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Introduction

No society, no religion, no culture, and no system of national law has been neutral about issues of human reproduction.¹

REPRODUCTIVE CHOICES ARE at once the most private and intimate decisions we make in our lives, and yet they undeniably also have public dimensions. Reproductive decision making takes place in a web of overlapping concerns – political and ideological, socio-economic, health and healthcare – all of which engage the public and which involve strongly-held opinions and attitudes. Decisions about reproducing, about whether and how to use one’s reproductive capacity, whether to ‘bear and beget’ children, are deeply meaningful to us as individuals, and of profound consequence to society. These decisions play a key role in ‘determin[ing] the shape and meaning of one’s life.’² And it is now possible actively to make decisions about childbearing in ways that would not have been open in the past. We now have choices about aspects of the reproductive process that, in the past, were matters of chance; we routinely see evidence of the social concerns that these issues raise in the popular press³ and popular culture.⁴ The shift from reproduction as a matter of chance to an opportunity for deliberate choice has yielded a need for greater State involvement in reproductive activity. The introduction of medical products and procedures to prevent conception, to terminate pregnancy and to initiate pregnancies in vitro, has created a need for regulation aimed at consumer protection and quality control, much as is the case with other medications, medical devices and procedures. But the complexities introduced by increased choice in reproduction go beyond issues of safety and quality, in that they also introduce new ethical concerns. Reproductive choices, controversial as they sometimes are, demand a carefully-balanced response from

¹ Rebecca J Cook, Bernard M Dickens and Mahmoud F Fathalla, *Reproductive Health and Human Rights: Integrating Medicine, Ethics, and Law* (Oxford, Oxford University Press, 2003) 3.

² John A Robertson, *Children of Choice: Freedom and the New Reproductive Technologies* (Princeton, NJ, Princeton University Press, 1994) 24.

³ See, eg, Mark Henderson, ‘First “Designer Baby” Could Save His Brother’, *The Times Online* (London, 9 November 2004), <www.timesonline.co.uk/article/0,,8122-1380616,00.html>; Rob Stein, ‘A Boy for You, a Girl for Me: Technology Allows Choice: Embryo Screening Stirs Ethics Debate’, *Washington Post* (14 December 2004) A01; Karen Chen, ‘Fertility Experts Debate the Risks of IVF Twins’, *Ottawa Citizen* (10 September 2012), <www.ottawacitizen.com/health/Fertility+experts+debate+risks+twins/7215343/story.html>; Michael Hanlon, ‘Three-parent IVF is a Chance to Create a Generation Free From Mitochondrial Diseases’, *Telegraph* (Chatham, 17 September 2012), <www.telegraph.co.uk/science/9548387/Three-parent-IVF-is-a-chance-to-create-a-generation-free-from-mitochondrial-diseases.html>; Reuters, ‘First Mother to Daughter Uterus Transplant Carried Out in Sweden’, *Vancouver Sun* (19 September 2012), <www.vancouversun.com/health/women/First+mother+daughter+uterus+transplant+carried+Sweden/7265488/story.html>.

⁴ There are several movies dealing with a number of the issues raised by assisted reproductive technologies: *Godsend* (2004); *Baby Mama* (2008); *Inconceivable* (2008); *My Sister’s Keeper* (2009).

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law and policy. Intervention by the State in the context of reproductive decision making is necessary but also dangerous – necessary in order to protect the rights and interests of individuals, and dangerous because if it goes too far, regulation can have destructive effects on individuals and on society as a whole.

I. REPRODUCTIVE AUTONOMY IN LAW

Reproductive autonomy – the ability to be self-determining and to act on one’s own values in making decisions about reproduction⁵ – is an important concept in law and policy. Legal support for reproductive autonomy is found in the Canadian⁶ and American⁷ Constitutions, international instruments (such as the International Convention on Civil and Political Rights,⁸ the Convention on the Elimination of Discrimination Against Women,⁹ the International Conference on Population and Development¹⁰ and the European Convention on Human Rights¹¹) and the common law. There does not seem to be much, if any, disagreement around the idea that freedom of choice in reproductive matters is a significant aspect of the freedom to map the course of one’s own life. Yet in attempting to look closely at the contours of the concept, we begin to see some uncertainty about its meaning and legal implications, about how to understand reproductive autonomy and how to value it.

