

“Moving Beyond the Picket Lines”

A Deliberative Forum on

The Issue of Abortion in America



**Focusing on State Regulations of Clinics
and Campus Reproductive Resources**

The Process

Public Deliberation

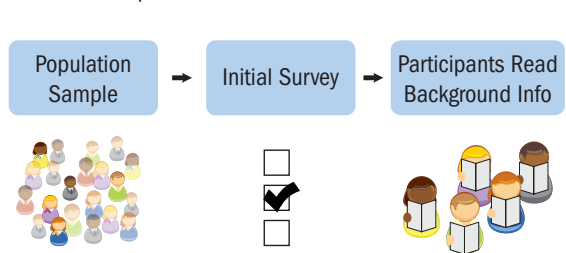
Ground Rules for Participating in a Deliberative Process

- Please explain your own perspective.
- Please listen to other people's views; don't interrupt when someone is speaking.
- Please focus on sharing your reasons, your experiences, and relevant facts.
- Please treat your group members with respect at all times.

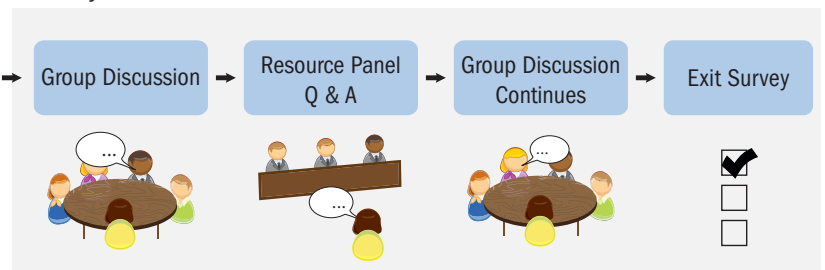
Through deliberation, people develop a fuller understanding of issues and come to appreciate how these issues are experienced differently by different people. Public deliberation also helps citizens to develop a shared resource of expanded knowledge, which emerges as people express their own perspectives and learn from the perspective of others. Drawing on this enriched understanding and the shared resource of knowledge enabled by deliberation, people can develop informed opinions. These informed opinions can, in turn, provide guidance to those who have the responsibility of devising policy or implementing programs.

The event to which you have been invited seeks to capitalize on the value of public deliberation and to do so in a structured way. By providing a mixed group of participants with balanced background information, the opportunity for small-group deliberation, and access to a resource panel of experts, we seek to provide you with a unique opportunity to work together as you develop the kinds of opinions that will provide advice and counsel to public officials across the political divide.

Pre-Poll Steps



The Day of Deliberation



Approaching the Topic

Approaching the Topic

The issue of abortion in America is far more complex than the rhetoric of picket lines and sound bites. National concerns that have resulted in polemics about the issue and affected the legal status of abortion include religious beliefs, health and safety concerns for women and children, and the political and socio-economic influences of the day. These national disputes often mirror individual concerns — concerns ranging from personal belief systems to a focus on one’s family and self. To better understand this issue, we need access to medical facts and legal decisions, a grasp of the debate’s historical context, and a willingness to pursue the alternatives that exist for discussing the issue apart from its political discord. Equally important, we need to understand how it plays itself out in the private struggles behind individual decisions.



Historical Context

Abortion has been a contentious issue in the United States from the country's founding to the present day. Yet a look at the history of abortion in America reveals a surprising ebb and flow of public tolerance and resistance over time. These changes in the country's attitude toward abortion are reflected by changes in its legal status. At the beginning of the 19th century, the practice of abortion during the early stages of pregnancy was considered permissible. By the end of the 19th century, however, the practice had been made illegal in many States, and these bans on abortion continued until the *Roe vs. Wade* decision in 1973. Though abortion was widely practiced by women in traditional societies for centuries, the intervention of law and religion on the practice has characterized the permissibility of the procedure for the past two hundred years.

19th century

Abortion, when carried out early in pregnancy, was practiced without legislative sanction in the United States from colonial times through the first decades of the 19th century. Abortion was only a criminal act if carried out after the time of "quickening," or when the woman first felt fetal movement, usually between 16 and 20 weeks of pregnancy. Common medical practice of the time affected abortion through the use of herbs (abortifacients) to induce miscarriage. Home medicine pamphlets included information on "nostrums for block menses," and mothers passed knowledge of family remedies for unwanted pregnancies onto their daughters. While widely practiced both in private and by physicians of the time, abortion was criticized by those who thought it morally wrong, including ministers, doctors, and local leaders. There was, however, no organized effort to restrict or prohibit the practice.

