

Abortion and Social Justice: a common ground position
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1. Questions about the moral status of abortion, and debates about whether abortion should be legal have occupied a central and highly contentious place in public discourse and philosophical writing for more than four decades.¹ These debates are highly polarized: debaters rarely agree on shared assumptions or common starting-points. The pro-life camp typically begins its argument with the assumption that the fetus is a person, with all the rights associated with post-birth personhood.² The pro-choice camp typically begins its argument with the assumption that keeping abortion safe and legal is essential in the struggle to end gender-based oppression. Even philosophical works on abortion often fail to find substantial common ground.³ Still, I believe it is possible, even for groups as deeply

¹ Following the 2016 election cycle, a friend and I were discussing some hopeful possibilities in the current state of politics. Apart from our substantive disagreements with the outcome of the elections, we were especially distressed by the extremely polarized nature of politics today. One idea we discussed was the possibility that perhaps political polarization had become so dysfunctional that ordinary people would begin to find common ground on issues, where previously, finding common ground had seemed unthinkable. This essay is a contribution to that effort.

² I want to acknowledge that as a matter of politics and philosophy, my own view on the traditional debate is committedly pro-choice. I mention this to be open about my own potential biases. However, I am, again as a matter of both politics and philosophy, committed to working to find common ground with pro-life people and I hope that what I have written here succeeds in that effort.

³ For instance, Celia Wolf-Devine and Philip E. Devine begin their commentary on essays by Michael Tooley and Alison M. Jagger by saying, "Neither Tooley nor Jagger conceded even the prima facie case against abortion; we, therefore, omit discussion of moderate positions that may be worthy of consideration." And regarding Jagger's view, they continue, in a somewhat inflammatory way: "...for Jagger the claim is that her kind of feminism is the wave of the future and is therefore entitled to ride

divided as are pro-life and pro-choice groups, to find common ground. Finding it is my aim here.

One assumption that guides my work is this: no one chooses an abortion for its own sake. Having an abortion is a means to cope with a situation that ranges from unplanned and not desired to a terrible trauma. My suggestion is that society should focus on creating the conditions that prevent rape, and through education and material support, enable people to avoid engaging in unprotected sexual contact, if they do not want to reproduce at that time. Indeed, in other areas of life (parenting or teaching, for instance), it is often useful to view actions in their wider context, asking how to create conditions that enable people to avoid unwanted or terrible situations. So in the same way, I urge us to shift our attention away from the usual legal and moral preoccupations on abortion and instead focus on the social conditions that obtain in society and work to create a more just social order – a society without rape, a society in which everyone is educated about how to avoid undesired pregnancy, and then empowered to act accordingly – which will, in turn, enable many people to avoid aborting an unexpected pregnancy.⁴

roughshod over all opposition.”(p. 198) In the same way, Jaggar concludes her reply to Devine and Devine with the conclusion that, “The concern for fetal life that is vaunted by opponents of abortion rights is inseparable from their cruel disregard for the lives of women. Especially in circumstances of extreme gender inequality, only those who support abortion rights are entitled to fly the flag of life.” (p. 232)

⁴ What I say here may not fully apply to pregnancy that results from non-consensual sexual intercourse (rape, under-age sex, under-the-influence sex, for example). In those cases, I believe that it will always be morally crucial for abortion to be available to those individuals. At the same time, my general position is relevant for cases of rape because my strategy urges society to do more to prevent rape and thus prevent abortion. I will have a bit more to say about this later in the essay.

Another way of making my point is to say that there are many ways of attempting to prevent abortions: the abortion procedure can be criminalized both for abortion-seekers and for abortion-providers, abortion can be made less readily available, abortion-seekers can be shamed or pressured to avoid abortion. These are strategies that some in our society have used and are using to decrease abortions. But these are not the only ways to reduce abortions: alternatively, society can address the underlying reasons why people get pregnant and use evidence-based means to prevent these states of affairs from obtaining. But even here we must be careful: we must acknowledge that many potentially effective means of preventing unwanted pregnancy are themselves morally suspect. Society could, for instance, imprison all men when they reach reproductive age. This is likely to prevent pregnancy. But of course this strategy has too high a cost in violating men's freedom. Effectiveness, then, cannot be the only test to determine whether a strategy to end abortion is a good one. It will be necessary for us to make substantive judgments about the moral acceptability of any options we consider.

I also assume that our end goal is to create a society in which no one has (or very few people have) abortions. Because there are many strategies we might employ to create this society, we need some criteria to help us choose among these strategies. To do this, I suggest that we identify two assumptions, one from the pro-life camp, and one from the pro-choice camp, which will serve as litmus tests to help us adjudicate the acceptability of these options. I also assume that, in this society we are envisioning, abortion is safe, legal, and available to all who seek one and that no

one is shamed for becoming pregnant or having an abortion. But still, given that abortions are not desirable for their own sakes, I ask how it might be possible to create a society in which no one chooses (freely and without constraint) to have one.

