Philosophy and Theology

In the *Washington Post* Fact Checker, Michelle Ye Hee Lee investigates the question, "Is the United States one of seven countries that 'allow elective abortions after 20 weeks of pregnancy?'" Although "this statistic seemed dubious at first, because it seemed extreme for just seven countries out of 198 to allow elective abortions after 20 weeks of pregnancy … upon further digging, the data back up the claim."[1] Abortion law in the United States is more extreme than in almost every nation on earth.

Erwin Chemerinsky and Michele Goodwin make a case in their fifty-nine-page article "Abortion: A Woman's Private Choice" that abortion law in the United States is not radical enough. They hold that legalized abortion in the United States is in "serious jeopardy" and that we need to act now not only to preserve the law as it stands but to expand abortion rights: "So-called 'informed consent' laws, special waiting periods for abortions, and prohibitions of 'partial birth abortions' all should be deemed unconstitutional." Moreover, the government should fund abortions, since failure to pay for abortion is "coercing motherhood upon poor, pregnant women."[2] How do they justify this view?

According to Chemerinsky and Goodwin, there is no consensus on when human life begins, and science does not clarify the matter:

> Why leave the choice as to abortion to the woman rather than to the state? First, there was then, and is now, no consensus as to when human life begins. As Professor Tribe explains: "The reality is that the 'general agreement'

A shorter version of this essay appeared as "The Ostrich Defense of Abortion," *The Public Discourse*, February 22, 2018, http://www.thepublicdiscourse.com.

1. Michelle Ye Hee Lee, "Is the United States One of Seven Countries That 'Allow Elective Abortions after 20 Weeks of Pregnancy?,'" *Washington Post*, October 9, 2017, https://www.washingtonpost.com/.

2. Erwin Chemerinsky and Michele Goodwin, "Abortion: A Woman's Private Choice," *Texas Law Review* 95.6 (May 2017): 1238.

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> posited … simply does not exist." In other words, "some regard the fetus as merely another part of the woman's body until quite late in pregnancy or even until birth; others believe the fetus must be regarded as a helpless human child from the time of its conception." Moreover, according to Professor Tribe, "these differences of view are endemic to the historical situation in which the abortion controversy arose." The choice of conception as the point at which human life begins, which underlies state laws prohibiting abortion, thus was based not on consensus or science, but religious views.[3]

Chemerinsky and Goodwin show no awareness of the relevant scientific research on the beginning of an individual human being's life. Patrick Lee and Melissa Moschella summarize the relevant scientific findings:

> The following are typical examples—only three of the many, many we could cite. These are from standard texts by embryologists, developmental biologists, and microbiologists:
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> "Human life begins at fertilization, the process during which a male gamete or sperm unites with a female gamete or oocyte (ovum) to form a single cell called a zygote. This highly specialized, totipotent cell marked the beginning of each of us as a unique individual." "A zygote is the beginning of a new human being (i.e., an embryo)." Keith L. Moore, *The Developing Human: Clinically Oriented Embryology*, 7th edition.
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> "Fertilization is the process by which male and female haploid gametes (sperm and egg) unite to produce a genetically distinct individual." Signorelli et al., Kinases, phosphatases and proteases during sperm capacitation, *Cell Tissue Research*.
>
> "Although life is a continuous process, fertilization (which, incidentally, is not a 'moment') is a critical landmark because, under ordinary circumstances, *a new, genetically distinct human organism is formed* when the chromosomes of the male and female pronuclei blend in the oocyte" (emphasis added; Ronan O'Rahilly and Fabiola Mueller, *Human Embryology and Teratology*, 3rd edition. Many other examples could be cited.[4]

The recognition that an individual human life begins at conception is a matter of science, not religious views or political ideology.

In another example, Sarah Knapton, the science editor of the *Telegraph* (London), notes, "Human embryos have been kept alive in a petri dish for an unprecedented 13 days, allowing scientists to finally see what happens in the mysterious days after implantation in the womb."[5] Only if they are *already alive* can human embryos be *kept alive* for longer than ever before. Honest and informed defenders of abortion often concede that an individual living human being comes into existence at completed fertilization. For example, Kate Greasley writes, "All embryos and fetuses are cer-

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3. Ibid., 1228.

