IN GOOD CONSCIENCE

16 December 2016

The Hon. Ms. Justice Mary Laffoy
Chairperson
The Citizens’ Assembly
16 Parnell Square
Dublin 1
REPUBLIC OF IRELAND

Dear Ms. Laffoy:

While things can and should always get better, we can all celebrate just how far Ireland has come over the years. We left behind those dark days of the 1950s when Dr. Noël Browne’s attempts to provide health care for new mothers and their infants were met with fierce rejection by the Catholic hierarchy. We left behind the marriage ban that excluded women from public service upon marriage in 1973. And, while it took more time and more court cases, the ban on contraception was lifted allowing women and men to make responsible decisions and practice birth control. The right to divorce and remarry, to be protected from violence and, in the last year, recognition of marriage equality for gays and lesbians all suggest that Ireland has grown up.

As a member of the great diaspora, I feel proud of the strides for human rights and the dignity of all people who live in Ireland. Respect for individual conscience and decision making by the state and the people of Ireland is key to a truly secular and pluralistic country where we can enjoy freedom of religion and freedom from religion.

As an Irish citizen and the head of the international organization Catholics for Choice, I humbly ask that the Citizens’ Assembly consider the input of this Irish citizen on a question that has vexed our country for decades: How to respect the decision making of Irish women in a Catholic context when it comes to abortion? It is a major hurdle, especially for those who are less well off. Those with means will always be insulated from prohibition by their cheque books. Consider please the poor and the burden they must carry with an unwanted pregnancy. What should be the response of a compassionate and free society?

Respectfully,

[Signature]

Jon O’Brien
President

Enclosure: Submission to the Citizens’ Assembly regarding the Eighth Amendment of the Constitution
Abortion in Good Faith: Repeal the Eighth Amendment

Submission to the Citizens’ Assembly

16 December 2016

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Introduction
Even in a predominantly Catholic country, like Ireland, laws governing access to abortion need not adhere to the official Catholic position. There are several reasons why.

First, church teaching and tradition leave room for support for a more liberal position on abortion. Core Catholic tenets include the primacy of conscience and the right to dissent. Furthermore, the church acknowledges that it does not know when the fetus becomes a person, and it has not declared the position on abortion to be among infallible teachings. Respect for life should include respect for women’s lives.

Second, many Catholics themselves do not support in thought or action the position of the church on abortion.

Third, the Irish system has instituted a separation between church and state; the church supports this principle and has called on Catholics to respect the positions of people of other faiths. This is particularly significant given that the Catholic church’s position on reproductive matters, including abortion, is more conservative than any other major faith group.

This review of relevant information regarding the church, abortion, and the state exposes the freedom policymakers have in crafting laws that respect the capacity of women to make good moral decisions. Policymakers should note that moral decisions can only be made in an atmosphere free of coercion, whether that coercion is physical or legal.

When it comes to the question of abortion, there are many legal formulations that can demonstrate respect for women’s moral agency. In the United States and South Africa, that respect is embedded in a constitutional right to choose abortion. Most European countries demonstrate this respect differently: through laws which affirm respect for developing life while clearly recognizing the need for women to have the abortion option in some or many circumstances. Ireland can repeal the Eighth Amendment and craft legislation that acknowledges the moral agency of women, respects developing life, and appreciates the Catholic tradition while honoring the views of other faith groups.

Over 50 years ago, John F. Kennedy described his own determination to keep in appropriately distinct spheres his religiously based beliefs from the demands of democracy and pluralism: “I do not speak for my church on public matters, and the church does not speak for me. Whatever issue may come before me as President if I should be elected – on birth control, divorce, censorship, gambling, or any other subject – I will make my decision in accordance with these views, in accordance with what my conscience tells me to be in the national interest, and without regard to outside religious pressure or dictates. And no power or threat of punishment could cause me to decide otherwise.”

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Catholics for Choice (CFC) supports policy making and governing structures that make a clear separation between church and state. At the same time, we also recognize that religion can make a contribution to law and policy making, particularly where these relate to social justice and the dignity of the human person. We strongly support the right of religious institutions to participate in the life of nations, to express their values, and even to attempt to influence public policy. Policymakers have the responsibility to evaluate the positions put forward by the church in the same way that they would evaluate public policy positions put forward by any other party. Do the positions contribute to the common good? Are they based on solid, provable facts? Do they unnecessarily infringe or impose on the rights and freedoms of others? Are they equitable? Have the people who will most directly feel the consequences of the policy been consulted?

