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RESEARCH ARTICLE

# Abortion Restrictions and Formative Autonomy

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## Abstract

*It is often morally important that you have a choice between two options in the sense that each option is available to you and you are not coerced into choosing one or the other. Even when you have a choice, though, the presence of time constraints and other noncoercive influences can prevent you from taking the time you need to make up your mind and really choose for yourself. How are we to understand this latter phenomenon? In this essay, I argue that while choosing for yourself seems, at first glance, to be an exercise in discovering your preferences, this is not the whole story. At least sometimes, choosing for yourself instead involves creating your preferences—and, in so doing, choosing what kind of person and valuer to be—through the exercise of what I call formative autonomy. I then explore some objections to this account and some implications for public health policy and clinical ethics. Throughout, I draw primarily on examples that involve choosing whether to continue or terminate a pregnancy and the regulations governing such choices.*

**Keywords:** abortion; autonomy; preferences; transformative experience

## Introduction

It is often morally important that you have a choice between two options in the sense that each option is available to you and you are not coerced into choosing one or the other. Even when you have a choice, though, the presence of time constraints or other noncoercive influences can prevent you from taking the time you need to make up your mind and really *choose for yourself.* How are we to understand this latter phenomenon? In this essay, I argue that while choosing for yourself seems, at first glance, to be an exercise in discovering your preferences, this is not the whole story. At least sometimes, choosing for yourself instead involves creating your preferences—and, in so doing, choosing what kind of person and valuer to be—through the exercise of what I call formative autonomy. I then explore some objections to this

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account and some implications for public health policy and clinical ethics. Throughout, I draw primarily on examples that involve choosing whether to continue or terminate a pregnancy and the regulations governing such choices.

## A motivating case

On September 1, 2021, State Bill 8 (SB8), also known as the "Texas Heartbeat Act," went into effect in Texas. Except in cases of medical emergency, the bill prohibited abortion after cardiac activity could be detected by ultrasound, which normally occurs around six weeks of pregnancy, often before someone knows they are pregnant.[1] SB8 supplemented existing laws in Texas requiring patients to confirm their pregnancy by ultrasound, during which the provider must show and describe the image to the patient, to receive state-directed counseling that included information designed to discourage them from choosing to have an abortion. They needed to do all of this at least twenty-four hours before returning to the clinic to obtain a medical or surgical abortion from the same provider.[2] Although such laws allegedly aimed to ensure that consent to an abortion was fully informed, in practice, these laws made abortions more difficult and costly to access and significantly rushed the choices of people considering whether to get one.[3]

SB8 was in place until August 25, 2022, when a law banning all abortions in Texas was triggered one month after the U.S. Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*, overturning *Roe v. Wade*.[4] For now, I will focus on the period of time when SB8 was in place before Texas banned abortion altogether, both because similar laws remain in place elsewhere in the United States and because this example will help us to clarify the phenomenon at issue in this essay.[5]

Some of the consequences of SB8 were obvious and expected. Patients over the six-week mark could no longer obtain an abortion in Texas. If they wanted to terminate their pregnancy, they would have to travel elsewhere to do so, if

[1] Texas Health and Safety Code, § 171.201–171.212 (2021), https://statutes.capitol.texas.gov/Docs/HS/htm/HS.171.htm#H; I. Glenn Cohen, Eli Y. Adashi, and Lawrence O. Gostin, "The Supreme Court, the Texas Abortion Law (SB8), and the Beginning of the End of *Roe v Wade*?" *Journal of the American Medical Association* 326, no. 15 (2021): 1473–74.

[2] Texas Health and Safety Code, § 171.011–171.014 (2021), https://statutes.capitol.texas.gov/Docs/HS/htm/HS.171.htm#B.

[3] Texas Health and Safety Code, § 171.011–171.014 (2021); Jeremy Blumenthal, "Emotional Paternalism," *Florida State University Law Review* 35, no. 1 (2007): 1–71; Katrina Kimport, Nicole E. Johns, and Ushma D. Upadhyay, "Coercing Women's Behavior: How a Mandatory Viewing Law Changes Patients' Preabortion Ultrasound Viewing Practices," *Journal of Health Politics, Policy & Law* 43, no. 6 (2018): 941–60.

[4] *Dobbs v. Jackson Women's Health Organization*, 597 U.S. (2022); *Roe v. Wade*, 410 U.S. 113 (1973).

[5] "State-by-State Guide," Power to Decide, *AbortionFinder*, https://www.abortionfinder.org/abortion-guides-by-state; "State Bans on Abortion Throughout Pregnancy," Guttmacher Institute, https://www.guttmacher.org/state-policy/explore/state-policies-later-abortions.

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they were able.[6] Other consequences of SB8 were easier to overlook, though perhaps no less predictable. These arose because of the brief time period people had to decide whether to continue or terminate their pregnancy.[7] Providers at clinics in Texas reported people learning that they were pregnant and having to decide what to do at the very same appointment, lest they miss the narrow window of opportunity to choose, schedule, and access abortion care in the state, given the new constraints imposed by SB8 in combination with preexisting regulations.[8]

For some people, choosing what to do about a pregnancy, even on very short notice, is easy. They might learn that they are pregnant and know immediately whether they want to have an abortion, finding the decision about whether to continue or terminate simple and straightforward. But this is not true of everyone. For many, this choice is complicated, involving conflicts and difficult trade-offs between things that are deeply important to their life, their sense of identity, their relationships, and their values; it is not at all the sort of decision they are ready to make at a moment's notice.[9] This also was reflected in reporting from abortion providers from clinics in Texas. Before SB8, they said, most of the clinics' patients had already decided on an abortion when they made their initial appointment. After SB8, that changed. For example, one abortion provider at a Houston clinic described an uptick in frantic decision-making, ambivalence, and uncertainty, with distraught patients saying things like, "I just don't feel like I've had enough time to think about this."[10] This ambivalence and uncertainty was reflected in patients' behavior, too. After receiving the ultrasound and state-mandated counseling, patients would fail to return to the clinic for their second appointment or return to pick up their medication but leave the clinic without it, only to call back later that day, panicked, asking whether it was too late and whether they had missed their chance.[11] On r/abortion, Reddit's online abortion support group, a user from Texas who ultimately obtained an out-of-state abortion in January 2022 reported feeling "devastated and full of regret" that she had to make the choice so quickly: "[W]e had no time to decide and I completely dissociated from it all."[12]

[6] Shefali Luthra, "Texas Patients May Have to Travel Hundreds of Miles for Abortion Access, Out-of-State Clinics Brace for Surge," *The 19th*, September 1, 2021, https://19thnews.org/2021/09/as-texas-patients-prepare-to-travel-hundreds-of-miles-for-abortion-access-out-of-state-clinics-brace-for-surge/; Jolie McCullough and Neelam Bohra, "As Texans Fill Up Abortion Clinics in Other States, Low-Income People Get Left Behind," *The Texas Tribune*, September 3, 2021, https://www.texastribune.org/2021/09/02/texas-abortion-out-of-state-people-of-color/.

[7] Kari White et al., "Texas Senate Bill 8: Medical and Legal Implications," *Texas Policy Evaluation Project*, July 2021.

