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Medical Assistance in Reproduction, and Bioethical Principles Derived from Mill's *On Liberty*

Summary

Paper considers Mill's principles of liberty and their application on medical assistance in reproduction, and more generally, on various sorts of bioethical problems. The basic contention in the paper is that Mill's principles of freedom of speech, and others, in accordance with his idea of negative liberty, must also be valid in cases of medical assistance in reproduction, since these decisions and deliberations are of concern for actors themselves only, and not of some more general unit i.e. state or community, and therefore, the state should not have the right to withdraw or suspend wishes of individuals in this area.

I do not know whether anyone has tried to justify procedures in contemporary medical assistance in reproduction on the First or Fourth Amendments of US Constitution, but I can nevertheless safely assume that MAR, and organ donation procedures can reasonably be justified according to liberal principles mentioned in Mill's *On Liberty*. Constitutions of contemporary democracies do not necessarily include clauses on medical assistance in reproduction and organ donations, but they can legally and morally be derived from human rights clauses or from the contents of human rights clauses.

Basic principles derived from Mill's *On Liberty* concerning MAR and Organ Donation are:

- Negative liberty clause (non-interference clause):

The object of this Essay is to assert one very simple principle, as entitled **to govern absolutely** the dealings of society with the individual in the way of compulsion and control, whether the means used be physical force in the form of legal penalties, or the moral coercion of public opinion. That principle is, that the sole end for which mankind are warranted, individually or collectively, in interfering with the liberty of action of any of their number, is self-protection. **That the only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others. His own good, either physical or moral, is not a sufficient warrant.**

He cannot rightfully be compelled to do or forbear because it will be better for him to do so, because it will make him happier, because, in the opinions of others, to do so would be wise, or even right. These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise. To justify that, the conduct from which it is desired to deter him, **must be calculated to produce evil to some one else. The only part of the conduct of any one, for which he is amenable to society, is that which concerns others. In the part which merely concerns himself, his independence is, of right, absolute. Over himself, over his own body and mind, the individual is sovereign.**

- Liberty of consciousness, thought and feeling

But there is a sphere of action in which society, as distinguished from the individual, has, if any, only an indirect interest; comprehending all that portion of a person's life and conduct which affects only himself, or if it also affects others, only with their free, voluntary, and undeceived consent and participation. When I say only himself, I mean directly, and in the first instance: for whatever affects himself, may affect others through himself; and the objection which may be grounded on this contingency, will receive consideration in the sequel. This, then, is the **appropriate region of human liberty**. It comprises, **first**, the inward domain of consciousness; demanding liberty of conscience, in the most comprehensive sense; liberty of thought and feeling; absolute freedom of opinion and sentiment on all subjects, practical or speculative, scientific, moral, or theological. The liberty of expressing and publishing opinions may seem to fall under a different principle, since it belongs to that part of the conduct of an individual which concerns other people; but, being almost of as much importance as the liberty of thought itself, and resting in great part on the same reasons, is practically inseparable from it.

- Liberty to pursuit our own tastes and pursuits or so called – autonomy:

Secondly, **the principle requires liberty of tastes and pursuits**; of framing the plan of our life to suit our own character; of doing as we like, subject to such consequences as may follow: **without impediment from our fellow-creatures, so long as what we do does not harm them**, even though they should think our conduct foolish, perverse, or wrong.

Thirdly, from this liberty of each individual, follows the liberty, within the same limits, of combination among individuals; freedom to unite, for any purpose not involving harm to others: the persons combining being supposed to be of full age, and not forced or deceived.

No society in which these liberties are not, on the whole, respected, is free, whatever may be its form of government; **and none is completely free in which they do not exist absolute and unqualified. The only freedom which deserves the name, is that of pursuing our own good in our own way, so long as we do not attempt to deprive others of theirs, or impede their efforts to obtain it. Each is the proper guardian of his own health, whether bodily, or mental and spiritual.** Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest.

