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Protecting women, saving the fetus: Symbolic politics and mandated abortion counseling

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SYNOPSIS

Roe v. *Wade* (1973) represented a major US pro-choice victory, but feminists have since noted the chipping away of abortion rights. While *Roe* did not protect these rights absolutely, subsequent Court decisions increased state power to regulate abortion. Several states have enacted informed consent counseling laws for abortion. These laws theoretically protect patient autonomy, but critics argue that they are detrimental to women's decision-making. Despite this commonly reached conclusion, there is little analysis of the counseling materials themselves. I build on prior research pointing to misinformation and ideological content, but focus on more latent content in the counseling documents. Two primary themes arise: 1) the issue of (un)trustworthy entities, and 2) the centrality of the fetus. I argue that these materials reflect competing institutional jurisdiction over abortion and ultimately position women as victims rather than agents in abortion decision-making.

Introduction

Roe v. *Wade* (1973) represented a major US pro-choice victory, but feminists have since noted the chipping away of abortion rights. This has heightened in the current political climate: 2011 marked a record year for state-enacted restrictions (Guttmacher Institute, 2012). In *Roe*, the US Supreme Court protected women's right to an abortion under the constitutional right to privacy. Although this right was not absolute, later Court decisions "downgraded" it, allowing for increased state regulation of the conditions under which a woman could seek an abortion (Anonymous, 1992; Weitz, 2009). One such regulation is state-mandated informed consent counseling, often passed as "A Woman's Right to Know" laws (WRTK). These require that physicians provide certain information to women seeking an abortion. Although informed consent theoretically protects patient autonomy, many argue that these laws are detrimental to women's decision-making (e.g., Gold & Nash, 2007; Richardson & Nash, 2006; Woodcock, 2011).

The few studies that have examined the actual content of mandated counseling materials identify misinformation, medical inaccuracy and ideological elements (Gold & Nash, 2007; Richardson & Nash, 2006). However, I argue that there is also value in addressing more latent content conveyed through these documents, through the presentation of medico-scientific facts, representations of various key actors (i.e., pregnant women, physicians, the state), and the presence of broader cultural discourses about gender, families, and physician–patient relations. Additionally, because these laws invoke "women's rights", a related issue is how pro-woman rhetoric is increasingly deployed by anti-abortion movements. Previous work has addressed this rhetoric in social movements (Cannold, 2002; Rose, 2011) and woman-protective legislation (Manian, 2009). I examine how this surfaces in documents directly aimed at women seeking an abortion.

Background

Perspectives on abortion counseling

There are divergent feminist and pro-choice perspectives on abortion counseling. Some view counseling as integral to making a well-informed reproductive decision and tending to women's psychological needs (Upadhyay, Cockrill, & Freedman,

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2010). Others view it as inherently paternalistic, part of a larger medico-legal problem of perceiving pregnant women as irrational and indecisive (Manian, 2009). Critiques of mandated counseling emphasize how these directives infringe on practitioners' rights to speak frankly with, and effectively treat, patients (Murtagh & Miller, 2011) or address inaccurate and misinformation in many of the state-mandated documents (Gold & Nash, 2007). Regulating abortion differently than other medical procedures can also be considered undue burden on women, therefore violating the Supreme Court ruling in *Planned Parenthood of Southeastern Pennsylvania* v. *Casey* (Weitz, 2009).

Abortion counseling is often an umbrella term for three functions: informed consent, patient education, and addressing patient feelings (Joffe, 2013). Informed consent is legally required before any patient undergoes a medical procedure and integral to the American Medical Association (AMA) code of ethics (AMA, 2014a). Research and practitioner experiences indicate that many women who contact an abortion provider have already decided (Ely, 2007; Moore, Frohwirth, & Blades, 2011). Yet, Joffe (2013) addressed counselors' conflicts over realizing that some women had decided but not reconciled themselves emotionally—this provided the impetus for 'head and heart' counseling. Joffe contextualizes this in the historical shift from abortion counseling as a feminist/pro-choice advocacy to an emerging, patient-centered profession, recognizing women's need to explore potential feelings of guilt, shame, regret, and indecision. This also makes abortion counseling an uneasy bedfellow with both pro-life and pro-choice politics. Contemporary US anti-abortion organizations have capitalized on women with post-abortion regret to represent abortion as harmful to women and counter pro-choice criticism that they do not represent women's interests (Rose, 2011).

