

Controversies and Solutions for Abortion Rights in the United States

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Abstract: This paper uses a case study approach to analyze the factors influencing abortion rights and how to use legal means to resolve the related controversies against the background of the widespread abortion problem in American society. The essence of the contradiction of abortion rights is that people do not want to ignore life but also want to respect women's basic rights. The law should play a role in regulating this conflict in society, so that it can be tightened and loosened. The "tightness" is reflected in the fact that the law needs to set a general direction for the abortion issue. The government can provide a certain degree of counseling according to the different conception situations of women, so that the government and related personnel can do their duty of counseling for the possible birth of life, which fully reflects the respect for life. "Loose" means that women can refer to the government's well-intentioned reminders, but ultimately control the decisions about their own bodies, and the law cannot interfere forcibly.

Keywords: abortion rights, women's rights, respect, pro-choice, pro-life

1. Introduction

The issue of abortion has long been a focal point in many countries because of its overwhelmingly broad scope. As modern human rights law continues to evolve, it is widely accepted that reproductive rights fall under the discussion of human rights. A woman's reproductive rights include the freedom to choose to have children or to choose not to have children. This suggests that the right to abortion is an important part of reproductive rights. Whether or not a woman has the right to abortion also means, to some extent, whether or not she has the right to reproductive freedom. Thus, the right to abortion can be defined as whether a woman has the right to terminate her own pregnancy. Some scholars argue that the fetus is not yet born and does not exist independently of the mother, but exists at the expense of some of her rights and interests. Therefore, the fetus cannot be considered as life, and the fetus naturally does not have the right to life. Some scholars believe that a woman's entry into gestation means that the fetus is a life and has the right to life. Because different groups of people are in different positions, the discussion of abortion sometimes extends to the protection of women's rights, adherence to religious beliefs, and the need for political development, etc. In June 2022, the U.S. Supreme Court handed down its decision in the Dobbs case, officially declaring the freedom of abortion established by Roe to be a thing of the past. It also signaled that in some U.S. states, women will no longer have the freedom to have an abortion. With the return of abortion legislation to the states by the U.S. Supreme Court, only five countries in the world -- China, Vietnam, North Korea,

the Netherlands and Canada -- have not placed any restrictions on women's right to abortion. Will banning abortion eliminate abortion? Does freedom to abort necessarily mean disregard for life? The survival of fetal life depends on the mother's body, and the enjoyment of the right to life is predicated on the sacrifice of some maternal rights. How to use the law to balance the views of different groups while protecting the interests of multiple parties is a question that deserves consideration and urgent resolution.

2. The Development of Abortion Rights in the United States

In the United States, the issue of abortion rights has always been more controversial. Groups representing different interests have fought hard for their rights. The Roe case in 1973, the Casey case in 1992, and the Dobbs case in 2022 best reflect the development and changes of abortion rights in the United States.

2.1. Roe Case

Texas woman Norma McCorvey is a poorly paid and poorly housed person who is not capable of raising a child. Faced with an unplanned pregnancy, Norma McCorvey decided to have an abortion. But in Texas, abortion is an illegal practice. So, Norma McCorvey took then-Dallas District Attorney Henry Wade to court and asked the state of Texas to lift the abortion ban [1]. Finally, in 1973, nine justices of the U.S. Supreme Court voted 7-2 to rule that women are free to terminate their pregnancies or not. This was the hallmark of the legality of abortion in the United States. The legalization of abortion established by Roe involved three broad steps. First, during the first trimester of pregnancy, a woman is free to decide whether to have an abortion, and the state has no right to interfere. Second, in the fourth, fifth, and sixth months of pregnancy, the state has the right to regulate the procedure in order to protect a woman's health, for example, by requiring her to go to a doctor who is legally licensed to perform abortions. Third, in the seventh, eighth, and ninth months of pregnancy, the state has the right to regulate or prohibit abortions in order to protect the potential life of the woman, provided that the health of the pregnant woman is not harmed. For the Roe decision, the Supreme Court primarily considered the constitutional right to privacy, and whether or not a woman chooses to have an abortion is their privacy, which should be protected by law. This decision was also controversial within the Supreme Court at the time, with opponents arguing that the Supreme Court was too arbitrary in overriding the right to choose over the right to life [2].

