

The evolution of reproductive rights assignment



Reproductive rights have always been a hot-button issue in the United States. The technologies in reproductive health, such as birth control methods, have developed significantly over the last hundred years. As these technologies have improved, laws have changed to suit the times. However, birth control and abortion have become so controversial that many of the laws and medical advances have gone backwards. The first condoms were developed in 1709. They were predominantly made of cloth, linen, and animal and were frequently used during the 1700's and early 1800's (Planned Parenthood).

A variety of female barrier methods, like sponges, intravaginal plugs, cervical caps, and diaphragms, were created and patented as well during this time. These were often made from wood, cloth, and other materials (Lawagan). In 1844, vulcanized rubber was invented which led to the creation of the first rubber condom in 1855. The rubber condoms of this time were 1 to 2 millimeters thick with seams down the side and reusable, but very expensive. Like the condom, female barrier methods greatly improved with the availability of vulcanized rubber (“ Evolution and Revolution: The Past, Present, and Future of Contraception”).

In 1912, a new technique for producing condoms was developed by dipping glass molds into the raw rubber solution allowing for thinner condoms with no seams. By the 1930's, production began on single-use condoms that were almost as thin and inexpensive as those available today (Planned Parenthood). In the United States, circulation of contraceptives was limited by the Comstock Act in 1873. The Comstock Act was a federal law which made it illegal to send any “ obscene, lewd, and/or lascivious” materials

through the mail, including contraceptive devices and information (“ Birth Control”).

In addition to banning contraceptives, this act also banned the distribution of information on abortion for educational purposes following the ideal of “ Hear no Evil, See no Evil” (Critchlow, Historical Perspective). In 1915, William Sanger was charged under the New York law against disseminating contraceptive information. In 1918, his wife, Margaret Sanger, was similarly charged. On appeal, her conviction was reversed on the grounds that contraceptive devices could legally be promoted for the cure and prevention of disease. Condoms were then only available by prescription (“ Birth Control”).

The prohibition of devices advertised for the explicit purpose of birth control was not overturned for another eighteen years; this included all abortion-related advertising. In 1932, Sanger arranged for a shipment of diaphragms to be mailed from Japan to a sympathetic doctor in New York City. When U. S. customs confiscated the package as illegal contraceptive devices, Sanger helped file a lawsuit. In 1936, a federal appeals court ruled in *United States v. One Package of Japanese Pessaries* that the federal government could not interfere with doctors providing contraception to their patients (“ Birth Control”).

The first intrauterine device was described in 1909 in a German publication, though the product was never put on the market. In 1929, Dr. Ernst Grafenberg wrote a report on his new invention, an IUD made of silk suture. In 1934, Dr. Tenrei Ota created an alternative to the Grafenberg ring that

contained a supportive structure in the center. This addition lowered the expulsion rate of IUD's, though they still had high infection rates (" Evolution and Revolution: The Past, Present, and Future of Contraception"). Their development went unstudied for some time due to World War II.

Contraception was prohibited in Nazi Germany and Axis-allied Japan (Potts). In 1958, the first plastic IUD was introduced and was larger than previous models, which caused many women, and their male partners, discomfort. In the 1970's, the first stainless steel IUD was developed with high failure rates. Dr. Howard Tatum devised the first T-shaped IUD in 1968 which was made from plastic. This new T-shaped design had lower expulsion rates since it was similar to the shape of the uterus. Soon, copper was added to these plastic T-shaped IUD's to improve their effectiveness (Planned Parenthood).

Work on oral contraceptives began in the early 1900's. In the 1920's, physiologist Ludwig Haberlandt studied the effect hormones, given orally, had on mice and other animals. He discovered this could inhibit fertility. In 1931, Haberlandt recommended using hormones for birth control in humans (" Evolution and Revolution: The Past, Present, and Future of Contraception"). As with IUD's, the Nazi's prohibited most of the research around contraceptives (Potts). Dr. Gregory Pincus was one of the leaders in contraceptive research after the war ended. In 1952, Dr.

Pincus and several physicians created an oral contraceptive, which was mainly tested outside the United States due to the legal, political, and religious opposition to birth control. On June 23, 1960, Enovid, the first birth control pill, was approved by the FDA (Planned Parenthood). One of the first

successful Supreme Court cases in working towards reproductive rights was *Griswold v. Connecticut*. The case involved a Connecticut law that prohibited the use of “ any drug, medicinal article or instrument for the purpose of preventing conception” (Lawagan). Although the law was passed in 1879, the statute was almost never enforced.

