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**“Rape as a Justification for Abortion”**

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At its national convention a few years ago, the Republican Party adopted a platform plank that declared that all abortions are morally wrong. Subsequently, a number of prominent figures in the party made public statements in which they expressed reservations about the position their party had adopted. One of these was Marilyn Quayle, the wife of the then-Vice President. Ms. Quayle suggested that the platform position was too extreme; too rigid. She went on to say that she accepts a more moderate position on abortion. According to this more moderate position, abortion is morally wrong in most cases, but permissible in certain cases. Specifically, Ms. Quayle indicated that, as she sees it, abortion is morally permissible (a) in cases where the pregnancy resulted from rape; (b) in cases where the pregnancy resulted from incest; and (c) in cases where the life of the mother would be threatened if there were no intervention.

A similar view was vigorously defended at around the same time in Ireland. Ireland has a constitutional ban on abortion. A young Irish girl was raped and became pregnant. She planned to go to England to have an abortion, but when the authorities discovered the purpose of her trip, they denied her the papers she needed to leave the country. After a lot of debate, she was permitted to go. In this context, a view much like Ms. Quayle's was widely endorsed. Many political leaders in Ireland expressed the view that their wholesale constitutional ban on abortion is too rigid. They said that abortion should be legally banned in almost all cases. The exceptions are provided by rape and incest and threat to the life of the mother. Presumably, their view about the law was based on a view about morality: that abortion is morally wrong except in cases of rape or incest or threat to the life of the mother. If so, they too accept this moderate position on abortion.

My topic for today is one of the components of this moderate position on abortion. Specifically, I want to discuss the idea that rape provides a moral justification for abortion. In what follows, I set aside all cases involving incest and threat to the life of the mother. Those will be discussed on some other occasion. So, my topic for today is this:

RJA: It is morally wrong for a woman to choose abortion in just about all cases; however, if a woman is pregnant as a result of rape, then it is morally permissible for her to choose abortion.

For ease of future reference, I will call this view "Rape Justifies Abortion", or "RJA". The talk is structured as follows: after (1) some preliminary clarifications of the meaning of RJA, (2) I describe some of the main alternatives to RJA. Then (3,4) I present and dismiss some implausible interpretations of RJA. In each case, I try to show that the proposed interpretation is probably not what defenders of RJA have in mind when they say that rape justifies abortion. I finally (5) formulate what I take to be the actual doctrine. I then (6,7,8) describe some possible rationales for RJA. In each

case, I try to show that the proposed rationale in fact does not support the doctrine. In the end, it appears that there are many reasons to think that RJA is false, and no reason to think it might be true.

## **1. Preliminary Clarification**

Before going further, I want to clarify a crucial aspect of the doctrine under consideration here. This concerns its status as a moral doctrine. A huge portion of the debate about abortion focuses on the legal status of abortion. Of course, people don't debate about what the law currently says. Rather, they debate about what the law should say. Some people think the law ought to be rewritten so that every abortion would be legally prohibited. Others think the law ought to be rewritten so that every abortion would be legally permitted. Others have other views about how the law ought to be written.

It is important to recognize that RJA is not a view about how the law should be written. Rather, it is a view about the moral status of abortions. Although many defenders of RJA also hold a certain view about how the laws on abortion should be written, the moral view has no necessary connection to any view about the law. One might hold RJA and nevertheless maintain that since abortion is such a private matter, there should be no laws on that topic at all. A person who felt this way might maintain that even though lots of abortions are morally wrong, it would be bad public policy to outlaw them.

I suspect that many who accept RJA also think that the best law would be one that prohibits most abortions, but permits those involving pregnancies resulting from rape. I also suspect that many who accept this moderate legal position hold it because they hold the moderate moral position – RJA. Perhaps they think that the law ought to be written in such a way as to outlaw all and only morally wrong abortions. But, no matter how naturally the legal view is tied to the moral view, they are two different views, and either might be held in conjunction with the denial of the other.

