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Should Abortion Be Decriminalized in Korea?

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I. INTRODUCTION

The Constitutional Court of Korea is currently reviewing a case brought by a Korean doctor who is challenging the constitutionality of Korea's criminal laws on abortion. Not surprisingly, the case has exposed deep divisions within Korean society and has also attracted considerable attention from interested groups abroad. While the Korean Ministry of Defense has spoken out in favor of the country's existing abortion laws, the Ministry of Gender Equality has written to the Constitutional Court in opposition to the existing laws, claiming that the laws prohibiting abortion are being used against women and are inconsistent with Korea's international treaty obligations, including those specified in the Convention on the Elimination of All Forms of Discrimination against Women, which Korea ratified in 1984 [1]. Similarly, while the Catholic Bishop's Conference has delivered a petition to the Court, with over 1 million signatures on it, urging the Court not to decriminalize abortion, Korean women's groups, such as Womenlink and Korea Women's Hot Line, have been actively campaigning against the current laws [2,3]. And although a group of almost 100 pro-life university professors, have written to the court in support of the existing laws on abortion, another group of over 100 researchers from the fields of bioethics, philosophy, and theology released a public statement calling for the abolition of those laws [1,4]. The international NGO Human Rights Watch has also weighed into the controversy by submitting an amicus brief urging the Court to decriminalize abortion and ensure safe and legal access for women in need of abortions [5].

The Constitutional Court is now tasked with making a legal decision on one of the most divisive issues in medical ethics. However, as I will argue below, the key ethical issue at the heart of this

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case—whether the practice of abortion in Korea should be decriminalized—need not be divisive at all. The fact that it is so polarizing is largely the result of a particular way of approaching the issue of abortion, one which is neither necessary nor desirable from the point of view of ethical progress. When abortion is seen as a conflict between competing sets of rights—the right to life of the unborn versus a woman's right to privacy or self-determination—the inevitable result is not so much a moral dilemma as it is a moral impasse or dead-end. However, as I will argue below, there is a way out of this impasse, a way of approaching the key ethical question that does not involve adjudicating between competing sets of rights or prioritizing one over the other. It is possible, I will argue, to approach the decriminalization question in a fair-minded and objective manner, taking into account both the costs as well as benefits of maintaining versus repealing the existing laws on abortion. When one does approach the matter in this fashion, the answer to the question of what should be done—what sort of legislation is most desirable—is relatively straightforward.

II. THE CURRENT LEGAL STATUS OF ABORTION IN KOREA

The Korean Criminal Code, enacted in 1953, prohibits abortion under any circumstances and specifies the forms of punishment that can be given both to women who induce their own abortions as well as to doctors or others who perform abortions on pregnant women. The relevant articles of the Criminal Code, articles 269 and 270, which were amended in 1995, state that women who procure their own abortions through the use of drugs or other means may be fined or imprisoned for up to one year, while doctors, midwifes or others who perform abortions may be fined or imprisoned for up to two years and have their licenses suspended for up to seven years [6]. The Mother and Child Health Act, enacted in 1973 and later amended in 2009, introduced certain exceptions to the general ban on abortion set out in the Criminal Code. Article 14 of this Act, "Limited Permission for Induced Abortion Operations" allows doctors to perform abortions but only when one or more of the following five conditions are met: (a) the woman or her spouse suffers from a eugenic or genetic or mental handicap or physical disease; (b) the woman or her spouse suffers from an infectious disease; (c) the woman is impregnated by rape or "quasi-rape"; (d) the woman and her spouse are relatives who are unable to marry legally; or (e) the maintenance of the pregnancy injures or might injure the health of the mother's body [7]. The Mother and Child Health Act also requires that doctors who perform abortions in any of the aforementioned circumstances do so only with the consent of *both* the pregnant woman and her "spouse" defined in such a way as to include any person having a de-facto marital relation.