4. Patrick Lee and Melissa Moschella, "Embryology and Science Denial," *Public Discourse*, November 8, 2017, http://www.thepublicdiscourse.com/, original emphasis.

5. Sarah Knapton, "Human Embryos Kept Alive in Lab for Unprecedented 13 Days So Scientists Can Watch Development," May 4, 2016, http://www.telegraph.co.uk/.

tainly human beings, in that they are all individual human organisms."[6] By contrast, Chemerinsky and Goodwin exhibit science denial. It is not a sign of intellectual rigor to simply ignore scientific evidence.

Neither is it a sign of intellectual rigor to distort your opponents' positions. Chemerinsky and Goodwin write, "Legislatures could cloak religious objections to abortion in secular arguments (and often they do this) by claiming that potential human life exists at the point of conception."[7] They cite no scholar who holds this position. In fact, I am aware of no pro-life advocate who claims that abortion is wrong because it kills *potential* human life. Rather, critics hold that abortion kills an actual human being with potential.

Chemerinsky and Goodwin's misrepresentation continues: "According to this line of argument, absent an abortion, all or the overwhelming majority of pregnancies develop fetuses to term and produce babies. This is woefully misguided and inaccurate."[8] After extensively reading the literature on abortion, I know of no one who holds this position. Chemerinsky and Goodwin go on to critique this straw man by noting,

> Roughly 10%–20% of known pregnancies will spontaneously terminate, resulting in miscarriages. Moreover, two-thirds "of all human embryos fail to develop successfully," and terminate before women even know they are pregnant. Even in the most controlled, hormone-rich circumstances, such as in vitro fertilization—over 65% of the embryos end in demise. According to the most recent Centers for Disease Control and Prevention (CDC) data on this issue, only 23.5% of implanted embryos result in normal live births (for women over thirty-five years old, the chances of pregnancy resulting in live birth are dramatically lower). In other words, there is not a probable chance that but for an abortion there will be a baby resulting from conception. Instead, there may be a reasonable chance—but clearly no more than that—that there will be a baby but for an abortion.[9]

This is a red herring argument. Embryos that spontaneously abort before women even know they are pregnant are completely irrelevant to the abortion debate, since abortion cannot be chosen until pregnancy is known. Likewise, the fact that only 23.5 percent of embryos created through IVF survive to birth after implantation is irrelevant. Women who go to the trouble and expense of IVF want to be pregnant. Might some of these women change their minds mid-pregnancy? Perhaps, but such abortions are possible only if the embryos do not spontaneously miscarry. If Chemerinsky and Goodwin are correct that 10 to 20 percent of known pregnancies spontaneously terminate, that leaves 80 to 90 percent of known pregnancies which continue to live birth. In other words, there is an excellent chance that a known pregnancy will result in a newborn unless an abortion takes place.

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6. Kate Greasley and Christopher Kaczor, *Abortion Rights: For and Against* (New York: Cambridge University Press, 2018), 6.

7. Chemerinsky and Goodwin, "Abortion," 1229.

8. Ibid.

9. Ibid.

Chemerinsky and Goodwin's argument from spontaneous miscarriage is a red herring for another reason. The probability of an individual's survival is irrelevant to the question of whether that individual has the right to live. In some times and places, a majority of newborns died. In some times and places, a majority of AIDS victims did not survive. The likelihood of an individual's survival is irrelevant to the question of whether that individual has basic human rights.

