

ABORTION IN AMERICA:
THE WAR ON WOMEN'S BODIES

By

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Abstract

This thesis examines abortion law in the United States from the late eighteenth century up to present day. Beyond merely looking at the legal aspects of restricting abortion, it explores the sentiments behind the anti-abortion campaign that took hold in the late nineteenth century as states around the country criminalized the practice. The initial movement focused on women and the idea that they were not capable of making such decisions on their own. As the anti-abortion movement changed throughout the years, its messaging transformed to fit the political landscape, but the underlying tone set in the early years never wavered. It's still seen in today's laws that work to limit and restrict a woman's ability to control her own reproductive health. Though arguably the anti-abortion movement's newest interest in 'trigger laws,' laws meant to take effect and fully criminalize abortion if *Roe v. Wade* was ever overturned, is the most telling of where the movement sees America heading. And without a true understanding of history and the experiences women faced during the period of criminalization, such laws only show the true oblivion of those peddling them. It's a war for control, and if the wrong side wins, we unfortunately know exactly what were in for.

Women are powerful. They lay claim to strongest muscle in the human body – the uterus. Beyond their shear strength, women can also grow an entire organ in a matter of nine months in addition to a baby who begins as a human egg cell and will grow to roughly the size of a watermelon.¹ Their body will undergo immense changes as it feeds and sustains the growing egg from an embryo to a fetus to a baby. Women will experience a wide variety of possible symptoms including, but not limited to: nausea and vomiting, headaches, round ligament pain, back aches, change in smell, taste and eyesight, heartburn, dizziness, increase in urination, hair loss, tender breasts, painful cramping, bloody gums, hemorrhoids, change in appetite, mood changes, health changes such as developing diabetes and so on. Of course, this is just pregnancy, the act of giving birth and postpartum present their own experiences and side effects. Women take on everything pregnancy, birth, and postpartum entail – all in the name of single-handedly furthering the world’s population.

Women are not only physically strong, but mentally and emotionally strong creatures and pregnancy and birth is just one illustration of their downright superhuman abilities. And yet society has continually questioned a woman’s capability and power to regulate her own body and reproductive rights. Pregnancy, birth, and motherhood can be a beautiful experience for a lot of women, but for some women it’s not an experience they want to or cannot undertake. Being it’s their body, a woman should be able to make that decision. But for centuries, women were denied this choice in America. Though even after the United States’ Supreme Court protected a woman’s right to an abortion in its landmark decision *Roe v. Wade*, the fight for

¹ Sharon Muza, “Ten Fascinating Facts about Pregnancy, Birth and the Newborn,” *Lamaze International*, September 01, 2016, <https://www.lamaze.org/Connecting-the-Dots/Post/ten-fascinating-facts-about-pregnancy-birth-and-the-newborn-that-may-surprise-you>.

control over a woman's uterus has continued. The most recent tactic (and notably just one of many) taken by self-proclaimed pro-life advocates has been the support and passage of 'trigger laws' – laws that would ban legal abortions (with little to no exceptions) in the event *Roe v. Wade* was ever overturned. In total, 21 states have laws that would automatically outlaw abortion if *Roe's* precedent was ever dismantled.² To fully understand and comprehend the insult and potential devastation of such laws, we must understand pre-*Roe* realities of American women.

Despite what many may assume, abortion was not always illegal and seen as morally taboo. Instead, during the eighteenth and early nineteenth centuries, abortion early on in pregnancy was legal and quite common. Common law of the time left the timing up to the woman, allowing abortions up to the point of "quickening" or the point in which a woman could feel fetal movement (typically around 20 weeks gestation).³ This allowed for woman-led reproductive decisions based on their experiences in their own bodies. Despite this more forward thinking view on abortion, most women never saw their actions as such, possibly explaining why the laws took such a relaxed stance. When a woman missed her period her first instinct was not that she was pregnant, but that her "menses" were being impeded by some other imbalance caused by diet or weather, etc. In order to restore them she would take a well-known concoction of herbs and drugs to "bring on the menses."⁴ While women would not

² "Abortion Policy in the Absence of Roe," *Guttmacher Institute*, <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roef>.

³ Leslie J. Reagan, *When Abortion was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (Berkeley and Los Angeles, California: University of California Press, 1997), 8.

⁴ *Ibid.*, 9.

necessarily talk about these occurrences openly with males, they were well known and discussed among close women family members or friends.

