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## The Right to Life of the Unborn—An Assessment of the Eighth Amendment to the Irish Constitution

The late President of Ireland and former Chief Justice of the Irish Supreme Court, Cearbhall O'Dalaigh, once stated, "Constitutional rights are declared not alone because of bitter memories of the past but no less because of the improbable, but not-to-be-overlooked, perils of the future."<sup>1</sup> This statement describes the rationale behind the eighth amendment to the Irish Constitution. Viewed in popular terms as a prolife amendment, its genesis lies in fear that the almost universal trend to liberalize abortion legislation may creep into Ireland. The amendment attempts to strike the appropriate balance between the mother's constitutionally protected personal rights and the unborn's right to life. Although it was strongly supported by the people, the amendment contains some technical problems, as well as some broad language that may permit rather than prevent the introduction of abortion legislation in Ireland. However, in light of the strong public opinion against any liberalization of abortion laws, and the legislative and judicial development of Irish family law, the more realistic view is that the amendment is a powerful endorsement of Ireland's prolife position.

### I. HISTORICAL BACKGROUND

In order to understand the legal and political atmosphere in Ireland at the time the amendment was passed, it is necessary to understand (1) the historical development of the Irish Republic, (2) the effects of foreign legislation on Irish law, and (3) the development of Irish abortion law.

Because English rule was imposed for several centuries, English common law directly applied in Ireland.<sup>2</sup> Abortion was viewed by early English commentators as a serious crime. Blackstone stated:

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1. *McMahon v. Attorney Gen.*, 1972 Ir. R. 69, 111.

2. Henchy, *Precedent in the Irish Supreme Court*, 25 Mod. L. Rev. 544 (1962).

Life is the immediate gift of God, a right inherent by nature in every individual; and it begins in contemplation of law as soon as an infant is able to stir in the mother's womb. For if a woman is quick with child, and by a potion or otherwise, killeth it in her womb; or if anyone beat her, whereby the child dieth in her body, and she is delivered of a dead child; this, though not murder, was by the ancient law homicide or manslaughter. But the modern law doth not look upon this offence in quite so atrocious a light, but merely as a heinous misdemeanor.<sup>3</sup>

Ireland was incorporated into the United Kingdom of Great Britain and Ireland in 1800 by the Union with Ireland Act.<sup>4</sup> The English Parliament became the sole legislator for both England and Ireland and thereafter all enactments specifically stated whether they were to apply to England, Ireland, or both.<sup>5</sup>

In the nineteenth century, the English Parliament codified the law governing abortion in the Offences Against the Person Act.<sup>6</sup> The Act specifically declared that it applied to Ireland.<sup>7</sup> Sections 58 and 59 provided:

58. Every Woman, being with Child, who with Intent to procure her own Miscarriage, shall unlawfully administer to herself any Poison or other noxious Thing, or shall unlawfully use any Instrument or other Means whatsoever with the like Intent, and whosoever, with Intent to procure the Miscarriage of any Woman, whether she be or be not with Child, shall unlawfully administer to her or cause to be taken by her any Poison or other noxious Thing, or shall unlawfully use any Instrument or other Means whatsoever with the like Intent, shall be guilty of Felony, and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for Life or for any Term not less than Three Years, or to be imprisoned

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3. 1 W. BLACKSTONE, COMMENTARIES 129-30 (4th ed. 1771); see also E. COKE, THIRD INSTITUTE 50 (1979) (1st ed. London 1628).

4. 39 & 40 Geo. 3, ch. 67 (1800), reprinted in 23 HALSBURY'S STATUTES OF ENGLAND 832 (A. Yonge 3d ed. 1970). The union was codified by an identical Irish act, the Act of Union (Ireland) 1800. The Act abolished the separate Irish Parliament that had existed since the thirteenth century. The Act received the Royal Assent on August 1, 1800.

5. For example, The Abortion Act, 1967, ch. 87, § 7(3) specifically provides that it does not apply to Northern Ireland.

6. 24 & 25 Vict., ch. 100 (1861).

7. *Id.* The preamble to the Act states, "Whereas it is expedient to consolidate and amend the Statute Law of England and Ireland in relation to offences against the person . . ." (emphasis in original).

- for any Term not exceeding Two Years, with or without Hard Labour, and with or without Solitary Confinement.
59. Whosoever shall unlawfully supply or procure any Poison or other noxious Thing, or any Instrument or Thing whatsoever, knowing that the same is intended to be unlawfully used or employed with Intent to procure the Miscarriage of any Woman, whether she be or be not with Child, shall be guilty of a Misdemeanor, and being convicted thereof shall be liable, at the Discretion of the Court, to be kept in Penal Servitude for the Term of Three Years, or to be imprisoned for any Term not exceeding Two Years, with or without Hard Labour.

This Act continues to be the law concerning abortion in Ireland today.<sup>8</sup>

In 1921 a treaty was signed between Ireland and England forming the Irish Free State (Saorstát Eireann) out of twenty-six of the thirty-two Irish counties.<sup>9</sup> Although it remained a member of the British Commonwealth of Nations, the Irish Free State ceased to be part of the United Kingdom. In 1922 an Irish Constitution was established.<sup>10</sup> This constitution was amended twenty-seven times in the next fifteen years<sup>11</sup> and was finally superceded in 1937 when the present constitution was approved by plebiscite. The eighth amendment discussed in this comment has been incorporated into the 1937 constitution.<sup>12</sup>

The 1937 constitution virtually severed Ireland's ties to Great Britain.<sup>13</sup> However, it provided (as did the 1922 constitution) that all laws previously in force would continue to be of full force and effect so long as they were consistent with the 1937 constitution, or until they were repealed or amended by the Oireachtas (Irish Parliament).<sup>14</sup> Thus, the "unlawful miscar-

8. Binchy, *Abortion and the Law*, in *ABORTION NOW* 69 (1983) (published by Life Education and Research Network).

9. Codified in *The Irish Free State (Agreement) Act, 1922*, 12 & 13 Geo. 5, ch. 4, reprinted in 4 *HALSBURY'S STATUTES OF ENGLAND* 636 (A. Yonge 3d ed. 1968). The remaining six counties now constitute Northern Ireland and remain under English rule.

10. Codified in *The Irish Free State (Saorstát Eireann) Constitution Act, 1922*, 13 Geo. 5, ch. 1, reprinted in 4 *HALSBURY'S STATUTES OF ENGLAND* 641 (A. Yonge 3d ed. 1968).

11. 4 *HALSBURY'S STATUTES OF ENGLAND* 642 (A. Yonge 3d ed. 1968).

12. *IRISH CONST.* art. 40.3.3.

13. The final step occurred in 1948 when the Irish Free State left the British Commonwealth of Nations. It is now internationally recognized as the Republic of Ireland. See *The Ireland Act, 1949*, 12, 13 & 14 Geo. 6, ch. 41, reprinted in 4 *HALSBURY'S STATUTES OF ENGLAND* 670 (A. Yonge 3d ed. 1968).

14. *IRISH CONST.* art. 50.1.

riages" provisions of the Offences Against the Person Act were carried over into Irish law by the new constitution.

Although sections 58 and 59 of the Offences Against the Person Act specifically prohibit abortion in Ireland, there have been few prosecutions.<sup>15</sup> In 1945 William Henry Coleman was charged with two counts of attempting to perform an abortion.<sup>16</sup> He was found guilty and sentenced to fifteen years of penal servitude on each count with the sentences to run concurrently. The most infamous Irish abortionist was a woman known as Nurse Cadden, who "was a well known figure . . . on the Dublin scene for 20 years."<sup>17</sup> Her medical services came to an end in 1956, when she was convicted of murder after the body of a woman, who died following an abortion, was found on the public footpath outside her apartment.<sup>18</sup> Nurse Cadden was sentenced to death, but the sentence was commuted to life imprisonment.

In neither of these cases, nor in any other case to date, has an Irish court analyzed the scope of sections 58 and 59.<sup>19</sup> However, the English courts have analyzed these sections and an examination of their analysis is instructive because of its potentially persuasive influence on Irish law.

The most pertinent case is *Rex v. Bourne*.<sup>20</sup> Dr. Aleck Bourne, a respected obstetrician, performed an abortion on a fourteen-year-old girl who had been violently raped. Dr. Bourne stated that he felt he had a duty to perform the abortion after deciding that continuance of the pregnancy would probably cause her serious injury.<sup>21</sup> Justice MacNaghten, in his instructions to the jury, stated that since sections 58 and 59 used the word "unlawfully" in relation to procuring a miscarriage, it implied that procuring a miscarriage would not be "unlawful" in certain circumstances. In defining these circumstances he borrowed language from the Infant Life (Preservation) Act of

15. P. JACKSON, *THE DEADLY SOLUTION TO AN IRISH PROBLEM—BACKSTREET ABORTION* 2 (1983) (published by the Women's Right To Choose Campaign). Jackson suggested that there have been 58 illegal abortion cases investigated or tried in Ireland between 1926 and 1974.

16. *People v. Coleman*, 1945 Ir. R. 237 (Crim. App. 1944) (the conviction was later reversed on other grounds).

17. P. JACKSON, *supra* note 15, at 4.

18. *Id.* at 5.

19. Binchy, *Ethical Issues in Reproductive Medicine: A Legal Perspective*, in *ETHICAL ISSUES IN REPRODUCTIVE MEDICINE* 95, 102 (M. Reidy ed. 1982).

20. [1939] 1 K.B. 687.

21. *Id.* at 688.