[8] Christina Cauterucci, "The Most Unexpected Consequence of the Texas Abortion Ban," *Slate*, April 24, 2022, https://slate.com/news-and-politics/2022/04/texas-abortion-ban-women-decisions.html.

[9] Lauren J. Ralph et al., "Measuring Decisional Certainty among Women Seeking Abortion," *Contraception* 95, no. 3 (2017): 269–78.

[10] Cauterucci, "The Most Unexpected Consequence of the Texas Abortion Ban."

[11] Cauterucci, "The Most Unexpected Consequence of the Texas Abortion Ban."

[12] Texasthrowaway2022, "I'm Struggling with Sadness and Regret Post SA," Reddit Post, R/Abortion, November 4, 2022, www.reddit.com/r/abortion/comments/ym8wgm/im_struggling_with_sadness_and_regret_post_sa/.

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The comments section is full of users sharing similar experiences and words of support.

Reflection on this phenomenon helps to highlight two different aspects of choice that seem important in these cases. The first is about what is available on the menu of options. Pregnant people should *have the choice* to continue or terminate a pregnancy; at least, all else being equal, if someone knows that they want to have an abortion, that option should be available to them.[13] In this sense of choice, people in Texas more than six-weeks pregnant who wanted an abortion no longer had the choice, while people less than six-weeks pregnant did. The second aspect of choice is about the process of selection. People should be allowed to *choose for themselves.* Again, all else being equal, if a pregnant person is ambivalent—if they find themselves pulled in different directions by different weighty considerations and have not yet determined what they, all things considered, most prefer to do—they should be allowed to make up their mind before having to decide. In this sense of choice, people in Texas less than six-weeks pregnant were unable to choose for themselves, even though they had the choice. Of course, people more than six-weeks pregnant both lacked the choice and could not choose for themselves.

In this essay, I will take it as uncontroversial that there is a difference between having the choice and choosing for yourself and that both are morally important. I will also take it for granted that at least sometimes, choosing for yourself is especially important because the choice is *momentous*; it stands significantly to alter your life, identity, or relationships and depends on a variety of deeply personal values that themselves might relate in complex ways or shift and change, depending on the choice you ultimately make.[14] Many recognize the existence of choices with these features and sort of momentous stakes, characterizing them with similarly evocative language. Edna Ullmann-Margalit, for example, speaks of "big choices" that "alter one's life projects and inner core" such that it makes sense to talk of an "Old Person" who existed before the decision and a "New Person" who exists afterward.[15] Choosing whether to have an abortion strikes me as an especially vivid example of a momentous choice, but it is by no means unique. Life is full of opportunities to change course, to shed old practical identities and adopt new ones, and to shape or reconfigure our preferences and values.

What it is to have the choice—and the moral significance of having one—is familiar. Most accounts of autonomy recognize that *coercing* individuals by

[13] "All else being equal" because my aim here is not to make any all-things-considered claims about what abortion regulations should be in the United States or about whether abortion is, all things considered, morally permissible. Instead, I focus on the moral costs imposed by regulations that restrict people's ability to choose whether to have an abortion, setting aside questions about the moral status of embryos and fetuses and how to balance such considerations against the costs in question.

[14] See Sarah Zoe Raskoff, "Nudges and Hard Choices," *Bioethics* 36, no. 9 (2022): 948–56, where I introduce the idea of momentous choices to argue against a class of nudges that shape patients' preferences in clinical settings.

[15] Edna Ullmann-Margalit, "Big Decisions: Opting, Converting, Drifting," *Royal Institute of Philosophy Supplements* 58 (2006): 157–72.

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removing options from a chooser's menu or threatening to attach serious costs to them violates their autonomy, especially when they are options the chooser would have selected had they been available.[16] It is less clear, though, what exactly is involved in choosing for yourself. In this essay, I aim to provide an account of what choosing for yourself amounts to that sheds light on its moral significance, illuminating the distinctive moral cost of denying people the opportunity to choose for themselves when it really matters.

At first glance, it might seem like the gap between having the choice and choosing for yourself should be explained in epistemic terms. If someone has the choice between two options but does not know which of those options they, all things considered, most prefer, they cannot yet choose for themselves. Choosing for yourself might involve *discovering* one's preferences or how they map onto one's concrete options, so that one can then choose on their basis. To begin, I will therefore consider what I call *self-discovery* accounts, according to which choosing for yourself is a matter of discovering your preferences. I will consider several versions of this view but argue that none captures the whole range of cases where it seems important to choose for yourself. In particular, such accounts cannot explain why choosing for yourself matters when the choice is "hard" (a technical term I elaborate later) or when we can reliably predict that the chooser's preferences will adapt and they will come to prefer their circumstances, no matter which choice they make. Next, I introduce and defend my favored account—the *self-creation* account—according to which choosing for yourself is, at least sometimes, a matter of forming your preferences rather than discovering them. The self-creation account can explain why choosing for yourself is morally significant, even when the choice is hard or involves predictable preference adaptation, so it improves upon self-discovery accounts. After considering several objections, I end by explaining some important practical upshots of the self-creation account for health policy and clinical ethics.

## Self-discovery accounts

In this section, I introduce simple and complex versions of the self-discovery account of choosing for yourself. The good news is that both versions can meet two key desiderata. First, they can (for the most part) provide a tidy explanation of what is involved in choosing for yourself and why this requires time and space. Second, they can explain why choosing for yourself—and not just having the choice—is morally significant. The bad news is that such views cannot meet a third desideratum of extensional adequacy. This is because there are certain versions of our motivating case—a pregnant person who is ambivalent about

[16] Ruth R. Faden, Tom L. Beauchamp, and Nancy M. P. King, *A History and Theory of Informed Consent* (New York: Oxford University Press, 1986); Joseph Raz, *The Morality of Freedom* (Oxford: Oxford University Press, 1986); Richard H. Thaler and Cass R. Sunstein, *Nudge: Improving Decisions about Health, Wealth, and Happiness*, rev. and expanded ed. (New York: Penguin Books, 2009); Andreas T. Schmidt and Bart Engelen, "The Ethics of Nudging: An Overview," *Philosophy Compass* 15, no. 4 (2020): e12658.

whether to have an abortion—that self-discovery accounts cannot accommodate, prompting the need for an alternative or supplementary account.

### *The simple self-discovery view*

The simplest version of a self-discovery account of choosing for yourself focuses on the chooser's current preferences. It says that choosing for yourself is choosing on the basis of your current preferences, but it holds that a chooser's current preferences or how they map onto the options before them might be opaque rather than transparent or luminous. When a chooser's current preferences are opaque, they have a preference between their options, but they do not know what that preference is and so are not yet in a position to choose for themselves on its basis. To put themselves in this position, then, they must first discover or acquire information to resolve the opacity. Often, discovering or acquiring information about one's current preferences requires time and space to introspect and reflect in order to figure this out.

Applied to our motivating case, the simple self-discovery view says that a pregnant person who is ambivalent about whether to continue or terminate their pregnancy already has a preference between their options, but they do not yet know what that preference is. Coming to know what they prefer requires them to take the time to reflect, introspect, or deliberate. A bill such as SB8 that rushes this decision might deny the pregnant person the ability to do that, and so prevent her from choosing for herself.