The *principle of liberty* establishes, in short, that no one should be amenable or punishable, for pursuit of his/her own happiness unless his actions interfere with the freedom of others, and secondly, that no law should be valid if it impedes such liberties. Furthermore, these quotes establish a very strong anti-paternalistic plea: not only should we not be coerced to do something which we do not want to do, but in

cases that involve our person and our body, no-one (no state, no community, and even no medical council) should be able to trump our wishes that concern ourselves only.

This principle of liberty may also be framed as a *claim to a personal autonomy*. Mill's view on autonomy can be framed as an utilitarian claim too – that is the view that more harm can come from our interference into other people's actions, even when we know that they act against their best interests, than letting them make choices according to their wishes.

To make the long story short and sharp. My basic claim is the following: **Since medical assistance in reproduction belongs to procedures which involve primarily the patient, and generally do not jeopardize anyone else's rights, there is no reason for the state to be involved, or rather to delimit the right of autonomy of the person. We can reason with him/her, we may not like the procedure, but that is none of our business, and that is certainly not the reason for the state to interfere.**

I shall also try to prove that this right may extend to s. c. living wills – to the person's wish about what should be done to his/her body after he/she is dead. **The state should not presume what person wanted (as most of the countries do nowadays, by assuming the person would have wanted to donate his/her organs. This is not the sphere of legitimate state intervention (disposition).**

Claim to a personal autonomy was further analyzed by Ronald Dworkin in *Life's Dominion* (1993). Dworkin distinguishes, first, a so called *evidentiary view on autonomy*, which "holds that we should respect the decisions people make for themselves, even when we regard these decisions as imprudent, because each person generally knows what is in his own best interests better than anyone else." Although we may think that is all that should be said about respecting other people's wishes, Dworkin adds: "But in fact the evidentiary view of autonomy is very far from compelling. For autonomy requires us to allow someone to run his own life even when he behaves in a way that he himself would accept as not at all in his interests. (223)" Think of smoking, for instance. People who smoke know that it is not in their own best interest. So, goes Dworkin's argument further, "(W)e cannot accept that the point of autonomy is to protect an agent's welfare". Therefore, Dworkin introduces another reason for accepting person's autonomy, a so called *integrity view of autonomy*. Such a view on autonomy "does not assume that competent people have consistent values or always make consistent choices, or that they always lead structured, reflective lives. It

recognizes that people make choices that reflect weakness, indecision, caprice, or plain irrationality. (224)" In this case it is not out of our concern for person's welfare that we defend his autonomy, but a concern for a person's "capacity to express one's own character – values, commitments, convictions, and critical as well as experiential interests."

Dworkin introduced this distinction to discuss the point when we should be able or legally entitled to withdraw actor's right to autonomy, i.e. in cases of their incapacity to think rationally at all or to make any reasonably stable choices. However, when discussing people's choices concerning medical assistance in reproduction, we do not have this complication. We should assume that people who ask for such assistance are in their right mind, capable of thinking more-or-less clearly, and wishing to fulfill one of their basic drives, one of their basic rights, a drive and a right to reproduce.

Which actions do we think of when we speak of medical assistance? First of all, we have in mind all sorts of medical assistance procedures designed to provide a patient, a woman, or a couple, a possibility to bear children, or to remove infertility. These include IVF (in vitro fertilization) or IUI (intrauterine insemination), GIFT (gamete intra-fallopian transfer), ZIFT (zigote intra-fallopian transfer), TET (tubal embryo transfer), PZD (partial zona dissection), ICSI (intracytoplasmic sperm injection), MESA (microsurgical epididymal sperm aspiration) TESE (testicular sperm extraction), PESA (pocket epididymal sperm aspiration), and the like. These procedures are mostly coupled with procedures for criopreservation (for gamete, zigote or embryo freezing).

In all procedures mentioned above, techniques used to assist patients suffering from infertility do not harm any other person, and are exclusively done (or should be performed) on explicit patient's request, which is almost always the case. All cases of coercion to performing such procedures, according to Mill's principle of freedom, and Dworkin's distinctions on autonomy, should be illegal and all such contracts void.

Secondly, we have in mind procedures and medical assistance which include abortion requests. Furthermore, thirdly, medical assistance is required in procedures involving genetic or non-genetic surrogate motherhood. And, finally, medical assistance will one day be required in all sorts of procedures involving cloning.