There has been no significant change to the laws governing abortion in Korea since the Mother and Child Health Act was first passed in 1973. However, in 2010 a Korean midwife filed a petition with the Constitutional Court of Korea (case 2010Hun-Ba402) challenging the constitutionality of the Criminal Code's prohibition on abortion. In

2012 the Court responded to this petition with a split-decision, with four judges ruling that articles 269 and 270 of the Criminal Code were constitutional, while another four judges insisted that they were unconstitutional if interpreted to prohibit even first-trimester abortions [8]. Since a minimum of six votes were needed to strike down the relevant articles, the constitutional challenge was unsuccessful and the prohibition on all abortions other than those specified in the Mother and Child Health Act remains in effect in Korea.

III. OPPORTUNITIES FOR CHANGING KOREA'S ABORTION LAWS

While Korea's relatively restrictive laws on abortion have remained stable for the past 45 years, during this same period there has been a significant worldwide trend toward liberalization of abortion laws [9]. Ireland, one of the few western countries to have maintained a ban on abortion, is the most recent country to vote to liberalize its abortion laws [10]. Korea too may soon follow this global trend and decriminalize abortion. Relevant legislative changes could come about either through the National Assembly or the Constitutional Court. Recent developments in Korea make either scenario entirely possible.

For instance, in August 2017 the new administration in South Korea, led by President Moon Jae-in, announced that that it would respond to any petition that receives more than 200,000 signatures. The next month it received a petition, signed by more than 235,000 citizens, calling for "the decriminalization of abortion and legalization of abortion pills" [3]. In response, the Secretary for Civil Affairs, Cho Kuk, announced that the government would launch a fact-finding study in 2018, collect opinions, and examine the reasons for Korea's ban on abortion. In acknowledging "the glaring disparity between the strict law and actual practices" regarding abortion in Korea, Cho's remarks were understood as hinting at the possibility that the current administration will endeavor to revise Korea's existing laws concerning abortion, a suggestion which has led religious and pro-life groups in Korea to speak out in defense of the current ban on abortion [11].

Additionally, as mentioned above, the Constitutional Court is currently reviewing, for the second time, the constitutionality of Korea's criminal ban on abortion. The case (2017Hun-Ba127) was launched in 2017 following a petition by a Korean doctor who is facing prosecution for performing abortions [3]. As we will see in more detail below, in its initial ruling in 2012, the Constitutional Court seemed to prioritize the right to life of the fetus over a woman's right to self-determination. However, the Court is currently staffed by an entirely new panel of judges, some of whom have publicly expressed views that run contrary to the Court's 2012 ruling. For instance, Justice Lee Jin-sung, the current president of the Constitutional Court, said in a confirmation hearing in 2012 that "Women's right to self-determination and right to pursue happiness which attempts to protect themselves from inevitable pregnancies by opting for birth control and abortion should not be evaluated as inferior to a fetus' right to life." [12]. And the former acting president, Kim Yi-su, has

stated that "In exceptional circumstances in which the pregnancy is in its early stages and the pregnancy is unwanted, there should be cases in which women's right to self-determination should be prioritized." [12]. Remarks such as these suggest that the Court may be poised to overturn Korea's current ban on abortion.

There are then legislative and judicial processes currently under way, either or both of which may result in significant changes to the laws governing abortion in Korea. While it is not clear what the outcome *will* be, it is possible to arrive at a reasonable and informed opinion on what the outcome *should* be, that is, on what sort of abortion legislation Korea should adopt. Let us approach this question by first considering the reasons why the previous constitutional challenge to Korea's ban on abortion failed.