We proceed first by identifying these two core assumptions, which will serve as litmus tests for the acceptability of a common ground view. I also argue, following others who have made this point, that it is important to disentangle the termination of pregnancy from the killing of fetuses, not only conceptually but also practically.⁵ I then suggest three strategies society can use to enable people to get pregnant only when they want to reproduce. Before concluding, I consider a few objections to my view.

2. Central Assumption: pro-life camp

Opponents of abortion rights typically begin their argument with the idea that the fetus is a person, with all the rights of post-birth persons. By their own lights, pro-life defenders argue from the assumption of fetal personhood to the right to life of the fetus and then to the impermissibility of abortion. To be successful, this argument requires additional steps. But at an intuitive level, it is not surprising that one who begins with the assumption of fetal personhood does not find much common ground with the pro-choice person who wants to keep abortion safe, legal, and readily available. Indeed, when the pro-choice person argues that pregnant people have the right to determine what happens in and to their bodies, in parallel to this right held by non-pregnant people, the pro-life person finds this argument to

⁵ Cite M. Little, "Abortion, Intimacy, and the Duty to Gestate..." Ethical Theory Moral Pract. 1999; 2:295-312.

be is a non-starter. In response to the ostensible right to bodily self-determination, the pro-life person argues that the right to bodily self-determination ends (or is limited) when another life begins. Because abortion kills another person, there can be no unfettered right to bodily self-determination. If the fetus is a person, this simple right does not apply.

There are many objections to the idea that fetuses are persons.⁶ Rather than address this tangle of objections and responses, I will instead argue that our litmus test should be that all fetal life has value. This is a much weaker claim than the claim that fetuses are persons, but is, I think, sufficient. What do I mean when I say that fetal life has value? One thing this claim is often taken to mean is that killing a fetus is not morally comparable to cutting one's hair or clipping one's nails. Like aborting a fetus, these are examples of removing human cells from one's body; but unlike a fetus, these cells have no moral significance.

It is worth asking why a fetus has moral significance. One possible answer is that fetuses have value because they are the only entities that will become human persons. If human persons have moral value, it is reasonable to accord moral value to the only entities that will become them. Consider a non-human example: it seems to be a mistake to value a material object (a house or a car) but fail to value the materials necessary to create that object. It can make sense to value some materials rather than others (to value environmentally friendly materials over environmentally unfriendly ones or inexpensive materials rather than expensive ones or beautiful materials rather than unattractive ones), but it does not seem

⁶ Cite the objections here: desires, interests, self-consciousness...

possible to value an object without valuing those materials necessary to create that object. I believe the same can be said for human persons: if we value human persons, then we must value the “materials” or precursors necessary to create them. A fetus is such a precursor.

But is it reasonable to hold that human persons have value? Some hold that all human life has special significance because (theologically) God has endowed human beings with special value or because (morally or metaphysically) there is some significant difference between human beings and other causes, or other forms of life (self-consciousness, perhaps). Since these views value human persons, they would then, according to my argument, value fetuses.

But many people do not hold that human life has any special value and consider human beings to be part of the causal nexus or the natural world and no different in those regards from tornados, trees, or grizzly bears. But even those who think that human life has no *special* value, might and perhaps, should, hold that human life itself has some value. Each of us values our own life to some extent and the lives of those we love, and so in this respect, we value human life. Even if someone does not value all human life, nearly all of us value some human lives.

All of these views are compatible with the idea that *human* life has some value. Alternatively, one could hold that life itself, human and non-human, has value. This more ecumenical view may be attractive to some who are skeptical that only human life has value.

So if life or human life or some human lives have value then the precursors to human life have value. On this view, all human embryos (implanted and non-

implanted) have value too. While some might take this to mean that these embryos have rights to life that are identical to post-birth human beings, I instead take this to mean that there are limits on what human beings can do with or to embryos. These embryos cannot be used for just any purpose (fish food, for instance). They cannot be thoughtlessly destroyed: there are limits on how and for what reasons they can be destroyed. It is not my aim to specify the conditions under which these actions are morally acceptable; instead I am arguing that these actions require some moral consideration, unlike, say, cutting one's hair or clipping one's nails.

This view has a number of consequences: first it requires that we view the many non-implanted human embryos created for, but unused by, in vitro fertilizations as having moral value. We may thus have moral obligations to these embryos (obligations concerning what we do with them, and whether and how we destroy them, etc.).