1929,<sup>22</sup> which provided that the killing of a child capable of being born alive was not an offense if the act was done "in good faith for the purpose only of preserving the life of the mother."<sup>23</sup> Though sections 58 and 59 of the Offences Against the Person Act did not provide such an exception, Justice MacNaghten interpreted the Act as though it did. He added that this standard ought to be given a reasonable interpretation:

[I]f the doctor is of opinion, on reasonable grounds and with adequate knowledge, that the probable consequence of the continuance of the pregnancy will be to make the woman a physical or mental wreck, the jury are [sic] quite entitled to take the view that the doctor who, under those circumstances and in that honest belief, operates, is operating for the purpose of preserving the life of the mother.<sup>24</sup>

Based on this sweeping instruction, the jury acquitted Dr. Bourne.<sup>25</sup>

The impact of *Bourne* on Irish law is unclear. It is not binding precedent and opinions vary about its persuasive value. William Binchy, a member of the Irish Law Reform Commission, and an authority on Irish family law stated:

It will be recalled that that decision [*Bourne*] held that necessity was a defence to a prosecution for abortion, and that an abortion performed to save the life of the mother would thus be permissible. It seems that this part of the judgment would represent the law in this country. But where that judgment went on to hold that an abortion would be lawful if designed to save the mother from becoming a "physical or mental wreck", this would surely not represent our law, since it goes far beyond what the defence of necessity can encompass.<sup>26</sup>

On the other hand, Father Bernard Treacy, a staunch anti-abortion campaigner noted:

However, the judge did state that the words "for the purpose only of preserving the life of the mother" represented the common law, and thus were implicit in the 1861 Act by virtue of the word "unlawfully".

If these words do represent the pre-1861 common law, it

22. 19 & 20 Geo. 5, ch. 34, reprinted in 8 HALSBURY'S STATUTES OF ENGLAND 304 (A. Yonge 3d ed. 1969).

23. Infant Life (Preservation) Act of 1929, 19 & 20 Geo. 5, ch. 34, § 1(1).

24. [1939] 1 K.B. at 694.

25. *Id.* at 696.

26. Binchy, *supra* note 19, at 103.

could be argued that they thereby declare the position in Irish law. If so, an Irish court could validly adopt the view that procuring a miscarriage would not be "unlawful" in regard to Section 58 of The Offences Against the Person Act if it were procured in good faith for the purpose only of preserving the life of the mother. However, the doctrine in [sic] unclear; and clarification would be welcome.<sup>27</sup>

However, it is clear that *Bourne* opened the door to the liberalization of abortion laws in England. In 1967, in response to the thalidomide tragedy of the early 1960s,<sup>28</sup> the English Parliament, with the encouragement of the Abortion Law Reform Association, passed The Abortion Act.<sup>29</sup> The Act provided:

- 1(1) . . . [A] person shall not be guilty of an offence under the law relating to abortion when a pregnancy is terminated by a registered medical practitioner if two registered medical practitioners are of the opinion, formed in good faith—
- (a) that the continuance of the pregnancy would involve risk to the life of the pregnant woman, or of injury to the physical or mental health of the pregnant woman or any existing children of her family, greater than if the pregnancy were terminated; or
  - (b) that there is a substantial risk that if the child were born it would suffer from such physical or mental abnormalities as to be seriously handicapped.<sup>30</sup>

The Abortion Act did not overrule sections 58 and 59 of the Offences Against the Person Act; however, it significantly narrowed the definition of what an unlawful abortion entailed.<sup>31</sup> Furthermore, although the Abortion Act, as an act of the British Parliament, has no legally binding effect in Ireland, it has had a significant impact in that an increasing number of Irish women

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27. Treacy, *The Constitution and Right to Life*, in *ABORTION AND LAW* 74, 80 (A. Flannery ed. 1983).

28. For a complete account of the Abortion Law Reform Association and the impact of the thalidomide tragedy on the movement to reform abortion law in England, see K. HINDELL & M. SIMMS, *ABORTION LAW REFORMED* 108 (1971).

29. 1967, ch. 87.

30. *Id.* § 1(1)(a)-(b).

31. Effectively, abortion is now available on demand in England. Official statistics indicate that in the last three months of 1983 there were 37,628 abortions performed. OFFICE OF POPULATION CENSUSES & SURVEYS, *OPCS MONITOR* (August 7, 1984).

are now having safe, lawful, and relatively inexpensive abortions in English clinics.<sup>32</sup>

## II. MODERN INFLUENCES

A modern trend toward liberalization of abortion laws in western democracies<sup>33</sup> caused conservative Irish lawyers and doctors to be concerned that the Irish abortion laws might be subject to change. Much of this concern was due to the fact that the Irish Constitution provided no explicit protection for the unborn child. Article 40.3 provides:

- (1) The State guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate the personal rights of the citizen.
- (2) The State shall, in particular, by its laws protect as best it may from unjust attack and, in the case of injustice done, vindicate the life, person, good name, and property rights of every citizen.<sup>34</sup>

However, these provisions only apply to "citizens." The constitution provides that citizenship is "determined in accordance with law."<sup>35</sup> The law defining citizenship is contained in the Irish Nationality and Citizenship Act and provides:

- (1) Every person born in Ireland is an Irish citizen from birth.
- (2) Every person is an Irish citizen if his father or mother was an Irish citizen at the time of that person's birth or becomes an Irish citizen under subsection (1) or would be an Irish citizen under that subsection if alive at the passing of this Act.<sup>36</sup>

Although it is clear from this language that an unborn child is not a citizen, the Irish Supreme Court in *State (Nicolaou) v. An Bord Uchtala*<sup>37</sup> left open the possibility of affording constitutional protection for a noncitizen. Nicolaou, a British subject,

32. In 1968 fewer than 100 Irish women had abortions in English clinics, whereas by the end of 1981, the number had risen to almost 4,000. MEDICO-SOCIAL RESEARCH BOARD, *TERMINATION OF PREGNANCY, ENGLAND 1983, WOMEN FROM THE REPUBLIC OF IRELAND 9* (1984) (citing MEDICO-SOCIAL RESEARCH BOARD, *ANNUAL REPORT 49* (1982)).

33. Abortion was legalized in England in 1967, the United States in 1973, France in 1975, Germany in 1976, Italy in 1978, and Holland in 1981. 340 DAIL DEB. 1585 (1983).

34. IRISH CONST. arts. 40.3.1 & 40.3.2.

35. *Id.* art. 9.1.2.

36. PUB. GEN. ACTS, no. 26, §§ 6(1) & (2) (1956).

37. 1966 Ir. R. 567.



sought a court order to prevent the adoption of his illegitimate son. He claimed that the Adoption Act was unconstitutional because it violated his rights as a natural father. The court stated: "This Court expressly reserves for another and more appropriate case consideration of the effect of non-citizenship upon the interpretation of the Articles in question . . . ." <sup>38</sup> Even if Article 40.3 were interpreted to apply to noncitizens, it would take quite a liberal interpretation of the word "citizen" to encompass the unborn child. <sup>39</sup>

The parameters of the constitutional rights of the unborn became less clear following decisions of the Irish Supreme Court that provided constitutional protection of individual personal rights that were not explicitly granted in the constitution. This trend began in 1963 with *Ryan v. Attorney General*.<sup>40</sup> Mrs. Ryan sought to have the Health (Flouridation of Water Supplies) Act struck down as unconstitutional.<sup>41</sup> The supreme court affirmed the high court's decision that, based on the facts, Mrs. Ryan's suit could not succeed. However, the court confirmed that the right to bodily integrity was included as part of the general constitutionally guaranteed personal rights.<sup>42</sup> Quoting Justice Kenny of the high court, the supreme court held that "the personal rights which may be invoked to invalidate legislation are not confined to those specified in Article 40 but include all

38. *Id.* at 645.

39. Heuston, *Personal Rights under the Irish Constitution*, 11 *IRISH JURIST* 205, 213 (1976), reprinted in 11 *U. BRIT. COLUM. L. REV.* 294, 304 (1977), stated in this regard:

The phrase "of the citizen" has given rise to difficulties here and elsewhere throughout the fundamental rights Articles. At least two questions arise—first, whether the constitutional guarantees extend to aliens and secondly, whether they extend to artificial as distinct from natural persons. The Supreme Court seems to be uncertain whether the constitutional guarantees protect aliens, although in one case on the matter (*In Re Singer*) [97 *I.L.T.R.* 130 (1960)] in which the issue might have arisen, counsel for the State expressly disclaimed any reliance on it. Clearly it would be very embarrassing for the Court, especially since the State has joined the *European Economic Community*, to be obliged to hold that an alien was not entitled to the same degree of protection as a citizen. On the other hand, simply as a matter of the interpretation of words, it is very difficult to see how the word "citizen" can be held to mean "any person whether a citizen or an alien."

40. 1965 *Ir. R.* 294.

41. The Health Act authorized the adding of flouride to public water in order to protect against dental decay. Mrs. Ryan challenged the state action as an infringement of (1) her parental rights to raise her children, and (2) her individual rights to personal integrity. *Id.* at 341.