Eventually, abortifacients became the most common way to induce an early abortion and the drugs became commercialized in the mid-eighteenth century. The drugs were easily accessed from doctors and druggists. As the drugs became more widely available and reports of death rose, laws were passed in the 1820's and 1830's classifying the drugs as poison and prohibiting their usage. Though the laws still did not punish women, nor did they remove the legal concept of quickening. Despite the regulations, the use of abortifacients boomed in the 1840's. And if the pills failed, women took to instrumental abortions.⁵

In 1857, the newly formed American Medical Association (AMA) began the fight to make abortion illegal, at all stages and circumstances. The fight initially came out of doctors wanting to keep control of the practice of medicine and keep it out of the hands of midwives and other homeopaths, but at its core it was sexist in nature. Abortions began to be labelled as infanticide and women were considered "immoral, unwomanly, and unpatriotic," if they practiced it.⁶ Abortions became criminalized in most states by the 1880's. Exceptions were only made for instances necessary to save a woman's life. The federal Comstock Law of 1873 also worked to ban items to include abortion drugs.⁷ Essentially by the end of the 1880's a woman's right to control her reproductive system were completely stripped from her, and instead left to the male dominated government and medical field.

⁵ Ibid., 10.

⁶ Ibid., 13.

⁷ Jessica Ravitz, "The Surprising History of Abortion in the United States," *CNN Health*, June 27, 2016, <https://www.cnn.com/2016/06/23/health/abortion-history-in-united-states/index.html>.

The following hundred years in history are what we can look to if *Roe v. Wade* was ever overturned and trigger laws went into effect. While some periods during this era show a relaxation in enforcement due to extenuating factors such as the Great Depression, much of this period demonstrates the hostility towards female independence hallmarked by strict antiabortion activity.⁸ Throughout this era of illegal abortion, women faced the true possibility of social judgment and backlash, illness, rape, and often death in the hopes to control her own reproductive health.

At the beginning of this period, abortion was still widely accepted. Women would often have support from their husbands, friends, family and practitioners.⁹ While no one knows for sure, doctors of the time believed there was roughly two million abortions performed in the United States a year.¹⁰ With no real form of birth control, women were left with counting on their partner for the pull-out method or abortion. And unfortunately, neither were a sure thing.

The women most concerned with family planning during the early 20th century were married mothers. With the dangers of childbirth constantly looming, and the need to provide for their existing children, often times the thought of another child was unbearable. It's important to note this since the antiabortion agenda frequently pushes the idea of immoral women who want to avoid motherhood, and that simply is not the case. These were loving and thoughtful mothers who worried their already existing children would suffer from an additional mouth to feed or another child's education to pay for.¹¹ The unfortunate side of this however,

⁸ Reagan, 14.

⁹ Ibid., 45,69.

¹⁰ Ibid., 23.

¹¹ Ibid., 39.

is that abortion methods during the early 20th century were far from safe and reliable. After missing a period, women would employ hot water, sitz baths and douches. If not successful, they would resort to button hooks, hair pins, knitting needles, crochet hooks, scissors, and catheters. They would apply mustard plaster to their abdomens or use cotton balls to irritate their uterus. They would ingest blueing, starch, gunpowder, and whiskey.¹² In short, women were lucky if they survived these home attempts. An even if they were able to see a doctor to perform an abortion, the practice was unregulated and not all doctors who agreed to perform illegal abortions were qualified. Often times a woman's uterus would be punctured during the procedure known as a dilation and curettage, or a D&C.¹³ This resulted in the United States having one of the highest maternal mortality rates in the world throughout the early twentieth century.¹⁴

While women during this time were usually privy to some kind of private support, there was a growing movement to fully enforce the antiabortion laws. The crusade was mostly led by men in the medical field who believed women's "dense ignorance" towards abortion was in part due to the medical profession.¹⁵ The antiabortion campaign took to warning women on the dangers and depravity of abortion. They also worked with physicians to push abortionists out of the business to include midwives who they saw as the worst of them all. While at this time in American history abortion was not a hot button political issue talked among high profile candidates, it was a highly contested matter at the local and state levels. The anti-abortion

¹² Ibid., 42-43.

¹³ Ibid., 78.

¹⁴ Ibid., 77.

¹⁵ Ibid., 80.

movement was so convicted in their crusade that they bore the brunt of the enforcement of the abortion laws.¹⁶ Voluntary medical groups and reformers essentially took on the role of the state, illustrating just how strongly these people felt about other women's reproductive systems and the morality they assigned to it. Many of the male physicians who took on this crusade saw themselves as a minister or father figure to these women seeking abortions. They would try to persuade them, suggesting they were breaking a moral law. For young unmarried women, they would push her to marry instead.¹⁷ The media also played a role in framing abortion as impure, linking it to prostitution and warning of its deadly potential.¹⁸ Overall, during this period in the early twentieth century, women were faced with sexist anti-abortion sentiment on one hand, yet usually had some kind of mutual understanding and support from either their husbands, close female friends, or family members on the other.