Between 1825 and 1850 abortion became commercialized and lucrative, and consequently, more available. In addition to "regular physicians," a growing number of "irregular physicians" practiced abortion, claiming the efficacy of pills, powders, and potions for bringing on a missed or suppressed menstrual period. Some also advertised the practice of surgical abortion. Abortion was increasingly used by white, married, Protestant women of the middle and upper classes. This, along with the growing influx of immigrants, the flourishing of "irregular physicians," and what seemed to be a greater frequency of deaths among women receiving abortions, caused alarm among middle-class physicians, clergy, and legislators. The time was ripe for restricting abortion.

In 1847, the American Medical Association was founded to improve and control the practice of medicine and to form "regular physicians" into a respected, powerful, cohesive and proactive group. The AMA also sought to professionalize medical practice and training, which involved putting the "irregulars" practicing abortion out of business.

Comstock Law (1873)

Be it enacted... That whoever, within the District of Columbia or any of the Territories of the United States...shall sell...or shall offer to sell, or to lend, or to give away, or in any manner to exhibit, or shall otherwise publish or offer to publish in any manner, ... an obscene book, or any cast instrument, or other article of an immoral nature, or any drug or medicine, or any article whatever, for the prevention of conception, or for causing unlawful abortion,, shall be deemed guilty of a misdemeanor, and on conviction thereof in any court of the United States...he shall be imprisoned at hard labor in the penitentiary for not less than six months nor more than five years for each offense, or fined not less than one hundred dollars nor more than two thousand dollars, with costs of court.

Around 1858, under the leadership of Dr. David Storer, who personally opposed abortion, the AMA organized physicians that had begun to speak out against abortion and aligned itself with the growing social movement to make the practice illegal.

Though no one religion took a united stand against abortion, by the late 1860's, at the urging of physicians, many Protestant sects and the Catholic Church began to take official stances against it. In 1869, Bishop Spaulding of Baltimore set forth the official Catholic position: abortion was not be allowed under any circumstances. The AMA was able to use these religious edicts to bolster its crusade against abortion and successfully change public policy: between 1860 and 1880 at least 40 anti-abortion statutes entered state law books. By the end of the 19th century, all states had banned abortion or severely restricted its use to cases where it was necessary to save the life of the woman as determined by a medical physician.

One effect of this change in social climate and statutory law was to drive abortion underground. Those individuals who performed abortions still had the knowledge, and women still found themselves with unintended or unwanted pregnancies. The era of illegal abortion had begun.

20th century

Nineteen seventeen saw the rise of the birth control movement in the United States. State laws of the time forbade the provision of contraceptive information and methods. But a concern that poor families were being harmed by the economic, health, and social effects of too many children born too close together combined with a growing desire of upper- and middle-class women to have greater control over their bodies. This led to the first public debates concerning a right to privacy. But then, as now, women did not speak with a single voice and motives were diverse when it came to the issue of abortion. Some, for example, felt that the procedure would simply allow men to more easily exploit women.

The world wars and the Great Depression had pushed women, especially the poor, out of the home and into paying jobs. The number of abortions increased 20 to 40 percent during this time. Many working wives in war jobs illegally ended their pregnancies in order to stay at work. When the war was over, men returned to reclaim their jobs and women returned to their roles as wives and mothers.

During the 1950's, the word "abortion" was rarely mentioned in polite company. It was a clandestine, hazardous and illegal act. Nevertheless, the practice of abortion may have been no less common than it is today. There remained a number of trained doctors, nurses, midwives and untrained opportunists who provided illegal abortions to those who sought them. In the United States, there were 130,000 out-of-wedlock births annually in the early 1950's, about 4 percent of all births. The estimated number of illegal abortions being performed in the 1940's and 1950's was close to one million a year.

What's Your Frame of Mind?

The terms we use to discuss any issue call to mind many associations, some of which we may not explicitly acknowledge. Together these terms and their associations make up a Frame, and these Frames play an important role in public deliberations. Specifically, the terms used to name or describe an issue encourage each of us to attach particular values or concerns to the issue.

This is particularly the case with the phrases such as “Pro-Life” and “Pro-Choice.” Yet those who are ‘pro-life’ certainly respect the role of individual choice in their own lives (so they are not strictly speaking ‘anti-choice’) and those that are ‘pro-choice’ certainly respect human life in their overall worldview (so they are not strictly speaking ‘anti-life’.)

In responsible democratic deliberation, participants should be explicit about the reasons why they hold their views, and they should be willing to offer the rationale that supports their positions. They should also be willing to listen to and consider the rationale and positions of others. When you join the conversation about the Issue of Abortion in America, we hope you will be mindful of and explicit about the terms and associations—the Frames—with which you and others discuss the issue.

During this period, doctors became increasingly concerned about the results of illegal and self-induced abortions. Women were admitted to emergency rooms around the country with hemorrhaging and infections from poorly performed abortions. In some cases, they were admitted too late for physicians to save their lives. As a result, some members of this generation of doctors began to work for less restrictive abortion laws.

