Cause of Action and the Right to Know

A Formal Conceptual Analysis of the Texas Senate Bill 25 Case

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Senate Bill 25 in Texas, 2017

- to eliminate the wrongful birth cause of action

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wrongful birth

noun

doctor having failed to warn the expectant parents that the fetus is seriously ill

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- **it didn't pass, but generated international media attention**

Health

Why critics say a Texas bill lets anti-abortion doctors lie to pregnant women

1. Trim.
Har-low
Pwr 97 %
Gn 2
C7 / M7
P3 / E2
SRI II 3

Senate Bill 25 in Texas, 2017
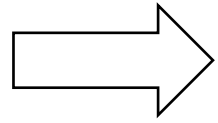
- ## Lani Watson:

    While the public debate surrounding Texas Senate Bill 25 was framed, predominantly, in terms of the language and rhetoric of the pro-life/pro-choice debate, the issue at the heart of the controversy is ultimately one of epistemic rights. Those opposing the bill argued that it would allow doctors to withhold information, or lie to, expectant parents about the health of an unborn fetus. The implicit assumption is that doing so would constitute some kind of harm or wrong. In the context of prenatal healthcare provision, expectant parents have a right to know certain facts about the health of an unborn fetus. By withholding, distorting, or failing to provide these facts, a doctor is unjustifiably disregarding her epistemic duty and so violating the parents' right to know.
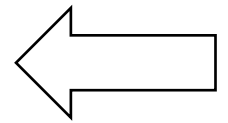
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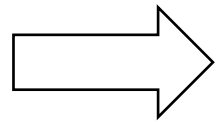
Senate Bill 25 in Texas, 2017

⟹ **if there is no wrongful birth cause of action, the parents have no right to know** ⟸

Senate Bill 25 in Texas, 2017

if there is no wrongful birth cause of action,
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What is the logical form of the parents' right to know?
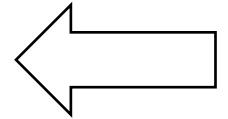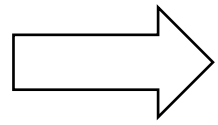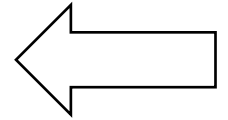
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What is the logical form of the parents' right to know?

What is the logical form of the cause of action?
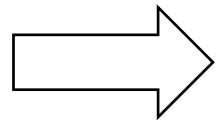
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→ **if there is no wrongful birth cause of action, the parents have no right to know** ←

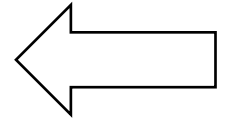**What is the logical form of the parents' right to know?**

What is the logical form of the cause of action?

What is its relevance for the relation between a power and a claim-right in the theory of normative position?

Language and Semantics

$$p \in \Phi \mid \varphi \wedge \psi \mid \neg\varphi \mid \mathbf{K}_a\varphi \mid \mathbf{O}_{a \to b}(\varphi/\psi) \mid E_a\varphi \mid \Box\varphi$$

$$\mathfrak{F} = \langle W, \{R_a, \leq_{a \to b}, f_a\}_{a,b \in A}, R_\Box \rangle$$

- $\mathfrak{M}, w \models E_a\varphi \Leftrightarrow ||\varphi|| \in f_a(w).$
- $\mathfrak{M}, w \models \Box\varphi \Leftrightarrow \forall v$ such that $wR_\Box v, \mathfrak{M}, v \models \varphi$
- $\mathfrak{M}, w \models K_a\varphi \Leftrightarrow \forall v$ such that $wR_a v, \mathfrak{M}, v \models \varphi$
- $\mathfrak{M}, w \models \mathbf{O}_{a \to b}(\varphi/\psi) \Leftrightarrow \forall v \in max_{\leq_{a \to b}}(||\psi|| \cap R_\Box[w]), \mathfrak{M}, v \models \varphi$

where, for any $X \subseteq W, max_{\leq_{a \to b}}(X) = \{w \in X : \neg\exists v \in X$ such that $w <_{a \to b} v\}.$

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legally settled

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Parents' Right to Know: Doctor's Duty

$$\mathbf{O}_{d \to p}[E_d(\mathbf{K}_p(ill)) \vee E_d(\mathbf{K}_p(\neg ill))]$$

Parents' Right to Know: Doctor's Duty

$$\mathbf{O}_{d \to p}[E_d(\mathbf{K}_p(ill)) \lor E_d(\mathbf{K}_p(\neg ill))]$$

$$\mathbf{O}_{d \to p}(E_d\mathbf{K}_p(ill)/K_d(ill)) \land \mathbf{O}_{d \to p}(E_d\mathbf{K}_p(\neg ill)/K_d(\neg ill))$$