As anti-abortion sentiment grew, so did enforcement. Initially police and local governments focused their efforts on prosecuting the doctors performing illegal abortions. They did this by collecting dying statements from women brought into hospitals following botched procedures. On their death beds, these women and girls were forced to name and identify their abolitionist, partner, discuss their sexual actions, and make a declaration that they received an abortion. It was mortifying, traumatic, and wholly inappropriate treatment for someone in their final hours. While doctors and sometimes the men (when the death was that of an unmarried woman) would be arrested, they were almost never convicted of their crime.¹⁹

¹⁶Ibid., 81.

¹⁷ Ibid., 84.

¹⁸ Ibid., 99.

¹⁹ Ibid., 117.

Instead, the trials were meant to serve as a public warning for women considering abortion and the doctors performing them.

The Great Depression was a period of relief for women seeking abortions. Of course, this was also accompanied by severe economic insecurity, but these conditions gave physicians a reason to relax their qualifications for what they considered therapeutic abortions. Doctors sympathized with women who were unable to provide for another child as they were already struggling.²⁰ This shift marked the consideration of a woman's entire situation, not just her present condition of pregnancy. And so, abortion became more widely available and arguably more tolerable again. Birth control also saw a form of acceptance during this time period, with the help of Comstock laws being overturned and the AMA no longer officially opposing it.²¹

The increased demand for abortions was met with a newly refreshed supply of abortion physicians. Doctors would specialize in the procedure and form clinics that specialized in the practice. They would work primarily on a referral basis with family practitioners sending their patients to the professional abortionists. The physicians worked on the cusp of legality. Therapeutic abortions remained legal, meaning abortions that were performed to save a woman's life were acceptable. While the classification had previously been strictly enforced, most practitioners relaxed their standards due to the economic and social crisis of the time. The abortionists therefore were able to practice by claiming the woman's extenuating life circumstances as life threatening, noting the stress of another mouth to feed and so forth was detrimental and dangerous for a woman's wellbeing. This further acceptance from doctors

²⁰ Ibid., 133.

²¹ Ibid., 135.

allowed for more women to obtain professionally attended abortions which led to improved health outcomes.²²

These clinics practiced for decades, pointing to the overall acceptance abortion had during this time period. Following the Great Depression and entering into World War II, abortion continued to get the same treatment. Women were called to work to help the war effort, and so physicians continued to make the same exceptions and perform therapeutic abortions, again practicing on the line of legality. Single clinics were known to provide over two-thousand abortions a year, or almost 50 abortions a week.²³

But we know this period of acceptance could not last forever. As women began to gain a greater sense of independence from working during the war effort, it was almost instantaneously that the anti-abortion crusade worked to diminish their right to access the healthcare they had been receiving.²⁴ The 1940's and 1950's were laden with raids. Instead of focusing efforts on the cases where women died, the raids took place at the abortions clinics who were successful and most importantly – safe. Instead of deathbeds, women were forced to talk of their abortions and private relations in male dominated police stations and courtrooms. They were subject to internal medical examinations to determine if they had an abortion or not.²⁵ It was humiliating, embarrassing, and a complete violation of their own private body. The media was also very cautious to display names of everyone involved in articles for the entire town to read. This was all done in part to shame women and scare them from obtaining

²² Ibid., 148-149.

²³ Ibid., 149-151.

²⁴ Ibid., 162.

²⁵ Ibid., 161.

abortions. But as we see throughout history, women did not stop getting abortions during this time of raids and enforcement – they stopped getting safe ones.

With dependable clinical abortions harder and harder to get, women turned to other means in the 1950's and 1960's. The need for abortion also rose during this time as young women chose to go to college and join the work force. If a woman was unmarried and pregnant, she faced termination or expulsion if her pregnancy was revealed. Yet at the same time, abortion was illegal and birth control methods were still difficult to obtain.²⁶ This left women with nowhere to turn. This leads us to believe the only acceptable thing for women to do was to fully abstain until marriage, and once married their role was to stay home and care for children. But the young women of the time, fought against this, and found their own options.

At first young women found themselves subject to the horrors of an unregulated system. Anyone could call themselves an abortionist, and with the need as great as it was, they received business. In order to avoid raids and enforcement, many women were blindfolded and taken by strange men to a dingy apartment. The “offices” were dirty, the “doctors” would be smoking and dressed in dirty T-shirts reeking of alcohol. Women were sexually harassed and in the worst cases sometimes even raped as the male attendants saw them as sexually promiscuous. They would offer women discounts if they performed oral sex, even agreeing to exchange an abortion for sex to underage girls.²⁷ But many women subjected themselves to the

²⁶ Ibid., 194-195.

²⁷ Ibid., 199.

dangers and risk, because they felt they had no other choice. It was disgusting and dangerous, and young women were fed up and decided to take matters into their own hands.