But what does this view say about human sperm and eggs? Must we accord some moral consideration to these entities? I do not think we must: there is a clear moral distinction between sperm and eggs on the one hand and embryos on the other: the latter, in the right environment, has a chance of becoming a human person. The former, each on their own, in any environment, will never become one. And that is a reasonable ground on which to hold a moral difference between human embryos and other human reproductive materials.

If it is plausible to hold that human embryos and fetuses have moral value, we must try to determine what sort of value they have. One possibility is that these entities have value relationally or extrinsically: they are valuable because someone

values them. Many people value fetuses. Often their parents (biological or prospective) value them; and even where their parents do not value them and there are no prospective parents who do, there are many abortion opponents who value the lives of all fetuses. So pretty clearly, human embryos and fetuses seem to have relational value.

But if we grant that fetuses have relational value, is this tantamount to conceding that abortion is immoral? Consider an analogy: imagine that I wish to cut some trees down on my property in order to eliminate the risk of them falling on and damaging my house. My neighbor values all trees and cannot bear the thought of any tree meeting an early demise. The trees are valued by my neighbor and thus they have relational value. Is my neighbor's valuing of these trees sufficient to provide a reason for me to avoid cutting down the trees? Clearly not. As the trees are on my property, they are mine to keep or cut down. The mere fact that some entity is valued by someone is not reason enough to require the continued existence of that entity.

It is also important at this point to note that the argument of this paper is not an argument that abortion is or is not morally (or legally) permissible. I am rather interested in the matter of whether it is possible to reduce (perhaps dramatically reduce) the number of abortions by creating a more just society. In order to justify this reduction in abortions, we need to assume that fetuses have value, for without this assumption, it is not clear why reducing the number of abortions would be a morally valuable goal.

So we have thus far established that it is reasonable to hold that fetuses have value because many people value them. But another possibility is that fetuses have value intrinsically, or for their own sake. Do fetuses and embryos have this sort of value? Here again, I think a plausible answer is yes: as I suggested above, fetuses, and fetuses alone are capable of becoming human persons. Not all fetuses will, and those that do, require a certain sort of environment in order to become a human person. But at this point, nothing else can become a human person apart from a fetus. And if human persons are valuable, so, are the entities that will become human persons. This is not to say that fetuses have the same value as human persons, but rather to say that as a result of their intimate, causal relationship to human persons, fetuses have their own sort of moral significance. To say that fetuses have intrinsic value is to say that even if no one valued some fetus or other, that fetus would still have value in itself.

One implication of this is that killing this fetus would still require some amount of justification. We require this in our view of killing non-human animals: many of us find that hunting, just for the fun of it, is morally wrong, even if respectfully-practiced-hunting (avoiding baiting animals, for example) for essential (and even non-essential) food is morally acceptable. Many of us find that killing dogs and cats and other pets is morally wrong, unless there is very good reason to do so: some examples of very good reasons include mercy killings or hastening death at the end of life in order to end suffering. Some people consider overpopulation to be a justifiable reason for killing animal kinds that are pets; others do not. Indeed, many people believe that the killing of non-pets is wrong too: it is reasonable to hold

that killing a squirrel or a chipmunk for no reason at all is morally wrong. As Atticus Finch famously cautions in To Kill a Mockingbird, it is morally acceptable to kill the annoying blue jay (because it is annoying), but “it’s a sin to kill a mockingbird,” because mockingbirds make beautiful music and don’t harm anyone. (page and citation) In cases such as these, the justification needed may be quite weak, as for instance that the squirrels have taken up residence in one’s home or under one’s porch or that blue jays are annoying. But to kill them for absolutely no reason at all may still be morally wrong.

Indeed, something like this may even underlie our views of when it is acceptable to kill a human person: while pacifists hold that this is never morally acceptable, most of us think it is sometimes, under certain circumstances, acceptable to end the life of another human being (self-defense, in a justifiable war, or even hastening death near the end of life in order to end suffering). So in this way, to say that fetal life has intrinsic value is to say that some amount of justification is needed in order to end fetal life. How much justification is needed will depend on how much value the life has. We needn’t settle this question here. But as we have seen, the lives of many creatures seem to have intrinsic value, as evidenced by the idea that killing these creatures requires some degree of justification. In this regard, fetuses are no different.

