CENTRO STUDI SUL FEDERALISMO
PERSPECTIVES ON FEDERALISM

ISSN: 2036-5438

Decriminalizing Abortion in Federal Systems

by

Christine Forster*

Perspectives on Federalism, Vol. 13, issue 2-3, 2021

Abstract

This article considers the decriminalization of abortion in federal systems - decentralised and centralised. While factors external to the governance model influence whether abortion is decriminalized, such as religious views on the fetus's right to life, this article focuses on governance. Drawing on a range of country examples, it explores opportunities for innovation and policy transfer of abortion reforms in decentralized federal systems. In decentralized systems the country examples suggest it is prudent to target receptive subnational units despite resistance in other subnational units for advocacy and reform. Advocates must also recognize and counter conservative actors stifling reform through multiple access points. The article further considers federal countries where the power to regulate abortion is central and assesses the opportunities for country-wide decriminalization by a unified women's movement. The article concludes that decentralized and centralized federal systems present opportunities and limitations and examining case examples leads to more effective strategies.

Key-words

abortion, federalism, international law, comparative law

1. Introduction

This article considers the opportunities and limitations in centralized and decentralized federal governance arrangements to decriminalize abortion and enhance women's reproductive rights. The identification of opportunities and limitations can, this article proposes, contribute to the formulation of strategy for the women's movement and their advocates. Although supported by international human rights law, the decriminalization of abortion has been difficult to achieve in all countries, federal and unitary (Erdman and Cook 2020). In many forums a woman's right to control her body and her reproductive choices are juxtaposed with religious and cultural beliefs about the right to life of the fetus and a patriarchal position that men have a right to control women's reproductive choices (Chesney-Lind and Hadi 2017). Although abortion laws have been gradually liberalized world-wide, approximately 6 percent of the world's 1.64 billion women of reproductive age live in a country where abortion is prohibited and criminalized without any exception, and 21 percent of reproductive age women live in a country where abortion is permitted only to save a woman's life, mostly in Latin America, Africa and Asia (Singh et al 2018). The link between the criminalization of abortion, maternal mortality and maternal morbidity has been established by research which indicates that most deaths from unsafe abortions occur in countries where abortion is severely restricted by law (Latt, Milner and Kavanagh, 2019). Thus, in addition to denying a woman's right to control her body and make reproductive choices the failure to decriminalize abortion and to provide safe, accessible facilities endangers their health and also that of any child born after a failed abortion.[I]

Federal systems vary, are dynamic, and have differing degrees of flexibility (Vickers, Grace and Collier 2020). However they also share many characteristics including a central government and subnational levels with genuine autonomy; a written constitution that identifies and sets out the parameters of the federal system formally allocating legislative and fiscal powers and responsibilities to different units; special arrangements to ensure the representation of subnational levels in the central government often in the form of an upper house; a procedure for resolving constitutional disputes; a judicial review mechanism that

prevents central and subnational governments exceeding their powers; and a mechanism for resolving disputes between the central and subnational levels (Anderson 2016; Aliff 2015; Smith 2020). In federal countries the abortion landscape is complex. There are factors, external to the model of governance, that influence any legislative shift to decriminalisation. The most contentious is religious influences that support a fetal right to life. For example, in Catholic and Evangelical dominated countries opposition to decriminalizing abortion is strong (such as Mexico, Brazil and Argentina), while in less religious countries (Canada and Australia) although there is opposition on moral (largely Christian) grounds, this has been a minority voice rather than a majority one (Calkin and Kaminska 2020; Malca et al 2017). Other factors include political priority (Daire et al 2018; White 2020) health concerns relating to maternal mortality (Yogi and Neupane 2018; Rowe et al 2019; Choudhury et al 2019; Melese et al 2017) population control (Carter 2018) the strength of the women's movement (Sutton and Borland 2019) the level of political representation of women (Malvern and MacLeod 2018) community support for reproductive rights (Udi Sommer and Forman-Rabinovici 2019; McReynolds-Pérez 2017) and the strength of traditional practices and cultural norms which deny women's reproductive rights (Shrestha et al 2018).

However, in addition to social and cultural influences the system of governance also impacts on legislative frameworks regulating abortion. This article considers the influence of federal governance, decentralized and centralized, on reform efforts and argues that federal systems do provide opportunities for decriminalization. This is supported by the extensive body of literature on gender and federalism which finds that decentralization assists gender equality measures and advancement through innovation, policy transfer and the opportunity for the women's movement and their allies to access the multiple access points of decentralized federal systems. (Vickers 2013; Chappell 2013) The article also notes that decentralization can, in some contexts, embolden conservative actors who may also utilise the multiple access points to block progressive reform (Gray 2010).

In addition, this article argues that centralized federal systems also provide opportunities for the advancement of gender equality through strongly framed Bills of Rights typically incorporated into the national constitution, and the ability to deliver uniform country-wide,

uniform laws, programs and services. In support of those arguments this article utilizes a selection of country examples to explore the opportunities and limitations in both centralized and decentralized federal systems to decriminalize abortion and reduce or remove legal restrictions on access.

Part 2 sets out the international human rights law support of the decriminalization of abortion through rights to autonomy, privacy, life, equality and non-discrimination and health. It also identifies three different approaches to regulating abortion in domestic legal contexts. Part 3 considers a selection of federal countries (including the United Kingdom 'UK' which, although not a federal country has devolved the power to regulate abortion) where the power to regulate abortion is decentralized. The countries are chosen as examples to illustrate how innovation, policy transfer and venue shopping have, in some instances, assisted the decriminalization of abortion in decentralized countries. It also shows however, how conservative actors can utilize decentralization to restrict abortion. Part 4 considers a selection of federal countries where the power to regulate abortion is centralized. As in Part 3 the country examples illustrate how a unified women's movement coupled with a strong Bill of Rights can provide an opportunity for uniform country-wide decriminalization of abortion. However, if the central government has a restrictive approach to the regulation of abortion, this can make reform efforts challenging. Part 5, concludes that although there are factors outside the system of governance which influence the regulation of abortion, federal systems do offer opportunities for decriminalization, in both decentralized and centralized federations. Importantly, in developing strategy to approach decriminalization in federal systems an understanding of the limitations and opportunities coupled with an examination of country examples can assist in ensuring targeted and appropriate responses to achieve decriminalization and the removal of restrictive legislative requirements.

2. Decriminalization of Abortion and its Regulation in Domestic Contexts

The decriminalization of abortion has proven controversial in both unitary and federal countries (Stark 2011). A legislative right to an abortion enables women to have control over

whether and when they have children, and how many children they have. Denying abortions through criminalization forces women to become mothers, requires them to perform nine months of reproductive work, to suffer pain, and to assume the risks of childbirth (Htun and Weldon 2010). Abortion also protects women from maternal deaths (Tadele et al 2019). Research has shown that when a mother dies (including because of an unsafe abortion), her surviving children are more likely to die within two years. In addition, motherless children receive less health care and education in their formative years (Chikhungu et al 2017). It also protects girls from giving birth at a young age. Adolescent mothers aged 10–19 years face high risks of eclampsia, puerperal endometritis and systemic infections during pregnancy and an annual number of 3.9 million unsafe abortions among girls aged 15–19 years contribute to maternal mortality, morbidity and ongoing health problems (Chikhungu et al 2017).