“Jane” was one of several underground abortion networks that formed in the 1960’s. Created by women, for women – “Jane” was a service born from Heather Booth, a student at the University of Chicago who merely wanted to help a friend’s sister find an abortion physician. It began as a referral service. Women would hear from a friend or see a flyer around campus that told them to call “Jane” if they were pregnant and didn’t want to be. Eventually the women taught themselves how to perform abortions and moved from being merely a middle (wo)man to the actual provider. While it started on a college campus, “Jane” performed abortions for young girls, students, housewives, and anyone else that could get ahold of their services. The women at “Jane” made it their mission to charge reduced fees so poorer women could also receive services. They would service around ten women a day about four days a week, making them just as productive as the earlier abortion clinics ran by medical doctors.²⁸ They gave thousands of women a safe space and allowed them to be in control of their reproduction health which was so needed at this point in history. Though as many successful abortion clinics of the time, “Jane” was eventually raided in 1972 as anti-abortion sentiment picked up throughout the country. Leading us to one of the most important Supreme Court cases to ever be ruled on.

²⁸ Nellie Gilles, Sarah Kramer, Joe Richman, “Before ‘Roe v. Wade,’ The Women of ‘Jane’ Provided Abortions For The Women of Chicago,” *NPR, Radio Diaries*, January 19, 2018, <https://www.npr.org/2018/01/19/578620266/before-roe-v-wade-the-women-of-jane-provided-abortions-for-the-women-of-chicago>.

Roe v Wade is synonymous with abortion in America. The name alone evokes strong sentiments from both sides of the issue. And while it seems everyone has some kind of opinion on the Supreme Court case, many Americans do not realize the legal battle that led to the landmark decision, nor its true impact on American society of that time and beyond. The fight for *Roe* and the right to access legal abortions began decades before with physicians and health workers who saw the overwhelming need for safe abortions. These physicians combined efforts with leaders in the legal profession, and the two groups worked together to push the movement forward.²⁹ A notably interesting shift from the doctors of the 19th century who were responsible for leading the charge on outlawing abortion in the first place. While generations upon generations passed during this shift in attitude, the profession paid witness to the fact that restricting safe and legal access only forced women into riskier options and decided to help fix what it had previously helped install.

One of the earliest efforts by the medical and legal professions was the case of *Tileston v. Ullman*, 318 U.S. 44 (1943). The suit was brought by a physician who claimed the Connecticut statute, which prohibited the use of drugs or instruments to prevent pregnancy and the assistance or consul of such use, prevented him from giving professional, potentially life-saving advice to his patients. The United States Supreme Court dismissed the case on grounds that the physician was not personally deprived of life, liberty, or due process, and therefore he had no standing in the court of law.³⁰ This case, while dismissed, was a crucial step on the road to *Roe*

²⁹ Reagan, 217.

³⁰ *Tileston v. Ullman*, 318 U.S. 44 (1943) cited in *Justia*, <https://supreme.justia.com/cases/federal/us/318/44/>.

v. *Wade* because it indicated to the medical and legal reformers that they needed actual women to stand up and fight with them.

Griswold v. Connecticut, 381 U.S. 479 (1965) also served as a crucial steppingstone to *Roe*. The case brought the same Connecticut statute into question. This time the suit was filed by Estelle Griswold and C. Lee Buxton who had opened a Planned Parenthood in the state. They were arrested and convicted of violating the state law and appealed the ruling. Their hope was the state law would be ruled unconstitutional under the Fourteenth Amendment as it infringed upon a married couple's right to privacy in their reproductive decisions. In a 7-2 decision, the Court ruled in favor of Griswold, noting the statute did in fact violate the implicit right to privacy provided by the Constitution.³¹ *Griswold* played a crucial role in the fight for *Roe v. Wade* as it opened up the abortion debate to the national stage and began a more serious look into whether abortion was a fundamental right.³² Though it is important to note that it took the discussion of a married couple, not merely just a woman, to prove the right to privacy. Essentially, it took the addition of a man for a woman's right to control her reproduction system to be seen as constitutionally protected in a court of law. It took six years for the Court to acknowledge the right to privacy was not just for married women, but for individuals – married or single – as well. This was established in *Eisenstadt v. Baird* 405 U.S. 438 (1972). Yet again, the fact it took six years, and an entirely separate court case to recognize and confirm that single women also have the right to privacy is important to note.

³¹ *Griswold v. Connecticut*, 381 U.S. 479 (1965) cited in Oyez, <https://www.oyez.org/cases/1964/496>.

³² Claudia Nunez-Eddy and Sharaden Seward, "Roe v. Wade (1973)," *The Embryo Project Encyclopedia*, July 03, 2018, <https://embryo.asu.edu/pages/roe-v-wade-1973>.