Then as today the issue of abortion also overlapped the issue of birth control. In 1965, the Supreme Court decided *Griswold v. Connecticut*, guaranteeing a controversial “right to privacy” to married couples when determining the use of contraception. This issue of privacy argued in *Griswold* led directly to the issue of privacy argued in the landmark 1973 *Roe v. Wade* decision.

In the 1970’s and 1980’s, a new movement, stemming from religious groups like Jerry Falwell’s Moral Majority, entered the political arena as the Religious Right. These groups, including the Christian Coalition, influenced the Republican Party’s Platform with an emphasis on social issues and family values. The lightning rod for this reform movement was the issue of abortion. For those opposing abortion, the issue was now the life of the fetus and with this a “Pro-Life Movement” emerged.

Contemporary Trends

Although the practice of abortion today is legal, the debate over abortion is more vehement than ever. It has two well-defined “publics”: one which opposes legal abortion, Pro-life, and one which supports the legality of abortion, Pro-choice. The public argument seems neither to yield nor to allow middle ground. Both sides continue their political activities. However, since the *Webster v. Reproductive Health Services* (1989) decision, these activities focus more on state legislatures than on all-encompassing Supreme Court decisions.

Laws and Legislatures

Court decisions provide us with examples of 'public reasoning.' While there can be references to religious traditions and texts, the arguments need to appeal to people of every religion and political persuasion. This applies both to the court's majority opinion and to the dissent.

For the first 60 years of the 20th Century, there were no efforts to change state abortion laws. Then in the early 1960's, there was a nationwide Rubella epidemic. When pregnant women got Rubella, and many of them did, it resulted in devastating birth defects. This led physicians and other public health workers to advocate a loosening of abortion laws. They advocated the passage of so-called reform laws that would permit physicians to perform abortions under certain circumstances — typically if the pregnancy resulted from rape or incest, if there was a substantial likelihood of fetal deformity, or if the continuation of the pregnancy would threaten the life or health of the woman.

"Repealers" went further than reformers but both believed that they could not be successful fighting for changes in state legislatures on a state-by-state basis. They turned to the courts, with repealers arguing that women had a constitutionally protected right of privacy which included deciding whether and when to continue a pregnancy.

As noted above, the link between privacy and reproductive choice was forged in the Supreme Court's 1965 Griswold decision. In a 7 to 2 majority the court struck down the 1879 Connecticut statute which made it illegal "to use any drug or article to prevent conception." The decision held that there exists a zone of privacy which encompasses the marital relationship and that this zone of privacy outweighs any legitimate interest the state may have in preventing sexual immorality in the manner of the Comstock Laws.

But single people still had no such right, and states like Massachusetts maintained an anti-contraception law with regard to them. In 1972, the United States Supreme Court struck down this law as well, noting that the right to privacy attaches to the individual and not just to a couple. Writing for the majority, Justice William Brennan said, "If 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." Those words were to set the stage for *Roe v. Wade*, decided the next year.

The Roe v Wade Decision (1973)

Norma McCorvey was a high school dropout whose parents divorced when she was thirteen years old. While still in her teens, she gave birth to a daughter in 1965 and, by the end of 1966, was pregnant again. In both cases she gave up custody of her children. During the summer of 1969 she became pregnant again by a third man. This time she did not want to give birth.

In the state of Texas at that time, abortion was illegal. Through a series of referrals Norma eventually met with two attorneys (Linda Coffee and Sarah Weddington) and agreed to move forward with a formal complaint challenging the Texas anti-abortion statute. The complaint, in which Norma McCorvey was called "Jane Roe," was made against Dallas County District Attorney Henry Wade. It alleged in part that the Texas law infringed upon the plaintiff's "right to safe and adequate medical advice pertaining to the decision of whether to carry a given pregnancy to term" and upon "the fundamental right of all women to choose whether to bear children."

As the case moved forward, Jay Floyd of the Texas State Attorney General's office came to represent the State of Texas and Sarah Weddington for the plaintiff before the United States Supreme Court, now argued as a "class action" suit on behalf of all women.

Since its decision in favor of Roe, the debate over Roe v. Wade has raged in law journals, private correspondence and discussion as well as within the court itself as other cases seeking to overturn or limit the scope of Roe are brought before it. Following are excerpts from the case as it was argued, from the decision itself and from the dissenting argument.

Justice Blackmun's Opinion

"We forthwith acknowledge our awareness of the sensitive and emotional nature of the abortion controversy, of the vigorous opposing views, even among physicians and of the deep and seemingly absolute convictions that the subject inspires. One's philosophy, one's experiences, one's exposure to the raw edges of human existence, one's religious training, one's attitudes toward life and family and their values, and the moral standards one establishes and seeks to observe, are all likely to influence and to color one's thinking and conclusions about abortion.....

