

### The Social Impact of Roe v. Wade

Although the 1973 Supreme Court case Roe v. Wade has been described by some as a monumental achievement for the rights of women, others have criticized the Supreme Court for overstepping its powers and acting in the legislature's realm of control. Despite such polarized opinions regarding the Roe v. Wade decision, which sparked an organized backlash of opposition groups and an equally strong coalition of supporters, it has expanded the right of privacy found in our Constitution to include the right of women to control their own bodies. Although common law prohibitions on abortion were absent from the United States legal doctrine until the nineteenth century, an upsurge of anti-abortion laws during the 1800s resulted in the criminalization of abortion in every state by 1880 (Rubin 15). However, the issue was left unchallenged until it became part of a larger women's rights movement during the 1950s and 1960s, during which women began to assert their changing roles within society and sought to reclaim control over their reproduction. Although the issue of women's reproductive rights began as an essential element of women's fight for equality, it quickly turned into a complicated and heated moral debate, influencing abortion and privacy cases yet today. The victory of women's rights groups in Roe v. Wade did not end the battle over abortion with the Court's final decision; this case only served to generate increased contestation regarding the highly personal, religious, and moral decision of abortion.

Although American courts had previously followed English common law, which did not condemn abortion before quickening, the state at which the mother could feel the fetus move, well-organized pressure by physicians during the nineteenth century resulted in a dramatic increase of abortion laws throughout the states (Rubin 16). Opposition to the changing status of women within society and a desire to limit an influx of foreign immigrants from Eastern Europe and Ireland also influenced the upsurge of abortion laws during this period (Rubin 15). Despite the lack of concern surrounding abortion prior to the nineteenth century, the passage of these laws served to gradually change public opinion regarding abortion. Given increased public support for anti-abortion doctrines and the lack of power held by women in their subordinate positions within society, opposition did not form against such laws for more than fifty years. Despite the fact that an estimated one million illegal abortions were performed every year by 1962, with approximately 5,000 a year resulting in death, abortion was rarely discussed publicly because it carried a stigma of sexual misbehavior and immorality (Rubin 17).

Opposition to abortion laws took formation with the organization of a women's rights movement during the 1950s. This movement sought to obtain equality for women generally within society, and women's reproductive rights were viewed as crucial to such an achievement because the ability to obtain a safe and legal abortion when met with an unwanted pregnancy influenced a woman's capacity to compete with men in the work force. Women felt constrained economically, physically, and emotionally by the laws criminalizing abortion, unable to advance their status in comparison to their male counterparts. In addition, these strict abortion laws forced women to resort to dangerous home remedies, self-abortion, and back-alley abortions, which resulted in thousands of preventable deaths each year. A number of physicians also joined the movement to repeal abortion laws because they witnessed the consequences of incompetent and untrained individuals performing abortions first-hand. These advocates believed that doctors should hold the power to determine whether an abortion should be administered, not the law.

As a grassroots movement to repeal abortion laws throughout the nation began to organize, conferences were held to educate the public about the negative effects of the current statutes. Planned Parenthood and the New York Academy of Medicine sponsored a conference in 1954, followed by the publication of reports concerning abortion by sexologist Alfred Kinsey in 1958 (Rubin 18). In addition, lawyers joined the crusade for women's reproductive rights, concerned with the widespread disregard of the current laws and the blatant incompatibility of such doctrines with the social reality in which they existed. When laws are so frequently disobeyed and remain widely unenforced, they no longer serve a practical purpose, but instead work only to assert one group's control over another using the law. Criminal prosecutions were few and far between not only because most abortions were done in secret and women were usually only caught when they were injured or killed during the procedures, but also because abortion is a consensual crime and it was difficult to find women willing to file a criminal complaint. By the 1960s, the movement had begun to draw national attention to the subject of abortion, as evidenced by the publication of articles in mass-circulation magazines and books designed for the general public concerning abortion (Rubin 19).

During this time period, other factors also influenced the increased attention given to abortion in addition to the women's liberation movement. Sex was being discussed more openly, fears of population growth were developing, and contraceptives were becoming used more widely (Rubin 19). However, the

strongest advocates for the repeal of abortion laws were women themselves, who began to assert their newfound power within society to demand increased rights and recognition. Women's rights activists chose the path of litigation to accomplish their policy goals because legislative gains were susceptible to counterattacks and even reversal after their passage (Rubin 5). The first gain for the movement came with the passage of an abortion reform law in California following an outbreak of German measles, a disease that caused serious fetal damage, followed by a surge of abortions performed by California doctors. When charges were brought against nine doctors in the state, a Citizens Defense Fund on Therapeutic Abortions was launched in a number of states to raise money for the defense of the "San Francisco Nine" (Rubin 23). California State Senator Anthony Beilenson introduced an abortion reform bill in the legislature with support from Episcopal and Jewish organizations, women's groups, abortion counseling services, medical societies and individual doctors (Rubin 23). The reform bill was passed in California, as well as twelve other states, allowing abortion under certain circumstances, such as therapeutic abortion.