2.2. Casey Case

The plaintiffs in Casey are five abortion clinics, physicians who provide abortion services, and a physician who independently represents himself. The plaintiffs filed suit arguing that the Pennsylvania Abortion Control Act was unconstitutional. Nine Supreme Court justices ruled 5-4 and for overturned Roe. The core attitude toward abortion rights remained the same, but the specific approach differed from Roe. Casey discarded the three-part argument of Roe, arguing that the clear delineation of months in the three-part argument was too rigid. The Casey decision held that government control over abortion must be soft, not forceful, and must not impose a substantial burden on pregnant women. If Roe was a "person" case, protecting the right to abortion in order to protect one's right to privacy, Casey was more focused on the right to abortion. The Casey case, on the other hand, focuses more on the "woman's" perspective and highlights the rights of "women. One aspect of women's constitutional interest in liberty is the right to bodily integrity, i.e., the right to control a person [3].

2.3. Dobbs Case

Mississippi law provides that, except in cases of medical emergency or in cases of severe fetal anomalies, no person shall knowingly or intentionally induce or perform a de facto abortion if the time of gestation of the unborn child has been determined to be more than 15 weeks. Respondent Jackson Women's Health Organization argues that this provision violates precedent. Petitioners, on the other hand, argued that the precedents Roe and Casey were unconstitutional and should not be followed. So on June 24, 2022, the U.S. Supreme Court issued a shocking decision in which they held that the Constitution did not give women the right to abortion and that Roe should be overturned. The Supreme Court relegated the legislative power of abortion to the states entirely. Although the Supreme Court did not explicitly state that abortion was prohibited, it simply left the right to abortion up to the states to decide. But there is no denying that this decision is essentially a restriction on a woman's right to abortion [4].

3. Influencing Factors

The history of development of countries is different; each person has different beliefs. Therefore, different views on the issue of abortion have been formed. In the United States, from the very beginning, when women were allowed to have abortions in Roe, to Dobbs, which restricted women's right to abortion, and even in some states, women were banned from having abortions. This change has been influenced by many factors. Among these factors, the constitutional, religious, political, and feminist movements have been particularly influential.

3.1. Constitution

On the issue of abortion rights, the Supreme Court has always ruled closely on the Constitution. In the Roe decision, it was written that "the right to abortion is a constitutionally protected right to privacy." If the right to abortion is a right to privacy, and the right to privacy is absolutely protected by the Constitution, the Supreme Court held that the Constitution also protects the right to abortion, and that led to the Roe decision. For the Dobbs case. Because the Supreme Court held that there is no constitutional protection of the right to abortion, Roe should be overruled. The above two decisions show that. Whether the right to abortion was previously protected or was no longer protected after the change. Both cases were based on the Constitution. Therefore, the constitution is one of the important factors that influence the decision.

3.2. Politics

For the political influencing factors, it mainly lies in the different attitudes between the two parties. Reagan, Bush Jr. and Trump, as Republican presidents, clearly stated their attitudes through different political measures regarding the abortion issue, i.e., they were strongly against abortion. While Clinton, Obama, Biden and others as Democrats are strongly pro-abortion. The most direct reason for the overturning of Roe in this Dobbs case is the vote of the nine justices. And of the nine justices, Trump, who is a staunch Republican anti-abortionist, has appointed three justices in only four years of his term. Such a general environment played a role in the Dobbs decision. It can be seen that attitudes toward abortion rights and related initiatives vary from time to time when different parties are in power, and that political partisan factors more directly influence the abortion rights issue.