Attempts were made to challenge the constitutionality of the law, but failed on technical grounds. In 1961, *Poe v. Ullman* was brought to the Supreme Court by a doctor and his patients to test the Connecticut statute. The court dismissed the appeal because the case was not ripe since the plaintiffs had not been charged or threatened with prosecution (“ Birth Control”). There was no actual controversy for the judiciary to resolve. Shortly after the *Poe* decision was handed down, Estelle Griswold, the Executive Director of the Planned Parenthood League of Connecticut, and Dr.

C. Lee Buxton, a physician and professor at the Yale School of Medicine, opened a birth control clinic in New Haven, Connecticut in order to test the contraception law once again. Shortly after the clinic was opened, Griswold and Buxton were arrested, tried, found guilty, and fined \$100 each. The conviction was upheld by the Appellate Division of the Circuit Court and the Connecticut Supreme Court (*Planned Parenthood*). Griswold then appealed her conviction to the Supreme Court of the United States.

Griswold argued that the Connecticut statute banning the use of contraceptives violated the 14th Amendment, which states “ no state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; not shall any State deprive any person of life,

liberty, or property, without due process of law... nor deny any person the equal protection of the laws" (Griswold v. Connecticut). In a 7-2 vote, the Supreme Court overturned the law on the grounds that it violated the "right to marital privacy" (Critchlow, Historical Perspective).

Although the Bill of Rights does not explicitly mention "privacy," Justice William O. Douglas stated the right was to be found in the "penumbras" and "emanations" of other constitutional protections. Justice Arthur Goldberg wrote a concurring opinion in which he used the Ninth Amendment to defend the Supreme Court's ruling. Justice John Marshall Harlan II, writing another concurring opinion, argued that privacy is protected by the due process clause of the Fourteenth Amendment. The Supreme Court's decision deemed the Connecticut Statute unconstitutional and it was removed from legislation (Griswold v.

Connecticut). In 1972, the Supreme Court found single people also had the same right to privacy in another contraceptives case, Eisenstadt v. Baird (Planned Parenthood). Abortions have been performed for thousands of years. Soranus, a 2nd century Greek physician, recommended abortion in cases involving health complications as well as emotional immaturity and provided detailed suggestions in his work Gynecology. Diuretics, enemas, fasting, and bloodletting were prescribed as safe abortion methods.

He also advised women wishing to abort their pregnancies to engage in energetic walking, carrying heavy objects, riding animals, and jumping so that the woman's heels were to touch her buttocks with each jump ("Abortion"). An 8th century Sanskrit text instructs women wishing to induce

an abortion to sit over a pot of steam or stewed onions (Potts). In 1898, King's American Dispensary recommended a mixture of brewer's yeast and pennyroyal tea as " a safe and certain abortive. " Two women in the United States died as a result of abortions attempted by pennyroyal, one in 1978 and another in 1994 (" Abortion").

Nineteenth century medicine saw advances in the fields of surgery, anesthesia, and sanitation. At the same time, the American Medical Association lobbied for bans on abortion in the United States (Critchlow, Historical Perspective). A variety of methods for performing an abortion were documented in the nineteenth and early twentieth centuries. A paper published in 1870 on the abortion services to be found in Syracuse, New York, concluded that the method most practiced during this time was to inject water inside of the uterus and flush it out (" Abortion").

In the United States and England, abortion became increasingly criminalized, thus limiting access to medical abortions and causing women to seek out dangerous alternatives. In 1898, after a rash of unexplained miscarriages in Sheffield, England were attributed to lead poisoning caused by the metal pipes which supplied the city's water, a woman confessed to using a lead-containing plaster to induce an abortion (Critchlow, Historical Perspective).

During the 1920's, women in Wales used candles intended for Roman Catholic ceremonies to dilate the cervix in an effort to self-induce abortion. The use of candles and other objects, such as penholders, curling irons, spoons, sticks, knives, and catheters to bring on a miscarriage were reported in the United States during the 19th century (" Abortion"). Madame Restell

was a 19th century abortionist who performed surgical abortions and provided pills to induce an abortion. She worked in the northern United States for over forty years before she was arrested.

One ad for Restell's medical services promised that she could offer the "strictest confidence on complaints incidental to the female frame" and that her "experience and knowledge in the treatment of cases of female irregularity, [was] such as to require but a few days to effect a perfect cure" ("Abortion"). There were many ads similar to this, discreetly describing such procedures and where to obtain one. These advertisements went unnoticed for sometime. There were great improvements in the 20th century saw improvements in abortion technology, increasing safety and reducing side-effects.

