

THE LAWS OF OTHERS: MANDATING “RIGHTS THROUGH TRAVEL” BETWEEN DISCRIMINATION, MORAL HAZARD, AND IRRATIONALITY

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I. Abortion Travel between Contestation and Elision

In the mid-1970s, shortly after a national referendum enshrined the right to divorce within Italy’s legal framework, the campaign for the liberalization of the country’s prohibitive abortion and contraception regulation took off. Part of the strategy adopted by feminist groups centered on organizing abortion travel. Clinics in London—where abortion had been legalized in 1967 (subject to various conditions, including the opinion of two physicians)—proved amenable to receiving weekly plane-loads of women accompanied by one or two activists. As demand grew and London no longer sufficed, other destinations were added. Until a new law was passed in 1978, unhappily pregnant women continued to meet in a cellar of a Roman working class neighborhood that has long since ceded to gentrification.¹ There, they received travel instructions from a group of young feminists. Many of the activists were university students; a few—like the lead organizer, physician Simonetta Tosi—already professionals. Perhaps the women going to London were “learning feminism” at the same time as they were accessing vital services. It’s possible that the travel itself promoted recruitment;² certainly, it was organized both as a service and as a form of mobilization.

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1 In 1975, the Italian Constitutional Court repealed the laws criminalizing abortion as an offence “against the integrity of the race” that undermined the “demographic interest of the state.” Corte cost., 18 febbraio 1975, n.27, Foro it. 1975, I, 515 (It.). In 1978, abortion was legalized when pregnancy, child birth or maternity imperil a woman’s psychological or physical health in relation to her health or social and economic conditions as well as to the circumstances of the conception; or when there are severe problems regarding the development of the fetus. Legge 22 maggio 1978, n.194 (It.), G.U. 22 maggio 1978, n.140 (It.). For an analysis of the significance of that campaign for feminist mobilization, see Yasmine Ergas, *1968–79—Feminism and the Italian Party System: Women’s Politics in a Decade of Turmoil*, 14 COMP. POL. 253 (1982). See also MAUD ANNE BRACKE, *WOMEN AND THE REINVENTION OF THE POLITICAL: FEMINISM IN ITALY, 1968–83* (2014).

2 Travel and transportation hubs can provide important sites for collective organization. See PREMILLA NADASEN, *HOUSEHOLD WORKERS UNITE: THE UNTOLD STORIES OF AFRICAN AMERICAN WOMEN WHO BUILT A MOVEMENT* (2015).

Abortion travel can constitute a locus of collective action as well as an individual response to restrictive laws and practices. Women cross borders to access services where they are legal, or less expensive, or come with other advantages such as increased privacy or medical guarantees. But today, “abortion travel” may also allow states to elide their obligations. Ensuring “rights through travel” can enable states to enforce regulations within their own territory that would not pass constitutional or political muster if there were not another state willing to provide the services they are themselves intent on denying. Recently, for instance, Texas argued that the existence of a clinic in New Mexico that would practice abortions meant that the restrictions it intended to place on providers within its own borders did not unduly burden women seeking to end their pregnancies.³ The United States Supreme Court rejected Texas’ arguments (*inter alia*, focusing on the distance women would have to travel to obtain legal abortions), but in the jurisprudence of the Council of Europe’s European Court of Human Rights (“ECtHR”), allowing states to rely on the “laws of others” may constitute a new paradigm for balancing contracting states’ latitude in interpreting their obligations against individuals’ rights. The Court has applied this paradigm with respect to abortion, as this contribution discusses, but it has also done so in other contexts—for instance, with respect to assisted reproductive technologies.⁴