I will have almost nothing further to say about abortion laws. I am neither attacking nor advocating any position on the question how these laws ought to be written. My topic is RJA itself, not its analog in the legal realm. So I am talking about the idea that abortions are morally wrong in most cases, but morally permissible in cases involving rape.

## **2. Some Alternative Views**

I think we can see why RJA is generally regarded as a "moderate" view on abortion if we compare it to two extremist views. One of these is the view that was endorsed in the Republican platform. It is the view that:

E1: It is always morally wrong for a woman to choose abortion.

Although different people might be moved by different considerations to adopt E1, here is one line of thinking that seems pretty popular: we start with (a) the absolutist moral principle that it is always morally wrong to murder an innocent person; and (b) the metaphysical view that little fetuses are innocent persons from the moment of conception. The immediate implication is that all abortions are morally wrong.

Anyone who really believes E1 will find it hard to understand how rape could have any bearing on the

morality of abortion. Concerning cases in which a woman is pregnant as a result of rape, a defender of E1 will say that the fetus surely didn't commit the rape. It didn't commit any crime; so there is no justification for killing it. It remains an innocent bystander. Admittedly, in such cases, the pregnant woman is the victim of a crime. But to kill the baby in these circumstances would just be to commit a second crime – in this case the murder of an innocent third party.

An opposite, but equally extremist view is the view that:

E2: It is always morally permissible for a woman to choose abortion.

Those who accept E2 might claim that abortion is an absolutely private matter. They might also claim that since it is such a private matter, each person is morally permitted to make her own decision concerning it. Whatever she decides will be morally permissible. Therefore, if a woman decides to have an abortion, then it is absolutely morally permissible for her to have that abortion, whether she is a victim of rape or not.

So RJA is more moderate than either of these extreme views. E1 prohibits all abortions. E2 permits all abortions. RJA prohibits most abortions, but permits some. So it is less extreme than either of the other views. It is important to realize, however, that there are many other moderate views. These are like RJA in that they permit some abortions and prohibit others. They differ from RJA in where they draw the line. We will discuss some of these other views later.

### **3. Further Clarification of RJA**

Although it may appear that RJA is the view defended by Mrs. Quayle and others, I think it is not. In fact, RJA draws the line between permissible and impermissible abortions in such a strange place that it is hard to see how any reasonable person could accept it. I want to try to explain why this is so.

As we have seen, RJA implies that whenever a pregnancy resulted from rape, it is morally permissible for the woman to choose abortion. But RJA also implies that in other cases, where there has been no rape, abortion is morally wrong. [putting aside incest & tlm] Yet it seems to me that there can be cases involving rape that are morally identical to cases not involving rape. The cases are so similar that no one could possibly think that abortion is permissible in one, but not in the other. But RJA has just this implication. And this is one reason why I think RJA must be a faulty formulation of the view defended by Mrs. Quayle and the others.

"Rape" is a legal concept. Its precise application varies from jurisdiction to jurisdiction. In some places, if an adult man has intercourse with a sixteen year old girl, then rape has occurred. In some of these jurisdictions, it makes no difference whether the girl participated voluntarily. In other jurisdictions, sixteen year old girls have passed the age of consent. If they voluntarily agree to intercourse, no rape has occurred. This provides part of my reason for thinking that RJA cannot be an adequate formulation of the view. To see why, consider the following thought experiment:

Case A

There are two very similar girls. Each is sixteen years old; each has a 21 year old boyfriend. One is in State A and the other is in State B. One night, each girl voluntarily engages in

intercourse with her boyfriend. Each becomes pregnant. The fetuses are alike with respect to health, and have similar prospects for future happiness. The laws in State A declare that the girl in A was raped, merely because she has not yet reached the age of consent under the laws of A. The laws in State B declare that the girl in B was not raped, because in B the age of consent is lower. Each girl subsequently has an abortion.