Vacuum devices, first described in medical literature in the 1800's, allowed for the development of suction-aspiration abortion ("Abortion"). This method was practiced in the Soviet Union, Japan, and China, before being introduced to the United States and England in the 1960's. The invention of a flexible, plastic model which replaced earlier metal versions in the 1970's, reduced the occurrence of perforation and made suction-aspiration methods possible under local anesthesia (Mohr). In 1983, Dr. James McMahon developed intact dilation and extraction procedure.

It resembles a procedure used in the 19th century to save a woman's life in cases of obstructed labor, "in which the fetal skull was first punctured with a perforator, then crushed and extracted with a forceps-like instrument" (NARAL Pro-Choice America). Historically, it is unclear how often the ethics of

abortion were discussed, but widespread regulation did not begin until the 18th century. There were no laws against abortion in the Roman Republic and early Roman Empire, as Roman law did not regard a fetus as distinct from the mother's body.

Abortion was not an uncommon practiced to control family size, to maintain one's physical appearance, or because of adultery. It was outlawed for a period of time, though it was out of concern for population growth and not as a morality issue (Critchlow, Historical Perspective). One factor in abortion restrictions was a socio-economic struggle between male physicians and female mid-wives. In the 18th century, English and American law allowed abortion if performed before the first movements of the fetus are felt by the mother (" Abortion").

Over the last two centuries abortion has been outlawed, then protected by the law, and then restricted by certain governments, with a real possibility of being banned again. In 1970, attorneys Linda Coffee and Sarah Weddington filed suit in a U. S. District Court in Texas challenging a statute banning abortion unless a woman's life was at stake on behalf of Norma L. McCorvey. Better known as " Jane Roe," McCorvey was raped, became pregnant as a result, and was seeking an abortion (NARAL Pro-Choice America).

The case eventually went to the Supreme Court, which ruled in favor of Jane Roe and struck down all legislation that banned abortion. However, there was some controversy to the justiciability of the case. There must be an actual case or controversy due to issues of standing and mootness (Hoffer). By the time the case reached the Supreme Court, Norma L. McCorvey had

already given birth, therefore many believed the argument was moot since she would no longer need an abortion. She also did not have the standing to represent other pregnant woman who may wish to have an abortion (Roe v. Wade).

The Court concluded that the case came within an established exception to the rule; one that allowed consideration of an issue that was “capable of repetition.” It was also noted that pregnancy normally concludes much faster than an appellate process. Justice Blackmun stated, “If that termination makes a case moot, pregnancy litigation seldom will survive much beyond the trial stage, and appellate review will be effectively denied” (Roe v. Wade). In its ruling, the court recognized the constitutional right to privacy “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy” (Roe v.

Wade). Most laws against abortion in the United States violated a constitutional right to privacy under the Due Process Clause of the Fourteenth Amendment and, in accordance with this ruling, were overturned. Though it is not as well known, Doe v. Bolton, a case dealing with the same issues of a Georgia statute, was decided at the same time and held the same decision as Roe v. Wade (NARAL Pro-Choice America). Roe v. Wade centrally held that a mother may abort her pregnancy for any reason, up until the “point at which the fetus becomes ‘viable.’” The Court defined ‘viable’ as “being potentially able to live outside the mother’s womb, albeit with artificial aid, which usually occurs at about 28 weeks but may occur as early as 24 weeks” (Roe v. Wade). The decision also held that abortion after viability must be available when needed to protect a woman’s health, which

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the Court broadly defined. These rulings affected laws in 46 states (NARAL Pro-Choice America). In 1976, Congress passed the Hyde Amendment, barring the use of federal funds to pay for abortions for low-income women.

This was introduced mainly in response to the Supreme Court's ruling in *Roe v. Wade*. The Hyde Amendment effectively ended the provision of abortions for low-income women across the United States through Medicaid (NARAL Pro-Choice America). The original legislation did not include any exceptions for rape, incest, or life of the mother, which was added in 1977, but the language changed from year to year. By the early 1980s, Congress had passed similar restrictions to the Hyde Amendment affecting programs which an estimated twenty million women rely on for their health care or insurance.

Native Americans, federal employees and their dependents, Peace Corps volunteers, low-income residents of Washington, DC, federal prisoners, military personnel and their dependents, and disabled women are affected by these restrictions in addition to low-income women and teenage girls who rely on Medicare or the Children's Health Insurance Program (American Civil Liberties Union). Due to these policies, several states began to provide public funding from the state for abortion services for low-income women. In 2007, only 17 of the 50 states provide such funding and 13 were required by a court order to do so (NARAL Pro-Choice America).