Abortion was legally restricted and criminalized in almost every country by the end of the nineteenth century (Berer 2017). However, a right to abortion, primarily through the broadening of other rights (Penovic and Sifris 2018) has had increasing support in international human rights law during the twentieth century (Penovic and Sifris 2018) and has influenced domestic legislative reform (Fine et al 2017). For example, restricting women's access to abortion has been conceptualized as a violation of the right to life and the right to privacy by the Human Rights Committee, which monitors the *International Covenant on Civil and Political Rights* 1976 (Sifris and Belton 2017). Article 12(1) of the *Convention on the Elimination of Discrimination against Women* 1979 (*CEDAW*) on equality in healthcare obligates countries that are party to it to ensure access to family planning services to women on a basis of equality with men but does not specifically refer to abortion.[II] However, the *CEDAW* Committee, which monitors *CEDAW*, in General Recommendation No 24 in 1999, which expands the meaning of Article 12, stated that states should remove "barriers to women's access to appropriate health care include laws that criminalize medical procedures only needed by women and that punish women who undergo those procedures."[III] Subsequently, the *CEDAW* Committee has increasingly strengthened its comments on abortion (Hunt and Gruszczynski 2019) demanding decriminalization and the removal of all punitive measures imposed on women who seek abortions.[IV] In its 2013 General Recommendation No 30 on women in conflict and post-

conflict situations the *CEDAW* Committee recommended that all states parties guarantee safe abortion access and post abortion care. Under *CEDAW*'s Optional Protocol mechanism through which an individual can bring a complaint against a state party to the *CEDAW* Committee, several complaints have been received in relation to countries criminalizing abortion. In 2018, the *CEDAW* Committee found that the UK had breached the rights of women in Northern Ireland because of restrictive abortion law that criminalizes abortion except when there is a threat to a woman's life or a serious risk to health.[V] The Committee found that the law breached Article 12, "for failing to respect women's right to health by obstructing their access to health services, including through laws criminalizing abortion, which punish women and those assisting them, and by rendering access to post-abortion care, irrespective of the legality of the abortion, inaccessible owing to clinicians' fear of prosecution."[VI] This article categorizes domestic law approaches to the regulation of abortion into three main categories, although many jurisdictions have a combination of these approaches in their laws. The first approach is criminalization which approaches abortion as a criminal activity in some or all circumstances. A criminalization approach can be very strict, for example criminalizing abortions - both the pregnant woman and any person assisting - in all situations without exception. A less strict approach criminalizes abortions but provides exceptions, for example, if the pregnancy is the result of rape, if the fetus has a serious medical condition or if the pregnant woman's life is in danger. Finally, in some countries, abortion is criminalized only if it is not performed in accordance with the law, for example if required authority from a medical practitioner is not properly obtained, if it is performed after a particular gestational cut-off point in the pregnancy or if it is performed by an "unqualified" person (Jain 2019).

In the latter example, some jurisdictions criminalize only the unqualified person and not the pregnant woman herself. The second approach is medicalization, which approaches abortion as a health issue and vests authority for abortions in medical practitioners. Typically, in this approach an abortion can proceed if a medical practitioner authorizes it, usually based on criteria focused on protecting the emotional, physical and financial well-being of the pregnant woman. While the medicalization approach strives to balance the interests of varying

interest groups; conservative, liberal, feminist, and religious, it does not fully recognize a reproductive right held by women and girls to choose for themselves when to proceed with an abortion (Peterson 2017; Keogh et al 2017). A fully decriminalized approach, the third approach identified in this article, conceptualizes abortion in terms of women's reproductive rights and their right to autonomy vesting authority for the decision to abort in pregnant women themselves (Forster and Jivan 2017). This approach treats abortion like any other form of health care that receives expert care and service delivery, has appropriate safety guidelines and recourse to remedies for any negligent practices (Forster and Jivan 2017). This final approach is rare for the duration of the pregnancy, although many jurisdictions adopt this approach up until a set gestational cut-off.

In practice, countries that have moved away from a strict criminalization approach have adopted a combination of these approaches co-existing in their legal frameworks. It is increasingly common for a fully decriminalized approach - where women can proceed with an abortion without authority or permission from a medical practitioner - to be adopted up until a particular gestation period – typically at or between 12 weeks to 24 weeks. This period is often argued to equate to pre-viability although this does not always accord with the science on viability or the particular facilities available in a country to sustain a pre-term fetus (Romanis 2020; Han et al 2018). After the designated gestation period where an abortion is legally available without any requirements or conditions many countries have adopted a medicalization approach where abortion is available if a medical practitioner certifies certain requirements are met - typically a serious risk to the life or health of either the pregnant woman or the fetus. Finally, some countries, despite moving to a hybrid decriminalization approach, have retained criminal offences if unqualified persons perform abortions, or if the prescribed requirements are not met. Some countries have retained criminal offences for pregnant women that fall into these categories, for example, if they obtain abortion drugs without medical authorisation, while some countries have removed pregnant women from the purview of the criminal law altogether.

3. Decentralized Federal Systems: Innovation, Policy Transfer, and Multiple Access Points

Decentralized federal systems, according to some commentators, create an opportunity for policy transfer of innovative and effective measures, initiatives and legal reforms from subnational unit to subnational unit (Vickers 2011). Federal systems provide the ideal conditions, they argue, for subnational units to act as "laboratories" for such measures, initiatives and legal reforms (Beyeler 2014) which will be replicated by policy makers in neighbouring units (Chappell and Curtin 2013). Unsuccessful initiatives are abandoned. This can occur through competition between the subnational units in a "race to the top" (Celis et al 2012) or in a cooperative federal system by providing a positive example for other subnational units to adopt (Sawyer et al 2012). Strengthening that opportunity for policy transfer in federal systems are the multiple access points with multiple institutions, providing more sites for instituting law and policy change (Vickers 2010). For example, local parliaments, unions, courts, and political parties (Vickers 2010). In addition, activists can, if the central government is resistant to reform, move between different levels of government to focus on the institution likely to be most receptive to their policy objectives (Vickers 2013). Other commentators note, however, that multiple access points can also become multiple veto points (Vickers 2013) or an opportunity for conservative actors to initiative reforms that do not support gender equality or to avoid responsibility for positive change (Alonso and Verge 2014) in a "race to the bottom" (Franceshet and Piscopo 2012).

The opportunity for innovation, policy transfer and venue-shopping through multiple access points to achieve the decriminalization of abortion can be seen in some of the case examples below. However, multiple access points, as evidenced by other examples, can also lead to regressive approaches to abortion and a "race to the bottom" as subnational units seek to distance themselves from progressive approaches.

Australia, a federation of six states and two territories, provides a positive example of the potential advantage that decentralization in a federal system can offer. The power to regulate abortion is allocated in Australia to the subnational units and the gradual shift to

decriminalization has been assisted by the federal system in an encouraging example of policy transfer in a "race to the top". Until 1969 all the states and territories had restrictive criminalization approaches to regulating abortion, drawn from legislation in Great Britain, in which women who terminated their pregnancy and anyone who assisted an abortion were liable for criminal offences (*Offences Against the Person Act* 1861 (UK)).

In 1969 South Australia became the first Australian state to partially decriminalize abortion. The legislative reform was not the result of pressure from the women's movement but rather was aimed at providing legislative clarity for medical practitioners who performed abortions (de Costa et al 2015). The new legislation provided that if two medical practitioners certified there was a risk to the life or the physical or mental health of the pregnant woman, or a substantial risk that if born, the child would suffer from 'serious physical or mental abnormalities' an abortion could be authorised in a prescribed hospital or clinic (*Criminal Law Consolidation Act* 1935, s 82A). However, an abortion continued to be criminalized after 28 weeks gestation unless it was necessary to save the mother's life. Although partially decriminalizing abortion the legislation left in place serious criminal offences for any unlawful abortions.