IV. CONSTITUTIONAL CASE 2010Hun-Ba402

In order to understand why articles 269 and 270 of the Criminal Code were upheld in case 2010Hun-Ba402, let us review the judicial reasoning expressed by the four judges who decided in favor of the constitutionality of those articles. These judges explained the reasoning behind their ruling as follows:

> Human life, which is noble and the source of a dignified human existence, cannot be exchanged for any other thing in this world. The right to life is the most fundamental right among basic human rights. Although the fetus must rely on the mother for the maintenance of life, it is a living thing separate from the mother and is very likely to become a human being in the absence of any unforeseen circumstances. Therefore, the right to life of the fetus must also be recognized, and whether a fetus is able to survive on its own cannot be used as a criterion for determining whether it can be aborted. If we do not punish abortion, that is, if we apply sanctions other than criminal punishment, abortion will become much more prevalent than it is at present, and the legislative purpose of the abortion clause will not be achieved. Sex education, the widespread availability of birth control, and support for pregnant women are insufficient as a means of preventing unlawful abortions. Moreover, by allowing abortions prior to 24 weeks of pregnancy in exceptional circumstances, including cases in which the fetus has a mental disorder due to eugenic or genetic illness, the fetus's right to life may be restricted (Article 14 of the Mother and Child Health Act and Article 15 of its enforcement ordinance). Furthermore, a pregnant woman's right to self-determination, which is limited by these laws, cannot be regarded as more important than the public interest in protecting the fetus's right to life. For these reasons, we do not believe that it is an excessive restriction on a pregnant woman's right to self-determination that the self-abortion crime provision does not permit abortion based on social or economic grounds; and the provision therefore does not violate the Constitution [13].

According to these judges, "the right to life" is the most fundamental right among basic human rights, and since the fetus is "a living thing separate from the mother" and very likely to become a human-being in the absence of any untoward circumstances, the fetus should enjoy the right to life as well. The judges went on to clarify that the reason why the fetus is granted a right to life is not that it is able to survive on its own, or because it has consciousness or self-consciousness, but rather because it is a living thing, distinct from its mother, and very "likely to become a human-being in the absence of any unforeseen circumstances".

However, protecting the alleged right to life of the unborn is not the only reason these justices gave in support of articles 269 and 270; they also claimed that these laws were necessary for *pragmatic* reasons. That is, the judges claimed that if the act of abortion is not punished or is only mildly sanctioned then "abortion will become much more prevalent than it is at present". I will return to this point below. Additionally, since the Mother and Child Health Act does allow for abortions in certain exceptional circumstances, the judges claimed that articles 269 and 270 are not excessive restrictions on a pregnant woman's right to self-determination.

There are several problems with the reasoning expressed by these judges. In this section I will explain two of these problems; in the following two sections I will explain another two. The first problem concerns the criteria that the judges used for claiming that an embryo/fetus has a right to life. In the landmark abortion case of *Roe v. Wade*, the US Supreme Court decided that *viability*—the ability of the fetus to survive outside the uterus—is the appropriate criteria to use in marking the point at which the state has a legitimate interest in protecting potential life. The US Supreme Court famously ruled that within the first trimester of pregnancy, a woman's right to abortion was absolute, but from the end of the second trimester, which the Court identified with the beginning of viability, states could regulate or even prohibit abortion to protect the life of the fetus. However, in its 2012 ruling, the Korean Constitutional Court explicitly rejected the idea that viability marks any important dividing line between embryos/fetuses that have, and those that lack, a right to life. Instead, the judges who defended articles 269 and 270 of the Criminal Code suggested that embryos/fetuses have a fundamental right to life simply in virtue of the fact that *they are living things that are, in the absence of any unforeseen circumstances, highly likely to become human beings*.

The problem with using this as a criterion for deciding what does, and what does not, have a right to life is that it is too imprecise to serve the purpose it is intended to serve. Whether any given embryo/fetus is, in the absence of any unforeseen circumstances, highly likely to become a human being depends on a number of factors including the age of the mother and her parity (i.e., how many children she has already delivered). For instance, one recent study on more than 65,000 parous woman found that 43% of these women reported one or more recognized spontaneous first trimester miscarriages and that the rate of miscarriage among women with 5 or more prior deliveries was approximately 70% to 80%, depending on