The simple self-discovery account can therefore explain what choosing for yourself is and why it requires time and space. Furthermore, it can offer both welfare- and autonomy-based explanations of why engaging in the process of discovering one's current preferences is morally significant. On the welfare-based explanation, the process of discovering one's preferences facilitates their satisfaction; a person is more likely to get what they want, if they know what they want. This explanation appeals to the broadly Millian idea that people are generally better able to ascertain and pursue their own preferences than are others who might intervene on their behalf.[17] When someone is denied the opportunity to figure out what they want before making a choice, it is less likely that their choice will satisfy their preferences. This has moral significance because nearly all accounts of welfare allow that preference or desire satisfaction matters at least to some extent, even if it is not all that matters.

An alternative explanation is that the process of discovering one's preferences matters to autonomy. Someone attracted to this sort of explanation might appeal to the idea that autonomous choice is, among other things, choice based on rational or justified belief.[18] Sometimes, people need to introspect, reflect, or deliberate in order to arrive at rational beliefs about their current preferences. Being denied the opportunity to engage in this discovery process violates

[17] John Stuart Mill, *On Liberty* (New York: Cambridge University Press, 2012), chap. 4.

[18] Julian Savulescu and Richard W. Momeyer, "Should Informed Consent Be Based on Rational Beliefs?" *Journal of Medical Ethics* 23, no. 5 (1997): 282–88.

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autonomy by preventing the chooser from forming—and therefore choosing on the basis of—relevant beliefs about what they want.

### The problem for the simple self-discovery view

We seek an account of choosing for yourself that illuminates what it involves, why it can require time and space, and why it is morally significant. Moreover, we want the account to be extensionally adequate. That is, it should apply to all cases in which choosing for yourself intuitively seems morally significant, including our motivating case of a pregnant person who is ambivalent and requires time and space to decide whether to continue or terminate their pregnancy. It is here where the simple self-discovery account might fall short. The problem is that, sometimes, choices about whether to continue or terminate a pregnancy are "hard" in the sense that they involve *incomplete* preferences; the chooser does not have an all-things-considered preference between their options, so there is no current preference for them to unearth.

The phrase "hard choices" comes from Ruth Chang, who uses it to describe cases where, more precisely, a chooser's options are "on a par." In such cases of parity, the chooser has incomplete preferences as a result of unresolved ambivalence; they deem one option better in some respects, the other better in other respects, but they lack a settled way of trading off these respects, rendering neither option best or, all things considered, most preferred.[19] The possibility of hard choices matters because it seems that, at least sometimes, deciding what to do about a pregnancy is a hard choice. A pregnant person might have a good sense of what their life will be like if they continue or terminate their pregnancy and see significant pros and cons on both sides. They might prefer to continue their pregnancy because they have always wanted to be a parent and feel some moral compunction about choosing to have an abortion, but prefer to terminate because they lack the social support they feel is necessary to raise a child and want to focus on their other children, career, or so on. At least sometimes, the difficulty involved in this choice seems to be that the chooser's all-things-considered preferences are genuinely incomplete; they prefer each option in some respects, but they have not settled how these different respects trade off or weigh against each other.

It is worth pausing to consider an objection to Chang's analysis of hard choices that helps to clarify the structure of these decisions. Namely, if the pregnant person really lacks a preference between continuing and terminating their pregnancy, it must be because the considerations in favor of each option exactly balance out, rendering the options equally good. If the options are equally good, then it makes sense why our chooser does not prefer one to the other: it is rational to be perfectly indifferent between equally good options. Chang, however, convincingly argues via the "small-improvement" argument that hard choices are not cases of indifference. According to this argument, if you were

[19] Ruth Chang, "The Possibility of Parity," *Ethics* 112, no. 4 (2002): 659–88; Ruth Chang, "Are Hard Choices Cases of Incomparability?" *Philosophical Issues* 22, no. 1 (2012): 106–26; Ruth Chang, "Hard Choices," *Journal of the American Philosophical Association* 3, no. 1 (2017): 1–21.

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perfectly indifferent between continuing or terminating your pregnancy, then any trivial benefit to one option should tip the scales in its favor.[20] For example, if someone offers you a free diaper and $5 to continue your pregnancy, that should eliminate your indifference and lead you to prefer to continue rather than terminate. But that just isn't how these choices work. When faced with a hard choice, a small improvement to one option often fails to lead the chooser to prefer that option to the other one. Thus, hard choices are not cases where the chooser is indifferent between their options; they are, rather, cases of genuinely incomplete preferences. Not all pregnant people face hard choices in this sense, but it seems plausible that at least some do, and this is enough to generate a problem for the simple self-discovery view.

Here is the problem. Hard choices seem possible and relatively common. Pregnant people are sometimes not only ambivalent about whether to continue or terminate their pregnancy, but also resistant to small improvements, implying that they have incomplete preferences and face a hard choice. Even when a choice is hard—and especially when it is furthermore *momentous* in the sense that it stands to alter significantly the chooser's life, practical identity, or relationships—it still seems important that the pregnant person gets to choose for themselves and has the time and space to do so. The simple self-discovery view cannot explain this; it says that choosing for oneself involves taking the time and space to introspect and discover one's current preferences, and so has nothing to say about cases where such preferences do not yet exist to be discovered. Thus, we find a violation of our desideratum of extensional adequacy. Our account of choosing for yourself and its moral significance should apply to those who face hard choices, but the simple self-discovery account does not. Can a different version of the self-discovery view do so?

### *The complex self-discovery view*

The inadequacy of the simple self-discovery account of choosing for yourself stems from its exclusive focus on the chooser's current preferences. Perhaps an obvious solution is to shift focus to the chooser's *future* preferences.[21] Someone facing a hard choice may lack a current preference between their options, but, the thought goes, they will come to have such a preference in the future. On the more complex self-discovery view, choosing for yourself involves a process of discovering those future preferences, for example, by trying to predict them accurately.

At this point, the complex self-discovery view can go two ways. It can say either (1) that predicting one's future preferences is difficult but nevertheless possible, provided the chooser has sufficient time and space to introspect and reflect about what their current preferences are and how they anticipate them changing in light of their choice, or (2) that making this prediction is downright impossible because choosing whether to become a parent is a "transformative" choice such that a person cannot know or even reliably predict what they will

[20] Chang, "The Possibility of Parity," 667–73.
[21] See Ruth Chang, "Transformative Choices," *Res Philosophica* 92, no. 2 (2015): 237–82.

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prefer without first undergoing the experience and finding out.[22] On the latter view, the chooser may still require time and space not to form a prediction about their future preferences, but rather to decide whether to undergo a transformative experience that will ultimately reveal their preferences to them instead of opting for the one that will leave them in the dark. Here, one might wonder why deciding whether to undergo a transformative experience takes time and space, but let's just grant that it does; I will argue below that the view faces a more serious problem anyway.

