Introducing the
Dilemma

The French author Annie Ernaux was awarded the 2022 Nobel Prize for Literature. Ernaux is 82 and her books deal with past and present events and their sociological context. Among her most well-known books is *Happening* (published in Israel by Resling), which deals with an illegal abortion that she had in the 1960s when she was a 23-year-old student. The book has been received as an important and disturbing text about abortions in the twentieth century. Is there a connection between her being awarded this prize and the anti-abortion legislation in the United States? I am dubious about this. In explaining their decision, the judges said that she received the award “for the courage and clinical acuity with which she uncovers the roots, estrangements and collective restraints of personal memory.” From my perspective, there is no doubt that there is a relationship between illegal abortions and the justification that those who oppose abortions try to find for what they see as an evil deed, and this is the purpose of passing an anti-abortion law.

In the United States there is controversy surrounding the overturning of *Roe vs. Wade,* which, around 50 years ago, permitted abortions. The ruling was given on 22nd January 1973 by a majority of seven judges. Justice Blackman, who was in favor of the right to abortion, wrote the majority opinion. The ruling invalidated laws in many states that forbade women from having abortions and declared that the law could not prevent an abortion during the first trimester. The court also determined that abortions could only be limited during the second trimester to protect the health of the woman and that that there could only be limitations on abortions during the third trimester to protect the health of the fetus. It is important to note that the court also determined that the United States constitution doesn’t recognize the “unborn child,” i.e., it doesn’t recognize the rights of the fetus. The laws of the State of Israel don’t recognize the rights of the fetus either, at any stage, even when the fetus can survive outside of the womb. Opponents of abortion did not accept the ruling, and for nearly 50 years have carried out a legal and political struggle that culminated victoriously on 24th June 2022 with the new ruling on the issue.

*Dobbs vs. Jackson Women’s Health Organization* ruled that the Constitution of the United States does not confer a right to abortion, giving the individual states the right to decide on the issue. A majority of six judges ruled that the law in Mississippi was legal. Justice Samuel Alito, who wrote the majority verdict, determined that the Mississippi law at the center of the petition, which banned abortion after the 15th week of pregnancy, was legal, and that *Roe vs. Wade* and *Planned Parenthood vs. Casey* were invalid. Four judges agreed with his verdict. Supreme Court Chief Justice John Roberts wrote a separate opinion in which he agreed that the Mississippi law was legal and that the law preventing states from banning abortions before the fetus can survive outside the womb should be overturned but wrote that he didn’t reject the previous laws. Three judges identified with the liberal side of the court opposed the majority ruling. With this judgement, artificial abortions became illegal in 13 states. Abortion opponents are now trying to pass a federal law forbidding abortions in all 50 states and five U.S. permanent territories. This could happen in 2025 or not at all – passing this kind of law requires a majority in both Congress and the Senate and the signature of the president. Some think that this decision will not just have an ethical and moral impact but will also impact the American economy in general and women who will be forced to go against their own desire. Some think that providing access to abortions is better for the American economy because it means more women in the workforce and studying, and that this will increase their earning potential (according to United States Secretary of the Treasury Janet Yellen in her testimony to the Senate Banking Committee). In reversing *Roe vs. Wade,* the United States Supreme Court made abortions illegal. Some, like Professor Daphna Hacker, think that the ruling turns *The Handmaid’s Tale* into a reality. She thinks that *Dobbs,* which allows every state legislature to prevent access to abortion, is shocking by any basic democratic measure. She thinks it is shocking because it allows every state to prevent access to abortion even for a new pregnancy, the pregnancy of a minor, a pregnancy that’s the result of rape or incest, or a pregnancy that endangers the life of the woman. In Israel there are also those who want to strengthen criminal laws against abortion. I completely disagree with this position. *Dobbs* did not transform the United States, the largest democracy in the world, into the Republic of Gilead like in *The Handmaid’s Tale.* Nor does *Dobbs* state that the fetus has greater rights than the woman. It only permits a new study of the ability of the legislature to limit a range of rights that until now were understood as being constitutionally protected. I think that looking at the impact of the ruling solely from the economic perspective is fundamentally mistaken. It is a shame that the opportunity has not been taken to discuss the issue more widely and substantially, particularly on the issue of the rights of the fetus. There is normative value to the life of the fetus, especially at the stage when it can live outside the womb, even if it falls short of human life.

The book before you deals with this unexplored issue, the right of the fetus to be born and to be born healthy, a right that should prevail over the woman’s right to bodily autonomy, and thus its importance. The book does not accept this right to this autonomy until the stage where the fetus can live outside the womb. My view is that a woman has the right to perform an abortion until 12 weeks and that this argument is valid even if the fetus has a moral right to live and its life has a normative value. However, even a fetus that is formed as the result of violence such as incest or rape has the right to be born and to live if it can survive outside the womb. Regulatory solutions should be given to newborns who are born as the result of these kind of relations by the welfare authorities.