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An Tionól Saoránach The Citizens' Assembly

*Paper by*


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## Presenting the Pro-choice Perspective

*delivered to*

## The Citizens' Assembly

*on*

05 Feb 2017

An Tionól Saoránach The Citizens' Assembly

UCC
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Coláiste na hOllscoile Corcaigh

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# A Woman's Right to Choose – the moral arguments

*Dr. Joan McCarthy, 5 February 2017*

The debate over abortion is regularly described as a debate over the moral status of the embryo or foetus. However, whatever moral standing we attribute to embryos or foetuses, they are not 'free-floating entities'; they exist and are connected to the human community in and through women's bodies.[1] My moral starting point is the body and the life of the woman or girl who is pregnant.[2] I will be arguing that we ought to consider the pregnant woman as a moral agent, that is, we ought to focus on her as a subject who is making moral choices about what she values and what she can and cannot commit to, rather than regarding her as the object of our deliberations as to what should happen to her pregnancy, her life, her body. My position rests on respect for two moral principles that are at the centre of all civil societies around the world and these are the concepts of autonomy and justice.

## 1. Autonomy and reproductive autonomy

Autonomy, meaning self-rule or self-determination, is a complex idea that has been widely debated in ethics, law and political philosophy for centuries. The standard account of autonomy that I rely on is one that is deeply embedded and defended in liberal democratic societies around the world. It refers to autonomy as an individual's right to be free to live their lives according to their own values and beliefs without being arbitrarily restrained or limited by anyone else. Historically, this understanding of autonomy has been viewed as the foundation of other rights, such as bodily integrity – the right of a person to be free from assault and to have control over their body, and the right to privacy – the right to be free in their private life from interference from the state.[3]

Respect for autonomy requires that we should not unreasonably restrict or constrain the life choices that individuals make.[4] This implies that if we disregard a person's autonomy, we are in some sense treating him or her, not as an individual with their own values and goals, but merely as a means, as an instrument, to achieving the goals of others. The individual becomes a means to an end rather than a person worthy of respect in their own right.[5] For example, an unscrupulous researcher undertaking a clinical trial on the possible benefits of a new cancer drug might not inform his research subjects of all the possible side effects of the drug in order to ensure their participation in the trial. In this way, these subjects are treated as a means for the purpose of completing the research; their own health concerns and goals are irrelevant.

What does this general view of the right of autonomy mean when it comes to reproductive decisions? It implies that a woman or a man has the right to decide, without interference from the state, whether or not to try to have children with a willing partner and when, and how many to have.[6] Of course, abstinence from sexual intercourse and effective contraception are

means that women and men can use to prevent pregnancy. However, when rape, incest, domestic violence, failed contraception or lack of access to contraception, ignorance, carelessness, or bad luck lead to unwanted pregnancy, women and girls are uniquely and disproportionately burdened.[7]

This is because pregnancy occurs within a female's body and results in profound and irreversible physiological, psychological and emotional changes to her body, her sense of self and, indeed, the rest of her life. So while her pregnancy is likely to impact on both the woman and her partner in different ways depending on the circumstances, any reproductive decision impacts directly on the woman's bodily integrity, health and life. Because it is the woman or girl who assumes the burden of pregnancy and childbirth, she has a special moral claim to make decisions about whether or not to continue the pregnancy.[8] This is a *moral* claim because it involves making a judgement and weighing all the relevant factors about what is right or best in a particular situation.

When a woman or girl makes that decision or choice, it is important to understand the context within which she makes it. When I use the word 'choice' in this regard, I am not referring to choice as simply the expression of individual freedom.[9] By definition, no woman or girl 'chooses' an unwanted pregnancy and so she does not 'choose' or 'want' to undergo an abortion procedure. This right to choose expresses a right to have control over their reproductive lives but, for many women and girls, the choice represents a 'grim option' – they don't want to have an abortion but they believe it is the morally responsible or practical thing to do, given their circumstances.[10]

