Social Justice Project
Locke & Prop. 85

Last election there was a proposition on the California ballot known as Prop 73. It mandated parental notification before allowing a minor to receive an abortion. The proposition was defeated, but this year we see a very similar measure – Proposition 85. This issue brings up the same controversial and hotly debated issues as last time – who has greater rights, the parent or the minor? Is it in the best interest of the minor to let her make her own decision? Who is to say when a girl is mature enough? Is age just a number? Is it justice to mandate informing a parent of what is going on with a body that does not belong to them? Is it justice to allow a uniformed minor to take such drastic measures on her body? What in fact is justice? What does someone like John Locke have to say? Can we define justice? These are all questions that spring from the issue and which we seek to discuss. We will argue that the Lockian notion of justice renders an unjust resolution to California’s Proposition 85.

Proposition 85 is on the California November 2006 ballot, and it is an initiative to amend California’s Constitution in order to prohibit abortion for a minor until 48 hours after the physician notifies the minor’s parent or legal guardian. However, it includes the ability for the minor to obtain a court order waiving notice based on evidence of minor’s maturity or best interests (Prop 85, Official Title and Summary). There are strong arguments both for and against the bill.

The opponents of the proposition see it as a threat to a minor’s right to privacy and safety. They believe that being a minor does not take away a girl’s right to privacy and the right to her body. It is viewed as a step toward banning abortion altogether and therefore detrimental. They believe a large portion of teenage girls who become pregnant already inform their parents, and that the small majority who do not have good reason. Girls who live in abusive homes may risk
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being kicked out, abuse, or domestic violence, if they inform their parents. In instances of rape or incest, the minor may also not be able to safely inform her parents of the need for an abortion. The opposition to the bill argues that family communication and trust cannot be mandated by law, and that attempting to do so would put minors who live in abusive or dangerous homes in worse danger. There is also concern that Prop 85 puts the minor in the position of either telling their parents or getting an illegal abortion, either self-induced or illegal back alley, both of which are highly unsafe and put the minor at a very high risk (Planned Parenthood Online).

The proponents of the bill see girls in these extreme situations as a small minority that could potentially have the notice waived by a judge as allowed in the proposition. The proponents of Prop 85 argue that Prop 85 protects the safety of minors, promotes communication with parents, and defends the parents’ right to know. Supporters of Prop 85 point out that currently in California minors cannot get so much as an aspirin at school without parental consent, and yet they can have a major medical procedure performed without the parents even being notified. Abortion is a major procedure that involves multiple potential consequences and complications. Prop 85 would ensure that the parent of the minor knows what is going to be done to his or her child. Supporters of Prop 85 see it as a way to prevent secret abortions which could take advantage of young girls which could harm them (Cardinal Mahoney). This bill is also believed to promote caution in teens and discourage promiscuity. Proponents consider this proposal to be in the best interest of both the minor and the parent.

Much like the proposals and hot topics of today, there were controversial issues being debated and discussed in the 17th century. Prominent among those who tackled such issues was the English philosopher John Locke, who was one of the most influential thinkers of the Age of Enlightenment. Specifically, Locke was very influential through his writings about theory of
knowledge and the justification of political authority. "His work on representative government
and human rights greatly influenced the founding fathers of the United States," and his essay, the
Second Treatise of Civil Government, "is the most important single work on constitutional
democracy" (Locke, CP, p. 121,460). It is through this essay that Locke defines his notion of
justice, which we will summarize and later apply to the resolution of Proposition 85.

Locke, in determining justice, makes a distinction between those who are living under the
state of nature and those who are living under a social contract. For him, justice for those not
living under a social contract is abiding by natural law. He states that by nature, all men are
equal, independent, and free and that in no way can a governing body or power infringe on these
natural rights without their consent. Therefore, under the state of nature, man is, "absolute lord
of his own person and possessions; equal to the greatest and subject to nobody" (Locke, CP, p.
462). This state of nature is governed only by natural laws, of which there are primarily four.
The first natural law is that no one person ought to harm another person whether through his life,
liberty, health, or possessions. Secondly, and as a result, each person has the natural right to
preserve himself if any of these are threatened. Next, each person is compelled to preserve all of
mankind as long as this does not interfere with his own self-preservation. Lastly, each person
has the right to punish those who break these natural laws including the right to implement
capital punishment. These are the laws that govern men absent of an established community or
governing power.