Chemerinsky and Goodwin go on to point out that arguments made against abortion on the basis of "potential life" could just as well apply to contraception, which also acts against potential life: "Arguments framed in protecting 'potential life' to justify a ban on contraceptives make as little sense [as] they do when applied to abortion. However, the Catholic Church takes this position."[10]

In fact, the Catholic Church argues that abortion is wrong because it kills an actual human being, not "potential life." As the *Catechism of the Catholic Church* notes, not potential but actual "human life must be respected and protected absolutely from the moment of conception. From the first moment of his existence, a human being must be recognized as having the rights of a person—among which is the inviolable right of every innocent being to life" (n. 2270). The Catholic Church does indeed oppose contraception, but not because it prevents "potential life," a term that does not appear in the Catechism. Rather, "this particular doctrine, expounded on numerous occasions by the Magisterium, is based on the inseparable connection, established by God, which man on his own initiative may not break, between the unitive significance and the procreative significance which are both inherent to the marriage act" (n. 2366). Although the Church condones neither abortion nor contraception, the Church does not hold that they are wrong for the same reason.

After examining a straw man version of one pro-life argument, Chemerinsky and Goodwin conclude, "When examined closely, as we have here, Professor Tribe's argument that there is no secular basis for a prohibition on abortion and contraception makes profound sense."[11] It is not simply that Chemerinsky and Goodwin misunderstand pro-life views articulated in the scholarly literature. Entirely missing from their analysis is any engagement with—indeed they show no awareness of—the many secular arguments against abortion advanced over the decades by scholars such as Don Marquis, Elizabeth Anscombe, Robert George, Patrick Lee, and Francis Beckwith.[12]

10. Ibid., 1229–1230.

11. Chemerinsky and Goodwin, "Abortion," 1230.

12. Don Marquis, "Why Abortion is Immoral," *Journal of Philosophy* 86.4 (April 1989): 183–202; Mary Geach and Luke Gormally, eds., *Human Life, Action and Ethics: Essays by G.E.M. Anscombe* (Exeter, UK: Imprint Academic, 2005); Robert P. George and Christopher Tollefsen, *Embryo: A Defense of Human Life* (New York: Doubleday, 2008); Patrick Lee, *Abortion and Unborn Human Life*, 2nd ed. (Washington, DC: Catholic University of America Press, 2010); and Francis J. Beckwith, *Defending Life: A Moral and Legal Case against Abortion Choice* (Cambridge, UK: Cambridge University Press, 2007). See also, for example, Christopher Kaczor, *The Ethics of Abortion: Women's Rights, Human Life, and the Question of Justice*, 2nd ed. (New York: Routledge, 2015). Although its publication is too recent for them to have considered it in their original essay, it would be interesting to see how Chemerinsky and Goodwin would respond to Joshua J. Craddock, "Protecting Prenatal

In ignoring such authors, Chemerinsky and Goodwin provide an ostrich defense of abortion. It is easy to think that the conclusion in *Roe v. Wade* is "unquestionably correct" when one simply ignores the questions raised by critics.

Chemerinsky and Goodwin seem to regard the fetus as merely another part of the woman's body.[13] They confuse being *inside* someone's body with being a *part* of someone's body. An embryo in vitro is inside the glass Petri dish but is not a part of the glass petri dish. Similarly, a prenatal human being is inside the woman's body but is not a part of her body. The prenatal human being often has a different blood type, race, and sex than the woman. Are we supposed to believe that the body of a pregnant woman has four legs, two heads, and, half the time, a penis? If the human being in utero is simply a part of the woman's body, how can we account for cases, such as some car accidents, in which the woman dies but her child survives? Barring transplantation, parts of a person's body do not survive her death.

Moreover, our right to decide what happens to our bodies is limited in innumerable ways. We cannot appear naked in public, use methamphetamine, have sex in the street, or sell ourselves into slavery. Our moral and legal rights to use our bodies are limited also by the bodies of other people. There is no right to use our bodies in a way that harms another human being's body. Chemerinsky and Goodwin rightly site the Tuskegee Study of Untreated Syphilis as a shameful experiment on a vulnerable human population. But they are not consistent advocates for vulnerable human populations, since they wish to exclude human beings in utero from legal protection.

Chemerinsky and Goodwin point out that the state cannot compel a person to use her body to keep another person alive. For example, it is illegal to force someone to donate blood or bone marrow, even if it is necessary to keep another person, even one's own son or daughter, alive: "Just as the law does not require individuals to donate body organs to save other people's lives, so should the state not require a woman to donate her body, against her will, to house a fetus."[14] So, they argue, the state cannot force a woman to keep the human being in utero alive by forbidding abortion.

