
MY BODY
MY CHOICE

Roe v. Wade: How Did We Get Here, What Should We Do?

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Abortion has always been part of human existence. For centuries, ending a pregnancy before 'the quickening' (i.e., when foetal movement is felt) wasn't particularly controversial. There is reference to abortions when the pharaohs ruled Egypt, the dynasties ruled ancient China, and within early texts of Judaism, some versions of both within Islamic and Catholic doctrine.[i] Where historic concerns are recorded, these often relate to the dangers of late abortions[ii] or to the poisonous nature of certain remedies that were used.[iii] In fact, many early US laws were introduced to protect women from unscrupulous vendors who profiteered from peddling unsafe medicines.[iv]

Abortion is also normal. Although it is impossible to calculate the exact numbers, the World Health Organisation (WHO) reckon one-third of all pregnancies end in this way.[v] One-quarter of all US women will have an abortion—59 percent of these are mothers.[vi] In England and Wales, over 200,000 are legally performed each year. Abortion enables millions of people to exercise choice in deciding when and with whom to have children, if at all. It allows women in particular to pursue life goals otherwise denied to them, to counter decades of discrimination in terms of their social and economic progress, and to manage their care burden.

Abortion is healthcare. The WHO describes abortion seekers as 'active participants in—as well as beneficiaries of—health services.'[vii] Because of phamacological advances, most people opt for medical abortions, meaning they take pills, often in their own homes. If surgery is preferred or needed because of timing, this is a simple, non-invasive procedure that only involves a few hours in a healthcare facility. Abortion is also part of 'critical care,' meaning bans and restrictions force pregnant people to put their health and even their lives at risk. To illustrate, the day before the US Supreme Court (SCOTUS) overturned *Roe v. Wade*, an American woman holidaying in Malta was airlifted to a Spanish hospital. She was miscarrying, but doctors weren't allowed perform an abortion because of a heartbeat, despite the fact that the foetus had zero chance of surviving.

Bans create other problems also: medical abortions move outside of the healthcare system, pregnant bodies are placed under surveillance, and pro-choice activists break the law by providing the information and medication that people need. This is what happened in Ireland before our near ban on abortion was lifted in 2019. Thousands got help from both Women on Web and Womanhelp or through an ad hoc network of illegal importation organised by Irish activists who regularly risked criminal charges that could have resulted in lengthy prison terms. Where medical abortions weren't appropriate or available, as many as 170,000 people went overseas, self-funding their travel, accommodation, loss of earnings, and medical costs. Many were helped by activist groups such as the London-based Abortion Support Network.

In the absence of constitutional protections, similar workarounds are happening in the US as abortion healthcare fundamentally changes. Thirteen states have now introduced total bans and others have instituted severe restrictions. Clinics have been forced to close or relocate, meaning states with abortion services are completely overwhelmed. There are other impacts, too, that affect people who aren't even pregnant, as some medicines that are commonly used to treat other conditions are being denied because of their abortifacient properties. For example, in Arizona, a fourteen-year-old girl was denied treatment for arthritis and osteoporosis because the drug methotrexate can potentially induce a miscarriage.[viii]

Despite the best efforts of the remaining services and the work of organisations such as AidAccess, who distribute abortion pills, people will inevitably give birth to babies they do not want and/or cannot care for. Maternity deaths will also rise. This is because an already present chill effect has been heightened for doctors, who make complex medical decisions, often in emergency situations, when dealing with miscarriages, ectopic pregnancies, and other obstetric complications. Since Poland introduced a near ban in 2020, we know of two women who have died because doctors failed to peform abortions during treatments for pregnancy complications. There names were Agnieszka T. and Izabela Sajbor. There will also be

fatalities because of unsafe abortions, as is evidenced where bans have existed for some time, such as in El Salvador, Madagascar, Egypt, Jamaica, Senegal, Honduras, Nicaragua, and the Philippines. Overall, the WHO estimates that 23,000 women die each year from unsafe abortions.[ix]