42. *Id.* at 295.

those rights that flow from the Christian and democratic nature of the State."<sup>43</sup>

The court soon recognized other personal rights,<sup>44</sup> most notably the right of marital privacy recognized in the 1973 landmark decision of *McGee v. Attorney General*.<sup>45</sup> In three years Mrs. McGee bore four children, two of them twins. Mrs. McGee had a long history of medical problems and each of her pregnancies had been difficult; she nearly lost her life while pregnant with her second child. Her doctor advised her that another pregnancy would endanger her life, so she was fitted with a diaphragm to be used with an intrauterine contraceptive jelly.<sup>46</sup> She brought this action after a supply of contraceptive jelly she was attempting to import from England was seized by customs officials pursuant to the Criminal Law Amendment Act.<sup>47</sup> Strangely, the Act prohibited the importation and sale of contraceptives, but not their use.<sup>48</sup> By a four-to-one majority, the supreme court held that the importation restriction was a violation of the right to marital privacy provided by articles 40.3.1 and 41.1 of the Irish Constitution.<sup>49</sup>

Those opposed to abortion were not so much concerned by the narrow holding of *McGee* as they were by the cases the court cited as support for the decision. The court relied extensively on two United States Supreme Court decisions, *Griswold v. Connecticut*<sup>50</sup> and *Eisenstadt v. Baird*.<sup>51</sup> In *Griswold*, the United States Supreme Court held that the right of married persons to use contraceptives was part of the constitutionally protected right of marital privacy.<sup>52</sup> *Eisenstadt* extended that right to the

43. *Id.* at 312.

44. See *State (Healy) v. Donoghue*, 1976 Ir. R. 325 (the right to justice and fair procedure); *Murtagh Properties v. Cleary*, 1972 Ir. R. 330 (the right to work & earn a livelihood); *In re Haughey*, 1971 Ir. R. 217 (the right to defend one's name).

45. 1974 Ir. R. 284.

46. *Id.*

47. PUB. GEN. ACTS, no. 6 (1935).

48. *Id.* § 17(1) provides, "It shall not be lawful for any person to sell, or expose, offer, advertise, or keep for sale or to import or attempt to import into Saorstát Eireann for sale, any contraceptive."

49. 1974 Ir. R. at 284-85. IRISH CONST. art. 40.3.1 states, "The State guarantees in its laws to respect, and as far as practicable, by its law to defend and vindicate the personal rights of the citizen." Article 41.1.1 states, "The state recognizes the family as the natural, primary and fundamental unit group of Society, and as a moral institution possessing inalienable and imprescriptible rights, antecedent and superior to all positive law."

50. 381 U.S. 479 (1965).

51. 405 U.S. 438 (1972).

52. 381 U.S. at 484-86.

unmarried,<sup>53</sup> and was the stepping-stone from *Griswold* to one of the major United States abortion decisions, *Roe v. Wade*.<sup>54</sup> In *Roe*, the United States Supreme Court held that the word "person", as used in the equal protection clause of the Fourteenth Amendment, did not include the unborn child.<sup>55</sup> The United States Supreme Court also held that the constitutionally protected right to privacy was "broad enough to encompass a woman's decision whether or not to terminate her pregnancy."<sup>56</sup>

The American cases disturbed conservative Irish lawyers<sup>57</sup> and doctors because of the similarity of the equal protection clauses of the United States and Irish Constitutions.<sup>58</sup> It was feared that *McGee* would lead to the liberalization of abortion laws in Ireland, particularly since the Irish Supreme Court looks upon the decisions of the United States Supreme Court with the greatest of respect.<sup>59</sup>

It is questionable whether these concerns were justified. Justice Walsh, speaking for the court in *McGee*, addressed the abortion issue in somewhat veiled terms: "[A]ny action on the

53. 405 U.S. at 453-54.

54. 410 U.S. 113 (1973). For an interesting look at how Justice Brennan prompted Justice Blackmun with a reference to *Eisenstadt* to assist him in bridging the gap from *Griswold* to *Roe* see B. WOODWARD & S. ARMSTRONG, *THE BROTHERS* 175-76 (1979).

55. 410 U.S. at 157.

56. *Id.* at 153.

57. THE IRISH ASSOCIATION OF LAWYERS FOR THE DEFENCE OF THE UNBORN, NEWSLETTER 2 (1983) stated, "The great abortion debate in America grew around the word 'person' and whether or not the word 'person' extended to include the unborn child. The similarity to our own situation is disturbing."

58. IRISH CONST. art. 40.1 provides, "All citizens shall, as human persons, be held before the law. This shall not be held to mean that the state shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."

59. In *O'Brien v. Stoutt*, No. 3264p (High Ct. May 5, 1982), Justice D'Arcy said that "decisions of the Supreme Court of the United States will always be received by this Court with the greatest of respect." See Binchy, *The Need for a Constitutional Amendment*, in *ABORTION & LAW* 116, 121, n.16 (A. Flannery ed. 1983); see also *State (Quinn) v. Ryan*, 1965 Ir. R. 70. Justice Walsh stated:

I reject the submission that because upon the foundation of the State our Courts took over an English legal system and the common law that the Courts must be deemed to have adopted and should now adopt an approach to Constitutional questions conditioned by English judicial methods and English legal training which despite their undoubted excellence were not fashioned for interpreting written constitutions or reviewing the constitutionality of legislation. In this state one would have expected that if the approach of any Court of final appeal of another State was to have been held up as an example for this Court to follow it would more appropriately have been the Supreme Court of the United States rather than the House of Lords.

*Id.* at 126.

part of either husband and wife or of the State to limit family sizes by endangering or destroying human life must necessarily not only be an offence against the common good but also against the guaranteed personal rights of that human life in question."<sup>60</sup> *McGee* was decided eleven months after *Roe*, and Justice Walsh, presumably aware of this major decision,<sup>61</sup> appeared to stress that *McGee* was a narrow decision that selectively recognized the right of married couples to use contraceptives and it was not to be interpreted as anything more. Six years later, Justice Walsh was even more explicit in *G. v. An Bord Uchtala*:<sup>62</sup>

[A child] has the right to life itself and the right to be guarded against all threats directed to its existence whether before or after birth. . . . The right to life necessarily implies the right to be born, the right to preserve and defend (and to have preserved and defended) that life . . . .<sup>63</sup>

Despite these dicta the potential effect of *McGee* on Irish abortion law remains open to debate.<sup>64</sup> Professor James Casey of University College Dublin Law School stated, "Those who argue that since the matrimonial privacy of *Griswold v. Connecticut*

60. 1974 Ir. R. at 312.

61. Surprisingly, one leading commentator has suggested that the Irish Supreme Court was unaware of the *Roe* decision. W. Binchy, *Sexual Behavior and the Law in Ireland* 22 n.70 (1978) (unpublished manuscript). This seems inconsistent with the publicity surrounding *Roe* and the deference given by the Irish Supreme Court to United States Supreme Court decisions. See *supra* note 59.

62. 1980 Ir. R. 32.

63. *Id.* at 69.

64. Proponents of the prolife amendment have rejected the persuasive value of these dicta:

Whilst these views expressed by the learned judge are encouraging they do not in themselves, of course, afford any adequate legal Constitutional protection for the unborn. The other judges in these decisions made it clear that they were not expressing any view on this issue. *Obiter dicta* bind no judge in any subsequent decision, not even the judge who made them originally. Mr. Justice Walsh would be the first to acknowledge that his view could not bind the Court in a future decision: as he pointed out in *McGee's* case, constitutional interpretation is not rooted in the past but is a continuous process through time.

THE IRISH ASSOCIATION OF LAWYERS FOR THE DEFENCE OF THE UNBORN, NEWSLETTER 2 (1983). Professor Kelly, a constitutional law professor and member of the Irish Parliament, thinks otherwise.

*Obiter dicta* in cases of this importance are not lightly uttered, they are regarded as the next best thing to a binding authority and are freely cited in court by counsel. They are treated for all practical purposes as though they were authority, even though they do not have a status in the ordinary hierarchy of binding precedent that we respect here.

339 DAIL DEB. 1399 (1983).

led to the proabortion decision in *Roe v. Wade*, the same must follow here from *McGee v. A.G.* are guilty of an absurdly mechanical view of the judicial process.”<sup>65</sup> Professor James O’Reilly, another professor of law at University College Dublin Law School, was even more assertive in declaring, “One wonders if the commentators who regard the finding of a right to abortion lurking behind *McGee* have actually read that decision and noticed not only the small print but the implications of the small print.”<sup>66</sup> Referring to such people as “prophets of doom,” he concluded, “Any commentator who seriously suggests that one can expect the Irish Supreme Court to arrive at a situation similar to *Roe v. Wade* or *Doe v. Bolton* simply has not read the Irish Constitution, the judgment in *McGee*, nor understands all the issues involved.”<sup>67</sup>

Professor Binchy, a key figure in the movement for a prolife amendment, saw it otherwise:

In my view, these commentators are guilty of too much vigour in ridiculing the possible developments in this country. No one seriously suggests that our Supreme Court would tomorrow recognise a constitutional right to abortion. Equally clearly, however, attitudes among the judiciary towards abortion may change in the coming years. If this happens, the introduction by *McGee* of the privacy concept into our jurisprudence may well serve to assist the constitutional case for abortion. Without such a concept, the constitutional argument in favour of abortion would be that much more difficult to establish.<sup>68</sup>

Additionally, there were concerns among staunch anti-abortionists that Ireland, as a signator and contracting party to the European Convention on Human Rights and Fundamental Freedoms, might be obligated to modify its laws in relation to abortion. This could happen if article two of the Convention, which states that “[e]veryone’s right to life shall be protected by law,”<sup>69</sup> were interpreted by the European Commission on Human Rights as giving women a limited right to abortion.

