

Do we need abortion laws? A legal perspective

Joanna Erdman
Schulich School of Law, Dalhousie University
@joannaerdman

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Do we need abortion laws?

No.

Any questions?

Need is a question of justification

States may enact abortion laws that limit human rights to protect public morals or public health, but

When laws seek to achieve these aims in ways that are:

Arbitrary

Overreaching

Disproportionate

The laws are *unnecessary* and therefore *unjustified*.

Need is a question of justification

There is no objective in law that justifies any and all means of its attainment.

Abortion laws must be rational, they must be minimal, they must be proportionate to their ends.

**These are the principles of necessity.
Most abortion laws run afoul of them.**

Objective

To make the case against abortion laws on human rights principles of need.

The need for rational, minimal and proportionate laws.

Principle: Laws cannot be arbitrary

No connection between the law & its aims

- Law = Time limits & grounds
- Aim = Protect prenatal life, public morals

What is the connection between time & morality?

- Morality of abortion changes with time
- Claim: Time limits mark morally significant acts

Is it rational to protect prenatal life by the hand of a clock?

There are good reasons to think not.

- No obvious moral significance, rarely assigned in law
- Great variation suggesting arbitrariness in setting
- Problems of definition: length of pregnancy/gestation, from LMP/conception
- Problems of measurement: routine observation, physical exam, ultrasound, patient's word

The arbitrariness of time limits

Time limits are too **unclear** in their **meaning**, and too **imprecise** in their **measurement** to create any defensible moral line.

Their arbitrariness breeds abuse of power and fear of its exercise.

Principle: Laws cannot overreach their ends

Laws that interfere with conduct that bears no connection to the ends they seek.

Many laws seek to protect health & well being

- Welcomed if necessary to achieve this end
- Reflect real differences in service delivery needs & in the real experiences of abortion

The overreach of supply side limits

Abortion is targeted for **excessive regulation** due to stigma and falsehoods of inherent risk

Unnecessary provider restrictions outlaw safe practices & shape abortion practice in harmful ways.
(practicing with an eye to the law)

Law frustrates its own public health ends by disqualifying qualified providers.

Principle: Laws cannot be disproportionate to their ends. Laws must have perspective.

The harms of demand side regulation in disrupting access & abusing people

- Extreme hardship
- Stigma
- Structural injustice

Conclusion

Conservatism of legal analysis

- In critique we fold back into logic of law

Law as normative, even prescriptive

- Legality and safety as coterminous
- Law's authority and capture

We give law too much imaginative power

What do we need from law?

Every person has the right to a safe and dignified abortion informed by the values and needs most important to them.

This is a law worth defending.