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Government-Scripted Consent: When Medical Ethics and Law Collide
Minkoff, Howard; Marshall, Mary Faith
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Kaposy, Chris
The public funding of abortion in Canada: going beyond the concept of medical necessity
Medicine, Health Care, and Philosophy 2009 August; 12(3): 301-311
Abstract: This article defends the public funding of abortion in the Canadian health care system in light of objections by opponents of abortion that the procedure should be denied public funding. Abortion opponents point out that women terminate their pregnancies most often for social reasons, that the Canadian health care system only requires funding for medically necessary procedures, and that abortion for social reasons is not medically necessary care. I offer two lines of response. First, I briefly present an argument that characterizes abortion sought for social reasons as medically necessary care, directly contesting the anti-abortion position. Second, and more substantially, I present a justice argument that shows that even if abortion is not regarded as medically necessary care, the reasons that typically motivate women to seek abortion are sufficiently weighty from the moral perspective that it would be unjust to deny them public funding. I finish by drawing the more general conclusion that health care funding decisions should be guided by a broader concept of necessary care, rather than by a narrow concept of specifically medical necessity. A broad concept of necessary care has been debated in health care policy in the Netherlands, and I suggest that such a concept would be a more just and defensible guide for funding decisions than the concept of medical necessity.
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Why the Equal Protection Clause cannot "fix" abortion law
Human Life Review 2009 Summer; 35(3): 121-144
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**When politics trumps evidence: legislative or regulatory exclusion of abortion from advanced practice clinician scope of practice.**
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**Journeys of choice? Abortion, travel, and women's autonomy**
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In: Sclater, Shelley Day; Ebtehaj, Fatemeh; Jackson, Emily; Richards, Martin, eds. Regulating Autonomy: Sex, Reproduction and Family. Oxford; Portland, OR: Hart, 2009: 239-257
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Cannold, Leslie
**Reply to 'The Other Abortion Myth-The Failure of the Common Law'**
Journal of Bioethical Inquiry 2009 March; 6(1): 129-130
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Gleeson, Kate
**The Other Abortion Myth – the Failure of the Common Law**

Abstract: The 2006 trial of Suman Sood put criminal abortion on the public agenda for the first time in 25 years in NSW. Response to the case highlights tenacious myths about abortion law in Australia; namely that the common law "is an ass" that allows for abortion only by way of a lack of application of the law. By briefly explaining the history of abortion in Australia, I argue that the Sood case does not represent a general failure of the common law to allow abortion, nor does it support the popular myth that abortion is "technically" illegal, or that doctors who perform abortions have historically been the target of the criminal law in Australia. I show that contrary to myths promoted particularly around the 1998 Western Australian reforms, abortion has long been lawful in Australia, and the common law has merit compared to other regulatory regimes. Hence, arguments for alternative abortion regimes should not depend on myths which are shown to be unrepresentative of the political and legal situation in Australia.

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**Ensuring that Department of Health and Human Services funds do not support coercive or discriminatory policies of practices in violation of federal law. Final rule**


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**The beginning of the end: the diminished abortion right following Carhart and Planned Parenthood**

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American Journal of Public Health 2008 October; 98(10): 1881-1885
Abstract: OBJECTIVES: We evaluated the presence of misclassification bias in the estimated effect of parental involvement laws on minors' reproductive outcomes when subjection to such laws was measured by age at the time of pregnancy resolution. METHODS: Using data from abortion and birth certificates, we evaluated the effect of Texas's parental notification law on the abortion, birth, and pregnancy rates of adolescents aged 17 years compared with those aged 18 years on the basis of age at the time of pregnancy resolution and age at conception. RESULTS: On the basis of age at the time of the abortion or birth, the law was associated with a fall of 26%, 7%, and 11% in the abortion, birth, and pregnancy rates, respectively, of 17- relative to 18-year-olds. Based on age at the time of conception, the abortion rate fell 15%, the birth rate rose 2%, and the pregnancy rate remained unchanged. CONCLUSIONS: Previous studies of parental involvement laws should be interpreted with caution because their methodological limitations have resulted in an overestimation of the fall in abortions and underestimation of the rise in births, possibly leading to the erroneous conclusion that pregnancies decline in response to such laws.

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**Abortion and the full humanity of women: nearly there**
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Miyazaki, Michiko
**The history of abortion-related acts and current issues in Japan**

**Abstract:** In Japan abortion is categorized into two types by law; one is illegal feticide and the other is legal abortion. The present criminal law forbids feticide in principle and the life of a fetus is protected. However, abortion can be practiced under the "Eugenic Protection Act" established in 1948 (currently referred to as the "Maternal Protection Act"), and is readily available in Japan. In this paper, I have traced the historical origins of abortion law and attempted to clarify the problems related to the current laws relating to artificial abortion. As a result, the existence of contradictions between attitudes toward the life of the fetus and that of the mother, women's right to self determination, and women's rights under current legislation has been clarified.

