

Abstract

In June 2022, the Supreme Court of the United States issued a ruling known as *Dobbs v. Jackson Women's Health Organization*, overturning the 1973 landmark decision of *Roe v. Wade* which had legalized abortion in the United States. Since *Roe* there have been more than 63 million legal abortions to date in the US, a staggering figure that abundantly surpasses the number of deaths suffered by the country in all the combined wars of its more than 200-year history. No doubt, the overturning of *Roe vs. Wade* is of paramount importance and will have a significant impact on the abortion debate, both in moral and political terms, which may well reach beyond the national boundaries of the United States. This article intends to understand the impact of these landmark decisions by further exploring the contrasting views, the sustaining arguments, and the potential moral and political implications within an already deeply divided American public opinion on abortion.

The background

When the United States of America became independent from the British crown, the new country kept the English Common Law to deal with abortion. Under such law, it was understood that life began at “quickening”, which indicated the start of fetal movement typically between 14 and 26 weeks after conception. However, in the mid-19th century, while Europe's medical progress acknowledged the irrelevance of fetal quickening, most of the US banned any abortion with only exceptions seen in a few states in the case of rape, incest, or the endangerment of the mother's life. This situation lasted substantially unchanged with some exceptions until the mid-20th century. Nevertheless, by the 1960s, following the civil right movements, the sexual revolution, and the feminist advocacy groups, the cultural climate had changed and became focused on the supposed reproductive rights of women.

Women's groups began arguing about the dangers of banning abortion. They pointed out that its illegality led many women to seek black market abortions by unlicensed physicians or to perform the procedure on themselves. As a result, several states such as California and New York began to legitimize abortions. How-

Abortion in America after *Dobbs*

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ever, with no definitive ruling from the federal government, women's groups and their supporters sought the opinion of the United States Supreme Court.

After vigorous debates, some lawyers managed to bring the case to the Supreme Court resulting in the landmark decision *Roe v. Wade* decision which legalized abortion. Prior to *Roe*, 30 states prohibited abortion without exception, 16 states banned abortion except in certain special circumstances (e.g., rape, incest, and health threat to mother), 3 states allowed residents to obtain abortions, and New York allowed abortions in most cases. But, on January 22, 1973, the US Supreme Court in *Roe v. Wade* invalidated all of these laws, and set guidelines for the availability of abortion, claiming the right to privacy of a woman to obtain an abortion “must be considered against important state interests in regulation.”

Roe also established a trimester framework, defined as the end of the first pregnancy trimester (12 weeks), as the threshold for state interest, such that states were prohibited from banning abortion in the first trimester but allowed to impose increasing restrictions or outright bans later in pregnancy.¹ In this ruling, the majority of the justices maintained that a right to privacy was implied by the Ninth and especially the Fourteenth Amendments. Consequently, no state could restrict abortions during the first three months, or first trimester, of a pregnancy. Any state law that conflicted with this ruling was automatically overturned.

The issue of abortion is fundamentally divisive because it involves opposite faiths and moralities, and millions of lives are involved. Those who believe that life begins at conception feel that the unborn child deserves the same legal protection as an adult. Ending such a life through abortion is equivalent to murder. Others argue that life begins at birth, and that laws restricting abortion interfere with the right of a woman to decide what is in her own best interest. As known, opponents of abortion use the label “PRO-LIFE” to define their cause; supporters of *Roe v. Wade* identify themselves as “PRO-CHOICE.”

At the issuance of *Roe*, women's pro-choice groups were ecstatic. But soon,

opposition emerged. The pro-life groups and, first, the Roman Catholic Church, had long criticized abortion as a form of infanticide. Many fundamentalist Protestant ministers joined the outcry, with the explicit goal of reversing *Roe v. Wade*.

America after *Dobbs*

It seemed that the legal legitimacy of *Roe v. Wade* would continue undisputed until, on 6/24/22, the Supreme Court of the United States issued a ruling known as *Dobbs v. Jackson Women's Health Organization*, simply referred to as *Dobbs*, which is considered to be of paramount importance for the implications that it is going to have on the controversial practice of abortion. The ruling holds that abortion is not a protected right under the US Constitution, overturning the previous 1973 *Roe v. Wade* ruling, and returning the decision regarding abortion regulations back to the states. The ruling has come after a long and heated debate on the right to abortion between the supporters of the pro-choice and pro-life positions respectively.