The development of the legal conception of reproductive autonomy relates to women’s claims to access to contraception and abortion services; it stems from assertions that women should be free from coercion in reproduction.¹² North American jurisprudence around reproductive autonomy thus has its origins in relation to bodily integrity and decisional privacy. Whether or not the law has explicitly recognised it as such,¹³ the struggle for the right to safe, timely abortion is where we locate the origins of reproductive autonomy.

Early judicial commentary on the notion of reproductive autonomy is found in the American contraception and abortion cases. In *Eisenstadt v Baird*, for example, Justice Brennan stated that

⁵ See, eg, Emily Jackson, *Regulating Reproduction: Law, Technology and Autonomy* (Oxford, Hart Publishing, 2001) 2–9; Carolyn McLeod, *Self-Trust and Reproductive Autonomy* (Cambridge, MA, MIT Press, 2002) 2. For a discussion of autonomy generally, see Catriona Mackenzie and Natalie Stoljar, ‘Introduction: Autonomy Refigured’ in Catriona Mackenzie and Natalie Stoljar (eds), *Relational Autonomy: Feminist Perspectives on Autonomy, Agency, and the Social Self* (Oxford, Oxford University Press, 2000) 3.

⁶ *R v Morgentaler* [1988] 1 SCR 30, 63 OR (2d) 281.

⁷ See, eg, Robertson (n 2) (arguing that US constitutional jurisprudence supports a broad reading of reproductive autonomy or, as he labels it, procreative liberty).

⁸ International Covenant on Civil and Political Rights (adopted 19 December 1966, entered into force 23 March 1976) 999 UNTS 171, Arts 17, 23.

⁹ Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, Art 16(1)(e).

¹⁰ ‘Programme of Action of the International Conference on Population and Development’, UN International Conference on Population and Development (Cairo 5–13 September 1994) UN Doc A/CONF.171/13/Rev.1, Ch VII.

¹¹ European Convention on Human Rights and Fundamental Freedoms (adopted 4 November 1950, entered into force 3 December 1953) UNTS 213.

¹² Onora O’Neill, *Autonomy and Trust in Bioethics* (Cambridge, Cambridge University Press, 2002) 50.

¹³ As is discussed in ch 5, the law around abortion in the UK and Australia has not developed in such a way as to recognise women’s autonomy explicitly.

[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.¹⁴

In *Roe v Wade*, the US Supreme Court expanded on this analysis in articulating the contours of a constitutional right to abortion, holding that ‘The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent.’¹⁵ In striking down Canada’s therapeutic abortion law, Chief Justice Dickson noted the profound implications of a woman’s inability to choose freely to terminate a pregnancy:

At the most basic, physical and emotional level, every pregnant woman is told . . . that she cannot submit to a generally safe medical procedure that might be of clear benefit to her unless she meets criteria entirely unrelated to her own priorities and aspirations. . . . Forcing a woman, by threat of criminal sanction, to carry a foetus to term unless she meets certain criteria unrelated to her own priorities and aspirations, is a profound interference with a woman’s body and thus a violation of security of the person.¹⁶

Madam Justice Wilson took an even more expansive view, recognising that a woman’s decision to terminate a pregnancy has ‘profound psychological, economic and social consequences,’ but also that it is a decision that ‘deeply reflects the way the woman thinks about herself and her relationship to others and to society . . . Her response to it will be the response of the whole person.’¹⁷

The cases on contraception and abortion tend to refer with approval to the idea that procreative decisions are of an acutely intimate and personal nature. The cases also recognise the importance of the freedom to make such decisions and acknowledge the universality of the relevant principles.¹⁸ As Mr Justice Munby put it:

Decisions on such intensely private and personal matters as whether or not to use contraceptives, or particular types of contraceptives, are surely matters which ought to be left to the free choice of the individual. And, whilst acknowledging that I have had no argument on the point, I cannot help thinking that personal choice in matters of contraception is part of that ‘respect for private and family life’ protected by Article 8 of the [European Convention on Human Rights]. The reasoning of the Supreme Court of the United States of America in *Griswold*, *Eisenstadt* and *Carey* no doubt reflects a different constitutional background, but are not the underlying principles the same?¹⁹

In addition to articulating an intense and very personal interest in being able to choose not to reproduce, courts have also noted the importance of the ‘right to reproduce’ in considering issues such as non-consensual sterilisation of persons with intellectual

¹⁴ *Eisenstadt v Baird*, 405 US 438 (1972) 453.

