

statute. The Court also found that there was a “rational basis” for the limitation, including governmental interests in the expression of “respect for the dignity of human life,” “protecting the integrity and ethics of the medical profession,” and the creation of a “dialogue that better informs the political and legal systems, the medical profession, expectant mothers, and society as a whole of the consequences that follow from a decision to elect a late-term abortion.”<sup>621</sup>

***Privacy after Roe: Informational Privacy, Privacy of the Home or Personal Autonomy?***.—The use of strict scrutiny to review intrusions on personal liberties in *Roe v. Wade* seemed to portend the Court’s striking down many other governmental restraints upon personal activities. These developments have not occurred, however, as the Court has been relatively cautious in extending the right to privacy. Part of the reason that the Court may have been slow to extend the rationale of *Roe* to other contexts was that “privacy” or the right “to be let alone” appears to encompass a number of different concepts arising from different parts of the Constitution, and the same combination of privacy rights and competing governmental interests are not necessarily implicated in other types of “private” conduct.

For instance, the term “privacy” itself seems to encompass at least two different but related issues. First, it relates to protecting against disclosure of personal information to the outside world, *i.e.*, the right of individuals to determine how much and what information about themselves is to be revealed to others.<sup>622</sup> Second, it relates inward toward notions of personal autonomy, *i.e.*, the freedom of individuals to perform or not perform certain acts or subject themselves to certain experiences.<sup>623</sup> These dual concepts, here referred to as “informational privacy” and “personal autonomy,” can easily arise in the same case, as government regulation of personal behavior can limit personal autonomy, while investigating and prosecuting such behavior can expose it to public scrutiny. Unfortunately, some of the Court’s cases identified violations of a right of privacy without necessarily making this distinction clear. While the main thrust of the Court’s fundamental-rights analysis appears to emphasize the personal autonomy aspect of privacy, now often phrased as “liberty” interests, a clear analytical framework for parsing of these two concepts in different contexts has not yet been established.

<sup>621</sup> 550 U.S. at 160.

<sup>622</sup> For instance, Justice Douglas’s asked rhetorically in *Griswold*: “[w]ould we allow the police to search the sacred precincts of marital bedrooms for telltale signs of the use of contraceptives? The very idea is repulsive to the notions of privacy surrounding the marriage relationship.” 381 U.S. at 486.

<sup>623</sup> *Whalen v. Roe*, 429 U.S. 589, 598–600 (1977).