However, with the expressed consent of man to join such a community, he gives up
certain natural laws and his notion of justice changes. In essence, he enters what Locke calls a
social contract which is done by, "agreeing with other men, to join and unite into a community
for their comfortable, safe, and peaceful living, one amongst another, in a secure enjoyment of
their properties, and a greater security against any that are not of it” (Locke, CP, p. 460). Locke says that it is this “greater security” that motivates a man to enter such a pact with others that directly limits the power of the man who was already lord over himself; “Why will he give up his empire, and subject himself to the dominion and control of any other power?” (p. 462). The reason is the increased protection of one's property, which Locke defines as life, liberty, and estate.

But within this social contract, a government is established because with every person's consent, one ruling body is created and consequently the individual is under social contract to abide by the laws that the majority of the community has created. As a result, Locke concludes, “And thus every man, by consenting with others to make one body politic under one government, puts himself under an obligation to everyone of that society to submit to the determination of the majority, and to be [included] by it” (p. 461). So not only does he place himself under the will and determination of the majority, but he also loses certain powers, giving them up to the majority, which were granted to him under the state of nature. First, he no longer has the privilege of doing whatever he saw fit for the preservation of him and the rest of mankind, in essence extending this natural right to the regulating laws set by the society. Secondly, he gives up entirely the power to punish, and is only able to assist through proper means set by the executive power of the society and its laws (Locke, CP, p. 463).

So what exactly is considered ‘consent’ to be under the social contract of society? Locke states that, “Every man that hath any possession of enjoyment of any part of the dominions of any government doth thereby give his tacit consent, and is as far forth obliged to obedience to the laws of that government” (p. 461). So any person who partakes in or is a recipient of any service that gives enjoyment which is provided by the government is giving their consent. In addition,
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Locke says that by uniting yourself, your person, which was before free, with any commonwealth or society, one is also uniting their possessions which were also free to this commonwealth. Therefore, "they become, both of them, person and possession, subject to the government and dominion of that commonwealth as long as it hath a being" (p. 461). In this way, the individual under social contract is to abide by the laws of that contract which is determined by the majority of the members of said society to better protect their natural rights to life, freedom, and property. This is Locke's notion of justice.

Under Locke's notion of justice, Prop 85 falls short, proving to be an unjust resolution. According to Locke's notion of justice, the individuals are either living under a social contract or they are not, and therefore are living only according to natural law. In this situation, the individuals involved concerning Prop 85 are clearly operating under social contract. Among these individuals is the minor girl who is pregnant, the parents of the minor, and the physician who knows of the minor's pregnancy. Through their actions and experiences in life, they have all given consent to live according to the laws of the social contract in one way or another. In today's world, people are for the most part born into an already existing social contract. Out of the womb a child is typically experiencing the joys of government services through hospitals. On the way home that child is riding in a car that the parents probably bought with borrowed money from a bank that is insured by the federal government. He or she is traveling on a road built with federal or state funding on their way to a house that is taxed by the IRS, a US government agency. All this is happening within just a few days of the beginning of that child's life. So presumably, it's safe to say that the parents of that minor and the physician likewise exist under such a social contract that according to Locke, protects their natural rights to life, freedom, and property.
But is Prop 85 protecting these rights? Is it securing, according to Locke, the natural rights of this underage pregnant girl? Implementing this law has the potential to limit or strip the minor of her right to life. If, for instance, a girl lived in a home with abusive parents, the news of her pregnancy from the physician could result in bodily harm towards the minor and possibly threaten her life. Under Locke, Prop 85 and its parental or guardian notifications would only increase these instances of child, or minor abuse. According to Locke, once a person is living under social contract, both their person and their possessions are subject to the government and authority over society. So besides her own life possibly becoming more vulnerable, so also do her possessions. So both the minor and her possessions, including a conceived child, become vulnerable to the laws of the governing body by being under this social contract which is really meant to better protect the rights she has to her person and possessions. Through John Locke's notion of justice and when applied to Prop 85, he is trying to better protect what he is making more vulnerable.