¹⁵ *Roe v Wade*, 410 US 113 (1973) 153. Justice Blackmun went on to refer to the potential medical and psychological harm, as well as the distress, that could be caused by forcing a woman to bear an unwanted child.

¹⁶ *Morgentaler* (n 6) 56–57 (cited to SCR). In *Morgentaler*, the Supreme Court of Canada found the Criminal Code (RSC 1970, c C-34) provisions dealing with abortion to be unconstitutional and therefore invalid, on the basis that they violated s 7 of the Canadian Charter of Rights and Freedoms, Pt I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (UK), 1982, c 11.

¹⁷ *Morgentaler* (n 6) 171 (cited to SCR).

¹⁸ In *Smeaton v Secretary of State for Health* [2002] EWHC 610 (Admin), [2002] 2 FCR 193, the English High Court was called upon to address ‘the legality of the prescription, supply and use of the morning-after pill’ in England (para 3). The petitioner asserted that the pill (also known as the ‘emergency contraceptive pill’) is an abortifacient.

¹⁹ *Ibid* para 398.

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disabilities.²⁰ In *Skinner v Oklahoma*, the United States Supreme Court expressed what is taken to be the ‘strongest precedent’²¹ in favour of a broad right to autonomy in the reproductive context, referring to procreation as a ‘basic civil [right]’ and holding that

[t]he power to sterilize . . . may have . . . farreaching and devastating effects. . . . There is no redemption for the individual whom the law touches. Any experiment which the State conducts is to his irreparable injury. He is forever deprived of a basic liberty.²²

And in *E (Mrs) v Eve*, in which the mother of an extremely aphasic woman sought to have her daughter sterilised, Mr Justice La Forest noted the ‘growing legal recognition of the fundamental character of the right to procreate’.²³

In spite of these unequivocal and eloquent statements about the deep interest we have in making our own decisions about whether or not to ‘bear or beget’ children, courts have on occasion faltered in attempting to articulate the contours of reproductive autonomy. In the United States, for example, the Supreme Court has made clear that its view of reproductive autonomy is limited, holding that although a woman has a constitutional right to choose abortion, this right does not

[carry] with it a constitutional entitlement to the financial resources to avail herself of the full range of protected choices. The reason why was explained in *Maher*: although government may not place obstacles in the path of a woman’s exercise of her freedom of choice, it need not remove those not of its own creation. Indigency falls in the latter category.²⁴

And in *Re B*, after noting that in an earlier decision of the Family Court²⁵ ‘the judge rightly referred to . . . a basic human right, namely the right of a woman to reproduce,’ Lord Hailsham proceeded savagely to criticise the decision of the Supreme Court of Canada in *Eve*.²⁶ He ultimately permitted the sterilisation of an intellectually disabled woman, stating that

²⁰ In *Skinner v Oklahoma*, 316 US 535 (1942), the US Supreme Court invalidated an Oklahoma statute that granted the state the power to sterilise persons who had been convicted three times of particular criminal offences.

²¹ Robertson (n 2) 36.

²² *Skinner* (n 20) 541.

²³ *E (Mrs) v Eve* [1986] 2 SCR 388, [1986] SCJ No 60, 419–20 (cited to SCR). This case concerned an application by the mother of an intellectually disabled woman to have the woman sterilised. Mr Justice La Forest referred to the ‘grave intrusion on a person’s rights and the certain physical damage that ensues from non-therapeutic sterilization without consent’ and concluded that ‘it can never safely be determined that such a procedure is for the benefit of that person’ (*ibid* 431). Similar comments have been made by judges in other jurisdictions. In *Re Jane* (1988) 85 ALR 409, 418–20, for example, Nicholson CJ suggested that there is a right to procreate, or to choose not to do so. In *Marion’s Case*, which was decided a few years after *Re Jane*, the Australian High Court recognised the ‘fundamental right to personal inviolability’ but left open the question of whether ‘there exists in the common law a fundamental right to reproduce which is independent of the right to personal inviolability’ (*Secretary, Department of Health and Community Services v JWB and SMB (Marion’s Case)* (1992) 175 CLR 218, 253).

