

RECONSIDERATION OF ARGUMENTATION CONCEPTIONS: USING THE EXAMPLE OF ABORTION

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The introduction to a great many bioethical problems has a broad application and significant dynamics. A great unification can hardly be expected and unanimous agreement even less so, as a diversity of opinions on bioethical issues is given by the values of pluralist society and the possibility to build argumentation techniques on various ethical conceptions (e.g. deontological, teleological, pragmatic or discourse ethics). There are two threats constantly lurking: dogmatism, by keeping rigorous principles, and relativism. In spite of the fact that there are no straightforward solutions or answers to satisfy everyone, a third route needs to be searched for, a route of minimum consensus.

The aim of bioethics and biomedicine is not only to know what is good and what is bad, but, rather, to know what we should act in accordance with. Ethical reflection and actions are distinguished in a new way, as the directing in terms of ethical reflection does not automatically lead to good actions and ethical conceptions with their general theses are often of little help in the process of identifying particular situations and contexts. Apart from that, new (bio)technologies have placed new types of problems ahead of us, which might not be possible to solve by classic ethical theories. I do not intend to undermine or dismiss the importance and significance of ethical conception by the above emphasis on the goal and possible limitations. On the contrary, it is necessary to reconsider their categorical apparatus and argumentation basis and power anew. Our critical reflection can become more intense if we are not dogmatic.

The intention of this contribution is to demonstrate, using the example of abortion, that by contemplating the mutual relation-

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ship between the right for life and the obligation to respect this right, the first precondition for a consensus of the existing defined viewpoints is formed. Re-definition of autonomy, or, rather, a shift from static to dynamic autonomy, is another, equally important, step.

The discussion on abortions, which, in 2001, blew through Slovakia like a hurricane, was initiated by the political activities of KDH (KDH – Kresťansko-demokratické hnutie; Christian-Democratic Movement), the core of which was formed by the following proposed change to the wording of Article 15, Paragraph 1 of the Slovak Constitution in force at the time: *“Everyone has the right for life. Human life is also worthy of protection before birth”*. A legal acceptance of this bill in the sense that human life needs protection from the moment of conception would have necessarily lead to a change in other valid legal rights, and it would, especially, mean the annulment of the right for legal and safe abortion. A wave of resistance was raised by various subjects against an introduction of such a strongly restrictive measure.

With regard to the culture of discourse, an intense polarisation of opinions and viewpoints of the representatives of both opinion groups must be considered the most unfortunate aspect in the face of such a whirlwind, as it disables any pluralist approach or a deeper and more detailed argumentation, without being bulldozed by extreme emotions and a priori prejudice. In the discussions, an excessively reductionist approach, dogmatic simplifications and “political capitalisation” could be witnessed, especially on the part of the initiators of change.

In the following contemplation, I will focus on the moral-philosophical context, bearing the importance of the legal-political aspect in mind. I will reconstruct the major arguments presented by pro-life defenders as well as pro-choice supporters. This will be done in a simplified, typological form, which still incorporates a great number of differences and various combinations of arguments. I am not going to pay any extra attention to them; the intention is rather to demonstrate that such attitudes that are based on extremely polarised arguments cannot lead to consensus or tolerance. It is necessary to look for a different, argumentatively con-

vincing, and alternative concept, which could be of help on the way out from a blind alley for those interested.

The opponents of legal abortion use the claim that abortions are morally inadmissible as an argument. This approach is based on the principle that no human life may be thwarted and that foetuses are human beings, as (human) life starts at conception. In this group there are people who might consider abortion immoral due to the fact that abortions are against human nature and endanger the very essence and self-evidence of natural laws. Many times, those who base their arguments on a religious belief that abortion breaks godly order sound more convincing.

The supporters of legal abortion acknowledge its moral admission and claim that a foetus is not a man, an independent individual or a person yet; therefore, it does not have the right for life, in contrast to a born man. The most frequent reason for approving and permitting abortion are various consequences, which the woman, family, or the baby itself, could suffer from, should the pregnancy proceed. A majority of the supporters of this opinion emphasise the woman’s right to decide whether she keeps the foetus or not. It is more or less assumed that the woman alone is able to judge the situation in the best way, she is competent, and, thus, it should primarily be her who has autonomy and responsibility in the process of making this morally difficult decision.

The arguments of both parties cannot be unified into one coherent whole; everyone has to choose what they consider most important. And still, is there nothing that would join the supporters of the above contradictory opinions?