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65. Casey, *The Development of Constitutional Law Under Chief Justice O’Dalaigh*, 1978 DUBLIN U.L.J. 3, 10.

66. O’Reilly, *Marital Privacy & Family Law*, 65 STUDIES 8, 17 (1977).

67. *Id.* at 22.

68. Binchy, *supra* note 19, at 104.

69. CONVENTION FOR THE PROTECTION OF HUMAN RIGHTS AND PERSONAL FREEDOMS, art. 2(1) [hereinafter cited as CONVENTION], reprinted in J. FAWCETT, *THE APPLICATION OF THE EUROPEAN CONVENTION ON HUMAN RIGHTS* 29 (1969).

Prolife supporters argued that Ireland would be required to comply with such a finding, since article 53 of the Convention provides, "The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties."<sup>70</sup>

Fears that abortion might be legalized in Ireland were also increased by statistics showing an increase in the number of Irish women having abortions in England from 64 in 1968 to more than 3,600 in 1981.<sup>71</sup> Such figures lent credibility to fears that Irish legislators might be more willing to adopt some form of abortion legislation, particularly in light of references to therapeutic abortion made previously in Irish parliamentary debates.<sup>72</sup>

Proposals (1) to extend jurisdiction to allow criminal prosecution of Irish women who had abortions abroad, (2) to enjoin women from leaving Ireland for abortions, and (3) to criminally prosecute abortion referral agencies were dismissed as either unmanageable or undesirable.<sup>73</sup> Conservative lawyers considered an amendment to the constitution as more effective in preserving the existing laws against abortion.<sup>74</sup> They argued that an amendment would have the double effect of prohibiting the Oireachtas from introducing abortion legislation, while at the same time preventing the Irish Supreme Court from holding that sections 58 and 59 of the Offences Against the Person Act were unconstitutional.<sup>75</sup>

### III. PASSAGE OF THE AMENDMENT

In light of these developments, on April 27, 1981 "a group of organisations acting with the full support of the Professors of Obstetrics and Gynaecology in the Irish Universities"<sup>76</sup> launched

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70. CONVENTION, *supra* note 69, art. 53, reprinted in J. FAWCETT, *supra* note 69, at 337.

71. O'Leary, *The Management of Problem Pregnancies*, in ABORTION NOW 69 (1983). These figures only represent the number of Irish women having abortions at English clinics who used their Irish addresses.

72. See SEN. DEB. 560-62 (daily ed. Dec. 19, 1973), 354-56 (daily ed. Feb. 21, 1974).

73. Binchy, *supra* note 19, at 106-08; see generally Findlay, *Criminal Liability for Complicity in Abortions Committed Outside Ireland*, 15 IRISH JURIST 88 (1980).

74. Binchy, *supra* note 19, at 108.

75. THE IRISH ASSOCIATION OF LAWYERS FOR THE DEFENCE OF THE UNBORN, THE ABORTION REFERENDUM 2 (1983).

76. SEN. DEB. 554-55 (daily ed. May 4, 1983) (citing a news release entitled *Campaign for Pro-Life Amendment to the Constitution*, Apr. 27, 1981).

the campaign for a constitutional amendment to protect the life of the unborn. Under the Irish Constitution, an amendment must be initiated as a bill in the Dail (house of representatives), passed by both Houses of the Oireachtas, and submitted by referendum to the people.<sup>77</sup> The amendment is considered approved if it receives a majority of the votes in the referendum.<sup>78</sup> Because of these constitutional requirements, the Pro-life Amendment Campaign (PLAC) sought the support of the leading political parties for an amendment to the constitution that would provide for an "absolute right to life."<sup>79</sup>

The campaign was timed perfectly because a general election was called within six weeks of its inception. Opposition to the amendment by any political party might have been interpreted by the electorate as a proabortion stance—a position no party could afford in a country that is ninety-five percent Catholic.<sup>80</sup> Three weeks after the campaign had been launched, the Fianna Fail Government and the opposition Fine Gael Party publicly stated that they were totally and unalterably opposed to abortion and promised to introduce an amendment to the constitution.<sup>81</sup> The other major party, Labour, stated that it was "unequivocally opposed to abortion and would give serious consideration" to the idea of an amendment.<sup>82</sup>

The Fine Gael Party achieved a narrow victory in the June

77. IRISH CONST. art. 46.2.

78. *Id.* art. 47.1.

79. SEN. DEB. 555 (daily ed. May 4, 1983) (citing a news release entitled *Campaign for Pro-Life Amendment to the Constitution*, Apr. 27, 1981). The statement provided:

While the precise wording of the actual amendment will be a matter for others, in accordance with legal advice available to us it is proposed that it be along the following lines:

"The State recognises the absolute right to life of every unborn child from conception, and accordingly guarantees to respect and protect such rights by law."

80. W. Binchy, *supra* note 61, at 1 n.2.

81. The official Fianna Fail statement read:

The Government are [sic] totally opposed to abortion, and an appropriate constitutional amendment to give effect to the position will be brought forward as soon as circumstances permit. The Government will also continue to take the necessary steps to prevent abortion referral and seek to alleviate the causes which may lead to abortion.

Pro-Life Amendment Campaign, Information Sheet No. 2 (June 1981). The Fine Gael Party statement stated, "Fine Gael is unalterably opposed to the legalisation of abortion and in Government will initiate a referendum to guarantee the right to life of the unborn child. Fine Gael recognises that a pro-life policy places an obligation upon us to support the single mother." *Id.*

82. *Id.*

election. Once in power the new Taoiseach (prime minister), Garret FitzGerald, confirmed his party's pre-election commitment to the amendment,<sup>83</sup> but lacked the time to act because a second general election restored power to the Fianna Fail party in March 1982.<sup>84</sup> In November of the same year, the third general election in eighteen months was called.<sup>85</sup> The narrowly elected governments and the successive election campaigns enabled the organizers of PLAC to exert pressure on deputies (members of parliament) and aspiring deputies to support a constitutional amendment.

On November 2, 1982, during its final days in power, Fianna Fail introduced a bill<sup>86</sup> that proposed what eventually became the wording of the amendment. It provided, "The State acknowledges the right to life of the unborn and, with due regard to the equal right to life of the mother, guarantees in its laws to respect, and, as far as practicable, by its laws to defend and vindicate that right."<sup>87</sup>

Within days, the Fine Gael Party issued a statement supporting the wording of the amendment,<sup>88</sup> and FitzGerald stated that the wording was "about as good a formula as you could get."<sup>89</sup> He later regretted this statement.

The third general election also failed to produce a clear winner. This caused Fine Gael and Labour to form a coalition government that continues in power today.<sup>90</sup> By this time, liberal members of Fine Gael and Labour were beginning to be concerned about the wording of the abortion referendum. It was

83. The Prime Minister stated: "The Government is unalterably opposed to the legalisation of abortion and is committed to taking whatever steps are necessary to ensure that an appropriate amendment is brought forward. The Attorney General is now examining the form such an amendment might take." Letter from Garret FitzGerald to Dr. Julia Vaughan (Aug. 5, 1981), *reprinted in SEN. DEB.* 557 (daily ed. May 4, 1983) (Dr. Julia Vaughan was chairman of PLAC).

84. *N.Y. Times*, Mar. 10, 1982, at 3, col. 4.

85. Under the Irish system of government, a general election is called if the National Parliament, by a simple majority, gives a vote of "no confidence" in the government.

86. Eighth Amendment to the Constitution Bill (1982).

87. Eighth Amendment of the Constitution Act, 1983, pt. II.

88. 339 *DAIL DEB.* 1374 (1983) (quoting a statement issued by Fine Gael Party on Wednesday, Nov. 3, 1982). The statement declared, "The Fine Gael Party welcomes the form of the Amendment to the Constitution proposed by the Government. The Amendment as proposed is worded in positive terms, designed to strengthen the Constitutional protection of life, as proposed by the leader of Fine Gael . . ."

89. *SEN. DEB.* 860 (daily ed. May 11, 1983) (quoting from a transcript of "Today Tonight," Radio Telefis Eireann [Irish National Television], November 4, 1982).

90. *N.Y. Times*, Dec. 13, 1982, at 14, col. 3.



feared that the amendment might provide for an absolute, unequivocal right to life. There was also discomfort at the growing criticisms from protestant churches about the matter and apprehension that the amendment would not fit into the Prime Minister's plans for a pluralist, secular state.<sup>91</sup> As a result, the coalition government refused to support the amendment as it was worded, arguing that it was sectarian and ambiguous.<sup>92</sup> This spawned a national controversy described by one commentator as "our moral civil war."<sup>93</sup>

A major division soon emerged. The prolife groups consisted of conservative members of the legal and medical profession. Such groups were strongly supported by the Fianna Fail Party and the Catholic Church.<sup>94</sup> The anti-amendment groups were a loose coalition of prochoice groups—feminists, trade unions, and liberal politicians—and somewhat more conservative groups made up of politicians, concerned members of the legal and medical professions, and most of the protestant churches and la-

91. *Uniting the Catholic Right*, in "THE ABORTION REFERENDUM"—THE CASE AGAINST 13, 23 (M. Arnold & P. Kirby eds. 1983).

92. See 339 DAIL DEB. 1353-68 (1983).

93. *Rights for the Unborn*, THE ECONOMIST, Sept. 3, 1984, at 39, 40 (quoting an editorial in The Irish Press, Aug. 29, 1983).