South Australia's reforms did not lead to any immediate policy transfer. In 1998 Western Australia moved to remove offences that criminalized pregnant women who aborted and replaced it with a medicalization approach for abortions up until 20 weeks requiring authorization from two medical practitioners, although retaining criminal offences for medical practitioners that acted outside of the legislation (*Acts Amendment (Abortion) Act* 1998. *Health Act* 1911, s 334, s 335). The most significant period of reform and policy transfer began, however, with the Australian Capital Territory (ACT) which repealed its restrictive criminalization abortion regime in 2002 (*Crimes (Abolition of Offence of Abortion) Act* 2002) after vigorous campaigning by pro-choice community groups which targeted a receptive state government (Baird 2017). The new legal regime provided for lawful abortions if performed in an approved medical facility by a medical practitioner (*Health Act* 1993, s81, s 82). There was no gestational cut-off and no requirements for pregnant women to satisfy. This was a significant and progressive legislative shift although any abortions outside of the registered

facilities would still result in criminal offences. The state of Victoria followed the ACT with abortion law reform 6 years later when it repealed the provisions that criminalized abortion in the *Crimes Act* 1958 (Vic) and introduced the *Abortion Law Reform Act* 2008 (Vic). The new legislation adopted some of the progressive aspects of the ACT legislation (but not all) and adopted some provisions that were more progressive than the ACT. It removed all criminal offences for women aborting in any circumstances. Until 24 weeks gestation women can obtain a surgical abortion without any requirements but in addition a registered pharmacist or a registered nurse who is employed by a hospital can supply or administer a drug to cause a chemical abortion (*Abortion Law Reform Act* 2008, s 4). After 24 weeks gestation however, unlike the ACT, the rules change, and a medical practitioner must reasonably believe "that abortion is appropriate in all the circumstances" and must consult at least one other registered medical practitioner who agrees (*Abortion Law Reform Act* 2008, s 5). Appropriate is defined as requiring consideration of "all relevant medical circumstances" and 'the woman's current and future physical, psychological and social circumstances" (*Abortion Law Reform Act* 2008 s 5). Additionally, a new offence was created in the *Crimes Act* criminalizing the act of a performing an abortion on another person by an unqualified person.[VII] The Victorian legislation, therefore, adopted ACT's fully decriminalization approach to abortions up until 24 weeks gestation. However, for women at more than 24 weeks gestation, it created a medicalization regime which does not fully recognize the reproductive rights of women and girls (Medleson 2012). It is, however, a much more progressive model than the one it replaced and at the time of enactment a much more progressive legislative framework than that in all other subnational units.[VIII]

After the reforms in the ACT and Victoria, which decriminalized abortion in many circumstances including up until 24 weeks gestation in Victoria and throughout pregnancy in the ACT, other subnational units followed, mirroring those reforms, even in conservative units (Forster and Jivan 2017; Peterson 2017). Research indicated (helpfully) that in ACT and Victoria the rate of abortion declined (rather than increased) (Sheldon 2017). By 2020, partial decriminalization had been achieved in 7 of the 8 subnational units, including progressive

reforms in New South Wales, despite a conservative state government (*Reproductive Health Care Reform Act* 2019).

Finally, South Australia, after the law remained unchanged after the reforms of 1969, became the most recent subnational unit to enact reforms fully decriminalizing abortion (*Termination of Pregnancy Bill 2020*). The amendments came after the publication of a comprehensive report that drew heavily on reforms in other jurisdictions in making recommendations to fully decriminalize (South Australian Law Reform Institute 2019).

The Australian abortion example showcases the benefits that federal systems can offer to progressing reforms through innovation, policy transfer and venue shopping. Notably since the federal government has been led by a conservative coalition for most of the past 20 years, it might have been difficult to achieve the country-wide decriminalization of abortion if the power to legislate was centrally held. Instead, reforms in progressive subnational units facilitated a "race to the top" culminating in the eventual decriminalization of abortion across the country. Although no subnational unit has a model that fully recognises women's right to abortion and some reforms are more progressive than others, Australia is illustrative of a federal system that has created opportunities for decriminalization and less strict approaches to the regulation of abortion.

The United Mexican States (Mexico) is a federal republic composed of 31 states and the federal district of Mexico City. It provides, in contrast to Australia, an example of conservative policy transfer in a "race to the bottom". Like Australia, Mexico allocates the power to regulate abortion to the subnational units and, until 2007, abortion was a criminal offence country-wide unless the pregnant woman's life was in danger. In 2007 Mexico City became the first place in Central and South America to legalize and decriminalize abortion after strong feminist mobilization, replacing a criminalization approach with a fully decriminalized approach until 12 weeks gestation. The law additionally, ambitious in scope, made sexual education in public schools of Mexico City mandatory, abortion and post abortion contraception free of charge to Mexico City residents, and set a sliding fee of no more than $100 for residents from other states (Olavarrieta et al. 2020). A Supreme Court challenge brought by the National Action Party with support from the Catholic Church followed arguing that the new law was contrary

to the *Political Constitution of the United Mexican States* 1917 (Beer 2017). It was unsuccessful however when on March 2, 2009, the Supreme Court released its final ruling that while life is legally protected it is not a necessary condition for the existence of other rights. It defended the reforms as measures that protect women's rights to bodily integrity, to physical and mental health, and rejected the plaintiffs' arguments that only the federal government can decide health policy, upholding the autonomy of the capital's assembly to legislate in health matters (Sieder and Espinosa 2021, Zaremberg and Rezende de Almeida 2021). Instead of this positive outcome resulting in a "race to the top" however strong resistance from other subnational units and a conservative pushback signalled a "race to the bottom" (Beer 2017). For example, two months after the ruling the state of Sonora ratified an amendment to the local constitution to protect life "from the moment of conception until natural death". Indeed, by 2013, 18 of the 31 states had moved to restrict abortion further by criminalizing abortion in all cases even if a woman's life is at risk (Lopreite 2014). Some states amended their constitutions to state that life begins at conception making future reform more challenging, and in other states women who terminated pregnancies could be prosecuted for murder (Beer 2017) While in 2019, Oaxaca became the second state, after Mexico City, to fully decriminalize abortion up to 12 weeks gestation, in other states the "race to the bottom" continued, further restricting women's right to abortion and reducing accessibility. In Guanajuato state prosecutions have been actively sought and in 2020 the joint health and justice committee voted resoundingly against decriminalizing abortion up until 12 weeks gestation (The Yucatan Times May 2020). In the neighbouring state of San Luis Potosi (also in 2020) lawmakers voted overwhelmingly against decriminalizing abortion (Catholic News Service 2020). On September 7, 2021 however, the Supreme Court of Mexico in a historic decision, unanimously ruled against a law that criminalized abortion in the state of Coahuila finding that it is unconstitutional to criminalize women and pregnant persons who have abortions because it violates their right to decide (Wadhwa 2021). This decision cleared the way for the decriminalisation and future legalisation of abortions across the country (Wadhwa 2021) by setting a national precedent (Ruibal, 2021). Ultimately, although the decision is positive for abortion rights, federalism did not assist in achieving this outcome.

The United Kingdom (UK) is not a federal system but was highly devolved in 1999 into four legislatures - Westminster which remains sovereign and Wales, Scotland and Northern Ireland each with strengthened powers and autonomy. Although health legislation was devolved, abortion regulation remained a reserved issue (with the exception of Northern Ireland) until the decision to extend the power to regulate abortion to the Scottish Parliament in 2015. Between 1967 and 2015 the *Abortion Act* 1967 (which had replaced a restrictive criminalization approach) applied to all parts of the UK except Northern Ireland, which retained a criminalization approach.[IX] The *Abortion Act* decriminalized abortions performed by a registered practitioner up until 24 weeks gestation if two registered medical practitioners agreed that the continuance of the pregnancy would involve greater risk than if the pregnancy was terminated of injury to the physical or mental health of the pregnant woman or any existing children of her family. The scope of risk included "reasonably foreseeable environment". Alternately, two registered medical practitioners must agree there is a substantial risk that the fetus has serious physical or mental abnormalities. After 24 weeks gestation an abortion is decriminalized only if the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant woman. (Abortion Act 1967, s 1). Criminal offences remain if an abortion proceeds outside the rules. The *Abortion Act* represents therefore a hybrid medicalization and criminalization approach to regulating abortion (Ottley 2020).

In 2015 the power to regulate abortion was devolved to Scotland, but not Wales where abortion continues to be regulated by the *Abortion Act*. Many feminists argued against devolution on the basis that fragmentation could threaten women's access to abortion and make it easier for anti-abortion campaigners to "divide us, pick us off one by one and target us differently" (Cooper 2015; Thomson 2018). In 2017 positive changes to abortion regulation were, however, introduced in Scotland. Scottish women were authorised to take both pills required for an early medical abortion at home providing greater access to medical abortions, while the UK continued with the approach that only the second pill for early medical abortion can be taken at home with women having to attend an abortion service to take the first pill. The change in Scotland was positively received by women's campaign groups as well as

medical experts, although challenged (unsuccessfully) in the courts by anti-abortion groups. During the COVID-19 pandemic the UK government has put in place a temporary approval in England that mirrors the Scottish reform (in an example of policy transfer) enabling women and girls to take both pills for early medical abortion at home, following a telephone or e-consultation with a clinician, without the need to first attend a hospital or clinic. It is time limited however for 2 years, or until the pandemic is over – whichever is earliest (The Guardian, 2020).