Parents' Right to Know: Doctor's Duty

$$\mathbf{O}_{d\to p}[E_d(\mathbf{K}_p(ill)) \vee E_d(\mathbf{K}_p(\neg ill))]$$

detachment of the undconditional duty only if $\Box ill$

$$\mathbf{O}_{d\to p}(E_d\mathbf{K}_p(ill)/K_d(ill)) \wedge \mathbf{O}_{d\to p}(E_d\mathbf{K}_p(\neg ill)/K_d(\neg ill))$$

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What makes 'ill' legally settled?

Parents' Right to Know: Doctor's Duty

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What makes 'ill' legally settled?
doctor's diagnosis
(difference from doctor knowing?)

Parents' Right to Know: Doctor's Duty

static vs dynamic modalities

Parents' Right to Know: Doctor's Duty

static vs dynamic modalities

Réka Markovich and Olivier Roy: "Formalizing the Right to Know – Epistemic Rights as Normative Positions"
In: *Logics for New-Generation AI Proceedings*, Beishui Liao, Jieting Luo, Leon van der Torre (eds.) College Publications 2021, pp. 154-158.

Cause of Action

helps understand the connection between the levels of rights

Claim-right and Power

Claim-right and Power

Makinson (1986)

x bears an obligation to y that F under the system N of norms

iff

in the case that F is not true then y has the power under the code N
to initiate legal action against x for non-fulfilment of F

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power shouldn't be *in the definition* of claim-right

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power shouldn't be *in the definition* of claim-right

What is the connection between claim-right and power?

Claim-right and Power

power to initiate a legal action: initiating a legal action puts a duty on someone

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Claim-right and Power

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the factual part is what is the Cause of Action

Claim-right and Power

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the factual part is what is the Cause of Action

when initiating a legal action, we use a power to put a duty on the judge to decide:

Claim-right and Power

power to initiate a legal action: initiating a legal action puts a duty on someone

when initiating a legal action,
we don't use a power to put a duty on the judge to enforce
for that she needs to see it proved that the defendant did what the plaintiff claims

the factual part is what is the Cause of Action

when initiating a legal action, we use a power to put a duty on the judge to decide:
to either settle that it happened or to settle that she doesn't settle that it happened

Claim-right and Power

$$\Diamond E_p(O_{j \to p}(E_j(\Box \neg E_d(KW_p(ill))) \lor E_j(\Box(\Diamond E_d(KW_p(ill)) \land \Diamond \neg E_d(KW_p(ill))))))$$

Claim-right and Power

$$\Diamond E_p(O_{j \to p}(E_j(\Box \neg \underbrace{E_d(KW_p(ill))}_{\textbf{Cause of Action}})) \vee E_j(\Box(\Diamond E_d(KW_p(ill)) \wedge \Diamond \neg E_d(KW_p(ill)))))))$$

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noun

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Claim-right and Power

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Cause of Action

settled that it happened

settled that it is not settled whether it happened

Claim-right and Power

$$\lozenge \underbrace{E_p(O_{j \to p}}_{\text{power}}(E_j(\underbrace{\square \neg E_d(KW_p(ill))}_{\text{Cause of Action}})) \vee E_j(\underbrace{\square(\lozenge E_d(KW_p(ill)) \wedge \lozenge \neg E_d(KW_p(ill)))}_{\text{settled that it is not settled whether it happened}})))$$

power

Cause of Action

settled that it is not settled whether it happened

settled that it happened

Claim-right and Power

$$\mathbf{O}_{d \to p}(E_d \mathbf{K}_p(\pm ill)/K_d \pm ill) \to$$

$$\underbrace{\Diamond E_p(O_{j \to p}}_{\textbf{power}}(E_j(\underbrace{\Box \neg E_d(KW_p(ill))}_{\textbf{settled that it happened}})) \vee E_j(\underbrace{\Box(\Diamond E_d(KW_p(ill)) \wedge \Diamond \neg E_d(KW_p(ill))}_{\textbf{settled that it is not settled whether it happened}}))))$$

power

Cause of Action

settled that it happened

settled that it is not settled whether it happened

Open questions, further work

- doctor's duty to know about the illness
- axiomatization
- studying the differences of the logical behavior of the different formalizations
- studying the consequences of using dynamic operators to capture power and "informing" in the (claim-)right to know
- and, of course, using other theories of conditional obligations e.g. defeasible deontic logic or input/output logics