

Abortion: Law, Policy, Ethics

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Course 611AB.05

W 7:30–9:15 p.m.
(Instructors' home)
<https://bit.ly/2Zjf8v0>

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The law of abortion is in flux. With new appointments to the Court and new legislative initiatives in the states, there is a greater likelihood of significant shifts in constitutional doctrine than at any point in the last few decades. As a result, it has become particularly important for future lawyers to have an opportunity to study the issue in detail and to decide what they think.

This one-credit, ungraded year-long readings course is intended to give students the chance to discuss, in a relaxed academic setting, the difficult and important questions of ethics, policy, and law raised by the issue of abortion. The course meets on eight Wednesday evenings, roughly once a month, from 7:30 to 9:15 p.m. Sessions are held at the instructors' home—depending on enrollment, either at our dinner table or in our living room. (You should have your dinner beforehand; we provide the coffee and dessert.)

The questions raised by abortion are both highly abstract and deeply personal. While they are the subject of intense and heartfelt commitment on both sides, this course is offered in the belief that they are also a proper subject for intellectual inquiry. We will insist that discussions be conducted in a civil and respectful manner, and that you address and listen to your fellow students, whatever their views, with an open mind. Within each unit, the assigned readings are roughly balanced as to viewpoint; they take deeply conflicting positions, and you will certainly disagree with some of them. The course is offered on a credit/no-credit basis partly to ensure that you are neither penalized nor rewarded for sharing the views of either of the instructors.

Two-page response papers are due **24 hours before each meeting**. They may be uploaded to the ‘Forum’ section of the course website, so that you can read your classmates’ papers in advance. Response papers should address some issue raised in your mind by that session’s readings; they needn’t discuss every reading, and they should respond to the readings rather than summarize them. Each student is expected to participate fully in the discussions.

There is one required text, *What Roe v. Wade Should Have Said* (Jack M. Balkin ed., 2005). Other required readings are available online or in the coursepack. (Because the course focuses on basic principles rather than the details of current doctrine, it leaves out such decisions as *Gonzales v. Carhart*, *Whole Woman’s Health v. Hellerstedt*, or *Azar v. Garza*, as well as a number of important cases in state or circuit courts.)

ETHICS

1 Sept. 4: Persons

1.1 Guttmacher Institute, Fact Sheet: Induced Abortion in the United States (Jan 2018).....5

1.2 John T. Noonan, Jr., *An Almost An Almost Absolute Value in History*, in *The Morality of Abortion: Legal and Historical Perspectives* 51, 51–59 (John T. Noonan ed. 1970).....9

1.3 Mary Anne Warren, *On the Moral and Legal Status of Abortion*, 57 *Monist* 43 (1973)..... 13

1.4 Peter Singer, *Germ of a New Debate on the Ethics of Life*, *The Australian* (Canberra), Dec. 23, 2005, at 10..... 19

1.5 Patrick Lee & Robert P. George, *Human-Embryo Liberation*, *Nat’l Rev.* (Jan. 25, 2006 1:29 p.m.), <https://www.nationalreview.com/2006/01/human-embryo-liberation-patrick-lee-rob-ert-p-george/> 23

1.6 Sherry F. Colb & Michael C. Dorf, *Beating Hearts: Abortion and Animal Rights* 13–44 (2016) 29

2 Oct. 2: Futures

2.1 Don Marquis, *Why Abortion Is Immoral*, 86 *J. Phil.* 183 (1989) 63

2.2 Colb & Dorf, *Beating Hearts* 96–115..... 83

2.3 J Savulescu, *Abortion, Embryo Destruction and the Future of Value Argument*, 28 *J. Med. Ethics* 133 (2002) 105

2.4 D Marquis, *Savulescu’s Objections to the Future of Value Argument*, 31 *J. Med. Ethics* 119 (2005) 109

3 Oct. 23: Autonomy	
3.1	Judith Jarvis Thomson, <i>A Defense of Abortion</i> , 1 Phil. & Pub. Aff. 47 (1971) 113
3.2	John Finnis, <i>The Rights and Wrongs of Abortion: A Reply to Judith Thomson</i> , 2 Phil. & Pub. Aff. 117 (1973) 133
3.3	Don Marquis, <i>Manninen’s Defense of Abortion Rights Is Unsuccessful</i> , 10 Am. J. Bioethics 56 (2010)..... 145
3.4	Judith Jarvis Thomson, <i>Rights and Deaths</i> , 2 Phil. & Pub. Aff. 146 (1973)..... 147
3.5	I. Glenn Cohen, <i>Artificial Wombs and Abortion Rights</i> , Hastings Ctr. Rep., July 1, 2017 153