To be more precise, by such a decision, the Supreme Court has overturned two previous rulings that legalized abortion in this country: The *Roe v. Wade* of January (1973): that legalized abortion of the “pre-viable” unborn² (at that time judged to be around 28 weeks), and *Planned Parenthood v. Casey* (1992) that reiterated the validity of *Roe v. Wade*, adding that states could not ban abortion for the pre-viable (normally judged 24 weeks at that time), but allowing states to restrict abortion as long they should avoid “undue burden” to the mothers.

Since then, several states have introduced, not without controversies, partial restrictions to the accessibility to abortion in their jurisdictions, while others have expanded the accessibility to the practice, further complicating the picture. Considering that *Dobbs* has been promoted by five of the nine Supreme Court justices, notably the ones adhering to conservative values, it has further increased the opposition towards the sentence by the great majority of the liberal component of the country.

In legal terms, the opposition to the

ruling has been motivated by the conviction, backed by the same precedent, that Dobbs violates the 14th Amendment. But the 14th Amendment, allegedly establishing the right to privacy, cannot overrule the right to life. By the way, the 14th amendment does not mention the right to abortion.³ Another legal objection brought about by the pro-choice movements has been that Dobbs violates the principle of “*stare decisis*”, which translates that the court cannot contradict previous decisions made by the very same court. But “*stare decisis*” is not to be considered an absolute principle. Other cases have been overruled by the Supreme Court in the past, such as the notorious *Brown v. Board of Education* (1954) overruling the principle “Separate but Equal”, previously established by *Plessy v. Ferguson* (1896).

To better evaluate the significance of such a decision, it is important to consider what is at stake with the abortion issue. Just to limit our consideration to the socio-demographic dimension, consider that since 1973, more than 63 million abortions have been legally performed in the US.⁴ No historical genocide can be compared to this figure! In 2000 the medical abortive pill, RU-486, was also approved by the FDA (Federal Drug Administration) and is now largely dispersed to the point that presently, about 50% of abortions are determined to be medically performed.

Split in temporal terms, federal statistics quote an average of almost one million abortions per year: 930,160 in the year 2020, 55% of which were from Black and Hispanic women; 60% of women seeking abortion were in their 20s; 85% were unmarried; 60% already had a child; 58% had already had a previous abortion; 62% were religiously affiliated (of which 24% were Catholic).⁵ Imagine what it would mean to a country with over 60 million additional births in the last fifty years, multiplied by their potential children who would have been born in that time frame. America would surely be a different nation, with many more people, where some of them would have been potential geniuses, professionals, and saints!

Pro-abortion arguments

Apart from the legal objections to Dobbs, which the court has authoritatively rejected, the debate has gone back to the moral foundations sustaining and opposing abortion. Among the reasons backed

by the pro-choice movement, the following appear to be the main ones:

Personal autonomy. There is no wonder that the postmodern culture highly values individual liberty and autonomy. One of the main arguments in favor of abortion is exhibited by the slogan “my body, my choice” Lately, the most radical feminist movements have substituted the wording from “my choice” to “my decision”, because the former term may possibly hint that opting for abortion is just one of two valid choices at the disposal of pregnant women. The term, decision expresses better, in their view, the total legitimacy and autonomy of the women to decide for an abortion.

A second argument brought about in defense of abortion is to believe and say that the unborn child is not a person, mainly because it is not yet endowed with self-awareness and rationality. The terminology used in our culture favors, in a certain way, this conviction. Instead of speaking of a child or life in the womb, both the medical and cultural language speaks of embryo and fetus that may improperly well be confused with a mass of organic tissues, nothing more.

A third argument in favor of the pro-choice exponents is to point out that objecting to abortion is a way of implementing social inequality and gender discrimination, as it forces women into a burden that men do not have. Nowadays, this is especially appealing in relation to the competing job market and individual opportunity to enjoy leisure time.

A fourth argument may be categorized as a religious matter. It states that religion cannot be imposed. This is often mentioned especially in opposition to the Catholic Church, viewed as a blind and insensitive opponent to women’s liberty. As we do not impose abortion on everyone, nor should the church pretend to impose its view beyond their members, sustain the pro-choice exponents. A motto often used by the feminists in this regard is to exhibit the slogan “Keep your rosary out of my ovaries”.

A fifth argument consists in the belief that abortion is essentially a medical procedure designed to fix an unwanted pregnancy. According to this pro-choice view, there are no consequences in undertaking an abortion under specialized medical care, neither physical nor mental. This opinion is medically controversial and oblivious to the moral and psychological implications.

A sixth argument is to view the right

to abortion as part of health care accessibility. As we are entitled to receive treatment for any other disease, so similarly this right should be applied to abortion seekers without any other objection, especially in modern liberal republics where individual rights are guaranteed by law.

