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Review of United States Abortion Policy

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The ruling of *Roe v. Wade* was a key point in the establishment of abortion policy in the United States, sparking controversy that is still prevalent politically and socially. Prior to *Roe v. Wade*, abortion was banned throughout the majority of the United States with very few exceptions. In the years since this historical ruling, civilians and politicians have taken sides over what abortion policies are morally and ethically correct. The intent of this policy review is to analyze how abortion policies have been established in the United States, how they have changed since the ruling of *Roe v. Wade*, and how such policies affect women today. This review will include analyses of the history, social movements, ideology, economics, and politics associated with abortion policy.

History

Before *Roe v. Wade*

Roe v. Wade is a well-known court case in the United States, famous for granting women the right to choose to receive an abortion. Prior to *Roe v. Wade*, all abortions aside from those needed to save a pregnant woman's life had been banned in the state of Texas, the state in which *Roe v. Wade* originated, by a law that took effect in 1857 (Shainwald, 2013). The first ban on abortion in the United States was implemented in 1821. By 1910, every state except Kentucky had outlawed abortion with few exceptions (Shainwald). Women in the early 20th century had several reasons for wanting safe and legal abortions. One reason at the core of this movement was a desire for a right to privacy and control; a right that bridged the legalization of abortion with the movement for more accessible contraception (Garrow, 1999). In relation to the women's movement, legal access to abortion was desirable for the purpose of giving women more freedom to pursue education as well as equal access to positions in work and politics without interruption by an unwanted pregnancy (Greenhouse & Siegel, 2012). Aside from a

desire for bodily autonomy, numerous women sought abortions in the early- to mid- 1900s as a result of contracting diseases during pregnancy that were known to be harmful to the developing fetus (Reagan, 2009). German measles, for example, had the potential to cause deafness, blindness, heart defects, and intellectual disabilities if a pregnant woman were exposed early in her pregnancy (Reagan). As a result of this risk, many parents wished to terminate pregnancies in which there was likely harm to the fetus. For women in the United States, reform of laws banning abortion meant gaining greater control over their reproductive lives (Greenhouse & Siegel, 2012).

Without legal access to abortion, an estimated one million women received illegal abortions each year during the early 1960s (Greenhouse & Siegel, 2012). According to Planned Parenthood Action Fund Incorporated (2018), in 1965, approximately 17 percent of all pregnancy- and childbirth- related deaths resulted from illegal abortions. Before abortion was legalized, women with the right medical contacts and an ability to pay received secret abortions from doctors who were willing to perform the procedure (Garrow, 1999). Providing illegal abortions was risky for doctors. Although all parties involved would receive serious punishment if an illegal abortion procedure was discovered, physicians performing such procedures received the most severe penalties. There was a risk of losing their license to practice medicine in addition to receiving criminal charges (Shainwald, 2013). Conversely, many physicians faced lawsuits for refusing to provide therapeutic abortions, an abortion deemed necessary to preserve the mother's health, if there was disagreement regarding whether or not the procedure was justified (Reagan, 2009).

Women who were unable to find a doctor willing to perform an illegal abortion often reverted to other methods of terminating the pregnancy. Many women who could not afford to

pay a medical professional attempted dangerous self-induced abortions. One survey conducted in New York City between 1965 and 1967 discovered that 80 percent of low-income women who had an abortion tried such procedures (Planned Parenthood Action Fund Incorporated). Another option for women who could afford to do so was to travel to other countries where abortion was legal (e.g. Japan, Mexico, Puerto Rico, England, and Scandinavia). Whereas medical professionals had previously pushed for prohibiting abortions a century earlier, the medical profession came to see this issue as a public health problem in urgent need of attention (Greenhouse & Siegel, 2012).

The ruling of *Roe v. Wade*

Roe v. Wade was filed in federal court in 1969 by an unmarried pregnant woman dissatisfied with the current abortion statutes effective in Texas (Lewis, 2014). Norma McCorvey, better known as Jane Roe, wished to safely and legally terminate her pregnancy. McCorvey chose to take action after finding that she was prohibited from doing so under Texas law. After consulting two attorneys, Sarah Weddington and Linda Coffee, McCorvey filed her class-action lawsuit against Dallas district attorney, Henry Wade, seeking an injunction to end the enforcement of the present abortion law. After the three-judge district court refused the issuance of an injunction despite their conclusion that the Texas law was unconstitutional, the case was appealed to the Supreme Court in 1971 (Lewis).