It seems that all sorts of actions concerning medical assistance in reproduction fall within Mill's freedom principle and Dworkin's distinctions on autonomy, since they concern only a patient in question, his/her wishes, values and notions of good life. However, there are complications, since it is not self-evident that these decisions do not interfere with other people's liberty, with their wishes and values, so let me discuss each kind of claim, and each kind of additional persons involved, separately.

In the first case (MAR in the strict sense of the term), potentially, there are three categories of people whose rights might be impeded by exerting our liberty to ask for assistance, or to do as we please. First, they may concern physicians who do not agree with patient's wishes. There are physicians, and recently, in several democratic countries (mostly in US), their number is on the rise. These are physicians who invoke the *objection of consciousness*: since they do not endorse patient wishes and values, they allege that they should not be coerced to perform medical procedures, since they do not conform with their idea of morality.

Second, in questions of terminating life of an embryo, (i.e. in abortion claims) it might be argued that the father of the potential child should have a say, since the embryo concerns him as well, and/or was a result of his actions and wishes.

Finally, apart from physicians and the partner, termination of pregnancy may impede the right to life of the newborn baby.

In the first case, in case of physician's protest, and his objection of consciousness, it seems the only way to get our wishes and rights realized, is to look for another doctor, since physician's objection of consciousness is not directed against an actor's wish or right to reproduce, but rather with his/her right to terminate a potential's life of a baby. Interestingly, doctor's *objection of consciousness* (which would inhibit such a procedure) may start another slippery slope, already visible in several democratic countries: what if the doctor thinks the patient is responsible for his medical condition (for instance in case of smokers), or refuses to perform a complicated operation on the grounds that such operation would diminish the overall hospital performance in high risk procedures?¹ Physician's objection of consciousness may well extend to a person's right to reproduce, or his right to use MAR. But in all real life situations, a person who

¹ Jauhar, Sandeep. 2003. "When Doctors Slam the Door", *New York Times Magazine*, March 16. See also: Verghese, Abraham. 2003. "Hard Cures", in the same issue.

asks for assistance in reproduction deals with physicians who have presumably autonomously chosen to provide people such help.

In the second case, involving fathers of children, the case is different. While it cannot be disputed that the father is involved in conception, most democratic countries have decided that it is the mother's wish that should have the upper hand. The basic argument for such a view is that before child's heart starts to beat, it is not "alive", it is not a person, but rather a simple collection of cells. During this period, i.e. before the end of the first trimester, these collections of cells primarily concern her body, and therefore they primarily concern her autonomy. It is also one of the reasons why most countries have decided that mother's wish should be hers only, only up to a certain point. After twelve weeks, termination of pregnancy is allowed only in medically dangerous cases. Whether for medical reasons, or for moral or legal ones, it follows that mother's wish should be exerted, and her autonomy respected, only by the end of this period. After this period, her actions concern others as well. Decision on terminating life after this legal timeframe is no longer purely an autonomous act. Apart from concerns for the pregnant woman's life, it includes concerns of other people, most notably a baby.

Respect for the unborn baby however does not trump mother's autonomy even after this legal period for termination of pregnancy. In most severe cases, termination of pregnancy is allowed, but this decision then involves other people's concerns too, most notably a physician's one.

However, this dispute is often broadened in such a way as to involve all sorts of other people's concerns. Sometimes, other people's claims are broadened to include all people, or the public in general, for instance by saying that no-one is a master of somebody else's life, or even more generally that *we* are not masters of our own lives and our bodies. In such disputes, God is usually invoked as the master of our lives. Such people usually start arguing on behalf on the unborn child, but then extend the argument pretending that it is a concern which includes *their* freedom and their autonomy. Further, we should not be fooled by pro-life proponents' tactic to switch the argument from pregnant woman's autonomy to the argument that God is the owner of our lives (or that no person is the owner of his/her body). Such tactics as a matter of fact, and as a matter of principle, denies any negative liberty established by Mill, and obviously, such a claim cannot pass Mill's first principle of liberty, as well as the usual concepts of life in democratic societies. Therefore, in majority of such disputes, it is very important to distinguish two different arguments: an argument in favor of embryo or a newborn baby, and/or the "God Almighty is the owner of our bodies and souls" argument which is used to justify anti-abortionist politics.