²⁴ *Harris v McRae*, 448 US 297 (1980) 316. The Court went on to say: ‘The financial constraints that restrict an indigent woman’s ability to enjoy the full range of constitutionally protected freedom of choice are the product not of governmental restrictions on access to abortions, but rather of her indigency. Although Congress has opted to subsidize medically necessary services generally, but not certain medically necessary abortions, the fact remains that the Hyde Amendment leaves an indigent woman with at least the same range of choice in deciding whether to obtain a medically necessary abortion as she would have had if Congress had chosen to subsidize no health care costs at all. We are thus not persuaded that the Hyde Amendment impinges on the constitutionally protected freedom of choice recognized in *Wade*’ (316–17). See also *Maher v Roe*, 432 US 464 (1977).

²⁵ *Re D (A Minor) (Wardship: Sterilisation)* [1976] Fam 185.

²⁶ *Re B (A Minor) (Wardship: Sterilisation)* [1988] AC 199.

[t]o talk of the ‘basic right’ to reproduce of an individual who is not capable of knowing the causal connection between intercourse and childbirth, the nature of pregnancy, what is involved in delivery, unable to form maternal instincts or to care for a child appears to me wholly to part company with reality.²⁷

The cases provide only a partial picture, as they consider only certain aspects of reproductive regulation and reproductive autonomy, rather than making broad statements about its implications. While it is fair to say that there is strong legal support for the notion of reproductive autonomy, at least in relation to abortion, contraception and sterilisation, questions remain as to whether these statements add up to more than the sum of their parts. Can we extrapolate from statements in favour of reproductive autonomy in the abortion and contraception context to support for the use of pre-natal diagnostic testing in an effort to avoid bearing a child with a genetic abnormality? Does the right not to be involuntarily sterilised entail a right to access technological means of procreation where one is unable to conceive a child without such assistance? Does the apparent endorsement of a strong, negative rights approach to the question of avoiding reproduction translate into a similar privileging of positive rights to access reproductive technology?

As assisted reproductive technologies (ARTs) have developed and become normalised, it has become increasingly clear that reproductive autonomy can be understood to encompass more than simply freedom from coercion in reproduction. It is commonplace to see claims that such things as the freedom to use pre-natal tests, the freedom to use technological means to facilitate procreation and the freedom to select for or against specific traits in our offspring, potentially involve the exercise of reproductive autonomy.²⁸ Arguably, the statements in cases that have considered aspects of reproductive autonomy lend themselves to this broader understanding of the freedom to make choices in an area of our lives that is central to our self-definition.²⁹ Yet, at the same time, new technologies evoke issues and concerns that are distinct from the more basic questions raised in the early cases. Courts have had to consider the implications of reproductive autonomy in the context of surrogacy agreements,³⁰ disputes over the disposition of surplus embryos created as a result of infertility treatment³¹ and cases where a woman has sought to attempt conception using her male partner’s sperm after his death.³² These cases require courts to consider conflicting rights or interests in reproductive autonomy where, for example, former partners cannot agree on the disposition of embryos created for purposes of in vitro fertilisation. Not surprisingly, these types of

²⁷ *Ibid* 204. It has been pointed out that the view taken of B’s capacity by the Law Lords is particularly pessimistic: see, eg, Jonathan Montgomery, ‘Rhetoric and “Welfare”’ (1989) 9 *OJLS* 395, 398–99. See also Jackson (n 5) 63, noting that the English courts have tended to ‘ignore the fluidity of incompetence’.

²⁸ See, eg, Jackson (n 5); Robertson (n 2); Dorothy Roberts, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty* (New York, Vintage, 1997); Allen Buchanan *et al*, *From Chance to Choice: Genetics and Justice* (Cambridge, Cambridge University Press, 2002).

²⁹ See, eg, Roberts (n 28); Robertson (n 2).

³⁰ *In the Matter of Baby M*, 109 NJ 396 (1988); *Johnson v Calvert*, 851 P 2d 776 (Cal 1993); *Jaycee B v John B*, 42 Cal App 4th 718 (1996).

