The BOISI CENTER for
RELIGION and AMERICAN PUBLIC LIFE

Symposium on Religion and Politics

Liberty and the Body

24 QUINCY ROAD, CHESTNUT HILL, MASSACHUSETTS 02467
TEL: 617.552.1861 FAX: 617.552.1863 EMAIL: PUBLIFE@BC.EDU WEB: WWW.BC.EDU/BOISI

BOSTON COLLEGE

BOISI CENTER
FOR RELIGION AND AMERICAN PUBLIC LIFE

Symposium on Religion and Politics

Liberty and the Body

Table of Contents:

Planned Parenthood v. Casey, majority opinion (1992) 1

Planned Parenthood v. Casey, dissent (1992) 9

Washington v. Glucksberg, majority opinion (1997) 15

24 QUINCY ROAD, CHESTNUT HILL, MASSACHUSETTS 02467
TEL: 617.552.1861 FAX: 617.552.1863 EMAIL: PUBLIFE@BC.EDU WEB: WWW.BC.EDU/BOISI

PLANNED PARENTHOOD OF SOUTHEASTERN PA. v. CASEY, 505 U.S. 833 (1992)

505 U.S. 833

PLANNED PARENTHOOD OF SOUTHEASTERN PENNSYLVANIA, ET AL. v. CASEY, GOVERNOR OF PENNSYLVANIA, ET AL., CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT Nos. 91-744
Argued April 22, 1992
**Decided June 29, 1992 * **

. . . .

II

Constitutional protection of the woman's decision to terminate her pregnancy derives from the Due Process Clause of the Fourteenth Amendment. It declares that no State shall "deprive any person of life, liberty, or property, without due process of law." The controlling word in the cases before us is "liberty." Although a literal reading of the Clause might suggest that it governs only the procedures by which a State may deprive persons of liberty, for at least 105 years, since Mugler v. Kansas, 123 U.S. 623, 660 -661 (1887), the Clause has been understood to contain a substantive component as well, one "barring certain government actions regardless of the fairness of the procedures used to implement them." Daniels v. Williams, 474 U.S. 327, 331 (1986). As Justice Brandeis (joined by Justice Holmes) observed, [d]espite arguments to the contrary which had seemed to me persuasive, it is settled that the due process clause of the Fourteenth [505 U.S. 833, 847] Amendment applies to matters of substantive law as well as to matters of procedure. Thus all fundamental rights comprised within the term liberty are protected by the Federal Constitution from invasion by the States. Whitney v. California, 274 U.S. 357, 373 (1927) (concurring opinion). [T]he guaranties of due process, though having their roots in Magna Carta's "per legem terrae" and considered as procedural safeguards "against executive usurpation and tyranny," have in this country "become bulwarks also against arbitrary legislation." Poe v. Ullman, 367 U.S. 497, 541 (1961) (Harlan, J., dissenting from dismissal on jurisdictional grounds) (quoting Hurtado v. California, 110 U.S. 516, 532 (1884)).

The most familiar of the substantive liberties protected by the Fourteenth Amendment are those recognized by the Bill of Rights. We have held that the Due Process Clause of the Fourteenth Amendment incorporates most of the Bill of Rights against the States. See, e.g., Duncan v. Louisiana, 391 U.S. 145, 147 -148 (1968). It is tempting, as a means of curbing the discretion of federal judges, to suppose that liberty encompasses no more than those rights already guaranteed to the individual against federal interference by the express provisions of the first eight amendments to the Constitution. See Adamson v. California, 332 U.S. 46, 68 -92 (1947) (Black, J., dissenting). But of course this Court has never accepted that view.

It is also tempting, for the same reason, to suppose that the Due Process Clause protects only those practices, defined at the most specific level, that were protected against government interference by other rules of law when the Fourteenth Amendment was ratified. See Michael H. v. Gerald D., 491 U.S. 110, 127 -128, n. 6 (1989) (opinion of SCALIA, J.). But such a view would be inconsistent with our law. It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter. We have vindicated this principle before. Marriage is mentioned nowhere in the Bill of Rights, and interracial marriage was illegal [505 U.S. 833, 848] in most States in the 19th century, but the Court was no doubt correct in finding it to be an aspect of liberty protected against state interference by the substantive component of the Due Process Clause in Loving v. Virginia, 388 U.S. 1, 12 (1967) (relying, in an opinion for eight Justices, on the Due Process Clause). Similar examples may be found in Turner v. Safley, 482 U.S. 78, 94 -99 (1987); in Carey v. Population Services International, 431 U.S. 678, 684 -686 (1977); in Griswold v. Connecticut, 381 U.S. 479, 481 -482 (1965), as well as in the separate opinions of a majority of the Members of the Court in that case, id. at 486-488 (Goldberg, J., joined by Warren, C.J., and Brennan, J., concurring) (expressly relying on due process), id. at 500-502 (Harlan, J., concurring in judgment) (same), id. at 502-507, (WHITE, J., concurring in judgment) (same); in Pierce v. Society of Sisters, 268 U.S. 510, 534 -535 (1925); and in Meyer v. Nebraska, 262 U.S. 390, 399 -403 (1923).

Neither the Bill of Rights nor the specific practices of States at the time of the adoption of the Fourteenth Amendment marks the outer limits of the substantive sphere of liberty which the Fourteenth Amendment protects. See U.S. Const., Amdt. 9. As the second Justice Harlan recognized:

[T]he full scope of the liberty guaranteed by the Due Process Clause cannot be found in or limited by the precise terms of the specific guarantees elsewhere provided in the Constitution. This "liberty" is not a series of isolated points pricked out in terms of the taking of property; the freedom of speech, press, and religion; the right to keep and bear arms; the freedom from unreasonable searches and seizures; and so on. It is a rational continuum which, broadly speaking, includes a freedom from all substantial arbitrary impositions and purposeless restraints, . . . and which also recognizes, what a reasonable and sensitive judgment must, that certain interests require particularly careful scrutiny of the state needs asserted to justify their abridgment. Poe v. [505 U.S. 833, 849] Ullman, supra, 367 U.S., at 543 (dissenting from dismissal on jurisdictional grounds).

Justice Harlan wrote these words in addressing an issue the full Court did not reach in Poe v. Ullman, but the Court adopted his position four Terms later in Griswold v. Connecticut, supra. In Griswold, we held that the Constitution does not permit a State to forbid a married couple to use contraceptives. That same freedom was later guaranteed, under the Equal Protection Clause, for unmarried couples. See Eisenstadt v. Baird, 405 U.S. 438 (1972). Constitutional protection was extended to the sale and distribution of contraceptives in Carey v. Population Services International, supra. It is settled now, as it was when the Court heard arguments in Roe v. Wade, that the Constitution places limits on a State's right to interfere with a person's most basic

decisions about family and parenthood, see Carey v. Population Services International, supra; Moore v. East Cleveland, 431 U.S. 494 (1977); Eisenstadt v. Baird, supra; Loving v. Virginia, supra; Griswold v. Connecticut, supra; Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942); Pierce v. Society of Sisters, supra; Meyer v. Nebraska, supra, as well as bodily integrity, see, e.g., Washington v. Harper, 494 U.S. 210, 221 -222 (1990); Winston v. Lee, 470 U.S. 753 (1985); Rochin v. California, 342 U.S. 165 (1952).

The inescapable fact is that adjudication of substantive due process claims may call upon the Court in interpreting the Constitution to exercise that same capacity which, by tradition, courts always have exercised: reasoned judgment. Its boundaries are not susceptible of expression as a simple rule. That does not mean we are free to invalidate state policy choices with which we disagree; yet neither does it permit us to shrink from the duties of our office. As Justice Harlan observed:

- "Due process has not been reduced to any formula; its content cannot be determined by reference to any code. [505 U.S. 833, 850] The best that can be said is that, through the course of this Court's decisions, it has represented the balance which our Nation, built upon postulates of respect for the liberty of the individual, has struck between that liberty and the demands of organized society. If the supplying of content to this Constitutional concept has, of necessity, been a rational process, it certainly has not been one where judges have felt free to roam where unguided speculation might take them. The balance of which I speak is the balance struck by this country, having regard to what history teaches are the traditions from which it developed as well as the traditions from which it broke. That tradition is a living thing. A decision of this Court which radically departs from it could not long survive, while a decision which builds on what has survived is likely to be sound. No formula could serve as a substitute, in this area, for judgment and restraint." Poe v. Ullman, 367 U.S., at 542 (dissenting from dismissal on jurisdictional grounds).

