacing a debate over rights and interests with a discussion of the intrinsic value of life — seems merely to shift the terms of engagement without ending the war. Indeed, it is hard to believe that Dworkin seriously thought that his alternative would produce a new era of calm analysis and rational disagreement. Yet, however much *Life's Dominion* makes him seem like the Don Quixote of public policy, he has once again written an interesting book that is well worth reading for its arguments and insights about the importance of returning to the moral question — "What is life's intrinsic value?" — if not for the armistice it attempts to impose on the right-to-life/quality-of-life wars.¹⁰

I. ABORTION AND THE SACRED VALUE OF LIFE

Most of *Life's Dominion* is concerned with abortion, first in philosophical and then in constitutional law terms. Dworkin begins by demonstrating that even those who speak in right-to-life language — such as President Bush and Vice-President Quayle during the 1992 campaign — do not actually believe that a fertilized egg from the moment of conception is a person whose abortion would always be murder. As the polls show, most people would allow abortion in the case of rape or incest or severe fetal abnormalities;¹¹ this demonstrates that however much they value a fetus, they do not regard it as a child or other person. As Dworkin points out, even the Catholic Church has not always held its present position (p. 39). Moreover, the Catholic position is at odds with the writings of theologians such as Thomas

9. 497 U.S. at 356-57 (Stevens, J., dissenting).

10. I note, but leave for the reader to evaluate, Dworkin's claim that his position will be more likely to improve "the quality of public political argument" than the theories put forward by others because he connects theory and practice "from the inside out" — that is, by beginning with the practical problems of abortion and euthanasia and then asking "which general philosophical or theoretical issues we must confront in order to resolve those practical problems." Pp. 28-29. If Dworkin intends more than practical reasoning and induction, and if his metaphor that in reasoning from the inside out "theories are bespoke, made for the occasion, Savile Row not Seventh Avenue" (p. 29) describes his method more than simply his taste in clothes, then one may well doubt that others should give much credence to theories that are so individually tailored. Does that mean that these theories need not be consistently applied to other settings or meet other tests of integrity? See *infra* note 20.

11. 82% OK Abortion Under Some Circumstances, USA Today/CNN/Gallup, June 30, 1992, available in LEXIS, News library, Curnws file.

Aquinas, who grounded his theory of ensoulment on the Aristotelian notion of *hylomorphism*, or the idea that the human soul only exists in an identifiably human body, which by our present understanding would be one with a functioning neocortex — the organ required for spiritual activity, among other forms of conscious reflection, not functional until late in gestation (pp. 40-42).

Thus, Dworkin argues that the opponents of abortion have misdescribed the moral claim on which their opposition rests. He labels the conventional view the *derivative* objection to abortion “because it presupposes and is derived from rights and interests that it assumes all human beings, including fetuses, have” (p. 11). He believes, however, that the antiabortion position is better understood as being *detached* from any presupposed rights or interests and as resting instead on the claim

that human life has an intrinsic, innate value; that human life is sacred just in itself; and that the sacred nature of a human life begins when its biological life begins, even before the creature whose life it is has movement or sensation or interests or rights of its own. [p. 11]

Unlike the derivative view, framed in terms of rights and interests, the detached view leads not to conclusions about the claims that people can make on others for action or forbearance but instead to more impersonal conclusions about whether a particular action would fail to respect — or would “disregard and insult,” as Dworkin puts it (p. 11) — the intrinsic value of an entity.¹²

If conservatives have it wrong when they claim that abortion is immoral because it violates the fetus’s “right to life,” liberals also have it wrong in suggesting that all that is at issue is a woman’s right to control her body. Again, Dworkin suggests that once we set aside political rhetoric, we will see that feminists do not view abortion simply in terms of women’s rights (pp. 50-60). To illustrate his thesis, he examines the positions of leading feminists and finds ways in which their views are — or can be made to be — consistent with his thesis that the fetus is something of intrinsic importance, albeit not a rights-bearer.