It seems pretty clear to me that nothing in Case A justifies the conclusion that there is a moral difference between the two abortions. If the girls are alike, and the fetuses are alike, and the boyfriends are alike, then if abortion is morally permissible in one of these cases, it is morally permissible in both. Surely, the differences between the two states' laws about age of consent cannot have such a dramatic impact on the moral status of the abortions. Yet RJA draws the line between permissible and impermissible abortions in such a way that one abortion falls on one side of the line and the other falls on the other. According to RJA, since the first girl's pregnancy did result from rape, it was morally permissible for her to have an abortion, but since the second girl's pregnancy did not result from rape it was morally wrong for her to have an abortion.

I should emphasize that I have not said that I think both abortions in Case A would be morally right, and I have not said that I think that both would be morally wrong. I have merely said that, given the information contained in the stories, there is no reason to suppose that the abortions should fall on different sides of the line. Either they are both right, or they are both wrong. But RJA implies, simply on the basis of what we have been told about the cases, that one is right and the other wrong. I can't believe that Mrs. Quayle and the others really meant to draw the line where RJA draws it. So we should look for some other interpretation of the view.

#### **4. Statutory vs. Forcible Rape**

A new interpretation of the view can be developed by appeal to the well-known distinction between statutory rape and forcible rape. Different jurisdictions have drawn the distinction in different ways, but, roughly, the difference is this: a man is guilty of statutory rape if a court determines that he has had sexual intercourse with a girl who has not reached the age of consent – she was too young to consent to sex. A man is guilty of forcible rape if a court determines that he forced a woman, against her will, to submit to sexual intercourse. Case A involves two girls. One is a victim of statutory rape and the other is not; but neither girl was a victim of forcible rape. Each girl in Case A voluntarily participated in sexual intercourse. I think it is more likely that those who believe that rape justifies abortion are thinking of forcible rape, not statutory. In order to make this clear, we could rewrite RJA as follows:

FRJA: It is morally wrong for a woman to choose abortion in just about all cases; however, if a woman is pregnant as a result of forcible rape, then it is morally permissible for her to choose abortion.

If we take FRJA as our formulation of the doctrine that rape justifies abortion, then my earlier argument no longer works. Since neither girl in Case A was a victim of forcible rape, FRJA does not imply that their abortions have different moral statuses. Rather, FRJA implies [given the provisos about incest and tlm] that both abortions in Case A would have the same moral status. Some may disagree about that status, but the earlier argument does not refute FRJA.

Nevertheless, I find it hard to understand how anyone could think FRJA draws the line in the right place. Consideration of another case may bring out part of the difficulty. So let us turn to a second example:

### Case B

There are two very similar women, one in State A and one in State B. Each goes out on a date with an acquaintance. Each goes back to the acquaintance's apartment for drinks later in the evening. One thing leads to another, and each woman ends up pregnant and claims to have been raped. The events that led up to intercourse in State A are exactly like those that led up to intercourse in State B. The women, the fetuses, the men, and all other affected parties in State A are relevantly similar to their counterparts in State B. When the cases go to trial, the jury in State A determines that forcible rape under the laws of A did not occur because the victim did not struggle hard enough. The jury in State B determines, on similar evidence, that forcible rape under the laws of B did occur because the laws in B do not require rape victims to struggle quite so hard. Each woman then has an abortion.

No one could seriously think that there is an important moral difference between the two abortions in Case B. The women were equally brutalized; they struggled equally hard against their assailants; the fetuses are equally innocent; the health and prospects for the future of all parties are exactly alike. The only difference is that one of the attacks took place in a state where rape occurs only if the woman puts up a physical struggle of a certain strength, and the other attack took place in a state where rape may occur even if the woman puts up a physical struggle of a lesser strength. This surely cannot justify the conclusion that it would be morally permissible for the woman in State B to have an abortion, while it would be morally wrong for the woman in State A to do likewise. Since FRJA has precisely this implication, it is clearly false. So once again, I think we have not interpreted the doctrine correctly. FRJA cannot be the view advocated by Mrs. Quayle and the others.