The principal thrust of appellant's attack on the Texas statutes is that they improperly invade a right, said to be possessed by the pregnant woman, to choose to terminate her pregnancy. Appellant would discover this right in the concept of person "liberty" embodied in the Fourteenth Amendment's due process clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights or its penumbras. . .

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, . . . the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. ...These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," Palko

vs. Connecticut (1937), ... are included in this guarantee of personal privacy. They also make it clear that the right has some extension activities relating to marriage, ... procreation, ... contraception, ... family relationships, ... and child rearing and education ...

On the basis of elements such as these, appellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive. The Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute.

We, therefore, conclude that this right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against important state interests in regulation.

The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the Fourteenth Amendment. In support of this, they outline at length and in detail the well-known facts of fetal development. If this suggestion of personhood is established, the appellant's case, of course, collapses, for the fetus' right to life would then be guaranteed specifically by the Amendment... The Constitution does not define "person" in so many words. Section 1 of the Fourteenth Amendment contains three references to "person." ... [But] the use of the word is such that it has application only postnatally. None indicates, with any assurance, that it has any possible pre-natal application. ... In short, the unborn have never been recognized in the law as persons in the whole sense.

With respect to the State's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester.

This means, on the other hand, that, for the period of pregnancy prior to this "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that in his medical judgment, the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother.

Justice Rehnquist's Dissent

"The Court's opinion brings to the decision of this troubling question both extensive historical fact and a wealth of legal scholarship. While the opinion thus commands my respect, I find myself nonetheless in fundamental disagreement with those parts of it that invalidate the Texas statute in question, and therefore dissent.

... I have difficulty in concluding, as the Court does, that the right of "privacy" is involved in this case. Texas, by the statute here challenged, bars the performance of a medical abortion by a licensed physician on a plaintiff such as Roe. A transaction resulting in an operation such as this is not "private" in the ordinary usage of that word. Nor is the "privacy" that the Court finds here even a distant relative of the freedom from searches and seizures protected by the Fourth Amendment to the Constitution, which the court has referred to as embodying a right to privacy.

... I agree with the statement of Mr. Justice Stewart in his concurring opinion that the "liberty" against deprivation of which without due process the Fourteenth Amendment protects, embraces more than the rights found in the Bill of Rights. But that liberty is not guaranteed absolutely against deprivation, only against deprivation without due process of law. ... But the Court's sweeping invalidation of any restriction on abortion during the first trimester is impossible to justify under that standard, and the conscious weighing of competing factors that the Court's opinion apparently substitutes for the established test is far more appropriate to a legislative judgment than to a judicial one.

The adoption of the compelling state interest standard will inevitably require this Court to examine the legislative policies and pass on the wisdom of these policies in the very process of deciding whether a particular state interest put forward may or may not be "compelling." The decision to break pregnancy into three distinct terms and to outline the permissible restrictions the State may impose in each one, for example, partakes more of judicial legislation than it does of a determination of the intent of the drafters of the Fourteenth Amendment.

The fact that a majority of the States reflecting, after all, the majority sentiment in those States, have had restrictions on abortions for at least a century is a strong indication, it seems to me, that the asserted right to an abortion is not “so rooted in the traditions and conscience of our people as to be ranked as fundamental,” *Snyder vs. Massachusetts* (1934). Even today, when society’s views on abortion are changing, the very existence of the debate is evidence that the “right” to an abortion is not so universally accepted as the appellant would have us believe.

To reach its result, the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment.

Personhood Amendments

Justice Rehnquist’s belief that the issue of abortion needs to be resolved through the legislative process gave opponents of the *Roe v Wade* opinion a path toward overturning the decision. For the past decade and even more so recently, state legislators have sought ways to restrict abortion. The clearest example of this, one that directly addresses Justice Blackmun’s acknowledged caveat regarding his own decision, is the movement to adopt a Personhood Amendment at both the state and national level.

The following excerpt from “Wikipedia” describes the background for this amendment.

A person is recognized by law as such, not because he is human, but because rights and duties are ascribed to him. The person is the legal subject or substance of which the rights and duties are attributes. An individual human being considered as having such attributes is what lawyers call a "natural person."

The beginning of human personhood is a concept long debated by religion and philosophy. According to some theories, once human beings are born, personhood is considered automatic. However, personhood could also extend to fetuses and human embryos, depending on what theory one ascribes to. With respect to abortion, 'personhood' is the status of a human being having individual human rights. The term was used by Justice Blackmun in *Roe v. Wade*.