For example, Catharine MacKinnon rejects *Roe v. Wade*’s right-to-privacy theory partly because it links pregnancy to other situations in which the more powerful one of two connected entities asserts a sovereign right to end the connection.¹³ Instead, MacKinnon articu-

12. Living human beings are not the only entities of value:

A beautiful sculpture can be smashed, and that would be a terrible insult to the intrinsic value that great works of art embody and also very much against the interests of people who take pleasure in seeing or studying them. But a sculpture has no interests of its own; a savage act of vandalism is not unfair to it.

Pp. 15-16.

13. Catharine A. MacKinnon, *Reflections on Sex Equality Under Law*, 100 YALE L.J. 1281, 1311-20 (1991).

lates the pregnant woman's perspective that the fetus "is both me and not me. It 'is' the pregnant woman in the sense that it is in her and of her and is hers more than anyone's. It 'is not' her in the sense that she is not all that is there."¹⁴ MacKinnon further contends that until men's sexual domination of women is replaced with true equality, fetuses must have lower status than women.¹⁵ MacKinnon frames that view, Dworkin argues, in terms of the fetus-as-person debate, but recast in light of his detached view of the fetus, it leads to the "arresting" conclusion "that the intrinsic importance of a new human life may well depend on the meaning and freedom of the act that created it" (p. 56).

Similarly, in the theories of another legal scholar, Robin West, Dworkin finds further affirmation for his contention that feminists support abortion, not as a manifestation of "a right to be left alone but often to strengthen their ties to others."¹⁶ Abortion thus involves a conflict among responsibilities, including acting responsibly toward the future child — not the existing fetus. A person thinking in these terms is not thinking of competing rights but of relationships among entities, each of whom has intrinsic value.

All of this seems sound and even helpful, at least analytically, albeit less novel than Dworkin makes it out to be.¹⁷ As Daniel Callahan pointed out several years ago, the continuing battle over *Roe* has meant that both sides have felt the need to harden their positions. As a result, they have failed to confront the moral issues of abortion in the way that we ought to address such important aspects of our lives.¹⁸ The proponents of women's choice feel particularly vulnerable; any admission that it is not always right to do what they say women have a right to do may appear to be an open invitation to opponents to restrict or revoke the right itself.

Yet, while Dworkin seems correct that neither side in the prolife-prochoice conflict really holds a pure "rights" perspective, it seems naive to the point of disingenuousness to suggest that both positions

14. *Id.* at 1316 (footnote omitted).

15. *Id.* at 1317.

16. Robin West, *The Supreme Court, 1989 Term — Foreword: Taking Freedom Seriously*, 104 HARV. L. REV. 43, 84-85 (1990) (footnote omitted).

17. *Life's Dominion's* 17 pages of footnotes (pp. 243-59) reveal that Dworkin has relied on a good deal of discussion in the academic legal literature as well as the popular media but show less familiarity with the discussion of the issues by lawyers, philosophers, and biomedical scientists in the bioethics literature, aside from chapter 8 (pp. 218-43), which apparently grew out of a paper that he wrote for a project on Alzheimer's disease for the Congressional Office of Technology Assessment. P. 222 n.12; see Ronald Dworkin, U.S. Congress, Office of Technology Assessment, *Philosophical Issues Concerning the Rights of Patients Suffering Serious Permanent Dementia* (1987), *microformed on* Philosophical, Legal, and Social Aspects of Surrogate Decisionmaking for Elderly Individuals, CIS No. OTAJ952-30 (Cong. Info. Serv.).

18. See Daniel Callahan, *An Ethical Challenge to Prochoice Advocates: Abortion & the Pluralistic Proposition*, 117 COMMONWEAL 681 (1990).

rest on the notion of the sacredness of life. In political — as opposed to moral or existential — terms, the net effect of Dworkin's clever argument is just to shift the terms of debate. No longer is the issue "Is the fetus a person, possessed of a right to life?" Instead, the question becomes "Does the sanctity of all human life stand in the way of abortion?"

