

The University of Chicago Legal Forum

THE BODY

2021 Symposium Abstracts & Schedule of Events

PANEL A: BODILY IDENTITY AND RIGHTS

1. Mimics, Extenders, Procreative Rights and Uterus Transplants

I. Glenn Cohen

The “first” reproductive revolution occurred in 1978, with the birth of Louise Brown in Manchester, UK, the first baby born through In Vitro Fertilization (IVF) – the fertilization of an egg outside the human body. This breakthrough has enabled millions of infertile individuals to reproduce –in the U.S. alone there have been at least 1 million babies born through IVF between 1987 (the first time it was used in the U.S.) and 2015. IVF also paved the way for a series of refinements and extensions, including: gestational surrogacy -- a man’s sperm is combined with a woman’s egg through IVF and carried in the womb of another woman; and Preimplantation Genetic Diagnosis (PGD) -- a cell is removed from an embryo fertilized through IVF at its three to five day stage, biopsied, and then the embryo is evaluated for genetic diseases and other elements to determine whether it should be implanted.

But as disruptive as IVF and its extensions have been, they pale in comparison to the impact of the second reproductive revolution. The first revolution focused on restoring or enabling the kind of reproductive options available to fertile, heterosexual, couples, a focus on what I call “mimicking.” It largely expanded access to that which could be achieved by traditional reproduction. The social, legal, and ethical dilemmas it raised were thus inherently procrustean – an attempt to fit these new technologies into traditional conceptions of family and parenting, which required bending but not breaking of old paradigms.

By contrast, the second reproductive revolution – involving mitochondrial replacement technologies, gene editing, uterus transplants, and other techniques -- is more about “extending” reproduction beyond what is possible through sexual reproduction, rather than “mimicking” what has come before. It thus raises profound new questions. The central one is: Is “extension” uses of reproductive technologies normatively and/or legally different from “mimicking” uses, or is this a distinction without a difference?

In this article I explore this big question on the canvas of a particular example: uterus transplantation. After discussing the science and the needs for uterus transplants I examine the following topics:

1. To what extent is a right to experience pregnancy, separate from a right to be a genetic or legal parent, a rights claim we should recognize?
2. Does a claim to a right to use uterus transplantation depend on the legal availability of surrogacy in a particular legal system? If so, ought there to be obligations to exhaust one before the other?
3. Should the state pay for uterus transplantation? How do claims to state assistance for this technology compare to claims of first-generation reproductive technologies like IVF? How do they compare to rights claims for other transplants like hand transplants?
4. Do the answers to any of the above change in a potential future setting where it is individuals assigned male at birth who want to use uterus transplantation to experience pregnancy (i.e., cisgender men, some members of the trans community?)

Along the way, I also consider the ways in which uterus transplant, living or cadaverous, should be treated as similar or different from other forms of organ donation, such as kidneys or livers.

2. Managing and Monitoring the Menopausal Body

Naomi R. Cahn, Bridget J. Crawford, Emily Gold Waldman

Menopause is both an ending and a beginning. Medically speaking, menopause is the cessation of menstruation for at least twelve months in a person who previously menstruated. Both during perimenopause (the transition to menopause) and post-menopause, law and the body intersect in complex and under-studied ways. This essay explores how menopausal bodies are both managed and monitored. It does so through two lenses: menopausal hormone therapy (MHT) and the burgeoning “femtech” industry that provides apps and other devices to facilitate the tracking of menopausal symptoms. In their current forms, neither MHT nor menopause-related apps appear to have the primary goal of advancing the long-term health and well-being of menopausal individuals.

After providing a history and overview of both MHT and menopause femtech, the essay identifies areas of concern that could and should be addressed through legal reform or regulation. Far from a comprehensive evaluation of legal solutions, however, the essay is mostly suggestive. It points to areas ripe for further research and inquiry in service of developing policies that lead to better health outcomes and improved privacy protection. Moreover, careful consideration of menopause brings this essay into ongoing conversations about theorizing beyond the gender binary and stereotypical notions of femininity. While MHT is a medical intervention and menopause-related apps are mostly user-controlled technologies, both are marketed primarily to cisgender women by appealing to notions of youthfulness, attractiveness, and sexual desirability. Indeed, they take their place within “menopausal capitalism,” the marketing and selling of menopause-related products by means of messages

that celebrate autonomy, community, or femininity by entities that are, at their core, commercial enterprises that primarily seek profit, rather than the promised feminist outcome.

