

Roe v. Wade essay

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Roe v. Wade Essay “ The Court today is correct in holding that the right asserted by Jane Roe is embraced within the personal liberty protected by the Due Process Clause of the Fourteenth Amendment. It is evident that the Texas abortion statute infringes that right directly. Indeed, it is difficult to imagine a more complete abridgment of a constitutional freedom than that worked by the inflexible criminal statute now in force in Texas.

The question then becomes whether the state interests advanced to justify this abridgment can survive the ‘ particularly careful scrutiny’ that the Fourteenth Amendment here requires. The asserted state interests are protection of the health and safety of the pregnant woman, and protection of the potential future human life within her. But such legislation is not before us, and I think the Court today has thoroughly demonstrated that these state interests cannot constitutionally support the broad abridgment of personal liberty worked by the existing Texas law. Accordingly, I join the Court’s opinion holding that that law is invalid under the Due Process Clause of the Fourteenth Amendment. ” On January twenty-second, 1973 Justice Harry Blackmun delivered the opinion of the Supreme Court regarding the Roe vs. Wade case. A pregnant single woman, “ Jane Roe,” brought a class action lawsuit challenging the constitutionality of the Texas criminal abortion laws, which proscribed procuring or attempting an abortion except on medical advice for the purpose of saving the mother’s life. Norma McCorvey, the real name of the plaintiff, was young and divorced at the time, searching for a solution to her unplanned pregnancy.

The plaintiff’s assertion was that prohibiting abortion at any time before birth violated a woman’s constitutional right to privacy. The Supreme Court later

agreed with Mrs. McCorvey, justifying the legality of abortion under the fourteenth amendment. A person's right to privacy now extended to choosing an abortion. Although the Court avoided the issue of when life actually begins, abortion became legal under this landmark Supreme Court decision. The debate over the legality of abortion had taken place in America for several decades, and the final decision rendered by Roe vs. Wade resonated among all Americans, influencing society to date. Norma McCorvey as of 1969 was working as a carnival sideshow barker when she discovered she was pregnant.

She was unable to get an abortion in Texas due to the standing state laws that prevented abortions unless the mother's life was directly threatened, or in proven cases of rape or incest. Although many other states carried out abortions (legal and illegal), many times over it was considered a risky proposition at best and incredibly dangerous at worst, depending on the place. Two lawyers, Linda Coffee and Sarah Weddington, represented McCorvey (under the alias of "Jane Roe"), filed a suit in the U. S.

District Court in Texas, with Dallas County D. A. Henry Wade named as defendant, under the grounds that Texas laws violated the Ninth Amendment. However, Justice William O. Douglas rejected that view; Douglas wrote that, "The Ninth Amendment obviously does not create federally enforceable rights." (according to Supreme Court case *Doe v. Bolton* [1973]).

The court also relied upon a concurring opinion by Justice Arthur Goldberg in the 1965 Supreme Court case of *Griswold v. Connecticut*, regarding a right to

use contraceptives. Therefore, the “ Does” had no legal standing to sue. We must also remember that at the time, even speaking about abortion was considered a taboo, held as immoral in many circles. But yet at the time over 90% of unplanned pregnancies among teenagers resulted in an abortion.

It was the American woman’s dirty little secret, considered an evil solution by society at large (especially in more rural, religious areas) and at best, kept to hushed conversations, with many women afraid of ostracism and ridicule, as well as the guilt that many people felt considering the widely conservative sociopolitical attitudes that existed at the time with lawmakers. At the time, the women’s movement was only just getting started, and the wide majority of American males viewed and treated women as less than equals, both socially and economically. Undeterred, Weddington and Coffee appealed the decision and took it to the highest of legal levels; the Supreme Court. The Roe vs. Wade decision was first argued in December 1971, and had been before the Supreme Court for over a year. Although this decision would later be intensely analyzed and debated, little attention was brought upon the case at the time. Chief Justice Burger opened the Court’s oral arguments, and each side had only thirty minutes to present their case and answer questions.

Sarah Weddington argued that abortion needed to be legalized beyond in the case where a woman’s life is threatened; the physiological and psychological harms to the mother also warranted an abortion, if she chose. However, since the Supreme Court has no jurisdiction over public policy, Weddington argued that current abortion laws violated the fourteenth amendment. The

fourteenth amendment guarantees the right to liberty without due process of law, and the decision contended that this right was extended to a woman's right to choose to be pregnant. In her closing argument, Weddington stated that " if liberty was meaningful.

.. that liberty to these women would mean liberty from being forced to continue an unwanted pregnancy". Jay Floyd, the assistant attorney general of Texas, next presented his case against the legalization of abortion.

Weddington had argued that many women had no other choice besides abortion because of their socioeconomic status. However, Floyd contended that despite external factors, each person had free autonomy. " Now I think she makes her choice prior to the time she becomes pregnant.

That is the time of her choice. It's like, more or less, the first three or four years of our life we don't remember anything. But once a child is born, a woman no longer has a choice, and I think pregnancy then determines that choice". Thus, Floyd contended, the fourteenth amendment was not violated since pregnancy was based on free will, and liberty was not denied. If pregnancy was a deliberate choice on the woman's part, then abortion was not warranted. Another crucial aspect of the Roe vs. Wade trial was the status of when a fetus is guaranteed constitutional rights.

In response to Texas' harsh abortion restrictions, Floyd explained that Texas " recognized the humanness of the embryo, or the fetus" and had " a compelling interest because of the protection of fetal life". However, there were several flaws with this statement in the court. First, the topic of the

Court was not the constitutional rights of embryos, but whether abortion violated a person's right to liberty.