3.3. Religion

The United States is a free and religiously diverse country, with the majority of the population being Christian and Catholic. Different interpretations of doctrine are also a factor in the abortion issue.

Some people believe that the Christian doctrine requires respect for all life and that a fetus is a life from the moment it is born in the mother's womb. Therefore, abortion cannot be performed against morality and doctrine; others believe that abortion is not mentioned in the doctrine, and that only a real, born fetus can be called a "human being", so abortion does not conflict with the doctrine. Religious groups are composed of the people, and in a democratic society, what the people think is extremely important, and the will of the people is sometimes the guideline for dealing with issues. Therefore, the power of religion has also been influencing the development and change of abortion rights.

3.4. Feminist Movement

As society has progressed, the rise of the feminist movement has had a tremendous impact on the issue of abortion. Advocates of women's rights believe in the supremacy of female power [5]. If the government did not allow abortion, it would disguise making women into reproductive machines. Once a pregnancy is conceived, whether by accident or otherwise, she must give birth. In this way, women's reproductive rights, their right to work, and other basic rights are not guaranteed at all. Even women cannot make decisions and choices for their own bodies. The U.S. feminist movement's systematic and organized pro-abortion campaign began in the 1960s, when the legalization of abortion was one of the key elements of the feminist movement. It was these feminist movements that gave a major impetus to the reform of abortion laws in the United States during the restrictive abortion period, which led to the landmark case of *Roe v. Wade*. Thus, it is also clear that the feminist movement played a role in the development of abortion.

4. Current Status

In controversies over the issue of abortion rights, three subjects of discussion generally arise. The first is the mother's right to life, the second is the mother's right to choose, and the third is the fetus' right to life. There are two dominant views on this issue, one is pro-abortion and the other is anti-abortion. There is no doubt that the mother's right to life is paramount, and that abortion is permissible when the existence of the fetus puts the mother's right to life at risk. Therefore, the main point of contention between the two mainstream views is whether the mother's right to choose or the fetus' right to life is more important. The controversy over the question of whether the mother's right to choose or the fetus' right to life is superior has evolved into the pro-life and pro-choice viewpoints [6].

4.1. Pro-life

Pro-life stands for anti-abortion, with respect for the right to life of the fetus as its highest purpose. The pro-life community believes that if women have the right to abortion, it is tantamount to stifling life. They believe that legalizing the right to abortion will inevitably lead to women exercising their right to abortion in certain circumstances, and that abortion is a great disregard for life, and that the government has the right to protect the lives of all people. pro-life also includes religious believers who, because of their religious beliefs, believe that any life is a gift from God and cannot be forcibly aborted against the will of God.

4.2. Pro-choice

Pro-choice, on the other hand, stands for pro-abortion, and they respect a woman's right to choose more. Pro-choice advocates that a woman's right to life and choice is more important than that of a lifeless embryo [7]. They argue that a fetus is not yet born, does not have the ability to survive on its

own, does not have human characteristics, and is not a life. In this case, then, it is clear that the woman's rights are more important. Moreover, even if the fetus is a life, it is a fetus that survives by drawing nutrients from the mother's body, so it should be considered part of the woman's body, and the woman has the right to determine her own body [8]. Since the uterus and the fetus are similar in nature and are part of the female body, if the woman can determine the existence of the uterus, why not the existence of the fetus.