Jane Roe v. Henry Wade, 410 U.S. 113 (1973) served as the tipping point in the fight for control over a woman's reproductive health. The landmark court case was decided alongside a lesser-known case, *Doe v. Bolton*, 410 U.S. 179 (1973). The two cases were deemed to be similar in nature and thus the Supreme Court chose to decide on the cases together.³³ Jane Roe was the alias for Norma McCorvey, a twenty-one-year-old woman who found herself pregnant for the third time. Following her first pregnancy at the age of sixteen, her mother forced an adoption of McCorvey's child without her consent on the grounds of neglect. McCorvey's second pregnancy also led to an adoption. As she became pregnant for the third time, she decided to gain some control over the situation and not be forced into another adoption scenario. She decided she wanted to terminate the pregnancy.³⁴

McCorvey went to her doctor who informed her that they were unable to perform abortions under Texas law. The doctor instead referred her to Linda Coffee and Sarah Weddington, two attorneys who were looking for a pregnant plaintiff to challenge the anti-abortion statutes. McCorvey agreed in the hopes it would help her receive an abortion.³⁵

The case was brought against Henry Wade, the Dallas County district attorney and was heard before the Circuit Judge, Irving Goldberg and the District Judges, Sarah Hughes and William Taylor. On June 17, 1970, The U.S. District Court ruled in favor of McCorvey or "Roe" citing the precedent to privacy set in *Griswold v. Connecticut*. Though the Court ruled in favor of McCorvey, they refused to file an injunction, keeping McCorvey pregnant and anyone else

³³ Nunez-Eddy and Seward.

³⁴ Ibid.

³⁵ Ibid.

looking for relief from the strict law. While the decision was being appealed, McCorvey gave birth to her third child and placed them up for adoption.³⁶

The case was eventually appealed to the Supreme Court where it was combined with the aforementioned *Doe* case. Weddington made the argument that fetuses are not considered persons and thus have no rights protected by the Fourteenth Amendment. She noted that self-induced abortions were not criminalized under Texas law which showed the intention of the state was not in fact to protect the potential of life and instead served other interests. Furthermore, the state has an interest in protecting maternal health, and by cutting off access to safe and legal abortions the state was acting in direct contrast of such interest.³⁷ Waddington's argument about potential life is important to note because it will go forward to serve as the basis of the contemporary "pro-life" campaign.

On January 22, 1973, the United States Supreme Court decided on arguably one of the most controversial cases in history. In a 7-2 ruling, the Court ruled in favor of *Roe*, citing the right to privacy implicitly implied by the Due Process clause of the Fourteenth Amendment. The Court stated that a state law that broadly prohibits a woman's right to choose an abortion is in violation of her right to privacy. The Court noted that through the first trimester, a woman had this right to privacy that shall only be decided between her and her physician. During the second trimester the state may impose reasonable regulations on abortions. And in the third trimester, once the fetus has reached viability, the state may prohibit abortions entirely as long as there remains an exception for instances where the mother's health is directly in danger.³⁸

³⁶ Ibid.

³⁷ Ibid.

³⁸ *Jane Roe v. Henry Wade*, 410 U.S. 113 (1973), cited in *Oyez*, <https://www.oyez.org/cases/1971/70-18>.

Roe v. Wade changed America. Cities and states recorded their lowest maternal mortality rate on record. Previously over run septic abortion wards were closed.³⁹ For the first time in history, American women were allowed to make safe decisions regarding their reproductive health and their own bodies. But despite this vast improvement to women's health as a whole, the backlash to the decision was palpable.

The 1980's and 1990's saw a distinct shift in the anti-abortion crusade as it began to be known as the "pro-life" movement. It was at this point in history that the movement focused on giving the fetus new meaning and power by deeming it human life from the point of conception. This was used to call any kind of abortion murder. The shift in thinking had a large backing from the Catholic Church as the religion believed in life *before* conception.⁴⁰ This new take on the anti-abortion movement gave new fuel behind its cause. It masked the outdated thinking of purity and control over women and made the crusade about being the savior of the 'unborn' who were helpless from the cruel intended mother. The new crusade was given clout as new science and technology allowed for a closer look at reproduction. Micro imagery by Lennart Nilsson was enlarged in great scale in the award-winning film, "The Miracle of Life" that gave the appearance of a human form at only 6 weeks gestation.⁴¹ These enlarged images show embryos that only measure a fifth of an inch – the size of a mere pea. But up close on a TV screen, their distorted scale gives off a much more human air. This further persuaded people of the concept that an embryo was just as much a human as the mother herself.

³⁹ Reagan, 246.

⁴⁰ Ibid., 248.

⁴¹ *The Miracle of Life*, produced by Nova, photography by Lennart Nilsson (1983, PBS) cited in *Daily Motion*, <https://www.dailymotion.com/video/x3623rs>.