In the Supreme Court, *Roe v. Wade* was first heard in a seven-justice court beginning December 13, 1971 (Lewis, 2014). After hearing briefs from various pro-choice and pro-life organizations, at least four of the seven justices came to a vague agreement that Texas's restrictions on abortion were unconstitutional. The case was later reargued in front of a court composed of nine justices on October 11, 1972. After this second hearing, the Texas abortion

law was overturned by a vote of seven to two (Lewis). On behalf of the majority, Justice Harry Blackmun declared that the constitutional rights of privacy and liberty encompassed by the 14th Amendment also applied to a woman's right to terminate a pregnancy. Although it was concluded that access to abortion is a fundamental right, the Court recognized the state's interest in protecting the woman's health as well as the potential of human life. Therefore, a three-tiered framework was designed allowing the state greater regulatory ability as a pregnancy progressed (Shainwald, 2013).

Before and during the proceedings of *Roe v. Wade*, other cases occurred throughout the country that challenged statutes restricting reproductive freedom, influencing the decision ruled in *Roe*. In the case of *Griswold v. Connecticut* in 1965, the Supreme Court ruled that the criminalization of birth control violated a married couples' right to privacy (Planned Parenthood Federation of America, 2014). Later in 1972, the case of *Eisenstadt v. Baird* established that the same right to privacy applied to unmarried people (Planned Parenthood Federation of America). These two cases set the stage for *Roe v. Wade* by establishing a fundamental right to privacy that could also be applied to a woman's right to choose abortion (Garrow, 1999). In the same year as *Roe*, *Doe v. Bolton* was also appealed to the Supreme Court challenging the abortion laws in Georgia. The two cases were heard together in the Supreme Court and received the same ruling voiced by Justice Harry Blackmun (Lewis, 2014).

After *Roe v. Wade*

The legalization of abortion resulted in a dramatic decrease in death and injuries experienced by women receiving abortions. As previously mentioned, 17 percent of all pregnancy and childbirth related deaths were the result of illegal abortions in 1965 (Planned Parenthood Action Fund, 2018). Since abortion became legal in the United States, it has become

one of the nation's safest medical procedures with over a 99 percent safety record (Planned Parenthood Action Fund). Although the legalization of abortion resulted in better preservation of women's health, backlash was seen in politics and against abortion providers. In the years immediately following *Roe*, efforts were made during Reagan's presidency to pass an anti-*Roe* constitutional amendment in Congress without success (Garrow, 1999). This failure to change the legislation implemented by *Roe* caused frustration amongst right-to-life activists, leading to violent attacks on abortion clinics in the mid- to late 1980s (Garrow). Countless incidents of abortion clinic staff being harassed, stalked, attacked, and killed have occurred; eight staff and volunteers have lost their lives (Joffe, 2013). The topic of abortion has become a prevalent issue in politics, with general affiliations seen within political parties. In general, the Republican Party is associated with a pro-life stance and the Democratic Party is associated with a pro-choice stance (Warnes, 2013). Events that followed the historic ruling of *Roe v. Wade* will be discussed further throughout this paper.

Social Movements

Emergence of social movements

As abortion became a prevalent issue in the years leading up to *Roe v. Wade*, people in the United States began advocating for either side of the abortion debate. Thus, two opposing social movements emerged: the pro-life movement and the pro-choice movement. Members of the pro-life movement are those who support the prohibition of abortion and believe that causing any harm to an unborn fetus should be punishable by law (Daniels, 2016). Members of the pro-choice movement are those who support legal abortion that is safe and affordable (Warnes, 2013). Activists advocating for legal abortion sought to protect the lives of women as well as individual liberty and reproductive freedom (Warnes). In response to the growing prevalence of

the issue, pro-life organizations formed throughout the United States (Karrer, 2011). When the pro-life movement began, activists had a mission to protect the civil and human rights of vulnerable populations including the unborn and indigent (Daniels). The pro-choice movement began when abortion rights advocates first promoted the reform of abortion laws in the 1950s (Karrer). According to Warnes, either movement was developed and labeled in such a way that makes the opposition appear less favorable. As described by Warnes, "The term 'pro-life' seems to imply that opponents are 'anti-life' or favor death, and pro-choice seems to imply that the opposition is 'anti-choice' and favors coercion" (Overview, para. 2).