One might think that proponents of choice would be most worried by this way of framing the issue. As the dissenting Justices in the *Cruzan* case make clear in their anger with the majority's reasoning,¹⁹ invocations of the sacredness of human life readily lead to limitations on individual choice in the name of the state's obligation to protect and preserve human life. Yet they need not fear, for in Dworkin's hands the result is to limit severely how far the state can go in enforcing any particular view of the sacredness of life.²⁰

II. ABORTION AND THE LAW

To translate respect for the intrinsic value of human life into law, Dworkin would permit states to take action geared toward maintaining "a moral environment in which decisions about life and death are taken seriously and treated as matters of moral gravity" (p. 168). Exactly how each individual actually weighs the sacredness of life in making decisions about such matters as abortion and euthanasia would, however, be beyond the reach of state regulation.

Dworkin believes that any imposition of an officially promulgated position on issues about the meaning of life is not only tyrannical but destructive of individual moral responsibility. Yet the community has in the past taken upon itself the enforcement of a single set of views. Although it is doubtful that most Americans would be comfortable allowing the government to treat as heresy views with which the majority disagrees, it is less obvious that a majority would reject some limitations on conduct that directly threatens human life. For example, as the Chief Justice noted in *Cruzan*, civilized societies everywhere

19. See *supra* notes 8-9 and accompanying text.

20. In reaching this conclusion, Dworkin first argues that Justice Blackmun basically got things right in *Roe v. Wade* insofar as the question at issue involves the "derivative" view that the fetus is endowed with the rights of a person. Pp. 104-11. Next, he takes on the conservative constitutional scholars who challenge the right to privacy as a judicial invention. In the process of arguing for a "constitution of principle" rather than the "constitution of detail" that he attributes to Justice Scalia and other conservative jurists, Dworkin subjects "enumerated rights" and "original intent" theories to withering critiques. Pp. 129-44. He ends — as readers of his 1986 book, *Law's Empire*, might anticipate — with the plea that the public dismiss further arguments framed in these terms about the suitability of judicial nominees or the soundness of judicial opinions and instead "seek genuine constraints [on judicial power] in the only place where they can be found: in good argument." P. 145. The fact that there is no universally accepted metric for identifying bad judicial decisions ought not to lead us to the critical conclusion that legal reasoning is a waste of time, because we can at least insist that judges "accept an independent and superior constraint of integrity in the decisions they make." P. 146.

treat murder as a serious offense.²¹ As Justice Scalia added in his concurrence, both the common law and the statutory law in this country have treated suicide as a crime — although it no longer is — and even private citizens' use of force to prevent suicide is privileged.²²

Thus, Dworkin faces at least two tasks: (i) to show that in furthering respect for the sanctity of life, the Constitution forbids states from outlawing the ending of the life of a human being — such as a fetus — who does not possess the full rights and interests of a person; and (ii) to convince those who now take a prolife view that, having accepted his reanalysis of their underlying premise — from right-to-life to sacredness-of-life — they must limit themselves to preachment and in the end must respect the choices made by people who understand very differently the limitations on human choices that are inherent in life's sacredness. He is more successful at the first than the second task, despite his optimism that reframing our political and constitutional debates in terms of sanctity of life not only better explains what is at stake but also allows for a greater degree of agreement.

To address the first task, Dworkin directs our attention not to the right to privacy but to the First Amendment's guarantees of religious liberty, which he sees as necessarily protecting "procreative autonomy" (p. 166). The Constitution does not protect all claims to free choice in the face of state regulations and restrictions, even when they involve things of great importance to people. However, some matters — such as reproduction — are so foundational and our conceptions of them are so vulnerable to the intrusive effects of state regulation that Dworkin argues they must be protected against the imposition by the state of a single view of life's intrinsic value. To do otherwise, he claims, would restrict what are essentially religious beliefs — recognizing that not all people would so identify this category of beliefs in their own systems of morality.²³

One problem for Dworkin's conception is to explain how we can distinguish the "existential question — does human life have any intrinsic or objective importance?" — from "more secular convictions about morality, fairness, and justice" (p. 156). One way to derive the answer is to reason backwards: if an essential responsibility of government is to decide how to reconcile our competing rights, then this

21. See *supra* note 7.

22. *Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 298 (1990) (Scalia, J., concurring).