## 5. "Moral Rape"

Perhaps those who think that rape justifies abortion are thinking neither of statutory rape nor forcible rape, as defined by the law. Perhaps the relevant concept here is neither of the familiar legal concepts of rape. Perhaps there is some more fundamental concept of rape – a moral concept of rape. This concept, it might be argued, does not vary from jurisdiction to jurisdiction; nor does its application depend upon the whims of a jury or even the whims of a legislature. Rather, the idea here is that rape occurs when a man forces a woman, against her will, to submit to sexual intercourse. If this happens, the woman is a victim of rape, whether or not there is an indictment, a trial, or a conviction. Let us call this "moral rape"; and let us reinterpret RJA as follows:

MRJA: It is morally wrong for a woman to choose abortion in just about all cases; however, if a woman is pregnant as a result of moral rape, then it is morally permissible for her to choose abortion.

The revised version of the principle has different implications for the cases we have considered. Since, in Case A, each girl engaged voluntarily in intercourse, neither is a victim of moral rape. MRJA then implies [proviso] that it would be morally wrong for either girl to choose abortion.

Since the circumstances surrounding the two pregnancies in Case B are stipulated to be the same, we must conclude that if the intercourse was forced upon the woman in either case, then it was forced upon her in both. Hence, either we have two cases of moral rape, or none. Thus, MRJA implies that the two abortions in Case B have the same moral status. Either both are right, or both are wrong. This seems to me to be closer to the intentions of the advocates of the idea that rape justifies abortion.

## **6. Seeking a Rationale for MRJA**

While the current version of the principle is somewhat more plausible than the original, I find it puzzling. I wonder why anyone would accept it. Perhaps I can get you to share my puzzlement. Consider some questions about MRJA: why draw the line between permissible and impermissible abortions where MRJA draws it? Why should the fact that a pregnancy resulted from moral rape make it permissible for a woman to choose abortion? How can the fact that a fetus came into the world as a result of a moral crime make it morally permissible to kill that fetus? What is the rationale behind MRJA?

It's easy to imagine reasons why someone might say she believes MRJA. A woman might in fact be an extreme anti-abortionist, maintaining E1. Then she might become convinced (perhaps by reading news about the polls) that her views on abortion are harming her husband's chances of retaining the vice-presidency of the U.S. The polls might tell her that too many people are offended by her rigid, extremist view on this extremely sensitive issue. It is too easy for them to imagine cases in which enforcement of such a view would subject innocent young girls to a sort of brutalization. So a person in this situation might then say that she believes that moral rape (along with incest and threat to the life of the mother) provides a justification for abortion. She might say this as a sort of political tactic to avoid ruffling the feathers of the voters.

Clearly, however, this line of thought does not give us any reason to believe MRJA. If you adopt a moral position, it must be because you come to think it is correct. Saying that you believe it when you don't is just intellectual dishonesty. Actually believing it just because you think it will benefit your husband's career is self-deception. In either case, it has no relevance to the truth of the view in question.

What I am asking for is a rationale for MRJA. By a "rationale", I mean a line of thought that shows that it is true, or at least a line of thought that strongly suggests that it is closer to the truth than competing views. Perhaps if we reflect on how a reasonable person might come to believe in the view, we will uncover a coherent rationale.

## **7. A Rationale Based on Justice**

Here's one possible way in which a reasonable person might come to believe in MRJA. She might start out an extremist who believes that all abortions are wrong. Critics might then draw her attention to cases such as the case of the young girl in Ireland who was raped and wanted to go to England for an abortion. She might then reflect on the horrible injustice of the situation. Here is a young girl who has suffered a terrible crime. Now she is being forced to undergo yet another terrible ordeal. She is being forced to carry to term and then give birth to the child of the man who raped her – a child she does

not want and who will not be loved. This seems terribly unfair.

In general, then, we might say that the rationale for MRJA is based on an appeal to justice. Any victim of moral rape has already suffered a terrible injury. If she is forced to have her baby, she suffers yet another injury. The injustice this would impose on the woman is so great as to make it morally permissible for her to have an abortion. Although this can hardly erase the evil that has already been done to her, it at least prevents further evil from being done to her. So MRJA is based on an appeal to justice.