At this point, some may worry that this view establishes only the weakest level of justification needed to end a fetal life. Indeed, many pro-choice writers can concede this point.⁷ So it is not clear that having a minimal level of value for fetal life

⁷ Judith Jarvis Thomson is a good example.

does enough to ensure that few abortions occur. This may be true, but only for those concerned with the moral and legal justification of abortion. As I said at the outset, I am not so much interested in these issues as interested in what steps are needed to create a society in which few or no abortions occur. To justify this project, it must be the case that fetal life has value. Without this assumption it would not be clear why abortions are an issue of social importance. But because my project is not to render a moral or legal view of the justifiability of abortion, I need not worry that my view of the value of fetal life is so minimal as to justify many abortions. I am simply not concerned with that question. As I indicated earlier, there are many ways to bring about a society in which abortions do not occur: making it illegal is but one (admittedly highly popular and well-publicized) path to this outcome. I believe, however, that it is one of the most costly paths, and perhaps also one of the paths least likely to be successful. I will return to this issue in section five.

To this point, I have established that there is good reason to hold that fetal life has both extrinsic and intrinsic value and I have explained what it means to say that fetal life has this sort of value (some justification is required to end fetal life). This view will serve as a litmus test for the eventual view on abortion that I will defend: any acceptable common ground view will need to be consistent with the idea that fetal life has both extrinsic and intrinsic value. Now we need a litmus test from the abortion rights camp.

3. Central Assumption: pro-choice camp

Some proponents of abortion rights begin their argument by calling attention to the severity of gender-based oppression.⁸ Moreover, some hold that unfettered access to abortion is a necessary component of any strategy to reduce and eliminate gender-based oppression.⁹ And these theorists hold that any reduction in the availability of abortion is very likely to worsen gender-based oppression. To the proponent of abortion rights, arguments about fetal personhood (or perhaps even fetal value) are beside the point: abortion rights are needed to secure full respect for women and femme-identified people.

Some might doubt the connection between the availability of safe abortions and a decrease in gender-based oppression. While it is not possible to address this issue fully, a few things can be said. First, when abortion has been illegal, pregnant people have still needed and wanted to control their reproduction. The means they have taken to do so have further disadvantaged them and exacerbated gender-based oppression: the illegality of abortion has allowed unscrupulous people to take advantage of pregnant people in desperate circumstances, resulting in unsafe, unsanitary abortions. These unsafe, unsanitary abortions often result in permanent damage to people's bodies and, in some cases, death.¹⁰ So from a purely consequentialist perspective, the consequences of unavailable abortion are harmful and can be severe.

⁸ I assume, rather than argue, that gender-based oppression exists and is severe. For those unconvinced, I suggest: Marilyn Frye, bell hooks, Catherine MacKinnon, Carol Sheffield (all reprinted in *Oppression, Privilege, and Resistance*).

⁹ Cite some here: A. Jaggar, Susan Sherwin...

¹⁰ Cite the film, the coathanger project. Find other data too?

Second, more substantively, many in society continue to treat women as sexual objects, and see women's bodies as sexually available to men, regardless of whether women consent to sexual contact. This view is clearly evidenced in the many examples of sexual harassment, sexual abuse, and sexual assault that have been in the news recently and have been occurring for centuries.¹¹ For a society to allow women to be the objects of male predation is itself a terrible injustice. But then to prevent women from controlling the consequences of this predation is a further injustice.

Women's bodies are treated as sexual objects and regarded as always sexually available not only by the individual men who sexually abuse women, but also by the way women are represented in advertising, in other visual media (television and movies), and by the norms governing sexual activity in the culture. In particular, some sexual norms urge women, especially white women, to be passive and non-assertive, suggest that women's bodies not take up much space, and hold that their ideas and voices should not attract too much attention. If these norms are specific primarily to white women, still other cultural norms for femininity urge women of all colors and identities to serve men: women are expected to raise the children that men and women together create; women are expected to serve men as their secretaries, their nurses, the educators of young children; women are expected to do the difficult emotional work that helps children (and adults) to process, shape, and deal with their emotions. In a society that largely views women as the assistant, rather than the equal, to men, to give the state control

¹¹ Harvey Weinstein, Matt Lauer, Garrison Keiler, etc...

over women's reproduction severely exacerbates women's the already diminished status.

To put it differently: until a society is able to guarantee safety and full personhood to women, to ensure that they will not be raped, that their bodies will not be touched without their consent, that they will not be expected to serve men, it is unjust to prevent women from using abortion to partially cope with these other injustices. Removing abortion from the small quiver of options open to women to cope with these injustices will increase gender-based oppression.

This is our second litmus test: any acceptable position on abortion must reduce the level of gender-based oppression. A strategy that increases gender-based oppression will not pass this test.