The “rights through travel” approach risks being discriminatory. It favors those with the ability to travel over those whose circumstances restrict their access to information and mobility. And, it reinforces the stigma associated with locally prohibited activities, even as it makes those activities theoretically accessible.⁵ But, it is also fraught with moral hazards and marked by irrationality. Under this approach, *some* state must satisfy the rights of the citizens (broadly defined) of a particular state (“State A”) to a particular right—one that, for instance, entails access to a service, such as those required to ensure reproductive health. But the state that satisfies the right, i.e., that provides the relevant service, need not be State A at all. If the citizens of State A are situated within an organization (such as the European Union (“EU”)) or a federal state (such as the United States) that bars member states from offering services to their own citizens while discriminating against those of another member state, then the citizens of State A will have a place to go, so long as at least one member

3 *Whole Woman’s Health v. Hellerstedt*, 579 U.S. ___ (2016). And for an account of the oral argument regarding *Whole Woman’s Health*, see Mark Joseph Stern, *The Most Important Exchange of Wednesday’s Scotus Arguments*, SLATE (Mar. 2, 2016), http://www.slate.com/blogs/the_slatest/2016/03/02/ruth_bader_ginsburg_asks_the_most_important_question_of_oral_arguments_in.html [<https://perma.cc/S4QB-VHHY>].

4 *See, e.g., S.H. v. Austria*, 2011-V Eur. Ct. H.R. 295.

5 Joanna Erdman, *The Law of Stigma, Travel, and the Abortion-Free Island*, 33 COLUM. J. GENDER & L. 29–30 (2016).

state provides the relevant services.⁶ This leaves other states free to deny such services on the basis of their own preferences. It also, however, places a potential burden on states that choose to provide these services, and may end up promoting free-ridership. Provider-states may then be tempted to close their borders—or eliminate their services—creating a downward spiral. Or, they may seek to maximize the financial and other advantages associated with being a provider-state, developing markets by charging high fees to all users, whether national or trans-border. Thus, when states are exempted from allowing their citizens to vindicate rights within their own borders, individuals become dependent on the laws of others. The legal and material ability and willingness of other states to satisfy them (including through commercial activities) become key. National obligations to satisfy human rights mutate into third-party opportunities to grow global markets.

II. Ireland: Towards A National Exemption?

Irish women know about the consequences of a legal system that simultaneously recognizes a right to access abortion in particular circumstances and denies that the state has an obligation to satisfy it directly.⁷ Several thousand travel to the U.K. and other European countries every year in order to access abortions.⁸ They have done so for decades—over 161,000 traveled to the U.K. between 1980 and 2014.⁹ And, despite numerous legislative

6 With respect to abortion in the United States., see generally Seth F. Kreimer, *The Law of Choice and Choice of Law: Abortion, The Right to Travel, and Extraterritorial Regulation in American Federalism*, 67 N.Y.U. L. REV. 451 (1992). With respect to the EU, the European Commission noted: “Patients travelling to another EU country for medical care will enjoy equal treatment with the citizens of the country in which they are treated.” Press Release, European Commission, Q&A: Patients’ Rights in Cross-Border Healthcare (Oct. 22, 2013), http://europa.eu/rapid/press-release_MEMO-13-918_en.htm [<https://perma.cc/P67Q-G4NW>]. See also, Council Directive 2011/24 of Mar. 9, 2011 on the application of patients’ rights in cross-border healthcare, 2011 O.J. (L88) 45 (EC). Note, however, that only twenty-seven states are members of the European Union and thus bound by the obligation to provide equal treatment with respect to health services to each others’ citizens. The European Convention on Human Rights (“ECHR”) has been ratified by forty-seven states. Whereas all the states of the EU have independently ratified the ECHR and hence are bound by it (negotiations are on-going for accession by the EU as such), the citizens of twenty other states are not encompassed within the protected zone of mutual non-discrimination defined by the EU.

7 See generally AMNESTY INT’L, SHE IS NOT A CRIMINAL: THE IMPACT OF IRELAND’S ABORTION LAW 78–98 (2015), <https://www.amnesty.org/en/documents/eur29/1597/2015/en/> [<https://perma.cc/F3EY-8PAL>].