I. Managing the Menopausal Body Through Menopausal Hormone Therapy

Menopausal hormone therapy and its controversies have long symbolized the medical establishment's approach to menopause: it is an illness to be treated and brought under a doctor's supervision. MHT was first approved for the limited treatment of menopause by the FDA during World War II. Its use expanded during the 1960s, with physician-backed promises of "femininity forever." MHT was touted as a means to stop the reality of aging, to allow women to avoid some of the most troublesome symptoms of menopause, and to reinforce gender-appropriate behavior and appearance. MHT's very goal was to medicalize the menopausal body by treating the biologically inevitable process as a medical "problem" to be managed. As MHT became more popular during the 1960s--in spite of the lack of scientific evidence to back its promises--feminists simultaneously challenged MHT's very premise and welcomed it as addressing symptoms that long had been dismissed or ignored. This mixed reception foreshadowed many controversies to come concerning the safety of MHT and the need for it in the first place.

Later (and more rigorous) research has revealed that, when prescribed correctly, MHT has some potential benefits for menopausal individuals. At the same time, the history of MHT is filled with wishful thinking, unfounded medical promises, profiteering, and flawed research. To give just one example, this history is rife with racial bias, reflecting the medical marginalization or neglect of people of color. Studies about menopause and the effectiveness of MHT were conducted primarily on white women; MHT was "sold" as a means of conforming to a mainstream bodily ideal, which was a white, middle-class version of femininity. Even now, the absence of robust studies means that there remain considerable concerns about the link between MHT and cancer in all menopausal individuals, regardless of race.

II. Monitoring the Menopausal Body Through FemTech

In the twenty-first century, while doctors continue to promote MHT as a possible remedy for the alleged maladies of menopause, multiple participants in the digital health industry have recently "discovered" that monitoring the menopausal body can be a profitable enterprise. For menopause-related companies, start-up funding is still comparatively small in relation to the femtech sector overall, but the funding allocated to menopause-related enterprises has grown significantly over the past decade. Just as MHT approaches menopause as an illness to be "managed," the so-called femtech sector treats menopause as a medical condition with symptoms to be monitored and reported. Indeed, some employers even tout menopause-related apps as part of the way they support menopausal employees at work (although it is not clear how using these apps is affirmatively helpful for the employees).

Because users enter private information into apps, there are concerns about when and how any information might be used by an employer or a third party. It is not uncommon, for example,

for menopause-related apps to have policies that offer only limited protection for users' data. Indeed, the potential for that data to be sold or shared means that the information that menopausal users voluntarily provide can become a corporate profit center. Menopause femtech thus raises issues of both privacy (i.e., who can access the users' data and for what purposes?) and commodification (who profits from the menopausal body?).

Despite these concerns about privacy and commodification, there is a way that menopause femtech can help change cultural attitudes for the better. The very existence of menopause-related apps removes some of the invisibility, stigma, and shame that have been associated historically with menopause. Furthermore, apps and other digital spaces have the potential to create communities and sources of peer support, albeit virtual (and somewhat contrived) ones. Consider, for example, the company Peanut. Initially focused on new mothers, Peanut has now created a "[Peanut Menopause](#)" group. This community allows those experiencing menopause to come together and discuss symptoms, challenges, and strategies for coping with common occurrences such as hot flashes, mood changes, or sleep disturbances. This type of support can be invaluable in a culture that otherwise treats menopause as either something to be hidden or the butt of jokes.

III. Who Manages and Monitors the Managers and Monitors?

With both MHT and femtech, there are multiple unresolved legal and theoretical concerns. With MHT, these primarily fall into two areas: (1) issues relating to safety and testing of "female" reproductive conditions; and (2) concerns about exceptionalizing the healthy aging process and creating a perceived need for intervention by essentializing bodies and fetishizing youthful femininity.

In the related, but slightly different, context of *menstruation* (not menopause) femtech, Michele Gilman has identified privacy as one of the chief concerns that should be addressed through legal reform. Gilman has proposed applying the tenets of "data feminism" to make femtech an "empowering and accurate health tool rather than a data extraction device." This part of the essay explores Gilman's critique of the United States' general notice-and-consent model of data privacy and then applies it to menopause apps in particular. As Gilman explains, the notice-and-consent approach means that individual consumers, rather than the data collector, bear the burden of protecting their privacy. We conclude that many of her recommendations for a "menstrual justice vision for femtech" would equally benefit users of menopause-related apps.