As the anti-abortion movement gained momentum, they decided their fight was best fought at the state level. They believed this would be the best way to chip away at *Roe's* decision and eventually ban abortion. So, they recruited candidates and helped them run for state legislatures all in the hopes to further limit a woman's access to abortion.⁴² The legislators worked to pass new laws that created roadblocks to a woman's ability to obtain a safe and legal abortion such as a 24-hour waiting period, parental consent for minors, and the need to notify their husbands if the woman was married. Such laws were mostly upheld by the Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Robert Casey*, 505 U.S. 833 (1992). The court addressed all three requirements in its 5-4 decision which upheld *Roe*, but also upheld the additional restrictions with the exception of the requirement that women notify their husbands.⁴³ The ruling has led to the acceptance of laws that at their core question a woman's ability to make her own choice in regard to her reproductive health. Laws that impose mandatory waiting times or require counseling prior to an abortion insinuate that a woman is not capable of making a well thought out and informed decision on her own, and that she is in need of additional time or opinions in order to do so. And while such laws are degrading and sexist at their core, there is a new trend in anti-abortion legislation that could prove to be much more dangerous – trigger laws.

Planned Parenthood of Southeastern Pennsylvania v. Robert Casey effectively emboldened the states in their anti-abortion crusade. It proved to them that they had the

⁴² *Birthright: A War Story*, directed by Civia Tamarkin, written by Luchina Fisher and Civia Tamarkin (2017) cited in Amazon Video, <https://www.amazon.com/Birthright-War-Story-Michele-Goodwin/dp/B075RXWJLR>.

⁴³ *Planned Parenthood of Southeastern Pennsylvania v. Robert Casey*, 505 U.S. 833 (1992), cited in Oyez, <https://www.oyez.org/cases/1991/91-744>.

ability to further restrict abortion despite *Roe*. And so, they began passing laws as if *Roe* didn't exist. The laws, known as trigger laws, are designed to be "triggered" and take effect if, or as they believe 'when,' *Roe* is ever overturned.⁴⁴ Illinois was the first state to pass such a law when it passed the Illinois Abortion Law in 1975. The law included a provision that would have reverted the state back to its pre-*Roe* law that criminalized abortion should the Supreme Court case be overturned. While the 1975 law was eventually overturned through HB40 in 2017, it served as an example for the future legislation that would catch popularity beginning around 2010.^{45,46}

Trigger laws caught their first wave of popularity around 2010. The 2008 election of President Barack Obama angered conservatives and led to their sweeping victories in the 2010 election. This was also the year of the Tea Party which served to solidify the conservative win.⁴⁷ The GOP swept the House of Representatives, but most importantly they dominated in the state elections, claiming 3,890 seats, or 53% of the total seats, which gave them control over 54 of the 99 state chambers.⁴⁸ Elected to the majority party were scores of candidates that had been backed and supported by anti-abortion organizations like National Right to Life.⁴⁹

Trigger laws saw a second wave of popularity recently in the last few years beginning around 2019. Conservative state legislators were emboldened not only by President Donald

⁴⁴ "Abortion Policy in the Absence of *Roe*," *Guttmacher Institute*, April 1, 2021, <https://www.guttmacher.org/state-policy/explore/abortion-policy-absence-roe#>.

⁴⁵ "HB 40: Access to Abortion in Illinois," *ACLU Illinois*, September 28, 2017, <https://www.aclu-il.org/en/legislation/access-abortion-illinois>.

⁴⁶ *Birthright: A War Story*.

⁴⁷ *Ibid*.

⁴⁸ "Republicans Exceed Expectations in 2010 State and Legislative Elections," *NCSL*, November 3, 2010, <https://www.ncsl.org/press-room/republicans-exceed-expectations-in-2010.aspx>.

⁴⁹ *Birthright: A War Story*.

Trump's disruptive rhetoric, but most importantly by the newly conservative majority of the Supreme Court. This led to the doubling of trigger laws passed in the United States since the wave in 2010, and they have continued to pass with popularity to this day.⁵⁰

In total, since the Illinois law, eleven states: Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, North Dakota, Oklahoma South Dakota, Tennessee, and Utah have passed laws since *Roe v. Wade* that are intended to take effect if the decision was overturned. Eight states: Alabama, Arizona, Arkansas, Michigan, Mississippi, Oklahoma, West Virginia, and Wisconsin have also kept their pre-*Roe* abortion bans on their records. This would allow the states to prosecute using the old laws if the Supreme Court decision was ever overturned, just like the post-*Roe* bans. And seven states: Arkansas, Kansas, Kentucky, Louisiana, Missouri, North Dakota, and Ohio have laws that express the intent to restrict abortion to the fullest extent if *Roe* was overturned. In all, there are 21 states in the United States that have some kind of law that could be used to restrict abortion if the Supreme Court ever made a move on *Roe v. Wade*.⁵¹⁵²

So why are these laws, that are essentially rendered ineffectual, so noteworthy? After all, they are all currently blocked by the precedent set by *Roe v. Wade*. Despite their legal shortcomings, these laws are significant because they completely ignore the past, embolden the present, and damn the future.