³¹ *Davis v Davis*, 842 SW 2d 588 (Tenn 1992); *Kass v Kass*, 696 NE 2d 174 (NY 1998); *AZ v BZ*, 725 NE 2d 1051 (Mass 2000); *JB v MB*, 783 A 2d 707 (NJ 2001); *Re the Marriage of Litowitz v Litowitz*, 48 P 3d 261 (Wash 2002); *Evans v Amicus Health Care Limited & Others* [2004] EWCA Civ 727, [2005] Fam 1.

³² Although these cases generally do not frame the issues with reference to reproductive autonomy, see, eg, *AB v AG (Vic)* (Supreme Court of Victoria, Gillard J, 21 July 1998); *R (Blood) v Human Fertilisation and Embryology Authority* [1997] EWCA Civ 3092; *Hecht v Superior Court*, 20 Cal Rptr 2d 274 (Cal App 1993); *Hall v Fertility Institute of New Orleans*, 647 So 2d 1348 (La App, 4th c 1994).

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cases create some uncertainty about the implications of reproductive autonomy for law and policy making.

It seems obvious that abortion and contraception rights are necessary in order for women to enjoy autonomy and to participate fully in civic life. A more difficult argument to make is that access to ARTs equally fits within our conception of what is needed to respect reproductive autonomy. The cases frame reproductive autonomy as a vast concept and articulate sweeping ideas about its importance; these judicial statements have been relied upon to ground broader arguments about reproductive autonomy, both in terms of what it means and what it demands of the State. As reproductive technologies have developed and changed, we have seen the issues that confront judges and policy makers become more complex, but because the cases do not give sufficient depth or clarity to the concept, it is not always clear what reproductive autonomy demands. My project here is to consider ideas and arguments from philosophy and bioethics around autonomy and reproductive autonomy, both in terms of what it means and what it demands, and to apply those ideas in considering what shape legal regulation of reproductive decision making should take.

II. THE STRUCTURE OF THE BOOK

This is a study of reproductive regulation, the meaning of reproductive autonomy and the implications of its meaning for the regulatory enterprise. The aim is twofold: first, to make some arguments about the meaning of reproductive autonomy and its implications for law and policy; and, secondly, to create a resource for those interested in law, policy and reproductive decision making in Canada, the United States, the United Kingdom and Australia. Given the pace of change that has marked the law in some of the areas of reproductive regulation, it is useful and important to have a point-in-time resource explaining the legal and policy landscape. It is also useful to introduce and highlight Canadian and Australian law and policy in particular, as law and policy in these jurisdictions are less well known to many readers than UK and US law and policy.

The book is divided into four parts. In chapter two, I consider the nature of reproductive autonomy by examining literature from philosophy and bioethics. I explore the developing feminist literature on relational autonomy, and though I think that it provides a useful starting point for considering autonomy from a more inclusive perspective, I ultimately conclude that a relational analysis is not an approach I am comfortable adopting. Instead, I suggest that we work with an array of philosophical ideas about autonomy to arrive at a deeply contextualised account of reproductive autonomy, one that is concerned with creating the opportunity for meaningful exercise of reproductive choice. This broad approach is particularly appropriate where, as here, we are concerned with issues at the intersection of law and reproductive medicine, and with their particular impact on women.

Judicial and academic commentary around reproductive autonomy in a variety of contexts suggests the adoption of an inclusive understanding of the concept. Given the importance of the freedom to make one's own reproductive choices, particularly in relation to women's lives,³³ reproductive autonomy surely must mean more than simply the

³³ Indeed, Robertson suggests that reproductive autonomy is of 'central importance to individual meaning, dignity, and identity' (Robertson (n 2) 16).

legal ability of a woman to obtain an abortion or access to reproductive technologies. Our understanding of this concept should 'encompass the full range of procreative activities, including the ability to bear a child, and it must acknowledge that we make reproductive decisions within a social context, including inequalities of wealth and power'.³⁴ I also suggest that a strong link between reproductive autonomy and reproductive health would help to ground policy development around reproductive choice.

