

**Title:** Atmospherics: Abortion Law and Philosophy

**Readability:** Easy/Moderate

**Author:** Anita Allen

**Possible Applications:**

Philosophy of Law  
Ethics & Bioethics  
Political Philosophy  
Social Epistemology

**Complimentary Texts/Resources:**

Shulamith Firestone, “Down with Childhood”

Other stuff on paternalism?

Maggie Little, “Abortion and the Margins of Personhood”

Rebecca Kukla, *Mass Hysteria* (selections)

Rebecca Kukla, “The ethics and cultural politics of reproductive risk warnings: A case study of California's Proposition 65.”

Karen Jones, “The Politics of Credibility”

**Thesis:** Recent US Supreme Court decisions regarding reproductive rights, as well as US Supreme Court decisions historically, are informed by a problematically paternalistic worldview.

**Key Definitions:**

The article does *not* give definitions that would be important to provide in order for students to understand the material:

- Natural law
- Positivism
- Realism
- Atmosphere/atmospherics (something like ‘mood’?)
- Paternalism
- Maternalism

**Summary:**

The article opens by criticizing Karl N. Llewellyn’s essay, “On Philosophy in American Law.” This essay, according to Allen, “argued that the legal philosophies implicit in American legal practice had been natural law, positivism and realism, each adopted in response to felt needs of a time.” Allen argues, to the contrary, that “The big three philosophies – natural law, positivism and realism – have never exhausted the atmospherics of American law.” The rest of the article seeks to show how maternalism/paternalism are ‘atmospherics’ that underlie important 20th century legal precedent as well as recent Supreme Court decisions about abortion (particularly the Supreme Court’s 2007 decision to uphold the Partial-Birth Abortion Ban). The article shows how the rationale for placing restrictions on abortions often relies on a problematic conception of women as something less than fully-fledged moral agents, incapable of making autonomous decisions about reproductive health.

**Class Activities:**

-Have students identify and discuss other examples of paternalism/maternalism and compare to Allen’s abortion examples. Possible connections to international relations and global justice – what does paternalism look like when exercised internationally by NGOs or nation-states? Is it different from the paternalism Allen identifies in the US legal system?

-Elaborate upon why paternalism is morally problematic for Allen. Are there cases where paternalism is *not* morally problematic?

-Discuss what it means to be appropriately “informed” about medical treatments. Does having a maximum amount of *information* always track being able to make *informed* decisions? (Assigning Rebecca’s stuff on reproductive risk would be really helpful here).

-Even if we agree with Allen that the rationale Kennedy used to condemn “partial-birth” abortions is flawed and problematically paternalistic, can the practice of late-term or partial-birth abortions restricted under another a different rationale? Maggie’s article “Abortion and the Margins of Personhood” is relevant here (it argues that we have more stringent obligations to a fetus the farther along a woman is in her pregnancy).

-Draw out connections between reproductive rights-related paternalism and the phenomenon of “runaway reductions” identified by Karen Jones?