⁵⁰ "Key Issue Areas: Trigger Laws," *Birthright: A War Story*, <https://www.birthrightfilm.com/key-issue-areas/trigger-laws>.

⁵¹ "Abortion Policy in the Absence of *Roe*."

⁵² Kaia Hubbard, "A Guide to Abortion Laws by State," *U.S. News & World Report*, April 29, 2021, <https://www.usnews.com/news/best-states/articles/a-guide-to-abortion-laws-by-state>.

Just look back at those hundred years in history that American women endured without legal access to safe abortion. In the very least, women faced judgment and ridicule. In so many other cases though, women were subject to violence like assault and rape. They accepted unsafe medical procedures performed by inexperienced attendees, where they faced the serious consequences of permanent damage like punctured uteruses and bladders or even death. And if they took matters into their own hands, for fear or lack of ability to find or afford an underground abortionist, they had an even greater risk of ending up in an abortion sepsis ward and dying.⁵³ This was the norm less than fifty years ago – living memory for entire generations still around today. Leslie Reagan explained, “For women, death’s shadow always lurked when they sought abortions, and they counted themselves among the lucky if they lived through their abortions.”⁵⁴ Women died. Today, the anti-abortion movement so often speaks of the “unborn” that are dying, but they seem to refuse to acknowledge that prior to *Roe*, women were dying. Fully grown, daughters, sisters, mothers, wives, friends were dying because the government refused to give them control over their own reproduction systems – their own bodies.

Yet beyond the most serious physical consequences of criminalizing abortion is the sentiment and reasoning behind the entire campaign. It’s damaging to women. This newly developed tactic of “fighting for the unborn” is only the most recent reasoning given in the fight to restrict women’s reproductive health.⁵⁵ And as moral as this current reasoning may appear, it’s built on decades of a crusade that was far from morally sound. As history shows, the anti-

⁵³ Reagan.

⁵⁴ Reagan, 222.

⁵⁵ *Birthright: A War Story*.

abortion movement is rooted in sexism and control. Women were seen as unfit to make their own decisions about their bodies. The movement was primarily based on the principal of abstinence and purity and worked to shame women for ever getting themselves into the predicament in the first place. It portrayed women – notably not the equally reasonable men – as loose and impure. It cast judgment so harshly that women faced public ridicule and even the termination of employment if it ever came out that they had an abortion. They faced the same ridicule and condemnation if it came out that she was pregnant and unwed.⁵⁶ So if it really was about the ‘unborn,’ then why was (and is) pregnancy out of wed lock given the same judgement as abortion? Arguably because it was (and still is) not about the unborn, but instead about the woman. The woman, and her right to choose what’s best for her, and her body.

Not only do trigger laws completely ignore the past, but they have also given the present movement fuel in their fight to restrict abortion access. As state legislatures pass trigger laws, they are also supplementing their anti-abortion fight with several other laws that restrict access, availability, and legality in real time. In 2021 alone, as of April 29th, twelve states have passed additional measures to restrict a woman’s abortion access.⁵⁷

On April 27, Arizona passed SB1457 into law that banned abortions solely due to genetic anomalies and banned the delivery of abortion-inducing medication via post. It also further restricted state funds from being used by organizations that provide abortion care. Though most notably the law sets an important definition stating: “The laws of this state shall be interpreted and construed to acknowledge, on behalf of an unborn child at every stage of

⁵⁶ Reagan.

⁵⁷ Hubbard.

development, all rights, privileges and immunities available to other persons, citizens, and residents of this state, subject only to the Constitution of the United States and decisional interpretations thereof by the United States Supreme Court.”⁵⁸ This kind of language that essentially gives full rights to an “unborn child” no matter the point of development arguably gives full rights to a fetus, an embryo, and even a blastocyst. Does it then give rights to the unfertilized egg as it is a stage of development? This kind of language opens up vast control over a woman’s body whether it be early on in pregnancy or later. It potentially takes away medical decisions from women who have the full intent to carry their pregnancy to term. If a doctor decided a certain kind of delivery was preferable or that a mother harmed the baby in some way while she carried it, even with the truest intentions, she could be left out of decisions in her pregnancy and even prosecuted with child endangerment.⁵⁹ Such definitions could easily allow the government to increase their control over a woman’s body in the name of protecting the now equally legally defined human she’s carrying within her.

