

ROE: TELLING THE TALE

an essay by
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A NOTE ON TERMINOLOGY

Since trans men and nonbinary and nonconforming people can become pregnant, it is tempting to adopt the inclusive term “pregnant person” in this essay. I have decided to keep the identity of the victims of the *Roe* reversal as “pregnant women,” though, on occasion, I refer broadly to pregnant persons or individuals. My decision owes much to the perceptive remark by African American feminist Loretta Ross. She notes the damage caused by using sex-neutral language as akin to colorblind language around race discrimination. This language, she warns, “fails to identify the victims and the specificity of oppression.” It risks, as Carrie N. Baker and Carley Thomsen observe, “obscuring the sexism underlying anti-abortion laws and policies—sexism that harms not only pregnant women, but also pregnant trans men and nonbinary people.”¹

AS I WRITE this essay in July 2022, I feel tossed in the powerful waves of daily changes in federal and state government policies following the demise of *Roe v. Wade* (1973), the decision that decriminalized abortion (henceforth in this essay referred to as *Roe*). On June 24, 2022, in a 6–3 decision, the Supreme Court upheld *Dobbs v. Jackson Women’s Health Organization* and in a 5–4 decision overturned *Roe*, recriminalizing abortion (No. 19–1392, 597). My essay is necessarily provisional, reflecting on the current moment in fluid time, providing historical perspective through the analysis of several personal stories, each with fertile historical implications.

I

BEFORE MY HUSBAND, Len Berkman, and I married in September 1962, we spent the summer of that year in my hometown, San Jose, California. While working as a reporter for the *Milpitas Post* on the outskirts of San Jose, Lenny met Patricia Theresa “Pat” Maginnis. Pat offered night classes in English to poor and exploited Mexican farm workers, but she had another and related focus for her energies as well. In 1961, as a San Francisco medical technician, she founded the

Society for Humane Abortion in California (SHA), the first organized movement in the United States to call for the repeal of all laws banning abortion. Previous resistance movements, grounded in the concept of therapeutic abortion, proposed to reform those laws by setting up medical review committees to review abortion applications and decide whether to authorize them. Pat repudiated this policy. She insisted that the authority over an abortion should reside with women alone. For poor women, the costs and likely humiliation of seeking a team of doctors' authorization were prohibitive. In Pat's mind, a woman's bodily autonomy, especially her right to control her fertility, was not a matter that others, almost wholly medical men, should control. Over the course of the late 1960s, all women's rights groups moved from advocating reform to endorsing repeal.² Now, anew, the threat of doctors in certain states deciding a patient's eligibility for an abortion resurrects a scary specter. Medical surveillance, Leslie Reagan crisply observes, determines that "When doctors and hospital staff questioned patients at the behest of the state, physicians became police and patients became suspects."³

Sensitive to the plight of vulnerable women, Pat Maginnis highlighted how mandated pregnancy risked a woman's health, if not her life, and jeopardized the well-being of her other offspring.⁴ We can appreciate Pat's vision when we consider the assumption of *Roe's* recent reversal. Inherent in the Supreme Court's majority ruling is the belief of antiabortionists that women cannot be trusted to make moral and enlightened decisions about childbirth and deserve to be controlled and terrorized by state authorities.

Pat's activism included various strategies, for example, a petition drive for abortion law repeal. Lenny and I supported this drive, and Pat gave us petition pages that we placed right next to our wedding guest book the day of our ceremony. Almost every guest, spanning a range of political and religious affiliations, signed the petition.

SHA sponsored other modes of activism. Pat ran abortion classes and distributed leaflets, providing names of reliable abortionists in nations that provided legal medical abortion outside the United States. Instead of women needing to prove to doctors that they were worthy of undergoing an abortion, doctors needed to prove they were competent abortionists. SHA's vigorous educational campaign and political lobbying led to California in 1967 becoming the second state to render abortion legal (Colorado taking first-place honors by two

months), though this legislation represented reform rather than repeal of prior bans, since the right to an abortion, though quite broad, still involved specific qualifications and required medical authorization.⁵