There have been mixed international reactions to the SCOTUS decision, some of which have been positive. Many European countries, including Ireland, saw protests calling for more reproductive freedoms, and solidarity gestures extended across the Atlantic. Some governments had already begun improving reproductive rights in anticipation of change in the US. For example, Dutch laws have recently been amended to ditch a five-day waiting period and to extend prescriptive authority beyond dedicated abortion clinics. In France, two days after the SCOTUS decision, a cross-party bill was put forward to make abortion a constitutional right. National Assembly member Marie-Pierre Rixain exclaimed, 'What happened elsewhere must not happen in France.'[x]

In other European counties there are fears that the decision will embolden an anti-abortion movement whose overall mission is to ban abortion all over again. The base from which they seek their backsliding reforms can be low. Not everyone realises that abortion is still a criminal offence in the Republic of Ireland and that our law is highly restrictive. Abortion is only available on demand before twelve weeks, and comes with a built-in pause period. After twelve weeks, two doctors must certifiably guarantee a risk to life or health, or that the baby would die within twenty-eight days. In part because of conscientious objection, availability is patchy, especially in rural areas. Nearly half of our publicly funded maternity hospitals don't even offer abortion care. Because of these restrictions, people likely still buy pills online when they don't have the time, money, and/or freedom to travel. Others may self-medicate for fear of stigma. Medical abortion without medical supervision is safe and typically uncomplicated. But when it is criminalised, it creates difficulties where backup care is needed because people can be afraid to present at a healthcare service for fear of prosecution. This isn't pie-in-the-sky thinking. In recent years, several British-based women have been investigated for self-managed abortions under the 1861 *Offences against the State Act*.[xi] Abortion is decriminalised in Northern Ireland; however, at the time of writing, services are practically nonexistent because of a failure by government to commission them.[xii]

In countries where severe restrictions are in place, for example in many African countries, the SCOTUS ruling may reduce the likelihood that draconian laws will be revoked. Amukelani Matsilele writes,

> The stats show that African countries with restrictive abortion laws have high numbers of maternal deaths resulting from illegal abortions being conducted in backdoor clinics. African women have been denied the right to choose. Overturning *Roe v Wade* will only increase the negative sentiments around abortion and likely will be used to bolster restrictions denying rights to women's health in African countries that are looking to revisit their abortion laws.[xiii]

Similar concerns have been voiced in the Philippines, a country where tens of thousands of women are hospitalised for complications from unsafe abortions and as many as one thousand die each year.[xiv]

How did we get here? A brief history of US criminalisation.

Given this context, it seems fair to ask why abortion and reproductive rights more broadly are the focal point of so much concern. Why is such an obvious human right so embroiled in political and legal debates? Getting to grips with this question involves delving into the second half of the nineteenth century, when moral arguments about the ethics of abortion most notably entered the fray. Before the mid-1800s, newspapers regularly advertised various oral remedies that would induce a miscarriage, and abortion care was mostly performed by skilled midwives who were trusted healthcare workers. It is widely accepted that the catalyst for change was the professionalisation of doctors, particularly through the creation of the male-led, conservative-thinking American Medical Association (AMA, est. 1847). The AMA made outlawing abortion one of its principal goals. This was, in part, to ensure university-trained, mostly male physicians could gain power over then unregulated, mostly female midwives. Rickie Solinger explains how the AMA's position had little to do with medicine and a lot to do with preserving the patriarchal family unit as the cornerstone of social order: if women were allowed to manage their fertility this would be 'a threat to the social order…that would

undermine the social arrangements that mandated families in which husbands held power and made all the important decisions.'[xv] The AMA weren't operating alone; they were supported by a growing religious conservativism, much of which came from the Catholic Church, which, in 1869, declared all abortion murder—a standard position that remains the Church's stance to this day.[xvi] Together with other social structures of power, including political institutions, they created a narrative that to choose abortion over motherhood was immoral. Abortion, and also contraception, would be restricted so that families could flourish. By the early 1900s, abortion was criminalised across the US except on the rare occasions a doctor felt it necessary.[xvii] Their interest in supporting families to grow was, however, highly selective, as many of these same doctors participated in a longstanding colonial eugenics movement that controlled mostly Black and Latino bodies through state-sponsored coercive sterilisations.[xviii]

Multiple births became the norm for many women, forcing them into the domestic realm, where they occupied a lower-status position in a patriarchal society. Many resorted to unsafe, back-street abortions, and just like today, thousands died and tens of thousands ended up in hospital with complications. The sheer scale of these deaths across the US led to some attempts at reform from within the medical profession. However, these remained outside of the control of women, and were driven rather by a patriarchal desire for a male-dominated, racist profession to be the gatekeepers of bodily autonomy.[xix]