5. How the Law Addresses Abortion

5.1. The Law Should Interfere with Abortion

The issue of abortion plays an important role in political stability and social development. The law is the lowest moral standard. When events become controversial, opposites are bound to arise, and when opposites arise, they lead to struggle and contention. At this point, uniform regulations are especially important. That is why legal intervention in the abortion issue is necessary and essential. Should the Supreme Court of the United States make uniform regulations, as in *Roe*, or should it delegate its authority to the state courts, as in *Dobbs*? As stated earlier, abortion rights can be reduced to a human rights issue. The scope of abortion rights is such that it is no longer a matter for the state courts to decide. Each state has different regulations, such as Missouri and Wisconsin, which have strict abortion bans. California, New York, etc. still protect abortion. This shows that the different decisions in a state lead to different resulting policies. Such actions, instead of being a positive guide, can lead to antagonism. It can also lead to the prevalence of extremism if the law is not properly and reasonably uniform in this regard. Some extremists believe that a woman cannot have an abortion even if the existence of the fetus threatens the life of the mother and would rather trade the life of the mother for the life of the fetus [9]. Other extremism advocates abortion, believing that only through abortion can women's rights be realized. The right to abortion is intended to protect a woman's fundamental rights and is not the only way to achieve them. Therefore, the Supreme Court should make a uniform rule on abortion.

5.2. Solutions and Their Rationale

5.2.1. Solution

The importance of the law in dealing with abortion is reinforced by the number of factors that influence it. While the law regulates the issue of abortion, it should also give a certain degree of freedom to individual rights. The law should be tightened and loosened. The "tightness" is reflected in the fact that the Supreme Law regulates abortion in a uniform manner and does not interfere with the woman's decision in cases where she conceives voluntarily but does not want to continue later. "Loose" means that women have the absolute right to make decisions about their own bodies. Even in the case of humane government intervention, the decision is final.

The Supreme Court should make different rules depending on the circumstances that lead to a woman's pregnancy. There are two broad types of circumstances that can cause a woman to become pregnant: a woman's voluntary conception and a woman's involuntary conception. Voluntary conception refers to a woman's willingness to conceive of her own volition; involuntary conception refers to a woman's unwillingness to conceive but is caused by the will of another person through other external forces, including rape, accidental pregnancy, etc [10].

5.2.2. Rationale

The problem of abortion that may arise in the face of voluntary conception is generally reflected in a change in the woman's will, i.e., a voluntary pregnancy that she does not want to continue for subjective or objective reasons. In such cases, the government has the right to intervene. However, this intervention is limited to the duty of reminding and does not include a mandatory order. The government can ask the woman or her family about the reasons, and if there are objective reasons (e.g., the fetus is found to have a congenital disease, bankruptcy and inability to raise the child, etc.), it can try to solve the problem with a certain degree of humanism; if there are subjective reasons, it can advise but not make the decision for the woman, which is a way of respecting life, which should not be reflected in coercion.

The government should absolutely respect a woman's wishes in cases of involuntary pregnancy. If, in this case, the freedom to abort is still denied. First of all, it will make some criminals more aggressive. For example, a man without a wife or girlfriend, who wants to have a child, chooses to rape a woman. When the woman has already been victimized by the rape and is desperate enough to ask the government for help not wanting to have the child, the government tells her, we don't allow abortion, you must have it. This leads to a vicious cycle. This is a huge disrespect for a "human being" and a huge violation of human rights. It is as if women are being told that you cannot have a will of your own. You are just a tool for reproduction, a machine that must give birth. By the same token, in the face of an unwanted pregnancy, the risks borne by women are far greater than those borne by men, and the decision should be left in the hands of women, whether for their protection or to respect their will.

Of course, regardless of the circumstances of conception, if a woman is willing to have this child, the government or others should not object on other grounds.

6. Conclusion

The Roe, Casey, and Dobbs cases have witnessed the development and changes of the legal system of abortion in the United States. The author believes that the U.S. Constitution does not contain any words about "abortion rights", but the continuous development of the society inevitably leads to different new issues. The right to abortion is one of the rights protected by the Constitution, and a logical correlation can be made for the benefit of society. Therefore, it is necessary to make such a generalization. To keep using "not in the Constitution" as an excuse is actually a kind of disguised indulgence and evasion, and without action, the problem will never be solved. The law is sacred and should not be denied for fear of responsibility.

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