After our wedding, Lenny and I drove cross-country to New Haven, Connecticut, where we were graduate students at Yale University. I was also a part-time instructor in history at Connecticut College in New London. Birth control was not yet legal in Connecticut. Lenny and I wanted a baby, anyway, and I soon became pregnant. Fortunately, the department chair did not force me to resign, which in that era was his legal prerogative. For decades, women could not enter professional positions, nor enter numerous other spheres of employment, if they were pregnant or mothers of young children. Along with institutional policies and state and federal laws, societal norms assumed a male breadwinner for the family, which woefully ignored the economic plight of countless poor white women and women of color, let alone the desire of women of all social strata to develop their talents and training to participate fully in the public sphere. *Roe* had enshrined a woman's freedom to protect her health and the health of those near her, and to guard her educational and occupational choices. The Supreme Court justices writing the majority opinion in deciding for *Roe* cited the Fourteenth Amendment, which they interpreted as assuring equality of opportunity for all individuals regardless of sex or race. The justices claimed this right as profoundly moral and constitutional.⁶

2

SEVERAL YEARS LATER, the issue of pregnancy and professional employment again entered my life. In spring 1965, the chair of the History Department at the University of Massachusetts Amherst phoned to offer me a job as full-time instructor in his department. I was in my mid-twenties, the mother of a two-year-old, and completing a doctoral dissertation on English pacifism between the two World Wars. When I enthusiastically agreed to accept the chair's offer, he added a crude caveat: "Promise me that you won't get knocked up again."

By issuing this ultimatum, the chair had threatened my bodily privacy, autonomy, and health. Sexual discrimination and sexual harassment policies and laws were not yet part of American academic structures. Crucially, his casual and odious remark highlights another key element in the *Roe* decision, which had roots in the legalizing of

contraceptives, first for married women (*Griswold v. Connecticut*, 1965), then for all women (*Baird v. Eisenstadt*, 1972). The axis of these two court decisions was the bedrock doctrine of personal privacy, a doctrine included in the United Nations' Universal Declaration of Human Rights (1948). This doctrine paved the way not only for *Roe* but for *Lawrence v. Texas*, 2003, which legalized gay sexual relationships, and which eventually led to the legalization of gay marriage. To argue on behalf of individual rights to privacy, the majority opinion in *Roe* invoked the Constitution's Ninth Amendment that assures the implicit, unenumerated rights of individuals as well as the penumbra, i.e., further organically linked rights illuminated through the Constitution's First, Third, Fourth, and Fifth Amendments that protected individuals from government intrusion in their personal lives. *Roe* articulated a Constitutional guarantee for women's bodily and sexual autonomy, for women's reproductive freedom from government intrusion.⁷

The Supreme Court dissenters in the recent *Dobbs* decision point out the multiple dangerous consequences of vitiating the doctrine of personal privacy, noting that this doctrine forms "part of the same constitutional fabric, protecting autonomous decision-making over the most personal of life decisions."⁸ Through the Supreme Court judges' overturning of *Roe*, interracial marriage, gay marriage, and contraception, among other private personal choices, none of which are specified in the Constitution as explicit rights, risk demise as well. The *Dobbs* dissenters highlight that the framers of the Constitution and even many of the Constitution's subsequent amendments were framed by privileged white males, whose interpretations were enunciated before women had the right to vote or sit on juries. The "originalism" tenet of the majority in the *Dobbs* decision represents, according to the dissenting judges, a "pinched view" of how to read constitutional rights. More recently, lawyers, citing the Thirteenth Amendment that prohibited and ended slavery, argue that this amendment's penumbra applies to all forms of enslavement, including mandated pregnancy, i.e., coercive reproduction, whether in bearing offspring or preventing pregnancy, as in instances of nonconsensual sterilization.⁹

My teaching of the history of reproductive rights shifted in later decades to the history of reproductive justice. Pro-choice is a vague clarion call. I have always insisted that the choice to become pregnant is as important as the choice to not become pregnant and that the prerequisites for making this choice are lacking for many women.¹⁰

“Real reproductive freedom for women,” Leslie Reagan reminds us, “requires that all women, regardless of race, class, age, sexual orientation, or marital status, be able to avoid unwanted childbearing through the use of contraception and abortion *and* be able to bear children without being stigmatized, impoverished, or compelled to give up their education, employment, or children.”¹¹