23. As he notes later, his views on religious liberty are very close in substance to those expressed by the three "center" Justices in *Casey*. Pp. 171-76. The latter rested their opinion on the Due Process Clause instead, but like Dworkin they concluded that "[a]t the heart of liberty is the right to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life. Beliefs about these matters could not define the attributes of personhood were they formed under the compulsion of the State." *Planned Parenthood of Southeastern Pa. v. Casey*, 112 S. Ct. 2791, 2807 (1992).

must be a secular function, and the guarantees of religious liberty must not limit the state in exercising it. Conversely, there is no need for the state to take positions on the meaning of life; these matters are left to individual convictions under the First Amendment.

If Dworkin is correct, however, in concluding that questions that turn on the value of life are essentially religious because they rest on underlying beliefs about the normative value of the beings that embody life — as endowed by the Creator, or as a result of a natural order, or whatever — and if he is correct that decisions closely tied to religious matters of this sort are protected against state dictates, he is then left with several problems. First, the question of regulation and prohibition: May the state regulate abortion — for example, effectively prohibiting it late in pregnancy? Second, the question of education and advocacy: Should the state be permitted to attempt to influence women to choose not to abort?

To the former question Dworkin replies that a state can justify limitations on abortion after viability because the insult to the sanctity of life increases as the fetus develops and because most women know about their pregnancies from an early point, so that a woman waiting until late in term to abort demonstrates an indifference to the cultural sense of the greater wrong in destroying a more developed fetus — an indifference against which society has a right to protect itself. Furthermore, around the time of viability the brain of the fetus is sufficiently developed that the fetus, though not a person in the constitutional sense, “might then sensibly be said to have interests of its own” (p. 169). The state may protect those interests so long as it does so in a way that respects the rights of constitutional persons (p. 169).

As to the second question, Dworkin is comfortable with the line set out in *Casey*, that is, that the state may be an advocate for fetal life provided that in doing so it does not create an “undue burden” by posing “substantial obstacles” to the choice.²⁴ Of course, reasonable people will disagree about when the state reaches the point of “undue burden,” but interventions aimed at promoting thoughtful deliberation — as opposed to those that merely inconvenience or obstruct a woman’s choice — may well be consistent with respect for women as individual judges of life’s value, each by her own lights. Surely, however, even if the state were to limit itself to urging women to appreciate the gravity of their decisions, some people would be as offended by this official preachment as they would be by the “establishment” of any other view that they would regard as essentially religious — as, in effect, Dworkin has admitted all views about the sanctity or intrinsic value of life to be. By this point, Dworkin is skating along at an

24. 112 S. Ct. at 2820.

Olympic clip, but the ice supporting him seems to have become awfully thin.

III. EUTHANASIA

In the nearly twenty years since the New Jersey Supreme Court handed down its landmark decision in *In re Quinlan*,²⁵ courts have widely adopted the view that competent patients have the right to refuse any medical care, including life-sustaining interventions such as respirators and feeding tubes.²⁶ In *Cruzan* a majority of the Justices recognized that the Constitution guaranteed such a liberty interest to each person.²⁷ Further, under the common law and under statutes adopted in most states, a person while competent may prepare an "advance directive" that either gives instructions about the extent of life support she wants under specified circumstances — such as "a terminal condition" — or names an agent who is authorized to make treatment decisions if the patient becomes unable to do so, or both.²⁸ Finally, most but not all jurisdictions allow a court-appointed guardian or an incompetent patient's family or close friends to make treatment decisions in the absence of an advance directive or comparable oral instructions. Such a decision by a "surrogate" may be either a "substitute judgment," based fairly closely on the known values and preferences of the patient, or, in the absence of sufficient information, a determination of what the surrogate believes would be in the "best interests" of the patient, given his or her prospects for survival, improvement, and recovery and the burden that the process would impose — in terms of dignity as well as financial cost and physical pain — on the patient.²⁹

To these two hallmarks of the end-of-life cases that are personal to the patient — autonomy and best interests — Dworkin adds a third, impersonal factor: the sacred value of life (p. 194). As noted at the outset,³⁰ for some people the clear implication of this value is that it is permissible for the state to insist on prolonging a patient's physical

25. 355 A.2d 647 (N.J.), *cert. denied*, 429 U.S. 922 (1976).