Northern Ireland did not adopt the reforms to abortion provided in the *Abortion Act* 1967 and continued to be governed by the *Offences Against the Persons Act* 1861 and the *Criminal Justice Act (Northern Ireland)* 1945. Although Northern Ireland became subject to direct rule in 1972, successive UK governments were reluctant to make Northern Ireland's abortion law accord with England, Scotland and Wales. The UK was concerned it "would provoke religious and political controversy of a most undesirable kind" that might militate against efforts "to promote a better relationship between the communities in the Province" (Sheldon et al 2020).

Instead, Northern Ireland retained the strict criminalization approach that had been the law prior to the *Abortion Act* across all of the UK. This resulted in an average of less than 20 approved abortions per year in Northern Ireland while an average of 800 women per year travelled from Northern Ireland to England, while hundreds more risked prosecution sourcing abortion medications from online providers (Aiken et al 2019). In 2019 however in response to decades of campaigning, an inquiry by the United Nations *Committee on the Elimination of Discrimination against Women,* an inquiry by the UK parliament's Women and Equalities Committee, and numerous legal cases challenging the restricted access to abortion (Fox et al 2020). Northern Ireland moved to decriminalize abortion and did so resoundingly, placing Northern Ireland in the vanguard of the movement to fully decriminalize abortion in the UK (Dyer, 2019).

Scotland and Northern Ireland, untethered from central control, have made progressive changes to the regulation of abortion (Moon et al 2019). In Northern Ireland a full reproductive rights approach has been adopted until 12 weeks gestation, with the result that Northern Ireland has a more progressive legislative framework than the rest of the UK

(Carnegie and Roth 2019) which is remarkable given the former strict criminalization approach (De Meyer 2020). In Scotland access to medical (chemical) abortions is significantly easier particularly for women in remote and rural locations since both pills can be administered at home. During the COVIV-19 pandemic the UK has temporarily mirrored the Scottish reforms in an example of policy transfer, but it is yet too soon to know whether this could signal a "race to the top". Decentralization has, in any event, provided Scotland and Northern Ireland the opportunity for innovation and venue-shopping by an active women's movement resulting in legal reforms that have decriminalized abortion in many situations.

A final example, but one of how decentralization can lead to inconsistent regulation of abortion, is provided by the United States (US), a federation of 50 states. Although there is a lack of agreement on whether Congress can also legislate abortion, the power to regulate abortion lies with the states.[X] In practice, however, the *Constitution of the United States* 1788 and the Supreme Court's interpretation of the Constitution has been the ultimate arbiter on abortion law. A mix of both progressive and restrictive legislative regimes were in place across the US when the 1973 case of *Roe v. Wade* 410 U.S. 113 (1973) was heard in the Supreme Court. Jane Roe challenged a Texas law that permitted abortion only to save the life of a pregnant woman. The court ruled that the right to privacy in the Constitution protects a pregnant woman's liberty to choose to have an abortion without excessive government restriction. The court adopted a trimester system finding a woman could choose abortion in the first trimester without restriction, in the second trimester reasonable regulation was permitted and in the third trimester regulation to protect the life of the fetus was permitted, although not if abortion was required to protect the life or health of the mother. The court decision struck down many overly restrictive state and federal abortion laws that did not comply with their ruling. Roe was however modified in *Planned Parenthood of South-Eastern Pennsylvania v Casey* 505 U.S. 833(1992). In this case abortion legislation in Pennsylvania was challenged. The legislation required that a woman seeking an abortion give her informed consent, that a minor seeking an abortion obtain parental consent unless waived by a judge, that a married woman notify her husband of her intended abortion, and that clinics must provide certain information to a woman seeking an abortion and wait 24 hours before

performing the abortion. The court held a law is invalid if its "purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability." The court's interpretation of "substantial obstacles" left in place many of the requirements in the new legislation striking out only the requirement of spousal notification (Faizer 2020).

Since the two Supreme Court decisions, a number of states have further restricted access to abortion through legislation often couching modifications in terms of public health and safety despite no evidence that these types of policies do contribute to patient health and well-being (Jones et al 2020). Restrictions include counselling mandates and waiting periods, ultrasound requirements, targeted regulation of abortion providers, gestational age limits, personhood laws and insurance coverage limitations (Verma and Shainker 2020). Recently, several conservative judges have been appointed to the US Supreme Court and some states have seen this as an opportunity to enact abortion laws which clearly conflict with *Roe v Wade* and *Casey's "*substantial obstacle" standard. In Alabama for example, the *Alabama Human Life Protection Act* (HB 314) was enacted on May 16, 2019, banning abortion except for cases of medical emergency including pregnancy resulting from sexual assault. A medical practitioner performing an abortion when it is not a medical emergency faces a criminal offence with a penalty of up to 99 years imprisonment (Andrews, 2019).The Alabama legislation has been ruled unlawful in the District Court and a preliminary injunction issued, however, it will likely go on to the Supreme Court where some anticipate *Roe v Wade* will be overturned.[XI] Guindon, 2019) In March 2021 Texas passed a restrictive abortion law which criminalized abortion once there is a detectable heartbeat (6 weeks). A number of abortion providers challenged the Bill (SB 8) but the Supreme Court voted 5-4 to uphold the Bill. In other states including Ohio, Georgia, Kentucky, Louisiana, Mississippi and Missouri legislation has been enacted which criminalizes abortion in any circumstance once a fetal heartbeat can be detected. Some states - Alabama, Alaska, Arkansas, Iowa, Kentucky, Louisiana, Ohio, Oklahoma, Tennessee, Texas and West Virginia – have further deemed abortion to be non-essential and therefore not available during periods where non-essential services are limited due to the COVID-19

pandemic (Bayefsky et al 2020). A small number of states have, however, legislatively protected abortion (for example New York).[XII]

The US provides a mixed, but largely unfavourable example of the decentralization of the power to regulate abortion. If states were free to legislate without the constraints imposed by the Supreme Court's interpretation of the Constitution, there would likely be a rapid "race to the bottom" across many states and the imposition of very restrictive abortion laws as indicated by the legislative changes that have already been enacted since the Supreme Court was populated with judges that might potentially rule against *Roe v Wade*.

4. Decriminalizing Abortion in Centralized Federal Systems. Country-Wide Uniformity and a United Women's Movement

Decentralized governance has provided strategic opportunities to decriminalize abortion in some federal systems. However, gender equality experts argue that in some contexts multiple levels of government "limit state capacity to enact and protect women's rights" (Celis et al 2012) and fragment its ability to implement redistributive social policies that benefit women (Collier 2020). They support a strong central government that can deliver country-wide, uniform laws, programs and services. If, they argue, each subnational unit is individually responsible for laws and the delivery of services then women may have more or less access to rights and services according to the wealth and priorities of each unit. The result is likely to be uneven access to rights protection and uneven delivery of services across a nation (Bhatia and Haussman 2014). In relation to abortion this is likely to mean women will have differing access to abortion depending on where they live and whether they have to travel to a neighbouring subnational unit to obtain an abortion. In addition to unevenness of access, some gender equality experts argue that decentralizing the power to make law fragments and isolates women's organisations and lobbyists weakening reform campaigns (Vickers 2020). Instead, if the law-making is centrally held, women can organise more easily, focus on a single access point and overall require less resources and less energy to launch campaigns and interventions

(Franceshet and Piscopo 2010). As illustrated in the following examples the allocation of the power to regulate abortion to the central government in some federal countries has resulted in successful campaigns to decriminalize abortion across the country. In other countries, however, it has resulted in the entrenchment of restrictive laws and the failure to make change despite active campaigns for reform. Additionally, in some countries where decriminalization has been enacted by the federal government, subnational units have restricted services or imposed regulatory restriction on the grounds of health and safety or through different interpretations of the legal framework.