A dispute on when does life begin is beyond Mill's concerns. And it is also dubious whether the answer to that question has implications for Mill's liberty principle, although we may safely presume that Mill would opt for keeping diversity of life (i.e. baby's life) if it does not jeopardize other beings. Mill says, however, that his principle of liberty, or his doctrine, "is meant to apply only to human beings in the maturity of their faculties. We are not speaking of children", says Mill, "or of young persons below the age which the law may fix as that of manhood or womanhood. Those who are still in the state to require being taken care of by others, and must be protected against their own actions as well as against external injury." This constraint (and its implication for eventual justification of communal or state interference in children's actions) however does not apply to embryos, since embryos do not act by themselves.

Although it is not clear where Mill explicitly stands, it is not far of the mark that Mill would conclude in the following way: Insofar as the being is a part of individual's body, insofar as it is a part of his/her design of good life, it is of that individual's concern only. However, termination of life, especially if we decide that it is somebody else's *life*, is not an action we would prescribe. Therefore, I would presume, this is a sort of action where the principle of convincing applies. ("These are good reasons for remonstrating with him, or reasoning with him, or persuading him, or entreating him, but not for compelling him, or visiting him with any evil in case he do otherwise".)

But before going further, let me reiterate: since pro-life tactics (of conflating "interest of the baby" and the "interest of the society" argument) is usually directed not only against pregnant women who wish to perform abortion, but rather against overall liberal justification of people's interactions in a democratic state and society, a dispute against such a view is not only a matter of reasoning when life begins, but primarily involves value choices which strongly oppose or endorse liberal society in general. And I hope I am right in assuming that Mill would endorse pro-choices made by present liberal societies, justified on his own principles. Democracy is namely about tolerating actions which do not concern us and which do not harm us (neither as individuals, nor as members of a particular society, nor as human beings). Since pregnant women's choices do not concern us as third parties, we should not meddle into their decisions. We may think their decisions are bad, but the only resort we have is to convince them, and not to legally (or otherwise) impede their action.

Let us now turn to next two problematic cases: surrogate motherhood and cloning. In the case of **surrogate motherhood**, we should invoke Mill's third principle: principle of liberty as a "combination among individuals; freedom to unite, for any purpose not involving harm to others". In most surrogate motherhood cases, it is precisely exerting freedom to unite for any purpose that does not involve harm to others, and I assume we should be able to legalize such practice on these grounds. If a couple makes a contract with a surrogate, it should be valid, since we should suppose (according to Mill) that people are the best guardians of their interests (medical and others). However, seeing that such a practice has led to a general confusion and a number of legal cases, majority of countries have abandoned or forbidden it. In Europe, for instance, it is not legal. But I doubt that such state interference is justified. It may be true that statistics on legal cases raised from alleged violations of such contracts is not a wishful development. In most such cases brokers agencies are involved, and it is perhaps precisely involvement of such third-party agencies that have stirred the simplicity of the issue. If two consenting adults sign a contract, a legal system should see to it that it is being fulfilled. According to Mill, if we assume that people are the best guardians of their interests, i.e. that they should be autonomous in their actions, they should also be capable of bearing the consequences of their actions. Therefore, the practice of forbidding such contracts does not belong to a liberal constitution of society. What is needed, though, is a precise wording of such contracts, and possibly the interference which would prohibit the misuse of such situations by the third parties (broker's agencies): that is all.