26. *See, e.g., Cruzan v. Director, Mo. Dept. of Health*, 497 U.S. 261, 271-77 (1990) (citing cases supporting the right to refuse medical care).

27. 497 U.S. at 278-79.

28. *See, e.g., COORDINATING COUNCIL ON LIFE-SUSTAINING MEDICAL TREATMENT DECISION MAKING BY THE COURTS, GUIDELINES FOR STATE COURT DECISION MAKING IN LIFE-SUSTAINING MEDICAL TREATMENT CASES* app. E (2d ed. 1993) (listing and analyzing state statutes).

29. *See, e.g., In re Conservatorship of Drabick*, 245 Cal. Rptr. 840 (Ct. App.), *cert. denied*, 488 U.S. 958 (1988); *Barber v. Superior Court*, 195 Cal. Rptr. 484 (Ct. App. 1983); *In re Guardianship of Browning*, 568 So. 2d 4 (Fla. 1990); *John F. Kennedy Memorial Hosp., Inc. v. Bludworth*, 452 So. 2d 921 (Fla. 1984); *Brophy v. New Eng. Sinai Hosp., Inc.*, 497 N.E.2d 626 (Mass. 1986); *In re Conroy*, 486 A.2d 1209 (N.J. 1985); *In re Quinlan*, 355 A.2d 647 (N.J.), *cert. denied*, 429 U.S. 922 (1976).

30. *See supra* notes 5-7 and accompanying text.

existence even when it might not be in that patient's best interests. The Court in *Cruzan* upheld a state's authority to do so, in the absence of clear and convincing evidence that the patient would have wanted treatment to cease under the circumstances.³¹ As we have seen in Dworkin's use of the idea of the sacred value of life in the abortion context, however, *Life's Dominion* does not support such a simplistic use of the notion that life has intrinsic worth. Indeed, in his final two chapters Dworkin's major objective seems to be linking the concept of the sanctity of life that he developed in the abortion context to the existing decisional tools — autonomy and best interests.³²

The analysis in these chapters on critically ill and demented patients is serviceable, albeit much less novel than the earlier material. Many thoughtful writers have in recent years addressed the problems of decisionmaking by and for dying, demented, and comatose patients — when, for example, the present “best interests” of a patient ought to override his or her “autonomous” wishes, whether currently or previously expressed, or to what extent physicians have an obligation to provide or withhold care when doing so conflicts with their professional or personal values.³³ Dworkin would have greatly enriched the discussion had he grappled with contemporary thinking about the place of health and pain in human life and the roles of physicians and others in health care. His philosophical musings on the role played by surrogates — especially when they claim to be able to make a substituted judgment based on what they think an incompetent patient would choose — take no account of studies that suggest that surrogates — and physicians — do not do a very accurate job of making such predictions.³⁴

Life's Dominion delves less deeply into euthanasia than abortion; Dworkin is content to set forth a philosophical analysis in this area without exploring its legislative or constitutional details. “None of us wants to end our lives out of character,” he concludes (p. 213). Thus, in assessing a person's autonomous choices or in calculating his best

31. *Cruzan*, 497 U.S. at 285 (1990).

32. In his final chapter, “Life Past Reason,” in which Dworkin deals with decisionmaking for and about demented patients with special reference to Alzheimer's Disease, he shifts to using the terms *autonomy*, *beneficence*, and *dignity*. Pp. 218-41. The discussion is a useful elaboration on the earlier examination of these issues and their relationship to the sanctity of life, but the chapter is the least well integrated into the central thesis of the rest of the book.

