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Science, Politics, and Reproductive Rights Introduction, Health Matrix: Journal of Law-Medicine - Introduction

B. Jessie Hill

Case Western University School of Law, jessie.hill@case.edu

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SYMPOSIUM:
SCIENCE, POLITICS, AND
REPRODUCTIVE RIGHTS
INTRODUCTION

Jessie Hill[†]

With two seats on the Supreme Court recently vacated, abortion rights have once again taken center stage in American political discourse—that is, if they ever left that position.¹ Yet, as the articles in this symposium demonstrate, the debate about reproductive rights has moved beyond abortion to encompass reproductive rights in a far broader sense, including stem-cell research, assisted reproductive technologies, abstinence-only education, minors' access to and information about contraceptives, and emergency contraception. Moreover, now more than ever reproductive rights are caught in the crossfire between science and politics. Of course, “[t]he governance of reproductive science is fraught with controversy in nearly every jurisdiction across the globe.”² But recent years have seen particularly salient claims that scientific truth is being distorted in the name of politics.³ In 2005, bills were introduced in both the House and Senate—by Senator Richard Durbin and by Representative Henry Waxman, one of the contributors to this Symposium—to prohibit tampering with federally funded scientific research, protect those who blow the whistle on such tampering, and require that appointments to scientific advisory committees be nonpartisan.⁴

[†] Assistant Professor of Law, Case Western Reserve University School of Law. B.A. 1992, Brown University; J.D. 1999, Harvard Law School.

¹ See, e.g., Richard W. Stevenson, *Court in Transition: The Overview; O'Connor to Retire, Touching Off Battle over Court*, N.Y. TIMES, July 2, 2005, at A1; David D. Kirkpatrick, *For Democrats, Rethinking Abortion Position Meets with Mix of Reactions in Party*, N.Y. TIMES, Feb. 16, 2005, at A18.

² Angela Campbell, *Ethos and Economics: Examining the Rationale Underlying Stem Cell and Cloning Research Policies in the United States, Germany, and Japan*, 31 AM. J.L. & MED. 47, 47 (2005).

³ See, e.g., Daniel Smith, *Political Science*, N.Y. TIMES MAGAZINE, Sept. 4, 2005, at 37.

⁴ Restore Scientific Integrity to Federal Research and Policymaking Act, H.R. 839, 109th Cong. (2005), & S. 1358, 109th Cong. (2005).

Each of the excellent contributions to this symposium explores, from its own unique perspective, the role of science or social science in political decision-making about reproductive issues. All of them demonstrate the fluidity of the categories of science and politics, encouraging us to consider the question of when there is too much political influence on our understanding of science or, alternately, too little science in our politics.

U.S. Representative Henry Waxman's comprehensive overview of the Bush Administration's reproductive rights policies surveys the multiple ways in which the border between science and politics has been breached, particularly in the contexts of abstinence-only education, the supposed abortion-breast cancer link, condom effectiveness, HIV/AIDS, emergency contraception, and stem cell research. Representative Waxman, of course, has been one of the most vocal critics of this breach, and he has been instrumental in bringing the Bush Administration's distortions of science to public attention, occasionally forcing change.

Janet Dolgin, the Jack and Freda Dicker Distinguished Professor of Health Care Law at Hofstra University School of Law, and Ellen Waldman, Professor of Law at the Thomas Jefferson School of Law, both explore the ways in which cultural politics interact with science. Professor Dolgin's article forcefully demonstrates how advances in medical technology have recently brought the debate over the metaphysical status of the embryo to the forefront of law, politics, and social consciousness, as embodied in legal disputes over frozen embryos, embryo adoption programs, and the fight over limits and alternatives to stem cell research. Claims about science and scientific truth, she argues, are ultimately used to support particular political and moral agendas. In a similar vein, Professor Waldman's fascinating comparative study shows how the United States' and Israel's treatment of Assisted Reproductive Technologies (ART) and frozen embryo disputes reflect underlying cultural attitudes and imperatives. Israel—shaped by Jewish religious identity, the experience of the Holocaust, and a shrinking Jewish population—is unambiguously pronatalist, while the United States—with its deeply ingrained focus on individual autonomy, combined with a strong bias toward traditional family forms—leans in favor of a free market system, combined with no or very limited governmental support for those seeking to build nontraditional families. Professor Waldman ends her article by asking whether it is possible that, just as technological advances in ART have been shaped by cultural norms, those technologies may in turn one day help to shape and change cultural attitudes toward the nature of the family.

Teresa Stanton Collett, Professor of Law at the University of St. Thomas School of Law, and Shoshanna Ehrlich, Associate Professor of Law, Family Law and Women's Legal Issues at the University of Massachusetts Boston College of Public and Community Service, both consider the evidence behind our assumptions about teenage girls and female adolescent sexuality in arguing, respectively, in favor of and against laws requiring parental involvement in minors' reproductive decision-making. Professor Collett persuasively argues in favor of proposed federal legislation requiring parental notice for minors seeking abortions.⁵ She both looks behind the statistics often cited in opposition to parental involvement laws and canvasses the evidence in support of parental involvement in a minor's abortion decision. Her arguments in favor of the proposed legislation draw on medicine and social science, as well as individual experiences embodied in compelling anecdotal accounts. Her article contrasts sharply with Professor Ehrlich's article. Professor Ehrlich traces the history of society's concern with adolescent female sexuality and reproductive decision-making. She effectively demonstrates how the notion that young women are incapable of making informed and moral decisions about sexual activity—and similar empirical assumptions that in many instances are untested or have proven to be inaccurate—are reflected in the current trends toward mandating parental involvement for abortion and contraception, as well as abstinence-only education.

Finally, Jonathan Klick, the Jeffrey A. Stoops Professor of Law at Florida State University, also approaches the issue of abortion regulation from a social scientific perspective, bringing rigorous empirical analysis to bear on the claims of abortion opponents that mandatory waiting periods for abortion lead to better and more considered decision-making about abortion, thus ultimately benefiting women. His conclusion, which many will no doubt find surprising, is that there is in fact a statistically robust correlation between mandatory abortion waiting periods and women's mental health. Professor Klick acknowledges that most people probably base their views about abortion regulation on normative rather than empirical precepts; nonetheless, he suggests that such data can and should inform policymaking, as it very rarely has to date.

⁵ As Professor Collett explains, the Child Interstate Abortion Notification Act (CIANA), H.R. 748, 109th Cong. (2005), would prohibit transporting a minor across state lines for the purpose of avoiding the minor's home-state parental involvement laws, as well as require an abortion provider to notify the parent of any out-of-state minor before providing the abortion. The Senate version, called the Child Custody Protection Act (CCPA), S. 403, 109th Cong. (2005), only forbids taking a minor across state lines to avoid a home-state parental involvement law.

These symposium pieces showcase a diversity of views on reproductive issues and explore, in a fascinating variety of ways, the relationship between science and politics. Individually and together, they make a significant contribution to one of the most important and enduring debates of our time.