the number of prior deliveries [14]. Another study found that while the risk of miscarriage is 8.9% in women aged 20 to 24 years, it is on average 74.7% in those aged 45 years or more [15]. Data such as these show that the chances of any pregnancy being brought to term as opposed to ending in miscarriage or spontaneous abortion is variable and depends upon a number of factors, including the age, parity, and overall health of the pregnant woman. Therefore, it is false to suggest, as the judges quoted above did, that in the absence of any unforeseen circumstances, a typical embryo/fetus is "highly likely to become a human being". The judges who ruled in favor of articles 269 and 270 presumably believed that abortion should be prohibited in all cases other than those specified in Article 14 of the Mother and Child Health Act. However, the criterion they used to attribute a right to life to an embryo/fetus does not apply to all of the beings they intend it to cover, since many of the embryos/fetuses that they regard as having a right to life are in fact not likely to become human beings.

It may be said, in defense of the Court opinion, that what is important is not that the embryo/fetus is very *likely* to become a human being but rather that it is *possible* for it to become a human being. In other words, it may be suggested that what the judges meant is that embryos/fetuses have a right to life in virtue of the fact that they are *potential* human beings. However, this suggestion is no better than the previous one. Whereas as the former criterion (i.e., beings that are highly likely to become human beings) is too narrow and fails to cover many of the embryos/fetuses that are thought to have a right to life, this second criterion (i.e., potential human beings) is too broad and covers many things that are generally not thought to have a right to life. Consider, for instance, the thousands of pre-implantation embryos (or pre-embryos) that have been formed through in vitro fertilization (IVF) procedures and are now frozen in fertility clinics around the country. These too are "potential human beings" but they are generally not thought of as having a right to life that needs to be protected. And if they ever were granted a legal right to life, this would have profound implications for fertility treatments involving IVF, which routinely produce more embryos than are ever used by infertile couples.

A further problem with using the notion of a potential human being as a criterion for determining what does, and what does not, have a right to life was pointed out long ago by Peter Singer: it does not follow from the fact that X is a potential Y that X should have whatever rights Y has [16]. For instance, Prince Harry is now a potential King of England but it does not follow that he now has the rights of a king. There are then two reasons why the foregoing interpretation fails to protect the reasoning of the judges expressing the Court opinion in case 2010Hun-Ba402. And neither of the two criteria considered above (i.e., "beings that are highly likely to become human beings" or "potential human beings") is precise enough to apply to all and only the beings it is intended to apply to.

The second problem with the reasoning expressed by these judges relates to whether their defense of articles 269 and 270 of the Criminal Code is consistent with Article 14 of the Mother

and Child Health Act. If the right to life is a fundamental human right, and if embryos/fetuses must be granted that right, as the judges claimed, then it seems that most of the cases of abortion that Article 14 legally permits cannot really be justified at all. Consider, for instance, the fourth clause in Article 14, the claim that a woman can abort if she and her partner are relatives who are unable to marry legally. If embryos/fetuses have a fundamental right to life in virtue of the fact that they are very likely to become human beings in the absence of any unforeseen circumstances, then they must have that right to life regardless of the relation between mother and father and whether or not the two can legally marry. So if the reason why abortion is prohibited by the Criminal Code is that the embryo/fetus has a right to life that must be protected, then it seems to follow that abortion must be prohibited even in cases in which the mother and father cannot legally marry, contrary to what Article 14 states.

The argument presented here with respect to the fourth clause in Article 14 applies just as much to the first three clauses. That is, if an embryo/fetus really does have a fundamental right to life for the reasons that the judges state, then it would seem to have that right regardless of whether (a) the woman or her spouse suffers from any mental handicap or physical disease; (b) the woman or her spouse suffers from an infectious disease; (c) the woman is impregnated by rape or "quasi-rape"; or (d) the woman and her spouse are unable to marry legally. Each of these conditions involve considerations that make the pregnancy unfortunate, or less than ideal, but they do nothing to undermine the idea that the embryo/fetus itself has a fundamental right to life. Indeed, the only clause of Article 14 that is arguably consistent with the claim that the embryo/fetus has a fundamental right to life is the last one, the idea that abortion is justified when the mother's own survival is at risk. That is, one need not suppose that the embryo/fetus does not have a right to life in order to think that abortion is justified, or should be legally permitted, when the mother's life is at risk. In such cases, there is a conflict between two competing rights to life—that of the mother and that of the embryo/fetus. When only one can live, it is possible to defend the idea that it should be the mother without assuming or implying that the fetus does not also have a right to life.