8 U.K. DEP’T OF HEALTH, REPORT OF ABORTION STATISTICS, ENGLAND AND WALES: 2014 21 (2015); *Abortion in Ireland: Statistics*, IRISH FAM. PLANNING ASS’N, <https://www.ifpa.ie/Hot-Topics/Abortion/Statistics> [<https://perma.cc/6Q44-R8X8>] (last visited May 18, 2016) (data regarding travel to the Netherlands).

9 *Abortion in Ireland*, *supra* note 8.

changes, they have continued to do so at a rate of approximately 4,000 per year.¹⁰ Their travel has been legitimated under—and, one might say, propelled by—*A, B & C v. Ireland*, a case in which the European Court of Human Rights simultaneously sanctioned Ireland’s restrictive abortion regulation and subordinated the legality of such regulation to the ability of women to travel to other countries to obtain the abortions they cannot have *in loco*.¹¹

A, B & C has often been commented upon; I will only recall its principal elements.¹² A, B, and C complained that Ireland’s legal and regulatory framework compelled them to travel to access abortion services. A had thought her partner was infertile until she became pregnant. Unmarried, unemployed, and impoverished, A was already the mother of four children—all in foster care. Her pregnancies, including this fifth, were marked by depression. In addition, she had battled alcohol dependency. Afraid that the continuation of her pregnancy would jeopardize her health and the reunification of her family, and despite considerable financial difficulties, she travelled to London for an abortion. Similarly, B, having also become pregnant inadvertently, travelled to London for an abortion. C, who suffered from a rare form of cancer, unwittingly became pregnant after chemotherapy. She feared that the pregnancy posed a risk to her life, but was unable to determine whether she would qualify for the “risk to life” exemption encoded in Ireland’s legislation. C, too, sought an abortion in the U.K.

Ireland barred abortion except where the life of the mother—as *distinct from her health*—was at risk. The country’s prohibitionist stance was not simply a legacy of former times. Abortion had been criminalized at least since the 1861 Offences Against the Person Act. As other states—in particular, the U.K. and the United States—liberalized their laws, Ireland sought to inure itself from this emerging trend.¹³ As a result of a 1983 referendum,

10 AMNESTY INT’L, *supra* note 7, at 79.

11 *A, B & C v. Ireland*, 2010-VI Eur. Ct. H.R. 185.

12 For recent discussions, see Chiara Cosentino, *Safe and Legal Abortion: An Emerging Human Right? The Long-lasting Dispute with State Sovereignty in ECHR Jurisprudence*, 15 HUM. RTS L. REV. 569 (2015); AMNESTY INT’L, *supra* note 7.

13 The following—very partial—reconstruction of Ireland’s abortion legal framework is primarily derived from *A, B & C*. 2010-VI Eur. Ct. H.R. at ¶¶ 28–29. In broaching this history, the ECtHR notes:

In the early 1980s there was some concern about . . . the possibility of abortion being deemed lawful by judicial interpretation. There was some debate as to whether the Supreme Court would follow the course adopted in England and Wales in *Bourne* [which had liberalized abortion under some circumstances] or in the United States of America in *Roe v. Wade*.

the Constitution, which had formerly guaranteed the “personal rights of the citizen,” was amended to read: “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.”¹⁴

The extraterritorial reach of the ensuing new constitutional article (40.3.3) was soon tested. In 1986, the Supreme Court of Ireland held that it was illegal to distribute information about foreign abortion services that could aid the commission of an abortion.¹⁵ And, in 1992, while holding that a woman whose life was at risk (including due to suicidality) had a right to an abortion, the Court noted in dicta that the “right to travel,” which it described as “an unenumerated constitutional right” of a “very fundamental nature,” must cede where there is “a stark conflict between the right of a mother of an unborn child to travel and the right to life of the unborn child.”¹⁶ In November of 1992, a further referendum amended the Constitution to ensure that Article 40.3.3 would neither “limit freedom to travel between the State and another State” nor “limit freedom to obtain or make available, in the State . . . information relating to services lawfully available in another State.”¹⁷ Such services were understood to include abortion, and the availability of information was subject to “such conditions as may be laid down by law.”¹⁸ Legislation passed in 1995 then specified the