Here we come to a very crucial issue: do individuals have reproductive rights? Do they have a natural right to reproduce? The answer to that question is, on my knowledge, not to be found in Mill's works. But, again, I think we can safely assume his answer to that question would be positive. Reproduction is one common activity, a need – moreover, which pertains to every normal person. And there is no particular argument that I can see why a state or a community would principally have to interfere with this need. There are cases, to be sure, when a legal action may be granted (for instance in cases of incest, rape, coerced marriages and the likes), but in all such cases, legal action is granted because/when the reproductive act was not mutually voluntary. The principle of interference into such acts is morally and legally justified only in cases when one of the individuals involved was involuntary. However, in cases of surrogate motherhood this is not the case, since a surrogate mother has voluntarily signed agreements or contracts presumably out of her own interest (whatever it may be). Some people feel offended by the alleged trading of children. But in most of the cases of surrogate motherhood, at least one of the contractual parents is a genetic parent, and in quite a few, a surrogate mother is just a carrier of the already formed embryo of the contractual parents. When a surrogate mother is also a genetic parent, we may imagine a complicated legal problem, but the bottom line should always be – to what did she give consent?

And I presume Mill's principles would give grounds for punishing individuals who did not keep up with their contractual obligations. (Otherwise, it would be an exploitation of another genetic and legal parent). The notion of gestation here is not of the greatest importance, since there are so many cases of foster children, of children who have been taken from their genetic parents because of misconduct and negligence, and no one seems to pose difficult moral questions in such cases. A surrogate mother who entered into such a serious contract (for the money), and who changes her mind in the process shows all the signs of negligent or even reckless person, and should be treated like all other such parents. But I admit Mill's principles do not extend that far.

Positive law does not confer individuals a reproductive right. There is no international convention which would guarantee any such right. But some scholars, notably Dworkin and Harris, have tried to stipulate the existence of such a right. And herein I see a possibility to legally extend Mill's liberty argument. Since reproduction (and the act of reproduction) is not a matter of state interference, and since it is a basic need or human instinct, I see no reason why such decisions should not be included into basic human rights and justifiably conferred to individuals.

All sorts of questions that spring from the question whether individuals should have reproductive rights pertain to the question of **cloning** as well. As a general argument, and as opposed to its medical viability, I would say that reproductive cloning is morally a far easier question than others already discussed. In the most typical example, it involves only a single person, and therefore a question of partner's interests, or some other alleged public interest, does not occur. Since the action of the individual who would like to clone himself/herself does not hinder any other freedom of others, it should be allowed. True, the question whether any doctor would like to perform such a procedure stays the same: physicians should not be compelled or coerced to perform such a procedure. But other kinds of arguments, most notably an argument which invokes potential misuse of children should not have a bearing for legality of cloning. Namely, if, as most of cloning anti-campaigners usually claim, it would turn out that clones are produced for some other reason, and not to be legal or genetic heirs of individuals, a normal and usual legal course of action against such person, and against trading with individuals would and should apply. Therefore, it goes without saying that cloning as a means of reproduction should be legal provided the person does not treat his/her kid as an object of anybody's disposal. It is therefore essential to stress that a cloned kid has the same legal and moral status as any other child or any other kind of person, and that all imaginable misuses of persons, usually invoked against cloning, pertain to all other children and persons.

As a conclusion of this discussion, we may safely say that Mill's arguments on freedom and autonomy of persons justify the broadest scope of reproductive liberties. As a matter of principle, medical assistance in reproduction does not invoke concerns of general public, although the interest of general public towards such questions undeniably does exist. These public concerns should not involve actions which would prevent a person from exerting their reproductive rights because in general they neither involve, nor limit the liberties of others. We may continue to reason with people whose decisions we do not endorse, but there are no reasons why we should invoke state intervention, and make such prohibition claims legal. Also, it should be noted that by broadening the scope of personal liberty onto medical assistance in reproduction, my intention was not to make any possible misuse involved in such human interactions less liable to legal action and state's interference. If a medical practitioner makes a mistake in performing such procedures, he should continue to be legally liable. If a parent misuses a child in any way, he/she should continue to be legally liable. A broker in surrogate motherhood cases should not have the upper hand, since the child involved is not primarily his concern.

My intention was only to see to it, that Mill's arguments on liberty can and should be invoked in cases when public wishes to delimit the scope of person's freedom.

Let me now turn to other problematic medical cases that have so far not received such big philosophical attention and still in some way belong to the same general discussion: let me consider **organ and tissue donations**. In our culture it is very laudable when people voluntarily donate their tissue and their organs to other people. In most countries such a practice is encouraged and individuals who do so are morally encouraged and valued. Blood donors are rewarded instantly (with free meals or free working days), and live organ donors are praised as heroes.