During the past fifty years of *Roe*, the reproductive rights movement has become more sensitive and responsive to the needs of marginalized women. The term reproductive justice combines reproductive rights and freedom with social justice demands. The term, coined by the collective SisterSong, holds that it is a human right to maintain personal bodily autonomy, to choose to have children or not, and to parent children in safe and sustainable communities.¹² The complexities of choice are captured in the title of Ricki Solinger’s superb study *Beggars and Choosers: How the Politics of Choice Shapes Adoption, Abortion, and Welfare in the United States*.¹³ Many women, particularly women of color, who want to raise children lack financial means, flexible jobs, medical services, day care, safe homes, and safe water and food. Further, far too many women of all societal backgrounds suffer domestic violence, rape, incest, and serious physical and emotional health issues, and many carry fetuses with severe abnormality, all conditions that prevent healthy reproduction and child-raising. At present, the United States ranks fifty-fifth in the world as regards safety in giving birth, a statistic that will surely worsen with *Dobbs*. In fact, women are fourteen times more likely to die from pregnancy than from abortion. Given that most states in the United States invest little in women and children’s health, and, relatedly, given that the United States, unlike most civilized nations, does not assure every person’s medical care as a right, countless women and children, without the possibility of fertility self-control in prohibition states, face devastating poverty and catastrophic illnesses.¹⁴

3

DURING ONE OF the classes in which I taught the history of reproductive rights and justice in the United States, a course I first taught in the mid-1980s and resumed on an almost yearly basis after 1999, one of my students recounted a story about her Catholic priest. The context for her narrative was my lecture and an ensuing energetic

discussion about the nature and history of religious attitudes and practices centered on reproduction. She remembered her priest assisting a pregnant friend to obtain an abortion in New Jersey when abortion was still illegal. The priest knew another defiant priest who could connect her friend with a reliable doctor. This Catholic underground surprised many of the other students in the class. I then shocked the class by informing them that the Catholic Church had not always deemed abortion a sin. One of the joys of teaching this course was revealing the far more complicated history of religion and abortion than was usually assumed.

Sadly, the majority decision overturning *Roe*, as the minority judges underscored, propagated false history. The majority claimed they were returning to traditional Christian practice, but, in fact, until after the Civil War, abortion was legal and its morality considered situational.¹⁵ Even after the Civil War, when abortion bans in states began to appear, almost all states allowed for therapeutic abortions to save the lives and health of pregnant women, a provision that a number of states with current trigger laws have terminated. Such a total ban on abortion is radically new. Although the only religious institution to preach a total ban earlier was the Roman Catholic Church, that position did not itself emerge until 1869 and did not become dogma until 1893. Prior to 1893, many Catholic clergy, like most Protestant and Jewish clergy, sanctioned abortion when pregnancy threatened a woman's life.¹⁶ In fact, viewing women's life as primary, Jewish law (see the Mishnah) *required abortion* when childbirth risked a woman's life, declaring that a pregnant woman's life takes precedence over fetal life.¹⁷ (One wonders if the new Supreme Court ruling, certainly at odds with Jewish religious requirements and perspectives, is not at odds with freedom of religion. Recently, the suit that a Florida synagogue, Congregation L'Dor Va-Dor of Boynton Beach, has initiated to test the Florida Constitution's guarantee of freedom of religion has been joined by Buddhist communities.)

Until the late nineteenth century, religious leaders adhered to the doctrine of "quickening." Based on Aristotelian philosophical tenets that form does not shape matter until sometime during the fourth month of pregnancy, Catholic theology declared that the soul does not enter the fetus until the fortieth day of pregnancy for male embryos and the ninetieth day for female embryos. The term "quick with child" corresponded to the time of ensoulment, when a woman felt

fetal movement.¹⁸ Yet even after a woman felt quickening, churches and synagogues did not call on the state to ban abortions. The state only intervened to prosecute doctors if a doctor killed a woman because of a dangerous abortifacient or surgical procedure.¹⁹

I explained to my students that the dramatic post-Civil War shift in religious and political attitudes arose from a set of demographic and societal changes gaining post-Civil War momentum. From the outset, mid- and late-nineteenth-century abortion laws were initiated by the newly formed American Medical Association's efforts to halt the growth of midwifery (a region of female medical expertise that included skills in providing abortions) as well as by a more general public anxiety over what was termed "race suicide."²⁰ With a burgeoning Irish American population (the Irish being then considered a distinct and inferior race) and with tidal waves of Southern and Eastern European Catholic and Jewish immigrants, and growing numbers of African Americans, white and Protestant supremacy were no longer demographically assured. Presumably, white women's procreative activity could potentially keep pace with that of the newcomers to our nation.