As with the simple version, defenders of the complex account can offer different explanations of the moral significance of choosing for yourself. Take first the view that analyzes choosing for yourself in terms of predicting one's future preferences, in cases where this is difficult but not impossible. Here, both welfare- and autonomy-based explanations of why this is morally significant are available. The welfare-based explanation again holds that the process of predicting one's future preferences matters because accurately predicting one's future preferences facilitates their future satisfaction. This inherits its moral significance from the moral significance of satisfying the preferences one has at the time that one has them. The autonomy-based explanation holds that the process of predicting one's future preferences matters to autonomy. Perhaps one cannot choose autonomously unless one knows the future preferences one will hold and this matters regardless of whether one chooses in a way that in fact better satisfies those future preferences.

The alternative complex self-discovery view, on which predicting one's future preferences is impossible and choosing for yourself involves deciding whether to undergo a transformative experience that reveals them, lends itself less straightforwardly to a welfare-based explanation. However, an autonomy-based explanation is available. In particular, someone attracted to this version of the self-discovery view might hold that there is an important sort of "revelatory" autonomy that is relevant to choosing whether to undergo a transformative experience that will ultimately allow the chooser to discover their future preferences.[23] If the chooser decides to undergo the transformative experience of having a child, they will discover whether they prefer having or not having a child. If they decide not to undergo that transformative experience, they will never make that discovery. Whichever way the chooser goes, what matters is that *they* get to decide, free from interference or from having their decision rushed, whether to undergo that transformative experience and discover who they will become.[24]

### The problem for the complex self-discovery view

Like its simpler variant, the complex self-discovery view provides an account of choosing for yourself that illuminates what it involves, why (at least on one

[22] L. A. Paul, "What You Can't Expect When You're Expecting," *Res Philosophica* 92, no. 2 (2015): 149–70.

[23] Farbod Akhlaghi, "Transformative Experience and the Right to Revelatory Autonomy," *Analysis* 83, no. 1 (2023): 3–12.

[24] Akhlaghi, "Transformative Experience and the Right to Revelatory Autonomy."

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version) it can require time and space, and why it is morally significant. Moreover, and unlike the simple self-discovery view, this account accommodates the existence of hard choices. A person might lack an all-things-considered preference between their options but still need time and space before choosing in cases where predicting their future preferences is difficult or impossible because they must form a prediction about their future preference or decide whether to have this preference revealed through a transformative experience. The problem for this account, though, is that deciding whether to continue or terminate a pregnancy might not be a case where it is impossible (or even particularly difficult) to predict one's future preferences. If this is so, then there is reason to doubt that the complex self-discovery view applies in our motivating case, so the problem of extensional inadequacy reemerges.

Opponents of abortion often object that abortion is psychologically harmful because people who choose to terminate their pregnancies experience severe depression and loss of self-esteem and eventually come to regret their decision. For a long time, there was little data to support or falsify this claim.[25] However, recent empirical work designed to investigate the consequences of being denied an abortion have called this objection into question. The Turnaway Study is a large longitudinal study investigating the effects of unintended pregnancy on women's lives. The study recruited women between 2008 and 2010 from thirty clinics in twenty-one states. It included nearly 1,000 women who sought abortions in the first trimester, some who received them because they were just under the clinic's gestational limit, and others who were "turned away" and carried to term because they were just past the clinic's gestational limit. Participants were interviewed by phone every six months for five years, resulting in a rich dataset documenting the mental health, physical health, and socioeconomic consequences of receiving an abortion compared to carrying to term an unwanted pregnancy.[26]

The study is complex and produced many important and interesting results. For example, being denied an abortion is correlated with greater financial distress, a higher likelihood of staying with an abusive partner, complications in pregnancy, and worse childhood development.[27] For our purposes, however, let's focus only on the results concerning abortion regret and preference adaptation. A fascinating finding of the Turnaway Study is that, despite what critics of abortion allege, five years out, 95 percent of study participants did *not* regret

[25] Writing for the majority in *Gonzalez v. Carhart*, Justice Anthony Kennedy asserts: "While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained. Severe depression and loss of esteem can follow." *Gonzales v. Carhart*, 550 U.S. 124 (2007), https://supreme.justia.com/cases/federal/us/550/124/.

[26] Diana Greene Foster, *The Turnaway Study: Ten Years, a Thousand Women, and the Consequences of Having—or Being Denied—an Abortion* (New York: Scribner, 2021).

[27] Sarah Miller, Laura R. Wherry, and Diana Greene Foster, "What Happens after an Abortion Denial? A Review of Results from the Turnaway Study," *American Economic Association Papers and Proceedings* 110 (2020): 226–30.

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terminating their pregnancy.[28] At the same time, 95 percent of study participants who were turned away did not regret this either.[29] In other words, five years out, 95 percent of study participants who received or were denied a desired abortion preferred the outcome they received; their preferences adapted to their circumstances either way.

These statistics are interesting in their own right, but also because they raise a challenge for the complex self-discovery view on both its predictive and transformative versions. On the complex self-discovery view, choosers need time and space to choose for themselves, given the difficulty or impossibility of predicting their future preferences. However, the results of the Turnaway Study suggest that in precisely our motivating case, it need not be either difficult or impossible to predict one's future preferences. After all, at least if our chooser has read or been informed about the results of the Turnaway Study, they can plausibly predict with about 95 percent confidence that their preferences will adapt and they will end up preferring whichever option they ultimately choose. However, the fact that someone's preferences will adapt either way and that they can predict this with near certain reliability—or, for that matter, with *perfect* reliability—does not seem to affect whether it matters that they have time and space to choose for themselves. Being reliably informed that whichever option you choose, you will end up preferring it, is not a morally satisfying substitute for having time and space to choose for yourself.

The problem for the transformative version of the complex self-discovery view is straightforward and decisive. If one can reliably predict one's future preferences, then the choice is not transformative in the relevant sense and the account simply does not apply. But a proponent of the predictive version of the complex self-discovery view might attempt to avoid this objection by adjusting their view along the following lines. Even in cases where one's future preferences will adapt to one's circumstances either way, they might argue, we can distinguish between cases where one's preference corresponds to what one's preference *would be* after having sufficient time and space to deliberate and cases where it does not. For example, it may be that after gestating and giving birth, you will prefer that you had the child because you now love and are deeply attached to the child—*your* child—and have a new practical identity as their parent. Yet if you had sufficient time and space to deliberate, you would have instead opted to receive an abortion and would have then preferred that outcome. Perhaps this distinction can be used to refine the self-discovery account of the moral significance of choosing for yourself. Choosing for yourself is important because it involves not merely discovering what you *will* prefer, but discovering the informed or rational preference that you *would* develop if given sufficient time

[28] Corinne H. Rocca et al., "Decision Rightness and Emotional Responses to Abortion in the United States: A Longitudinal Study," *PLoS One* 10, no. 7 (2015): e0128832; Corinne H. Rocca et al., "Emotions and Decision Rightness over Five Years Following an Abortion: An Examination of Decision Difficulty and Abortion Stigma," *Social Science & Medicine* 248 (2020): 112704.