IV. Managing and Monitoring Gender

Running through this essay's critique of both MHT and femtech are themes of disease, youthfulness, aging, gender norms, and privacy. Queer feminist activist Heather Corinna, for example, has called menopause and perimenopause one of the many "other indignities" that must be endured. This essay challenges the positioning of menopause as a medical condition to be managed and monitored, while also acknowledging two distinct paradoxes. The first is the

tension between the cultural need for greater openness about menopause—it is an inevitable biological process for approximately half the world’s population—and the legal need for greater privacy protections for those who choose to use technology to track menopause’s symptoms. The second paradox is the challenge of avoiding pathologizing menopause as an “illness” while simultaneously recognizing that, for many, menopause has real (and sometimes debilitating) effects that merit serious and thorough research and treatment. In other words, menopause itself should not be treated as a taboo topic unfit for public discussion, but any one person’s information about menopausal symptoms should not be shared freely with individuals or companies that seek to profit from it. Similarly, research on menopause’s varied physical, psychological, and cognitive effects should proceed from the recognition that menopause is not a disease or a problem, but a natural and inevitable stage of life that warrants more attention. Furthermore, in some people, symptoms of menopause may be so severe as to require medical intervention, but menopause is not inevitably a condition to be managed or monitored.

Indeed, menopause is a true transition point. It marks the change from a fertile body capable of reproduction to an infertile body that is not. Menopause thus represents the loss of the biological capability that has, at least historically speaking, been the basis for much of the differentiation between “men” and “women.” For that reason, some people subjectively experience menopause as a “sexless” state to be mourned and lamented. Larger cultural attitudes toward menopausal individuals suggest that menopause is not a state that is to be advertised or celebrated. For other individuals, though, menopause can represent a time of personal liberation. It also can mark the decoupling of gender identity from reproductive capability, thus serving as an entry point for theorizing beyond binaries of sex, gender, and gender identity.

Conclusion

This essay has focused on menopause itself—the cessation of menstruation after twelve months in those who previously menstruated, and the multiple ways that menopausal bodies are managed and monitored. Yet this is only one axis of a larger inquiry; much of what this essay addresses invites consideration of related issues in trans and gender nonbinary contexts, for example. Trans and gender nonbinary individuals have a right to gender-affirming healthcare, including hormone-related treatments if they choose. At the same time, medical intervention should not become a litmus test for trans identity, nor should trans and gender nonbinary people be medicalized or pathologized as “sick” or needing medical supervision.

Likewise, data privacy concerns around femtech generally—and menopause-related apps in particular—point to broader failures of U.S. law to adequately protect consumer data. These concerns are heightened in the context of digital health tools, where consumers of all types voluntarily share sensitive information about themselves, and third-party companies routinely profit from that data. For certain populations, including trans and gender nonbinary individuals, the need for robust consumer-protection laws become particularly salient; the failure to safeguard data opens the door to potential discrimination in employment, healthcare, housing, and other contexts.

3. Involuntary Servitude: Pregnancy, Abortion, and the Thirteenth Amendment

Michele Goodwin

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 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 is described as ranking worst in the developing world on maternal mortality. With this backdrop, and in light of the Texas law, SB8 banning abortion after 6 weeks of pregnancy, this talk explores abortion restrictions as fomenting involuntary servitude. It considers this involuntary servitude in conflict with the Thirteenth Amendment.

This talk addresses these issues.

4. Genitals That Matter

Ezra Young

Over the last decade, myriad barriers to transition related healthcare have been lifted at the state and federal level. A growing number of private and public employers provide affirmative coverage in their health plans, courts have struck down transgender exclusions in Medicaid plans, and Medicare lifted a decades' old bar on transition-related surgeries. Consequently, more transgender people than ever before are pursuing genital reconstruction surgery. This is a happy development. And yet, the transgender rights movement has failed to account for this progress in its messaging and framing in recent impact cases.

Today, the movement urges two irreconcilable positions. In cases challenging trans-exclusionary laws—like those brought against states that seek to exclude transgender girls and women from playing on sex-segregated teams—the movement urges that genitals do not matter, identity should trump everything. And yet, in many (but not all) healthcare coverage cases, the movement argues that genital configuration is so vitally important that refusal to cover genital reconstruction surgeries violates statutory and even constitutional protections prohibiting unequal treatment based on sex or disability, and, in the prison context, the Eighth Amendment's prohibition of cruel and unusual punishment.