CFC is pleased to make this submission to the Citizens’ Assembly in support of the important discussion regarding Article 40.3.3, commonly referred to as the Eighth Amendment of the Irish Constitution. We offer this submission in light of the unofficial but significant public policy role of the Catholic church and its teachings in Ireland, and in consideration of the fact that church leaders, in hot pursuit of their goal of keeping abortion legally restricted, have tended to stress certain aspects of church teaching while virtually ignoring others that do not support this agenda.

This submission discusses some of the most important Catholic principles, teachings, and traditions that recognize an individual’s moral freedom to make the abortion decision and support the establishment of non-restrictive abortion laws. Our submission also reflects on the value of religious pluralism in public policy.

Most importantly, our submission comes to you from Catholics who are concerned about the health, welfare, and rights of the women of Ireland. We represent the voice of the majority of Catholics all over the world who believe that our Catholic faith demands social justice and that we are called to address the needs of those who are suffering and in positions of powerlessness.

**About Catholics for Choice**

CFC’s mission is to shape and advance sexual and reproductive ethics that are based on justice, reflect a commitment to women’s well-being, and respect and affirm the capacity of women and men to make moral decisions about their lives.

CFC works in the United States and internationally to ensure that all people have access to safe and affordable reproductive healthcare services and to infuse our core values into public policy, community life, and Catholic social thinking and teaching.

CFC is at the forefront of international debates on the intersection of faith, women’s health, and reproductive justice. CFC is committed not only to policy change, but also to a change in the culture in
which policy decisions are made, a change in people’s hearts and minds about the ways they think about sexuality and reproduction.

We strive to be an expression of Catholicism as it is lived by ordinary people. We are part of the great majority of the faithful in the Catholic Church who disagree with thedictates of the Vatican on matters related to sexuality, contraception, and abortion.

In all parts of the world, women, men, and their families suffer and some die because they lack the resources to plan their families and the comprehensive information and education to keep themselves safe and healthy. The Catholic hierarchy’s role in influencing public policy affects everyone—Catholic and non-Catholic—by limiting the availability of reproductive health services worldwide.

The Catholic hierarchy’s lobbying against contraception and abortion has disastrous effects on women’s lives both in the US and abroad and especially on the lives of poor women. We believe in a world where every woman and man has access to quality and choice in contraception. Wherever possible, we believe in working to reduce the incidence of unplanned and unwanted pregnancy and that society and individuals should strive to give women and men real choices.

We believe that young and old should have access to the best information so we know and understand our bodies and can make the best and most responsible decisions to enjoy and share our sexuality.

We believe that social services should exist in our communities where people may freely access quality healthcare and child-care—where women and men have real choices and where no one is ever forced for any reason to have an abortion or to give birth.

We believe that women should have access to abortion when they need it and when, in consultation with their doctors, it can be performed safely.

We work for a world where all women and men are trusted to make responsible decisions about their lives, where skilled and compassionate doctors, nurses, and healthcare providers are allowed and supported in the work they do to enable people to exercise their right to choose.

We are part of the great majority who believe that the teaching on the primacy of conscience means that every individual must follow his or her own conscience—and respect the rights of others to do the same. We affirm that the moral capacity and the human right to make choices about whether and when to become pregnant or to end a pregnancy are supported by church teachings.

We believe that people should be empowered and given support to exercise their rights and responsibilities.

We believe that women have a right to choose.
Abortion and moral decision making: more complex than believed
It is understood in Ireland and elsewhere that the Catholic church teaches that direct abortion is an objectively moral evil and is forbidden. But Catholic teachings regarding abortion itself and moral decision making in general are complex and do not end with this stark ban. In Catholic theology there is room for the acceptance of policies that favor access to the full range of reproductive health options, including contraception and abortion.

Catholic teaching regards the well-formed conscience as the final arbiter in moral decision making
At the heart of church teachings on moral matters is the deep regard for individual conscience. According to the Catechism of the Catholic Church, “a human being must always obey the certain judgment of his conscience.” The church takes conscience so seriously that, as Fr. Richard P. McBrien wrote in his encyclopedic reference and teaching guide on Catholicism, even in cases of a conflict with the moral teachings of the church, Catholics “not only may but must follow the dictates of conscience rather than the teachings of the Church.”