Pro-life movement

The intent of the pro-life movement is to prohibit abortion and protect unborn fetuses in the United States (Daniels, 2016). Pro-life activists pursue this goal through organized activism such as protests and marches, and by advocating for legislative change. Supporters of the pro-life movement believe that a fetus deserves protection and any harm done to a developing fetus should be a criminal offense. Individuals subject to criminal charges if this initiative were successful would include parents and doctors attempting to abort a fetus. Within the pro-life movement exists the personhood movement in which the group seeks to obtain legal rights and protections for the developing fetus from conception to birth. According to Daniels, the beliefs of the pro-life movement are based on constitutional rights, human value, and the idea that conception is the beginning of life and personhood. In support of the pro-life movement, many organizations have formed to enact change and promote pro-life beliefs.

As part of the pro-life movement, organizations throughout the United States coordinate activist efforts to advocate for legislative change and the prohibition of abortion. One example is the National Right to Life Committee (NRLC). NRLC was developed in 1967 by the National

Conference of Catholic Bishops in response to members of Catholicism advocating for a more active role in preventing the reform of abortion laws (Karrer, 2011). National Right to Life (n.d.) identifies their mission as "to protect and defend the most fundamental right of humankind, the right to life of every innocent human being from the beginning of life to natural death" (National Right to Life Mission Statement, para. 1). This mission is achieved through providing research, education, and sponsoring legislation aimed at advancing the protection of human life (National Right to Life). Another example of pro-life activism in the United States is the annual March for Life held in Washington D.C. The first March for Life was held on January 22, 1974, the one year anniversary of the *Roe v. Wade* ruling. Every year since then, pro-life activists have met in Washington D.C. to march and communicate their pro-life message to the government, the media, and the nation (March for Life Education and Defense Fund, 2018).

The efforts of the pro-life movement have resulted in over 200 abortion restrictions passed at the state level between 2010 and 2016 (Daniels, 2016). These restrictions include requirements for abortion providers, limits to insurance coverage, mandatory counseling, mandatory waiting periods, and required parental involvement for minors seeking an abortion. State legislature is where the pro-life movement has had the largest impact (Daniels). Another way the pro-life movement has attempted to reduce abortion rates is by protesting outside of abortion clinics. These protests have ranged from picketing to more extreme tactics including violence, harassment, graphic visualizations, and intimidation. From 1973 to 2003, United States abortion clinics experienced over 300 attacks in the form of arson, bombings, butyric acid attacks, and homicide by anti-abortion activists (Jacobson & Royer, 2011). Despite these efforts, it was found that when restrictions and threats attempt to reduce abortion, many women tend to travel to areas with fewer barriers to receive an abortion.

Pro-choice movement

The goal of the pro-choice movement in the United States is to enable access to abortions that are safe and legal (Warnes, 2013). The arguments of the pro-choice movement are based on individual liberty as well as reproductive freedom and rights. In addition, pro-choice activists argue that legalizing abortion could prevent bodily harm and death among women who would otherwise seek an abortion illegally. Another aspect of the pro-choice movement is affordability of abortion. The pro-choice movement contends that abortion should be affordable for all women and, "…forcing poor women to continue unwanted pregnancies is cruel, discriminatory, and economically untenable" (Overview, para. 7). For this reason, pro-choice activists believe that abortion should be covered by insurance and that federal funds should be attainable to pay for an abortion (Warnes).

Throughout the United States, organizations have formed in support of the pro-choice movement to assist in the fight for safe, legal abortion and reproductive freedom. An example of a national organization that is part of the movement is National Abortion Rights Action League (NARAL) Pro-Choice America. NARAL is composed of 1.2 million members who advocate for reproductive freedom across the nation (NARAL Pro-Choice America, 2018). This is done through education, working with state affiliates to promote proactive policies, and voting for officials who are willing to fight for the cause (NARAL Pro-Choice America). Another organization commonly thought of when thinking about the pro-choice movement is Planned Parenthood. Planned Parenthood (2018) is a healthcare provider well-known in the United States for providing abortions and promoting reproductive rights. For this reason, it is a common target for pro-life groups and legislators attempting to prohibit abortion.