See also Rochin v. California, supra, at 171-172 (Frankfurter, J., writing for the Court) ("To believe that this judicial exercise of judgment could be avoided by freezing `due process of law' at some fixed stage of time or thought is to suggest that the most important aspect of constitutional adjudication is a function for inanimate machines, and not for judges").

Men and women of good conscience can disagree, and we suppose some always shall disagree, about the profound moral and spiritual implications of terminating a pregnancy, even in its earliest stage. Some of us as individuals find abortion offensive to our most basic principles of morality, but that cannot control our decision. Our obligation is to define the liberty of all, not to mandate our own moral code. The underlying constitutional issue is whether the State can resolve these philosophic questions in such a definitive way that a woman lacks all choice in the matter, except perhaps [505 U.S. 833, 851] in those rare circumstances in which the pregnancy is itself a danger to her own life or health, or is the result of rape or incest.

It is conventional constitutional doctrine that, where reasonable people disagree, the government can adopt one position or the other. See, e.g., Ferguson v. Skrupa, 372 U.S. 726 (1963); Williamson v. Lee Optical of Okla., Inc., 348 U.S. 483 (1955). That theorem, however, assumes a state of affairs in which the choice does not intrude upon a protected liberty. Thus, while some people might disagree about whether or not the flag should be saluted, or disagree about the proposition that it may not be defiled, we have ruled that a State may not compel or enforce one view or the other. See West Virginia Bd. of Ed. v. Barnette, 319 U.S. 624 (1943); Texas v. Johnson, 491 U.S. 397 (1989).

Our law affords constitutional protection to personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education. Carey v. Population Services International, 431 U.S., at 685 . Our cases recognize the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child. Eisenstadt v. Baird, supra, 405 U.S., at 453 (emphasis in original). Our precedents "have respected the private realm of family life which the state cannot enter." Prince v. Massachusetts, 321 U.S. 158, 166 (1944). These matters, involving the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy, are central to the liberty protected by the Fourteenth Amendment. At 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 compulsion of the State. [505 U.S. 833, 852]

These considerations begin our analysis of the woman's interest in terminating her pregnancy, but cannot end it, for this reason: though the abortion decision may originate within the zone of conscience and belief, it is more than a philosophic exercise. Abortion is a unique act. It is an act fraught with consequences for others: for the woman who must live with the implications of her decision; for the persons who perform and assist in the procedure; for the spouse, family, and society which must confront the knowledge that these procedures exist, procedures some deem nothing short of an act of violence against innocent human life; and, depending on one's beliefs, for the life or potential life that is aborted. Though abortion is conduct, it does not follow that the State is entitled to proscribe it in all instances. That is because the liberty of the woman is at stake in a sense unique to the human condition, and so, unique to the law. The mother who carries a child to full term is subject to anxieties, to physical constraints, to pain that only she must bear. That these sacrifices have from the beginning of the human race been endured by woman with a pride that ennobles her in the eyes of others and gives to the infant a bond of love cannot alone be grounds for the State to insist she make the sacrifice. Her suffering is too intimate and personal for the State to insist, without more, upon its own vision of the woman's role, however dominant that vision has been in the course of our history and our culture. The destiny of the woman must be shaped to a large extent on her own conception of her spiritual imperatives and her place in society.

It should be recognized, moreover, that in some critical respects, the abortion decision is of the same character as the decision to use contraception, to which Griswold v. Connecticut, Eisenstadt

v. Baird, and Carey v. Population Services International afford constitutional protection. We have no doubt as to the correctness of those decisions. They support [505 U.S. 833, 853] the reasoning in Roe relating to the woman's liberty, because they involve personal decisions concerning not only the meaning of procreation but also human responsibility and respect for it. As with abortion, reasonable people will have differences of opinion about these matters. One view is based on such reverence for the wonder of creation that any pregnancy ought to be welcomed and carried to full term, no matter how difficult it will be to provide for the child and ensure its wellbeing. Another is that the inability to provide for the nurture and care of the infant is a cruelty to the child and an anguish to the parent. These are intimate views with infinite variations, and their deep, personal character underlay our decisions in Griswold, Eisenstadt, and Carey. The same concerns are present when the woman confronts the reality that, perhaps despite her attempts to avoid it, she has become pregnant.

It was this dimension of personal liberty that Roe sought to protect, and its holding invoked the reasoning and the tradition of the precedents we have discussed, granting protection to substantive liberties of the person. Roe was, of course, an extension of those cases and, as the decision itself indicated, the separate States could act in some degree to further their own legitimate interests in protecting prenatal life. The extent to which the legislatures of the States might act to outweigh the interests of the woman in choosing to terminate her pregnancy was a subject of debate both in Roe itself and in decisions following it.

While we appreciate the weight of the arguments made on behalf of the State in the cases before us, arguments which in their ultimate formulation conclude that Roe should be overruled, the reservations any of us may have in reaffirming the central holding of Roe are outweighed by the explication of individual liberty we have given, combined with the force of stare decisis. We turn now to that doctrine. [505 U.S. 833, 854]

. . . **III.A** . . .

5

The sum of the precedential enquiry to this point shows Roe's underpinnings unweakened in any way affecting its central holding. While it has engendered disapproval, it has not been unworkable. An entire generation has come of age free to assume Roe's concept of liberty in defining the capacity of women to act in society, and to make reproductive decisions; no erosion of principle going to liberty or personal autonomy has left Roe's central holding a doctrinal remnant; [505 U.S. 833, 861] Roe portends no developments at odds with other precedent for the analysis of personal liberty; and no changes of fact have rendered viability more or less appropriate as the point at which the balance of interests tips. Within the bounds of normal stare decisis analysis, then, and subject to the considerations on which it customarily turns, the stronger argument is for affirming Roe's central holding, with whatever degree of personal reluctance any of us may have, not for overruling it.

. . .

III. C

The examination of the conditions justifying the repudiation of Adkins by West Coast Hotel and Plessy by Brown is enough to suggest the terrible price that would have been paid if the Court had not overruled as it did. In the present cases, however, as our analysis to this point makes clear, the terrible price would be paid for overruling. Our analysis [505 U.S. 833, 865] would not be complete, however, without explaining why overruling Roe's central holding would not only reach an unjustifiable result under principles of stare decisis, but would seriously weaken the Court's capacity to exercise the judicial power and to function as the Supreme Court of a Nation dedicated to the rule of law. To understand why this would be so, it is necessary to understand the source of this Court's authority, the conditions necessary for its preservation, and its relationship to the country's understanding of itself as a constitutional Republic.

The root of American governmental power is revealed most clearly in the instance of the power conferred by the Constitution upon the Judiciary of the United States, and specifically upon this Court. As Americans of each succeeding generation are rightly told, the Court cannot buy support for its decisions by spending money, and, except to a minor degree, it cannot independently coerce obedience to its decrees. The Court's power lies, rather, in its legitimacy, a product of substance and perception that shows itself in the people's acceptance of the Judiciary as fit to determine what the Nation's law means, and to declare what it demands.

The underlying substance of this legitimacy is of course the warrant for the Court's decisions in the Constitution and the lesser sources of legal principle on which the Court draws. That substance is expressed in the Court's opinions, and our contemporary understanding is such that a decision without principled justification would be no judicial act at all. But even when justification is furnished by apposite legal principle, something more is required. Because not every conscientious claim of principled justification will be accepted as such, the justification claimed must be beyond dispute. The Court must take care to speak and act in ways that allow people to accept its decisions on the terms the Court claims for them, as grounded truly in principle, not as compromises with social and political pressures having, as such, no bearing on the principled choices that the Court is [505 U.S. 833, 866] obliged to make. Thus, the Court's legitimacy depends on making legally principled decisions under circumstances in which their principled character is sufficiently plausible to be accepted by the Nation. . . .