A political movement in the United States seeks to define the beginning of human personhood as starting from the moment of fertilization with the result being that abortion, as well as forms of birth control that act to deprive the human embryo of necessary sustenance in implantation, could become illegal. Supporters of the movement also state that it would have some effect on the

Wikipedia is a collective effort (its entries are the results of multiple edits and reviews). We use it in this way, with the recognition that the statements here are open to further commentary.

practice of in-vitro fertilization, but would not lead to the practice being outlawed.

The principal organization within this movement is Personhood USA, a Colorado-based umbrella group with a number of state-level affiliates which describes itself as a nonprofit Christian ministry and seeks to ban abortion. Personhood USA was founded by the pro-life activist Keith Mason in 2008 following the Colorado for Equal Rights campaign to enact a state constitutional personhood amendment.

Proponents of the movement regard personhood as an attempt to directly challenge the Roe v. Wade U.S. Supreme Court decision, thus filling a legal void left by Justice Harry Blackmun in the majority opinion when he wrote: “If this suggestion of personhood is established, the appellant’s case, of course, collapses, for the fetus’ right to life would then be guaranteed specifically by the Amendment.”

Roe v Wade versus the Personhood Amendment

With these legal and legislative perspectives, we have sketched an outline of the current public debate. There are those who align themselves with the arguments of Justice Blackmun and see abortion as a private matter during the first trimester (with growing State interest in the 2nd and 3rd trimesters). There are those who align themselves with Justice Rehnquist and seek a legislative Personhood Amendment that directly challenges Roe v Wade, thus making abortion illegal from the moment of conception (though some of these amendments could include exceptions for rape, incest, and the life of the mother).

Imagine that you are in the role of a legislator. You are both listening to and participating in a discussion of two constitutional approaches to the issue of abortion in America. One supports the position of Roe v Wade; the other supports the position of the Personhood Amendment.

The following are the actual texts from (a) Justice Blackmun's summary and (b) a State of Florida proposed Personhood Amendment.

Summary from Roe v Wade

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability, the State in promoting its interest in the potentiality of human life may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

Statement of the Personhood Amendment

Approved current Florida petition language reads:

SECTION 28. Person Defined: (a) The rights of every person shall be recognized, among which in the first place is the inviolable right of every innocent human being to life. The right to life is the paramount and most fundamental right of a person. (b) With respect to the fundamental and inalienable rights of all persons guaranteed in this Constitution, the word 'person' applies to all human beings, irrespective of age, race, sex, health, function, or condition of dependency, including unborn children at every stage of their biological development regardless of the method of creation. (c) This amendment shall take effect on the first day of the next regular legislative session occurring after voter approval of this amendment.

Our choices

Clinic Regulations







Absolutist verses
Incrementalist approaches

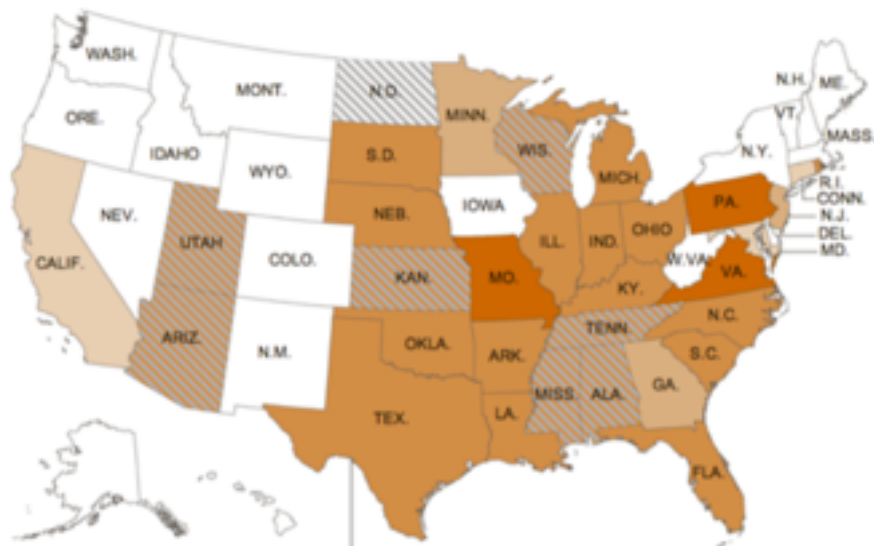
Anti-abortion “Absolutists” argue that by drawing the line around 20 weeks, the abortion debate has abandoned the terrain where over 90% of all abortions are performed. As Robert Muise wrote, “the incremental approach has had the effect of making the abortion issue negotiable” (*Response to Bopp & Coleson Memo of August 7, 2007 re: Pro-Life Strategy Issues*).