Much of the pro-choice movement's efforts have been in response to the actions of the pro-life movement. For example, when anti-abortion activists attacked clinics and abortion providers, the pro-choice movement took legal action in court (Warnes, 2013). The pro-life movement has made an impact through state-level legislature including Targeted Regulation of Abortion Providers (TRAP), laws that set strict, hard to reach standards designed to shut down health care centers that provide abortion (Planned Parenthood Action Fund Inc., 2018). Other efforts made through state-level legislature to prevent abortion include enacting personhood measures and reducing funding to abortion providers (Planned Parenthood Action Fund Inc.). The pro-choice movement fights back against these restrictions by electing officials in support of reproductive freedom and working with state affiliates (NARAL Pro-Choice America, 2018). Aside from acting to protect reproductive freedom at the state level, the pro-choice movement enacts change through education and hosting pro-choice events such as fundraisers and rallies across the United States.

Ideology

Abortion views in the United States

As described above, many United States citizens identify as "pro-life" or "pro-choice" when thinking about abortion. According to a Gallup poll, 47 percent of adults in the United States identified themselves as pro-choice and 46 percent identified as pro-life in 2014 (Saad, 2014). This poll found differences in age and gender, showing that a majority of women and adults age 18 to 34 identify as pro-choice, and a majority of men and citizens age 55 and older identify as pro-life. Although the proportion of Americans who identify as pro-life or pro-choice are approximately equal, 50 percent of Americans agree that abortion should be restricted under certain circumstances; 28 percent believe abortion should be legal in all circumstances and 21

percent believe it should be illegal in all circumstances (Saad). In addition to contextual factors, education, gender-role attitudes, and fundamentalist beliefs are also predictors of a person's ideology regarding abortion (Hans & Kimberly, 2014).

Stigma

In the United States, abortion is an issue that carries with it social stigma that can be harmful to a woman's mental and physical health. Research by Cockrill and Nack (2013) contends that following an abortion, stigma can harm a woman's mental health by causing negative self-image, concerns for reputation, and negative social interactions. Physical health is put at risk when stigma causes a fear of judgment, deterring the patient from follow-up appointments and honest disclosure in health assessments (Cockrill & Nack). When considering or seeking an abortion, women are said to experience three types of stigma: perceived stigma, in which a woman is aware of or expecting negative responses to her abortion; internalized stigma, in which devaluing beliefs about abortion are embodied in a woman's self-image; and enacted stigma, which refers to acts of discrimination experienced as a result of abortion (Hanschmidt, Linde, Hilbert, Riedel-Heller, & Kersting, 2016). Abortion stigma can come from society, communities, medical institutions, and friends and family of the individual receiving an abortion procedure. Additionally, persons associated with abortion care as well as partners of women receiving abortions may also experience effects of stigma such as harm to mental health and negative social interactions (Hanschmidt et al.).

Abortion and prenatal diagnosis

One issue that contributes to the controversy of abortion is the reasoning behind a woman seeking abortion care. In relation to the stigma associated with abortion, women experience judgment based on why they chose abortion and are often stereotyped as selfish (McCoyd,

2010). In cases in which the abortion was brought about by fetal anomaly in a wanted pregnancy, it has been found that women often dissociate from the term abortion, refusing to view their procedure as such. Rather, it is often viewed as a lost pregnancy because it was wanted and they felt there was no other choice. Women may struggle when their procedure is referred to as an abortion because they do not see their experience as fitting the stereotype, creating cognitive dissonance. When others learn of the terminated pregnancy, women may experience unexpected stigma because of social stereotypes of abortion, even though they did not view their own procedure as an abortion. This leads to isolation for women grieving the termination of their desired pregnancy (McCoyd).