It is true that diminished legitimacy may be restored, but only slowly. Unlike the political branches, a Court thus weakened could not seek to regain its position with a new mandate from the voters, and even if the Court could somehow go to the polls, the loss of its principled character could not be retrieved by the casting of so many votes. Like the character of an individual, the legitimacy of the Court must be earned over time. So, indeed, must be the character of a Nation of people who aspire to live according to the rule of law. Their belief in themselves as such a people is not readily separable from their understanding of the Court invested with the authority to decide their constitutional cases and speak before all others for

their constitutional ideals. If the Court's legitimacy should be undermined, then, so would the country be in its very ability to see itself through its constitutional ideals. The Court's concern with legitimacy is not for the sake of the Court, but for the sake of the Nation to which it is responsible.

The Court's duty in the present case is clear. In 1973, it confronted the already-divisive issue of governmental power [505 U.S. 833, 869] to limit personal choice to undergo abortion, for which it provided a new resolution based on the due process guaranteed by the Fourteenth Amendment. Whether or not a new social consensus is developing on that issue, its divisiveness is no less today than in 1973, and pressure to overrule the decision, like pressure to retain it, has grown only more intense. A decision to overrule Roe's essential holding under the existing circumstances would address error, if error there was, at the cost of both profound and unnecessary damage to the Court's legitimacy, and to the Nation's commitment to the rule of law. It is therefore imperative to adhere to the essence of Roe's original decision, and we do so today.

IV

From what we have said so far, it follows that it is a constitutional liberty of the woman to have some freedom to terminate her pregnancy. We conclude that the basic decision in Roe was based on a constitutional analysis which we cannot now repudiate. The woman's liberty is not so unlimited, however, that, from the outset, the State cannot show its concern for the life of the unborn and, at a later point in fetal development, the State's interest in life has sufficient force so that the right of the woman to terminate the pregnancy can be restricted.

That brings us, of course, to the point where much criticism has been directed at Roe, a criticism that always inheres when the Court draws a specific rule from what in the Constitution is but a general standard. We conclude, however, that the urgent claims of the woman to retain the ultimate control over her destiny and her body, claims implicit in the meaning of liberty, require us to perform that function. Liberty must not be extinguished for want of a line that is clear. And it falls to us to give some real substance to the woman's liberty to determine whether to carry her pregnancy to full term. [505 U.S. 833, 870]

We conclude the line should be drawn at viability, so that, before that time, the woman has a right to choose to terminate her pregnancy. We adhere to this principle for two reasons. First, as we have said, is the doctrine of stare decisis. Any judicial act of line-drawing may seem somewhat arbitrary, but Roe was a reasoned statement, elaborated with great care. We have twice reaffirmed it in the face of great opposition. See Thornburgh v. American College of Obstetricians and Gynecologists, 476 U.S., at 759 ; Akron I, 462 U.S., at 419 -420. Although we must overrule those parts of Thornburgh and Akron I which, in our view, are inconsistent with Roe's statement that the State has a legitimate interest in promoting the life or potential life of the unborn, see infra, at 40-41, the central premise of those cases represents an unbroken commitment by this Court to the essential holding of Roe. It is that premise which we reaffirm today.

The second reason is that the concept of viability, as we noted in Roe, is the time at which there is a realistic possibility of maintaining and nourishing a life outside the womb, so that the independent existence of the second life can, in reason and all fairness, be the object of state protection that now overrides the rights of the woman. See Roe v. Wade, 410 U.S., at 163 . Consistent with other constitutional norms, legislatures may draw lines which appear arbitrary without the necessity of offering a justification. But courts may not. We must justify the lines we draw. And there is no line other than viability which is more workable. To be sure, as we have said, there may be some medical developments that affect the precise point of viability, see supra, at 17-18, but this is an imprecision within tolerable limits, given that the medical community and all those who must apply its discoveries will continue to explore the matter. The viability line also has, as a practical matter, an element of fairness. In some broad sense, it might be said that a woman who fails to act before viability has consented to the State's intervention on behalf of the developing child. [505 U.S. 833, 871]

The woman's right to terminate her pregnancy before viability is the most central principle of Roe v. Wade. It is a rule of law and a component of liberty we cannot renounce.

On the other side of the equation is the interest of the State in the protection of potential life. The Roe Court recognized the State's "important and legitimate interest in protecting the potentiality of human life." Roe, supra, at 162. The weight to be given this state interest, not the strength of the woman's interest, was the difficult question faced in Roe. We do not need to say whether each of us, had we been Members of the Court when the valuation of the state interest came before it as an original matter, would have concluded, as the Roe Court did, that its weight is insufficient to justify a ban on abortions prior to viability even when it is subject to certain exceptions. The matter is not before us in the first instance, and, coming as it does after nearly 20 years of litigation in Roe's wake we are satisfied that the immediate question is not the soundness of Roe's resolution of the issue, but the precedential force that must be accorded to its holding. And we have concluded that the essential holding of Roe should be reaffirmed. . . .

JUSTICE SCALIA, with whom THE CHIEF JUSTICE, JUSTICE WHITE, and JUSTICE THOMAS join, concurring in the judgment in part and dissenting in part.

My views on this matter are unchanged from those I set forth in my separate opinions in Webster v. Reproductive Health Services, 492 U.S. 490, 532 (1989) (opinion concurring in part and concurring in judgment), and Ohio v. Akron Center for Reproductive Health, 497 U.S. 502, 520 (1990) (Akron II) (concurring opinion). The States may, if they wish, permit abortion on demand, but the Constitution does not require them to do so. The permissibility of abortion, and the limitations upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting. As the Court acknowledges, "where reasonable people disagree, the government can adopt one position or the other." Ante, at 851. The Court is correct in adding the qualification that this "assumes a state of affairs in which the choice does not intrude upon a protected liberty," ibid., - but the crucial part of that qualification [505 U.S. 833, 980] is the penultimate word. A State's choice between two positions on which reasonable people can disagree is constitutional even when (as is often the case) it intrudes upon a "liberty" in the absolute sense. Laws against bigamy, for example - with which entire societies of reasonable people disagree - intrude upon men and women's liberty to marry and live with one another. But bigamy happens not to be a liberty specially "protected" by the Constitution.

That is, quite simply, the issue in this case: not whether the power of a woman to abort her unborn child is a "liberty" in the absolute sense; or even whether it is a liberty of great importance to many women. Of course it is both. The issue is whether it is a liberty protected by the Constitution of the United States. I am sure it is not. I reach that conclusion not because of anything so exalted as my views concerning the "concept of existence, of meaning, of the universe, and of the mystery of human life." Ibid. Rather, I reach it for the same reason I reach the conclusion that bigamy is not constitutionally protected - because of two simple facts: (1) the Constitution says absolutely nothing about it, and (2) the longstanding traditions of American society have permitted it to be legally proscribed. 1 Akron II, supra, at 520 (SCALIA, J., concurring). [505 U.S. 833, 981]

The Court destroys the proposition, evidently meant to represent my position, that "liberty" includes only those practices, defined at the most specific level, that were protected against government interference by other rules of law when the Fourteenth Amendment was ratified, ante, at 847 (citing Michael H. v. Gerald D., 491 U.S. 110, 127 , n. 6 (1989) (opinion of SCALIA, J.). That is not, however, what Michael H. says; it merely observes that, in defining "liberty," we may not disregard a specific, "relevant tradition protecting, or denying protection to, the asserted right," Ibid. But the Court does not wish to be fettered by any such limitations on its preferences. The Court's statement that it is "tempting" to acknowledge the authoritativeness of tradition in order to "cur[b] the discretion of federal judges," ante, at 847, is, of course, rhetoric rather than reality; no government official is "tempted" to place restraints upon his own freedom of action, which is why Lord Acton did not say "Power tends to purify." The Court's temptation is in the quite opposite and more natural direction - towards systematically eliminating checks upon its own power; and it succumbs.

Beyond that brief summary of the essence of my position, I will not swell the United States Reports with repetition of what I have said before; and applying the rational basis test, I would uphold the Pennsylvania statute in its entirety. I must, however, respond to a few of the more outrageous arguments in today's opinion, which it is beyond human nature to leave unanswered. I shall discuss each of them under a quotation from the Court's opinion to which they pertain.