V. THE PROBLEM WITH RIGHTS–BASED APPROACHES TO ABORTION

Nothing in the foregoing should be interpreted as suggesting that the various exceptions to the abortion ban specified in Article 14 of the Mother and Child Health Act cannot be ethically justified. Clearly they can. However, in order to justify those exceptions one must approach the issue from the point of view of considering the costs and benefits of allowing versus prohibiting abortion in the various circumstances specified in Article 14. For instance, consider the third exception specified by Article 14, the case in which a woman becomes pregnant as a result of rape or "quasi-rape". To force a woman to carry to term an unwanted child that is the product of a brutal assault and a gross

violation of her autonomy and dignity is a cruel punishment indeed, and one that will likely result in much more suffering for both the mother and the child than would be the case if she were allowed to abort. That, presumably, is why Article 14 allows for abortion in such cases. However, the cost-benefit reasoning that motivates that exception is not based on any respect for the rights of the unborn, but is rather utilitarian in nature. From a rights-based perspective, the fact that the embryo/fetus has a fundamental right to life means that its life should be protected regardless of the suffering that such protection might bring about. And it is precisely such thinking that has led over 30 countries around in the world, including many in South America, Africa, as well as Ireland, to prohibit abortion even in the case of rape [17]. Such countries are often criticized by the United Nations (UN) and also by human rights groups for their restrictive abortion laws. However, it is important to see that those laws did not come about by accident; in many if not most cases they are the result of a serious commitment to protecting the right to life of the unborn.

The judges that expressed the court opinion in case 2010Hun-Ba402 clearly struggled to adjudicate between the competing rights or interests of embryos/fetuses on the one hand and the rights or interests of women on the other. They suggested that a pregnant woman's right to self-determination cannot be regarded as more important than the right to life of the embryo/fetus. However, the dissenting judges in this case claimed that articles 269 and 270 are an infringement on a pregnant woman's right to self-determination. It seems that from their point of view, the law itself, and the judges who decided to uphold it, prioritized the rights of the embryo/fetus over the rights of pregnant women. Other commentators have come to the same conclusion [18]. The dissenting judges explicitly wanted to strike a better balance between the competing rights involved in abortion, and they believed that that better balance consists in decriminalizing abortion at least in the early stages of pregnancy.

However, it is not at all clear that permitting abortion in the first trimester of pregnancy really does reflect "a better balance" of the competing rights. How exactly can one balance the alleged right to life of an embryo/fetus with a women's right to self-determination when the latter is understood to include the right to terminate the life of an embryo/fetus? Precisely because the alleged rights in the case of abortion seem to cancel each other out, many of those who believe that embryos and fetuses do have a right to life have been unwilling to permit abortions under any circumstances, except perhaps to save the life of the mother. Indeed, 66 countries in the world today, mostly in the global south, with 25.5% of the global population, have such laws [19]. The thought that motivates or justifies such laws is the idea that the right to life of the unborn is fundamental and not something that can be balanced by other considerations, except perhaps the life of the mother. This too is the position of the Catholic Church, whose Catechism describes abortion as "gravely contrary to the moral law" and states that "From the first moment of his existence, a human being must be recognized as having the rights of a

person—among which is the inviolable right of every innocent being to life." [20]. And it is for this reason that abortion is illegal with no exceptions in the Vatican City as well as currently only three other countries—Honduras, El Salvador, and Nicaragua—all heavily influenced by Catholicism.