I think this rationale for MRJA does not succeed. The problem can be brought out by reflection on another example. Consider this case:

#### Case C

There are two very similar women, one in State A and one in State B. The woman in State A has been morally raped and as a result is pregnant. She does not want this baby. The woman in State B has not been raped, but has been brutally mugged. She has suffered physical and psychological injuries just as serious as those inflicted on the woman in A. The woman in B happens to be pregnant as a result of voluntary intercourse with her boyfriend. The woman in B fears that having a baby would ruin her career plans. She does not want her baby either. Each woman then has an abortion.

The crucial feature of Case C is this: the two women are stipulated to be exactly alike with respect to all features bearing on justice. Each is a victim of a terrible crime; each is pregnant and hates the thought of having to bear her child; each would be further injured by being forced to bear that child. If we think that it is morally permissible for the woman in State A to have an abortion, and we think this is a matter of justice, then we should also think that it is morally permissible for the woman in State B to have an abortion. Yet, since the woman in B is not a victim of moral rape, MRJA would deny her this right. MRJA implies [provisoes] that it would be morally wrong for the woman in B to have an abortion.

Let me take a moment to review. I asked a question about the rationale for MRJA. What basis is there for thinking that the line between permissible and impermissible abortions should be drawn where MRJA draws it? One possible answer appeals to justice. The idea is that since rape victims have already suffered more than their fair share of injury, it would be unjust to force them to bear children conceived in rape.

The example in Case C is designed to show that this can't be the rationale for MRJA. The problem is that there are other cases – cases that don't involve moral rape – in which it would be equally unjust for a woman to be forced to bear her baby. MRJA would prohibit these abortions. So the appeal to justice cannot provide a rationale for MRJA, since this rationale in fact implies that MRJA is false.

## **8. A Rationale Based on Consequences**

There is another way to defend MRJA. This approach focuses on consequences. That is, we consider what would most likely happen if a rape victim were to have the baby, as opposed to what would most likely happen if she were allowed to have an abortion. The claim is in general that forcing rape victims

to have their babies would have such bad results as to be morally wrong. Letting them have abortions has less bad consequences, and so should be permitted. To see this more concretely, consider again the case of the young Irish girl.

It is reasonable to think that if the Irish girl is forced to have her baby, she will be much worse off. She is too young to have any babies, so it might injure her physically. She is a rape victim, and is already suffering the emotional effects of the crime that has been committed against her. If she now is forced to have the baby, she will suffer even greater emotional injuries. There will be bad consequences for the baby, too. The baby may be sickly, because born to a too-young mother. The baby may be emotionally scarred, because it will soon come to know that it is the product of an ugly crime, that it is unwanted, that it is a constant reminder to its mother of the terrible crime that she suffered. This can't be good for a child.

Reflecting in this way about the terrible things that would probably happen if the baby is born, and weighing them against the fairly bad thing that would happen if it is aborted, we might think that in some cases the results of abortions are not as bad as the results of births. In those cases, we might agree, it would be better to permit the abortion.

These reflections provide the basis for a second rationale for MRJA. It is this: abortions are in general morally wrong – because they involve the killing of an innocent person. But in cases of moral rape, there are other factors to consider: harms to the mother and child. If a rape victim gives birth to a child conceived in rape, the consequences for that mother or child might be so horrible that it would be better if the fetus were aborted. Hence, in these cases, it is permissible for the woman to choose abortion.

Once again, however, it seems to me that the rationale in fact does not support MRJA. The problem is similar to the problem encountered in connection with the rationale based on justice. There are other cases – cases not involving rape – in which the consequences may be just as bad as the consequences in the cases involving rape. Let me introduce another example to illustrate my point.

#### Case D

There are two very similar women, one in State A and one in State B. The woman in State A has been morally raped and as a result is pregnant. She does not want this baby. The woman in State B has not been raped, but is also pregnant. She learns that her baby is very seriously deformed. It will lead a horrible life. Furthermore, because of the economic and emotional strain of caring for this child, the woman's life will be ruined if she bears this child. The pain suffered by the woman in B if she has her baby would be just as great as that suffered by the woman in A if she has her baby. Each woman then has an abortion.