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Developing World Bioethics 2007 August; 7(2): 64-67
Abstract: This paper discusses the Brazilian Supreme Court ruling on the case of anencephaly. In Brazil, abortion is a crime against the life of a fetus, and selective abortion of non-viable fetuses is prohibited. Following a paradigmatic case discussed by the Brazilian Supreme Court in 2004, the use of abortion was authorized in the case of a fetus with anencephaly. The objective of this paper is to analyze the ethical arguments of the case, in particular the strategy of avoiding the moral status of the fetus, the cornerstone thesis of the Catholic Church.
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Carranza, María
The therapeutic exception: abortion, sterilization and medical necessity in Costa Rica
Developing World Bioethics 2007 August; 7(2): 55-63
Abstract: Based on the case of Rosa, a nine-year-old girl who was denied a therapeutic abortion, this article analyzes the role played by the social in medical practice. For that purpose, it compares the different application of two similar pieces of legislation in Costa Rica, where both the practice of abortion and sterilization are restricted to the protection of health and life by the Penal Code. As a concept subject to interpretation, a broad conception of medical necessity could enable an ample use of the therapeutic exception and a liberal use of both surgeries. The practice of therapeutic sterilization has been generalized in Costa Rica and has become the legitimate way to distribute contraceptive sterilization. In contrast, therapeutic abortion is very rarely practiced. The analysis carried out proposes that it is the difference in social acceptance of abortion and sterilization that explains the different use that doctors, as gatekeepers of social morality, make of medical necessity.
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Ten years hence – has the South African Choice on Termination of Pregnancy Act, Act 92 of 1996, realised its aims? A moral-critical evaluation
Abstract: The South African Choice on Termination of Pregnancy Act (Act 92 of 1996) (CTOP) passed by parliament ten years ago, aims to promote female reproductive autonomy through legitimising free access to abortion up to 20 weeks’ of gestation. The article critically evaluates CTOP and highlights three societal concerns: the effect of CTOP on the self-esteem of nurses who perform abortion; the effect on general societal morality, and its desirability. CTOP has enjoyed mixed success. On the plus side, it has furthered female reproductive autonomy, has decreased early pregnancy maternal mortality and has advanced non-racialism through equal access to safe abortion. On the minus side, it remains controversial; the majority of the population opposes abortion on request, predominantly based on religiously-informed intuitions on the value of ante-natal life. Officials and managers of public health care facilities are often obstructive, and TOP personnel victimised and socially stigmatised. An unacceptably high rate of unsafe abortion prevails, particularly in rural areas and amongst adolescents, but also in certain urban areas. The prime
causes are inadequate public education, attitudinal problems, and lack of psychological support for TOP personnel, the segregation of ante-natal care and abortion services, inadequate training, research, communication and contraceptive services, absence of incentives for TOP personnel and "traditional" gender roles and male power-based domination in reproductive choices. Corrective measures include a goal directed educational programme and initiatives like value clarification workshops which have been effective in changing negative attitudes of participants, and may thus address stigmatisation, improve working conditions of TOP personnel, promote societal tolerance and acceptance, and informed consent. Of particular concern are the questions of informed consent, minors, promotion of counselling and contraceptive services (particularly for adolescents), conscientious objection and the protection of compliant (and non-compliant) personnel.

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Alvarez Manninen, Bertha
Revisiting the argument from fetal potential
Abstract: One of the most famous, and most derided, arguments against the morality of abortion is the argument from potential, which maintains that the fetus' potential to become a person and enjoy the valuable life common to persons, entails that its destruction is prima facie morally impermissible. In this paper, I will revisit and offer a defense of the argument from potential. First, I will criticize the classical arguments proffered against the importance of fetal potential, specifically the arguments put forth by philosophers Peter Singer and David Boonin, by carefully unpacking the claims made in these arguments and illustrating why they are flawed. Secondly, I will maintain that fetal potential is morally relevant when it comes to the morality of abortion, but that it must be accorded a proper place in the argument. This proper place, however, cannot be found until we first answer a very important and complex question: we must first address the issue of personal identity, and when the fetus becomes the type of being who is relevantly identical to a future person. I will illustrate why the question of fetal potential can only be meaningfully addressed after we have first answered the question of personal identity and how it relates to the human fetus.

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Patient privacy and conflicting legal and ethical obligations in El Salvador: reporting of unlawful abortions
American Journal of Public Health 2006 November; 96(11): 1927-1933
Abstract: Postabortion care providers who breach patient confidentiality endanger women's health and violate ethics. A 1998 abortion ban in El Salvador likely spurred an increase in the number of women investigated, because many women were reported to legal authorities by health care providers. Having analyzed safeguards of confidentiality in laws and ethical guidelines, we obtained information from legal records on women prosecuted from 1998 to 2003 and identified factors that may lead to reporting through a survey of obstetrician-gynecologists (n=110). Although ethical and human rights standards oblige providers to respect patients' privacy, 80% of obstetrician-gynecologists mistakenly believed reporting was required. Most respondents (86%) knew that women delay seeking care because of fear of prosecution, yet a majority (56%) participated in notification of legal authorities.
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**Taking the sting out of reporting requirements: reproductive health clinics and the constitutional right to informational privacy**


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**The Commerce Clause and federal abortion law: why progressives might be tempted to embrace federalism**


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Bioethics 2005 April; 19(2): 131-145

**Abstract:** The traditional approach to the abortion debate revolves around numerous issues, such as whether the foetus is a person, whether the foetus has rights, and more. Don Marquis suggests that this traditional approach leads to a standoff and that the abortion debate 'requires a different strategy.' Hence his 'future of value' strategy, which is summarized as follows: (1) A normal foetus has a future of value. (2) Depriving a normal foetus of a future of value imposes a misfortune on it. (3) Imposing a misfortune on a normal foetus is prima facie wrong. (4) Therefore, depriving a normal foetus of a future of value is prima facie wrong. (5) Killing a normal foetus deprives it of a future value. (6) Therefore, killing a normal foetus is prima facie wrong. In this paper, I argue that Marquis's strategy is not different since it involves the concept of person—a concept deeply rooted in the traditional approach. Specifically, I argue that futures are valuable insofar as they are not only dominated by goods of consciousness, but are experienced by psychologically continuous persons. Moreover, I argue that his strategy is not sound since premise (1) is false. Specifically, I argue that a normal foetus, at least during the first trimester, is not a person. Thus, during that stage of development it is not capable of experiencing its future as a psychologically continuous person and, hence, it does not have a future of value.

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