POLICY

4 Nov. 6: Equality	
4.1	Lawrence B. Finer et al., <i>Reasons U.S. Women Have Abortions</i> , 37 Persp. on Sexual & Reprod. Health 110 (2005)..... 155
4.2	Rachel K. Jones & Jenna Jerman, <i>Population Group Abortion Rates and Lifetime Incidence of Abortion: United States, 2008–2014</i> , 107 Am. J. Pub. Health 1904 (2017) 161
4.3	Sally Markowitz, <i>Abortion and Feminism</i> , in <i>The Problem of Abortion</i> 194 (Susan Dwyer & Joel Feinberg eds., 3d ed. 1997) 171
4.4	Reva B. Siegel, <i>Abortion as a Sex Equality Right</i> , in <i>Mothers in Law</i> (Martha Albertson Fineman & Isabel Karpin eds., 1995)..... 181
4.5	Robin West, <i>Liberalism and Abortion</i> , 87 Geo. L.J. 2117 (1999) 213
4.6	George A. Akerlof, Janet L. Yellen & Michael L. Katz, <i>An Analysis of Out-of-Wedlock Childbearing in the United States</i> , 109 Q.J. Econ. 277 (1996) 245
5 Jan. 15: Society	
5.1	Gallup, <i>Abortion: Gallup Historical Trends</i> , https://news.gallup.com/poll/1576/abortion.aspx (viewed July 25, 2019) (<i>skim</i>)..... 263
5.2	Judith Jarvis Thomson & Peter de Marneffe, <i>Abortion: Whose Right?</i> , Boston Review, Summer–Fall 1995 293
5.3	The Pollitt-Douthat Debate..... 305
5.4	Michelle Alexander, <i>My Rapist Apologized</i> , N.Y. Times, May 26, 2019, at SR1 341 [continued]

5.5	Ariana Eunjung Cha, <i>Babies with Down Syndrome Are Put on Center Stage in the U.S. Abortion Fight</i> , Wash. Post, March 4, 2018	347
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LAW

6 Feb. 12: Roe

6.1	<i>Pierce v. Soc’y of Sisters</i> , 268 U.S. 510 (1925).....	351
6.2	<i>Buck v. Bell</i> , 274 U.S. 200 (1927).....	365
6.3	<i>Griswold v. Connecticut</i> , 381 U.S. 479 (1965).....	371
6.4	<i>Eisenstadt v. Baird</i> , 405 U.S. 438 (1972)	399
6.5	<i>Roe v. Wade</i> , 410 U.S. 113 (1973).....	417

7 Mar. 18: Responses

7.1	John Hart Ely, <i>The Wages of Crying Wolf: A Comment on Roe v. Wade</i> , 82 Yale L.J. 920 (1973).....	451
7.2	What <i>Roe v. Wade</i> Should Have Said: The Nation’s Top Legal Experts Rewrite America’s Most Controversial Decision (Jack M. Balkin ed., 2005) (<i>read as much as seems relevant</i>)	

8 Apr. 15: Casey

8.1	<i>Planned Parenthood of Southeastern Pennsylvania v. Casey</i> , 505 U.S. 833 (1992)	481
8.2	Michael Stokes Paulsen, <i>The Worst Constitutional Decision of All Time</i> , 78 Notre Dame L. Rev. 995 (2003)	527
8.3	Neal Devins, <i>How Planned Parenthood v. Casey (Pretty Much) Settled the Abortion Wars</i> , 118 Yale L.J. 1318 (2009)	577