[29] Corinne H. Rocca et al., "Emotions over Five Years after Denial of Abortion in the United States: Contextualizing the Effects of Abortion Denial on Women's Health and Lives," *Social Science & Medicine* 269 (2021): 113567.

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and space to reflect. The best way to discover that is clear; one must go through that reflective process.[30]

Even without digging into the details of and motivation for this more sophisticated version of the complex self-discovery view, we can use it to illustrate the deeper problem with self-discovery views in general. The problem is that, when it comes to momentous choices, it matters not only that the chooser *ends up* with the preferences they would have if given sufficient time and space for deliberation, but also that they in fact go through that deliberative process. Consider, for example, Annette Rid and David Wendler's idea of a "patient preference predictor," which is an algorithm intended to reduce some of the burden and guilt that can be involved in surrogate decision-making by predicting what incapacitated patients would prefer from the demographic and circumstantial features of their condition.[31] Now suppose that we have an advanced and generalized version of the predictor we could use to predict, with at least 95 percent reliability, what someone would prefer to do about their pregnancy if given sufficient time and space to deliberate. If those denied this time and space could outsource the choice to the predictor, then there would again be a 95 percent chance that individuals' future preferences align with their choice, though we can now add that the predictor would ensure that patients' adaptive preferences also match the preferences they would have if given sufficient time and space to deliberate themselves. The more sophisticated view we are considering suggests that, in this case, patients choose for themselves.

However, this still seems mistaken. Something is missing and patients are *not* choosing for themselves in an important sense. If pregnant people are denied sufficient time and space to deliberate, simply giving them access to the verdict of a predictor that with 95 percent (or even 100 percent) reliability would tell them what they *would* choose if given more time does not substitute for this. Having the predictor choose for you is not the same as choosing for yourself, so even this more sophisticated version of the complex self-discovery account fails.

Thus, just as the simple self-discovery view is extensionally inadequate because it cannot explain the importance of choosing for yourself when you lack a current preference and so face a hard choice, the complex self-discovery view also cannot explain the importance of choosing for yourself when you can easily predict your future preference due to the phenomenon of predictable preference adaptation. This would be the case even if we could somehow guarantee that your adaptive preference will match what you *would have* chosen given sufficient time and space. Given that, in our motivating case, choosers often face hard choices and are often subject to predictable preference adaptation, we must supplement self-discovery views with an alternative account of choosing for yourself.

[30] Thanks to an anonymous referee for raising this objection and for bringing to my attention Elizabeth Harman, "'I'll Be Glad I Did It' Reasoning and the Significance of Future Desires," *Philosophical Perspectives* 23, no. 1 (2009): 177–99, which I draw on here.

[31] Annette Rid and David Wendler, "Use of a Patient Preference Predictor to Help Make Medical Decisions for Incapacitated Patients," *Journal of Medicine & Philosophy* 39, no. 2 (2014): 104–29.

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## The self-creation account

My arguments against self-discovery accounts suggest that, at least sometimes, choosing for yourself involves more than self-discovery. Here, I propose that what is missing from such accounts is a focus on the moral significance of *creating* one's preferences rather than merely discovering them. I call this a self-creation account and will argue that it can capture the importance of choosing for yourself in precisely the cases I have argued the self-discovery account lapses.

According to the self-creation account, choosing for yourself sometimes involves choosing or creating your preferences. Consider a pregnant person who faces a hard choice about whether to continue or terminate their pregnancy, but who knows that their future preferences will adapt to whatever choice they make. On the self-creation account, such a person needs time and space to choose for themselves all the same—not to discover their current or future preferences, but to choose or create them. In particular, because our chooser faces a hard choice, they currently prefer each option in some respects, but they have not settled on how to weigh those various respects against each other to arrive at an all-things-considered preference between the options. Choosing for themselves involves *forming* this all-things-considered preference; it involves not an epistemic exercise of self-discovery, but a practical exercise of self-creation. Faced with a hard choice, a chooser therefore must engage in what is logically (though not necessarily temporally) a two-step process. First, they must choose their preferences; second, they must choose an option in light of their new preferences. It is the first step that is compromised when you lack time and space to choose for yourself.

By design, then, the self-creation account accommodates both hard choices and cases of predictable preference adaptation. It can also capture the moral significance of choosing for yourself by appeal to the value of what I have elsewhere called "formative autonomy."[32] Formative autonomy is the autonomy involved in choosing one's preferences, especially in cases of momentous choices, where the decision one faces may significantly alter one's life, identity, or relationships or significantly affect what kind of person or valuer one is or will be. It is central to the wider notion of autonomy as the capacity to control or fashion one's own destiny through successive decisions throughout one's life.[33]

As with other forms of autonomy, we can value formative autonomy in different ways. On one view, formative autonomy is something we ought to respect. On this view, it is pro tanto wrong to restrict or undermine someone's formative autonomy, for example, by depriving them of the time and space they need to choose their own preferences, and so of the opportunity to exercise formative autonomy. Seen this way, the moral significance of "choosing for yourself" is captured by the familiar idea that other individuals should not intentionally control or interfere with your choice. My account adds to this familiar idea the thought that even noncoercive interventions can interfere with

[32] Raskoff, "Nudges and Hard Choices."
[33] Raz, *The Morality of Freedom*, chap. 14.

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choosers' autonomy through their interaction with *formative* autonomy, in cases where they prevent people not only from choosing more preferred options, but also from choosing their own preferences.

On another view, formative autonomy is furthermore something we ought to promote, for example, by designing choice architecture that helps people exercise it. Importantly, however, to hold that formative autonomy should be promoted is not to claim that it is always better for choosers to exercise it. This is because there may be costs to exercising formative autonomy and, in some cases, choosers might reasonably prefer not to bear them. For example, supposing that Sophie currently lacks a settled preference about which of her two children to save were she ever to be confronted by that monstrous choice, there may be good reasons for her not to want to settle this preference now. Respecting formative autonomy might therefore require that people like Sophie not be required to settle preferences like this. A plausible version of the view that we should promote formative autonomy will involve promoting the *opportunity* to exercise formative autonomy, not necessarily the exercise of formative autonomy itself. The idea is that people should have the option to choose for themselves, even if sometimes they will not take it.

The difference between these two ways of valuing formative autonomy comes out in cases where choosers lack the opportunity to choose for themselves given some "natural" time constraint that no one has imposed on them, for example, due to a medical emergency. Should we aim to promote the opportunity to exercise formative autonomy in such cases as well? Regardless, formative autonomy seems violated in our motivating case, which concerns a state-imposed restriction on people's ability to choose for themselves, not merely a failure of the state to facilitate the opportunity to do so in the face of a natural constraint.[34]

We are looking for an account of choosing for yourself that explains what choosing for yourself amounts to, why it sometimes requires time and space, and why it is morally significant. Furthermore, we want this account to be extensionally adequate, that is, to apply to all cases in which choosing for yourself seems morally important. So far, we have seen how the self-creation account explains the moral significance of choosing for yourself in terms of the importance of formative autonomy. We have also seen how the self-creation account, unlike the simple and complex self-discovery accounts, is able to accommodate cases of hard choices and predictable preference adaptation. However, there remain three lingering questions about the self-creation account's ability to meet our desiderata. First, how, exactly, does a person choose for themselves by creating their preferences and why does this process require time and space? Second, does the self-creation account really capture our motivating case? Third, can the self-creation account capture the full range of cases where choosing for yourself seems morally important or does it only seem well-suited to certain special cases? I will consider each question in turn.