In Belgium, a federation of three communities, three regions and ten provinces, the power to regulate abortion lies with the federal government. Until 1990 abortion was criminalized with no exceptions.[XIII] In 1990, after heated debate, abortion was partially decriminalized. Up until 12 weeks gestation abortion was no longer a criminal offence if a medical practitioner judged the pregnant woman was in a "situation of distress".[XIV] After 12 weeks gestation abortion was decriminalized only if medical practitioners judged there was a serious health risk to either the pregnant woman or the fetus.[XV] With only a single access point to lobby for reform it took until 2018 for any further changes despite strong and continued advocacy from the women's movement (De Meyer 2020). In 2018 new legislation fully decriminalized abortion, with no requirements, up until 12 weeks gestation. Although there was considerable pressure from women's lobbyists to extent this period to 22 weeks, particularly given that many Belgium women regularly travelled to the neighbouring Netherlands where abortion can be obtained until 22 weeks gestation without requirements, this was not adopted (De Meyer 2020). After 12 weeks gestation only two situations can give rise to a lawful abortion, first, severe and incurable disease of the fetus and second serious threat to the health of the pregnant woman. The reform progressed the law to a reproductive rights approach up until 12 weeks gestation. After 12 weeks gestation a hybrid medicalization and criminalization approach continued in most part unchanged from the law it replaced. The replacement of serious threat to life" with "serious threat to life health" however enabled a broader range of circumstances to be considered including both physical and mental health. It did not include socio-economic circumstances, despite attempts to incorporate broader grounds by some lobbyists and

politicians. If the requirements are not met a criminal offence can ensue, including for the pregnant woman. Centralization has led to partial decriminalization across the country, however the opportunity for the women's movement to target select subnational units is absent.

In Switzerland, a federation of 26 cantons, the power to regulate abortion also lies with the federal government. Abortion was criminalized, except for emergency medical reasons, until 2002 when a federal law was enacted decriminalizing abortion until 12 weeks gestation provided the pregnant woman had a detailed consultation with a medical practitioner and received "appropriate" counselling.[XVI] After 12 weeks gestation abortion is decriminalized only if "necessary in order to be able to prevent the pregnant woman from sustaining serious physical injury or serious psychological distress". That requirement, however, after 12 weeks gestation has been interpreted differently by the cantons, leading to permissive regimes in some of the cantons and very restrictive regimes in other cantons (Hofmann et al 2016). Although the opportunity for different interpretations of the law in different cantons does create access points for women to lobby for progressive interpretations this is much harder than to achieve than law reform measures. Like Belgium the centralized power to regulate abortion has achieved uniform decriminalization for abortion up until 12 weeks but the inability to lobby for reform at the subnational level has made decriminalization much more challenging.

In Argentina, a federation of 23 provinces and an autonomous federal capital, the power to regulate abortion lies with the federal government. In the national *Criminal Code* 1921 abortion is a criminal offence unless it results from rape or medical necessity (Lopreite 2020). Although the centralization of the power to regulate abortion has enabled the women's movement to unite and lobby for reform in the single federal venue, women legislators and feminist groups have struggled to achieve progressive change. Indeed, in some provinces even the restrictive requirements have not been upheld with some women who became pregnant after rape unable to access abortions. Although the Supreme Court issued a Protocol requiring the law to be adhered to, some provinces have enacted their own protocols with restrictive interpretations of the law. For example, allowing doctors to be conscientious objectors, limiting services to major

hospitals, and requesting legal consent from parents when girl under 18 even when the pregnancy is the result of rape or the pregnant person's life is in danger (Lopreite 2020). After sustained advocacy over many years in 2018 a bill was submitted to liberalize and decriminalize abortion, but it did not pass through the Senate (Tarducci and Daich 2018). In November 2020, however, another bill passed through the Senate despite opposition from the influential Catholic Church, decriminalizing abortions up until 14 weeks gestation without requirements. After 14 weeks gestation abortion is lawful only in cases of rape or if the mother's health is in danger, similar to Belgium and Switzerland. In comparison to other federal countries where women and their allies have succeeded in achieving reform in subnational units through policy transfer and a "race to the top" this appears to have been a slow and hard-won victory (Loptiete 2020).

In India, a federation of of 28 states and 8 union territories, the power to regulate abortion is allocated to the (federal) Union government. Abortion regulation shifted from a restrictive criminalization approach with no exceptions introduced by the British Imperial colonisers to a hybrid criminalization and medicalization approach in 1971 (*Indian Penal Code* 1860). The *Medical Termination of Pregnancy Act* 1971 decriminalizes abortions until 12 weeks gestation if one medical practitioner agrees and 20 weeks gestation if two medical practitioners agree that "the continuance of the pregnancy involves a risk to the life of the pregnant woman or of grave injury of physical or mental health, or there is a substantial risk that if the child were born, it would suffer from such physical or mental abnormalities as to be seriously handicapped".[XVII] After 20 weeks gestation abortion decriminalized only if conducted "in good faith for the purpose of saving the life of the woman."[XVIII].The 1971 reforms were the combined result of advocacy from the women's movement, lobbying from within the medical profession motivated by widespread unsafe abortions resulting in high rates of maternal death and finally to curb population growth in an effort to assist the economic development of the country (Chatterjee and Vig 2019). Additionally, there was a moral context which favoured abortions because, although pregnancy was desirable for married women, it was unacceptable for widows and unmarried women and in these circumstances, abortion saved family honour (Tripathi, 2021). India therefore moved early compared to other federal countries towards

decriminalization. Although liberal at the time, since the enactment of the *Medical Termination of Pregnancy Act* there have been numerous efforts by the women lobbyists and organisations to reform the legislation and to align it more closely to a reproductive rights approach but without success (Patel 2018). In an important recent development, however, the Lower House of the Indian Parliament on 17 March 2020 passed the *Medical Termination of Pregnancy (Amendment) Bill* 2020 which expands the period during which abortion is decriminalized if two medical practitioners agree that there is a risk to the pregnant woman or the fetus from 20 weeks to 24 weeks gestation**.** India provides a further example of the limitations of a centralized power to regulate abortion as despite significant efforts from a united women's movement, reform has been slow and laboured. Additionally, despite a uniform law there is considerable inconsistency across the country in the delivery of safe abortion services as a result of differing levels of funding, differing priorities in different states, and diverse cultural and religious views on abortion including boy preference and sex-determination law.

In Canada, a federation of ten provinces and three territories, the power to regulate abortion lies with the federal government. In 1988 the Supreme Court held that the criminalization of abortion in the national *Criminal Code* 1985 violated section 7 (life, liberty, and security of the person) of the *Charter of Rights and Freedoms* 1982 (Charter). It could not be rescued, according to the court, by section 1 of the Charter which states that rights and freedoms are subject to reasonable limits that are "demonstrably justified in a free and democratic society".[XIX] While a conservative federal government attempted to enact new legislation to re-impose restrictions on abortion it failed, as did future progressive legislative attempts to declare a right to abortion (Burnett et al 2019). Ultimately, by not enacting new legislation criminalizing or restricting abortion, or declaring a right to abortion, it remains unfettered representing the most progressive legal approach to abortion globally aligning fully with a reproductive rights approach to abortion.

Health delivery, however, is a provincial responsibility, and Canada provides an interesting example of where a centralized legal power has resulted in a very progressive legal framework, but where a decentralized health policy power has significantly weakened access to abortion. Some conservative provinces and territories have restricted access through health policy

measures which they argue aim to promote health rather than restrict abortion (White 2013). They have done this by not compelling hospitals and clinics to provide abortion services, by providing very restricted funding for abortion services, by not training medical practitioners in conducting abortions and failing to provide services in remote areas (Burningham 2019). In Prince Edward Island, for example, from 1988 until 2015 no abortion services were provided. In 2016, under threat of legal action, they reversed the policy and began proving some (limited) abortion services (Shaw and Norma 2020). In another example, although Mifepristone (chemical abortion) was introduced in Canada in 2017 and offered free to residents by most provincial governments, in Manitoba and Saskatchewan women are charged $300 (Shaw and Norma 2020). Consequently, working class and poorer women in those subnational units have less access to abortion than more affluent women who can afford the fee (Htun and Weldon 2010). The disjuncture between the legislative framework which decriminalizes abortion (deployed centrally) and the failure of some subnational units to properly fund abortion services illustrates a problematic feature of federalism if the two powers are not aligned (Burningham 2019). It could be argued that in Canada the federal system has not supported the decriminalization of abortion by the judiciary (Burningham 2019).