Furthermore, according to Locke, Prop 85 is a direct violation of the pregnant minor's freedoms. By implementing a law that forces the physician to inform the parents before giving an abortion, the girl's freedom to choose to have that abortion upon discovering her pregnancy is stripped away. Under this law, she would now have to wait 48 hours after her parents or legal guardians found out to have an abortion. So besides her freedom to choose, the freedom she has to her body is slighted. Under Locke's notion of justice, he states that anyone under contract also has the natural right to property which he defines as lives, liberties, and estates. The natural right to the estate of this pregnant minor can be interpreted as her natural right to her assets, holdings, or worth. Now this girl, who has inside her a growing developing fetus, has a natural right to do what she wishes with her assets, her holdings, her property, in essence the child inside
of her. Is it just to say that she has a natural right to do with her property as she wishes, and then try to strip her of this right by forcing her to place a portion of the decision concerning the future of her property in the hands of others, namely her parents? Under a Lockean view of justice, it is unjust and therefore Prop 85, which does this, is unjust.

However, in our opinion, Proposition 85 is a just law and therefore, Locke’s notion of justice is fallible. We think that it is just to not put such an important decision in the hands of a minor. Having an abortion is a serious medical procedure with serious implications. First of all, there is the inherent risk involved with any kind of operation. The risk of complication is high, and there are many possible complications to worry about. First of all, there are possible immediate complications of abortion - infection, excessive bleeding, embolism, ripping or perforation of the uterus, anesthesia complications, convulsions, hemorrhage, cervical injury, and endotoxic shock. The most common "minor" complications include: infection, bleeding, fever, second degree burns, chronic abdominal pain, vomiting, gastro-intestinal disturbances, and Rh sensitization. “Women under 17 have been found to face twice the normal risk of suffering cervical damage due to the fact that their cervixes are still "green" and developing.” There are also potential long term complications which include cervical, ovarian, liver and cancer, uterine perforation, cervical lacerations, placenta previa, complications of labor, handicapped newborns in later pregnancies, ectopic pregnancy, pelvic inflammatory disease, and endometritis (www.afterabortion.org, The Elliot Institute). Research has found that having multiple abortions increases a woman’s chance of having a miscarriage in a later pregnancy (Journal of the American Medical Association). Another study found that among teenagers who aborted their first pregnancies, 66% subsequently experienced miscarriages or premature birth of their second "wanted" pregnancies (Clinics in Ob&Gyn). For women under the age of 18 with no previous
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pregnancies, having an abortion after the 8th week increased the risk of breast cancer 800%
(Journal of the National Cancer Institute, Vol. 86, No. 21 (November 2, 1994), pp. 1584-1592).

"Teenagers, who account for about 30 percent of all abortions, are also at much higher risk of
suffering many abortion related complications. This is true of both immediate complications, and
of long-term reproductive damage" (Canadian Medical Association Journal, 122:1386-1389,
(June 1980)). Most tragically, maternal death is a small but possible complication of abortion.

Over 200 women have died from legal abortions since 1973 (American Journal of Obstetrics and

There are also psychologically harmful effects of abortion. Between 40 and 60 percent of
women experience negative reactions to abortion. Within 8 weeks after their abortions, 55%
expressed guilt, 44% complained of nervous disorders, 36% had experienced sleep disturbances,
31% had regrets about their decision, and 11% had been prescribed psychotropic medicine by
their family doctor (British Journal of Ob&Gyn (1980), vol.87,p1115-1122). “Many women
experience post-traumatic stress disorder after an abortion . . . PTSD symptoms include dreams
or flashbacks to the abortion, a general numbing of responsiveness not present before the
abortion, and difficulty falling asleep” (www.family.org, Archives of General Psychiatry).

The potential psychological harm involved with abortion is linked with the idea that there
was in fact, a life growing inside of the woman. Abortion is a very serious medical procedure
linked to serious complications as well as the very heavy responsibility of being pregnant. Being
pregnant involves being responsible for another life, or at the very least, the potential for another
life. Abortion is terminating the potential future of a human being, another reason it should not
be taken lightly. This decision is not one that should be made by anyone who is not fully
informed of all the implications of abortion, who does not know all her options, or has not very carefully considered the seriousness of the procedure. A minor is very likely to be such a person.

Take for example a day in the life of Maria, our fictional character. She is 15 years old; it’s a Tuesday morning as her mom drops her off at her high school. She goes to class and gets pissed at her teacher for making her put away her cell phone. During lunch, she sits with her boyfriend and tries to study out of the DMV handbook for her permit test later that afternoon.