[34] Thanks to an anonymous referee for suggesting this contrast.

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### How do we create our preferences?

On first glance, it is far from clear how it is that we choose our preferences or why this might require time and space. We are used to thinking of people choosing options *in light* of their preferences. How, then, are they supposed to choose their own preferences, in cases where they don't yet have them?

There are different answers to this question on offer. One is Chang's "hybrid voluntarism," which relies on the idea of "will-based reasons."[35] Chang thinks that when you face a hard choice, you have "the normative power to *create* new will-based reasons for one option over another by putting your agency behind some feature of one of the options. By putting your will behind a feature of an option—by standing for it—*you* can be that in virtue of which something is a will-based reason for choosing that option."[36] Putting your will behind something, Chang elaborates, is as familiar as committing to it: "When you commit to something, you put your very agency—your very self—behind [it] … . You stand *for* what you have committed to."[37] The idea here is that we are able to choose on the basis of two types of reasons. First, there are those that derive from our preferences. Second, there are those we create by acts of will. When preference-based reasons "run out," we are able to choose our own preferences through an act of will by deciding to commit ourselves, stand behind, or identify with one (or more) of the features of an option, deciding that this—for us—will outweigh the other features favoring the other options.

A second view is suggested by David Schmidtz's remarks on choosing ends or preferences, though he does not consider hard choices.[38] On this view, we often choose our own preferences in light of higher-order or overarching preferences. For example, we might choose between the preferences associated with different careers on the grounds that one set of preferences might better satisfy an overarching end of "finding something to live for," which is achieved to the extent that "our goals grip us, making us feel our pursuits are worthy."[39] On this account, when confronted by a hard choice, we choose for ourselves by asking not which of the two *options* we want—for example, to continue or terminate the pregnancy—but rather which *preference* we would rather have—a preference to continue the pregnancy or a preference to terminate it. At least sometimes, we can have grounds for choosing between these preferences by appealing to higher-order preferences, including abstract preferences to have first-order preferences that give us something to live for.

Laura Ekstrom provides a third possible view about how we choose or create preferences in cases of ambivalence (which include hard choices).[40] She suggests

[35] Ruth Chang, "Grounding Practical Normativity: Going Hybrid," *Philosophical Studies* 164, no. 1 (2013): 163–87; Ruth Chang, "Do We Have Normative Powers?" *Aristotelian Society Supplementary Volume* 94, no. 1 (2020): 275–300; Chang, "Transformative Choices"; Chang, "Hard Choices."

[36] Chang, "Hard Choices," 16–17.

[37] Chang, "Hard Choices," 17.

[38] David Schmidtz, "Choosing Ends," *Ethics* 104, no. 2 (1994): 226–51.

[39] Schmidtz, "Choosing Ends," 242–43.

[40] Laura Waddell Ekstrom, "A Coherence Theory of Autonomy," *Philosophy and Phenomenological Research* 53, no. 3 (1993): 599–616; Laura W. Ekstrom, "Ambivalence and Authentic Agency," *Ratio* 23, no. 4 (2010): 374–92.

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that a certain subset of our preferences form our "true self," namely, those that are long-standing and mutually reinforce and cohere with each other in a complex way. When we are ambivalent, according to Ekstrom, we should choose and revise our preferences in light of their coherence with the preferences that form our true self. Even if someone lacks an all-things-considered preference between continuing and terminating their pregnancy, factoring in their whole range of preferences, it could be that a preference for continuing rather than terminating the pregnancy better coheres with our "true self," such that we should choose it. On this view, choosing for yourself involves not an act of will nor an appeal to higher-order preferences, but rather an appeal to coherence with the subset of preferences that form your true self.

These are only three possible views, but they together serve to illustrate three answers you might give to the question: "On what grounds can you choose to have one preference or another?" Chang's view is *deflationary.* It denies that you have any grounds for choosing one preference rather than another, so it simply claims that you can choose by an act of will or commitment. The Schmidtz-inspired view is *subjectivist.* It finds grounds for choosing your preferences in light of other, higher-order preferences about what first-order preferences to have. Finally, Ekstrom's is *objectivist*, in the sense that it appeals to considerations beyond what you happen to prefer, in this case, claiming that you ought to choose preferences that best cohere with your "true self," regardless of whether you prefer to have preferences that cohere in this way.

I will not here settle the debate between these views, but note that both subjectivist and objectivist views seem well-equipped to explain how we choose for ourself and do so in a way that requires time and space. It can take time, introspection, and reflection to determine which of one's preferences best matches with one's higher-order preferences, especially if they are vague and abstract, or with external standards such as their coherence with one's true self. The deflationary view, by contrast, struggles to explain why time should be important. If any way of choosing is no better than any other, then it is not clear why it is so important for a chooser to have time and space to engage in extensive introspection and reflection. What, after all, is the chooser meant to think about? The best a deflationary theorist such as Chang can say here is that choosers need time and space to survey the different respects in which they prefer each alternative in order to decide which feature to throw their agency behind and stand for—or perhaps that the act of commitment, as a psychological matter, simply takes time. But again, if committing to any respect is no better than committing to any other, then it is not clear why choosers need time and space to survey each respect. Again, what could they be looking for? This suggests that the subjectivist or objectivist view may be preferable. Perhaps even better would be a hybrid view that allows both subjective and objective criteria to play some role in choosing for yourself as well as for the deflationary possibility that in cases where our appeals to such criteria have failed to settle the matter, we must at this point fall back on a Chang-like act of will or commitment. In any event, my point in raising these views is to illustrate that there are multiple plausible accounts on offer for how we choose our preferences, although admittedly there remain several details to work out.

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### Does formative autonomy explain our motivating case?

My motivating case in this essay has been SB8, which was a law that banned abortion in Texas after six weeks, and so restricted choices of pregnant people in Texas. I suggested that the law deprived pregnant people of the opportunity to choose for themselves by preventing the exercise of their formative autonomy and denying them the time to settle previously incomplete preferences. One might wonder, though, why this opportunity only comes on the scene once one learns that one is pregnant. After all, once SB8 passed, people knew that if they were to become pregnant, they would have very little time to decide what to do. At that point they had the opportunity to exercise their formative autonomy (prophylactically, as it were) and to settle their preferences about whether to get an abortion lest the decision arise. Why, then, does SB8 represent such a threat to formative autonomy?[41]

The first thing to note in response to this concern is that SB8 clearly did at least somewhat reduce the opportunity to exercise formative autonomy. Before SB8, people could settle their preference either in advance or upon discovering that they were pregnant; afterward, they lost the latter option. The relevant question, then, is why it is important to have the opportunity to settle one's preferences not only in advance, but also upon learning that one is pregnant. Here, two considerations are especially important.