- "The inescapable fact is that adjudication of substantive due process claims may call upon the Court, [505 U.S. 833, 982] in interpreting the Constitution, to exercise that same capacity which, by tradition, courts always have exercised: reasoned judgment". Ante, at 849.

Assuming that the question before us is to be resolved at such a level of philosophical abstraction, in such isolation from the traditions of American society, as by simply applying "reasoned judgment," I do not see how that could possibly have produced the answer the Court arrived at in Roe v. Wade, 410 U.S. 113 (1973). Today's opinion describes the methodology of Roe, quite accurately, as weighing against the woman's interest the State's "`important and legitimate interest in protecting the potentiality of human life.'" Ante, at 871 (quoting Roe, supra, at 162). But "reasoned judgment" does not begin by begging the question, as Roe and subsequent cases unquestionably did by assuming that what the State is protecting is the mere "potentiality of human life." See, e.g., Roe, supra, at 162; Planned Parenthood of Central Mo. v. Danforth, 428 U.S. 52, 61 (1976); Colautti v. Franklin, 439 U.S. 379, 386 (1979); Akron v. Akron Center for Reproductive Health, Inc., 462 U.S. 416, 428 (1983) (Akron I); Planned Parenthood Assn. of Kansas City, Mo., Inc. v. Ashcroft, 462 U.S. 476, 482 (1983). The whole argument of abortion opponents is that what the Court calls the fetus and what others call the unborn child is a human life. Thus, whatever answer Roe came up with after conducting its "balancing" is bound to be wrong, unless it is correct that the human fetus is in some critical sense merely potentially human. There is, of course, no way to determine that as a legal matter; it is, in fact, a value judgment. Some societies have considered newborn children not yet human, or the incompetent elderly no longer so.

The authors of the joint opinion, of course, do not squarely contend that Roe v. Wade was a correct application of "reasoned judgment"; merely that it must be followed, because of stare decisis. Ante, at 853, 861, 871. But in their exhaustive discussion of all the factors that go into the determination [505 U.S. 833, 983] of when stare decisis should be observed and when disregarded, they never mention "how wrong was the decision on its face?" Surely, if "[t]he Court's power lies . . . in its legitimacy, a product of substance and perception," ante, at 865, the "substance" part of the equation demands that plain error be acknowledged and eliminated. Roe was plainly wrong - even on the Court's methodology of "reasoned judgment," and even more so (of course) if the proper criteria of text and tradition are applied.

The emptiness of the "reasoned judgment" that produced Roe is displayed in plain view by the fact that, after more than 19 years of effort by some of the brightest (and most determined) legal minds in the country, after more than 10 cases upholding abortion rights in this Court, and after dozens upon dozens of amicus briefs submitted in this and other cases, the best the Court can do

to explain how it is that the word "liberty" must be thought to include the right to destroy human fetuses is to rattle off a collection of adjectives that simply decorate a value judgment and conceal a political choice. The right to abort, we are told, inheres in "liberty" because it is among "a person's most basic decisions," ante, at 849; it involves a "most intimate and personal choic [e]," ante, at 851; it is "central to personal dignity and autonomy," ibid.; it "originate[s] within the zone of conscience and belief," ante, at 852 it is "too intimate and personal" for state interference, ibid.;, it reflects "intimate views" of a "deep, personal character," ante, at 853; it involves "intimate relationships" and notions of "personal autonomy and bodily integrity," ante, at 857; and it concerns a particularly "`important decisio[n],'" ante, at 859 (citation omitted). 2 But it is [505 U.S. 833, 984] obvious to anyone applying "reasoned judgment" that the same adjectives can be applied to many forms of conduct that this Court (including one of the Justices in today's majority, see Bowers v. Hardwick, 478 U.S. 186 (1986)) has held are not entitled to constitutional protection - because, like abortion, they are forms of conduct that have long been criminalized in American society. Those adjectives might be applied, for example, to homosexual sodomy, polygamy, adult incest, and suicide, all of which are equally "intimate" and "deep[ly] personal" decisions involving "personal autonomy and bodily integrity," and all of which can constitutionally be proscribed because it is our unquestionable constitutional tradition that they are proscribable. It is not reasoned judgment that supports the Court's decision; only personal predilection. Justice Curtis' warning is as timely today as it was 135 years ago:

- "[W]hen a strict interpretation of the Constitution, according to the fixed rules which govern the interpretation of laws, is abandoned, and the theoretical opinions of individuals are allowed to control its meaning, we have no longer a Constitution; we are under the government of individual men, who for the time being have power to declare what the Constitution is, according to their own views of what it ought to mean." Dred Scott v. Sandford, 19 How. 393, 621 (1857) (dissenting opinion).

- Liberty finds no refuge in a jurisprudence of doubt. Ante, at 844.

. . . .

The Court's reliance upon stare decisis can best be described as contrived. It insists upon the necessity of adhering not to all of Roe, but only to what it calls the "central holding." It seems to me that stare decisis ought to be applied even to the doctrine of stare decisis, and I confess never to have heard of this new, keep-what-you-want-and-throw-away-the-rest version. I wonder whether, as applied to Marbury v. Madison, 1 Cranch 137 (1803), for example, the new version of stare decisis would be satisfied if we allowed courts to review the constitutionality of only those statutes that (like the one in Marbury) pertain to the jurisdiction of the courts.

I am certainly not in a good position to dispute that the Court has saved the "central holding" of Roe, since, to do that effectively, I would have to know what the Court has saved, which in turn would require me to understand (as I do not) what the "undue burden" test means. I must confess, however, that I have always thought, and I think a lot of other people have always thought, that the arbitrary trimester framework, which the Court today discards, was quite as

central to Roe as the arbitrary viability test, which the Court today retains. It seems particularly ungrateful to carve the trimester framework out of the core of Roe, since its very rigidity (in sharp contrast to the utter indeterminability of the "undue burden" test) is probably the only reason the Court is able to say, in urging stare decisis, that Roe "has in no sense proven `unworkable,'" ante, at 855. I suppose the [505 U.S. 833, 994] Court is entitled to call a "central holding" whatever it wants to call a "central holding" - which is, come to think of it, perhaps one of the difficulties with this modified version of stare decisis. . . .

The Court's description of the place of Roe in the social history of the United States is unrecognizable. Not only did Roe not, as the Court suggests, resolve the deeply divisive issue of abortion; it did more than anything else to nourish it, by elevating it to the national level, where it is infinitely more difficult to resolve. National politics were not plagued by abortion protests, national abortion lobbying, or abortion marches on Congress before Roe v. Wade was decided. Profound disagreement existed among our citizens over the issue - as it does over other issues, such as the death penalty - but that disagreement was being worked out at the state level. As with many other issues, the division of sentiment within each State was not as closely balanced as it was among the population of the Nation as a whole, meaning not only that more people would be satisfied with the results of state-by-state resolution, but also that those results would be more stable. Pre-Roe, moreover, political compromise was possible.

Roe's mandate for abortion on demand destroyed the compromises of the past, rendered compromise impossible for the future, and required the entire issue to be resolved uniformly, at the national level. At the same time, Roe created a vast new class of abortion consumers and abortion proponents by eliminating the moral opprobrium that had attached to the act. ("If the Constitution guarantees abortion, how can it be bad?" - not an accurate line of thought, but a natural one.) Many favor all of those developments, and it is not for me to say that they are wrong. But to portray Roe as the statesmanlike "settlement" of a divisive issue, a jurisprudential Peace of Westphalia that is worth preserving, is nothing less than Orwellian. Roe fanned into life an issue that has inflamed our national politics in general, and has obscured with its smoke the selection of Justices to this Court, [505 U.S. 833, 996] in particular, ever since. And by keeping us in the abortion-umpiring business, it is the perpetuation of that disruption, rather than of any Pax Roeana that the Court's new majority decrees.