No less a concern for many Americans was the security of male supremacy, given the threat of the mid-nineteenth-century women's movement and the allied growth of female higher education with its increasingly vocal demand by women to enter occupations and professions monopolized by men. Women who had abortions were now being portrayed as unwomanly, unpatriotic, and immoral. A similar charge was leveled against women who used contraceptives. Beginning in 1873, the "Comstock laws," named after their proponent Anthony Comstock, labeled contraceptives obscene and outlawed the advertisement, sale, and use of contraceptives at the federal level while certain states passed comparable laws to thicken the prohibitional wall.²¹

Simultaneously, a new science of eugenics gained numerous adherents, with their anxious charge that the spreading dilution of white Protestant genes risked the survival of U.S. power and prosperity. President Theodore Roosevelt called white Christian women who refrained from giving birth, whatever these women's chosen means, traitors to the nation.²² Many men and women shared this view of the power of right reproduction, and in the years between the two World Wars, eugenics movements sprung up worldwide. These move-

ments were shaped by their national (and anti-colonial national) contexts in the Global North and South, most often advocating forced sterilization of those deemed “unfit,” predominantly people from minority communities, while encouraging the “fit” to reproduce. In the United States, a twist on this sentiment was evident among many, predominantly male, African Americans and immigrants who feared that women voluntarily limiting their fertility was a form of racial or ethnic genocide.²³ Within Europe, concern arose in the Catholic Church about the plummeting numbers of Catholic births, especially in France, which, combined with the admittedly shaky science behind quickening, contributed to the Vatican’s repudiation of contraception and abortion.²⁴

Although philosophical, theological, and scientific conceptions of the fetus were secondary to these powerful historical transformations that outlawed most types of abortion, newly straitjacketing women’s reproductive freedom, political and religious authorities were eager to justify their changed positions with recourse to theological and scientific notions. A rationale was crucial to selling and instilling the idea that contraception and abortion were immoral, sinful, as well as disloyal to the United States or to some marginalized population. The familiar trope of the fetus as a potential person from the point of fertilization, as already holding a soul in process, now enters and dominates church doctrines, both among Catholics and increasingly among fundamentalist Protestants.

Definitions of life, specifically human life, as well as the question of when such life begins have long been controversial among scientists, doctors, and the population at large. Further contested, in the rivalry between fetal personhood and a mother’s personhood, is the issue of whether the unborn carry higher value than the women who bear them. Who decides if a fetus is a person and at what point in fetal development a fetus becomes a person: science, rational inquiry, or faith? Should one specific faith dominate others’ spectrum of faiths? The conviction that no one should be able to impose their faith on others undergirds the historical doctrines of religious toleration and of the separation of church and state. Catholics for a Free Choice, which formed in 1973, includes nuns and priests, but the established Catholic Church, heeding a century of Vatican dogma, denounced them. Only in our present time, with Pope Francis refusing to excommunicate public figures who politically support a pro-choice position and even

offering communion to such figures as Nancy Pelosi, has there been a rising awareness of diverse Catholic perspectives.

For many years Americans have celebrated religious pluralism along with a comparable right to unbelief. Imagine if Jews or Moslems legislated that every infant boy be circumcised. Would men put up with that mandate? Many enlightened and politically engaged Catholics, among them such prominent figures as President Biden, Speaker of the House Nancy Pelosi, and Supreme Court Justice Sonia Sotomayor, distinguish between their committed Catholic beliefs and legal mandates applying indiscriminately to people of all faiths. Many of my students, as I do, likewise have a wealth of family and friends personally opposed to abortion but who abhor the idea of imposing their personal beliefs on those who hold different religious, scientific, and moral views.