Second, no state law or court decision had equated abortion with murder. Thus, Floyd's contention amounted to a mere personal opinion, with no bearing on the case. The Court needed to uphold the constitutional rights of the woman before protecting the "rights" of the unborn fetus. The fourteenth amendment applies only "to all persons born or naturalized in the United States," and if the Court guaranteed the fourteenth amendment to unborn children, it would likely have been seen as an extreme case of judicial activism. After two years listening to arguments, the Supreme Court finally made its decision: the right to privacy and liberty was broad enough to encompass a woman's decision for abortion.

The fourteenth amendment guaranteed personal liberty, which included a woman's body and unborn fetus. Although the Court established the legality of abortion, they left the responsibility of implementation to the states. Although the court did not provide any specific methods of implementation, it did set broad guidelines regarding the stage of the fetus. A mother had the sole choice to abort the child in the first trimester, but limitations on abortion were allowed in the second and third trimesters if the right to liberty and privacy of the mother was still preserved. After the third trimester the decision would be left to the medical judgement of the attending physician for health safety reasons of both fetus and mother. The initial reactions to the Roe vs. Wade decision were intense and extreme, as abortion remains to be an extremely controversial issue.

I unequivocally find abortion to be a fundamental right of the woman (and man, if he is a partner in the pregnancy), as inalienable as the right to pursue life, liberty and happiness. Bearing a child is not something that should be left entirely to premature decisions based upon popular misconceptions (such as abortion being evil), which often goes hand-in-hand with religious upbringing or political bodies that condemn the practice. I myself find that the decisions one makes on abortion is oftentimes dictated by their religion, such as with Catholics (and many other branches of Christianity), who as a rule are almost uniformly opposed to the very idea. The debate almost always seems to center upon whether a child is considered “ alive” at conception, or “ alive” upon formation of the brain and consciousness. While I do believe that a person’s religious beliefs should never be infringed, I also believe that it requires a person to judge critically both sides of an argument using what they know – as in, scientific, visible/physical proof – to be true as opposed to what they want to be true, which would extend to the realm of God and matters of faith. I do not believe that the ultimate authority should rest in the words of a two- and three-thousand year-old text written and rewritten/edited thousands of times by people who thought women were soulless baby-making slaves and cooks: those ideas are a little outdated. Barring the idea of a “ soul” or other religious implications, a fetus is NOT a baby.

A baby is a full-grown fetus, but until there is a heartbeat or brain activity, I would not consider it “ alive”. However this is, in my opinion, secondary to what may be the most important part of the decision to have a child: are the parents responsible enough and/or financially able to keep the child? So

many times you see on the news terrible stories of abandoned, abused, and neglected children that were brought into the world by irresponsible couples (in many cases “ couples” become “ single mothers”) or have children for entirely wrong reasons such as social status, personal attention, tax exemptions, and/or government aid. Having a child is NOT a decision that should be made lightly, especially considering the rash of teen and pre-teen pregnancies where children themselves are having kids. Raising a child, and its subsequent growth into adulthood, is an enormous task that more often than not puts the parents’ lives, personal desires, and dreams on “ hold”. Many times, the pregnancy is a mistake, created in a moment of extreme irresponsibility and the rashness of youth. Without proper parenting and support, the child will grow to be emotionally unbalanced or unable to cope with the challenges of life without having direction, not to mention the myriad of psychological problems associated with an absence of adult direction. Many mothers/parents of a child who may carry the fetus to term may not want to make the child a ward of the state or be placed in a group home/orphanage, where many children fall through the cracks, or never receive actual parenting, love, and support.

Even worse still, what about when the child is a product of rape or incest, or is found to have a deadly and/or debilitating deformity or medical condition while in utero? In extreme cases such as those, abortion as a choice is absolutely necessary. There were more than a few cases of this happening under the Bush II Administration, where abortion was hindered by laws designed to restrict insurance companies from covering certain types of abortions, barred from receiving international funding towards abortions, and

restricted further with the passing of the Partial-Birth Abortion Ban Act. In some instances, it can be known early on that a child, as a result of a genetic flaw or disease inherited from the mother, will be stillborn.

This can be an incredibly hard choice for a parent to make as to whether to abort or keep the baby, but all the same, the choice should be there. In the end I believe that restriction of any laws designed to protect ANY human's right to chose what to do with their bodies is fundamentally wrong and unconstitutional. The Roe vs. Wade decision continues to affect all aspects of society, from the role of the Supreme Court to the human status of an unborn fetus. Many scholars refer to the case as the “ Dred Scott” of the twentieth century. The decision sparked a national discussion on judicial activism, and the role the Supreme Court has on public policy. No other case like Roe vs.

Wade had had such a direct impact on public law. Furthermore, the case drew an imaginary line, dividing the country into either the pro-life or pro-choice category. Almost immediately after the decision, a multitude of pro-life and pro-choice groups were formed, and abortion has remained a pressing political, social, and moral issue. No other subject has resonated such disparity and importance in American politics. Finally, the Roe vs. Wade decision is considered a representation of the changing society during the 1970's.

In the past, abortion was highly restricted and opposed, mimicking the conservative society. However, as the 1970's marked a rise in liberalism and the importance of individual freedom, the Roe vs. Wade decision to legalize

abortion mirrored this willingness to embrace a person's autonomy. All-in-all, Roe vs. Wade marked a dramatic change in government, politics, and society.