- "[T]o overrule under fire . . . would subvert the Court's legitimacy. . . .
- ". . . To all those who will be . . . tested by following, the Court implicitly undertakes to remain steadfast. . . . The promise of constancy, once given, binds its maker for as long as the power to stand by the decision survives and . . . the commitment [is not] obsolete. . . .
- "[The American people's] belief in themselves as . . . a people [who aspire to live according to the rule of law] is not readily separable from their understanding of the Court invested with the authority to decide their constitutional cases and speak before all others for their constitutional ideals. If the Court's legitimacy should be undermined, then

so would the country be in its very ability to see itself through its constitutional ideals." Ante, at 867-868.

The Imperial Judiciary lives. It is instructive to compare this Nietzschean vision of us unelected, life-tenured judges - leading a Volk who will be "tested by following," and whose very "belief in themselves" is mystically bound up in their "understanding" of a Court that "speak[s] before all others for their constitutional ideals" - with the somewhat more modest role envisioned for these lawyers by the Founders.

- "The judiciary . . . has . . . no direction either of the strength or of the wealth of the society, and can take no active resolution whatever. It may truly be said to have neither Force nor Will, but merely judgment. . . ." The Federalist No. 78, pp. 393-394 (G. Wills ed. 1982).

Or, again, to compare this ecstasy of a Supreme Court in which there is, especially on controversial matters, no [505 U.S. 833, 997] shadow of change or hint of alteration ("There is a limit to the amount of error that can plausibly be imputed to prior Courts," ante, at 866), with the more democratic views of a more humble man:

- "[T]he candid citizen must confess that, if the policy of the Government upon vital questions affecting the whole people is to be irrevocably fixed by decisions of the Supreme Court, . . . the people will have ceased to be their own rulers, having to that extent practically resigned their Government into the hands of that eminent tribunal." A. Lincoln, First Inaugural Address (Mar. 4, 1861), reprinted in Inaugural Addresses of the Presidents of the United States, S. Doc. No. 101-10, p. 139 (1989).

. . . .

But whether it would "subvert the Court's legitimacy" or not, the notion that we would decide a case differently from the way we otherwise would have in order to show that we can stand firm against public disapproval is frightening. It is a bad enough idea, even in the head of someone like me, who believes that the text of the Constitution, and our traditions, say what they say and there is no fiddling with them. But when it is in the mind of a Court that believes the Constitution [505 U.S. 833, 999] has an evolving meaning, see ante, at 848; that the Ninth Amendment's reference to "othe[r]" rights is not a disclaimer, but a charter for action, ibid.; and that the function of this Court is to "speak before all others for [the people's] constitutional ideals" unrestrained by meaningful text or tradition - then the notion that the Court must adhere to a decision for as long as the decision faces "great opposition" and the Court is "under fire" acquires a character of almost czarist arrogance. . . .

. . . . Instead of engaging in the hopeless task of predicting public perception - a job not for lawyers but for political campaign managers - the Justices should do what is legally right by asking two questions: (1) Was Roe correctly decided? (2) Has Roe succeeded in producing a settled body of law? If the answer to both questions is no, Roe should undoubtedly be overruled.

. . . . What makes all this relevant to the bothersome application of "political pressure" against the Court are the twin facts that the American people love democracy and the American people are not fools. As long as this Court thought (and the people thought) that we Justices were doing essentially lawyers' work up here - reading text and discerning our society's traditional understanding of that text - the public pretty much left us alone. Texts and traditions are facts to study, not convictions to demonstrate about. But if in reality, our process of constitutional adjudication consists primarily of making value judgments; if we can ignore a long and clear tradition clarifying an ambiguous text, as we did, for example, five days ago in declaring unconstitutional invocations and benedictions at public high school graduation ceremonies, Lee v. Weisman, 505 U.S. 577 (1992); if, as I say, our pronouncement of constitutional law rests primarily on value [505 U.S. 833, 1001] judgments, then a free and intelligent people's attitude towards us can be expected to be (ought to be) quite different. The people know that their value judgments are quite as good as those taught in any law school - maybe better. If, indeed, the "liberties" protected by the Constitution are, as the Court says, undefined and unbounded, then the people should demonstrate, to protest that we do not implement their values instead of ours. Not only that, but the confirmation hearings for new Justices should deteriorate into question-and-answer sessions in which Senators go through a list of their constituents' most favored and most disfavored alleged constitutional rights, and seek the nominee's commitment to support or oppose them. Value judgments, after all, should be voted on, not dictated; and if our Constitution has somehow accidentally committed them to the Supreme Court, at least we can have a sort of plebiscite each time a new nominee to that body is put forward. JUSTICE BLACKMUN not only regards this prospect with equanimity, he solicits it. Ante, at 943.

***

. . . . It is no more realistic for us in this case than it was for him in that to think that an issue of the sort they both involved - an issue involving life and death, freedom and subjugation - can be "speedily and finally settled" by the Supreme Court, as President James Buchanan, in his inaugural address, said the issue of slavery in the territories would be. See Inaugural Addresses of the Presidents of the United States, S.Doc. No. 101-10, p. 126 (1989). Quite to the contrary, by foreclosing all democratic outlet for the deep passions this issue arouses, by banishing the issue from the political forum that gives all participants, even the losers, the satisfaction of a fair hearing and an honest fight, by continuing the imposition of a rigid national rule instead of allowing for regional differences, the Court merely prolongs and intensifies the anguish.

We should get out of this area, where we have no right to be, and where we do neither ourselves nor the country any good by remaining.

--

U.S. Supreme Court

No. 96-110

WASHINGTON, et al., PETITIONERS v. HAROLD GLUCKSBERG et al.

on writ of certiorari to the united states court of appeals for the ninth circuit

[June 26, 1997]

Chief Justice Rehnquist delivered the opinion of the Court.

The question presented in this case is whether Washington's prohibition against "caus[ing]" or "aid[ing]" a suicide offends the Fourteenth Amendment to the United States Constitution. We hold that it does not.

It has always been a crime to assist a suicide in the State of Washington. In 1854, Washington's first Territorial Legislature outlawed "assisting another in the commission of self murder." 1 Today, Washington law provides: "A person is guilty of promoting a suicide attempt when he knowingly causes or aids another person to attempt suicide." Wash. Rev. Code 9A.36.060(1) (1994). "Promoting a suicide attempt" is a felony, punishable by up to five years' imprisonment and up to a $10,000 fine. ��9A.36.060(2) and 9A.20.021(1)(c). At the same time, Washington's Natural Death Act, enacted in 1979, states that the "withholding or withdrawal of life sustaining treatment" at a patient's direction "shall not, for any purpose, constitute a suicide." Wash. Rev. Code ?70.122.070(1). 2

Petitioners in this case are the State of Washington and its Attorney General. Respondents Harold Glucksberg, M. D., Abigail Halperin, M. D., Thomas A. Preston, M. D., and Peter Shalit, M. D., are physicians who practice in Washington. These doctors occasionally treat terminally ill, suffering patients, and declare that they would assist these patients in ending their lives if not for Washington's assisted suicide ban. 3 In January 1994, respondents, along with three gravely ill, pseudonymous plaintiffs who have since died and Compassion in Dying, a nonprofit organization that counsels people considering physician assisted suicide, sued in the United States District Court, seeking a declaration that Wash Rev. Code 9A.36.060(1) (1994) is, on its face, unconstitutional. Compassion in Dying v. Washington, 850 F. Supp. 1454, 1459 (WD Wash. 1994). 4

The plaintiffs asserted "the existence of a liberty interest protected by the Fourteenth Amendment which extends to a personal choice by a mentally competent, terminally ill adult to commit physician assisted suicide." Id., at 1459. Relying primarily on Planned Parenthood v. Casey, 505 U.S. 833 (1992), and Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261 (1990), the District Court agreed, 850 F. Supp., at 1459-1462, and concluded that Washington's assisted suicide ban is unconstitutional because it "places an undue burden on the exercise of [that] constitutionally protected liberty interest." Id., at 1465. 5 The District Court also decided that the

Washington statute violated the Equal Protection Clause's requirement that "`all persons similarly situated . . . be treated alike.'" Id., at 1466 (quoting Cleburne v. Cleburne Living Center, Inc., 473 U.S. 432, 439 (1985)).