The idea that abortion should be prohibited altogether or allowed only when the mother's life is at risk cannot be easily dismissed as the product of irrational religious fundamentalism. If one seriously considers the embryo/fetus as having a right to life that is no less significant than that of a full-fledged human being, then abortion really is the moral equivalent of murder, which is not the sort of thing that one generally takes a balanced approach towards. No reasonable person thinks that parents who find their children burdensome, expensive, or inconvenient should be allowed to murder them. So why should it be any different in the case of embryos or fetuses if they too are human beings with a right to life? This, then, is the fundamental problem with abortion. Those who believe firmly in the right to life of the unborn may be fully supportive of gender equality and the advancement of women's rights, but what they cannot tolerate is any understanding of those rights that permits abortion, which for them is the moral equivalent of murder. The moral dilemma, or rather deadlock, that I am describing here is one that is inevitable if we take seriously both the right to life of an embryo/fetus and a woman's right to self-determination. If there is any moral progress to be made on the issue of abortion it must involve something other than rights-based thinking.

VI. A PRAGMATIC WAY FORWARD

The approach that I advocate to the issue of abortion is not exactly new; it has been advanced by others, including most recently by Joshua Greene [21]. My contribution is to defend the use of this approach specifically with respect to the ethical question of whether or not abortion should be decriminalized in Korea. While the approach I defend has its roots in utilitarianism, Greene prefers the title "deep pragmatism" to avoid much of the baggage that the term "utilitarianism" brings with it. It is pragmatic in the sense of being flexible, realistic, and open to compromise; it is deep in the sense of being principled. Ultimately it is an approach to ethical decision-making that attempts to make principled decisions on the basis of common currency or shared values.

Are there any shared values or objectives between those who want women to have access to legal and safe abortions and those who defend the right to life of the unborn? Clearly there are all concerned parties want abortion rates to be reduced, ideally to zero. No reasonable person wants to see an increase in the roughly 56 million abortions that are performed globally each year. Underlying this shared objective is perhaps a value judgment—that abortion is undesirable or at least problematic. Of course, some regard abortion as morally repugnant, while others see it rather as a unfortunate means to a necessary end; but virtually no one sees it as good in any other sense than instrumentally. From this shared value, moral progress is within reach, for if all concerned parties desire a reduction in abortions rates, both nation-

ally and internationally, the single most important question to ask is how that objective could best be achieved. Working within moral boundaries, what are the most effective ways of reducing abortion rates and making it as rare as possible?

If this is the key question, it seems that the answer is not to criminalize it. Evidence from around the world suggests that restrictive abortion laws do little or nothing to deter abortion. For instance, one recent, large-scale study published in the *Lancet* found no significant difference in abortion rates between countries with restrictive abortion laws and those in which it is available upon request [22]. However, while restrictive abortion laws do little or nothing to reduce abortion rates, they do have the effect of driving the practice underground, resulting in unnecessary harms to women seeking abortions. Indeed unsafe abortions are responsible for 8% to 11% of maternal deaths globally [23]. Yet death from unsafe abortions is virtually nonexistent in countries in which abortion is available upon request [24].

The ineffectiveness of abortion laws in deterring abortion is perhaps nowhere more apparent than in Korea. Precisely because of the abortion ban in Korea, it is notoriously difficult to determine the exact number of abortions in any given year. However, one recent attempt to estimate systematically the country's abortion rate in 2005 arrived a figure of 29.8 per 1,000 women aged 15 to 44 years [25]. This figure is slightly higher than estimates of the overall abortion rate for developed countries (27 per 1,000 women), where there are relatively liberal abortion laws; and it is significantly higher than the rate for Northern America (17 per 1,000 women), where abortion is available upon request [17]. More importantly, while the study mentioned above estimates that there were 342,433 induced abortions in Korea in 2005, the study also calculates that only 4.4% of these abortions were legal according to the existing laws. Thus, it appears that Korea exemplifies the general pattern found elsewhere—that banning abortion does little or nothing to reduce the number of abortions actually performed, but it does succeed in driving the practice underground and into conditions that are less safe for women.

The evidence outlined above provides the basis for a strong argument in support of decriminalizing abortion in Korea. If Korea's abortion laws have no effect on abortion rates and only make worse the conditions under which women have abortions, then the most reasonable conclusion to draw from this is that the relevant laws should be changed at least to ensure the safety of the women who seek abortions. And there are of course other benefits to decriminalization, such as removing the shame and stigmatization associated with abortion.