Economic System

Monetary cost of abortion

Restricted insurance coverage makes abortion an unexpected, out-of-pocket expense for many women. According to Ely, Hales, Jackson, Maguin, and Hamilton (2017), this statement is true for 70 percent of women who receive an abortion in the United States. The cost of an abortion procedure is dependent on many factors including gestation, type of procedure, and provider of the procedure. Guttmacher Institute (2018b) reports that on average in 2014, an abortion in a nonhospital setting with local anesthesia occurring 10 weeks from conception cost $508; an early medication abortion occurring at or before 9 weeks' gestation cost $535. As a woman's pregnancy progresses, the cost to receive an abortion increases. Roberts, Gould, Kimport, Weitz, and Foster (2014) found that the average cost of an abortion occurring between 14 and 20 weeks' gestation was $860. After 20 weeks, the average cost rose to $1,874. High out-of-pocket costs are especially concerning for women living in poverty. According to Dennis, Manski, and Blanchard (2014), the average income of a pregnant woman on Medicaid is

approximately $1,750 per month. Without assistance, even a first trimester abortion could cost a person with low-income over a quarter of their monthly earnings. In addition to the cost of the procedure, many women face additional out-of-pocket expenses for travel. In a study by Roberts et al., participants reported paying up to $2200 in travel expenses to receive an abortion. In the same study, 54 percent of participants reported that out-of-pocket costs prevented them from receiving care sooner.

Insurance coverage

For almost as long as abortion has been legal in the United States, funding and insurance coverage for abortion services have been restricted by federal and state level legislature. The Hyde Amendment was one of the first laws passed to restrict coverage for abortion services (Planned Parenthood Action Fund, 2018). Enacted in 1976, the Hyde Amendment prohibits the use of federal funds, specifically Medicaid, to pay for abortion services (Planned Parenthood Action Fund). After several revisions of the law in the years since, the Hyde Amendment now includes exceptions in which federal funding may be used for abortion in cases of rape, incest, or if the pregnancy is endangering the woman's life (Engstrom, 2016). The original Hyde Amendment only impacted women on Medicaid, but similar laws have since been enacted to prohibit abortion coverage for groups of women dependent on the federal government for health insurance or health care, including women in the military, Peace Corps, disabled women, women utilizing Indian Health Services, and federal prisoners (Engstrom; Starrs, 2016).

Since Medicaid is a joint program among state and federal governments, states have the freedom to allocate public funding to abortion services for women on Medicaid (Engstrom, 2016). According to Guttmacher Institute (2018b), 15 states allow their own public funds to be used to pay for abortion. Twenty-four percent of women who received an abortion in 2014 had

the procedure paid for by Medicaid; 15 percent paid with private insurance (Guttmacher Institute). Medicaid is not the only form of insurance barred from covering abortion services in the United States; 11 states restrict coverage for private insurance written in the state, 26 states restrict coverage for plans offered by insurance exchanges, and 22 states restrict coverage for public employees (Guttmacher Institute, 2018c). Restricted insurance coverage in addition to state-level restrictions on abortion lead to many women being delayed till after their first trimester to receive abortion care, increasing the cost and number of days required for care (Roberts et al., 2014).

Restrictions on insurance coverage for abortion often lead to women delaying a wanted abortion to gather funds or may prevent them from receiving an abortion altogether. These consequences may put a woman's health and wellbeing at risk, cause financial instability, and compromise a woman's reproductive life plans (Dennis et al., 2014). In a study comparing women who received an abortion to those who were denied a wanted abortion, Foster, Biggs, Ralph, Gerdts, Roberts, and Glymour (2018) found that women who were denied an abortion faced more economic hardships following their attempt to receive the procedure. Women who were denied an abortion and gave birth were nearly four-times more likely to be below the federal poverty line from six months to four years after attempting to receive the procedure. These women were also more likely to report not having enough money for basic living expenses (Foster et al.). Although Foster et al. does not specify why women who were denied an abortion did not pursue a procedure until after gestation limits, it can be inferred from the literature that time needed to raise money to pay for an abortion likely contributed to delays in seeking care. Access to Medicaid or private insurance that covers abortion has the potential to reduce finance-related delays (Roberts et al., 2014).

Provider funding

Throughout the United States, family planning providers depend on Title X for funding to provide services to millions of women (Zoppo, 2012). Title X is a federal grant program that funds family planning and preventive health services, allowing clinics to provide services regardless of age, marital status, income, or insurance. With Title X funding, low-income women are able to receive health care services including gynecological care, birth control, STD and HIV testing, contraception, pap tests, and pelvic examinations. Although federal law already prevents federal funding from being used for abortion services, anti-abortion legislation has been passed to prevent abortion providers from receiving family planning funding (Zoppo).