Despite the initial success accomplishing reform of abortion laws, the women's rights movement began to split along the issue of reform or repeal. More radical women's groups separated themselves from the moderate organizations, no longer seeing abortion as an issue that could be compromised upon, but rather as a right they must fight for. Organizations such as the Woman's Radical Action Project saw abortion as "a matter of social justice rather than a private personal problem," encouraging women to speak out about their own experiences (Rubin 25). Women appeared at public discussions of abortion to protest the dominance of men leading such panels and organized marches and pickets. However, the grassroots movement to repeal abortion laws was not supported solely by women; broad coalitions were formed with lawyers, doctors, lay organizations and churches in an effort to bring a greater range of supporters and resources into the movement. Increased public discourse surrounding abortion served to eliminate the previous feelings of shame and guilt that had followed many women. Repeal became the goal for an increasing number of women's groups, as they saw the undesired effects of reform in many states. The reformed laws not only narrowly defined circumstances in which an abortion could be given, but also created significant obstacles for women of middle- and lower-class standings. According to Lucinda Cisler, "Poor women often didn't know the new law existed, much less how to stretch it for their own purposes" (Rubin 29).

Although the women's rights movement successfully formed broader coalitions with community members, lawyers, doctors, and churches and expanded public knowledge concerning the issue of abortion through the use of the media, success had yet to be achieved at the judicial level. The 1965 Supreme Court case *Griswold v. Connecticut* opened the door for litigation concerning a woman's right to reproductive privacy. The case argued that a Connecticut law prohibiting the use of contraceptives was unconstitutional, stating that the law abridged citizens' rights to privacy (Rubin 41). This decision increased the chances of success for advocates of abortion repeal because it found a right to privacy that had not previously been interpreted by the Court to exist in the Constitution. The Court defended its interpretation of such a right by citing the previous protection of rights not specifically mentioned in the Constitution, such as the right to free association and the right to educate one's children (Rubin 42). The newfound right to privacy created the conditions for the expansion of such a right to encompass women's reproductive rights as well, given that *Griswold v. Connecticut* could now be used as a precedent.

In 1971, the Supreme Court of the United States heard the case *Roe v. Wade*, brought by a group of three plaintiffs: Roe, a pregnant single woman; Hallford, a licensed physician; and the Does, a childless married couple. The plaintiffs brought a class action suit challenging the constitutionality of the Texas criminal abortion laws. Justice Blackmun, who administered the majority opinion, cited that the task before the court was "to resolve the issue by constitutional measurement, free of emotion and predilection" (*Roe v. Wade*). Although it is an unstated duty of the Supreme Court to determine every case without bias or personal judgment, the power, breadth, and moral magnitude of this particular case made their decision increasingly difficult. Justice Blackmun stated the relative novelty of American abortion laws in support of the majority's decision. Prior to the nineteenth century, a law criminalizing pre-quickening abortion was absent from American legal doctrine, leaving the Court to find that it was "doubtful that abortion was ever firmly established as a common-law crime even with respect to the destruction of a quick fetus" (*Roe v. Wade*). In addition, the Court concluded that at the time our Constitution was adopted "a woman enjoyed a substantially broader right to terminate a pregnancy than she does in most States today" (*Roe v. Wade*).

Given the lack of an extensive historical restriction of abortion in the United States, the defense that criminalization of such a procedure has been ingrained in our country's history was void. Furthermore, the Court found that the newly discovered right to privacy was broad enough to encompass a woman's

decision whether or not to terminate her pregnancy. Although such a right to privacy over a woman's reproductive rights was declared, the Court was also obligated to protect the interests of the fetus and the state's interests to regulate health and medical standards. The Court's decision therefore reached a compromise: a woman's right to obtain an abortion, under the discretion of her doctor, during her first trimester of pregnancy was protected; the states were given reign to determine legislation restricting, although not prohibiting, abortion during a woman's second trimester; and the fetus' could may be found by the state legislature to preside over the woman's interests in the third trimester (Rubin 71). By providing some discretion and power for the state legislatures, the Court attempted to please both parties at once. Justice Blackmun stated that the right to privacy "cannot be said to be absolute" and "at some point the state interests as to protection of health, medical standards, and prenatal life, become dominant," portraying the Court as an objective body that has not swung completely to one side's favor (*Roe v. Wade*). The Court also sought to present its decision in a neutral light by describing the abortion decision as "inherently, and primarily, a medical decision" (*Roe v. Wade*). Taking into consideration the ramifications of their decision and its moral weight, the Court actively tried to present its opinion void of personal, religious, or moral influence. Following the Court's decision, Justice Blackmun stated in an interview, "All we were deciding was a Constitutional issue, not a philosophical one" (Rubin 78).