A final example is Nigeria, a federation of 36 states plus the Federal Capital City Ajuba. Abortion is regulated through two criminal laws. The 17 southern states are governed by the provisions of the *Criminal Code Act* 1990 and 19 northern (predominantly Muslim) states, are governed by the *Penal Code* 1960. Under both legal frameworks abortion is criminalized and can only be performed to save the life of a pregnant woman.[XX] Despite a strong unified women's movement to reform the laws, supported by health providers and advocates concerned by the high rate of maternal deaths no reform to the law has succeeded (Okorie, Olubusola Adebayo Abayomi 2019; Nagarajan 2018). Centralization in this instance provides an example of its limitations when the central government has a conservative approach to abortion regulation. As a result, there are no subnational access points for the women's movement to target for reform.

5. Conclusion: Strategizing to Achieve the Decriminalization of Abortion in Federal Systems

Federal systems both centralized and decentralized create different opportunities and present different barriers to the decriminalization of abortion. Although there are other factors beyond the governance model which must also be considered, the case examples discussed in this article provide rich material for devising strategies to advocate for the decriminalization of abortion.

Based on many of the country examples examined, this article concludes that decentralizing the power to regulate abortion to subnational units creates opportunities, in some contexts, for quicker and more progressive abortion law reform through innovation, policy transfer and venue-shopping. In decentralized systems it is prudent to identify and target receptive subnational units despite resistance in other subnational units, for advocacy and targeted reform efforts Recognizing that success in one subnational unit may result in a 'race to the top' and policy transfer to other subnational units suggests supporting women and their allies to target receptive units is an important component of abortion law reform. The case examples also suggest that advocates must be cognizant, however, of the ability of conservative actors (for example those with strong religious views on the right to life of the fetus) to veto reforms and instigate even more restrictive responses to abortion. Strategies to counter such measures should be developed.

In other federal countries where the legislative power to regulate abortion is centrally held progressive reform has been achieved. A significant advantage in centralized systems is that any progressive reforms are country-wide. In some federal countries, however, decriminalization has occurred much more slowly despite the advantages of a unified women's movement in part because of the lack of opportunity for innovation, policy transfer and multiple access points. In addition, in some countries despite decriminalization by the central government (or judiciary) subnational units have frustrated that reform by utilizing healthcare powers to limit the delivery of services.

Although there is no unified conclusion that can be reached, particularly because of the multiple factors that influence the achievement of decriminalization, this article concludes that valuable strategy lessons can be learnt through the examination of other country examples.

---

* Christine Forster is a Professor and Associate Dean International at the Law and Justice Faculty of the University of New South Wales in Sydney, Australia. Email address: c.forster@unsw.edu.au..

[I] See Raffaela Schiavon and Erika Troncoso, 'Inequalities in Access to and Quality of Abortion Services in Mexico: Can Task-Sharing be an Opportunity to Increase Legal and Safe Abortion Care?' (2020) 1590 *International Journal of Gynecology and Obstetrics* 25 where the authors found that abortion mortality in Mexico City sharply declined after decriminalization.

[II] General Recommendation No 24 *Women and Health*, 1999, 20th Session (UN Doc A/54/38/Rev.1).

[III] Ibid at para [14].

[IV] Concluding Comments of the CEDAW Committee: Kiribati (2020) 75th Session at para [44(d)] (UN Doc CEDAW/C/KIR/CO/1-3); Pakistan, (2020) 75th Session at para [44(c)] (UN Doc CEDAW/C/PAK/CO/3); Zimbabwe (2020) 75th Session at para [40(d)] (UN Doc CEDAW/C/ZWE/CO/6).

[V] CEDAW Committee, *Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (2019) CEDAW/C/OP.8/GBR/3.

[VI] CEDAW Committee, *Inquiry concerning the United Kingdom of Great Britain and Northern Ireland under article 8 of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women* (2019) CEDAW/C/OP.8/GBR/3 at para 72(b).

[VII] *Crimes Act* 1958, s 65 with a penalty 5-10 years imprisonment.

[VIII] *Crimes Act* 1900 (ACT), s 42. Failure to do so creates offences with penalties of a term of imprisonment of up to 5 years and 6 months respectively.

[IX] *Abortion Act* 1967 (UK) replaced the 1861 *Offences Against the Person Act* 1861 (UK).

[X] Justin Dyer, 'The Constitution, Congress and Abortion' (2017) 11 *NYUJL & Liberty* 394. Those who have tried to pass restrictive federal legislation have alternately, but unsuccessfully relied on the Commerce Clause, the Due Process Amendment, and the Equal Protection Clause.

[XI] Amanda Guindon, 'Alabama's Abortion Ban Has Been Blocked for Now.' 4 *The Comment,* (Bridgewater State University, November 7, 2019). <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1630&context=comment>

[XII] *Reproductive Health Act* 2019 (NY).

[XIII] *Belgium Criminal Code* 1867, Article 348, 350-353.

[XIV] *Act on Termination of Pregnancy* 1990, Article 2, Article 5.

[XV] *Act on Termination of Pregnancy* 1990, Article 2, Article 5.

[XVI] *Swiss Penal Code* 1937, Article 119.

[XVII] *Medical Termination of Pregnancy Act* 1971, s 3.

[XVIII] *Indian Penal Code*, s 312.

[XIX] *R. v. Morgentaler* [1988] 1 SCR 30.

[XX] *Criminal Code Act*, s 297; *Penal Code Act* s 232-234.

References

- Aliff, Seeni, 'New Trends and Models in Federalism' (2015) 20 *IOSR Journal of Humanities and Social Science* 71.

Alonso, Alba and Tania Verge, 'Territorial Dynamics and Gender Equality Polices in Spain' (2014) 14 *Federalisme Regionalisme.* <https://popups.uliege.be/1374-3864/index.php?id=12712>

- Anderson, George, *Federalism. An Introduction* (Forum of Federations, 2016).

- Andrews, Courtney, 'Alabama's Abortion Law Is Not About Protecting Life' (2019) 11(1-2) *Anthropology Now* 85.
- Baird, Barbara 'Decriminalization and Women's Access to Abortion in Australia' (2017) 19(1) *Health and Human Rights* 197.
- Bayefsky, Michelle J, Deborah Bartz and Katie L. Watson, 'Abortion during the Covid-19 Pandemic—Ensuring Access to an Essential Health Service' (2020) 382(19) *New England Journal of Medicine* e47.
- Beer, Caroline, 'Making Abortion Laws in Mexico: Salience and Autonomy in the Policymaking Process' (2017) 50(1) *Comparative Politics* 42.
- Berer, Marge, 'Abortion Law and Policy Around the World: In Search of Decriminalization' (2017) 19 *Health and Human Rights Journal* 13.
- Beyeler, Michele, 'Direct and Indirect Effects of Federalism on Equality Policies Between Women and Men. Perspectives from Switzerland' (2014) 14 *Federalisme Regionalisme.* <https://popups.uliege.be/1374-3864/index.php?id=12712>.
- Bhatia, Vandna and Melissa Haussman, 'Internal Variations in Health-Care Federalism in Canada and the United States' (2014) 14 *Federalisme Regionalisme* <https://popups.uliege.be/1374-3864/index.php?id=12712>.
- Burnett, Margaret, Kelcey Winchar and Adelicia Yu, 'A History of Women's Reproductive Rights in Canada' (2019) 41(5) *Journal of Obstetrics and Gynaecology Canada* 713.
- Burningham, Sarah, 'Constitutional Law and Abortion in Saskatchewan: The Freedom of Informed Choice (Abortion) Act' (2020) 35(1) *Canadian Journal of Law and Society* 69.
- Burningham, Sarah, 'Provincial Jurisdiction Over Abortion' (2019) 45 *Queens Law Journal* 37.
- Calkin, Sydney and Monika Ewa Kaminska, 'Persistence and Change in Morality Policy: The Role of the Catholic Church in the Politics of Abortion in Ireland and Poland' (2020) 124(1) *Feminist Review* 86.
- Carnegie, Anna and Rachel Roth, 'From the Grassroots to the Oireachtas: Abortion Law Reform in the Republic of Ireland' (2019) 21(2) *Health and Human Rights* 109.
- Carter, Eric, 'Population Control, Public Health, and Development in Mid Twentieth Century Latin America' (2018) 62 *Journal of Historical Geography* 96.
- Celis, Karen, Fiona MacKay and Petra Meier, 'Social Movement Organizations and Changing State Architectures: Comparing Women's Movement Organizing in Flanders and Scotland' (2012) 43(1) *Publius. The Journal of Federalism* 44.
- Chappell, Louise and Jennifer Curtin, 'Does Federalism Matter? Evaluating State Architecture and Family and Domestic Violence Policy in Australia and New Zealand' (2013) 43(1) *Publius: The Journal of Federalism* 24.
- Chatterjee, Pyali and Komal Vig, 'The Politics Behind the Reproductive Health in India: Special Reference to Abortion Law' (2019) 10(6) *Indian Journal of Public Health Research and Development* 240.
- Chesney-Lind, Meda and Syeda Tonima Hadi, 'Patriarchy, Abortion, and the Criminal System: Policing Female Bodies' (2017) 27(1) *Women and Criminal Justice* 73.
- Chikhungu, Lana, Marie-Louise Newell, and Nigel Rollins, 'Increased Mortality Risk for Motherless Children aged Less than 5 Years: A Systematic Review and Meta-Analysis' (2017) 95 *Bulletin of the World Health Organisation* 281.
- Collier, Cheryl, 'Comparing Country-Wide Women's Organizations in Canada and the United States in the Age of Decentralization' in Jill Vickers, Joan Grace and Cheryl Collier (eds) *Handbook on Gender, Diversity and Federalism* (Edward Elgar, 2020) 91.
- Daire, Judith, Maren O. Kloster and Katerini T. Storeng, 'Political Priority for Abortion Law Reform in Malawi: Transnational and National Influences' (2018) 20(1) *Health and Human Rights* 225.