Id. at ¶ 35 (internal references omitted). On the history of Ireland’s abortion regulation, see Abigail-Mary E.W. Sterling, *The European Union and Abortion Tourism: Liberalizing Ireland’s Abortion Law*, 20 B.C. INT’L & COMP. L. REV. 385 (1997).

The Irish constitutional and legislative framework regarding abortion has since been amended numerous times. For the most recent legislative enactment, see the Protection of Life Act of 2013 (Act No. 35/2013) (Ir.), <http://www.irishstatutebook.ie/eli/2013/act/35> [<https://perma.cc/K5BJ-YLHX>]. *Inter alia*, examination of this legislation has led the Council of Europe to close its examination of Ireland’s implementation of the European Court of Human Rights’ decision in the case of *A, B & C* discussed herein. See Suzanne Lynch, *Council of Europe Closes Case against Ireland on Abortion*, IRISH TIMES (Dec. 3, 2014), <http://www.irishtimes.com/news/world/council-of-europe-closes-case-against-ireland-on-abortion-1.2025834> [<https://perma.cc/8DJ8-HV57>].

14 *A, B & C*, 2010-VI Eur. Ct. H.R. at ¶ 36 (quoting Constitution of Ireland 1937 art. 40.3.3, <http://www.irishstatutebook.ie/eli/cons/en/html> [<https://perma.cc/DSU8-JBLX>]).

15 *Id.* at ¶ 38 (citing *The Attorney General (S.P.U.C.) v. Open Door Counselling* [1988] IR 593 (Ir.)).

16 *Att’y General v. X* [1992] 1 IR 1 (Ir.).

17 Constitution of Ireland 1937, art. 40.3.3, <http://www.irishstatutebook.ie/eli/cons/en/html> [<https://perma.cc/DSU8-JBLX>].

18 Constitution of Ireland 1937, amend. 13, <http://www.irishstatutebook.ie/eli/1992/ca/13/enacted/en/print.html> [<https://perma.cc/HE7T-3EXA>] (regarding freedom to travel); Constitution of Ireland, amend. 14, <http://www.irishstatutebook.ie/eli/1992/ca/14/enacted/en/print.html> [<https://perma.cc/NCT7-9M4T>] (regarding

conditions under which information could be provided. It required that no “information, counseling or advice” either “advocate or promote . . . [or be] accompanied by any advocacy or promotion of, the termination of pregnancy.”¹⁹ Rather than explicitly promulgate a law criminalizing extraterritorial abortion, Ireland simultaneously maintained a highly restrictive inward-directed policy and adopted a somewhat permissive outwardly-directed stance (for the continued ban on any information that could be construed as advocating or promoting abortion could only produce a chilling effect).²⁰

But Ireland could no longer limit its defensive posture to staving off foreign ideological or jurisprudential influences. In the context of the growing European integration that characterized the 1990s and the first decade of this century, the government attempted to establish a bulwark against European institutional power. It sought, in practice, a national exemption for its abortion regulation from the possible implications of the treaties to which it was or was becoming party. A 1992 Protocol to the Maastricht Treaty specifically inured Ireland from challenge to its application—*within its own territory*—of the constitutional article that had enshrined the right to life of the unborn, Art. 40.3.3.²¹ And, a legally binding decision of twenty-seven European heads of state reaffirmed that commitment in 2008 and 2009 in respect to the Treaty of Lisbon.²² When *A, B & C* was decided, abortion was available on request in thirty Contracting States of the European Convention; on health grounds, in forty; on well-being grounds in thirty-five. Only three States prohibited abortion in all circumstances—San Marino, Malta, and Andorra. Several had recently enlarged its

availability of information). A subsequent case affirmed that the right to travel enshrined in the 13th amendment took precedence over the rights of the unborn under Article 40.3.3 of the Constitution. *A, B & C*, 2010-VI Eur. Ct. H.R. at ¶ 99 (citing *D (A Minor) v. District Judge Brennan*, [2007] unreported, May 9, 2007 (H. Ct.)).