The majority decision in overturning *Roe* argued that policies on abortion belong to the voters in each of the fifty states and not to the courts.²⁵ Putting aside the antidemocratic realities of voter suppression, gerrymandering, and long, costly legislative electoral campaigns that severely limit who can run for office, fundamental constitutional rights have long been understood as federal. Would we leave to the states the matter of integrated or segregated schooling? Imagine our nation in which most of the southern states enshrined racially segregated education. Over the course of the past two centuries Americans moved to become a more egalitarian and inclusive democracy. In reversing *Roe*, the Supreme Court has eliminated a United States citizen's Constitutional rights for the first time in U.S. history.

4

INTERESTINGLY, IN TEACHING about the history of reproductive rights, I realized the vital role of oral history in preserving and sharing stories and reflections of our past. As one of the founders in 1998 of the Valley Women's History Collaborative, I and another founding coordinator, Susan Tracy, initiated an oral history project on reproductive rights in our Pioneer Valley, focusing on Hampshire, Franklin, and Hampden Counties from the early 1960s to the *Roe* decision in 1973. We were eager to learn about Pioneer Valley women who underwent illegal abortions, with the struggle to decriminalize abortion in our area serving as a pivotal case study. After training both community

volunteers and graduate students in oral history theory and methods, we interviewed roughly thirty women and men. The outcome of this project is a volume of personal narratives, *Creating Choice: A Community Responds to the Need for Abortion and Birth Control, 1961–1973*, edited with scholarly commentary by David P. Cline (currently professor of history at San Diego State University, formerly one of my graduate students).²⁶ Focusing on the decade of illegal abortions before *Roe*, the entries cover the gamut: male clergy of diverse faiths who supported and aided women seeking underground abortions; individual and group feminist activists who formed secret associations to counsel and help women find and travel to abortion providers; the male and female providers themselves; and the women who survived illegal abortions. Among the most telling revelations of this volume is the breadth of the repeal movement, the numbers of men as well as women who put their shoulders to the wheel, and the range in participants' ages, education, socioeconomic circumstances, and religious and secular backgrounds. I am proud that this oral history project contributed to my being honored in 2005 with the Margaret Sanger Award from Tapestry Health, the leading reproductive rights organization in our region and a primary center for reproductive health services since 1973.

5

CRUCIALLY, THE STRUGGLE to repeal the ban on abortion during the decade before *Roe* involved myriad risks and personal sacrifices. The narrators in *Creating Choice* spotlight these, but none of the interviewees in this volume suffered jail terms for their activities. Someone who did and who garners minimal attention so far in the history of *Roe* is Bill Baird. He was jailed eight times in five states; the most traumatic of these arrests was his three months in Boston's Charles Street Jail, where his cell was infested with rats, he was served gruel with bugs and pebbles in it, and he was abused by guards. Some of my graduate students undertook an oral history of Bill and culled through his monumental collection of documents (now housed in the Schlesinger Library at Radcliffe/Harvard Institute for Advanced Study), in addition to sources in our University's Special Collections and Archives. These students worked with two graduate students, Jeannie Hoag and Madeline Ffitch in the MFA for Poets and Writers program of the

English Department, supervised by Professor Tanya Fernando (now Performance editor of the [Massachusetts Review](#)), to author a docu-drama, *A Menace to Society*, centered on Bill Baird's valiant struggle for women's reproductive rights. These history graduate students also collaborated with actors, faculty, and staff of the Theater Department as well as faculty and students in Women, Gender, and Sexuality Studies and the Legal Studies departments to produce a public staged reading on December 12–13, 2008, directed by Shawn Lacount, in the Curtain Theater of the University of Massachusetts.

Bill's incarceration was based on his handing contraceptive foam to a woman at a public lecture at Boston University in violation of the Massachusetts ban on contraceptives, but his vision was much broader. His belief in the paramount importance of privacy in loving relationships spanned the right to abortion to same-sex intimacy. A Supreme Court decision in 1972, *Baird v. Eisenstadt*, was the essential precedent for *Roe* the following year and for two subsequent Supreme Court abortion rulings, in *Baird v. Belotti*, 1976 and 1979, as well as for the decision legalizing gay sexual relationships in *Lawrence v. Texas*, 2003.