- De Costa, Caroline, Heather Douglas, Julie Hamblin, Philippa Ramsay and Mandy Shircore, 'Abortion Law across Australia–a Review of Nine Jurisdictions' (2015) 55(2) *Australian and New Zealand Journal of Obstetrics and Gynaecology* 105.
- De Meyer, Fine, 'Abortion Law Reform in Europe. The 1018 Belgian and Irish Acts on Termination of Pregnancy' (2020) 20(1) *Medical Law International* 3.
- De Meyer, Fine, 'Late Termination of Pregnancy in Belgium: Exploring its Legality and Scope' (2020)27 *European Journal of Health Law* 9.
- Erdman, Joanna N and Rebecca J. Cook, 'Decriminalization of Abortion–A Human Rights Imperative' (2020) 62 *Best Practice and Research Clinical Obstetrics and Gynaecology* 11.
- Faizer, M Akram, 'Federal Abortion Rights Under a Conservative United States Supreme Court' (2020) 69 *Drake Law Review Discourse* 101.
- Fine, Johana, Katherine Mayall and Lilian Sepulveda, 'The Role of International Human Rights Norms in the Liberalization of Abortion Laws Globally' (2017) 19(1) *Health and Human Rights Journal* 69.
- Forster, Christine and Vedna Jivan, 'Abortion Law in NSW: Shifting from Criminalization to the Reproductive Rights of Women and Girls' (2017) 24 *Journal of Law and Medicine* 850.
- Fox, Marie and Goretti Horgan, 'The Effects of Decriminalisation in Northern Ireland' in Sally Sheldon and Kaye Wellings (eds) *Decriminalising Abortion in the UK: What Would it Mean'* (Policy Press, 2020) 77.
- Franceshet, Susan and Jennifer Piscopo, 'Federalism, Decentralization and Reproductive Rights in Argentina and Chile' (2012) 43(1) *Publius. The Journal of Federalism* 129.
- Gray, Gwendolyn, 'Federalism, Feminism and Multilevel Governance: The Elusive Search for Theory' in Melissa Haussman, Marian Sawer and Jill Vickers (eds) *Federalism, Feminism and Multi-Level Governance* (Ashgate, 2010) 19.
- Guindon, Amanda, 'Alabama's Abortion Ban Has Been Blocked for Now.' 4 *The Comment,* (Bridgewater State University, November 7, 2019). <https://vc.bridgew.edu/cgi/viewcontent.cgi?article=1630&context=comment>.
- Han, Leo, Maria I. Rodriguez, and Aaron B. Caughey, 'Blurred Lines: Disentangling the Concept of Fetal Viability from Abortion Law' (2018) 28(4) *Women's Health Issues* 287.
- Hofmann, Annette, Julia K. Neumann and Peter Zweifel, *Camouflage and Ballooning in Health Insurance: Evidence from Abortion* (2016) 1 <http://egrie2016.ucy.ac.cy/wp-content/uploads/2016/09/54_Hofmann_Neumann_2016-07-20.pdf>.
- Htun, Mala and S. Laurel Weldon, 'When Do Governments Promote Women's Rights? A Framework for the Comparative Analysis of Sex Equality Policy' (2010) 8(1) *Perspectives on Politics* 207.
- Hunt, Kate and Mike Gruszczynski, 'The Ratification of CEDAW and the Liberalization of Abortion Laws' (2019) 15(4) *Politics and Gender* 722.
- Jain, Dipika, 'Time to Rethink Criminalisation of Abortion? Towards a Gender Justice Approach' (2019) 12 *NUJS Law Review* 21.
- Jones, Rachel K, Laura Lindberg and Elizabeth Witwer, 'COVID-19 Abortion Bans and their Implications for Public Health' (2020) 52(2) *Perspectives on Sexual and Reproductive Health* 65.
- Keogh, Louise, Danielle Newton, Chris Bayly, Kathleen McNamee, Annarella Hardiman, Adam Webster and Marie Bismark, 'Intended and Unintended Consequences of Abortion Law Reform: Perspectives of Abortion Experts in Victoria, Australia' (2017) 43(1) *Journal of Family Planning and Reproductive Health Care* 18.
- Latt, Su Mon, Allison Milner and Anne Kavanagh, 'Abortion Laws Reform May Reduce Maternal Mortality: An Ecological Study in 162 Countries' (2019) 19(1) *BMC Women's Health* 1.