It’s a particularly sunny day, the glare of the sun combined with the stress of her upcoming test begin to give Maria a headache. Frustrated and no longer able to concentrate, Maria goes to the nurse’s office to get some aspirin. The nurse calls Maria’s mom to make sure it’s ok to give her the aspirin, and Maria hurries off to her next class, wondering if her boyfriend is thinking about her. Later that evening, her headache is not better, in fact she feels worse. Maria feels so bad that she decides not to go to her friend’s sleepover that night, even though they were going to watch the first season of the OC. When Maria still doesn’t feel good the next morning, she goes back to the nurse’s office. After talking with the nurse Maria becomes worried. She later takes a test and finds out she is pregnant.

Maria is very upset. She never meant to get pregnant. Her boyfriend said he loved her and that this was something people do when they love each other. Maria can’t imagine telling her parents what she had done, much less that she’s pregnant. They will never trust her again. She can picture the pain, disappointment, and anger in their eyes. Maria feels sick to her stomach, as if she’s in a nightmare and she desperately wants it to go away. She remembers when her best friend Natalia got pregnant. She had gone to an abortion clinic and her parents never knew. Nobody except Maria and Natalia’s boyfriend knew. Maria felt so guilty, and all she knew was that she did not want her parents, or anyone else for that matter, to know she was
pregnant. She went and talked to a woman at the clinic. She told Maria getting an abortion was a simple process. Maria felt utterly alone. She didn’t know much about abortion, but she knew it meant she wouldn’t have to be pregnant anymore. And nobody would have to know.

Maria’s situation is one that girls are placed in all the time. Recorded is story after story of young girls who were scared, got an abortion, and regretted it. Documented are the statistics of the psychological impact abortion has on the unsuspecting mother. Researched are the serious medical complications involved with abortion. There is something growing inside of the mother that has the qualities of a life. But California has faced young girls with this decision. If nobody has to know, not even the girl’s parents, it creates the incentive to get an abortion, rather than consider the implications of abortion itself. When abortion is a secret way out, it isn’t carefully considered, which often leads to suffering on the girl’s part.

Being able to get a secret abortion also takes away the seriousness of pregnancy. If a pregnancy can be made to go away, than it really isn’t a big deal, it isn’t something that needs to be given much thought. The problem is, pregnancy is a big deal, sex is a big deal, and to say it isn’t creates a generation of girls who are less likely to consider the consequences of their actions. Knowing that if one has sex and gets pregnant and can have that problem taken care of certainly does not create incentive to carefully consider the consequences of sex or to practice safe sex.

This environment in which girls are less cautious and consider the consequences of their actions has a negative effect of society. Another way it can have such an effect is through the spread of sexually transmitted diseases. Prop 85 will encourage minors to more carefully consider the consequences of their actions, particularly actions that could lead to STDs.

Researchers found that teen gonorrhea rates dropped by an average of 20 percent for Hispanic
girls and 12 percent for white girls in states where parental notification laws were in effect (Florida State University, www.fsu.edu/news/2006/09/27/consent.laws/). This is definitey to the advantage of society and individual minors.

Our notion of justice includes more that just Locke’s concern for the personal rights of the individual. We believe justice to be concerned with the good of those individuals and the society they form. We support Proposition 85 because it doesn’t unjustly put an uneducated minor in the position to decide between telling her parents she got pregnant and getting an abortion. Rather it justly creates an environment that encourages the minor to consider the consequences of her actions and promotes carefully considering all the implications of the huge decision to get an abortion. The severity of abortion mandates that one needs to be free to carefully consider what she is doing without other influences, including worrying about disappointing her parents. To allow an equation where there is serious incentive to get an abortion, a highly dangerous and morally debated procedure, especially without being educated about her decision, is an unjust situation.

Locke’s notion of justice focuses on individual freedoms and property rights, so according to Locke, Prop 85 would be unjust because it limits a minor’s freedom to her body. But we believe that justice needs to better include the good of society. So we believe Prop 85 is a just law because it has the best interest of both society and the individual in mind. This is where we see the weakness in Lock – he is primarily concerned about the rights of the individual. Prop 85 protects both societal and individual well-being. Regarding society it encourages a generation of girls that are more aware of the indirect consequences of their actions. Prop 85 aids in putting into perspective the seriousness and responsibility involved in pregnancy. Understanding personal responsibility is beneficial to society as a whole.
Individually, it protects the girl from having to face such a heavy and potentially life-altering decision by herself. Placing a decision of such gravity in the hands of a minor has a high potential for resulting in harm to that minor and consequently has a negative effect on society.

We believe Proposition 85 to therefore be just and as such, proves Locke’s notion of justice fallible.
References

1. Prop 85, Official Title and Summary


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12. www.family.org, Archives of General Psychiatry