Casual disagreement, of course, is not sufficient grounds for contradicting moral teachings. Catholics are obliged to know and consider thoughtfully and seriously Catholic teachings. After all, McBrien writes, “The Church, as the Temple of the Holy Spirit, is a major resource of ... moral direction and leadership. It is the product of centuries of experience, crossing cultural, national, and continental lines.” But in the end, a well-formed conscience reigns. One of the most influential church thinkers, St. Thomas Aquinas, said that it would be better to be excommunicated than to act in a way that contradicted your conscience.

The church does not know when the fetus becomes a person
Catholic teachings on abortion have changed over time. Although the Catholic hierarchy says that the prohibition on abortion is both “unchanged” and “unchangeable,” this does not comport with the actual history of abortion teaching, and dissent, within the church.

The Catechism contains only six paragraphs on abortion. This brief section starts: “Since the first century the Church has affirmed the moral evil of every procured abortion. This teaching has not changed and remains unchangeable.” While the Catholic church has long taught that abortion is a sin, the reasons for judging abortion sinful have changed over time. In fact, through most of history the church did not pay much attention to abortion except as a sexual issue.

The early prohibition of abortion was not based on concern about the fetus. It was based on a view that only people who engage in forbidden sexual activity would attempt abortion, and that abortion is wrong from either an ontological perspective or from a negative judgment about sexuality and sexual behavior, known as the perversity view. “The ontological view is that the human fetus is a person from
the earliest moments of conception, hence to abort it is either murder or something closely approximating murder; the perversity view is that sex is only licit within marriage and for the primary purpose of having children, hence abortion perverts sex and is immoral in the same way that contraception is immoral.”

The perversity view is no longer much argued explicitly within the Catholic church, though it underlies many of the hierarchy’s arguments. Many church officials and antichoice Catholics now focus on the ontological view, which argues that the fetus is a person from the moment of conception. This view, however, is based on faulty science, dating from the 17th century. At that time scientists, looking at fertilized eggs through magnifying glasses and primitive microscopes, imagined that they saw tiny, fully formed animal fetuses.

The church hierarchy has since rejected the notion that a fetus is a fully formed person. In the 1974 Declaration on Procured Abortion, the Vatican acknowledged that it does not know when the fetus becomes a person: “There is not a unanimous tradition on this point and authors are as yet in disagreement.” This disagreement has a long history as well; neither St. Augustine nor St. Thomas Aquinas, two of the most important theologians in the Catholic tradition, considered the fetus in the early stages of pregnancy to be a person.

The US Supreme Court explored fetal personhood at some length in its Roe v. Wade decision and concluded: “When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man’s knowledge, is not in a position to speculate as to the answer.”

The teaching on abortion is not infallible, and Catholics have the right to dissent from non-infallible church teachings

In the modern church, there is a great diversity of opinion regarding infallibility. Some theologians reject infallibility altogether, some maintain that only matters of faith – not moral matters – can be proclaimed infallible. Theologians of a more conservative stripe maintain that all of the Pope’s declarations on doctrine are directed by the Holy Spirit and are thus free from error. In any case, the popular notion that whatever the pope says on a serious topic is infallible is an exaggeration of the principle of infallibility. And no one claims that the teaching on abortion is infallible.

Before the encyclical Evangelium Vitae was published in 1995, there was much speculation among theologians and others that Pope John Paul II would declare the abortion teaching infallible in the letter. On the encyclical’s release, Cardinal Joseph Ratzinger, the Vatican’s chief doctrinal officer, confirmed that the word “infallibly” had been considered in early drafts, but was finally rejected. Ratzinger explained that while the teaching on abortion is authoritative and deserves obedience, the encyclical stopped short of the “formality of dogmatization.” The fact that this Pope – one for whom the abortion ban has been a central theme of his papacy – did not in the end make that declaration of infallibility can be read as a sign that such a claim cannot be made.