19 Regulation of Information (Services Outside the State For Termination of Pregnancies) Act, 1995, (Act No. 5/1995) § 5(b)(iii) (Ir.).

20 On the chilling effect of the limitations imposed on the information provided to women potentially seeking abortions, see Human Rights Committee, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning Communication No. 2324/2013 (June 9, 2016) ¶ 3.10. The ambiguity of this approach can be contrasted with the extraterritorial criminalization of female genital mutilation/cutting endorsed by, among others, the Council of Europe and promulgated into law in Ireland in 2012. On this issue generally, see Yasmine Ergas, *Regulating Religion Beyond Borders: The Case of Female Genital Cutting*, in *BEYOND POST-SECULARISM: POLITICAL RELIGION, LEGAL PLURALISM AND DEMOCRATIC CONSTITUTIONALISM* 66 (Jean L. Cohen & Cecile Laborde eds., 2016).

21 See *A, B & C*, 2010-VI Eur. Ct. H.R. at ¶ 100 (quoting Treaty on European Union, Feb. 7, 1992, 1992 O.J. (C 191) 1).

22 See *id.* at ¶ 102 (citing Presidency Conclusions, Brussels European Council (Feb. 13, 2009) and Presidency Conclusions, Brussels European Council (July 10, 2009)).

availability.²³ Could Ireland inure itself against the liberalization of abortion laws that seemed to characterize the rest of Europe?

III. The Margin of Appreciation and the Laws of Others

A, B & C, showed that it ultimately could not. But Ireland could nonetheless maintain a significant exemption from the prevalent approach. While situating the evolution of Ireland's legal framework within the broader European and international context, the ECtHR examined the three applicants' claims primarily in relation to Article 8 of the European Convention of Human Rights ("ECHR").²⁴ That article protects private life, but allows for interference of public authorities where such interference is lawful and required in a democratic society in the interests, *inter alia*, of the protection of health or morals.

The Court distinguished the cases of A and B from that of C. With respect to C—who had feared that pregnancy could endanger her own life—the Court found “a striking discordance between the theoretical right to a lawful abortion in Ireland on the ground of a relevant risk to a woman's life and the reality of its practical implementation.”²⁵ By not promulgating clear guidelines regarding when a risk to life would be recognized, Ireland had failed to secure effective respect for C's private life.²⁶ The issuance of such guidance constituted a positive obligation of the state: having recognized the right of a woman whose life was in jeopardy to abort, the state could not claim that requiring its realization constituted an infringement on its sovereignty.²⁷ But, in the Court's view, the claims of A and B fell within Ireland's margin of appreciation.

23 *Id.* at ¶ 112.

24 ARTICLE 8: Right to respect for private and family life 1. Everyone has the right to respect for his private and family life, his home and his correspondence. 2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.

Convention for the Protection of Human Rights and Fundamental Freedoms, art. 5, Nov. 4, 1950, 5 ETS 1, 5.

25 *A, B & C*, 2010-VI Eur. Ct. H.R. at ¶ 264.

26 *Id.* at ¶ 267.

27 *Id.* at ¶ 266.