A panel of the Court of Appeals for the Ninth Circuit reversed, emphasizing that "[i]n the two hundred and five years of our existence no constitutional right to aid in killing oneself has ever been asserted and upheld by a court of final jurisdiction." Compassion in Dying v. Washington, 49 F. 3d 586, 591 (1995). The Ninth Circuit reheard the case en banc, reversed the panel's decision, and affirmed the District Court. Compassion in Dying v. Washington, 79 F. 3d 790, 798 (1996). Like the District Court, the en banc Court of Appeals emphasized our Casey and Cruzan decisions. 79 F. 3d, at 813-816. The court also discussed what it described as "historical" and "current societal attitudes" toward suicide and assisted suicide, id., at 806-812, and concluded that "the Constitution encompasses a due process liberty interest in controlling the time and manner of one's death--that there is, in short, a constitutionally recognized `right to die.' " Id., at 816. After "[w]eighing and then balancing" this interest against Washington's various interests, the court held that the State's assisted suicide ban was unconstitutional "as applied to terminally ill competent adults who wish to hasten their deaths with medication prescribed by their physicians." Id., at 836, 837. 6 The court did not reach the District Court's equal protection holding. Id., at 838. 7 We granted certiorari, 519 U. S. ___ (1996), and now reverse. . . .

II

The Due Process Clause guarantees more than fair process, and the "liberty" it protects includes more than the absence of physical restraint. Collins v. Harker Heights, 503 U.S. 115, 125 (1992) (Due Process Clause "protects individual liberty against `certain government actions regardless of the fairness of the procedures used to implement them' ") (quoting Daniels v. Williams, 474 U.S. 327, 331 (1986)). The Clause also provides heightened protection against government interference with certain fundamental rights and liberty interests. Reno v. Flores, 507 U.S. 292, 301 -302 (1993); Casey, 505 U.S., at 851 . In a long line of cases, we have held that, in addition to the specific freedoms protected by the Bill of Rights, the "liberty" specially protected by the Due Process Clause includes the rights to marry, Loving v. Virginia, 388 U.S. 1 (1967); to have children, Skinner v. Oklahoma ex rel. Williamson, 316 U.S. 535 (1942); to direct the education and upbringing of one's children, Meyer v. Nebraska, 262 U.S. 390 (1923); Pierce v. Society of Sisters, 268 U.S. 510 (1925); to marital privacy, Griswold v. Connecticut, 381 U.S. 479 (1965); to use contraception, ibid; Eisenstadt v. Baird, 405 U.S. 438 (1972); to bodily integrity, Rochin v. California, 342 U.S. 165 (1952), and to abortion, Casey, supra. We have also assumed, and strongly suggested, that the Due Process Clause protects the traditional right to refuse unwanted lifesaving medical treatment. Cruzan, 497 U.S., at 278 -279.

But we "ha[ve] always been reluctant to expand the concept of substantive due process because guideposts for responsible decision making in this unchartered area are scarce and open ended." Collins, 503 U.S., at 125 . By extending constitutional protection to an asserted right or liberty interest, we, to a great extent, place the matter outside the arena of public debate and legislative

action. We must therefore "exercise the utmost care whenever we are asked to break new ground in this field," ibid, lest the liberty protected by the Due Process Clause be subtly transformed into the policy preferences of the members of this Court, Moore, 431 U.S., at 502 (plurality opinion).

Our established method of substantive due process analysis has two primary features: First, we have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, "deeply rooted in this Nation's history and tradition," id., at 503 (plurality opinion); Snyder v. Massachusetts, 291 U.S. 97, 105 (1934) ("so rooted in the traditions and conscience of our people as to be ranked as fundamental"), and "implicit in the concept of ordered liberty," such that "neither liberty nor justice would exist if they were sacrificed," Palko v. Connecticut, 302 U.S. 319, 325 , 326 (1937). Second, we have required in substantive due process cases a "careful description" of the asserted fundamental liberty interest. Flores, supra, at 302; Collins, supra, at 125; Cruzan, supra, at 277-278. Our Nation's history, legal traditions, and practices thus provide the crucial "guideposts for responsible decision making," Collins, supra, at 125, that direct and restrain our exposition of the Due Process Clause. As we stated recently in Flores, the Fourteenth Amendment "forbids the government to infringe . . . `fundamental' liberty interests at all, no matter what process is provided, unless the infringement is narrowly tailored to serve a compelling state interest." 507 U.S., at 302 .

Justice Souter, relying on Justice Harlan's dissenting opinion in Poe v. Ullman, would largely abandon this restrained methodology, and instead ask "whether [Washington's] statute sets up one of those `arbitrary impositions' or `purposeless restraints' at odds with the Due Process Clause of the Fourteenth Amendment," post, at 1 (quoting Poe, 367 U.S. 497, 543 (1961) (Harlan, J., dissenting)). 17 In our view, however, the development of this Court's substantive due process jurisprudence, described briefly above, supra, at 15, has been a process whereby the outlines of the "liberty" specially protected by the Fourteenth Amendment--never fully clarified, to be sure, and perhaps not capable of being fully clarified--have at least been carefully refined by concrete examples involving fundamental rights found to be deeply rooted in our legal tradition. This approach tends to rein in the subjective elements that are necessarily present in due process judicial review. In addition, by establishing a threshold requirement--that a challenged state action implicate a fundamental right--before requiring more than a reasonable relation to a legitimate state interest to justify the action, it avoids the need for complex balancing of competing interests in every case.

Turning to the claim at issue here, the Court of Appeals stated that "[p]roperly analyzed, the first issue to be resolved is whether there is a liberty interest in determining the time and manner of one's death," 79 F. 3d, at 801, or, in other words, "[i]s there a right to die?," id., at 799. Similarly, respondents assert a "liberty to choose how to die" and a right to "control of one's final days," Brief for Respondents 7, and describe the asserted liberty as "the right to choose a humane, dignified death," id., at 15, and "the liberty to shape death," id., at 18. As noted above, we have a tradition of carefully formulating the interest at stake in substantive due process cases. For example, although Cruzan is often described as a "right to die" case, see 79 F. 3d, at 799; post, at 9 (Stevens, J., concurring in judgment) (Cruzan recognized "the more specific interest in making

decisions about how to confront an imminent death"), we were, in fact, more precise: we assumed that the Constitution granted competent persons a "constitutionally protected right to refuse lifesaving hydration and nutrition." Cruzan, 497 U.S., at 279 ; id., at 287 (O'Connor, J., concurring) ("[A] liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions"). The Washington statute at issue in this case prohibits "aid[ing] another person to attempt suicide," Wash. Rev. Code ⁋9A.36.060(1) (1994), and, thus, the question before us is whether the "liberty" specially protected by the Due Process Clause includes a right to commit suicide which itself includes a right to assistance in doing so. 18

We now inquire whether this asserted right has any place in our Nation's traditions. Here, as discussed above, supra, at 4-15, we are confronted with a consistent and almost universal tradition that has long rejected the asserted right, and continues explicitly to reject it today, even for terminally ill, mentally competent adults. To hold for respondents, we would have to reverse centuries of legal doctrine and practice, and strike down the considered policy choice of almost every State. See Jackman v. Rosenbaum Co., 260 U.S. 22, 31 (1922) ("If a thing has been practiced for two hundred years by common consent, it will need a strong case for the Fourteenth Amendment to affect it"); Flores, 507 U.S., at 303 (%The mere novelty of such a claim is reason enough to doubt that `substantive due process' sustains it").

Respondents contend, however, that the liberty interest they assert is consistent with this Court's substantive due process line of cases, if not with this Nation's history and practice. Pointing to Casey and Cruzan, respondents read our jurisprudence in this area as reflecting a general tradition of "self sovereignty," Brief of Respondents 12, and as teaching that the "liberty" protected by the Due Process Clause includes "basic and intimate exercises of personal autonomy," id., at 10; see Casey, 505 U.S., at 847 ("It is a promise of the Constitution that there is a realm of personal liberty which the government may not enter"). According to respondents, our liberty jurisprudence, and the broad, individualistic principles it reflects, protects the "liberty of competent, terminally ill adults to make end of life decisions free of undue government interference." Brief for Respondents 10. The question presented in this case, however, is whether the protections of the Due Process Clause include a right to commit suicide with another's assistance. With this "careful description" of respondents' claim in mind, we turn to Casey and Cruzan.