4. Disentangling Abortion from Fetal Killing

Having established our two litmus tests for a common ground view of abortion, we need one more idea before we can articulate that common ground view. Proponents of abortion rights point out that there appear to be substantial inconsistencies in how some in society view duties to aid: when the person helping is the mother of a fetus, some hold that the mother has a stringent duty to aid. But when the person helping is a stranger, or is the parent of a post-birth child in need, society does not hold that these individuals have stringent duties to aid. In particular, (in the United States) we do not require passers-by to be good Samaritans, nor do we require parents to donate organs, tissues, or even blood to their child who needs these to survive.

Those opposed to abortion rights can make one of two replies to these arguments: first, they can acknowledge that society currently has a double standard, but hold that passers-by and parents are, contra the current social norms, morally obligated to help (strangers and their children) if they are well-situated to do so. This brings their views of these cases into line with their views on abortion and thus resolves the double standard. Alternatively, pro-life proponents can deny the existence of a double standard by drawing a distinction between killing and allowing-to-die, and argue that abortion is killing whereas these cases of not helping are examples of allowing-to-die. Because it is killing, abortion would be impermissible while these cases of allowing-to-die would be permissible.

Briefly in reply to the first response, I believe it would be a positive move for society to have more stringent norms of providing aid to others. If this resulted in more social supports for people in general, it might also result in more support for people who are pregnant. All of these seem to be positive developments.

In response to second reply, I argue that we must disentangle abortion from the killing of a fetus. That is, abortion should be seen not as the justified killing of a fetus, but as the removal of the fetus from the body of its gestational mother. Abortion is, thus, the termination of a pregnancy for the pregnant gestational mother, but not necessarily the killing of a fetus.

To see what I have in mind here, consider two thought-experiments:

1. Imagine that advances in medicine develop a high-tech incubator that can grow an embryo from the moment of conception to viability. When a pregnant person no longer desires to be pregnant, the embryo or fetus can be surgically

transferred to this incubator to live and grow to viability. When viability is reached, the baby can be adopted.

2. Imagine that advances in medicine allow for transfers of embryos or fetuses from a pregnant person to another person who desires to be pregnant and in whom the conditions to support a pregnancy can be medically induced (as they are for in vitro fertilization). The person to whom the embryo or fetus is transferred might be a paid surrogate or a person who desires to be pregnant but has not been able to conceive by other means, including other reproductive technologies.

In both of these imagined scenarios, a person who desires to terminate a pregnancy is able to do so, but in neither case does the termination result in a fetal death. In both cases, the termination allows another person or people to become parents or expand their families. These outcomes serve a variety of goods: they respect the value of fetal life, they allow people who do not wish to remain pregnant to terminate their pregnancies, and they allow those who wish to adopt a baby to do so. Moreover, by keeping the termination of pregnancy available to all, this strategy avoids worsening gender-based oppression.

5. A Common Ground View

To this point, I have argued for two litmus tests for any social policy on abortion: any social policy must recognize the moral significance of the fetus and must reduce the level of gender-based oppression in society. I have also argued that society should view abortion as the termination of a pregnancy and work to find practical implementations of this idea, where the termination of a pregnancy does

not entail the death of the fetus. I suggested two such possibilities. These two litmus tests, alongside the view of abortion as pregnancy termination without fetal death, are key components of a social policy that aims to substantially reduce or even nearly eliminate fetal deaths from society.

How, then, would my approach work? Unwanted pregnancies result either from consensual sexual activity or from non-consensual sexual activity (rape). In the case of consensual, the sexual activity is either planned or spontaneous. In both cases, reproduction is no part of the goal of the activity. In all these kinds of cases, I believe that society has failed in upholding the social contract. In the case of rape, society has failed to keep the rape victim safe. In the case of wanted sexual activity that results in unwanted pregnancy, society has failed to provide the education or material support to prevent this situation from obtaining.

The particular strategies I recommend to uphold the social contract and minimize abortions focus on preventing unwanted pregnancy and preventing rape. I suggest three strategies:

1. Avoid “Abstinence Only Until Marriage” sexuality education; instead use only Comprehensive sexuality education programs;
2. Provide free or low-cost, long acting contraception to women and men;
3. Dismantle the rape culture and associated norms that identify masculinity with power, conquest, and violence, and femininity with weakness and submission.

We will discuss each in turn.

It is reasonable to hold that part of public education includes education about the human body, and about sexuality, sexual identity, sexual orientation, sexual desire, and reproduction. It is important for this education to be honest, open, accurate, and informative, and for it to include comprehensive information about how to prevent pregnancy. The type of education that provides all this information is often called “Comprehensive Sexuality” education. All other things being equal, better information leads to better choices, and so I believe that providing Comprehensive Sexuality education is necessary in any strategy to minimize abortion.