The principle at issue—forcing one person to use her body for the purposes of another person—does not support abortion, unless one assumes that the fetal person is a nonentity. If it is wrong to force one human being to give up some of her blood in order to save the life of another human being, it is even more wrong to force one human being to give up all of her blood, her organs, and her life itself so that another person can be free of pregnancy. The prenatal human being should not have to die so that another person can live as she wants. Abortion is not, after all, just the removal of life support, but the intentional killing of the prenatal human being as a means or as an end.

Persons: Does the Fourteenth Amendment Prohibit Abortion?," *Harvard Journal of Law and Public Policy* 40.2 (May 2017): 539–572.

13. Chemerinsky and Goodwin, "Abortion," 1197, 1200, 1211, 1226.

14. Ibid., 1235.

Moreover, Chemerinsky and Goodwin show insufficient familiarity with the relevant literature defending abortion: "Although everyone can agree that an individual capable of surviving outside the womb should be protected, consensus never will be reached as to the status of the fetus."[15] Many defenders of abortion disagree. Michael Tooley, Peter Singer, Alberto Giubilini, Francesca Minerva, and others have defended both abortion and infanticide on the grounds that both the newborn and the prenatal human being are not "persons" in the ethically relevant sense.[16]

Indeed, many defenses of infanticide over the last forty years suggest that consensus may never be reached on the status of the newborn.[17] If we adopt the principle endorsed by Chemerinsky and Goodwin—that is, lack of consensus grounds the liberty to terminate young human life—then we should endorse both abortion and infanticide. If, on the other hand, the lack of consensus on newborn personhood is irrelevant to respecting the life of every infant and protecting it in law, then lack of consensus would also seem irrelevant to fetal personhood.

Chemerinsky and Goodwin repeat the argument that criminalizing abortion will be especially burdensome for poor women, a disproportionate number of whom are minorities. If abortion is made illegal, rich white women will still be able to obtain abortions by going abroad.[18] Indeed, the rich have an easier time evading all laws than do the poor. If O.J. Simpson had been economically disadvantaged and unknown, he would probably have been convicted of murder. Rich people can fly to other countries for the sake of evading US law against child prostitution, but it hardly follows from this fact that we should decriminalize child prostitution. Rich white women are less likely to get traffic tickets than poor black women, but we should not therefore abolish traffic laws. Legal justice should be blind to race and class, but this is a problem for the legal system in general and, therefore, irrelevant to laws about abortion specifically.

Chemerinsky and Goodwin's defense of legal abortion does not take into account, let alone engage and refute, scholarly pro-life arguments. They highlight the risks that women will encounter if abortion is criminalized and ignore the harms that abortion causes women. They repeat the claim that abortion is less dangerous than childbirth and ignore evidence to the contrary.[19] Chemerinsky and Goodwin's article on abortion attacks straw men, employs red herrings, and ignores relevant evidence. "Abortion: A Woman's Private Choice" is very much in the spirit of *Roe*.

Christopher Kaczor

15. Ibid., 1234.

16. Michael Tooley, "Abortion and Infanticide," *Philosophy and Public Affairs* 2.1 (1972): 37–65; Peter Singer, *Writings on an Ethical Life* (New York: Ecco, 2000), 160–161; and Alberto Giubilini and Francesca Minerva, "After-Birth Abortion: Why Should the Baby Live?," *Journal of Medical Ethics* 39.5 (May 2013): 261–263, doi: 10.1136/medethics-2011-100411.

17. To get some sense of the range of debate and the lack of consensus on the issue of newborn personhood, see the May 2013 issue of the *Journal of Medical Ethics*.