In Cruzan, we considered whether Nancy Beth Cruzan, who had been severely injured in an automobile accident and was in a persistive vegetative state, "ha[d] a right under the United States Constitution which would require the hospital to withdraw life sustaining treatment" at her parents' request. Cruzan, 497 U.S., at 269 . We began with the observation that "[a]t common law, even the touching of one person by another without consent and without legal justification was a battery." Ibid. We then discussed the related rule that "informed consent is generally required for medical treatment." Ibid. After reviewing a long line of relevant state cases, we concluded that "the common law doctrine of informed consent is viewed as generally encompassing the right of a competent individual to refuse medical treatment." Id., at 277. Next, we reviewed our own cases on the subject, and stated that "[t]he principle that a competent

person has a constitutionally protected liberty interest in refusing unwanted medical treatment may be inferred from our prior decisions." Id., at 278. Therefore, "for purposes of [that] case, we assume[d] that the United States Constitution would grant a competent person a constitutionally protected right to refuse lifesaving hydration and nutrition." Id., at 279; see id., at 287 (O'Connor, J., concurring). We concluded that, notwithstanding this right, the Constitution permitted Missouri to require clear and convincing evidence of an incompetent patient's wishes concerning the withdrawal of life sustaining treatment. Id., at 280-281.

Respondents contend that in Cruzan we "acknowledged that competent, dying persons have the right to direct the removal of life sustaining medical treatment and thus hasten death," Brief for Respondents 23, and that "the constitutional principle behind recognizing the patient's liberty to direct the withdrawal of artificial life support applies at least as strongly to the choice to hasten impending death by consuming lethal medication," id., at 26. Similarly, the Court of Appeals concluded that "Cruzan, by recognizing a liberty interest that includes the refusal of artificial provision of life sustaining food and water, necessarily recognize[d] a liberty interest in hastening one's own death." 79 F. 3d, at 816.

The right assumed in Cruzan, however, was not simply deduced from abstract concepts of personal autonomy. Given the common law rule that forced medication was a battery, and the long legal tradition protecting the decision to refuse unwanted medical treatment, our assumption was entirely consistent with this Nation's history and constitutional traditions. The decision to commit suicide with the assistance of another may be just as personal and profound as the decision to refuse unwanted medical treatment, but it has never enjoyed similar legal protection. Indeed, the two acts are widely and reasonably regarded as quite distinct. See Quill v. Vacco, post, at 5-13. In Cruzan itself, we recognized that most States outlawed assisted suicide--and even more do today--and we certainly gave no intimation that the right to refuse unwanted medical treatment could be somehow transmuted into a right to assistance in committing suicide. 497 U.S., at 280 .

Respondents also rely on Casey. There, the Court's opinion concluded that "the essential holding of Roe v. Wade should be retained and once again reaffirmed." Casey, 505 U.S., at 846 . We held, first, that a woman has a right, before her fetus is viable, to an abortion "without undue interference from the State"; second, that States may restrict post-viability abortions, so long as exceptions are made to protect a woman's life and health; and third, that the State has legitimate interests throughout a pregnancy in protecting the health of the woman and the life of the unborn child. Ibid. In reaching this conclusion, the opinion discussed in some detail this Court's substantive due process tradition of interpreting the Due Process Clause to protect certain fundamental rights and "personal decisions relating to marriage, procreation, contraception, family relationships, child rearing, and education," and noted that many of those rights and liberties "involv[e] the most intimate and personal choices a person may make in a lifetime." Id., at 851.

The Court of Appeals, like the District Court, found Casey "`highly instructive'" and "`almost prescriptive'" for determining "`what liberty interest may inhere in a terminally ill person's choice to commit suicide'":

"Like the decision of whether or not to have an abortion, the decision how and when to die is one of `the most intimate and personal choices a person may make in a lifetime,' a choice `central to personal dignity and autonomy.' " 79 F. 3d, at 813-814.

Similarly, respondents emphasize the statement in Casey that:

At 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 compulsion of the State.", 505 U.S., at 851 .

Brief for Respondents 12. By choosing this language, the Court's opinion in Casey described, in a general way and in light of our prior cases, those personal activities and decisions that this Court has identified as so deeply rooted in our history and traditions, or so fundamental to our concept of constitutionally ordered liberty, that they are protected by the Fourteenth Amendment. 19 The opinion moved from the recognition that liberty necessarily includes freedom of conscience and belief about ultimate considerations to the observation that "though the abortion decision may originate within the zone of conscience and belief, it is more than a philosophic exercise." Casey, 505 U.S., at 852 (emphasis added). That many of the rights and liberties protected by the Due Process Clause sound in personal autonomy does not warrant the sweeping conclusion that any and all important, intimate, and personal decisions are so protected, San Antonio Independent School Dist. v. Rodriguez, 411 U.S. 1, 33 -35 (1973), and Casey did not suggest otherwise.

The history of the law's treatment of assisted suicide in this country has been and continues to be one of the rejection of nearly all efforts to permit it. That being the case, our decisions lead us to conclude that the asserted "right" to assistance in committing suicide is not a fundamental liberty interest protected by the Due Process Clause. The Constitution also requires, however, that Washington's assisted suicide ban be rationally related to legitimate government interests. See Heller v. Doe, 509 U.S. 312, 319 -320 (1993); Flores, 507 U.S., at 305 . This requirement is unquestionably met here. As the court below recognized, 79 F. 3d, at 816-817, 20 Washington's assisted suicide ban implicates a number of state interests. 21 See 49 F. 3d, at 592-593; Brief for State of California et al. as Amici Curiae 26-29; Brief for United States as Amicus Curiae 16-27.

First, Washington has an "unqualified interest in the preservation of human life." Cruzan, 497 U.S., at 282 . The State's prohibition on assisted suicide, like all homicide laws, both reflects and advances its commitment to this interest. See id., at 280; Model Penal Code §210.5, Comment 5, at 100 ("[T]he interests in the sanctity of life that are represented by the criminal homicide laws are threatened by one who expresses a willingness to participate in taking the life of another"). 22 This interest is symbolic and aspirational as well as practical:

- "While suicide is no longer prohibited or penalized, the ban against assisted suicide and euthanasia shores up the notion of limits in human relationships. It reflects the gravity with which we view the decision to take one's own life or the life of another, and our reluctance to encourage or promote these decisions." New York Task Force 131-132.

Respondents admit that "[t]he State has a real interest in preserving the lives of those who can still contribute to society and enjoy life." Brief for Respondents 35, n. 23. The Court of Appeals also recognized Washington's interest in protecting life, but held that the "weight" of this interest depends on the "medical condition and the wishes of the person whose life is at stake." 79 F. 3d, at 817. Washington, however, has rejected this sliding scale approach and, through its assisted suicide ban, insists that all persons' lives, from beginning to end, regardless of physical or mental condition, are under the full protection of the law. See United States v. Rutherford, 442 U.S. 544, 558 (1979) (". . . Congress could reasonably have determined to protect the terminally ill, no less than other patients, from the vast range of self styled panaceas that inventive minds can devise"). As we have previously affirmed, the States "may properly decline to make judgments about the `quality' of life that a particular individual may enjoy," Cruzan, 497 U. S., at 282. This remains true, as Cruzan makes clear, even for those who are near death.

Relatedly, all admit that suicide is a serious public health problem, especially among persons in otherwise vulnerable groups. See Washington State Dept. of Health, Annual Summary of Vital Statistics 1991, pp. 29-30 (Oct. 1992) (suicide is a leading cause of death in Washington of those between the ages of 14 and 54); New York Task Force 10, 23-33 (suicide rate in the general population is about one percent, and suicide is especially prevalent among the young and the elderly). The State has an interest in preventing suicide, and in studying, identifying, and treating its causes. See 79 F. 3d, at 820; id., at 854 (Beezer, J., dissenting) ("The state recognizes suicide as a manifestation of medical and psychological anguish"); Marzen 107-146.