In this Article I tease out the conflicting positions taken by the transgender rights movement. I attribute the long popular “genitals don't matter” frame in public education and litigation

messaging to the fact that, for many decades, most transgender people desired genital reconstruction surgery but could not access it. Given the drastic shift in terrain, this messaging is no longer appropriate and could prove tactically and doctrinally harmful in the courts and, as it has for decades, fuels misinformation campaigns outside and within the transgender community that dangerously deter folks from seeking out necessary medical care with disastrous consequences. Ultimately I suggest that the movement shift tactics, embracing that, in fact, in many instances genitals do matter.

PANEL B: EXPLOITING AND TRANSACTING THE BODY

1. Fear, Desire and Control: Black Male Bodies in the Criminal Legal System

Paul Butler

My essay will examine the Black male body as an object of desire and fear, and as a source of law, especially criminal procedure. I am interested in the way that constructions of masculinity and sexuality over-determine how the law “sees” Black men. Among other things, I will explore the consistent failure of law and policy to see Black men as victims, especially of sexual harms.

2. Bring Up the Bodies

Bennett Capers

My project is about how we reduce defendants at trial to a body, mute, silent, practically inhuman. We silence defendants throughout the trial process in order to reduce any empathy between the defendant and the jurors. All of this works to make conviction easier. We are convicting an animal, not a human. But what does this dehumanization do to justice, and what does reducing a defendant to a body say about us?

3. Moral Disagreements about Markets and Bodies

Kimberly D. Krawiec

Although disputes about the nature of market boundaries are long-standing, particularly in the context of the human body, recent years have seen a renewed focus on the ways in which attitudes about the proper scope of commercial exchange shape markets and, indeed, dictate whether exchange for money occurs at all. Observers, for example, have long debated the propriety of certain market exchanges involving the body, including prostitution, organ and gamete selling, commercial surrogacy, and blood and plasma markets.

This article considers one aspect of that debate – how the law should account for third party externalities not susceptible to objective measure in the form of what might be broadly categorized as disagreements about the moral limits of markets (a form of “moral externality”). These objections often involve concerns about the purported harmful effects of market transactions on particular relations, goods, services, or society at large, due to an inappropriate

valuation. In other words, market trading in the body and its parts is degrading or corrupting – not just to the willing parties to the exchange—but to society at large, because it suggests that it is appropriate to value the human body as a commodified economic asset, rather than as the subject of love, reverence, or respect.

To be sure, not all claims about the harmful effects of markets in the body depend on third-party effects. Many disagreements about the proper scope of markets and the body instead rest on paternalistic concerns about dangers to the parties to the transaction, such as that particular exchanges are coercive or exploitative. In addition, some of the externalities allegedly posed by markets in the body are susceptible to objective measurement – for example, that markets in sex will increase the transmission of disease or that payments for blood or plasma will make the blood or plasma supply less safe—and are the subject of robust empirical study.

Of note, however, is that many observers – including many market skeptics – do not believe that these objections fully explain (or should fully explain) legal limits on markets in the body. In other words, many of the most prominent and influential market skeptics contend that, even if problems of coercion, exploitation, and safety could be fully addressed, we should still limit certain market transactions in the body and its parts, because to do otherwise reflects and fosters an inappropriate market conception of the body, with attendant negative effects on us all. And although some of these objections represent deontological claims about the inherent wrongness of certain markets, other claims –those that are the focus of this paper-- contain both a (frequently unacknowledged) empirical component and a moral component. These objections are empirical, in the sense that they involve claims that markets in certain items and activities change the way in which society and its members perceive those items and activities or the non-market relationships through which they would otherwise be supplied. They are also moral claims, because they rest on a contention that the change is inevitably negative—that certain modes of valuation and visions of the world are superior to others.

This Article argues that moral objections to markets that depend on their degrading or corrupting effects fail to provide evidence of such corruption, despite the wide availability of comparison points afforded by variation across legal regimes. Moreover, these objections fail to account for the human tendency – long noted within psychology, anthropology, and sociology – to refashion contested exchanges in a manner that reinforces – rather than undermines – deeply-held values and relationships.