Both lines of argument, pro-life as well as pro-choice, agree that the right for human life should be respected and everyone who has the right for life must not/should not be killed. They, however, disagree with regard to whether the foetus should be considered a (complete) human being. The first group claim it should, as life (of a human being) starts at conception, which is why it has the right to life. This status is most frequently legitimatised biologically, referring to the start of the individual’s genetic code at the moment when the egg cell is fertilised by the sperm. The pro-choice supporters claim that it is only after birth that the foetus becomes a (complete) human being, or some of them even support a dualistic

idea, according to which the state of the embryo/foetus rises with the increasing stage of pregnancy, as this is how it becomes closer to a human being. This is legitimised by means of a lack or an unfinished development of such features typical for man as mental activities, perception of pain, planning of activities, self-awareness, etc. Foetuses are not considered rational and social beings, and, thus, they do not have their own right for life.

Both standpoints make the same mistake, although they each use a different area of facts. One group primarily base the foetus's right for life on biological (genetic) characteristics, while the other group use psychological characteristics as a precondition of moral divergence (i.e. the newborn does have the right to life while the foetus does not). The drawback lies in their basing the moral thesis on psychological or biological qualities and their use for its legitimisation. However, as Rosamond Rhodes claims, neither biological arguments against abortion, nor psychological arguments permitting abortion solve the issue of the right for life in an acceptable way (Rhodes, 2000, p. 75).

It is necessary to find a new, different argument which justifies the moral significance of the statement on the right for life in a more convincing way. It has to be a concept in which the *mutual relationship between the right and responsibility for life* is reconsidered or in which the discussion about rights will also be a discussion about obligations. In the case of pregnancy, the relationship concerns the foetus and the pregnant woman (the biological mother), and places a question before us *how the right of the foetus is established* and, at the same time, *how the responsibility of the (pregnant) woman originates*.

To answer the question of how the foetus's right for life is established also means to "say who, at the same time, is obliged to respect this right. To determine the obligation it is necessary to explain how this obligation has arisen" (Rhodes, 2000, p. 76). The answer is that it was established by the woman who has accepted the pregnancy, or, more, precisely, has agreed to accept the responsibility to provide for the foetus. By the woman undertaking this obligation, the foetus's right for life is established. The right for life does not simply arise from the fact the foetus was conceived in the woman, but from her approval to bear and provide for it.

A critical analysis of this natural-right theory and a refusal of the opinion that naturally occurring rights and moral obligations exist is a more general background to this contemplation. The emphasis is mainly placed on obligations and their origination. All moral obligations only arise by undertaking some specific commitments.

With regard to the problem of abortion, the cases of *unplanned* pregnancies are primarily concerned. The foetus does not have the right for life until the moment when the woman decides to have a baby. From the moment of her approval, her obligation towards the foetus begins, which she has not had until then, and, thus, the foetus has not had the right for life. If the woman decides to abort the pregnancy, this does not concern the foetus's right for life being endangered, as it has never had one. This, however, also solves a positive aspect, which is the right of the baby for being born as wanted. If the woman undertakes the obligation and wants to have the baby, the right for a wanted baby arises.

Two matters, which are mutually interconnected, need to be emphasised:

a) The approval to undertake the commitment must not be enforced onto the woman; it must be her free decision and choice that she made, having considered the circumstances which will influence the whole network of relationships existing around her. This claim is based on the accepted assumption that a woman is a free, autonomous being responsible for her own decisions. "Women need the freedom to make decisions referring to reproduction not only to defend their right for the actual decision making but, often, also to strengthen their connections to others: to responsibly plan and have such family which they can look after and provide for, to devote time to professional or work commitments towards the outside world, or keep supporting their families or communities" (Dworkin, 2002, p. 139).

b) The approval to undertake the commitment and responsible decision-making is non-transferable; no one else, and not even any institution, can undertake it for her. This is, again, based on the assumption that the woman is considered the subject of decision-making and not, thanks to giving birth to children, an object of someone else's interests – e.g. army lobbyists who want more soldiers, nationalists – good Slovaks, fundamentalist Catholics – who

want more Christians, economic determinists - "labour force", providing for our pensions. It is necessary to point out again that the obligation and rights arise on the basis of some special relationships, i.e. the relationship between the pregnant woman/biological mother and the foetus, or the mother/father/parents and the child in the case of parents' rights and obligations. If I consider the issue of abortion from the viewpoint of the parents' relationship, I can agree with the following opinion: *"as the parents are responsible for all their deeds, they are responsible for making decisions about the offspring they conceive. This obligation gives only them the right to decide if the foetus will be or will not be carried the full term and no institution has the right to impose this decision on them"* (Rhodes, 2000, p. 78). And, thus, the pregnant woman/potential parents have the choice: either to refuse the motherly/parental rights and accept the responsibility for abortion, or accept the motherly/parental obligations, fulfil them and, in this way, actually become a mother/parents.