33. See, e.g., DANIEL CALLAHAN, *THE TROUBLED DREAM OF LIFE* (1993); DANIEL CALLAHAN, *WHAT KIND OF LIFE: THE LIMITS OF MEDICAL PROGRESS* (1990); ERIC J. CASSELL, *THE NATURE OF SUFFERING AND THE GOALS OF MEDICINE* (1991); LEON R. KASS, *TOWARD A MORE NATURAL SCIENCE: BIOLOGY AND HUMAN AFFAIRS* (1985).

34. Richard F. Uhlmann et al., *Understanding of Elderly Patients' Resuscitation Preferences by Physicians and Nurses*, 150 W.J. MED. 705 (1989); Richard F. Uhlmann et al., *Physicians' and Spouses' Predictions of Elderly Patients' Resuscitation Preferences*, 43 J. GERONTOLOGY M115 (1988); Nancy R. Zweibel & Christine K. Cassel, *Treatment Choices at the End of Life: A Comparison of Decisions by Older Patients and Their Physician-selected Proxies*, 29 GERONTOLOGIST 615 (1989).

interests, society should recognize that the sanctity of human life means more than its mere biological continuation — what Dworkin terms “the natural investment” (p. 214). Sanctity also means the *human* investment, what an individual regards as his critical interests, or those things that make up a good life — and hence also a good death. This is a more eloquent and fully elaborated version of the views expressed by Justices Brennan and Stevens in their dissents in *Cruzan*.³⁵

Because Dworkin eschews wrestling with the “difficult and important administrative questions” (p. 216), he does not get beyond showing that the Chief Justice’s opinion failed to distinguish clearly the distinct values of autonomy, best interests, and sanctity of life and, by implication, badly misunderstood the last of these. It is thus opaque whether Dworkin intends his bold conclusion — that respect for the sanctity of life counsels in favor of active euthanasia and assisted suicide in certain cases — to lend support to efforts to legalize physician participation in these practices or merely to be a philosophical argument. This seems to me regrettable, as some of the most telling arguments against legalization come from commentators such as Yale Kamisar who weigh concerns other than those that Dworkin termed religious in his analysis of abortion.³⁶ My own sense is that the risks to the very values Dworkin identifies with the human investment in life are such that society may forbid certain forms of killing, especially by medical personnel, even when carried out at the request of, or to further the best interests of, seriously ill patients, and that doing so does not amount to the “devastating, odious form of tyranny” (p. 217) that Dworkin correctly implies would offend any civilized society, especially one with a formal bill of rights such as ours.

IV. THE VALUE OF LIFE

Dworkin’s treatment of the issues at the end of life is briefer, I suppose, because it is less difficult to convince people of his central claim, that is, that the value or worth of human life comes not from mere biological functioning but from how the person living it conceives of his critical interests and lives his life to manifest and achieve those interests. Although Dworkin argues for what he terms the detached view of the intrinsic value of life, in the case of a patient who is or once was a competent adult — or perhaps even a child of an age of reason — this detached view usually coincides with the derivative view, namely that value flows from respect for the individual’s rights and interests.

When discussing abortion, in contrast, *Life’s Dominion* faces a

35. See *supra* notes 8-9 and accompanying text.

36. Yale Kamisar, *Some Non-Religious Views Against Proposed “Mercy-killing” Legislation*, 42 MINN. L. REV. 969 (1958).

harder challenge because the intrinsic value of life is more dependent on the natural investment in that life, the human dimension being still absent. It is thus a mark of the book's success on an analytic level that it builds such a strong and relatively novel claim for the effect of the sanctity of life on abortion law and practice. Yet, at the same time, the very effectiveness of Dworkin's argument probably makes futile his professed ambition to bring prolife advocates to the table with their prochoice counterparts for a harmonious discussion carried out with common terminology. Nonetheless, any reminder of the human meaning of our precious lives and any encouragement to reflect on how one should go about living well that is as lucid as *Life's Dominion* deserves our applause.