Under the ECtHR's doctrine of the "margin of appreciation," states have latitude to interpret their obligations with respect to the ECHR. Such latitude is more restricted when particularly significant aspects of an individual's existence or identity are in play; it is also more limited when there is a significant consensus among signatory states as to the proper interpretation of a particular norm. Determination of the appropriate margin of appreciation is for the ECtHR itself: the margin of appreciation subordinates state autonomy to the superior authority of the Court.²⁸

The Court found important elements that might have justified affording Ireland only a narrow margin of appreciation. The right to privacy encompasses, it noted, a right to personal autonomy, to a person's physical and psychological integrity and to "decisions both to have and not to have a child."²⁹ And although "Article 8 cannot be interpreted as meaning that pregnancy and its termination pertain uniquely to the woman's private life as, whenever a woman is pregnant, her private life becomes closely connected with the developing foetus," such that "Article 8 cannot . . . be interpreted as conferring a right to abortion, the Court finds . . . [that the three applicants' claims] come within the scope of their right to respect for their private lives and accordingly Article 8."³⁰ Moreover, "contrary to the Government's submission," there existed a substantial consensus among Contracting States towards a more liberal posture on abortion than that adopted by Ireland.³¹

Despite the fact, then, that a significant aspect of a woman's existence is at issue in abortion, and that a substantial consensus among contracting states conflicted with Ireland's restrictive posture, the ECtHR declined to accord Ireland only a narrow margin of appreciation. To the contrary, finding that Ireland's abortion regulation pursued "the legitimate aim of the protection of morals of which the protection in Ireland of the right to life of the unborn was one aspect," and stressing the "acute sensitivity of the moral and ethical issues" raised by abortion, the Court found that a broad margin of appreciation should be granted.³² The question to be addressed was whether a "fair balance" had been struck between the public interest in the protection of the right to life of the unborn and the

28 See, e.g., *id.* at ¶ 232.

29 *Id.* at ¶ 212.

30 *Id.* at ¶¶ 213–14.

31 *A, B & C*, 2010-VI Eur. Ct. H.R. at ¶ 235. In fact, "the Court notes that the . . . applicants could have obtained an abortion on request . . . in some 30 [Contracting] States." *Id.*

32 *Id.* at ¶¶ 227, 233.

conflicting rights of B and C in regards to their private lives.³³ And from this perspective, the consensus that prevailed among Contracting States could not be decisive, for what mattered to the determination of a “fair balance” could not simply be evinced from a majoritarian trend.³⁴

It is difficult not to agree with the ECtHR that questions of principle should not be reduced to a head count among states. But rather than pursue a principled line of argument, the Court invoked the “right to travel.”³⁵ Ireland, the ECtHR noted, ensured that women seeking abortions that were legal abroad could do so. Moreover, the state had not simply de-criminalized their actions through the Thirteenth and Fourteenth Amendments,³⁶ it also provided them with support. Legislative measures had been adopted to ensure both that pregnant women be given information and counseling with respect to abortions available to them abroad and that they receive any necessary medical treatment, before and, most especially, after the procedure.³⁷ It was true, the Court conceded, that travelling abroad was “psychologically and physically arduous.”³⁸ Nonetheless it was precisely “having regard to the right to travel abroad” that, the Court concluded, “the impugned prohibition in Ireland struck a fair balance between the right of . . . applicants [B and C] to respect for their private lives and the rights invoked on behalf of the unborn.”³⁹ Following *A, B & C* and the death, in 2012, of Savita Halappanavar, who died because she was denied a life-saving abortion, Ireland passed the Protection of Life During Pregnancy Act (“PLDA”). Commentators point out that the PLDA still provides insufficient guidance to physicians as to when an abortion may be performed, for it fails to determine clear criteria by which

33 *Id.* at ¶ 233. *See also id.* at ¶ 237.

34 *Id.* at ¶¶ 237–38. The government argued that the Court could not find a consensus on abortion because the Court had already described the question of the beginning of “life” and the status of the fetus as one upon which there was no consensus thus justifying a broad margin of appreciation. *Id.* at ¶ 185 (citing *Vo v. France*, 2004-VIII Eur. Ct. H.R. 67; *Evans v. United Kingdom*, 2007-I Eur. Ct. H.R. 353). The Court, however, chose not to endorse this line of reasoning.