Among the sources for Bill's abortion advocacy were his experiences with poor women, often of color, who had neither the means that more privileged women possessed to travel beyond U.S. borders to secure an abortion nor the money to pay a reliable U.S. doctor's fee for the risk of the doctor's providing an abortion illegally. Therapeutic abortions, available to some women, were little known as an option. In 1963, working as a researcher for EMKO contraceptive foam at New York's Harlem Hospital, Bill witnessed the fatal hemorrhaging of a desperate African American woman, the mother of nine children, who tried to self-abort. Despite all the gains in contraceptive and abortifacient pharmaceuticals over the past fifty years, the *Roe* reversal threatens a return to such horrific conditions of the past.²⁷

Since the 1960s, the technology of contraception and abortion has made significant gains, each now vulnerable to legal banning. In jeopardy, for instance, is an immensely helpful advance, emergency contraception, available in certain states through public vending machines.²⁸ Generally, women need a doctor's prescription for emergency contraception, which carries the cost of the doctor's appointment as well as a higher cost for purchase of the product at the pharmacy. In a range of states, efforts are under way to ban emergency contraceptives, regardless of the emergency circumstances of the particular individual.

Similarly, antiabortionists are seeking to criminalize the abortifacient combination of Mifepristone and Misoprostol, even though its safety and effectiveness is limited to the first seventy days (ten weeks) of pregnancy. Due to a protracted process for FDA approval, access to this abortifacient took far longer than in many other countries, despite its convenience, privacy, safety, and efficacy. Even before the *Dobbs* decision, various restrictions on its purchase were legally imposed, chief among these that a woman would need a doctor's visit to obtain a prescription. In December 2021, the FDA authorized a telemedicine prescription, a boon to those living at a distance from a provider and seeking an affordable option. Despite the FDA ruling, certain states still require a certified prescriber. Nineteen states require a clinician's presence when a woman takes the pill. With the current Supreme Court ruling, states have a legal option to criminalize this abortifacient altogether, despite its efficacious usage not only for abortions but also for involuntary miscarriages. Antiabortionists target both surgical and medical abortions, and some wrongly consider the emergency contraceptive pill an abortifacient, oblivious to the fact that the pill prevents fertilization.²⁹

6

A FEW MONTHS AGO, a former student of mine, anxious and depressed, spoke of the world of terror that young women now face. She entwined the frightening impact of climate change, gun massacres, warfare, and present and future pandemics with her loss of bodily autonomy. Were she a woman of color, the toll of mounting discrimination and racial abuse would compound these other fearsome realities. Should she accept a job offer in a prohibition state? If her contraceptive failed or if she was unable to acquire emergency contraception, would her only recourse be abstinence, in effect a rude and scary return to the sexual double standard for individuals who can become pregnant, both before and after marriage?

Although legislative codification of *Roe* would help her, much more needs to be done to guarantee women's bodily dignity, autonomy, and health. Even before the death of *Roe*, women did not have equal access to abortion. Over 80 percent of counties throughout the United States did not provide abortions, and certain states offered only one provider. Since the mid-1970s, clinics throughout our nation have

been war zones, targets of vandalism and arson, with doctors and nurses maimed and killed. Even before the recent spate of antiabortion laws, countless women could not attain a legal abortion because of the costs of travel, loss of job time, their need to take major school examinations or to meet work deadlines, or to assure home care for children or elderly parents. Many private health insurance plans do not cover abortions (though they cover sterilization procedures). Women who go to health clinics face severe harassment and often family and peer shaming.

On July 8, 2021—two weeks after the Supreme Court decision annihilated *Roe*—President Biden issued an executive order declaring what measures were in his power to protect a modicum of access to abortion. Declaring the court decision to be neither constitutional nor historically valid—the majority of judges having played “fast and loose with facts,” he charged—he empowered U.S. Health and Human Services Director Xavier Becarra to assure and assist women in all states to exercise their right to emergency contraception and abortifacients. Mobile clinics, he assured, will offer abortions to out-of-state seekers. He assigned the Federal Trade Commission the task of attacking misleading and fraudulent information, as well as protecting women and doctors’ private communications. Further, he ordered the HHS to counter “data brokers’” invasions of women’s social media accounts to sell data to extremist politicians and others, thereby hopefully allaying women’s, doctors’, and hospitals’ fears of punishment for emergency treatment of women who had suffered ill-trained abortion attempts or natural miscarriages.