18. Chemerinsky and Goodwin, "Abortion," 1191, 1235–1236.

19. See, for example, my Autumn 2014 column, 561–566.

Philosophy Abstracts

Bioethics

Christopher Cowley, **A defence of conscientious objection in medicine: a reply to Schuklenk and Savulescu**, *Bioethics* 30.5 (June 2016): 358–364, doi:10.1111/bioe.12233 • In a recent (2015) *Bioethics* editorial, Udo Schuklenk argues against allowing Canadian doctors to conscientiously object to any new euthanasia procedures approved by Parliament. In this he follows Julian Savulescu's 2006 *BMJ* paper which argued for the removal of the conscientious objection clause in the 1967 UK Abortion Act. Both authors advance powerful arguments based on the need for uniformity of service and on analogies with reprehensible kinds of personal exemption. In this article I want to defend the practice of conscientious objection in publicly funded healthcare systems (such as those of Canada and the UK), at least in the area of abortion and end-of-life care, without entering either of the substantive moral debates about the permissibility of either. My main claim is that Schuklenk and Savulescu have misunderstood the special nature of medicine, and have misunderstood the motivations of the conscientious objectors. However, I acknowledge Schuklenk's point about differential access to lawful services in remote rural areas, and I argue that the health service should expend more to protect conscientious objection while ensuring universal access.

Alan Holland, **The case against the case for procreative beneficence**, *Bioethics* 30.7 (September 2016): 490–499, doi: 10.1111/bioe.12253 • Julian Savulescu's principle of procreative beneficence (PB) states that, other things being equal, and of the possible children they could have, a couple contemplating procreation are morally obliged to (attempt to) procreate the child with the best chance of the best life. The critique of PB is in three parts. The first part argues that PB rests on a particular conception of the good life, and that alternative conceptions of the good life afford no obvious way in which PB can be rendered operational. The second part identifies six flaws in the attempt to justify PB in terms of a particular conception of the good life according to which the best life is understood as the life with the most well-being. The third part explores some of the uncertainties that surround the potential implications and ramifications of adopting the principle. The overall purpose is not to demonstrate that the principle is untenable, but only to demonstrate that no compelling reason has yet been given for adhering to it.

Melissa Moschella, **Integrated but not whole? Applying an ontological account of human organismal unity to the brain death debate**, *Bioethics* 30.8 (October 2016): 550–556, doi: 10.1111/bioe.12258 • As is clear in the 2008 report of the President's Council on Bioethics, the brain death debate is plagued by ambiguity in the use of such key terms as "integration" and "wholeness." Addressing this problem, I offer a plausible ontological account of organismal unity drawing on the work of Hoffman and Rosenkrantz, and then apply that account to the case of brain death, concluding that a brain dead body lacks the unity proper to a human organism, and has therefore undergone a substantial change. I also show how my view can explain hard cases better than one in which biological integration (as understood by Alan Shewmon and the President's Council) is taken to imply ontological wholeness or unity.

Harvard Journal of Law and Public Policy

Joshua J. Craddock, **Protecting prenatal persons: does the Fourteenth Amendment prohibit abortion?**, *Harv J Law Public Policy* 40.2 (May 2017): 539–572 • What should the legal status of human beings in utero be under an originalist interpretation of

the Constitution? Other legal thinkers have explored whether a national "right to abortion" can be justified on originalist grounds. Assuming that it cannot, and that *Roe v. Wade* and *Planned Parenthood of Southeastern Pennsylvania v. Casey* were wrongly decided, only two other options are available. Should preborn human beings be considered legal "persons" within the meaning of the Fourteenth Amendment, or do states retain authority to make abortion policy? The late Justice Scalia famously argued for the latter position and pledged he would strike down a federal ban on abortion. But is this view consistent with the original meaning of the term "person"? Using originalist interpretive methods, this paper argues that preborn human beings are legal "persons" within the meaning of the Fourteenth Amendment.

Kennedy Institute of Ethics Journal

Ben Bronner, **The total artificial heart and the dilemma of deactivation**, *Kennedy Inst Ethics J* 26.4 (December 2016): 347–367, doi: 10.1353/ken.2016.0034 • It is widely believed to be permissible for a physician to discontinue any treatment upon the request of a competent patient. Many also believe it is never permissible for a physician to intentionally kill a patient. I argue that the prospect of deactivating a patient's artificial heart presents us with a dilemma: either the first belief just mentioned is false or the second one is. Which horn of the dilemma we choose has significant implications for contemporary medical ethics.