A more moderate argument, also sustained by sentences prior to Dobbs, is to invoke the concept of viability. Viability is the medical term expressing that the fetus can be considered a human life once it is viable and not before, that is, it can survive outside the womb of the mother. According to this view, abortion is perfectly acceptable within the terms of viability. The criterion of viability is nevertheless subject to the progress of medical science. At the time of *Roe v. Wade* (1973) it was determined to be at about 28 weeks, but at the time of *Planned Parenthood v. Casey* (1992) it was reduced to about 24 weeks and, at present, it may be even shorter.

There are other arguments brought forward by the supporters of abortion. All of them can be summarized in the reasoning that women have their reproductive rights, which would include the voluntary termination of their pregnancies. They believe this should be considered a fundamental human right envisioned by the governments promoting individual freedom. Recently, the UN has approved, even though in ambiguous terms, this alleged right.⁶

Pro-life arguments

Life starts at conception. This has been a constant interpretation of the doctrine of the church, backed more and more by the medical science⁷. The same concept of viability has been shortened, as mentioned, thanks to the progress of medical science. The so-called fetus may be able to survive outside the womb at 22 weeks of pregnancy, confirming the sufficient formation of the fetus as an autonomous human life. Consider that the fetus has his/her own DNA, different from the mother’s and father’s; the heartbeat of the fetus can be detected as early as 22 days, confirming that the fetus is a human life of its own.⁸ The slogan “my body, my decision” ignores the fact that the fetus is a different body from the one of the mother. When a woman is pregnant, there are two human lives: the mother and the child (fetus).

In response to the pro-choice claim that the pro-life position is a form of a gender discrimination, meaning that men

are anti-abortion because they want to keep women subordinated and marginalized, it can be argued that many men are pro-choice, and many women are pro-life and many of them are in the front line in defending the right to life.

In response to the claim that the principles of religion, including the anti-abortion belief, cannot be imposed on the non-believers, it can be argued that the right to life has its foundation in basic human rights, as sustained by any moralist, independently of their religious beliefs. Any human being has as a primordial right, the right to life, as the right to life is fundamental for the existence of all other human rights. Even Pope Francis reiterated that abortion is primarily not a religious issue but a human one.⁹ This right is solemnly proclaimed in the US Declaration of Independence, later incorporated by the Constitution.¹⁰

Also, the arguments brought by pro-choice supporters claiming that the fetus is not a person because he/she is unconscious and irrational, are not sufficient reasons to get rid of it. If we believe these to be valid arguments, it would be perfectly moral to kill a person during his/her sleep because they are unconscious, or to get rid of mentally handicapped people and young children because they have not developed their potential rationality.

As per the pro-choice argument that abortion allows women to fix a problem, Pope Francis has compared it to hiring a hit man to get rid of a problem. In other words, I cannot kill in order to solve a possible envisioned problem. There must be other solutions compatible with the wellbeing of both the mother and the child.¹¹

The idea that abortion is healthcare, and therefore must be considered as a right accessible to all women, forgets that being pregnant is not a sickness. It is rather a sign of good health, as the body of a woman is designed for pregnancy.

As for the general assumption that women have their own reproductive rights, and therefore excluding them from abortion would take away from them a fundamental right, we may not that this ignores the fact that any right is not legitimate when it implies the suppression of another life, as the right to life stands supreme over all other rights. In other words, if two alleged positive values come into conflict, the right to life prevails. This principle is shared by all serious ethicists, independently of their religious beliefs.

Consequences and implications

As already said, the Dobbs ruling is likely to have a wide impact on American society, with possible worldwide repercussions, given the relevance of the topic and the recognized international role of the US. It arrives in a moment of unprecedented division within American society. Rarely in recent times has America known such a harsh division on many aspects of public life, in a sort of culture war climate. To many, the assault on Capitol Hill of January 6, 2021, came as a shocking surprise, yet this event can be explained as the culmination of a cultural war already occurring in recent times.¹² Politically, America seems deeply split between Republicans and Democrats over economics, social reforms, and collateral issues. Of course, this is not new in democratic societies but what appears unprecedented is that this division is not just strictly political; it is further reinforced and complicated by opposing views on basic moral principles.

For a long time, the strength of American society has been based on a strong middle class sharing basic values inherited from the Judeo-Christian tradition, notably God, family, and country. But in the late 60s and early 70s, with the contraction of the middle class, a new culture emerged emphasizing as its common denominator the development of individual rights, especially among the so-called minority components of society, such as Blacks, Hispanics, women, and, lately, supporters of gender theory. What seems to tie together such different and numerous components of modern American society appears to be a secular humanism able to undermine the aforementioned traditional pillars of American society: God, family, and country.