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Dissent from church teachings is permissible, and the church has a long tradition of disagreement among its members on official teachings, interpretations of those teachings, and ways that those teachings are expressed. At various points during the church’s history, the church has recognized views that were at one time in opposition to official teachings. Theologians whose opinions at one time clashed with prevailing papal views and were later recognized include St. Thomas Aquinas, the biblical scholar Marie-Joseph LaGrange, John Courtney Murray, and Henri Lubac, who was singled out for special praise by Pope John Paul II some years after his views were criticized by Pope Pius XII.9

“Although the Catholic’s first and proper instinct is to be guided by the official teachings as presently understood and interpreted,” writes McBrien, “one must nonetheless take into serious account the theological work that continues to be produced alongside, and sometimes even over against, these conventional interpretations.”10

The Catholic system of probabilism supports Catholics’ right to dissent from church teachings

While virtually unknown to most Catholics, the concept of probabilism is the safeguard within the church that protects individuals from teachings that are wrong or are in development, as long as one can find sound reasons for a differing position. As moral theologian Daniel Maguire has written, probabilism gives “Catholics the right to dissent from hierarchical church teaching on a moral matter, if they could achieve ‘solid probability.’” Maguire writes of two ways to achieve solid probability. One is through prayerful discovery in one’s conscience of “‘cogent,’ non frivolous reasons for dissenting from the hierarchically supported view.” The other is by citing the liberal dissenting view of “five or six” reputable theologians.11

The latter is certainly no challenge when it comes to theologians’ views on abortion, even though theologians who voice positions on abortion that differ from the official position do so at great risk of Vatican censure. As long ago as 1973, Catholic theologian Charles Curran wrote that “there is a sizable and growing number of Catholic theologians who do disagree with some aspects of the officially proposed Catholic teaching that direct abortion from the time of conception is always wrong.”12 (Curran himself was strongly rebuked by the Vatican for this and other divergent views. Even after the Vatican’s censure, Curran maintained that his “theological positions represent the mainstream of Catholic theology and are accepted by the majority of Catholic theologians today.”13)

Canon laws calling for automatic excommunication for abortion make significant exceptions

While church law cites obtaining an abortion among offenses that incur latae sententiae (automatic) excommunication, excepted are those who:

- are under 17 years of age;
- were ignorant of the church’s teaching;

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• acted under compulsion of “grave fear, even if only relative, or by reason of necessity or grave inconvenience;”
• were unaware of the penalty;
• acted without full imputability.\textsuperscript{14}

This last exception includes the person who acted based on “an erroneous conscience or a sincere good faith conviction … that abortion is permissible in certain circumstances.”\textsuperscript{15}

**Catholics share in the development of teaching through the principle of reception**

The teaching authority of the church is trinitarian. It is not based solely on statements of the hierarchy, but also includes the scholarly efforts of theologians and the lived experience of Catholic people. “Since the Church is a living body,” the Vatican has declared, “she needs public opinion in order to sustain a giving and taking between her members. Without this, she cannot advance in thought and action.”\textsuperscript{16}

The importance of lay Catholics’ experience in the establishment of church law is recognized through the concept of reception. Leading canon lawyer James Coriden shows how the principle of reception “asserts that for a [church] law or rule to be an effective guide for the believing community it must be accepted by that community.” Reception originated in the 12th century in the *Decretum*, the first compilation of church law that was accepted as authoritative within the church. In them, the monk John Gratian wrote that church laws:

> are instituted when they are promulgated and they are confirmed when they are approved by the practices of those who use them. Just as the contrary practices of the users have abrogated some laws today, so the (conforming) practices of the users confirm laws.

Coriden shows how church law experts have, through the centuries, reaffirmed an understanding that “the obligatory force of church law is affected by its reception by the community.” Like the concept of the primacy of conscience, the principle of reception does not mean that Catholic law is to be taken lightly and rejected without thoughtful and prudent consideration. “Reception,” Coriden has said, “is not a demonstration of popular sovereignty or an outcropping of populist democracy. It is a legitimate participation by the people in their own governance.”\textsuperscript{17}

While no one would suggest that the findings of opinion polls have the moral strength of church teachings, on questions of reproduction such as contraception and abortion, the consensus of the faithful, or *sensus fidelium*, cannot be said to support the hierarchy’s position. Catholics all over the world have soundly rejected the church’s ban on contraception and, on the topic of abortion, in some countries and on some questions, only a minority of Catholics agree with church leaders. Dissent can be a majority position.
Many of the hierarchy’s teachings on reproductive health and rights have not been received by the faithful. Rather, Catholics all over the world have soundly rejected the church’s ban on contraception, and in many countries only a minority of Catholics agree with church leaders on abortion. Only 14 percent of Catholics in the US agree with the bishops that abortion should be completely illegal, and Catholic women in the US have abortions at the same rate as women in the population as a whole. Majorities of Catholics in Spain (88 percent), Poland (82 percent), Italy (83 percent), Brazil (81 percent) and Mexico (72 percent) feel abortion should be permitted under some or all circumstances.\(^8\) When it comes to the Vatican’s teachings on abortion, Catholics the world over stand well apart from the hierarchy.