In 1992, *Planned Parenthood v. Casey* was brought to the Supreme Court challenging the constitutionality of five provisions of the Pennsylvania Abortion Control Act. The "informed consent" rule under the Act required doctors to provide women with information about the health risks and

possible complications of having an abortion before one could be performed. The “ spousal notification” rule required women to inform their husbands and the “ parental consent” rule required minors to receive consent from a parent or guardian prior to an abortion. The fourth provision imposed a 24-hour waiting period before obtaining an abortion.

The fifth provision challenged in the case was the imposition of certain reporting requirements on facilities providing abortion services (Planned Parenthood of Southern PA. v. Casey). The plurality decision jointly written by Justices Souter, O’Connor, and Kennedy is recognized as the lead opinion. The plurality opinion stated that it was upholding what it called the “ essential holding” of Roe (NARAL Pro-Choice America). The plurality asserted that the right to abortion is grounded in the Due Process Clause of the Fourteenth Amendment, “[i]f the right of privacy means anything, it is the right of the individual, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child” (Planned Parenthood of Southern PA. v. Casey). The plurality also emphasized the need to stand by prior decisions unless there had been a change in the fundamental reasoning undermining the previous decision, acknowledging the need for predictability and constancy in judicial decision making (Abortion).

The plurality overturned the strict trimester formula used in Roe to weigh the woman’s interest in obtaining an abortion against the State’s interest in the life of the fetus. At the time Casey was decided, a fetus might be considered viable at 22 or 23 weeks rather than at the 28 weeks. The plurality recognized viability as the point at which the state interest in the life of the

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fetus outweighs the rights of the woman (NARAL Pro-Choice America). The plurality also replaced the strict scrutiny of abortion regulations under Roe with a lesser “undue burden. Using this new standard, the plurality struck down the spousal notification requirement, stating that it gave too much power to husbands over their wives and would worsen situations of spousal abuse. They upheld the State’s 24 hour waiting period, informed consent, and parental notification requirements, holding that none imposed an undue burden (Planned Parenthood of Southern PA. v. Casey). President Bush signed the Partial-Birth Abortion Ban Act on November 5, 2003 and it was immediately challenged.

This statute prohibits a method of abortion called intact dilation and extraction. The term “partial-birth abortion” was thought up in 1995 by Congressman Charles T. Canady (Critchlow, *Intended Consequences*). The American Medical Association and the American College of Obstetricians and Gynecologists does not recognize “partial-birth abortion” as a medical term (NARAL Pro-Choice New York). This procedure is usually performed in the second trimester from 18 to 26 weeks, both before and after viability. The law itself contains no reference to gestational age or viability (Hoffer).

Every court which heard cases challenging the Partial-Birth Abortion Ban Act as unconstitutional struck it down, until it got to the Supreme Court. The Supreme Court’s decision upheld the federal ban and stated it did not impose an undue burden on the due process right of women to obtain an abortion, though it has no health exception (*Gonzales v. Carhart*). Abortion is not just an issue of legality and civil rights, but also a serious health concern.

In 1965, abortion was so unsafe that 17 percent of all deaths due to pregnancy and childbirth were the result of illegal abortion.

Until the 1970's the leading cause of death in women was maternal mortality, attributed mostly to illegal, unsafe abortions (NARAL Pro-Choice America). Today, an abortion is a safe clinical procedure and less than 0.3 percent of women having a legal abortion procedure sustain a serious complication. In 2003, the maternal mortality rate in the U. S. was 12.1 deaths per 100,000 live. The risk of death from an abortion performed within 63 days of fertilization is about one per 100,000 procedures.

Comparatively, the risk of death from miscarriage is about one per 100,000 and the risk of death associated with childbirth is about 10 times as high as that associated with all abortion ("Abortion"). These low numbers of women dying or being maimed from an abortion are due to the fact that abortion is legal. Abortion is safe when it is performed in a hospital or doctor's office with the proper, sterilized tools. Birth control is often used not only as a means of contraception, but as a way to treat a gynecological issue.

Women with Polycystic Ovarian Syndrome (PCOS) use birth control to prevent cysts from growing. Many women just use it as a convenient way to regulate their menstrual cycle. These are all private decisions to be made between a woman and her doctor. The government has no business legislating what women can or cannot do with their bodies and lives. The next President and Congressional Majority will have tremendous authority whether that holds true. Works Cited "Abortion." Encarta Encyclopedia. 2007. Abortion. NARAL Pro-Choice America. n. d. 22 Sept. 2008. Birth

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