Planned Parenthood is a common target for legislation intended to defund abortion providers (Zoppo, 2012). This is despite abortion accounting for just three percent of their affiliate medical services in 2016 (Planned Parenthood, 2016-2017). In an effort to harm abortion providers, legislation is being used to de-fund other services provided by clinics that are important to women's health. Without federal funding to pay for abortion services and less funding coming from the federal government for other services, Planned Parenthood is dependent on non-government health services reimbursements and grants, private contributions, and support from affiliates to continue operating and providing family planning services (Planned Parenthood).

Politics

Abortion and political campaigning

As abortion has become a prominent issue in the United States, it has also become a key topic during campaigns for elected office. According to a 2014 Gallup poll, 19 percent of registered voters will only vote for a candidate who they agree with on the abortion issue;

another 49 percent said that abortion is one of many important issues that would be taken into consideration when voting for a candidate (Saad, 2014). In general, the Democratic Party supports the pro-choice movement, advocating for abortion that is safe, legal, and rare, and promoting programs intended to reduce the need for abortion (Warnes, 2013). The Republican Party endorses the pro-life position, advocating for legislation that will limit access to abortion. Within each political party are small groups that support the opposing position (i.e. Democrats who are pro-life, and Republicans who are pro-choice; Warnes). Although abortion is not a deciding issue in elections, a candidate's stance on abortion is found to have an impact on a large portion of registered voters.

Legislation

Although the 1973 ruling of *Roe v. Wade* declared that a woman's right to terminate her pregnancy is protected by the 14th Amendment, the court allowed for state restrictions in the interest of protecting the woman's health and the potential for human life (Shainwald, 2013). According to Medoff (2016), there are 13 types of restrictions on abortion throughout the United States: post-viability bans, spousal consent or notification, insurance restrictions, partial-birth abortion bans, second trimester hospitalization, 12-week abortion bans, Medicaid funding restrictions, waiting periods, informed consent, two-visit laws, targeted regulation of abortion providers (TRAP) laws, and parental involvement laws. Currently, Connecticut, Montana, Washington, Oregon, California, and Hawaii have the most strongly protected abortion access in the United States (NARAL Pro-Choice America, 2018). However, 26 states are said to have "severely restricted access" according to data presented by NARAL Pro-Choice America. An example of a state with severely restricted access is Ohio. In Ohio, an abortion must be performed by a licensed physician, must take place at a hospital if occurring at 20 weeks

gestation or later, a second physician must participate if at 20 weeks gestation or later, is prohibited at or past 20 weeks gestation unless the woman's health is at risk, "partial-birth" abortions are prohibited, and public funding is limited for abortion in cases of life endangerment, rape, or incest (Guttmacher Institute, 2018a). Additional provisions in Ohio include that an individual or institution may refuse to participate in the procedure, a person must wait 24 hours to receive an abortion after completing counseling, and minors must receive parental consent before receiving an abortion (Guttmacher Institute).

Abortion and the present political climate

Under President Donald Trump, the United States may experience greater restrictions to abortion access and reproductive freedom. President Trump is a supporter of the pro-life movement and has previously expressed support for 20 week abortion bans (NARAL Pro-Choice America, 2018). During his campaign, Trump shared his belief that women should be punished for choosing abortion and expressed an intent to choose anti-abortion judges for the Supreme Court (Girard, 2017). Now in his presidency Trump has consistently nominated and selected opponents of abortion as advisers and cabinet members (Girard; NARAL Pro-Choice America). In this political climate, reproductive freedom is at greater risk, calling for increased activism by pro-choice initiatives to maintain abortion rights.

Conclusion

From the ruling of *Roe v. Wade* to present day, abortion has remained a contentious issue that divides the nation. Even before abortion became legal, the pro-choice and pro-life movements began competing for their ideology to be reflected in policy; a battle that has persisted for over 40 years. This review has shown that abortion policy affects citizens economically, socially, psychologically. With the United States being nearly evenly divided

regarding whether or not abortion should be legal, it is likely that abortion will remain a hot-button issue for decades to come.

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