The Irish disagree, too. Recent polling by the *Irish Times* demonstrated that 75 percent of the population in Ireland supports repeal of the Eighth Amendment.\(^9\) What’s more, 78 percent of Catholics in Ireland say they follow their own consciences in making serious moral decisions, while only 21 percent say they follow the teaching of the church. Every year thousands of Irish women, most of them Catholic, demonstrate disagreement with the church by obtaining legal abortions in England.\(^10\)

In terms of law making, the overwhelming majority of voters, 87 percent, believe that abortion access should expanded, while only five percent agree with the church’s position that abortion should not be permitted in any circumstances.\(^11\)

**The sanctity of life includes women’s lives**

Human persons are the “crown of divine creation,”\(^12\) and the Catholic tradition demands respect for life and human dignity. In the case of abortion, church leaders have tended to focus this respect on the developing fetal life – giving it the benefit of the doubt that it is fully human – to the great detriment of women, whose personhood is, of course, not in question at all.

Irish women experiencing troubled or unsupportable pregnancies face a difficult situation, living in a country where abortion is illegal and unavailable. Still, legal restrictions do not stop Irish women from obtaining abortions – in 2015 alone 3,451 women traveled to Britain – a trip that involves considerable time and financial expenditures, and thus often delays the procedure.\(^13\)

Worse, as Catherine Conlon concluded after conducting an extensive research study of Irish women and abortion, “As with many aspects of our lives, it is poor women or women with no independent income who suffer most from [the Irish] government’s failure to provide for the health and integrity of Irish women.”\(^14\) Indeed, for poor women there may be no option at all. To force women to travel to another country to obtain necessary health care is ample demonstration of disrespect and disregard for women’s health and dignity, but to *de facto* proscribe it entirely for women because they are poor is even worse. It is a direct contradiction of the Catholic tradition of preferential option for the poor.
Catholic teaching supports pluralism and the separation of church and state

Despite its efforts to conform public policies to its teachings, church teaching clearly demands that Catholics respect the views of other faith groups, and the church accepts the principle of church-state separation. So do the Irish: In a 1972 referendum, the Irish people overwhelming approved the removal of the special status accorded the Roman Catholic Church in the Irish constitution. This non-controversial move to secularize the Irish system was made in light of the tensions in Northern Ireland.

Catholics “should recognize the legitimacy of differing points of view about the organization of worldly affairs and show respect for their fellow citizens.”

This is particularly significant in cases where one religion’s position is far apart from many others, as is the case of the Catholic church’s positions on sexuality and reproductive health. On these issues, the Catholic church’s views are more conservative than any other major world religion. For example, the complete ban on artificial contraception, even for married couples, has been rejected by all other major faith groups. Furthermore, many other major faiths also accept the possibility of abortion’s morality in some circumstances, and the Catholic church’s complete ban is among the world’s most extreme.

In a pluralistic society in which many major faith groups recognize the possibility of abortion’s morality, Catholics need not work to legally restrict access to abortion. Current Catholic theology makes a clear distinction between the moral teachings of the Catholic church and the right of legislators to use prudential judgment in developing public policy. To quote Vatican II authors again: “It is of supreme importance, especially in a pluralistic society, to work out a proper vision of the relationship between the political community and the Church... The political community and the Church are autonomous and independent of each other in their own fields.”

Even in a predominantly Catholic country, laws governing access to abortion need not adhere to the official Catholic position. The Second Vatican Council’s Declaration on Religious Freedom reinforced the call for Catholics to respect the positions of people of other faiths. This is particularly significant given that the Catholic hierarchy’s positions on health policies, including abortion, are more conservative than those of other major faith groups. In addition, as noted, many Catholics do not support the Vatican’s position on abortion.

Sound public policy on abortion would affirm respect for developing life without diminishing respect for women’s lives. Catholics can and do support public policies that acknowledge the moral agency of women, respect developing life, and appreciate the Catholic tradition while honoring the views of other faith groups.
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