Let us return then to the opinions expressed by the Constitutional Court of Korea in the case of 2010Hun-Ba402. Though the judges expressing the court's opinion seemed to be focused primarily on the question of rights, specifically the right to life of the embryo/fetus, these judges also expressed a pragmatic argument in support of articles 269 and 270. They wrote that if the act of abortion is not punished or is only mildly sanctioned then "abortion will become much more prevalent than it is at present". The argument

is relevant and, if sound, would indeed provide some reason for maintaining the ban on abortion. However, the evidence cited above makes it clear that the argument is not sound, for it is based on a premise that is false: it is simply not the case that criminalizing abortion reduces abortion rates. The available evidence indicates that this is true, not only in Korea, but globally. Since 1990 abortion rates have fallen in most of the developed world, where women generally have access to legal and safe abortions, but not in the developing world, where restrictive abortion laws are the rule [22].

VII. CONCLUSION

I have argued in the foregoing that the issue of whether abortion should be decriminalized in Korea should be approached, not from the perspective of trying to adjudicate between the competing rights involved, but rather from the perspective of weighing the expected costs and benefits of maintaining the ban on abortion versus repealing it. Moral rights are simply not suited for the task of resolving the differences between those who support and those who oppose women having access to legal abortions. There are, as Greene points out, no non-question-begging ways of figuring out who has exactly what rights and which rights outweigh others; rather, rights tend to be used as rhetorical cloaks for deep-suited intuitions and emotions, exactly the sort of things that must be scrutinized or jettisoned in order to make moral progress [21].

To overcome the deep divisions surrounding the issue of abortion and make moral progress, a common currency must be found. What unites the groups that are polarized by abortion is the desire to reduce abortion rates as much as possible. However, there is now a strong body of evidence indicating that the best way to reduce abortion rates is not to prevent women from having access to abortions, but rather to prevent unwanted pregnancies in the first place. And the way to do that is by no means mysterious: it is by improving sex education and providing access to effective contraception. If there is a country that Korea can benchmark in this regard it is Switzerland, which in 2002 legalized abortion upon request within the first trimester of pregnancy and since then has witnessed a significant decrease in its abortion rate, which is currently 6.8 per 1,000 women, making it one of the lowest in the world [26].

The key ethical question that currently confronts the Constitutional Court of Korea, and indeed the country as a whole, is whether abortion should be decriminalized. In response to the recent citizen's petition requesting that the government decriminalize abortion and legalize abortion pills, the Blue House Secretary for Civil Affairs stressed the need to approach the issue deliberately and avoid "zero-sum thinking," claiming that "the debate should not be between the rights of the fetus versus the rights of women." [3]. For the reasons outlined above, I believe that this is exactly right. And if Cho's comments are any indication of the intentions of the administration for which he speaks, there is reason to be hopeful that moral progress on the abortion issue will soon come to Korea.

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Should Abortion Be Decriminalized in Korea?

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Abstract

The Constitutional Court of Korea is currently tasked with making a decision on the country's laws concerning abortion, which is one of the most divisive issues in medical ethics. However, as I argue in this article, the key ethical issue at the heart of this case—whether abortion should be decriminalized—need not be divisive at all. To move beyond the polarization this issue generates, the rights-based thinking that plagues so much of the abortion debate should be replaced with a pragmatic approach that attempts to assess the costs and benefits of maintaining the current abortion ban versus those of decriminalizing abortion. Progress can come when the groups that are divided on the abortion issue recognize that they have something in common, which I claim is the goal of reducing the number of abortions. The key question that is prioritized on the approach that I defend is whether the existing ban on abortion is the best or most effective way to reduce the abortion rate in this country. In this article I present evidence to suggest that it is not.

Keywords

abortion, moral rights, Criminal Code, Mother and Child Health Act, deep pragmatism

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