Real change only happened because of what is sometimes called an 'abortion revolution' that connected with wider antiwar and civil rights activism as thousands of American women campaigned for reproductive rights. Two such groups, the Chicago-based Jane Collective and the Californian Society for Humane Abortion, not only provided abortions, they tirelessly agitated to take reproductive decision-making out of the hands of politicians and doctors. This is the context within which, in 1969, Jane Roe (a pseudonym), with the support of her legal team, successfully argued the right to abortion, despite Texan law only allowing the procedure if her life was at risk. District attorney Henry Wade appealed the ruling to SCOTUS, where he lost 2–7, with the court ruling that Roe's right to privacy extended to her right to abortion. This built on a previous 1965 ruling, *Griswold v. Connecticut*, which overturned two laws that banned contraception, again because of privacy rights.[xx]

Although *Roe v. Wade* did protect the right to abortion, its privacy focus was a negative interpretation, and the ruling gave each state significant leeway in choosing how it would legislate. This leeway would soon be exploited by a Christian right movement that would come to exercise significant power within the US political terrain. Initially, many religious groups weren't particularly concerned with the liberalisation of abortion rights. One 1973 news document from a Baptist church states that "although the Roman Catholic Hierarchy insists the Supreme Court blundered…most other religious bodies and leaders, who have expressed themselves, approve the decision," continuing, "social, welfare and civil rights workers hailed the decision with enthusiasm."[xxi] According to Katherine Stewart, what an emerging 'New Right' did care about was preserving segregated schooling. But such an unpopular platform would never galvanise the support they sought in order to topple Jimmy Carter's Democratic presidency, so they chose an anti-abortion platform. She explains:

Abortion turned out to be the critical unifying issue for two fundamentally political reasons. First, it brought together conservative Catholics who supplied much of the intellectual leadership of the movement with conservative Protestants and evangelicals. Second, by tying abortion to the perceived social ills of the age—the sexual revolution, the civil rights movement, and women's liberation—the issue became a focal point for the anxieties about social change welling up from the base.[xxii]

The tactic of this now anti-abortion Christian right was to change society one legal reform at a time. And so they began to carve away at abortion rights (and later other fundamental rights) through what are sometimes called TRAP (targeted regulation of abortion providers) laws. TRAP laws feign concern for pregnant people but are ultimately designed to create the maximum level of disruption possible. Examples include unnecessary pause periods, tight gestational limits, and/or the insistence that doctors have admitting privileges at nearby hospitals even though these would rarely be needed. When people have resources, these barriers are discriminatory and hugely inconvenient; when people are financially and/or time poor, live in coercive circumstances, are disabled, and/or are impacted by borders, these barriers can be insurmountable. Although many TRAP laws were struck

down, each one was introduced with one eye on a successful SCOTUS. In 2021, Texas implemented *Senate Bill 8*, or the heartbeat law, which effectively banned abortion at six weeks. When this was appealed to the SCOTUS, it was allowed to stand despite clearly violating the constitutional right to abortion. However, it was the *Dobbs v. Jackson Women's Health Organisation* ruling that, in June 2022, eventually overturned *Roe* and also *Planned Parenthood v. Casey*, arguing both cases were wrong to provide constitutional protection.

These court rulings didn't happen in isolation but rather went hand in glove with political decisions that also chipped away at reproductive rights. In 1976, the Republican Party deliberately adopted an anti-abortion platform as a tactic that would enable them to grow their base amongst catholic and social conservative voters.[xxiii] That same year, the US House of Representatives passed the *Hyde Amendment*, which blocked the use of federal funds for abortions for certain insurance policy holders including those enrolled in Medicaid, a scheme used by many poorer people, especially women of colour.[xxiv] In 1984, Ronald Reagan introduced the global gag rule (or the Mexico City Policy), which banned overseas charities in receipt of US funding from providing or promoting abortion services. This was despite the fact that, while he was governor of California, Reagan had signed off on some of the most liberal abortion reforms in US history.[xxv] To give you a flavour of the impact of the global gag rule, one Ugandan-based study directly linked it to an increase in unwanted pregnancies because of the loss of community healthcare workers.[xxvi] This is in a country where 75 percent of abortions are unsafe due to legal restrictions and where there is severe abortion morbidity and mortality.[xxvii]