Abortion plays a great part in this cultural conflict, as the opposing parties ground their convictions on nonnegotiable values: the sanctity and primacy of life, on one hand, and the autonomy of the individual on the other. The former considers abortion a form of infanticide, while the latter claims the absolute self-determination of the woman on her own body.

The abortion issue has also split the Christian churches in America. Notoriously the Catholic church has been a beacon for the defense of the unborn and considers abortion an early murder of a human life. But many Catholics have absorbed the mentality of secular human-

ism and indeed consider abortion as a human right. Among them are several Catholic politicians, most notoriously, the president Joe Biden and the long-time Speaker of the House, Nancy Pelosi, both proclaiming to be devout Catholics.¹³ Similarly, several Protestant churches and their members have split over abortion, notoriously those Protestants who self-recognize as Evangelicals. They are among the most active pro-lifers, including the previous President of United States, Donald Trump, who, despite his questionable private life, has been a strong defender to the right to life.

Abortion is also a divisive topic among those who are not religiously affiliated. Recent polls have shown that opposition to abortion is not uncommon among nonreligious affiliated groups, disproving the pro-choice strategy to paint the abortion debate as a religious argument. A significant, growing number of self-identified non-religious and atheist people oppose abortion on the grounds of human rights¹⁴. All of us have envisioned an embryo and a fetus. Suppressing them would have deprived us of life, the primordial human right. Pro-Lifers believe that it is morally wrong to suppress an incipient life, aligning themselves with Pope Francis who declared that preserving life from abortion is, first of all, a human right, not a religious one.

Abortion is also seen by the defenders of life as a form of suppression of religious and individual civil liberty, as the laws on abortion in several states coerce the taxpayers into financing it through the taxation system, regardless of their moral conviction on the matter. Particularly affected are the medical personnel, who are not infrequently forced to assist at, or perform, abortions in spite of their personal ethical beliefs. This is an argument that surprisingly has been timidly brought up in Europe. But it is well presented in the US, as shown by a recent letter dated 1/27/23 by the Conference of Catholic Bishops, addressed to the Congress, urging for approval of legislation ending the taxpayer's contribution to the abortion industry.¹⁵

It is plausible that the intensity of the conflict over abortion has been elevated to another level with the recent Dobbs ruling, as a large part of public opinion considered *Roe* as an irreversible benchmark. With the overruling of *Roe*, the opposition, and the consequent debate, has restarted from ground zero. The debate is now concentrated at the state level, since

states have the legal capability, in the absence of a federal guideline, to regulate the practice by their own legislature, as the *Dobbs* ruling has delegated to the single states the job to do so. This means that the US will have very different legislation regarding abortion depending on the political orientation of every single state. Some will, and have already, restricted abortion, such as Texas and Louisiana. Others will, and have already, extended abortion accessibility up to birth, as is the case in New York and California¹⁶. A collateral consequence will be that women living in restricted abortion states may well seek abortions in a nearby liberal state. As a result of this opposing legislation, we will see a Union which is a Disunion that some authoritative observers have already labeled as the “Disunited States of America.”¹⁷ The pro-choice movements say that this forced migration will penalize minority groups, as they have less economic means to afford travel and accommodation expenses. In broader terms, the *Dobbs* sentence will contribute to deepening the already divided national split between traditional value Conservatives and liberal value Progressivists.

The opposing moral views on abortion are poised to increase the degree of intolerance already present in American society, as has been made evident by the recent spread of acts of vandalism against churches and pro-life facilities.¹⁸ It may appear quite paradoxical that the development of enlightenment ideas, which have inspired the founding of this country and were supposed to be conducive to a more tolerant society, has in reality ended up with an increase in intolerance. From this perspective, the words of the recently departed Pope Emeritus Benedict XVI, who often denounced post-modern culture with the label “dictatorship of relativism”, appear more actual and prophetic than ever.

NOTE

1. Cf. “Abortion in the United States” in Wikipedia.org, retrieved December 13, 2022.

2. Viability of a fetus means its having reached such a stage of development as to be capable of living, under normal conditions, outside the uterus.

3. The XIV amendment adopted a number of measures to protect individual rights from interference by the states. Among others, it prohibits the states from depriving “any person of life, liberty, or property, without due process of

law”.

4. Cf. “Abortion Statistics”, United States Data and Trends, in FS01 Abortion in the US, retrieved December 13, 2022.

5. Diamant, J, Mohamed, B. (June 24, 2022) “What the Data say about Abortion in the US”, Pew Research center, retrieved on December 14, 2022.