The first concerns *difficulty.* Decisions about abortion are often context-dependent in ways that make it difficult if not impossible to settle one's preference in advance. This is because how one wishes to settle the relevant trade-offs between one's values may depend on factors that are difficult to know or predict before one actually faces the decision, such as how others in one's life, including one's partner, family, or employer, will respond; what one's own emotional response will be; what one's financial situation will be; how one's body will handle pregnancy; what sort of support will be available; and so on. Furthermore, even if one attempts to settle these preferences in advance, this might prove in vain; when the situation actually arises, everything might feel very different and this might unsettle your preferences all over again. SB8 therefore not only made it more difficult to exercise formative autonomy, but also left many without a realistic opportunity to exercise it at all.

The second consideration concerns *cost.* These include the costs involved in gathering the sort of information needed to settle one's preferences, which can be quite significant. But they also include more existential or psychic costs involved in settling preferences one would rather not settle. Recall the above variation of Sophie's choice, where Sophie must settle on which child she *would* hypothetically save, even without having to make the choice. Requiring Sophie to settle this preference, just in case she might one day have to choose between her children, imposes a serious cost—and one whose imposition is unreasonable. Although less dramatic, analogous costs are involved in decisions about abortion. For instance, one major consideration pregnant people raise when deciding

[41] Thanks to Frances Kamm for raising this question.

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whether to get an abortion is how it will affect the well-being of their other children and their ability to care for them and their other dependents.

It might seem like people deciding whether to get an abortion will have to bear this cost either way, so why does SB8 aggravate it? The answer is that removing the option to settle one's preferences after discovering that one is pregnant means that many more people must bear this cost. Indeed, *anyone* who might get pregnant but has not yet made up their mind about whether they would get an abortion must bear such costs, if they wish to exercise formative autonomy with respect to this class of reproductive choices at all—at least among those who could not afford to leave Texas to get an abortion elsewhere. The unreasonableness of imposing this cost on this entire group is especially obvious when we consider that the group includes people who have no intention of ever getting pregnant or of having unprotected sex that might lead to pregnancy, such that any unprotected sex they had would be nonvoluntary.

Even without elaborating the obviously asymmetric distribution of such costs, we can conclude that SB8, despite leaving people free to settle their preferences in advance, raises serious concerns from the perspective of formative autonomy that our discussion of difficulty and cost make vivid. It is an advantage of my account that it illuminates these concerns.

### *Is choosing for yourself always about self-creation?*

This bring us to our final question: "Is the self-creation account extensionally adequate more generally?" On first glance it might seem like it is not, because it seems to explain the importance of choosing for yourself only in cases where you face a hard choice. However, it would seem that these are not the only cases where it seems morally significant that people have time and space to choose for themselves.

There are two possible responses to this concern. The first notes that defenders of the existence of hard choices often claim that such choices are ubiquitous. We often lack an all-things-considered preference between the options we face and not only when the decisions are especially significant or life-altering. For example, one of Chang's stock examples is deciding between coffee and tea, each of which you prefer in some respects, but where these respects are, on reflection, difficult to weigh.[42] Of course, it might not seem important to your formative autonomy that you choose for yourself what to drink with breakfast, but that does not challenge the ubiquity of hard choices; it only challenges the significance of exercising formative autonomy in all of them rather than merely in those momentous choices that bear or reflect more centrally on what kind of person you are or what kind of life you will lead. If the "ubiquity of hard choices" hypothesis is right, then life is in large part a matter of self-creation. As we go through the world, we often lack preferences to discover, so we must choose our preferences for ourselves.

If we reject this hypothesis, another response is available. This is that my argument has *not* been that self-discovery is unimportant. Indeed, in many cases

[42] Chang, "The Possibility of Parity," 669–70.

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where it is important that someone has time to choose for themselves, it may well be that this is best explained by the importance of self-discovery. The self-creation account can supplement, without necessarily replacing, the other accounts we have discussed. There may be many reasons why it is important to choose for yourself and this may often involve both elements of self-discovery and self-creation. My argument has been that self-discovery cannot be the whole story, that self-creation also plays an important role, including for many people facing our motivating case.

## Implications for health policy and clinical ethics

My discussion so far has aimed to make sense of the idea that there is something important not only about having a choice, but choosing for yourself, especially when it comes to momentous decisions such as whether to continue or terminate a pregnancy. I have suggested that at least sometimes, we go wrong in trying to analyze what is going on in these cases through an epistemic lens of self-discovery, self-prediction, or "transformative choice" (in the technical sense that involves an inability to predict one's future preferences) or through associated normative concepts such as "revelatory autonomy." Instead, choosing for yourself is sometimes best analyzed through the practical lens of self-creation or of choosing what preferences or what kind of person or valuer to be, the importance of which, I have suggested, can be understood in terms of the idea of "formative autonomy." We have also seen that while there are a few accounts available about how, exactly, we choose our own preferences, there has been considerably less work on this topic than on the more familiar question of how we should choose in ways that best satisfy our preferences or on the recent flurry of literature on transformative experience. My discussion therefore highlights the need for future theoretical work on these issues.

In the remainder of this essay, however, I want to turn from theory to practice, toward some more practical implications of my analysis, especially when it comes to health policy and clinical ethics. I focus on health contexts because they are, I believe, rife with momentous choices that provide important opportunities for patients to exercise formative autonomy, the significance of which is often overlooked despite widespread recognition of the importance of patient autonomy in these same settings.[43] To see this, recall Chang's earlier analysis of when an individual faces a hard choice: they must decide between options, each of which they prefer in some respects, but which they have no all-things-considered preference between. Recall also the small-improvement argument. When someone lacks an all-things-considered preference between two options, the test for whether this is a case of incomplete preferences rather than mere indifference is whether their preferences are resistant to small improvements. If a small improvement to one option does not settle the case and lead

[43] Tom L. Beauchamp and James F. Childress, *Principles of Biomedical Ethics*, 7th ed. (New York: Oxford University Press, 2013); David DeGrazia and Joseph Millum, *A Theory of Bioethics* (Cambridge: Cambridge University Press, 2021).

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them to prefer that option, then this suggests they face a hard choice because if they were merely indifferent, the small improvement would be decisive.

Notice, though, how many health-related decisions seem to fit this pattern. Patients must decide whether to continue with invasive chemotherapy that is unlikely to work and live in pain and discomfort or to die comfortably in hospice care, whether to undergo risky but ultimately cosmetic surgery, whether to donate a kidney, whether or how to medically transition in light of gender dysphoria, whether to accept a life-saving treatment that violates strongly held religious convictions, whether to get a cochlear implant later in life, whether to undergo voluntary sterilization, whether to participate in experimental research with no prospect of direct benefit, and so on. In each case, there appear to be weighty considerations on each side such that a chooser might reasonably prefer each option in some respect, but they lack an all-things-considered preference between them. Furthermore, choosers who lack such a preference are unlikely to be moved by a small improvement to one of the options, suggesting that they face a genuinely hard choice. Finally, these choices are often what I have called momentous; they stand to significantly alter the chooser's life or identity and depend on a variety of the chooser's deeply personal values that themselves might relate in complex ways. This suggests that medical contexts may frequently give rise to opportunities to exercise formative autonomy.[44]

Taking formative autonomy seriously has many upshots for health policy and clinical ethics, but I end by pointing out a few that seem especially significant. These concern decision-making capacity, facilitating autonomy, the use of non-coercive interventions, and the special costs associated with certain coercive interventions.