Many of those in State Legislatures who favor drawing the line at 20-22 weeks claim that the fetus can experience pain at that point. But a survey of peer reviewed scientific literature presents a different picture: “Pain perception requires conscious recognition or awareness of a noxious stimulus. Neither withdrawal reflexes nor hormonal stress responses to invasive procedures prove the existence of fetal pain, because they can be elicited by nonpainful stimuli and occur without conscious cortical processing. Fetal awareness of noxious stimuli requires functional thalamocortical connections. Thalamocortical fibers begin appearing between 23 to 30 weeks’ gestational age, while electroencephalography suggests the capacity for functional pain perception in preterm neonates probably does not exist before 29 or 30 weeks.” *Fetal Pain: A Systematic Multidisciplinary Review of the Evidence* (Journal of the American Medical Association, 2005)

While the legal logic of those who oppose *Roe v. Wade* leads to something like a Personhood Amendment, many opposed to abortion in State Legislatures are taking a more incremental approach. They argue that advances in imaging technology and a better understanding of the science of fetal development since the 70s should allow lawmakers to draw lines to legal abortion around the 20-22 week period (see sidebar). At five months into the pregnancy, this is later into the second trimester (where 1.5 percent of abortions occur). Conjoined to this are a number of new rules regulating facilities that provide abortion services. The argument here is that abortions at any stage require facilities similar to those that deliver outpatient surgical procedures and that doctors should have “admitting privileges” to local hospitals in case of emergency complications.

Opponents to these measures argue that (1) these laws violate the constitutional guarantees of *Roe v. Wade* and (2) the requirements being made of facilities and doctors lack medical justification. It should be recalled that *Roe v Wade* does allow for state interests to enter during the later stages of pregnancy. The controversy here involves the strict ban on abortions at this stage and the restrictive regulations on abortion clinics, causing many of them to shut down. The following is from the NYT 7-10-13:

-  States that have the most stringent abortion clinic requirements, mirroring those for surgery centers that perform more complex procedures.
-  Have strong abortion clinic regulations but less elaborate requirements for facilities and staffing.
-  Have strong abortion clinic regulations that apply after the first trimester, or 14 weeks into pregnancy.
-  Have licensing and inspection procedures for abortion clinics.
-  Have no special rules for abortion clinics; state relies on medical licensing of doctors and consumer complaints.
-  Also have laws requiring doctors to have admitting privileges at local hospitals. *



The Casey and Whole Woman's Health Decisions

As more and more states began to enact and enforce clinic regulations with regard to (1) the size of the procedure room and the corridor in accord with those applied to comprehensive freestanding ambulatory surgical facilities (e.g., PA House Bill 574) and (2) a transfer agreement with a hospital and an agreement with a physician who has privileges, more and more abortion providing clinics were forced to close. In Texas, the number of facilities providing abortions dropped from 40 to about 20. Because of the long distances involved for many to travel to the remaining facilities and the increased wait time due to increased patient load at the remaining facilities, a case began moving toward the Supreme Court arguing that these restrictions were not medically necessary and their effect was to place an “undue burden” on a woman’s constitutional right to have an abortion. This undue burden argument was crucial to the case and had precedent in a 1992 Supreme Court decision: *Planned Parenthood of Southeastern Pennsylvania v. Casey*.

Casey upheld the essentials of *Roe v. Wade* but noted the State’s interests “from the outset of the pregnancy in protecting the health of the woman and the life of the fetus that may become a child.” Again, in addition to the “recognition of the right of the woman to choose to have an abortion before viability and to obtain it without undue interference from the State,” the Court also recognized the role of the State in overseeing the facilities and services provided in clinics such as those maintained by Planned Parenthood. The concept of the “undue burden standard” emerged as “the appropriate means of reconciling the State’s interest with the woman’s constitutionally protected liberty.”

In 2016 the Texas case came before the Supreme Court as “*Whole Woman’s Health et al. v. Hellerstedt*.” The court’s majority opinion determined that both regulations constituted a medically unnecessary undue burden for women seeking a pre-viability abortion and that the arguments put forward in their favor lacked the kind factual evidence that the court requires. Furthermore, the effect of these regulations “would be harmful to, not supportive of, women’s health” (36).

By emphasizing the need for medical evidence and good argument, the Court reminded state legislatures that the “Court retains an independent constitutional duty to review factual findings where constitutional rights are at stake” (20 referring to *Gonzales*).

Pennsylvania versus Maryland on Clinic Regulations

The differences between these two states mirror the differences in many states regarding clinic regulation. In light of the Whole Woman's Health decision, Pennsylvania's HB 574 is now unconstitutional. But state legislatures still bring forth bills regarding clinic regulation. We see that Roe and Casey allow for a State interest in abortion decisions (no one can demand a second trimester abortion for reasons of a break up in a relationship) and the task now is to consider the reasons for each regulation, the facts behind those reasons and whether or not the regulation creates an "undue burden" for a woman seeking to terminate a pregnancy.