- Lopreite, Deborah, 'The Federal Restriction of Women's Rights: Argentina's Politics on Abortion and Contraception' in Jill Vickers, Joan Grace and Cheryl Collier (eds) *Handbook on Gender, Diversity and Federalism* (Edward Elgar, 2020) 216.
- Lopreite, Deborah 'Explaining Policy Outcomes in Federal Contexts: The Politics of Reproductive Rights in Argentina and Mexico' (2014) 33(4) *Bulletin of Latin American Research* 389.
- Malca, Camila, Gianella, Rachel Sieder, Angelica Peñas and Marta Rodriguez de Assis Machado, 'A New Conservative Social Movement? Latin America's Regional Strategies to Restrict Abortion Rights' (2017) *CMI Brief* 5.
- Malvern, Chiwesh and Catriona Macleod, 'Cultural De-Colonization versus Liberal Approaches to Abortion in Africa: The Politics of Representation and Voice' (2018) 22(2) *African Journal of Reproductive Health* 49.
- Medleson, Danuta, 'Decriminalisation of Abortion Performed by Qualified Health Practitioners Under the Abortion Law Reform Act 2008 (Vic)' (2012) 19 *Journal of Law and Medicine* 651.
- Melese, Tadele, Dereje Habte, Billy M. Tsima, Keitshokile Dintle Mogobe, Kesegofetse Chabaesele, Goabaone Rankgoane, Tshiamo R. Keakabetse, Mabole Masweu, Mosidi Mokotedi, Mpho Motana and Badani Moreri-Ntshabele, 'High Levels of Post-Abortion Complication in a Setting where Abortion Service is not Legalized' (2017) 12(1) *PloS one*.
- McReynolds-Pérez, Julia, 'Abortion as Empowerment: Reproductive Rights Activism in a Legally Restricted Context' (2017) 17(2) *BMC Pregnancy and Childbirth* 1.
- Moon, David, Jennifer Thompson and Sophie Whiting, 'Lost in the Process? The Impact of Devolution on Abortion Law in the United Kingdom' (2019) 21(4) *British Journal of Politics and International Relations* 728.
- Nagarajan, Chitra, 'Culture/Religion/Tradition vs Modern/Secular/Foreign: Implications of Binary Framings for Women's Rights in Nigeria' (2018) 3 *Feminist Dissent* 114.
- Okorie, Chibueze and Olubusola Adebayo Abayomi, 'Abortion Laws in Nigeria: A Case for Reform' (2019) 23(1) *Annual Survey of International and Comparative Law* 165.
- Ottley, Emily, 'Abortion on Request: A Desirable Response to the Criminalisation of Abortion in England and Wales?' (2020) 11 *King's Student Law Review* 2.
- Parker, Claire 'A Parliament's Right to Choose Abortion Law Reform in South Australia' (2014)
- 11(2) *History Australia* 60.
- Patel, Tulsi, 'Experiencing Abortion Rights in India through issues of Autonomy and Legality: A Few' (2018) 13(6) *Global Public Health* 702.
- Penovic, Tania and Ronli Sifris, 'Expanding the Feminisation Dimension of International Law: Targeted Anti-Abortion Protest as Violence Against Women' (2018) 7(2) *Cambridge International Law Journal* 241.
- Peterson, Kerry, 'Abortion Laws: Criminalization and Decriminalization' in Ian Freckleton (ed) *Tensions and Trauma in Health Law* (Federation Press, 2017) 657.
- Romanis, Elizabeth Chloe, 'Is 'Viability' Viable? Abortion, Conceptual Confusion and the Law in England and Wales and the United States' (2020) *Journal of Law and the Biosciences* 1.
- Ruibal, Alba, 'Using Constitutional Courts to Advance Abortion Rights in Latin America' (2021) 23(4) *International Feminist Journal of Politics* 57.
- Sawyer, Marian, Melissa Haussman and Jill Vickers, (eds) 'Conclusion' *Federalism, Feminism and Multilevel Governance* (Ashgate, 2012) 229.
- Schiavon, Raffaela and Erika Troncoso, 'Inequalities in Access to and Quality of Abortion Services in Mexico: Can Task-Sharing be an Opportunity to Increase Legal and Safe Abortion Care?' (2020) 1590 *International Journal of Gynecology and Obstetrics* 25.

- Sieder, Rachel, and Yacotzin Bravo Espinosa. "Abortion Lawfare in Mexico's Supreme Court: Between the Right to Health and Subnational Autonomy." *Revista Direito GV* 17 (2021).
- Shaw, Dorothy and Wendy Norma, 'When There are no Abortion Laws. A Case Study of Canada' (2020) 62 *Best Practices and Research Clinical Obstetrics and Gynaecology* 49.
- Sheldon, Sally, 'Abortion Law Reform in Victoria: Lessons for the UK' (2017) 43(1) *Journal of Family Planning and Reproductive Health Care* 25.
- Sheldon, Sally, Jane O'Neill, Clare Parker, Gayle Davis, 'Too Much, too Indigestible, too Fast'? The Decades of Struggle for Abortion Law Reform in Northern Ireland' (2020) 83(4) *The Modern Law Review* 761.
- Sifris, Ronlyfv and Suzanne Belton, 'Australia and Human Rights' (2017) 19(1) *Health and Human Rights Journal* 209.
- Singh, Susheela, Lisa Remez, Gilda Sedgh, Lorraine Kwok and Tsuyoshi Onda, *Abortion Worldwide 2017: Uneven Progress and Unequal Access* (Guttmacher Institute, 2018) 14.
- Shrestha, Dirgha Raj, Shibesh Chandra Regmi and Ganesh Dangal, 'Abortion: Still Unfinished Agenda in Nepal' (2018) 16(1) *Journal of Nepal Health Research Council* 93.
- Smith, Peter, *Federalism, Gender Equality and Religious Rights* in Jill Vickers, Joan Grace and Cheryl Collier (eds) *Handbook on Gender, Diversity and Federalism* (Edward Elgar, 2020) 48.
- Sommer, Udi and Aliza Forman-Rabinovici, *Producing Reproductive Rights: Determining Abortion Policy Worldwide* (Cambridge University Press, 2019).
- Stark, Barbara J, 'The Women's Convention, Reproductive Rights, and the Reproduction of Gender' (2011) 18(2) *Duke Journal of Gender Law and Policy* 261.
- Sutton, Barbara and Elizabeth Borland, 'Abortion and Human Rights for Women in Argentina' (2019) 40(2) *Frontiers: A Journal of Women Studies* 27.
- Tarducci, Monica, Debora Daich, 'Antropólogas feministas por el derecho a decidir. Aportes para una historia de la lucha por la despenalización y legalización del aborto en Argentina» (2018) 24 *Publicar en Antropología y Ciencias Sociales.*
- Tadele, Getnet, Haldis Haukanes, Astrid Blystad and Karen Marie Moland, 'An Uneasy Compromise': Strategies and Dilemmas in Realizing a Permissive Abortion Law in Ethiopia' (2019) 18(1) *International Journal for Equity in Health* 1.
- The Yucatan Times 'Initiative for the decriminalization of abortion rejected in Guanajuato' May 2020 https://www.theyucatantimes.com/2020/05/initiative-for-the-decriminalization-of-abortion-rejected-in-guanajuato/
- Thomson, Jennifer, 'Abortion Law and Scotland: An Issue of What?' (2018) 89(1) *The Political Quarterly* 100.
- Tripathi, Niharika, 'Does Family Life Education Influence Attitudes towards Sexual and Reproductive Health Matters among Unmarried Young Women in India?' (2021) 16(1) *Plos one.*
- Verma, Nisha and Scott A. Shainker. 'Maternal Mortality, Abortion Access, and Optimizing Care in an Increasingly Restrictive United States: A Review of the Current Climate' *Seminars in Perinatology* (WB Saunders, 2020).
- Vickers, Jill, Joan Grace and Cheryl Collier (eds) 'Introduction' in *Handbook on Gender, Diversity and Federalism* (Edward Elgar, 2020) 4.
- Vickers, Jill, 'A Two-Way Street: Federalism and Women's Politics in Canada and the United States' (2010) 40(3) *Publius* 412.
- Vickers, Jill, "Is Federalism Gendered? Incorporating Gender into Studies of Federalism' (2013) 43(1) *Publius: The Journal of Federalism* 1.

- Vickers, Jill, 'Gendering Federalism. Institutions of Decentralization and Power-Sharing' in Mona Krook and Fiona MacKay *Gender, Politics and Institutions* (Palgrave Macmillan, 2011b) 129.
- Vickers, Jill, 'How Can Comparative Studies of Federalism be Gendered? Gendering Inter-Governmental Relations" in Jill Vickers, Joan Grace and Cheryl Collier (eds) *Handbook on Gender, Diversity and Federalism* (Edward Elgar, 2020) 16.
- Wadhwa, Tanya, 'Mexico: Abortion Decriminalised in Historic Ruling' (2021) 13 *Green Left Weekly* 1319.
- White, Linda, 'Does Federalism Support Policy Innovation for Children and Families' in Jill Vickers, Joan Grace and Cheryl Collier (eds) *Handbook on Gender, Diversity and Federalism* (Edward Elgar, 2020) 32.
- White, Linda A, 'Federalism and Equality Rights Implementation in Canada' (2013) 44(1) *Publius. The Journal of Federalism* 157.
- Yogi, Abinath, K. C. Prakash and Subas Neupane, 'Prevalence and Factors Associated with Abortion and Unsafe Abortion in Nepal: A Nationwide Cross-Sectional Study' (2018) 18(1) *BMC Pregnancy and Childbirth* 376.
- Yokoe, Ryo, Rachel Rowe, Saswati Sanyal Choudhury, Anjali Rani, Farzana Zahir and Manisha Nair, 'Unsafe Abortion and Abortion-Related Death among 1.8 Million Women in India' (2019) 4(3) *BMJ Global Health*.
- Zaremberg, Gisela, and Debora Rezende de Almeida, "Blocking Anti-Choice Conservatives: Feminist Institutional Networks in Mexico and Brazil (2000–2018)' (2021) 23(4) *International Feminist Journal of Politics* 600.