This is not to suggest that the social, cultural, or legal acceptance of a particular transaction renders it moral. But to the extent that moral objections themselves depend on a corruption or cheapening of values or relationships, the actual operation of those values and relationships should be relevant. Moreover, to the extent that some, including Sandel (2012), have explicitly contended that “market creep” has occurred without public awareness or debate, that claim is undermined by the full extent to which participants in and third-party observers of repugnant exchange have, in fact, debated, modified, and managed those exchanges over time.

4. **Donorsexuality**
Mary Anne Case

5. **The Body of Sports**
Alice M. Miller

Recent years have seen an eruption of interest in the bodies of elite athletes, notably through representations of sexual harm and abuse. Each eruption of athlete abuse story has age, race, place and gender particularities and asymmetries, and the perpetrators range from men's wrestling and (American) football coaches to team doctors (USA women's gymnastics) and football/soccer coaches (Afghanistan, Haiti). In looking at formal responses, from anemic ["safeguarding"] to inept/tolerant [US FBI in the context of USA gymnastics] one robust response stands out: local state prosecutors looking to prosecute abuse under US state anti-trafficking frameworks. While this effort instrumentalizes the fraught and historically misguided 'anti-trafficking' frame, paradoxically here, I seek to use this vexed frame against its own grain to do what it rarely does: show us something new. I argue that it inadvertently perhaps, but sharply exposes alienation and exploited labor as aspects of the abuse of the athlete body. It allows us to see by what processes, institutions, ideologies and other market and media-saturated assemblages of power in sport and media, an elite athlete's body is made not their own, despite – indeed I will argue, because of- sports own rhetorics of embodied will, self-mastery and excellence.

PANEL C: REGULATION AND POLICY OF THE BODY

1. **The Body Bureaucracy: Feminist Politics at the Food and Drug Administration**
Aziza Ahmed

While all administrative agencies guidelines and regulations are rooted in subject matter expertise, agencies including the Food and Drug Administration (FDA) and the Centers for Disease Control (CDC) put science at their core. For the FDA and CDC, deviations from science-based decision-making calls into question the legitimacy of agency guidance and regulation. The history of these agencies, however, suggest that they are often prone to political influence including from the executive, pharmaceutical companies, activists, and interest groups. This results in a tension that haunts these agencies between their purported evidence-based neutrality and issuing guidance that had been touched by politics.

My book project explores this tension in the context of the CDC during the height of the HIV epidemic. In this paper, I turn to the FDA to explore a new moment of tension between science and politics at the agency: the case of medication abortion. The contemporary advocacy around medication abortion is part of a long history of feminist advocacy targeting the FDA. At least since the 1980s, feminists have viewed the FDA guidance and regulation as central point

of advocacy given the agencies impact on the ability of women to make evidence-based decisions about their bodies or exercise bodily autonomy.

In the 1990s, perhaps the most well-known feminist campaign targeting the agency, feminist advocates forced the Food and Drug Administration to issue new guidelines encouraging drug manufacturers to include women in clinical trials. Until this point, data that existed on drugs and medical treatments had excluded women due to concerns about fetal harm. Without adequate data, feminists felt that healthcare for women was lacking the appropriate evidence-base. Feminist advocacy forced the FDA and, in turn, researchers to include women in clinical trials. Though still today women are often excluded, the new guidance led to a windfall of data on how drugs interact with women's bodies.

While that was a feminist campaign that targeted the FDA for more knowledge about women's bodies, the fight for medication abortion focused in on the ability of women to make choices about their bodies without excess regulation from the state. This paper will map this fight as it began in the 1990s around medication abortion, beginning with RU-486 and continuing today as medication abortion has become a new battleground in the context of the COVID-19 pandemic.

2. How the Law (Mis)construes Disabled Bodies (and Minds)

Leslie Francis , Michael Ashley Stein

Disability rights advocates argue that in many cases it is social structures and policies that are disabling, rather than an individual's inherent physical or mental condition. Put another way, the argument is that disability is construed as a social rather than a medical phenomenon. The ADA Amendments Act (ADAAA) was enacted in 2008 to rectify judicial opinions grounding the disability category in medical pathology by specifying that courts are to understand disability broadly in determining whether people qualify for protection under the amended ADA. Commentators such as Elizabeth Emens argue, however, that despite the emendations, the ADA remains committed to a medical model of disability rather than a model that is in any sense social. In this contribution, we explore whether post-ADAAA courts interpreting the revised statute are understanding disability in social or in purely medical terms. To do so, we use conditions that have been viewed as medically ambiguous—such as chronic fatigue syndrome, depression, or ADHD—to examine whether post-ADAAA courts are construing disability as purely medical and concluding as a result that people with these conditions do not warrant ADA protection as disabled. We then argue that when the law relies on a purely medical model of disability, it (mis)construes bodies (and minds) by imposing a baseline of species typicality on them.