94. The Catholic Church enthusiastically encouraged its members to vote for the amendment. In a letter read to all Catholic congregations in the Dublin diocese on Sunday, Apr. 10, 1983, Archbishop Ryan stated:

Attempts have been made to raise issues which have little or nothing to do with the central point. Sectarianism has been mentioned, as if it were a question of deciding between the views of various churches. It is not. The question is whether the people of Ireland want, or do not want, to give to the unborn child a greater legal protection than it has at present. This is not in any sense a "Church" matter. It is rather a matter of the basic human right to life. It can hardly be called "sectarian" to say that this right to life belongs to all, not just to some.

Letter from Archbishop Ryan to all Catholic congregations in the Dublin diocese (Apr. 4, 1983).

A statement from the Irish Episcopal conference concluded: "A decisive 'Yes' to the Amendment will, we believe, in the words of Pope John Paul II in Limerick, constitute a 'witness before Europe and before the whole world to the dignity and sacredness of all human life, from conception until death.'" The Amendment—A Statement from the Irish Episcopal Conference, (Veritas Publications Aug. 22, 1983).

Finally, a statement by the Archbishop of Dublin, Dr. Ryan, read at all Catholic churches three days before the national referendum concluded:

Over the last few weeks many people have been asking me for guidance. My advice to them, and to all of you, is that a "Yes" vote on Wednesday will protect the right to life of the unborn child; it will not create a threat to expectant mothers; it will block any attempt to legalise abortion in this country.

Letter from Archbishop Ryan to all Catholic congregations in the Dublin diocese (Sept. 1, 1983).

ity, who, although opposed to the introduction of abortion legislation, either opposed the need for an amendment or objected to its sectarian nature.<sup>95</sup>

Allegations of sectarianism resulted from the similarities in the proposed amendment to the Catholic doctrine of "double effect." This doctrine, which permits an operation to remove a woman's cancerous womb with the resultant inevitable death of the fetus, is based on the rationale that the primary intention—the removal of a diseased organ—justifies the secondary effect—the death of the fetus.<sup>96</sup> Right wing prolife supporters argued that such actions are not abortions but are merely unfortunate consequences that result from such operations. Dr. Julia Vaughan, Chairman of the Pro-Life Amendment Campaign explained:

Doctors who participate in these procedures are not performing abortions. It cannot be too strongly emphasized that they are not abortions in either medical or legal terms. In each case, the removal of a pathological organ is carried out to save women's life, not in order to kill the fetus. The pregnancy is not directly attacked, even though its loss may be the inevitable consequence of treatment which has as its objective the "good" of saving the life of the mother.<sup>97</sup>

Prolife supporters argued that the rights of the unborn were absolute and unequivocal, and that no exceptions existed to a general prohibition on abortion.<sup>98</sup> Protestants and prochoice supporters considered this a flagrant attempt by right wing prolife supporters who, while claiming to be nonsectarian, were attempting to have the permissible parameters of Irish abortion law defined in a very Roman Catholic way.<sup>99</sup>

In contrast, Fine Gael's opposition was directed toward the wording of the amendment. The Director of Public Prosecutions and the Attorney General issued statements that mirrored these concerns. The Director of Public Prosecution stated that while he would have no difficulty prosecuting an unlawful abortion under the 1861 Offences Against the Person Act, he would expe-

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95. For a sizeable but not exhaustive list of statements, see *Protestant Churches' Statements*, in "THE ABORTION REFERENDUM"—THE CASE AGAINST 61-65 (M. Arnold & P. Kirby eds. 1983).

96. *Uniting the Catholic Right*, *supra* note 91.

97. J. Vaughan, Pro-Life Amendment Campaign—A Response to Prof. O'Mahony (May 19, 1982).

98. O'Mahony, *A Catholic View*, in "THE ABORTION REFERENDUM"—THE CASE AGAINST 35, 37 (M. Arnold & P. Kirby eds. 1983).

99. *Id.*

rience "grave difficulty" in maintaining prosecutions in many cases if the amendment passed.<sup>100</sup> The Attorney General attacked the wording of the amendment.

[The] wording is ambiguous and unsatisfactory. It will lead inevitably to confusion and uncertainty, not merely amongst the medical profession, to whom it has of course particular relevance, but also amongst lawyers and more specifically the judges who will have to interpret it. Far from providing the protection and certainty which is sought by many of those who have advocated its adoption, it will have a contrary effect.

In particular it is not clear as to what life is being protected; as to whether "the unborn" is protected from the moment of fertilisation or alternatively is left unprotected until an independently viable human being exists at 25 to 28 weeks.

Further, having regard to the equal rights of the unborn and the mother, a doctor faced with the dilemma of saving the life of the mother, knowing that to do so will terminate the life of "the unborn," will be compelled by the wording to conclude that he can do nothing. Whatever his intentions, he will have to show equal regard for both lives, and his predominant intent will not be a factor.

In those circumstances I cannot approve of the wording proposed.<sup>101</sup>

Fianna Fail, the party that proposed the wording of the amendment, and the members of PLAC maintained that the wording was adequate to protect the rights of the unborn. They argued that there was no justification for the "needless anxiety" that had been generated concerning the consequences of the amendment's adoption.<sup>102</sup> The Irish Association of Lawyers for the Defence of the Unborn stated bluntly, "We unequivocally maintain that there is nothing in the original wording which would oblige an Irish Court to make such a grotesque decision as that suggested by Mr. Sutherland [Attorney General]."<sup>103</sup>

On April 27, 1983, in response to these concerns, Fine Gael introduced a more simply worded version of the amendment which stated, "Nothing in this Constitution shall be invoked to invalidate, or to deprive of force or effect any provision of a law

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100. 340 DAIL DEB. 474 (1983) (statement of the Director of Public Prosecutions).

101. SEN. DEB. 520 (daily ed. May 4, 1983) (statement of Attorney General, Mr. Peter D. Sutherland, S.C., quoted from *The Irish Times*, Feb. 16, 1983).

102. SEN. DEB. 1265 (daily ed. May 26, 1983).

103. *Id.* (quoting statement of The Irish Association of Lawyers for the Defence of the Unborn).

on the ground that it prohibits abortion."<sup>104</sup> Fine Gael argued that this wording avoided the multiple interpretations of the Fianna Fail amendment and made it easier for the public to understand. At the same time, the proposal fulfilled Fine Gael's commitment to introduce an amendment to the constitution that would prohibit the introduction of abortion in Ireland.<sup>105</sup> However, the wording proposed by Fine Gael proved unacceptable because it did not preclude future legislative repeal of the 1861 Act and provision for some form of legalized abortion. As a result, the Fine Gael proposal was soundly defeated.<sup>106</sup>

Several other proposals to clarify the wording of the original amendment were also presented in the Dail. These included: (1) a proposal to delete the word "unborn" and substitute "unborn human being,"<sup>107</sup> (2) a proposal to delete "with due regard to the equal right to life of the mother" and substitute "subject to the right of the mother to life and bodily integrity,"<sup>108</sup> and (3) a proposal to insert after "practicable" the words "without interference with any existing right or lawful opportunity of any citizen."<sup>109</sup> Each proposal was soundly defeated.<sup>110</sup> Similar proposals were made in the Senate (1) to modify the wording of the amendment by inserting "which shall not include the fertilised ovum prior to the time at which such fertilised ovum becomes implanted in the wall of the uterus" after the word "unborn"<sup>111</sup> and (2) to delete the word "equal" and substitute the word "prior."<sup>112</sup> Each of these proposals was also defeated.

The amendment, as originally worded by Fianna Fail, passed overwhelmingly in the Dail,<sup>113</sup> with Fine Gael abstaining from the vote and Labour voting against it. Thereafter, Garret FitzGerald, the Taoiseach, issued a statement expressing his regret that he had supported the idea of an amendment. FitzGerald asked the people to vote against the amendment because it

104. 341 DAIL DEB. 2001 (1983).

105. SEN. DEB. 935 (daily ed. May 18, 1983).

106. 341 DAIL DEB. 2225-30 (1983).

107. *Id.* at 2229.

108. *Id.* at 2230.

109. *Id.* at 2231.

110. *Id.* at 2233-38.

111. SEN. DEB. 1092 (daily ed. May 25, 1983). The proposal was defeated by a vote of 18 to 10. *Id.* at 1149-50.

112. *Id.* at 1154. The proposal was defeated by a vote of 15 to 8, SEN. DEB. 1281-82 (daily ed. May 26, 1983).

113. 341 DAIL DEB. 2235-38 (1983).

was "ambiguous and unclear"<sup>114</sup> and could lead to the death of women "whose lives are now saved in all hospitals in accordance with universal medical practice."<sup>115</sup> Despite FitzGerald's plea, on September 7, 1983, in one of the smallest voter turnouts in Irish history, the electorate voted by a two-to-one majority to include the amendment in the Irish Constitution.<sup>116</sup>

#### IV. IMPLICATIONS OF THE AMENDMENT

The eighth amendment to the Irish Constitution grew out of the desire of prolife groups and concerned citizens to further protect the rights of the unborn. The challenge faced by the drafters was to produce an amendment that would legally protect the rights of the unborn, while at the same time not create an absolute right that would supersede the already guaranteed personal rights of the citizen.<sup>117</sup>

Despite the powerful endorsement the amendment received at the polls, it poses several problems. The most serious challenge is likely to be directed at the language of the amendment itself. The amendment guarantees the "right to life of the unborn" but fails to indicate at what point that "unborn" life begins. Admittedly, this is not an easy question, but it is a fundamental question that must be answered. The United States Supreme Court in *Roe v. Wade*<sup>118</sup> noted that due to the "wide divergence of thinking" among philosophers, theologians and physicians, it could not resolve the "difficult question of when life begins."<sup>119</sup> Yet, the United States Supreme Court's failure to resolve the question combined with their refusal to protect the fetus until the time of viability (24-28 weeks) practically resulted in recognition that life does not exist prior to that time.