Ultimately, Biden explained that only by codifying *Roe* into federal law would women’s reproductive freedom be restored. Accordingly, he exhorted women to “vote, vote, vote, vote!” Only if enough pro-choice senators take or remain in office after the November 2022 mid-term election would codifying *Roe* at the federal level be possible. (Some states are currently codifying *Roe* at the state level.) President Biden also plans to provide legal and financial aid to women who need to travel out of their home state to have an abortion.

Does Biden offer an adequate solution? The *Roe* urgency highlights a fundamental crisis in our democracy. Voter suppression, dishonest precinct workers under the sway of the far right, gerrymandering, unbridled big money in support of political campaigns, and the Senate’s antidemocratic basis may cripple the basic and essential democratic

principle of one person, one vote. The difficulty of legislative codification of *Roe* is one of the major outgrowths of this radical attack on democratic values and practices. Despite vast popular majority support, the lack of passage of laws to restrict the sale and use of guns or laws to promote the health of our climate are likewise symptoms of an abused democracy. Over recent decades, the truly pro-life party has been the Democrats, along with a few Republican allies, but a minority of anti-life legislators rules our nation. If popular will is no longer the basis of legislation, what can be done?

To restore the vitality of democracy, yes, we must passionately vote, but our uphill battle requires more than our citizen majority's assuring of "one person, one vote." To nourish the roots and soil of democracy for further generations of women's reproductive freedom, and to have the vast numbers of us enact progressive laws to make "choice" genuine, two major social changes are essential: first, a sweeping transformation in American education, giving stimulus for evidence-based dialogue and making action their warranted priority. We can fertilize the soil of democracy only when future generations of young people maintain and fire up their critical thinking skills, keep at the forefront their grasp of the dynamics and questions of our national history, utilize their training in compassion for and empathy with our population at large, and guide themselves and each other to be active, effective participants for the peaceful sustenance of what "justice and liberty for all" ought to mean. The second necessity: a broad-based and immense grassroots political effort by our outspent but not outnumbered progressive-minded American people at local, state, and national levels; we need them to run as candidates for school boards and town offices, volunteer as precinct workers, become policy makers, and permeate and influence all forms of traditional and new social media.

Reproductive freedom and justice, and the very survival of our planet, depend on this.

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Cover Art: Susan Jahoda, From the series (*inpreparation for absence*), silver print, 16x20 inches, 1999. ©Susan Jahoda, used with permission. All Rights Reserved.

Notes

¹See Carrie N. Baker and Carly Thomsen, "The Importance of Talking About Women in the Fight Against Abortion Bans," *Ms. Magazine*, June 23, 2022.

<https://msmagazine.com/2022/06/23/women-abortion-bans-inclusive-language-pregnant-people/>

²Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973* (Berkeley: University of California Press, 1997). This study continues to be the most reliable and comprehensive history of abortion in this period. Its bibliography is thorough and an immense resource for scholars.

³Reagan, 246.

⁴Reagan, 224.

⁵Reagan, 216–245.

⁶*Roe v. Wade*, 410 U.S. 113 (1973). Available on audio. See *Landmark Briefs and Arguments of the Supreme Court of the United States: Constitutional Law*, eds. Philip B. Kurland and Gerhard Casper (1973). For a full description and thoughtful analysis of the decision, consult N. E. Jull and Peter Charles Hoffer, *Roe v. Wade: The Abortion Rights Controversy in American History* (Lawrence, Kansas: University Press of Kansas, 2001). Useful excerpts from the decision appear in *Controlling Reproduction in American History* (Oxford, UK: SR Books, 1997), ed. Andrea Tone.

⁷*Ibid.*

⁸*Dobbs v. Jackson Women's Health Organization*, No. 19-132, 597: 151–152, 2022. See, too, Michelle Goodwin, "No, Justice Alito, Reproductive Justice Is in the Constitution," *New York Times*, July 6, 2022.

⁹*Dobbs*, 161–162.

¹⁰Joyce Avrech Berkman, "The Fertility of Scholarship on the History of Reproductive Rights in the United States," *History Compass* (Wiley Blackwell), 9.6 (May 2011). The essay offers an historiographical overview and analysis of scholarship on reproductive rights in our country as of 2011.