Political context of states with mandated counseling

Although the WRTK laws are typically presented under the politically neutral frame of bolstering women's informed consent, the political landscape of states with mandates reveals that these states are more conservative on social and family issues and have regulated abortion in other ways (Table 1). At the time of data collection for this study, thirty-four states had abortion-specific informed consent requirements and twenty-four directed the state health agency to create materials (Guttmacher Institute, 2010). There were three main time periods during which most mandates were enacted—the 1970s, the 1990s, and the early 2000s. These generally correspond to the timing of key Court decisions on abortion regulation (*Roe* (1973) and *Casey* (1992)), and the signing of the Partial Birth Abortion Ban Act (PBAB) (2003), suggesting that counseling regulation may be a symbolic political reaction to pro-choice gains (*Roe*) or it may be a "foot in the door" when other political opportunities to regulate abortion arise (*Casey*, PBAB). Most states with counseling directives are in the South or Midwest—regions that are more politically and socially conservative (Cahn & Carbone, 2010). Notably, over half of these states had a (male) Democratic governor in office when the mandate was enacted; male Democratic legislators are less likely to be pro-choice than their female counterparts (e.g., Berkman & O'Connor, 1993). More than 80% require a twenty-four hour waiting period between initial consultation and undergoing the procedure. All require parental involvement for minors seeking an abortion. Finally, for an overall metric, I use Gold and Nash's (2012) conceptualization of states as "supportive," "middle-ground", or "hostile" to abortion access. In 2000 half of these states were considered "hostile". By 2011 more than 80% were considered "hostile".

Table 1
Political context of states with mandated written materials (n = 24).

	n	%		
Decade enacted				
1960s	1	4.2		
1970s	7	29.2		
1980s	3	12.5		
1990s	7	29.2		
2000s	8	33.3		
Region				
Northeast	2	8.3		
South	12	50.0		
Midwest	8	33.3		
West	4	16.7		
Governor				
Democrat	14	58.3		
Republican	10	41.7		
Waiting period				
None	1	4.2		
Next day	1	4.2		
24 h	20	83.3		
72 h	2	8.3		
Parental role for minors				
Consent	15	62.5		
Notification	5	20.8		
Consent and notice	4	16.7		
Abortion policies	2000		2011	
Supportive	3	12.5	0	0.0
Middle ground	9	37.5	4	16.7
Hostile	12	50.0	20	83.3

Abortion regulation as an arena of action

To conceptualize abortion counseling regulation, I use social worlds and arenas analysis. This approach aims to understand the focus of an identified arena of action, the presence or notable absence of particular social worlds, and the various ideologies, discourses, and "contested topics" within the arena (Clarke, 2005). Social worlds are "units of social organization […] with an internally recognizable constellation of actors, organizations, events, and practices" (Unruh, 1979, p. 115). Various social worlds interact within particular arenas (Clarke, 2005). For this study, the broader arena of action is abortion regulation, of which mandated abortion counseling is a specific site of interest. This arena involves three primary actors—pregnant women seeking an abortion, physicians as abortion providers, and the state as a regulator of both abortion access and the physician-patient relationship. The naming of many mandated counseling laws as "A Woman's Right to Know" also implicates a fourth key element—the rhetoric of women's rights. Each actor potentially inhabits one or more social worlds: pregnant women inhabit the social world of professional medicine as patients, but they are also citizens, and potential mothers. While a detailed analysis of each relevant social world is beyond the scope here, below I address each of these actors, as well as women's rights rhetoric, in relation to one another and to mandated abortion counseling.