Democrats have been quick to point out that all five of the nine unelected US Supreme Court justices who overturned *Roe* were appointed by Republican presidents. This is true.[xxviii] It is also true that Bill Clinton was the first president to openly support abortion rights. He lifted several restrictions on abortion and supported laws to protect healthcare workers, who were frequently under attack when doing their jobs. Clinton also removed the global gag rule, as did Obama and Biden. But these presidents (especially Obama) had ample time to introduce the political reforms needed to codify *Roe v. Wade*, which means passing a law that would give people the right to abortion without government restrictions and in a way that didn't depend on a privacy ruling.

Furthermore, Hilary Clinton, the Democrat's poster girl for reproductive rights, has consistently promoted a platform of 'safe, legal, but rare,' a message that fuels moral ambiguity and ensures ongoing stigma.

Clinton's stance succinctly reveals the Democratic Party's unwavering support for an individualised choice paradigm, an approach that is also preferred by liberal feminists. There are a number of problems with this individualist rhetoric, one of which is that it absolves politicians of their role in creating the conditions within which reproductive options exist. 'My body, my choice' may be a catchy sound bite that holds weight in describing the very personal nature of bodily autonomy, but it fails to illuminate the impacts of forced migration, poverty, and the absence of contraception, and the influence of precarious housing and/or employment in a person's decision-making. It also ignores how abortions typically increase during periods of austerity and socio-economic difficulty and how reproductive oppressions disproportionately impact racialised people, who already have worse maternal and neonatal health outcomes because of structural racism within healthcare. In fact, the now popular 'reproductive justice framework' created by Women of African Descent for Reproductive Justice (WADRJ) in 1994 was conceived of in direct opposition to the Clinton administration's approach to reproductive healthcare. WADRJ also justifiably criticised the mainstream feminist movement for its failure to challenge the racist, neoliberal state.

Nothing much has changed in the intervening years. Joe Biden's principal response to the reversal of *Roe v. Wade* was to try to galvanise votes for Democrats in the upcoming midterm elections. Meanwhile, Nancy Pelosi clung to her power base by shedding tears for *Roe* while continuing to support an anti-abortion Democratic candidate.[xxix] The Democratic Party's failure to act clearly parallels the situation in Ireland, where, although claiming to be pro-choice for years, the Irish Labour Party did little to advance this when in government.

What do we do?

Ideally, there should be no laws about abortion. The same general healthcare guidelines that ensure informed consent and safe, supportive environments should be the only rules. Prescriptive authority should be extended to pharmacists, midwives, and auxiliary nurses, and conscientious objection should be banned. This is because refusal of care privileges the rights of the healthcare

worker over a person's right to access a service they are legally entitled to. Perhaps most importantly, we must locate reproductive healthcare in its socio-economic circumstances and demand widespread social supports for individuals, families, and communties.

As Lola Olufemi puts it, 'Perhaps the greatest trick of recent history has been to convince women that the state cares for their wellbeing.'[xxx] These aspirations will never be delivered by neoliberal politicians and the liberal feminists that support them. Instead, they cut care and welfare supports, thereby exponentially increasing private reproductive labour, most of which is undertaken by women. This hollowing out of state supports concretises the patriarchal family as the normative form of kinship, despite mountains of evidence, even from the United Nations,[xxxi] that the heteronormative family is the most dangerous place a woman can be.

The logic of this commitment to the patriarchal family is based first and foremost on its being an economic unit. Its function in capitalist society is twofold: Firstly, the family is the principal provider of care through a model whereby mostly one parent, typically the mother, stays at home for all or part of the working week. Privileged families often outsource this care labour by hiring low-paid, mostly migrant women either within their own homes or at childcare facilities. The second function of the family is to ensure the generational flow of material inheritance, a mechanism that presents a significant obstacle to financial equality. These essential functions—the provision of care and the protection of wealth—explain why politicians who claim to support church-state separations turn a blind eye to the impact of the Christian right's crusade to maintain the heteronormative family—a crusade they call 'family values' and which justifies their waging war on women and LGBTQI+ people. The Christian right's vision of the world may be different to that espoused by secular politicians, but it is their shared dependence on the family unit that creates sufficient grounds for a coalition and which explains why so little is done to advance the radical reforms needed to protect reproductive rights. People do have the right to oppose abortion, but this right must cease when it meets another person's right to bodily autonomy.