In short, women and girls do not make reproductive decisions in the abstract, as if their choice included all possible options. They must make their decisions in the context of an unplanned or undesired pregnancy and the constraints imposed by their personal circumstances. These circumstances may include, e.g., responsibility for other children or dependant adults, health concerns or money worries, education, career or relationship commitments.[11]

Respect for their reproductive autonomy means respecting the choices that women or girls make in light of their values and goals and their views of the health and life risks that they feel able or willing to take. Such respect is often provided by those who are close to them and are in a position to advise, support and trust them. A woman's husband, parent or co-worker may travel with her to the clinic, offer emotional or financial assistance or help with childcare. Refusal to accept their decisions is to treat women and girls as passive objects and their bodies as containers or mere life support systems – as means to achieving reproductive goals which are not their own. For example, a state's interest in maintaining cultural norms relating to reproduction or a partner's interest in becoming a father are not the goals of the women themselves, but the goals of others who are not in their shoes, are not listening to their thoughts and do not see the world through their eyes.

**2. Justice or fairness**

When it comes to the second moral principle of justice or fairness we might accept that women and girls are undoubtedly people with rights and their pregnancy does not diminish these rights. The moral principle of justice refers to the right to be treated equally and it requires that pregnant women are treated on an equal footing with non-pregnant people.[12] However, because the Eighth Amendment to the Constitution gives a right to life to what our state calls the 'unborn' it has given rise to legislation and policies that place unequal or disproportionate burdens on pregnant women and girls living in Ireland. I will look specifically at: a) situations involving medical uncertainty; and, b) hardships of travel.

*a) Situations involving medical uncertainty*

In healthcare settings, where a medical intervention carries risk and there is uncertainty as to whether the potential benefit outweighs the risk involved, the HSE *National Consent Policy* (2013) obliges doctors to acknowledge their uncertainty about the risk and seek the views of patients as to whether or not they want the intervention. In these situations 'the preferences and values of the individual [patient] are of paramount importance'.[13]

However, in situations where continued pregnancy poses risk, the provisions of the *Protection of Life During Pregnancy Act* 2013 and the accompanying guidance for health professionals prescribe that only doctors can certify that there is a 'real and substantial risk' to the pregnant woman's life (and NOT her health) which would necessitate a termination.[14] Such risks of death may be difficult if not impossible to quantify, especially given the challenge of distinguishing between risks to the pregnant woman's life and her health. Moreover, the legislation places no obligation on doctors to disclose any uncertainty in their determination of the risk posed by continued pregnancy to the life of a pregnant woman. Nor does it require them to involve her in discussions about what risk might be acceptable to her. For many women, continued pregnancy carries very grave risks, e.g., hypertension, preeclampsia, sepsis or the exacerbation of existing conditions such as congenital heart disease, diabetes or cancer. In these situations, just as in the case of non-pregnant people, the views of the pregnant woman or girl whose life (and health) is at risk should be central to the decision about whether or not the risk is great enough to warrant a termination of her pregnancy.

*b) Hardships of travel*

Commitment to the principle of justice also requires that it should be *practically* possible for all women and girls to continue with or terminate their pregnancies.[15] Because abortion is illegal in Ireland except in the most restricted of circumstances, many thousands of women and girls must travel to the UK and other countries to access safe abortion services. Having to travel for a needed abortion is unjust; being unable to travel and thereby forced to continue an unwanted, dangerous or futile pregnancy or risk an illegal and unsafe abortion is doubly unjust. In this way, women and girls living in Ireland who are poor or young, members of the Traveller community, in the asylum system or in the care of the state, and women and girls who are unable to travel because of illness or disability suffer discrimination because they cannot avail of abortion services here and because they are unable to travel to access them elsewhere.