6. Cf. “UN Human Rights Committee Asserts that Access to Abortion and Prevention of Maternal Mortality are Human Rights”, Center for Reproduction Rights, retrieved on December 13, 2022.

7. Life starts at fertilization. The following references illustrate the fact that a new human embryo, the starting point for a human life, comes into existence with the formation of the one-celled zygote:

“Development of the embryo begins at Stage 1 when a sperm fertilizes an oocyte and together they form a zygote.” [England, Marjorie A. *Life Before Birth*. 2nd ed. England: Mosby-Wolfe, 1996, p.31]

“Human development begins after the union of male and female gametes or germ cells during a process known as *fertilization* (conception). “Fertilization is a sequence of events that begins with the contact of a *sperm* (spermatozoon) with a *secondary oocyte* (ovum) and ends with the fusion of their *pronuclei* (the haploid nuclei of the sperm and ovum) and the mingling of their chromosomes to form a new cell. This fertilized ovum, known as a *zygote*, is a large diploid cell that is the beginning, or *primordium*, of a human being.” [Moore, Keith L. *Essentials of Human Embryology*. Toronto: B.C. Decker Inc, 1988, p.2]

“Embryo: the developing organism from the time of fertilization until significant differentiation has occurred, when the organism becomes known as a fetus.” [*Cloning Human Beings*. Report and Recommendations of the National Bioethics Advisory Commission. Rockville, MD: GPO, 1997, Appendix-2.]

“Embryo: An organism in the earliest stage of development; in a man, from the time of conception to the end of the second month in the uterus.” [Dox, Ida G. et al. *The Harper Collins Illustrated Medical Dictionary*. New York: Harper Perennial, 1993, p. 146]

“Embryo: The early developing fertilized egg that is growing into another individual of the species. In man the term ‘embryo’ is usually restricted to the period of development from fertilization until the end of the eighth week of pregnancy.” [Walters, William and Singer, Peter (eds.). *Test-Tube Babies*. Melbourne: Oxford University Press, 1982, p. 160]

“The development of a human being begins with fertilization, a process by which two highly specialized cells, the *spermatozoon* from the male and the oocyte from the female, unite to give rise to a new organism, the *zygote*.” [Langman, Jan. *Medical Embryology*. 3rd edition. Baltimore: Williams and Wilkins, 1975, p. 3]

8. Cf. Charlotte Lozier Institute. (2021)

“The heart is actively beating at 6 weeks. Between conception and birth the baby’s heart will beat approximately 54 million times”. Retrieved on 12/14/2022:

- The baby’s average heart rate is 110 BPM. This will rise to 175 BPM by 9 weeks’ gestation.
- The presence of a heartbeat at 6-8 weeks’ gestation correlates with a live birth rate of 98% in normal pregnancies without intervention.
- The brain has divided into three primary sections responsible for sensing and decision-making, moving and tracking objects, and vital body functions.
- Eyes, ears, and nose start forming.

9. Windfield, Nicole (2019) “Pope: abortion is never OK, AP News, retrieved on 12/16/2022.

10. Declaration of Independence of the United States (1976), *Preamble*, Philadelphia: Second continental congress.

11. Windfield, Nicole (2019) Op.Cit., retrieved on 12/16/2022.

12. Hunter, J. D. (1991) *Culture wars: The struggle to define America*, New York: Harper Collins.

13. LifeNews.com (2023, Feb 15) “Catholic archbishop: Joe Biden’s promotion of abortion is betraying the faith”, LifeNews.com, retrieved 2/19/2023.

14. Florito, M. (2022, July 3), “Atheists against abortion reject the religious argument”, Our Sunday Visitor. See also: Watson, C., (Nov 21, 2022), “They are not religious. But they oppose abortion”, Retrieved on 1/3/2023.”

15. Cf. US Conference of Catholic Bishops Letter (2023, January 27) “No taxpayer funding for abortion act”, Washington, US Conference of Catholic bishops. See also Pinedo, P. (2023, January 1) “US bishops urge congress to pass no taxpayer funding for abortion act”, Washington, Catholic News Agency, retrieved 1/31/2023.

16. As per November 23, 2022, 14 states have already restricted abortion accessibility and other 9 had in place similar restrictions, whereas 16 states, plus the District of Columbia, have expanded accessibility to abortion.

17. The Economist (2022, September 3) “The Disunited States of America”, London, weekly edition.

18. Bukuras, J. (2022, June 30) “Attacks on churches, pro-life pregnancy continue”, Washington, CNA, retrieved 1/30/2023.