The important feature of Case D is this: the two women and the two babies are stipulated to be exactly alike with respect to all features bearing on consequences. If forced to bear their children, each would suffer terrible injury; each child would get a rotten life. If we think that the woman in State A should be permitted to have an abortion, and we justify this by appeal to considerations about consequences, then, since the consequences in the case of the woman in State B are just as bad, we should also think that the woman in State B should be permitted to have an abortion. Yet, since the woman in B is not a victim of moral rape, MRJA would deny her this right. MRJA implies [provisoes] that it would be morally wrong for the woman in B to have an abortion.



The example in Case D is designed to show that the appeal to consequences can't be the rationale for MRJA. The problem is that there are other cases – cases that don't involve moral rape – in which the consequences would be just as bad if the woman were forced to bear her baby. MRJA would prohibit these abortions.

## **9. A Final Rationale for MRJA**

I want to consider, briefly, a final possible rationale for MRJA. This is based on the idea that when a woman becomes pregnant as a result of rape, she has no responsibility for the welfare of the fetus. The woman did not voluntarily behave in such a way as to create that fetus; she did not consent to it being in her womb; it is not her fault that it exists. Hence, if she chooses to have it removed, she has done nothing wrong. On the other hand, if a woman voluntarily engages in intercourse, then for all practical purposes she did consent to having a fetus in her womb. Since the fetus exists as a result of her voluntary behavior, she is responsible for its welfare. Its existence is her fault. Thus, if she has it removed, she does something morally wrong.

It might appear that these reflections on fault and consent provide a rationale for MRJA. It could be said that when a woman is a victim of moral rape, it is not her fault that she's pregnant, and so abortion should be permissible. But when a woman is not a victim of moral rape, it is her fault that she's pregnant, and so abortion should be prohibited.

Once again, it seems to me that the rationale in fact does not provide support for MRJA. If we think the rationale is plausible, we should reject MRJA. A final example should make this clear:

### Case E

A woman in State A is pregnant as a result of moral rape. She was raped while walking her dog in a park at night. She knew that going into the park at night was risky, but she thought she could protect herself. A woman in State B was not raped. She voluntarily engaged in intercourse with her boyfriend. Since for several reasons she did not want to become pregnant, she made use of highly effective contraceptives. In fact, she took very great care to assure herself that the contraceptives would work. Unfortunately, there was an accident and she became pregnant anyway. Each woman then has an abortion.

The crucial feature of Case E is this: although one woman was raped and the other was not, the women are alike with respect to responsibility for becoming pregnant. In each case, the woman behaved in such a way that there was a slight chance that she might become pregnant. Each tried to avoid becoming pregnant. In each case, it would be correct to say that it is not her fault that she is pregnant. Nevertheless, in each case, in spite of her efforts, the woman became pregnant.

According to the rationale based on fault and responsibility, the rape victim may have an abortion because it is not her fault that she is pregnant. This is supposed to provide support for MRJA. Case E shows, however, that there are other cases, not involving rape, in which the pregnant woman is equally not at fault. The second woman in Case E has just as little responsibility for being pregnant as the first woman. Thus, far from providing support for MRJA, this final line of thought is inconsistent with that doctrine.

## **10. Conclusion**

My topic today has been the idea that while abortion is just about always morally wrong, it is morally permissible in cases in which the woman is pregnant as a result of rape. After a bit of preliminary clarification, I have attempted to formulate this doctrine clearly. I then considered three possible rationales – three sorts of consideration that might be thought to provide support for this view. The first is based on justice; the second on the value of consequences; and third on fault and responsibility. In each case, however, I tried to show that the alleged rationale in fact does not support MRJA. In each case, the alleged rationale in fact entails that MRJA is false.

My own view is that MRJA is false. It draws the line between permissible and impermissible abortions in a place that makes no sense to me. I can't understand why anyone would believe it. I sometimes suspect that some who claim to believe it are being disingenuous. In fact, I suspect, they may really think that all abortions are wrong. Perhaps they say they believe MRJA because they don't want to appear callous. On the other hand, perhaps they are being honest. In this case, I think they are simply confused.