**Conclusion**

To conclude, it is important to distinguish between morality and legality. Some people argue that abortion is immoral. Others don't think so. Some think that abortion is immoral in general, and in the abstract, and yet judge that women and girls may need to choose abortion for many complex reasons. Moral disagreement about abortion is further complicated by different judgements about the extent to which legislation should be used to enforce moral values. Liberal societies, for example, favour rules of social cooperation that allow the widest possible exercise of individual moral authority. From a liberal perspective, a person might hold the view that something or other is immoral (e.g., eating meat) and still believe that legislation should not make it illegal.[16]

Over the past four decades, most of the liberal democratic countries around the world, such as the US, the UK and other European countries, have debated the moral rights and wrongs of abortion but they have not reached a moral consensus about it. Instead, most of them have arrived at a political compromise that tries to meet at least some of the deeply felt concerns of those who disagree about the ethical nature of the problem of abortion: they recognize the right of a pregnant woman to have a legal abortion in the early stages of pregnancy but limit access to abortion thereafter.

Ireland, as we know, also debated the issue of abortion more than 30 years ago and its solution was the Eighth Amendment – not a compromise, but the imposition of one highly contested account of the moral standing of the embryo or foetus, i.e., that it had an equal right to life to that of the pregnant woman. In the years since then it has become clear that the operationalization of the Eighth Amendment in legislation and clinical practice poses serious risks to the mental and physical health of pregnant women, tramples on their autonomy rights and requires of them a self-sacrifice that is unreasonable and unjust. In light of this, it should be repealed and the rights of pregnant women and girls to make a judgement as to the moral and responsible thing to do in their circumstances should be respected and supported.

[1] Mackenzie C (1992) 'Abortion and Embodiment', *Australasian Journal of Philosophy*, 70(2): 136-155.

[2] Sherwin S (1992) *No Longer Patient.* Philadelphia. Temple University Press.

[3] Mill JS (1981[1859]) *On Liberty.* London: Penguin.

[4] The right of autonomy is not absolute. Autonomously chosen actions can justifiably be limited if it can be demonstrated that they cause harm to others (as per the 'harm principle' first articulated by Mill [see footnote 3]).

[5] Kant I (1993 [1785]) *Groundwork for the Metaphysics of Morals.* trans JW. Ellington, London: Hackett.

[6] The right of reproductive autonomy is also not absolute (see footnote 4). However, those who would limit it must demonstrate that exercising autonomous choice in this context poses a substantial threat of harm to the tangible interests of others. Those who would deny women access to abortion services have not, in my view, succeeded in demonstrating this. On the contrary, it is the lack of legal abortion that leads to substantial harm, namely, the death, suffering and criminalization of women and girls.

[7] Robertson JA (1992) 'Casey and the Resuscitation of Roe v. Wade', *The Hastings Center Report*, 22(5): 24-2.

[8] Khader SJ (2008) 'When Equality Justifies Women's Subjection: Luce Irigaray's Critique of Equality and the Fathers' Rights Movement', *Hypatia*, 23(4): 48-74.

[9] Fletcher R (1995) 'Silences: Irish Women and Abortion', *Feminist Review*, 50: 44-66.

[10] Whitbeck C (1984) 'The Moral Implications of Regarding Women as People: New Perspectives on Pregnancy and Person-hood', in *Abortion and the Status of the Fetus*, WB. Bondeson et al., eds. Boston: Reidel.

[11] Hewson B (2001) 'Reproductive Autonomy and the Ethics of Abortion', *Journal of Medical Ethics,* 27, Supplement: ii10-ii14.

[12] Mahowald MB (1989) 'Is There Life after Roe v. Wade?' *The Hastings Center Report,* 19(4): 22-29.

[13] HSE (2013) National Consent Policy, Part 4, 6.2. Available at: http://www.hse.ie/eng/about/Who/qualityandpatientsafety/National_Consent_Policy/

[14] Protection of Life During Pregnancy Act 2013. Available at: www.irishstatutebook.ie/eli/2013/act/35/enacted/en/pdf
Department of Health (2014) Guidance Document for Health Professionals. Available at: http://health.gov.ie/wp-content/uploads/2014/09/Guidance-Document-Final-September-2014.pdf

[15] Jagger AM (2009) 'Abortion Rights and Gender Justice Worldwide: An Essay in Political Philosophy', in *Abortion, Three Perspectives,* M Tooley et al., eds. Oxford: Oxford University Press.

[16] Dooley D, McCarthy J (2005) *Nursing Ethics: Irish Cases and Concerns*, Dublin: Gill and MacMillan.