But some opponents of abortion also oppose Comprehensive Sexuality education, preferring exclusively “Abstinence Only Until Marriage” (AOUM) sex education. According to the pro-life organization, “Advocates for Youth,”¹² AOUM sex education focuses both on the importance of saying no to sexual activity outside of a monogamous marriage, and on the potential costs of extramarital sexual activity: sexually transmitted diseases, unintended pregnancy, and anecdotally asserted psychological costs to a teenager or young adult and to that young person’s relationship with their family.

Research does not show that these costs of sexual activity obtain. Rather, research shows that AOUM sex education is in fact *less* effective at preventing sexually transmitted diseases and unwanted pregnancy than are Comprehensive Sexuality education programs. The Society for Adolescent Health and Medicine recently released a position paper on AOUM and Comprehensive Sexuality

¹² <http://www.advocatesforyouth.org/topics-issues/abstinenceonly/132-8-point-definition-of-abstinence-only-education>

education programs.¹³ They cite meta-analyses showing that students in AOUM programs were no more likely to abstain from sex (as compared to students in the Comprehensive Sexuality education programs) and that the two sets of students had similar behaviors regarding sex (similar number of partners and similar age at sex initiation).¹⁴ As AOUM Sexuality education rightly claims, abstaining from sexual contact will (except for non-consensual sexual contact) prevent pregnancy. But as critics of AOUM sex education point out, the intention to be abstinent does not always ensure the practice of abstinence. So I would argue that even for teenagers and young adults who intend to be abstinent, it is important for their education to include the recognition that some who intend to be abstinent until marriage, abandon this intention without at the same time planning for responsible sexual contact (contact that will avoid an STI or an unwanted pregnancy).

The Society for Adolescent Health and Medicine also argues that AOUM programs are harmful to LGBTQ+ youth, as these programs take as their norm (and their only healthy model) sexual activity within the context of a monogamous marriage between straight, cisgender people. This perpetuates oppression of youth and people of all ages who identify as LGBTQ+ because this way of life is not acknowledged and legitimized. Many proponents of AOUM sexual education also hold a religious worldview, where the reality of gender fluidity and the range of gender identities experienced by many people is not acknowledged. Some who hold this worldview deny the validity of homosexuality. This worldview also tends to

¹³ [http://www.jahonline.org/article/S1054-139X\(17\)30297-5/pdf](http://www.jahonline.org/article/S1054-139X(17)30297-5/pdf)

¹⁴ [http://www.jahonline.org/article/S1054-139X\(17\)30297-5/pdf](http://www.jahonline.org/article/S1054-139X(17)30297-5/pdf)

See p. 401.

hold highly prescribed gender roles where women are identified with care work and men are identified with provider, protector work and where the man is the leader and the woman is his helper. AOUM education programs would seem likely to perpetuate oppression of LGBTQ+ people and oppression on the basis of gender.

Now certainly, a view (in this case AOUM sex education) is not falsified or unjustified simply because it is held by a person who holds a particular worldview (a Christian or Judeo Christian worldview). But because there seems to be little data-driven reason to use AOUM sex education programs, their primary attractiveness may be the way they promote a particular worldview. So the very existence of ineffective AOUM sex education programs thus reinforces and perpetuates gender-based oppression. It does this because these programs enliven and support a worldview that denies the existence and legitimacy of LGBTQ+ people, and reinforces the view that women are not leaders and that they are the (only) appropriate caregivers in society. These norms serve to relegate women to unpaid labor (as stay-at-home mothers), or less-well-paid jobs (as nurses rather than doctors, kindergarten teachers rather than high school teachers), and keep women out of leadership roles (cite statistics on women CEOs and women in Congress). Having few women in leadership roles, in turn, perpetuates a system where women's concerns do not get a direct hearing in policy decisions (both in government and in corporations), and where policy decision makers do not have first hand experience of these concerns. All of this perpetuates and reinforces gender-based oppression.

Some pro-life people might blanch at having what they view as a pro-sex sexuality education curriculum. But I would reply that this debate is not a debate about legislating a particular worldview. If Comprehensive Sexuality education curricula reduce unwanted pregnancies and thus also reduce the need for abortions, society should opt for those curricula. This strategy passes the first litmus test: by reducing the need for abortions, it acknowledges the value of fetal life. This strategy also meets the second litmus test: by providing factual, unbiased sexuality education, it reduces gender-based oppression.

Indeed, I suspect that providing comprehensive sexuality education, including education about the diversity of sexual orientations, sexual identities, and genders, will reduce gender-based oppression as compared to the levels present in society today. But it is also important to point out that Comprehensive Sexuality education will reduce gender-based oppression *as compared to AOUM sexuality education programs*. As I argued earlier, the latter are likely to increase gender-based oppression, as they offer only one model of healthy sexuality: sexual activity within a monogamous, cisgendered, heterosexual marriage. And having only this option necessarily disadvantages and delegitimizes all other sorts of relationships.