Despite the reversal of all current state laws criminalizing abortion, some feminists were not satisfied with the Court's decision, arguing that distinguishing the fetus' point of viability as the boundary for protected abortions tied women's rights to the current state of science, which could result in the elimination of a woman's right to choose when science makes it possible to keep a fetus alive outside its mother's womb at any stage of her pregnancy (Rubin 72). In addition, dissenting Justices Rehnquist and White argued that the majority's decision was effectively creating a new law, which was the responsibility of the legislative branch, not the judicial. However, at times in our nation's history it is necessary for the Court to enact such far-reaching decisions, regardless of the level of public support. The Supreme Court was originally created to act as an independent body, free from influence by the other two branches of government, in an effort to protect the rights of those members of society who are under-represented and overlooked by the majority government. Therefore, the Court's decision in *Roe v. Wade* may appear to overstep its traditional boundaries, but doing so protects the rights of individuals as guaranteed by our

Constitution.

The Court's attempt to stay the middle ground resulted in backlash from both sides of the debate; women's rights activists were not pleased with the legislature's ability to still restrict abortions, and the Pro-Life forces were angered that abortion was no longer criminalized and could now be provided to all women. In the year following the Supreme Court's decision, sixty-two laws concerning abortion were adopted by thirty-two states (Rubin 127). These laws addressed issues of performance requirements, consent requirements, reporting requirements, advertising of legal abortions, public funding of abortions, and fetal protection (Rubin 130). An organized Pro-Life movement attempted to break away at the *Roe v. Wade* decision through its own use of litigation. In 1976, the first of these cases, *Planned Parenthood of Central Missouri v. Danforth*, the Supreme Court invalidated the parental and spousal consent provisions of Missouri's abortion statute, stating that these requirements were in conflict with *Roe v. Wade* and the United States Constitution (Rubin 133). However, in 1981 the Supreme Court upheld a parental notification law for abortions in *H.L. v. Matheson* (Rubin 136). The issue of parental consent was addressed again in 1983 with *City of Akron v. Akron Center for Reproductive Health*. In this case, the Court overturned the provision requiring parental consent because it did not provide a procedure for mature minors to make their own decisions regarding abortions if their parents disagreed (Rubin 142). Attempts were also made by individual states to put the fetus' rights above the interests of the mother during abortion procedures. In Pennsylvania, a statute was passed that required physicians to use certain medical techniques to save the life of a fetus that might be viable, even when these techniques could put the mother at risk. However, in 1986 the Supreme Court overturned Pennsylvania's provisions in *Thornburgh v. American College of Obstetricians and Gynecologists* (Rubin 148). Although previous cases were unsuccessful at eroding *Roe v. Wade*, in 1989 the Supreme Court decision of *Webster v. Reproductive Health Services* upheld a Missouri law restricting the use of public funding, employees, and facilities in performing abortions or counseling individuals about abortions, which many considered to compromise the protection of abortion previously established by *Roe v. Wade* (*Webster v. Reproductive Health Services*).

The precedent set by *Roe v. Wade* was challenged once again in 1992 with the Supreme Court case *Planned Parenthood v. Casey*. In its decision, the Court declared, "No change in *Roe*'s factual underpinning has left its central holding obsolete, and none supports an argument for its overruling"

(Planned Parenthood v. Casey). Despite persistent and organized efforts from Pro-Life coalitions, the Court insisted that regardless of medical developments that have advanced the point of viability for a fetus, this point remains the moment at which the State's interest may justify a ban on abortion. Although the Pro-Life organizations were unsuccessful in overturning *Roe v. Wade*, the Supreme Court did uphold the passage of their Partial-Birth Abortion Ban Act of 2003 in its 2007 decision *Gonzales v. Carhart*.

Although the women's rights movement successfully mobilized grassroots support and media coverage to repeal nationwide laws criminalizing abortion, their struggle did not end with the *Roe v. Wade* decision. An organized Pro-Life opposition formed in retaliation to the Court's monumental decision. The opposition coalition used the same strategies employed by the Pro-Choice movement and successfully passed several state statutes decreasing the strength of the *Roe v. Wade* outcome. Given the determination of such polarized movements surrounding the heated debate of abortion, the issue did not remain in the realm of women's rights where it began, but quickly transformed into a national moral dispute, forcing politicians to declare their personal stances as well. The accomplishments achieved by the Pro-Choice and women's liberation movements exhibit the capacity to produce social change through persistence, networking, political involvement and the use of the media. However, the enforcement of a judicial decision may prove to be more difficult than expected, as in the case of *Roe v. Wade*. Widespread and structured right-wing Conservative opposition has revealed the contrasting positions that have developed within our nation regarding moral issues that have permeated politics. However, the example of *Roe v. Wade* depicts the need for litigation to bring about social change in the face of public resistance.

#### Works Cited

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