MARYLAND -- The Maryland regulations, which are designed to ensure the appropriateness of the facility, the safety of the procedures and the proper certification of the staff, do not dictate the width of hallways, require doctors to have local hospital admitting privileges or the reading of state prescribed literature.

In general, the state of Maryland, like most states, regulates outpatient clinics where surgical abortion is provided and requires, like most states, that abortion facilities have structural standards equivalent to those for surgical centers. Further, clinics are subject to annual reporting and inspection, have personnel policies and staffing requirements, infection control standards, and protection of patient rights. Violations of such requirements can lead to civil and criminal penalties. (In the notorious Gosnell case, violations of all the above escaped detection because his clinic went uninspected for over 15 years, an extreme failure of procedures already in place.)

PENNSYLVANIA -- The state of Pennsylvania adds regulations to the size of the procedure room and the corridor in accord with those applied to comprehensive freestanding ambulatory surgical facilities (PA House Bill 574). It requires a transfer agreement with a hospital and an agreement with a physician who has privileges. Further, a woman may not obtain an abortion until at least 24 hours after the attending or referring physician orally informs her of: (1) the probable gestational age of the fetus; (2) the nature of the proposed procedure, including risks and alternatives; and (3) the medical risks of carrying the pregnancy to term.

In addition, at least 24 hours prior to an abortion, the woman must receive from the attending or referring physician, a health-care practitioner, physician's assistant, technician, or social worker state-mandated material that must include: (1) that medical assistance benefits may be available for prenatal care, childbirth, and neonatal care; (2) that the father is liable for child support, even if he offered to pay for an abortion; and (3) that she has a right to review state-prepared materials that describe fetal development and list agencies that offer alternatives to abortion.

Those who favor the Pennsylvania regulations argue that they help insure the health of the patient and provide more information regarding the status of the fetus and the alternatives to abortion. Those who oppose the Pennsylvania regulations argue that the patient's health is fully protected under the Maryland regulations (including access to information and counseling) and that the additional requirements create an undue burden for both the clinics and the patients who seek them out.

Stepping Back

Seeking Common Ground

"We believe that there is a space - it could be for dialogue, it could be for work on issues - where pro-choice and pro-life persons can come together in a non-adversarial way. We also believe that such coming together is a good thing. It produces positive outcomes for the individuals and groups involved, as well as for society."

– The Network for Life and Choice

"... progress toward a solution depends on finding ways of working with each other instead of against each other..." - Martha Harty, Professional Mediator

The field of conflict resolution may provide some resources for moving beyond intractable differences. Conflict resolution is the use of communication to manage and resolve conflicts. There are a wide variety of approaches in use, including negotiation, arbitration and mediation. These processes are used at all levels to deal with conflicts between individuals and groups. They are collaborative, non-adversarial, and aimed at finding win-win solutions.

Major social controversies, unlike business or playground disputes, are usually marked by deep differences in people's closely held values and beliefs. This involvement of central values and beliefs makes them too deep-seated to be easily negotiated or reconciled.

In bringing together people with strong convictions, facilitators seek to create structured discussions that ensure participants both safety and respect. Many techniques are used for this purpose, including clear agendas, ground rules or guidelines, and active listening.

This process of clarification might serve as the basis for a "common ground" exercise, which begins with representatives of the various positions stating their views. In this exercise no one should try to persuade the other of their position and each must listen carefully to what the other is saying. Afterward, people should restate what their "opponent" said, to that person's satisfaction, and then take turns explaining their beliefs to each other, and listening to the restatements.

A next step might be to discuss whether anything can be done jointly in areas of mutual concern. Some groups might then work on concrete goals and specific tasks once they identify a common issue. For example, while people may never reach agreement on the "moral status of the fetus," they may have a mutual interest in reducing the incidence of unwanted teenage pregnancies. This may lead to a focus on family, school, and community programs that are directed to the problem of teenage pregnancies rather than the problem of abortion in general.

Campus Reproductive Services

Consider and discuss your own campus healthcare services, if any. This is one of the main sections for Campus Conversations and your survey responses could influence campus policy in regard to these kinds of services.

Health Services for college students first appeared mid-19th Century in response to public health emergencies (such as cholera outbreaks) and the need to service transient students who live on or near the campus. Such services on campus today address a large number of healthcare issues ranging from flu shots to eating disorders. Facilities and staffing vary greatly, from first aid stations to dedicated patient care capabilities.

Beginning in the 1930s, counseling became available on some campuses and today such counseling centers represent a complementary health care service. The stress of campus life is often connected to physical health issues and roles of health care and psychological counseling often overlap. As with healthcare facilities, campus counseling capabilities (if they exist) can range from a health care staff member to separate facilities with a full suite of services.

Addressing both the physical and emotional aspects of human sexuality on college campuses highlights in interconnection between these services and can be seen in the kinds of reproductive resources offered to students. The following example from Carnegie Mellon represents one model of this interconnection and can be used to compare and contrast with other campus services.