Those who attempt suicide--terminally ill or not--often suffer from depression or other mental disorders. See New York Task Force 13-22, 126-128 (more than 95% of those who commit suicide had a major psychiatric illness at the time of death; among the terminally ill, uncontrolled pain is a "risk factor" because it contributes to depression); Physician Assisted Suicide and Euthanasia in the Netherlands: A Report of Chairman Charles T. Canady to the Subcommittee on the Constitution of the House Committee on the Judiciary, 104th Cong., 2d Sess., 10-11 (Comm. Print 1996); cf. Back, Wallace, Starks, & Pearlman, Physician Assisted Suicide and Euthanasia in Washington State, 275 JAMA 919, 924 (1996) ("[I]ntolerable physical symptoms are not the reason most patients request physician assisted suicide or euthanasia"). Research indicates, however, that many people who request physician assisted suicide withdraw that request if their depression and pain are treated. H. Hendin, Seduced by Death: Doctors, Patients and the Dutch Cure 24-25 (1997) (suicidal, terminally ill patients "usually respond well to treatment for depressive illness and pain medication and are then grateful to be alive"); New York Task Force 177-178. The New York Task Force, however, expressed its concern that, because depression is difficult to diagnose, physicians and medical professionals often fail to respond adequately to seriously ill patients' needs. Id., at 175. Thus, legal physician assisted suicide could make it more

difficult for the State to protect depressed or mentally ill persons, or those who are suffering from untreated pain, from suicidal impulses.

The State also has an interest in protecting the integrity and ethics of the medical profession. In contrast to the Court of Appeals' conclusion that %the integrity of the medical profession would [not] be threatened in any way by [physician assisted suicide]," 79 F. 3d, at 827, the American Medical Association, like many other medical and physicians' groups, has concluded that "[p] physician assisted suicide is fundamentally incompatible with the physician's role as healer." American Medical Association, Code of Ethics ¬2.211 (1994); see Council on Ethical and Judicial Affairs, Decisions Near the End of Life, 267 JAMA 2229, 2233 (1992) ("[T]he societal risks of involving physicians in medical interventions to cause patients' deaths is too great"); New York Task Force 103-109 (discussing physicians' views). And physician assisted suicide could, it is argued, undermine the trust that is essential to the doctor patient relationship by blurring the time honored line between healing and harming. Assisted Suicide in the United States, Hearing before the Subcommittee on the Constitution of the House Committee on the Judiciary, 104th Cong., 2d Sess., 355-356 (1996) (testimony of Dr. Leon R. Kass) ("The patient's trust in the doctor's whole hearted devotion to his best interests will be hard to sustain").

Next, the State has an interest in protecting vulnerable groups--including the poor, the elderly, and disabledpersons--from abuse, neglect, and mistakes. The Court of Appeals dismissed the State's concern that disadvantaged persons might be pressured into physician assisted suicide as "ludicrous on its face." 79 F. 3d, at 825. We have recognized, however, the real risk of subtle coercion and undue influence in end of life situations. Cruzan, 497 U.S., at 281 . Similarly, the New York Task Force warned that %[l]egalizing physician assisted suicide would pose profound risks to many individuals who are ill and vulnerable. . . . The risk of harm is greatest for the many individuals in our society whose autonomy and well being are already compromised by poverty, lack of access to good medical care, advanced age, or membership in a stigmatized social group." New York Task Force 120; see Compassion in Dying, 49 F. 3d, at 593 ("[A]n insidious bias against the handicapped--again coupled with a cost saving mentality--makes them especially in need of Washington's statutory protection"). If physician assisted suicide were permitted, many might resort to it to spare their families the substantial financial burden of end of life health care costs.

The State's interest here goes beyond protecting the vulnerable from coercion; it extends to protecting disabled and terminally ill people from prejudice, negative and inaccurate stereotypes, and "societal indifference." 49 F. 3d, at 592. The State's assisted suicide ban reflects and reinforces its policy that the lives of terminally ill, disabled, and elderly people must be no less valued than the lives of the young and healthy, and that a seriously disabled person's suicidal impulses should be interpreted and treated the same way as anyone else's. See New York Task Force 101-102; Physician Assisted Suicide and Euthanasia in the Netherlands: A Report of Chairman Charles T. Canady, at 9, 20 (discussing prejudice toward the disabled and the negative messages euthanasia and assisted suicide send to handicapped patients).

Finally, the State may fear that permitting assisted suicide will start it down the path to voluntary and perhaps even involuntary euthanasia. The Court of Appeals struck down Washington's assisted suicide ban only "as applied to competent, terminally ill adults who wish to hasten their deaths by obtaining medication prescribed by their doctors." 79 F. 3d, at 838. Washington insists, however, that the impact of the court's decision will not and cannot be so limited. Brief for Petitioners 44-47. If suicide is protected as a matter of constitutional right, it is argued, "every man and woman in the United States must enjoy it." Compassion in Dying, 49 F. 3d, at 591; see Kevorkian, 447 Mich., at 470, n. 41, 527 N. W. 2d, at 727-728, n. 41. The Court of Appeals' decision, and its expansive reasoning, provide ample support for the State's concerns. The court noted, for example, that the "decision of a duly appointed surrogate decision maker is for all legal purposes the decision of the patient himself," 79 F. 3d, at 832, n. 120; that "in some instances, the patient may be unable to self administer the drugs and . . . administration by the physician . . . may be the only way the patient may be able to receive them," id., at 831; and that not only physicians, but also family members and loved ones, will inevitably participate in assisting suicide. Id., at 838, n. 140. Thus, it turns out that what is couched as a limited right to "physician assisted suicide" is likely, in effect, a much broader license, which could prove extremely difficult to police and contain. 23 Washington's ban on assisting suicide prevents such erosion.

This concern is further supported by evidence about the practice of euthanasia in the Netherlands. The Dutch government's own study revealed that in 1990, there were 2,300 cases of voluntary euthanasia (defined as "the deliberate termination of another's life at his request"), 400 cases of assisted suicide, and more than 1,000 cases of euthanasia without an explicit request. In addition to these latter 1,000 cases, the study found an additional 4,941 cases where physicians administered lethal morphine overdoses without the patients' explicit consent. Physician Assisted Suicide and Euthanasia in the Netherlands: A Report of Chairman Charles T. Canady, at 12-13 (citing Dutch study). This study suggests that, despite the existence of various reporting procedures, euthanasia in the Netherlands has not been limited to competent, terminally ill adults who are enduring physical suffering, and that regulation of the practice may not have prevented abuses in cases involving vulnerable persons, including severely disabled neonates and elderly persons suffering from dementia. Id., at 16-21; see generally C. Gomez, Regulating Death: Euthanasia and the Case of the Netherlands (1991); H. Hendin, Seduced By Death: Doctors, Patients, and the Dutch Cure (1997). The New York Task Force, citing the Dutch experience, observed that "assisted suicide and euthanasia are closely linked," New York Task Force 145, and concluded that the "risk of . . . abuse is neither speculative nor distant," id., at 134. Washington, like most other States, reasonably ensures against this risk by banning, rather than regulating, assisting suicide. See United States v. 12 200-ft Reels of Super 8MM Film, 413 U.S. 123, 127 (1973) ("Each step, when taken, appear[s] a reasonable step in relation to that which preceded it, although the aggregate or end result is one that would never have been seriously considered in the first instance").

We need not weigh exactingly the relative strengths of these various interests. They are unquestionably important and legitimate, and Washington's ban on assisted suicide is at least

reasonably related to their promotion and protection. We therefore hold that Wash. Rev. Code §9A.36.060(1) (1994) does not violate the Fourteenth Amendment, either on its face or "as applied to competent, terminally ill adults who wish to hasten their deaths by obtaining medication prescribed by their doctors." 79 F. 3d, at 838. [24]

* * *

Throughout the Nation, Americans are engaged in an earnest and profound debate about the morality, legality, and practicality of physician assisted suicide. Our holding permits this debate to continue, as it should in a democratic society. The decision of the en banc Court of Appeals is reversed, and the case is remanded for further proceedings consistent with this opinion.

It is so ordered.