114. Keenan, *A Verbal War of Morality*, MACLEAN's, Sept. 19, 1983, at 53.

115. Kirby, *A Pyrrhic Victory—Disarray Over Abortion*, COMMONWEAL, Oct. 7, 1983, at 519, col. 1. As a result of this statement, the anti-amendment groups adopted the slogan, "This amendment could kill women."

116. *Id.* at 518. The turnout at the polls was only 54%, extremely low compared to the 70% plus that usually turn out to vote in Ireland. This may be a reflection of the difficulty people had in deciding which way to vote. Significant, too, is that in Dublin the vote was split almost evenly, with 48% for the amendment and 51% against, indicating that the rural vote was mainly responsible for the passage of the amendment by the 2-1 margin.

117. O'Mahony, *Medical Ethics in the Pluralistic State*, in ABORTION AND LAW 40, 46 (A. Flannery ed. 1983).

118. 410 U.S. 113 (1973).

119. *Id.* at 159-60.

This avoidance of the question of when life begins has been sharply criticized by one Irish commentator:

This failure of either English or American law to resolve the basic question of the humanity of the unborn child must be criticised, whatever the true motives of the courts or legislature may be. If, on the one hand, there is a *genuine* reluctance to determine the issue, this may be criticised on the basis that the question is so fundamental that it requires to be resolved before any other subsidiary issues are determined. Moreover, a Court which is too timid to resolve such a basic moral issue could scarcely feel itself competent to determine other equally important moral questions in the legal forum.

If, on the other hand, the apparent failure to determine the issue amounts in reality to a decision that the unborn child is *not* a human being, then the courts and legislature should have the courage to say so clearly and be judged accordingly. From the standpoint of the child, the failure to resolve the issue of his humanity amounts in result to a finding that he is not a human being.<sup>120</sup>

This criticism is particularly applicable to the Irish legislature because it holds the exclusive constitutional power to make laws for the state.<sup>121</sup> This makes legislators responsible for vigorously debating the issues, considering all possible ramifications, and coming up with the clearest language possible before presenting to the people a proposed amendment of the constitution. This does not require legislators to determine the exact moment when human life begins for all purposes. However, it does require the election of a specific cognizable time at which the law is prepared to protect the unborn's right to life.

The amendment's failure to define when the unborn is constitutionally protected means the judiciary will eventually have to formulate the definition; the very result the prolife campaigners sought to avoid.<sup>122</sup> This has caused uncertainty about the effect of the amendment. The Attorney General has stated:

In the event that the Supreme Court is called upon to construe the proposal, it could come to a number of different conclusions as to the definition of the class which is afforded pro-

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120. Binchy, *supra* note 19, at 99 (emphasis in original).

121. IRISH CONST. art. 15.2.1 provides that "[t]he sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State."

122. See *supra* note 75 and accompanying text.

tection. Undoubtedly a view which might commend itself to the court is that all human beings fall within the ambit of the amendment, and that a human being comes into existence when the process of fertilisation is complete.

. . . .

If, as would appear to be the case, it is correct to state that certain contraceptives can operate after fertilisation, then these would be abortifacient if human life commences on conception. Thus the importation, dissemination and use of such contraceptives would be prohibited, and as an example, the use of the "morning-after" pill in the treatment of rape victims will not be permissible, nor will the use of such contraceptives in certain conditions of the health of a woman—e.g. valvular heart disease or diabetes.

. . . .

However, the point of time for which the most compelling legal argument could be made, other than the time of fertilisation, as being the moment of commencement of protection, could be said to be the time when the foetus becomes independently viable. I understand that this is probably at some time between 25 and 28 weeks of pregnancy.

Such a construction could be supported by an argument that "unborn" could be regarded as being applicable only to something capable of being born. The word "unborn" used as a noun must, as a matter of language, mean "unborn person", "unborn child" or "unborn human being". It could be argued that neither a fertilised ovum, a fertilised and implanted ovum, an embryo or even a foetus prior to the time when it is independently viable, would come within this definition.

The consequences of such a finding could be that there would be no constitutional prohibition on abortion prior to this stage of pregnancy.<sup>123</sup>

It is possible that a future Irish Supreme Court may choose to interpret the amendment in a liberal manner, particularly if Irish public opinion moves toward acceptance of some form of abortion. This could place Ireland in a situation similar to that of the United States where the generally proabortion courts have thus far succeeded in liberalizing abortion legislation despite the contrary views of generally prolife legislatures. In reality, this is not likely to occur because of past developments in

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123. SEN DEB 524-26 (daily ed May 4, 1983) (statement of Attorney General, Mr Peter D. Sutherland, S.C., quoted from *The Irish Times*, Feb. 16, 1983)

Irish family law and the happenings accompanying the movement to amend the constitution.

The justices cannot avoid being influenced by the strong public stance against the introduction of abortion legislation in Ireland. Even prior to passage of the amendment, the Irish Supreme Court intimated that the right to life of the unborn would be protected.<sup>124</sup> Although dicta,<sup>125</sup> these statements have not been challenged and cannot go unnoticed. Admittedly, the Irish Supreme Court looks upon decisions of the United States Supreme Court with great respect,<sup>126</sup> and has even made extensive use of American decisions in formulating the concept of marital privacy in *McGee*.<sup>127</sup> However, it does not necessarily follow that the Irish Supreme Court will track the judicial trend developed in the United States in relation to abortion. Past experience indicates the opposite may be true. In the decade since *Roe*, the United States has become more liberal,<sup>128</sup> while Ireland has become more conservative.

At most, the impact of *McGee* is limited to the 1979 passage of the Health (Family Planning) Act,<sup>129</sup> which permits limited access to contraceptives. In drafting the Health Act, the Irish legislature clearly stated the Act was not to be used as a stepping-stone to some form of abortion legislation. Section 10 provides: "Nothing in this Act shall be construed as authorizing . . . the procuring of abortion . . . ."<sup>130</sup> The act is so restrictive toward abortion that it provides that the Censorship Board may ban a book that "advocates or might reasonably be supposed to advocate the procurement of abortion or miscarriage or any

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124. See *supra* notes 60 & 63 and accompanying text.

125. See *supra* note 64.

126. See *supra* note 59.

127. See *supra* notes 50-53 and accompanying text.

128. See *City of Akron v. Akron Center for Reproductive Health*, 103 S. Ct. 2481 (1983) (an abortion performed after the first trimester need not be performed in a hospital, state may not impose a blanket provision requiring parental consent for an abortion for an unmarried minor; state cannot require instructions by attending physician as to fetal development and alternatives to abortion); *Colautti v. Franklin*, 439 U.S. 379 (1978) (struck down a statute that required postviability abortions to be by such method as to give the fetus the best opportunity of surviving); *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976) (a woman's decision to have an abortion cannot be made subject to parental or spousal consent).

129. PUB GEN ACTS, no. 20 (1979).

130. *Id.* § 10(a).



method, treatment or appliance to be used for the purpose of such procurement."<sup>131</sup>

Other operative acts also suggest that the unborn child is a *persona judicata*. Section 58 of the Civil Liability Act<sup>132</sup> provides for recovery, by a child, of damages for injuries caused before birth: "For the avoidance of doubt it is hereby declared that the law relating to wrongs shall apply to an unborn child for his protection in like manner as if the child were born, provided the child is subsequently born alive."<sup>133</sup> Similarly, the Succession Act<sup>134</sup> gives inheritance rights to a child *en ventre sa mere* who is not illegitimate, provided the child is subsequently born alive.<sup>135</sup>

More significantly, the parliamentary debates during the campaign to amend the constitution were devoid of any suggestion that abortion in any form ought to be legalized. Each of the major parliamentary parties also publicly stated that they opposed abortion.<sup>136</sup> Similarly, nearly all of the churches that released statements indicated their opposition to the introduction of abortion legislation, and their support of the right to life of the unborn.<sup>137</sup> Moreover, the Irish people approved the amendment by a two-to-one margin.<sup>138</sup> Indeed, just four months before the amendment inevitably passed,<sup>139</sup> the Irish Supreme Court, in *Norris v. Attorney General*,<sup>140</sup> a case concerning the constitutionality of legislation against homosexuality, commented on the abortion issue. Speaking for the court, Chief Justice O'Higgins stated:

A right to privacy or, as it has been put, a right "to be let alone," can never be absolute. There are many acts done in pri-

131. *Id.* § 12(1).

132. PUB GEN ACTS, no. 41, § 58 (1961).

133. *Id.*

134. PUB GEN ACTS, no. 27 (1965).

135. *Id.* § 3(2).

136. See *supra* notes 81-82 and accompanying text.

137. See *supra* notes 94-95.

138. See *supra* note 116 and accompanying text.

139. The Women's Right to Choose Campaign, in a recent discussion of their amendment campaign, admitted, "The function of our organization was to present a right to choose argument against the amendment's provisions. We were in existence as a point of principle—we had no illusions about the likely effectiveness of our propaganda." *Fighting for Control—The Ongoing Struggle for Reproductive Rights* 7, 16, in THE IRISH FEMINIST REVIEW (Womens Community Press 1984).