Pregnancy Prevention:

University Health Services offers:

- Education: consultation, pamphlets, and fact sheets
- Pregnancy Testing
- Condoms: without an appointment, at a discounted cost
- Emergency contraception including Plan B One Step: without an appointment; Other contraception including birth control pills and Nexplanon: by appointment

Options to End Pregnancy:

University Health Services offers:

- Factual information regarding abortion and providers
- Online information and interactive services via Columbia University's "Go Ask Alice" website
- Referrals to services (Planned Parenthood, Magee-Womens' Hospital, Allegheny General Hospital, other local providers)

Counseling and Psychological Services (CaPS) offers:

- Consultation
- Brief psychotherapy; Referral to local mental health specialists
- Case Management; Group Therapy when available

Options to Carry to Term:

- Pregnancy counseling including the option to carry to term
- Referral to adoption services
- Information about pregnancy and health
- Referrals to local services for: maternity doctors, paternity testing, and education.

Questions

Because the issue of abortion affects the lives as students as well as the public at large, it will be important to seek informed opinion on this matter. Please use the following questions as prompts for your deliberations.

1. On a constitutional level, consider and discuss the summary of Roe v. Wade and the proposed Florida Personhood Amendment. What kind of arguments or reasons can you give for or against these positions? What should state legislators consider when discussing public policy matters in regard to these issues?
2. On a state legislative level, consider and discuss the Casey and Whole Woman's Health decision and the difference between the State of Maryland and the State of Pennsylvania regarding the regulation of abortion clinics. What kind of arguments or reasons can you give for or against state regulation of abortion providing clinics?
3. Consider the following two statements and discuss where you stand and what you think the other side believes. (1) "Economic constraints make it very difficult for some women to carry their pregnancies to term or imagine being able to raise their children." (2) "Reducing the number of abortions is a worthwhile goal."
4. On a campus level, consider and discuss whether there should be pregnancy counseling at campus Health Services (including, for example, access to Plan B or maternity care). What should a staff member do if a student asks to be accompanied to a clinic to get an abortion? What campus support should a student get if she chooses to carry to term?



Our Metaphysical Problem?

One of the great divides in the abortion debate is over the status of the fetus. This is particularly true during the first trimester when over 90% of all abortions are performed. Speaking abstractly, some argue that during this first trimester the fetus is a potential human being in the moral and legal sense, but not yet (in the sense that an egg is not yet a chicken). Others argue that the fetus is already what it will be (a human being in the full moral and legal sense) and that destroying the fetus, even from the moment of conception, is no different, morally, than killing a 2-year old child in the privacy of your back yard. But there is no microscope in the world, no scientific method, that can see which meaning of potential is correct: is it potential in the sense of “is not yet” or potential in the sense of “is already what it will be.” Like many metaphysical problems, this can become a matter of belief and conviction for many of us; and it is but one of many ways that people of principle and good will can disagree about the issue of abortion.

On a more personal level, there are those who see the pregnancy as the presence of a beautiful child and a living human being; and there are those who see the pregnancy as a personal crisis, a tragic situation that must be dealt with as best one can. And then there are those who share a thousand nuanced feelings in-between.

Yet once politicized, one side sees murder; the other choice. Here’s the source of the labels on the picket lines – and why we must try to go beyond the picket lines in this conversation.

Acknowledgements

Several resources for this document come from *The Issue of Abortion in America: A Multimedia CD-ROM* by Preston Covey, Robert Cavalier, Liz Style and Andrew Thompson (Routledge, 1996). The section on history was initially composed by Wendy Goldman, Carnegie Mellon.

Document Development by Robert Cavalier, Center for Ethics and Policy, Carnegie Mellon.

Design by Miso Kim.

Thanks to Jess Klein, Justin Mando and Lavender Yi and to the following groups and organizations involved in the CMU Campus Conversation on this topic during the 2014 MOSIAC conference: Life Matters, Mobilization of Resolute Feminists, and Students for Deliberative Democracy.

Special thanks also to Kathy Smith, Esq., Director, The Fox Rothschild Center for Law and Society at Community College of Philadelphia and Sara Grove, Esq., Chair, Department of Political Science, Shippensburg University for holding versions of this Campus Conversation during the Fall of 2015 and Spring of 2016. All these 'beta tests' of the materials have served to improve and refine the Discussion Guide and the accompanying survey questions. Finally, I want to thank David Garrow for his encouragement and support.

Updates to these materials in light of the *Whole Woman's Health v. Hellerstedt* Supreme Court decision as well as support for the wider distribution of these materials has been made possible by a generous Gift from Judith A. Wright, Carnegie Mellon, CIT Class of 1969.

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