I am also going to mention some consequences arising from the above conception. A refusal to accept parental responsibility can be expressed by regular use of contraception. *"A sexually active person who has decided not to use any contraception and does not have a clear idea whether to have a child or not is considered morally irresponsible"* (Rhodes, 2000, p. 80). Woman's indecisiveness in undertaking the commitment towards the foetus or abortion is considered morally negative. *"An indecisive woman who does not use any contraception and, first, decides to have a baby but, later, changes her mind and decides for abortion endangers the foetus's right for life"* (Rhodes, 2000, p. 80). Here, the importance of planned parenthood, corresponding with legal requirements formulated in the Chart of sexual and reproduction rights (cf. the Chart of sexual and reproduction rights IPPF, 1999), gains a moral justification.

For the above arguments to gain more convincing force, it is necessary to notice which ethical principles they are compatible with, or what, from the rich network of variously oriented moral viewpoints we should be sensitive to, to see the connection. I will present some of them.

Each moral agent is a unique individual with certain needs, interests and limits, but also with an individual moral orientation

and moral priorities. When searching for answers to moral actions, the standing of the particular individual must be taken into consideration. The (woman's) possibility to choose then also means that every woman decides having considered the particular life circumstances and situations. It is important to acknowledge the woman as an autonomous individual making moral decisions. This requirement is most frequently presented by pro-choice supporters in response to their opponents, who formulate the problem of abortion as a conflict between the mother's and foetus's interest and add that the given conflict arises with respect to the exceptionality of pregnancy. What can, however, be understood by autonomy of a (pregnant) woman? In modern-day culture, this notion is most frequently connected to independence, separation and definition of "I" and the other. If the term is used in this sense with respect to the woman's option of abortion, it is implicitly and indirectly assumed that if not a conflict, then, at least, separation and a difference of the "interests" ("right") of the pregnant woman with those of the foetus is concerned. This, further, leads to the acknowledgment of the foetus's autonomy. Consequently, we can hear pro-choice supporters using the diction and logic of their opponents. For instance: conflicts arise with regard to the exceptionality of pregnancy, as they evoke a question when not only the autonomy of the pregnant woman but also that of the foetus should be taken into consideration. The key to this serious misunderstanding and incorrect formulation is, at present, conventionalised, and the most frequently used sense of the term "autonomy".

It must be realised that the "exceptionality of pregnancy" suggests that it concerns woman's self-duality, or double-singleness. The term "pregnant woman" evokes a link to the foetus (a woman without it is not pregnant), the foetus evokes dependence on the pregnant woman. Their mutual relationship is not of an independent character but of dependent and essential determination.

If the term "autonomy" commonly implies almost radical independence, is the connection of autonomy and a pregnant woman not wrong and confused? Or is it an offer or a challenge to a significant shift in meaning of the term "autonomy" itself, an extension of its spectrum so that we do not have to stay in the captivity of antagonisms and blind alleys?

E. F. Keller, an American feminist, comes to our aid. She puts forward a need to differentiate between two conceptions of autonomy: static and dynamic. While static autonomy determines the borders between "I" and the other in a stiff or, possibly, even rigid way, it marginalises the relevancy and comes to a well-known definition of a free subject/ "I" independent from others and one's environment; *dynamic autonomy* does not question the potential space between "I" and the other, it allows temporal elimination of the borders between them, and it, especially, accents relevancy (towards others, towards the environment), or it is, to an equal extent, a product of relevancy as well as definition, while neither of them are preferred. Dynamic autonomy arises from the experience of continuity and reciprocity. The relationship between the child and the mother (or another immediate person who looks after it) is a certain idealised prototype of such a connection. This has certain consequences and, within dynamic autonomy, the following is emphasised: the borders between "I" and the other are flexible, the connection and separation are in a complementary relationship, the tension in relationships might remain; it is, however, not the same as opposition or antagonism. A focus on relationships and unity, sensitivity to context, care for oneself, others and the world, all this is directed to and ends in ethics of care.

Ethics of care does not want to give up the term "autonomy" and it considers differentiating between self-sufficiency and self-determination important. If autonomy is understood as self-sufficiency, then the care becomes invisible, imperceptible and the responsibility to oneself and others is weakened. Autonomy can be considered an equivalent of self-determination. Their mutual bond is expressed in the concept of relational autonomy, according to which people become autonomous in relation to others. Man forms the sense of his/her "I" thanks to others acknowledging them as an individual, autonomous person, or helping to develop this sense of autonomy. In this sense, autonomy of man always depends on others. Self-determination, undertaking obligations and responsibility can only be developed in a relative context.

Women's prerogative to decide about the time and way of reproduction forms the core of women's self-determination and freedom. At the same time, it is expected that their moral decisions

will be accepted and that their effort to undertake the commitment and responsibility for their future baby will be supported.

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