Govert den Hartogh, **Sedation until death: are the requirements laid down in the guidelines too restrictive?**, *Kennedy Inst Ethics J* 26.4 (December 2016) 369–397, doi: 10.1353/ken.2016.0035 • Guidelines that have been published on sedation until death take the following positions: the patient's consciousness should not be lowered more than is necessary for preventing her from suffering; it must be impossible to alleviate the suffering in any alternative way; and the patient's mere preference for dying peacefully cannot justify the procedure. Some guidelines also stipulate that purely existential suffering cannot do so either. I will discuss the (few) arguments that can be found in the literature for these restrictions. I will focus in particular on the argument that it is either a vital interest, or even a duty, of the patient to preserve consciousness as long as possible at all times. None of these arguments turn out to be convincing. On the other hand, deviation from the requirements can be justified only by appealing to the priorities of the patient. These should therefore have been discussed in detail at an earlier stage of the patient's illness.

Bertha A. Manninen, **Sustaining a pregnant cadaver for the purpose of gestating a fetus: a limited defense**, *Kennedy Inst Ethics J* 26.4 (December 2016) 399–430, doi: 10.1353/ken.2016.0036 • I argue that there are times it is morally permissible to keep a brain-dead pregnant woman on life support for the sole purpose of allowing her fetus to gestate until it is able to be born as healthy as possible. While a woman should not be kept on such support if she has clearly expressed that this would contradict her wishes, she may be kept on such support if she did not make her wishes known at all. Moreover, there are reasons why her family's wishes alone may not suffice to override the fetus' interest in continued existence. The most difficult case to assess is when the woman had previously made it known she would not want to be sustained on artificial life support, but was not explicit concerning whether she would maintain that stance in the event of her pregancy. Finally, I will show why my position is compatible with a pro-abortion-choice perspective.

Metaphilosophy

Sami Pihlström, **Ethical unthinkabilities and philosophical seriousness**, *Metaphilosophy* 40. 5 (October 2009): 656–670, doi: 10.1111/j.1467-9973.2009.01614.x • This article defends a controversial metaphilosophical thesis: it is not immediately obvious that "the best argument wins" in philosophy. Certain philosophical views, for example, extremely controversial ethical positions, may be intolerable and impossible to take seriously as contributions to

ethical discussion, irrespective of their argumentative merits. As a case study of this metaphilosophical issue, the article discusses David Benatar's recent thesis that it is, for everyone, harmful to exist. It is argued that ethical and cultural "unthinkabilities" set limits to philosophical reasoning that even the most insightful arguments cannot transcend.

New Bioethics

Toni Saad, **We are not gametes: distinguishing between abortion and contraception**, *New Bioeth* 22.3 (November 2016):202–211, doi:10.1080/20502877.2016.1238581 • It is sometimes argued that interruptions of the life's continuum which have the same end result are morally equivalent. In other words, abortion and contraception are ethically identical because both prevent birth and the development of persons. We will examine two major arguments in favour of this thesis: (1) all things that are potential persons have equal moral status. Hence preventing fertilisation of gametes is morally identical to destroying an embryo. (2) All interruptions of the continuous process which leads to the creation of a person are morally equivalent; abortion and contraception are morally indistinguishable. These arguments challenge those who distinguish between abortion and contraception. It is argued, however, that there is good reason to doubt their validity. Furthermore, an argument is offered which confirms the ethical boundary between abortion and contraception on the basis that an embryo is something greater and other than the sum of its constituent gametes.

Clara Watson, **Womb rentals and baby selling: does surrogacy undermine the human dignity and rights of the surrogate mother and child?**, *New Bioeth* 22.3 (November 2016): 212–228, doi:10.1080/20502877.2016.1238582 • The question of surrogacy has dominated much of the European human rights agenda over the last two years; at the time writing, the Parliamentary Assembly of the Council of Europe hopes to adopt a resolution on surrogacy in the coming months. There is, however, danger in taking action at a supranational level to address the European "surrogacy problem" without first honestly answering the question: does surrogacy undermine the human dignity and rights of the surrogate mother and child? This paper presents the case that surrogacy, by its nature, necessarily undermines the human dignity of both the woman and child born through such arrangements, and thus neither commercial nor altruistic surrogacy can ever be justified.