On March 9, Arkansas passed SB6 or the Arkansas Unborn Child Protection Act which serves as a near-total ban on abortion. It bans all abortions, regardless of rape or incest, and only leaves a narrow provision for instances where the mother’s life is in danger. The law is in line with several other state statutes that are purposely passed in direct violation of *Roe v. Wade*, in the hopes the law will make it to the Supreme Court and challenge the precedent. Three additional bills were also signed into law the same month that created a state database to track women who receive abortions, required ultrasounds prior to abortion with the image

⁵⁸ Arizona State Legislature, S.B. 1457, 55th Leg. § 1 (2021), <https://www.azleg.gov/legtext/55leg/1R/bills/SB1457P.pdf>.

⁵⁹ *Birthright: A War Story*.

displayed and described to the woman, and allows for providers to refuse any kind of health care service on the grounds of religious, ethical, or moral beliefs.⁶⁰

On April 27, Idaho passed a heartbeat bill, that would ban abortion if a heartbeat was detected, though this is pending based on a similar law currently being fought in a federal appeals court. South Carolina and Oklahoma also passed a similar measure. On April 29, Indiana passed a law requiring abortion providers to tell patients about the possibility of stopping abortion medication mid treatment, despite science not fully supporting the viability at that point. In January, Kansas voted to add an amendment to their constitution that states there is no legal right to abortion nor is it up to the government to fund such procedures. The amendment is set to be voted on in a special election in 2022. Kentucky also passed a bill that would propose a similar amendment to their state constitution to be voted on in 2022. Montana and Ohio both passed measures on telemedicine and abortion medication, requiring any kind of abortion-inducing medication must be first administered with a physician present. Oklahoma not only signed into law it's trigger law this year, but also passed several other bills including the aforementioned heartbeat bill. Lastly, South Dakota and Wyoming passed similar bills noting several measures in the above-mentioned laws.⁶¹

These laws, matched with the ever-lurking trigger laws paint a grim future for women and society as a whole. If *Roe v. Wade* was ever overturned, or even simply chipped away at until it's ruling is basically rendered useless, we face a reality much like the one described earlier in this paper. Yet I urge you, if you take one thing away from this foray into abortion in

⁶⁰ Hubbard.

⁶¹ Ibid.

America, I hope it is a basic understanding of not only what women would face if the protection of *Roe* was ever overturned, but moreover how and why we're still discussing such a topic in 2021.

While the anti-abortion movement has changed its rhetoric over the years, its tone remains unchanged. Its message is largely based in the notion we must regulate and control another person's body and reproductive health. And it almost never looks to address the other person responsible for pregnancy, the cause only concerns itself with the woman. After all, a woman can only carry a baby realistically every ten months at most. A man could in theory impregnate multiple women in just one day. Yet the focus of the conversation and science revolves around the woman.

And recognize who is talking. Look at the boards of anti-abortion organizations, look at the majority of the candidates they are running – they're mostly men.⁶² Men, who do not lay claim to the most powerful muscle in the human body, who have no idea or concept of what it is like to carry a baby, deliver that baby, and ultimately be the one left with the responsibility if the father decides he wants no part in it. The man can walk away. Could he be subject to child support? Sure. Does he have rights as a father? Absolutely. But at the end of the day, if he walks away, it is up to the mother to care for herself during the pregnancy and it is up to her to decide to raise the child or to give birth and put it up for adoption. The state does not make the father stick around for those nine months, and he certainly cannot endure any of the long list of side effects of pregnancy first mentioned in this essay. It is only left to the woman. And if she is the only one who can go through the experience, the decision shall be left to the woman.

⁶² *Birthright: A War Story*.

Our society has somehow devolved into mastering excuses in the face of restricting equality. As Leslie Reagan explains, “The restriction or reversal of abortion rights sends the...message: women cannot be trusted to make moral decisions about children and family, but must be overseen and regulated by men; procreation is a state mandate not a choice; women’s lives, sexuality, and bodies are not their own.”⁶³ Yet the anti-abortion movement would instead claim it is protecting not only women, but the “unborn” as well.⁶⁴ Though as history has shown, and as Reagan explains, restricting abortion and a woman’s control over her reproductive system is not a protection. It is a power grab, and it is in direct conflict with attaining equality for women. Women will not have true equality unless they have control over their own bodies. And part of that is control over her reproductive system which includes access to birth control and access to safe and legal abortions. Without both, she lacks not only control over her own self, but also the basic position of equity in society.

⁶³ Reagan, 253.

⁶⁴ *Birthright: A War Story*.

Postscript

It is important to note that this essay primarily describes the experience of Caucasian and middle-class women in America. The experiences of minority and poor women were often times much worse during the period of history that abortion was criminalized, and they still are currently. Today, these groups are regularly targeted with restrictions that limit access to abortion clinics and state funding for such procedures. To fully understand the depth of their experiences would require extensive additional research and deserves an essay of its own.

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