Change happened in Ireland because of mass mobilisations, strikes, artistic protest, acts of civil disobedience, and targeted court interventions, and abortion was legalised in spite of, not because of, the politicians in power. As my book *Repealed; Ireland's unfinished fight for reproductive rights* explains, politicians only supported the movement when public opinion was overwhelmingly on the side of change, and they continue to drag their heels in reforming Irish law. As a result, pro-choice activists must continue to agitate through marches and other demonstrations as they seek fundamental improvements in the quality of our law and the availability of services both north and south of the border. Ireland isn't an isolated case. In Argentina, it was the Ni Una Menos (not one less) movement which pushed for, and won, access to abortion despite significant and sustained opposition by the Catholic Church. In the UK, grassroots feminist organisations, including Sister Supporter and Back off Scotland, continue to fight for much needed exclusion zones outside abortion providers amidst increases in vigil-type anti-abortion demonstrations that deter doctors and shame service-users.[xxxii]

It is the mass protests that have swept the streets of the US, and not the empty promises made by politicians, that will win back abortion rights. These protests have, at times, been backed by the labour movement and it is postive step that union leaders within the American Federation of Labour and Congress of Industrial Organizations (AFL-CIO) have described recent events as 'a devastating blow to working women and families' and 'a reckless decision.'[xxxiii] As we join together, our politics must centre those most impacted by current restrictions and our demands must be much more ambitious than the liberal choice paradigm's singular issue of abortion. Standing firm on reproductive justice objectives, the right to have, or not have, children and the right to parent in a safe, supportive environment, means thinking collectively as well as structurally. It means building rebellious movements that expose capitalism's reliance on exploitative, patriarchal reproductive labour and see it for what it is—the linchpin of capitalism's own survival.

If you are in America and you need an abortion contact AidAccess by emailing info@aidaccess.org who will direct you about how to buy pills online. To find out about your options in Ireland call the Alliance for Choice abortion doulas on 07397, 902774.

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[i] Kissling, 2017, p. 1–2.
[ii] Riddle, 1992, pp. 4–7.
[iii] Potts & Campbell, 2002.
[iv] Kissling, 2017.
[v] WHO, 2021.
[vi] Guttmacher Institute, 2022.
[vii] WHO, 2022, p. 12.
[viii] Cheung, 2022.
[ix] Centre for Reproductive Rights, 2021.
[x] Cited in Mahdawi, 2022
[xi] Proudman, 2022.
[xii] Carroll, 2022
[xiii] Matsilele, 2022.
[xiv] Finer & Hassian, 2013.
[xv] Solinger, 2005, p. 7.
[xvi] Hovey, 1985.
[xvii] Dynak , Weitz , Joffe, Stewart, & Arons, 2003.
[xviii] Schoen, 2005.
[xix] Reagan, 1997.
[xx] It was a similar Irish right to marital privacy ruling in *McGee v. The Attorney General* that spearheaded the creation of the Pro-Life Amendment Campaign (PLAC), which successfully campaigned to insert an abortion ban into the Irish constitution.
[xxi] Baptist Press, 1973.
[xxii] Stewart, 2022.
[xxiii] Williams, 2011, p. 514.
[xxiv] National Partnership for Women and Families, 2019.
[xxv] This was through the *Therapeutic Reform Act* (1967).
[xxvi] Giorgio, et al., 2020.
[xxvii] Atuhairwe, et al., 2021.

[xxviii] Clarence Thomas by George H.W. Bush in 1991 and Samuel Alito by George W. Bush in 2006. Neil Gorsuch (2017), Brett Kavanaugh (2018), and Amy Coney-Barrett (2020) were all appointed by Donald Trump.
[xxix] Tracey, 2022.
[xxx] Olufemi, 2020, p. 25.
[xxxi] United Nations, 2018.
[xxxii] Lowe and Page, 2022.
[xxxiii] Mueller & Niedzwiadek, 2022.