Perspectives in Biology and Medicine

Matthew W. McCarthy, Elizabeth Reis, and Joseph J. Fins, **Transgender patients, hospitalists, and ethical care**, *Perspect Biol Med* 59.2 (Spring 2016): 234–245, doi: 10.1353/pbm.2017.0008 • Meeting the needs of current and future transgender individuals is a pressing medical concern. The transgender community faces unique health issues, including an elevated risk of HIV infection in male-to-female transgender people and high rates of violence, suicide, and substance abuse. Unfortunately, many trans people avoid seeking treatment because they have experienced discrimination, hostility, and refusal of medical care because of their status. Health-care workers who are not transphobic simply may not understand enough about the medical process of transitioning to adequately care for these patients. Hospitalists—specialists in inpatient medicine—are uniquely positioned to change this trajectory. We believe that as this burgeoning cohort of doctors takes on an expanded role in medicine, they should take the lead in the care of hospitalized transgender patients and in providing education to trainees about medical issues pertinent to this group of underserved and marginalized patients.

Philosophy and Phenomenological Research

Jason Marsh, **Quality of life assessments, cognitive reliability, and procreative responsibility**, *Philos Phenomenol Res* 89.2 (September 2014): 436–466, doi:10.1111/phpr.12114 • Recent work in the psychology of happiness has led some to conclude that we are unreliable assessors of our lives and that skepticism about whether we are happy is a genuine possibility worth taking very seriously. I argue that such claims, if true,

have worrisome implications for procreation. In particular, they show that skepticism about whether many if not most people are well positioned to create persons is a genuine possibility worth taking very seriously. This skeptical worry should not be confused with a related but much stronger version of the argument, which says that all human lives are very bad and not worth starting. I criticize the latter stance, but take seriously the former stance and hope it can be answered in future work.

Texas Law Review

Erwin Chemerinsky and Michele Goodwin, **Abortion: a woman's private choice**, *Tex Law Rev* 95.6 (May 2017): 1189–1247 • The uncertainty about abortion rights makes it especially important to provide a strong constitutional foundation and the best possible constitutional defense for their protection. That is our purpose in this article, because abortion rights in the United States are in serious jeopardy. Despite the fact that a legal abortion is medically safer than carrying a pregnancy to term in the United States, that right may soon be more illusory than real. If *Roe v. Wade* is overturned, lessons from the era preceding that landmark decision underscore the broad harms women will encounter, particularly because 49% of pregnancies in the United States are unintended. In traditionally conservative states, the rates of unintended pregnancies are even higher: 54% in Texas, 55% in Alabama and Arkansas, 60% in Louisiana, and 62% in Mississippi, among others. Yet these states also have some of the highest rates of maternal mortality in the developing world: Texas ranks worst in the developing world on maternal mortality. The article proceeds in three parts. First, it explains the flawed foundation for the protection of reproductive rights under the Constitution, noting that the problem began in *Griswold v. Connecticut*, the first case to protect reproductive freedom. Second, it seeks to reconceptualize abortion rights and underscore the value and relevance of a reproductive justice framework, including taking serious account of women's lived lives. Finally, in Part III we discuss what it would mean for abortion to be regarded as a private choice. In this part, we identify three implications: (a) restoring strict scrutiny to examining laws regulating abortions, which would mean that the government must be neutral between childbirth and abortion; (b) preventing the government from denying funding for abortions when it pays for childbirth; and (c) invalidating the countless types of restrictions on abortion—often referred to as "targeted restrictions of abortion providers"—that have the purpose and effect of limiting women's access to abortion rather than promoting safety and health. We especially focus on "informed consent" and waiting period laws and show that they are inconsistent with regarding abortion as a private choice for each woman.