However, laudability of such a practice, for some reason, is not accredited to the **gamete donation**. While sperm donation is often laughed at, egg-donation is mostly forbidden. I am not going to speculate where lies the reason for such a hypocrisy. Does it lie in our conviction that male gametes are expendable, and that female ones are rare? Or in our notion that eggs, unlike sperm, somehow bears a more important - mother's imprint? My immediate point is that there is no reason whatsoever why there should be any moral or legal difference between sperm and egg donation. Speaking from the moral point of view only, donation

of these cells should have the same weight. Any other kind of reasoning would involve a kind of sexism. And the difference in our attitudes towards gamete donation most certainly does not stem from any of the Mill's arguments. It is only our hypocrisy that makes the difference, and I hope that in countries which do make a legal difference, this is going to change soon.

Apart from purely moral issues, however, there are other complications. Let us consider the argument from the medical point of view. It is true that oocyte aspiration is, comparatively speaking, a far more complicated means to get a gamete than collecting sperm. But, comparing this procedure with potential medical complications involved in, say, heart, kidney or liver donation, oocyte aspiration is quite a minor and relatively straightforward intervention, which does not involve risks for the life of a patient. In almost all cases, this procedure is done while performing other kinds of procedures on a patient, primarily during the course of medical reproduction assistance which has a surplus of eggs as a side-effect. In no way does it involve an organ snatching scenario, as some people would have it, since the surplus of collected eggs in such procedures would otherwise be wasted. That is another reason why there should be no moral and legal distinction between egg and sperm aspiration.

However, precisely the fact that eggs are primarily collected from selected women who undergo medical treatment, and not from random ones, sometimes provides grounds for argumentation against it. In some cases it involves some eugenic kind of thinking (when it is latently assumed that these women do not add to the quality of human stock, and that therefore should be excluded from the list of donors). But more commonly, it is assumed that the procedure of egg aspiration described above abuses or misuses the authentic or autonomous wish of a patient that undergoes such treatment. It is assumed that unlike in these critical circumstances, and in such a fragile train of thought, (which goes like this: since I have to be assisted in my reproduction, let me contribute to the health of others), women in their right mind, in normal circumstances, would not wish to undergo such a treatment. In the first case, since eugenic reasons are not invoked in sperm aspiration, neither can they be invoked in cases of egg aspirations. Concerning the second argument, it goes without saying that patient's written positive statement concerning egg aspiration should be necessary for performing such an action. And the problem whether the patient is in her right mind while signing such agreements is not exclusively a problem for egg donors.

Some people may think that in case of egg aspiration, we already have all the problems with surrogate motherhood. But this is not the case. Consenting to an egg aspiration does not involve the question who is the real mother, as it is sometime the case with confusing of gestational and genetic mothers. Unlike with

surrogate motherhood cases, the donors in general do not have a right to change their minds and withdraw their consent. They are not given such an opportunity, and no-one in his right mind would even consider it. Consider what would happen if we allowed a kidney donor to change his mind after the kidney was implanted into another person? In short, I see no reason whatsoever why egg donation should be forbidden (neither from Mill's principles, nor from any other). The practice of gamete donation should be treated as any other tissue and organ donation – as a charitable act. (Even more so: since people in such cases help other people getting new people, while in ordinary donations, they just help others to survive).

Again, some people may consider the practice of gamete donation immoral. We may invoke our intuitions, or yuk-factors, but in no legal system does this kind of intuition serve as a proper ground to delimit the scope of other people's freedoms. And again, we may argue with donors, try to convince them that such a behavior is imprudent, but that is not a sufficient reason to legally delimit such arrangements.