Sometimes the abortion debate devolves into a debate about opposing worldviews: the progressive worldview vs. the religious worldview. One insight of my view is that *this* debate between worldviews is unproductive and leads to further polarization. If instead both camps worked to promote a world with few or no abortions (without making abortion illegal) and a world with much less gender-

based oppression, both camps are likely to get much more of what they want: a world both with fewer abortions and less gender-based oppression.

A similar argument can be made about providing free or low-cost contraception and providing education about contraception as an effective way to avoid STIs and unwanted pregnancy. Research shows that providing both contraception (especially long-acting, reversible contraception) and education about contraception is very effective in preventing abortion.¹⁵ Some holders of a religious worldview worry that provision of, and education about, contraception will encourage teenagers to become sexually active. This concern has not been found in research on sexual behaviors and Comprehensive sexuality education programs.

But even if this worry is true, it is important to remember our two litmus tests: does our social policy on abortion value fetal life and does it decrease gender-based oppression? Our litmus test asks not: does the social policy on abortion decrease or de-incentivize sexual activity among teenagers? There may be some who hold religious worldviews who would like to de-incentivize sexual activity among teenagers. And as a matter of how those individuals teach values to their children or their families, they are free to de-incentivize sexual activity. But as a matter of social policy in a secular, multicultural society, it is not appropriate for social policy to be driven by those religious values. Indeed, these individuals and

¹⁵ See especially: Jeffrey Peipert, et al, "Preventing Unintended Pregnancies by Providing No-Cost Contraception," *Obstet Gynecol.* 2012 Dec; 120(6): 1291–1297. P.D. Blumenthal, et al, "Strategies to prevent unintended pregnancy: increasing use of long-acting reversible contraception," *Human Reproduction Update*, 17(1) January 2011, Pages 121–137.

families are free to send their children to private or religious schools, where the values taught are in line with their own. But when it comes to public education, and any school receiving public funds, the school must provide both contraception and education about contraception to its students.

Here, as with AOUM sex education, I believe we will see something similar: when people who are engaging in sexual activity that can result in pregnancy are denied access to contraception, their ability to cope with gender-based oppression decreases. As we saw earlier, women and femme-identified people currently experience their bodies as sexually available to men and as objects of male predation. Women repeatedly describe unwanted touching, kissing, groping, and rape. And even where women have sex, but are not raped, the sexual contact may not be fully consensual: women may feel pressured, may feel that they have no other good options but to “consent” to sex. And in a society that fails to keep all its members safe (indeed, in this case fails to keep more than half of its members safe), it is important for women, including female teenagers, to have the ability to control whether they reproduce, and thus to have access to contraception and education about contraception.¹⁶

Some libertarians balk at the second proposal: why should the government pay for contraception, in essence paying for people to have sex, when sex is a totally

¹⁶ Should this contraception be free? Some argue that sex is a voluntary activity and so contraception should not be provided by the government. Perhaps in a society in which people only have sex when they freely consent to it, contraception should not be provided by the government (and nor should medication to treat erectile dysfunction). But in the society which we currently occupy, sexual activity, for women is not freely consented to. And so for that reason contraception should be provided by the government.

optional activity? If such a person also holds that abortions can be easily available without restrictions to promote freedom, then I would have little quarrel with such a view. But if such a person wants to restrict the availability of abortion or restrict the availability of contraception (perhaps to promote a particular religious or gender-restrictive worldview), then I would say these two views are inconsistent. Also, many insurance plans, including government plans, reimburse for treatment for erectile dysfunction. If the libertarian position is to be consistent, the government would not reimburse for this treatment, which is for a totally optional activity. So if society does not provide the materials necessary for women and femme-identified people to prevent unwanted pregnancy in optional sexual activity, society should not provide the materials needed by some men to enable them to engage in optional sexual activity.

The final strategy I am proposing to reduce abortions requires eliminating the rape culture by rethinking the norms constituting masculinity and femininity. Currently, masculinity is partly defined as conquering, dominating, and doing violence to others. Femininity is partly defined as weakness, meekness, taking up little space, and being deferential. Heterosexual activity is similarly seen as an activity where the masculine partner dominates, subdues, or subordinates the feminine partner. Acts of rape and sexual violence are an extension of the norms of domination. Most men do not commit rape or other acts of sexual violence. But society does men, women, and people of all genders a disservice by perpetuating norms of masculinity and heterosexual sexual activity where domination are so central a part of these norms. If society is to succeed in keeping women and femme-

identified people safe from male predation, we must envision and reinforce different norms for masculinity, femininity, and heterosexual sexual activity. Doing this will reduce gender-based oppression: so this strategy thus meets our second litmus test. And while it may not directly address the first litmus test (valuing fetal life), it may indirectly value fetal life by enabling all people to take responsibility for their sexual activities and ensure that they engage in procreation-possible activities only when they wish to procreate.