In chapter three, I turn from thinking about how to understand reproductive autonomy to considering how to respect it. In other words, based on this contextual understanding of reproductive autonomy, how should the State approach regulating reproduction? In this context, I argue for a model that takes as its starting point the notion that there is a 'core' of reproductive autonomy in which I locate decisions that engage women's bodily integrity. Reproductive autonomy need not be viewed as monolithic, but instead should be understood as including a vast number and array of decisions that may not all demand the same level of respect from the State. I suggest we can create a model that places these core issues at its heart, entitling them to maximal respect from the State (which includes the provision of resources). While other reproductive decisions are also entitled to respect, they do not demand as much from the State as do decisions that engage women's bodily integrity. I also argue here that a contextualised approach to reproductive autonomy requires a coherent and thoughtful approach to regulating reproductive decision making. The development of a comprehensive framework to guide law and policy on all aspects of reproductive regulation is not a realistic aim. But one step in the right direction would be the creation of a national reproductive health strategy, which would permit the bringing together of experts in healthcare, law and policy, and would help to highlight the relationship of reproductive health and reproductive autonomy. Though a national reproductive health strategy would not answer all of the questions raised by a reproductive autonomy analysis, it could provide a starting point for consideration of policy directions.

The remaining three parts of the book take a detailed look at law and policy related to various aspects of reproductive decision making, drawing on examples from Canada, Australia, the United States and the United Kingdom. When I began this project, I thought that considering law and policy in several jurisdictions would be useful in terms of thinking about the lessons Canada might learn from these other jurisdictions, as well as providing a focal point for critique. As I have progressed through this work over the years, what I have found instead is that most of these jurisdictions can be criticised for their positions on several of these issues, but most of all, they can be criticised for failing to adopt any coherent policy framework for legal and policy decision making in this area. The analysis of several different jurisdictions with different histories but which share a liberal democratic tradition, adds depth and richness to the discussion. Such an approach does allow for us to draw lessons from one jurisdiction that can be applied in others but, more than anything else, shows how important it is to address these issues from a policy orientation (as opposed to *no* policy orientation), and in particular a policy orientation that acknowledges the importance of reproductive autonomy for women.

All four jurisdictions have taken *ad hoc* approaches to regulating reproduction, as a result of which this study of law and policy around reproductive decision making in these jurisdictions reveals some interesting contradictions. For example, in the UK and in some Australian states, abortion remains a criminal offence, yet it is generally available and is

³⁴ Roberts (n 28) 6.

(at least partially) publicly funded. In Canada, there is no criminal law against abortion, yet in some geographic locations there are no abortion providers. The procedure is therefore available only to those who are not prevented by other responsibilities, or by financial straits, from traveling to other jurisdictions. In the US, abortion and contraception are constitutional entitlements, but abortion services can be very difficult to access due to restrictive legislation (both in terms of funding for abortion services and in terms of other restrictions, including mandatory waiting periods and parental consent rules for minors). Moreover, prescription hormonal contraception is often not covered by health insurers, and emergency contraception in particular can be extremely difficult to access.

Numerous areas of law and policy are covered here, from birth control and abortion to surrogacy arrangements and parentage laws, and several more besides.³⁵ None of these areas is covered exhaustively; my purpose is to give a sense of the legal and policy landscape in the various jurisdictions. I have included this wide array of issues because, in order fully to appreciate the important role reproductive decision making plays in women's lives, it is essential to look at reproductive decision making through a wide lens. The juxtaposition of all of these areas helps to highlight the importance of context in reproductive regulation, as it illustrates the ways in which women's lives are affected by regulation of reproduction and the impact on women of our continued failure to regulate with a view to fostering reproductive autonomy. Another reason for including all of these areas is that much contemporary scholarship on reproductive autonomy has shifted its focus to regulating 'new' technologies', and I wanted to concentrate some attention on contraception and abortion, to show how much work is yet to be done to establish meaningful opportunities for the exercise of reproductive autonomy even in those less contemporary, arguably more settled areas of law.

In spite of the emphasis I place on the importance of reproductive autonomy in regulating reproduction, I also acknowledge the limits of a reproductive autonomy analysis. This analysis cannot resolve all of the issues that fall to be considered in thinking about how particular areas of reproductive decision making should be regulated. That said, given the significance of reproductive autonomy – in particular, its significance to women – the task for law and policy is to create conditions under which reproductive autonomy can be exercised meaningfully.

The pace of change in reproductive science and technology is astonishing. Even as we attempt to create law and policy, the ground is shifting underfoot. We cannot hope to fashion a set of fixed, explicit rules to guide law and policy makers. But we can – and must – take steps to work toward the development of a coherent approach to legal and policy decision making in the reproductive context.

³⁵ And there are many others which could be considered but which I do not include.