3. Gender as Commons

Sonia Katyal

In previous work, I have argued that it might be helpful for us to reconceptualize sex classifications along the lines of tangible property-bordered, seemingly fixed, rivalrous, and

premised on a juridical presumption of scarcity in terms of its rigid polarities of male and female. In contrast, regarding gender regulation, thinking through gender as a performance (as Judith Butler has suggested), if taken seriously, also suggests that gender is more akin to intellectual property—permeable, malleable, unfixed, nonrivalrous, and ultimately—deeply nonexclusive. An account of gender performance suggests that gender is not something natural, tangible, or fixed; but constitutes a sort of expression that is intangible, borderless, and suffused through cultural regulation and social norms rather than biological imperative. As I will argue, this account moves gender from a set of cultural expectations - and instead offers it as a series of intangible forms of expression, an essence that is not natural or fixed, but instead resembles the mutable, highly expressive and transitory qualities of intellectual property.

If we reconceptualize the intellectual properties of gender, we decouple them from a set of expectations mapped onto the vagaries of biological identity, and map an entirely new host of possibilities for gender relations to operate outside of the boundaries of law's fixedness on identity. But this project is not only a descriptive one. It also provides us an important set of normative possibilities stemming from property law, intellectual property theory, and the management of resources. Here, I argue that the metaphor of the commons provides us with an important framework with which to examine the importance of gender diversity and fluidity. Instead of looking at the relationship between male and female as: (1) a series of polarities, or (2) a continuum, I propose looking at gender through the lens of (3) a commons, which implies a nonexclusive, unlimited access to both polarities, and to the myriad host of possibilities that lie within human expression. Drawing on Donna Haraway's work on cyborgs and cyberfeminism, I offer a metaphorical reconceptualization of gender as a commons, as a set of nonexclusive, open access regimes that enables individuals to appropriate objects - to play with gender - in order to freely shift and rebuild multiple aspects of their persona.

4. Medical Teleologies of the Body in the Law

Craig Konnoth

Legal institutions, actors, and activists, invoke medical concepts and language in a range of contexts, in courtrooms, administrative proceedings, legislative bodies, and in informal contexts. They do so to address issues ranging from benefits distribution and antidiscrimination law, to, of course, the distribution of health insurance and delivery of healthcare. This Essay argues that in each of these contexts, there are three models that determine how the law invokes medicine in ways that construct the ideals and purposes towards which the human body is oriented.

First, medicine is invoked to *manage* bodies in socially optimum ways. Legal actors deliberately or not invoke medicine to optimize social productivity and limit cost. Thus, justifications for the Americans with Disabilities Act, the Affordable Care Act, and most public health measures heavily draw on these narratives. Second, the law invokes medicine to *moralize*—to subject bodies to desirable moral narratives. In medical policy, law often reinforces both positive and negative moral reinforcement. It reminds us of our duties to the poor (Medicaid), disabled (Social Security), and elderly (Medicare). But it also engages in negative reinforcement—for

example, drug addiction and smoking are specifically disfavored several legal programs that invokes medicine (ADA, ACA, Social Security). Finally, legal agents invoke medicine to *liberate* bodies. That is, they treat medical spaces as loci where individuals and groups can engage with the state and other groups in rights seeking to help individual human lives flourish. Each of these models developed in different historical periods, and are now layered upon each other, and often being simultaneously invoked in policy debates.

The Essay has two goals. First, with few exceptions, when it explicitly considers medicalization, legal literature takes a critical view, arguing that the phenomenon serves to oppress, control, and coerce. In offering these three models, I seek to refute that narrative, showing that medical policy—that is, how the *law* uses medicine—is what the political and legal process makes of it. Rather than seeing medical controversies as Manichean battles between good and evil, on the ground movements and actors shape outcomes; what is important is generating and sustaining grass roots movements that offer a sustained vision. Second, and relatedly, by demonstrating the dialectic process of medical policy development and creating a roadmap, it allows advocates, scholars, and actors to orient themselves in this space, situating their arguments in interactive and strategic ways in order to obtain desirable policy outcomes.