6. Objections and Responses

Before concluding, I will consider a few objections. Some might object that I have built this view around the progressive, rather than the religious, worldview. The religious worldview assumes that the only sexual relationship that is morally acceptable is one between straight, cisgendered, married people. Even granting the least biased version of this view, some holders of the religious worldview would claim that I have illegitimately advanced a progressive world view rather than their religious one. But in a multicultural, open, non-religious society, I believe our framing assumptions need to be non-religious ones.

Second, some pro-life folks may worry about my argument because, unlike making abortion illegal, it may take time to implement these strategies (more Comprehensive Sexuality education programs and making birth control more readily available to all) and in the meantime, abortions will continue and fetuses will continue to die. Indeed, my suggestion of practically disentangling the termination of pregnancy from the killing of a fetus might take years or decades to realize the

technological advances needed to implement this. And again, thousands of fetuses will be killed until these possibilities are put into practice.

Those in the pro-choice camp have a different worry: they may object that any acknowledgment of the moral significance of the fetus or of any moral ambiguity regarding abortion will open the door to restrictions on women's reproductive freedom, allowing the government to further control women's bodies. According to this objection, it is inappropriate or even dangerous to women to shift the terms of the debate away from keeping abortion safe and legal. Once the debate shifts away from this, the door is open to further reduce women's freedom and thus increase gender-based oppression.

Both are legitimate concerns. Indeed, the concerns may be heightened because it could be especially challenging for either of these entrenched camps to trust those in the opposing camp, who have so long been their political enemy. But when we focus not on this understandable anxiety but instead on the shared assumptions each camp must grant, I believe this is a much easier ask. As we have seen, those shared assumptions are: 1. That having an abortion is not an act that is valuable in itself. It is rather valuable as a means to another desired end; 2. That fetuses have moral significance. Killing them requires justification and they are owed respectful treatment from human persons; and 3. Gender-based oppression is a reality, it is experienced by many people as severe, and there are steps we can take as a society to reduce it.

Another way to read my argument is as a compromise: some pro-life people may not be very concerned about gender-based oppression. Similarly some pro-

choice people may not be very concerned about the value of fetal life. However, I believe that if each group conceded that there is some level of importance to the core value espoused by the other group, there are many abortion-reducing strategies that then become available: providing Comprehensive Sexuality education and providing free or low-cost, long-acting (and other) contraception are two examples. Another is urging physicians, scientists, and medical device manufacturers to provide the materials needed to practically disentangle pregnancy termination from fetal death.

No doubt these strategies will take time to be effective. However, from the pro-life person's perspective, every fetal death is a tragedy. And from the pro-choice person's perspective, the continued existence of gender-based and other forms of oppression substantially harms people every day. But over time, I believe these strategies have an excellent chance of lowering the rate of abortion to (perhaps) almost zero. These strategies achieve this without increasing, and with a very good chance of decreasing, gender-based oppression. Deep historical mistrust and anxiety, while perhaps well-placed, should not stand in the way of pro-life and pro-choice people working together to achieve these important goals.

7. Conclusion

I have argued that historical mistrust and suspicion, while understandable, should not stand in the way of pro-life and pro-choice people working together to realize a society with few or no abortions. Through strategies that can be implemented right now (universal Comprehensive Sexuality education programs,

and providing low- or no-cost contraception) as well as the promotion of longer-term technological advances and rethinking the role of domination in norms of masculinity and submission in norms of femininity, we can work to bring about a society with few or no abortions and lower levels of gender-based oppression.

No one wants to have an abortion. But women need to control their reproduction, most especially in a society that persistently fails to protect women from male harassment, predation, and other violence. In other contexts, it is an effective strategy to create the conditions that enable people to plan ahead, to be educated about the likely effects of their actions, and at the same time, to, as a society, create the conditions that will keep all people safe. Achieving a society free of gender-based oppression is likely to take far longer than creating a society where abortion is legal and available but rarely chosen. Still, it is reasonable to believe that having universal Comprehensive Sexuality education and readily available long-acting contraception will help lower the rates of gender-based oppression in society. Of course, the hardest work in achieving that society will require the painstaking work of changing gendered norms of sex and sexuality that equate male sexual identity with power, conquest, and violence and female sexual identity with submission and weakness.