35 *A, B & C*, 2010-VI Eur. Ct. H.R. at ¶ 241.

36 Constitution of Ireland 1937, amend. 13, <http://www.irishstatutebook.ie/eli/1992/ca/13/enacted/en/print.html> [<https://perma.cc/578X-BGQN>] (regarding freedom to travel); Constitution of Ireland, amend. 14, <http://www.irishstatutebook.ie/eli/1992/ca/14/enacted/en/print.html> [<https://perma.cc/K948-EH DU>] (regarding availability of information).

37 *A, B & C*, 2010-VI Eur. Ct. H.R. at ¶ 239.

38 *Id.*

39 *Id.* at ¶ 241.

a “life-threatening” situation may be identified so as to override Ireland’s constitutionally enshrined commitment to the protection of fetal life.⁴⁰ Moreover, the PLDA does not legalize abortion for causes other than a threat to the life of the pregnant woman. As a result, it has not stemmed the flow of women seeking abortions abroad.

As has been repeatedly noted, realizing rights through travel while restricting them *in loco* is profoundly discriminatory. The ECtHR itself recalled the language with which the Parliamentary Assembly of the Council of Europe exhorted states to ensure women’s access to safe and legal abortion: “A ban on abortions does not result in fewer abortions but mainly leads to clandestine abortions, which are more traumatic and increase maternal mortality and/or lead to abortion ‘tourism’ which is costly, and delays the timing of an abortion and results in social inequities.”⁴¹ The Court also evoked similar statements regarding “abortion travel” of the Human Rights Committee—which very recently issued sharp “Views” finding Ireland’s legislation in violation of the International Covenant on Civil and Political Rights. *Inter alia*, the Committee called on Ireland to “amend its law on voluntary termination of pregnancy, including if necessary its Constitution, to ensure compliance with the Covenant, including ensuring effective, timely and accessible procedures for pregnancy termination *in Ireland*, and take measures to ensure that health-care providers are in a position to supply full information on safe abortion services without fearing being subjected to criminal sanctions.”⁴²

The problem with the “rights through travel” approach is not only that it is discriminatory. Rather, it risks promoting “free-riders”—states that can evade their direct responsibilities towards their citizens by exporting their care. Moreover, as a strategy, it borders on the irrational. Why should Ireland be obliged not only to legitimize but also to assist behavior abroad that, if undertaken domestically, it is free to criminalize? Presumably because, *pace* the Court’s finding that there is not a right to an abortion under the European Convention, there indeed is such a right—at least with respect to a broader set of circumstances than simply when pregnancy jeopardizes a woman’s life. And, if the “rights through travel” approach were exported beyond the confines of Europe’s relatively tightly-knit multi-state quasi-federation (even in this post-Schengen era) or of a single federal state (such as the United States), where would women *de facto* expelled from their own states find other

40 AMNESTY INT’L, *supra* note 7 and accompanying text of this Article.

41 A, B & C, 2010-VI Eur. Ct. H.R. at ¶ 108 (citing Council of Europe, Access to Safe and Legal Abortion in Europe, Resolution 1607 (2008)).

42 Human Rights Committee, Views adopted by the Committee under article 5(4) of the Optional Protocol, concerning Communication No. 2324/2013 (June 9, 2016) ¶ 9.

states willing to grant them, *as a matter of right*, safe, affordable, and accessible care? Within the United States, the Court's recent decision in *Whole Woman* seems to have, at least implicitly, invalidated states' "rights through travel" approach to abortion and the Human Rights Committee has also explicitly done so. But within Europe it may still be viewed as a viable, though highly debatable, model. If it were extended to non-federal or quasi-federal contexts it would seem fantastical. Rather than being allowed to rely on the laws of others, states should be held answerable for their own.