140. W BINCHY, A CASEBOOK ON IRISH FAMILY LAW (1984) (Ir Sup Ct., Apr. 22, 1983, as yet unreported in Ir. R.).

vate which the State is entitled to condemn, whether such be done by an individual on his own or with another. The law has always condemned abortion, incest, suicide attempts, suicide pacts, euthanasia or mercy killing. These are prohibited simply because they are morally wrong and regardless of the fact, which may exist in some instances, that no harm or injury to others is involved.<sup>141</sup>

Justice McCarthy was even more effusive. In a dissenting opinion, he stated:

I cannot delimit the area in which the State may constitutionally intervene so as to restrict the right to privacy, nor can I overlook the present public debate concerning the criminal law, arising from the statute of 1861, as to abortion—the killing of an unborn child. It is not an issue that arises in the instant case, but it may be claimed that the right of privacy of a pregnant woman would extend to a right in her to terminate a pregnancy, an act which would involve depriving the unborn child of the most fundamental right of all—the right to life itself.<sup>142</sup>

He then suggested that the right to life of the unborn was protected by the preamble to the constitution that acknowledges Jesus Christ and the principles of Christianity.<sup>143</sup> He concluded:

For myself, I am content to say that the provisions of the Preamble which I have quoted earlier in this judgment would appear to lean heavily against any view other than that the right to life of the unborn is a sacred trust to which all organs of government must lend their support.<sup>144</sup>

Against this background, it is unlikely that any member of the

141. *Id.* at 379.

142. *Id.* at 387.

143. IRISH CONST. preamble. It states:

In the name of the Most Holy Trinity, from Whom is all authority and to Whom, as our final end, all actions both of men and States must be referred, We the People of Eire [Ireland], Humbly acknowledging all our obligations to our divine Lord, Jesus Christ, Who sustained our fathers through centuries of trial, Gratefully remembering their heroic and unremitting struggle to regain the rightful independence of our Nation, And seeking to promote the common good, with due observance of Prudence, Justice and Charity, so that the dignity and freedom of the individual may be assured, true social order attained, the unity of our country restored, and concord established with other nations, Do hereby adopt, enact, and give to ourselves, this Constitution.

144. W. BINCHY, *supra* note 140, at 387.

Irish Supreme Court would interpret the amendment in such a manner as to defeat the right to life of the unborn.<sup>145</sup>

The language of the amendment is deliberately general, just as is every other article of the constitution. The amendment was not intended to outline every possible eventuality, but rather to give adequate guidelines to the courts to enable them to make reasonable decisions.<sup>146</sup> The amendment is modelled after and uses language nearly identical to that found in the constitutional provision that protects the rights of the citizen. That provision states: "The State guarantees in its laws to respect, and as far as practicable by its laws to defend and vindicate the personal rights of the citizen."<sup>147</sup> Because this wording has provided adequate protection for the rights of Irish citizens since 1937, it is not surprising that similar wording was used to protect the rights of the unborn.

Opponents of the amendment have also been critical of the phrase "with due regard to the equal right to life of the mother." The Attorney General elaborated:

The meaning of "with due regard to" is entirely unclear. These words are generally perceived to allow for, at least, termination of the life of the foetus in the cases of ectopic pregnancy or cancer of the uterus. The words "with due regard to" have been understood by many to suggest that the right to life enjoyed by the unborn was to be confined in some way. That interpretation is in my opinion incorrect. (The word "comhcheart" in the Irish text is literally "the same right.") The right to life of both the unborn and the mother is stated in the proposed text to be equal, and in these circumstances I cannot see how it could be possible knowingly to terminate the existence of the unborn even if such termination were the secondary effect of an operation for another purpose.

. . . .

If a doctor were to be faced with the choice as to saving the life of one, and thereby terminating the life of the other, then I believe that the only lawful conclusion to this dilemma would be that he could do nothing, absolutely nothing, which

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145. Similarly, criticism of the amendment because it may effectively ban contraceptives that are considered abortifacient is misguided since such contraceptives are already prohibited by the Health (Family Planning) Act. See *supra* notes 129-30 and accompanying text.

146. Society for the Protection of Unborn Children, *The Pro-Life Amendment-Questions and Answers*, Fact Sheet No. 3 (1983).

147. IRISH CONST. art. 40.3.1.

infringed on either right. It is only where there is no possibility of the foetus surviving, even without the doctor's intervention, that no difficulty will arise.<sup>148</sup>

While this argument is superficially appealing, the only alternative is to resolve the equality issue between the mother and the unborn by giving one or the other greater rights. This presents even greater difficulties. Affording greater rights to the mother would cater to the prochoice lobby, which views the rights of the mother as always superior to those of the unborn. This is not in keeping with the purpose of the amendment to further protect the right to life of the unborn. Conversely, affording greater rights to the unborn would cater to the right wing prolife lobby, which views the rights of the unborn as absolute and unequivocal, with no exceptions save those covered by the Catholic doctrine of double effect. This position is also unacceptable because there really is no such thing as an absolute right to life. The common law, based on the biblical command, "Thou shall not kill"<sup>149</sup> admits to exceptions such as self-defense. The right to life of the unborn is subject to exceptions as well. Even some staunch prolife supporters recognize this. Father Haring, a noted Catholic theologian, has stated:

I consider probable the opinion of those who justify the removal of a foetus that surely cannot survive, when the action is taken in order to prevent grave damage to the mother. For instance, an anencephalic foetus not only cannot develop into a conscious human life but cannot survive. To remove it in order to spare great damage to the mother is truly therapeutic, while no injustice is done to the life of the foetus already doomed to death.<sup>150</sup>

Under these circumstances, the only logical solution was to give both mother and unborn an equal statutory right to life, allowing the judiciary to decide each case on the facts. The fact that both mother and unborn have equal rights does not prevent any action from being taken in cases of conflict as suggested by the Attorney General. Such a conclusion defies common sense, suggesting that if two patients needed a life support system to

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148. SEN. DEB. 540 (daily ed. May 4, 1983) (statement of Attorney General, Mr. Peter D. Sutherland, S.C., quoted from *The Irish Times*, Feb. 16, 1983).

149. *Exodus* 20:13 (King James).

150. O'Mahony, *A Catholic View*, in "THE ABORTION REFERENDUM"—THE CASE AGAINST 35, 38 (M. Arnold & P. Kirby eds. 1983).

stay alive, but only one was available, the doctor could not utilize the system for either patient since it would interfere with the equal right to life of the other.

In addition, the amendment merely states that the equal rights of the mother and the unborn will be defended and vindicated by Irish laws only "as far as practicable." The Irish translation, recognized by the constitution as the prevailing language in cases of conflict,<sup>151</sup> reads: "sa mheid gur feidir e," which literally translated means "as far as possible." This phrase also appears as part of the article of the constitution into which the amendment was incorporated.<sup>152</sup> Under either translation, the language makes allowance for situations that may arise where it is not "practicable" or even "possible" to protect the right to life of the unborn.

The equal rights provision of the Irish Constitution, included in the same article as the prolife amendment, also recognizes this. It states: "All citizens shall, as human persons, be held equal before the law. This shall not be held to mean that the State shall not in its enactments have due regard to differences of capacity, physical and moral, and of social function."<sup>153</sup> In 1972, in *O'Brien v. Keogh*,<sup>154</sup> the Irish Supreme Court suggested that "equal" may not mean a mathematical equality. Chief Justice O'Dalaigh stated that, "Article 40 does not require identical treatment of all persons without recognition of differences in relevant circumstances. It only forbids invidious discrimination."<sup>155</sup>

Justice Walsh previously commented in *State v. An Bord Uchtala*:<sup>156</sup>

In the opinion of the Court section 1 of Article 40 is not to be read as a guarantee or undertaking that all citizens shall be treated by the law as equal for all purposes, but rather as an acknowledgment of the human equality of all citizens and that such equality will be recognised in the laws of the State. The section itself in its provision, "this shall not be held to mean that the State shall not in its enactments have due regard to

151. IRISH CONST. art. 25.4.6. This article provides: "In case of conflict between the texts of a law enrolled under this section in both the official languages, the text in the national language shall prevail."

152. *Id.* art. 40.3.1.

153. *Id.* art. 40.1.

154. 1972 Ir. R. 144.

155. *Id.* at 156.

156. 1966 Ir. R. 567.

differences of capacity, physical and moral, and of social function," is a recognition that inequality may or must result from some special abilities or from some deficiency or from some special need and it is clear that the Article does not either envisage or guarantee equal measure in all things to all citizens. To do so regardless of the factors mentioned would be inequality.<sup>157</sup>

More realistically, the weakness of the constitutional right to life for the unborn is that the unborn, by its nature, cannot assert that right. Therefore, this right must be capable of being asserted by a third party. Those opposed to the amendment feared that individuals concerned about the rights of the unborn, might be able to obtain injunctions to prevent Irish women from going abroad to have abortions. Technically this appears possible. The Irish Supreme Court stated in *Cahill v. Sutton*,<sup>158</sup> that, while the general rule of standing is that "the challenger must adduce circumstances showing that the impugned provision is operating, or is poised to operate, in such a way as to deprive him personally of the benefit of a particular constitutional right,"<sup>159</sup> third parties, in "exceptional cases, hopefully rare," may also be heard on behalf of persons who cannot assert their own rights.<sup>160</sup> The pertinent question is the likelihood that third parties will stalk women they suspect may go abroad to have an abortion. In all probability, it can be expected that such injunctive actions, if they are permitted by the Irish courts, would generally be brought by the father. If such a situation were to arise, the judiciary would have to resolve the matter with due regard for the rights of all parties.

