

SYLLABUS

General Theme and Focus

This course will explore the boundaries between the claim of the individual to liberty and the enforcement by society of rules to protect the common good.

As lawyers in training, you have learned how “the law” balances these two interests, sometimes favoring the rights of the individual and sometimes favoring the interest of society in preventing individuals from acts that would harm the common good.

This course will focus on a particular problem arising from the development of new medical technolog(ies) and the successful assertion by individuals of a right to “reproductive autonomy”: the law of ART – assisted reproductive technology.

There will be four areas of focus in the materials we will read:

- I. The scientific and medical basis for ART
- II. What ART practices (if any) should be permitted, and which (if any) forbidden?
- III. If at least some ART practices are permitted, what degree of regulation should be imposed?
- IV. To what extent (if any) should public funding be available for ART?

TEXT

The source material we will be using is either in the public domain or through Westlaw / Lexis. I have placed the beginnings of a .pdf file on line, here: http://guweb2.gonzaga.edu/~dewolf/Just_Soc12/Justice_Society_2012.pdf One primary source is a report by the President’s Commission on Bioethics, REPRODUCTION AND RESPONSIBILITY, reflecting a relatively restrictive attitude toward ART. By contrast, most of the material published in the articles database of Westlaw (JLR), is decidedly positive toward ART. Your first assignment will be to read both part of the Bioethics Report as well as an example of the perspective that would be less restrictive. We will read a variety of sources, attempting to answer the four questions previously posed.

GRADING

There will be a midterm on Feb. 29 that will account for 30% of the grade. The balance will be based upon papers written to address a more specific aspect of the topic of ART. In addition, each student will be expected to make an in-class presentation of their research and will be assigned to comment on other students’ papers.

Class	Date	.pdf Pages	Reading Assignment
1	1/11	2-47	Reproduction and Responsibility [“R&R”], Chapter 1 (pp. 1-20); Goodwin & Duke, <i>Capacity and Autonomy: A Thought Experiment on Minors’ Access to Assisted Reproductive Technology</i> , 34 HARV. J. L. & GENDER 503 (Summer 2011)
2	1/18	48-73	“Assisted Reproduction,” R&R, pp. 23-35; skim Kohm, <i>A Hitchhiker’s Guide To ART: Implementing Self-Governed Personally</i>

			<i>Responsible Decision-Making In The Context Of Artificial Reproductive Technology</i> , 39 Cap. U. L. Rev. 413
3	1/23		“Ethical Considerations,” R&R pp. 36-46
4	1/25	74-86	COMPENDIUM OF THE SOCIAL DOCTRINE OF THE CHURCH, ¶¶ 209 – 245
5	1/30		“Current Regulation,” R&R pp. 46-87
6	2/1	87-146	“Screening and Selection for Genetic Conditions and Traits,” R&R, pp. 89-104; skim Macintosh, <i>Brave New Eugenics: Regulating Assisted Reproductive Technologies in the Name of Better Babies</i> , 2010 U. ILL. J. L. TECH. & POL’Y 257 (2010)
7	2/6		“Modification of Traits and Characteristics,” R&R pp. 105-121
8	2/8		“Research Involving In Vitro Human Embryos,” R&R pp. 123-145
9	2/13		“Commerce,” R&R pp. 147-166
10	2/15		“Diagnostic Survey: Summary and Conclusion,” pp. 167-171; “Findings,” pp. 173-179; “Policy Options,” pp. 183-204
11	2/21		“Recommendations,” pp. 205-224
12	2/22	147-153	Stuart Green, <i>Introduction: Feinberg’s Moral Limits, and Beyond</i> , 5 BUFF. CRIM. L. REV. 1 (2001)
13	2/27	154-188	Steven D. Smith, <i>Is the Harm Principle Illiberal?</i> 51 AM. J. JURIS. 1 (2006)
14	2/29		Midterm
15	3/1		Presentation of Paper Topics
16	3/5		Outline of Paper Topic Due
17	3/7		Revised Outline of Paper Due
			Spring Break
18	3/19		Paper Presentation 1
19	3/21		Paper Presentation 2
20	3/26		Paper Presentation 3
21	3/28		Paper Presentation 4
22	4/2		Paper Presentation 5
23	4/4		Paper Presentation 6
24	4/11		Paper Presentation 7
25	4/16		Paper Presentation 8

26	4/23		Makeup Class for Missed Presentations
27	4/25		Concluding Discussion of ART issues.