Another kind of argument is an argument against payments normally involved in such practices. It should be noted that in majority of cases, this is not the case. And even when a donor does not make a profit out of his/her donation, it goes without saying, that a written consent should explicitly enumerate kinds of actions that a donor has consented with: whether has he/she consented to cryo-preservation, to be used in research or experiments with it, whether it should be disposed with, whether he/she allowed medical personal to trade with it etc. Donation is more laudable when it is done for the sake of it, but since helping others reproduce is just one way to help mankind, the difference between a charitable donation and a donation made for say stem cells research, which is usually paid for, is a difference in grade, not in kind. If blood donors are rewarded by a lunch or a free working day (and we think it fit), I see no reason why a lunch could not be replaced by some money rewards in cases of gamete donation.

Again, as with the surrogate motherhood cases, presuming that people are the best guardians of their interests, and that they do not violate other people's freedoms, they should be able to form contracts involving monetary compensations.

As a conclusion, in Appendix 1, I present the table summary of the arguments.

Now, let me briefly consider another batch of problems which involve medical procedures, and are in most respects similar to the ones just described. They do not involve reproduction, but rather a survival of some person as their goal. We are talking about the problems with organ donations.

There is a strong reason to involve these questions, since it involves the basic idea of Mill's argumentation, in a rather curious fashion. Do we have a right to other people's organs? Can we expect other people to donate us their organs? Who decides what is going to be done with our bodies and our body parts after we are gone? Let me rephrase the questions in the following peculiar way: "Do our rights extend to afterlife?"

Organ donations are done in two principal ways: from live donors and from cadavers. In the first case, problems posed by Mill's principle of liberty are not very hard, in spite of the fact that some philosophers have reinterpreted the doctrine of utilitarianism by saying that the doctrine "maximization of pleasure for the most" would mean that it is legitimate to kill a patient and use his organs to save three other people. No sane person has ever thought of justifying that seriously, so I presume, neither would Mill. The only question worth asking in connection with live donors is: should we forbid live donors (of kidneys) to meet their recipients? In most of the countries this is forbidden, I presume, to avoid a slippery slope of making pressure on other people to do so involuntarily, or more importantly, to avoid a hint that the donation was done for some other (monetary) purpose. Perhaps precisely this reason is an argument against such a ban.

It seems self-evident that no person should be justified in forcing any other living being to donate an organ to the other – no matter how desperate the recipient, and no matter whether he/she was a perfect donor. Any violation of the integrity of the living body is something that should be strictly forbidden. But in spite of the fact that this is not (and should not) be legal, the pressure put on some people to do so (I am talking here mostly about acquaintances and relatives of the patient), to be generous, altruistic, heroic, "angelic" is becoming very awkward. Secondly, awkwardness is even more pronounced when some people claim there should be a social reciprocity: if you are not willing to become a donor, you should not expect to be a recipient either. (A perfect example was an author who recently received a live donor kidney. In a TV broadcasting on the topic, she claimed that people who would consent to be potential donors, should therefore be excluded from recipient lists too.) Not signing a donor card therefore means that we are selfish egoists who do not care for the wellbeing of others. So, in spite of all the legal fences, the pressure on the people to become live donors (and cadaver donors too) is on the rise. But still, I hope, no sensible community would ever again cross the humane line of justifying voluntary donations only.

Well, how about being cadaver donors? Because, after all, once we are dead, we are gone, why should it matter to us?² Until recently, majority of countries have used a so called "informed consent" system of organ harvesting. *Prima facie*, it seems ludicrous to claim that dead people also have rights. Mill, as far as

² See a brilliant book on what happens when you sign to become a body or an organ donor, and what happens to cadavers in general, by Mary Roach, *Stiff. Curious lives of human cadavers*, Penguin, London, 2000.

my knowledge goes, has never posed, neither answered this question. But, I hope I shall assure you that the question is not absurd.

The bottom line of the whole argumentation is that Mill's discussion in *On Liberty* provides several very fundamental democratic principles which are not paid due respect in modern democratic societies. In some democratic societies, Croatia for instance, people are not aware that democracy is not constrained to expressing opinions, voting and being elected. Democratic values include individual rights and several obligations, among which – our obligation to be "proper guardians of our spiritual and physical interests". That means that people should not normally expect from the state (or from their community) to be such a guardian. And no society, according to Mill, which would not pay respect to such rights (and respected obligations) should be considered a democratic and a liberal one.

Appendix I
(enclosed)

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