Lastly, Ireland is a signator of the European Convention on Human Rights and Fundamental Freedoms.<sup>161</sup> Therefore, the validity of the Irish constitutional amendment may be challenged in the European courts. The European Commission, charged with ensuring compliance with the provisions of the Convention, could find Ireland in violation of one of the articles of the convention. However, this is unlikely in view of previous abortion decisions by the Commission, which demonstrate its reluctance to interfere with abortion legislation in individual

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157. *Id.* at 639.

158. 1980 Ir. R. 269.

159. *Id.* at 282.

160. *Id.* at 277.

161. *See supra* note 69 and accompanying text.

member countries.<sup>162</sup> Even if the amendment was determined to

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162. The first abortion case before the Commission was brought in the 1960s by a Norwegian man challenging a Norwegian abortion law as violative of the rights of the unborn. He claimed the unborn was protected under the language of article two of the Convention which provided, "Everyone's right to life shall be protected by law." The Commission found the petition was inadmissible on the grounds that "only a victim of an alleged violation of the convention may bring an application" and that the Norwegian petitioner, who declared that he acted in the interest of third persons, "could not claim to be himself the victim of a violation of the Convention." Gorby, *The West German Abortion Decision before the European Commission on Human Rights*, in *NEW PERSPECTIVES ON HUMAN ABORTION* 264 (1981) (quoting Application No. 86760, Collection of Decisions 6, at 34).

The first abortion case actually decided by the Commission was *Bruggermann & Scheuten v. Federal Republic of Germany*, 1978 Y.B. EUR. CONV. ON HUMAN RIGHTS 638 (Eur. Comm'n on Human Rights). Two West German women claimed that (1) a decision of the West German Constitutional Court that invalidated part of a 1974 abortion law permitting abortions in the first trimester with approval of a doctor and the mother, and (2) a subsequent law that prohibited abortion at any time absent exceptional circumstances, violated Article 8(1) and other Articles of the Convention. Article 8(1) provides, "[E]verybody has the right to respect for his private or family life, his home and his correspondence." The Commission held that neither the German abortion legislation nor the Federal Constitutional Court's decision violated any Convention right.

This decision has raised questions about whether the Commission will interfere with the abortion laws of individual member States. One commentator suggested that in view of the wide divergence of abortion laws among member nations "a decision in *Bruggermann and Scheuten's* favor would have had the effect of declaring the law on abortion in most of the member States incompatible with the European Convention on Human Rights—a decision which would hardly inspire confidence in the Commission on Human Rights. Gorby, *supra*, at 274. He postulated that the decision "reflects the caution of an international legal body whose powers of enforcement are minimal." *Id.*

The most recent case to come before the Commission, *Paton v. United Kingdom*, 3 EUR. HUM. RTS. REP. 408 (1980), seems to provide support for this theory. Paton applied to the English courts for an injunction to prevent his wife from getting an abortion. The English courts refused to grant the injunction, holding that the father had no right to stop the mother from having an abortion, even if he was her husband. *Id.* at 410. Paton appealed the decision to the Commission, which concluded:

The Commission . . . does not find that the husband's and potential father's right to respect for his private and family life can be interpreted so widely as to embrace such procedural rights as claimed by the applicant, *i.e.* a right to be consulted, or a right to make applications, about an abortion which his wife intends to have performed on her.

*Id.* at 417. Before deciding that the application was inadmissible, the Commission considered whether article two, while not providing any express limitation concerning the fetus, is to be interpreted (1) as not covering the fetus at all, (2) as recognizing a right to life with certain limitations, or (3) as recognizing an absolute right to life. *Id.* at 415. The Commission readily dismissed the idea that the fetus had an absolute right to life, noting that almost all signators at the time of the signing of the Convention permitted some form of abortion legislation. *Id.* However, the Commission circumvented the more difficult questions by concluding:

The Commission considers that it is not in these circumstances called upon to decide whether Article 2 does not cover the foetus at all or whether it recognises a "right to life" of the foetus with implied limitations. It finds that the authorisation, by the United Kingdom authorities, of the abortion com-

violate the Convention, the Commission has no power to order changes in the domestic laws of Ireland; Ireland has previously ignored decisions of the Commission without any detrimental consequences.<sup>163</sup>

## V. CONCLUSION

The Irish prolife amendment grew out of fears that the nearly universal trend to liberalize abortion legislation might

plained of is compatible with Article 2(1), first sentence because, if one assumes that this provision applies at the initial stage of the pregnancy, the abortion is covered by an implied limitation, protecting the life and health of the woman at that stage, of the "right to life" of the foetus.

*Id.* at 416.

163. The Commission is not a traditional court of appeal. It may find that a particular piece of legislation violates one of the articles of the Convention, but it has no power to overrule any domestic law of a member state. Telephone interview with Professor John Gorby (Nov. 8, 1984). Admittedly, article 53 does provide, "The High Contracting Parties undertake to abide by the decision of the Court in any case to which they are parties." This means that, while the Convention, as a treaty, is binding on all states that have ratified it, the Commission's decisions are still not enforceable until the Convention has been adopted into the domestic law of the state. Ireland has not done this.

The Irish Constitution provides, "No international agreement shall be part of the domestic law of the State save as may be determined by the Oireachtas." IRISH CONST. art. 29.6. It further states, "The sole and exclusive power of making laws for the State is hereby vested in the Oireachtas: no other legislative authority has power to make laws for the State." *Id.* art. 15.2.1. In 1960, the Irish Supreme Court indicated its refusal to apply the provisions of the Convention in *In re O'Laighleis*, 1960 Ir. R. 93. The Court stated:

The Oireachtas has not determined that the Convention of Human Rights and Fundamental Freedoms is to be part of the domestic law of the State, and accordingly this Court cannot give effect to the Convention if it be contrary to domestic law or purports to grant rights or impose obligations additional to those of domestic law.

*Id.* at 125. The situation remains the same today. One commentator recently concluded, "Nearly thirty years after ratifying the European Convention on Human Rights, Ireland has still failed to incorporate it into domestic law. As a consequence the Irish Courts have, for the most part, refused to take cognisance of the provisions of the Convention in domestic cases." Comment, *The Application of the European Convention on Human Rights before the Irish Courts*, 31 INT'L & COMP. L.Q. 856, 860-61 (1982).

No action has been taken against Ireland for failing to incorporate the Convention into domestic law. It is possible that Ireland could be asked to withdraw or even be expelled from the Commission if it were determined that Irish abortion laws violated one of the articles of the Convention, and Ireland refused to modify its stance on abortion. However, this is highly unlikely in view of what appears to be a clear reluctance on the part of the Commission to interfere with abortion legislation in member countries. In the 35 year existence of the Commission only one country, Greece, has been asked to withdraw, and that was for flagrant violations of numerous articles. For a discussion of the relationship between the Convention and the domestic law of the signatories generally, and Ireland specifically, see Buergethal, *The Domestic Status of the European Convention on Human Rights*, 13 BUFFALO L. REV. 354 (1964).



eventually reach Ireland. The amendment attempts to constitutionally establish the ultimate balance between the mother's rights and the unborn's right to life. Viewed against the long-standing Irish legislative, judicial, and public policy of protecting the life of the unborn, it appears that the real motivation for the amendment was not that the prior law did not adequately prevent abortion. Rather, the amendment stemmed from a political and social fear that a clear and dramatic rejection of abortion was necessary to prevent the country from drifting into a slow acceptance of abortion over time, as has happened in most other western nations. Once the amendment had been proposed, it was also critical that it or some equally strong anti-abortion amendment be passed, because a defeat could have been interpreted as a signal that Ireland was ready for some form of abortion legislation.<sup>164</sup>

Interestingly enough, the broad language of the amendment may permit rather than prevent the introduction of abortion legislation in Ireland. However, in spite of the potential problems, passage of the amendment by such a large margin can be expected to lend a powerful endorsement to the existing prohibition of abortion in Ireland.<sup>165</sup>

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164. This is consistent with a statement made by the Women's Right to Choose Group (a separate organization from the Women's Right to Choose Campaign) that concluded, "[T]he current political objective is the defeat of the amendment, the pro-abortion lobby comes later." Address by Professor Cornelius O'Leary, Vice-Chairman of the Pro-Life Amendment Campaign (Aug. 16, 1983) (quoting Sunday Tribune, May 15, 1983).

165. The Women's Right to Choose Campaign has even accepted this conclusion. They recently stated:

By winning the referendum PLAC [Pro-Life Amendment Campaign] have [sic] indeed made it impossible for abortion to become legal without another referendum on the issue. That *does* make our long-term task more difficult—but only marginally so, because there had been no prospect of achieving any liberalisation of the law in the foreseeable future anyway.

. . . . .  
Apart from the Post-Referendum Solidarity March in July 1984 which highlighted SPUC's [Society for the Protection of Unborn Children] pickets on Open Line [an abortion referral agency in Dublin] and a right to choose counter-picket at SPUC's referendum anniversary vigil on September 7th this year, next to nothing was heard publicly of a pro-abortion nature in 1984. To some extent this may be due to sheer weariness, but it also suggests a certain level of dismay among right to choose supporters.

*Fighting for Control—the Ongoing Struggle for Reproductive Rights*, in *THE IRISH FEMINIST REVIEW* 7, 23-24 (Women's Community Press 1984)."