In health-care settings, the primary protection for patient autonomy is the informed consent process, which is supposed to ensure that a patient's choice is intentional, made with substantial understanding, and in the absence of substantial control by others.[45] Only patients with decision-making capacity, however, are eligible to provide informed consent; if a patient lacks this capacity, they cannot make treatment decisions for themselves and a surrogate decision-maker must be sought. But ambivalent patients facing hard choices might appear to health-care providers to lack decision-making capacity. Indeed, on Paul Appelbaum and Thomas Grisso's influential account, decision-making capacity requires that a patient "understand the relevant information," "appreciate the situation and its consequences," "reason about treatment options," and "communicate a choice" by "clearly indicat[ing] a preferred treatment option."[46] The issue here is that while an inability to make a choice and clearly indicate a preferred treatment option may sometimes indicate lack of capacity, other times the same inability might be evidence of incomplete preferences. It would be a grave moral mistake for

[44] This draws heavily on my "Nudges and Hard Choices."

[45] Faden, Beauchamp, and King, *A History and Theory of Informed Consent.*

[46] Paul S. Appelbaum and Thomas Grisso, "Assessing Patients' Capacities to Consent to Treatment," *New England Journal of Medicine* 319, no. 25 (1988): 1635–38; Paul S. Appelbaum, "Assessment of Patients' Competence to Consent to Treatment," *New England Journal of Medicine* 357, no. 18 (2007): 1834–40.

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health-care providers and clinical ethicists to classify all such patients as lacking capacity rather than as patients with an opportunity to choose for themselves. Sensitivity to this therefore seems to be a clinical skill worth developing.[47]

This leads to the more general question of how health-care providers and clinical ethicists should interact with these patients over and above acknowledging their decision-making capacity. Are there any strategies that providers and ethicists might adopt, especially if they are concerned not merely with respecting opportunities to exercise formative autonomy, but also positively promoting them? Of course, the evaluation of such strategies will depend, in part, on exactly how we characterize the process of self-creation. If, for example, one adopts a subjectivist account on which people should choose their preferences in light of higher-level goals, this might suggest strategies that focus on helping choosers construct meaningful narratives about themselves, their values, and their lives in relation to the momentous choice they face. If one instead adopts a deflationary account on which people must simply choose their preferences through an act of will without any grounds favoring one option over another, it may be that the best we can do is "invite the patient to make an existential leap."[48]

Still, other strategies seem helpful regardless of which account we accept. For example, rather than simply refraining from rushing patients into a decision, health-care providers and institutions can help to ensure that patients have the opportunity to settle their preferences before choosing rather than merely "drifting" along the path of least resistance and finding themselves with one option rather than another despite lacking a preference either way.[49] Health-care providers can prompt patients to reflect on their values and how they wish to weigh them against each other as well as help them to understand how those values map onto various treatment options. At the system level, we can also "nudge" doctors into engaging in "difficult conversations" with patients in which they prompt exactly this sort of reflection.[50]

This brings us to the issue of how formative autonomy interacts with non-coercive interventions that do not outright remove or impose significantly higher costs on options. The most obvious sort, given our discussion above, are interventions that limit the time or space individuals have to make choices, forcing them to rush and make a decision about which option to select before they are able to make a decision about their preferences. Elsewhere, I have also discussed the threat that certain nudges may pose to formative autonomy when they are directed at patients rather than health-care providers.[51]

[47] Bryanna Moore et al., "Two Minds, One Patient: Clearing Up Confusion About 'Ambivalence,'" *The American Journal of Bioethics* 22, no. 6 (2022): 37–47.

[48] Moore et al., "Two Minds, One Patient," 46.

[49] Chang, "Hard Choices."

[50] Christopher R. Manz et al., "Effect of Integrating Machine Learning Mortality Estimates with Behavioral Nudges to Clinicians on Serious Illness Conversations Among Patients with Cancer: A Stepped-Wedge Cluster Randomized Clinical Trial," *Journal of the American Medical Association Oncology* 6, no. 12 (2020): e204759.

[51] Raskoff, "Nudges and Hard Choices."

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Nudges are small changes in the presentation of options that make a predictable impact on people's decisions. These interventions purport to provide a mechanism by which a "choice architect" can promote the chooser's well-being without violating their autonomy because a nudge merely makes it more likely that someone will choose an option that is better for them without restricting their ability to choose otherwise. However, this standard defense of nudges runs into trouble once we acknowledge the possibility of hard choices. When someone who lacks an all-things-considered preference is nudged one way rather than another, they may end up selecting an option before having the opportunity to settle their preference. Much like our motivating case where a pregnant person must decide whether to continue or terminate their pregnancy without first settling their preference, certain nudges may similarly deprive or interfere with individuals' opportunity to exercise formative autonomy. Indeed, pre-*Dobbs*, many states had laws like Texas's that required people seeking abortions to receive an ultrasound and state-mandated counseling at least twenty-four hours before obtaining abortion services.[52] Even if we grant that these laws are noncoercive, it cannot be denied that, in practice, they at least nudge patients away from choosing abortion. For example, no states have laws requiring someone to deliberate carefully for twenty-four hours or to watch videos depicting how hectic their life will become once they have children before deciding *against* abortion, nor do states mandate providing information about the risks of continuing a pregnancy and giving birth, which are generally significantly higher than risks of early abortion.[53]

Post-*Dobbs*, many states have straightforwardly outlawed abortion, making it impossible or much more costly (because it requires travel to another state) for pregnant people to get an abortion. This, of course, is a coercive intervention, but my analysis also sheds light on why such interventions are especially and distinctively costly, as far as autonomy is concerned. Although I have focused on cases where one has a choice but cannot choose for oneself, if one lacks a choice, one *a fortiori* cannot choose for oneself. If choosing for oneself, in such cases, is often a matter of self-creation—of deciding what kind of person or valuer to be—restricting people from making this reproductive choice represents an especially grave violation of autonomy.

## Conclusion

It is often important that individuals not only have a choice, but they can also choose for themselves. While on first glance choosing for yourself might seem to be an exercise in discovering your preferences, I have suggested that in some cases it is more a matter of creating preferences that one previously lacked.

[52] Texas Health and Safety Code, § 171.011–171.014 (2021); "Requirements for Ultrasound," September 1, 2023, Guttmacher Institute, https://www.guttmacher.org/state-policy/explore/requirements-ultrasound.

[53] Elizabeth G. Raymond and David A. Grimes, "The Comparative Safety of Legal Induced Abortion and Childbirth in the United States," *Obstetrics and Gynecology* 119, no. 2 (2012): 215–19.

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Restricting people's ability to choose for themselves in this way violates an important sort of autonomy—formative autonomy—which we exercise in choosing what kind of person to be. Although I have primarily focused on such issues in the context of abortion restrictions, fully appreciating this point has many important implications for health policy and clinical ethics more broadly.

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