¹¹Reagan, 249.

¹²Loretta Ross and Ricki Solinger, *Reproductive Justice: An Introduction* (Berkeley, CA: University of California Press, 2017). For SisterSong Reproductive Justice Collective's Women of Color's origins, consult *Undivided Rights: Women of Color Organize for Reproductive Justice* (Cambridge, MA: South End Press, 2004), eds. Jael Silliman et al., 14, 42, 230, 301–303.

¹³Ricki Solinger, *Beggars and Choosers: How the Politics of Choice Shapes Adoption, Abortion, and Welfare in the United States* (New York: Hill and Wang, 2001).

¹⁴*Dobbs*, 179–196. See, too, Ricki Solinger, *Pregnancy and Power: A Short History of Reproductive Politics in America* (New York: New York University Press, 2005).

¹⁵The best overviews of nineteenth-century U.S. abortion laws and policies appear in J. C. Mohr, *Abortion in America, 1800–1900* (Oxford, UK: Oxford University Press, 1998); Linda Gordon, *The Moral Property of Women: A History of Birth Control Politics in America* (Urbana and Chicago: University of Illinois Press, 2002); and J. F. Brodie, *Contraception and Abortion in Nineteenth-Century America* (Ithaca, NY: Cornell University Press, 1994).

¹⁶John T. Noonan Jr., *Contraception: A History of Its Treatment by Catholic Theologians and Canonists* (Cambridge, MA: Harvard University Press 1966, 1986); John T. Noonan Jr., *The Morality of Abortion* (Cambridge, MA: Harvard University Press, 1970).

¹⁷Mishna Ohlot 7:6. Trans. Daniel Sinclair. See, too, Daniel Sinclair, *Jewish Biomedical View* (Oxford: Oxford University Press), 12, and David Schiff, *Abortion in Judaism* (Cambridge, UK: Cambridge University Press, 2002).

¹⁸Dealing with English Common Law, Angus McClaren, *Reproductive Rituals: The Perception of Fertility in England from the Sixteenth Century to the Nineteenth Century* (London: Methuen, 1984), 102–103, 108–109, 188 n.98; Mohr, *Abortion in America*, 3–45, 55–86; Gordon, *The Moral Property*, 4–26.

¹⁹Cornelia Hughes Dayton, “Taking the Trade: Abortion and Gender Relations in an Eighteenth-Century New England Village,” *William and Mary Quarterly*, 3rd ser. 48, (January 1991): 1, 24–25; Susan Klepp, *Revolutionary Conceptions: Women’s Fertility and Family Limitation in America, 1760–1820* (Chapel Hill, NC: University of North Carolina Press, 2007).

²⁰Gordon, “Race Suicide,” in *The Moral Property*, 86–104.

²¹*Ibid.*, 32–36, 111–113. Nicole Beisel, Anthony Comstock, *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America* (Princeton, NJ: Princeton University Press, 1997).

²²Theodore Roosevelt, “On Race Destiny and Wilful Sterility” in *Controlling Reproduction*, edited by Andrea Tone, 159–162. See, too, Mark H. Haller, *Eugenics: Hereditarian Attitudes in American Thought* (Brunswick, NJ: Rutgers University Press, 1963).

²³Gordon, *The Moral Property*, 326.

²⁴Karen Offen, *European Feminisms, 1700–1950* (Stanford, CA: Stanford University Press, 2000), 190–197, 245.

²⁵Dobbs, 186–196.

²⁶David P. Cline, *Creating Choice: A Community Responds to the Need for Abortion and Birth Control, 1961–1973* (New York: Palgrave Macmillan, 2006).

²⁷*Ibid.* The major events in Bill Baird’s evolution as a reproductive rights activist, based on interviews of Baird and related documents, appear in Jeannie Hoag’s and Madeline Fitch’s *A Menace to Society* (unpublished script).

²⁸Carrie N. Baker, “Student Campaign to Increase Emergency Contraceptives Access: ‘EC Vending Machines Everywhere’” *MS. Roe. v. Wade* (Fall 2021): 8–9.

²⁹Carrie N. Baker, “We Have Had Abortions’ Petition Relaunches 50 Years Later—With Support from Original Signatories.” *MS.* (January 20, 2022).