

ROE V. WADE: A BAD DECISION YIELDS TERRIBLE CONSEQUENCES

Supreme Court Sets U.S. Abortion Policy

On January 22, 1973, the U.S. Supreme Court promulgated *Roe v. Wade* and *Doe v. Bolton* which gave us the most permissive abortion policy in the world, permitting abortion for virtually any reason throughout the nine months of pregnancy.¹ Subsequent Supreme Court decisions upheld these rulings.

Roe v. Wade is a Faulty Legal Decision Based Upon Deception and Poor Jurisprudence

Deception Both *Roe v. Wade* and *Doe v. Bolton* were brought before the Supreme Court as a result of the efforts of activist pro-choice lawyers who exploited their clients' situations to attack existing abortion laws in Texas and Georgia. Deception played a role in moving these cases through the courts.

1. Norma McCorvey, the Roe of *Roe v. Wade*, initially told her lawyers she had been gang-raped, whereas she had been impregnated by her boyfriend.
2. McCorvey's lawyers led her to believe she could get her abortion if she let them take her case. Given the amount of time needed to move cases through the courts, this was highly unlikely, and McCorvey gave birth to her child, placing it for adoption.
3. Sandra Cano, the Doe of *Doe v. Bolton*, was not even seeking an abortion, but only wanted help gaining custody of some of her children. Yet she was described in the case as "An indigent, married, pregnant woman who desired but had been refused an abortion."²
4. Neither McCorvey nor Cano ever appeared in court, but simply signed documents placed before them by their lawyers. Both subsequently joined the pro-life movement.

Poor Jurisprudence Both pro-choice and pro-life lawyers tend to agree that *Roe v. Wade* was poorly decided. It is characterized by double standards, a failure to address basic issues, self-contradictions, faulty facts, and failure to follow normal procedure. Some examples follow.

1. **Double Standards** The Court based a woman's right to abortion on the "right to privacy," a right which is not mentioned anywhere in the Constitution. On the other hand, it denied the unborn's right to life because it stated that although the 14th Amendment protects a "person's" right to life, in "nearly all" instances where the word "person" appears in the Constitution, it "has application only postnatally."³ Note that the Court says in "nearly all" instances, implying that in some instances, the word "person" did apply to unborn human beings. Gregory J. Roden has cited one such instance.⁴ In the 1884 property law case *McArthur v. Scott*, dealing with grandchildren's inheritance rights, the Supreme Court said, "The will devised the lands in controversy to all the grandchildren, whether born or unborn. ... When the statute says that 'the verdict shall be final between the parties,' it means that all parties of interest, whether actual present parties or **unborn persons**...."⁵ (Emphasis added). Roden goes on to argue that in the past, the Supreme Court did hold that "preborn persons do have the right to due process" and that "preborn persons can hold vested rights, not just rights contingent upon live birth."
2. **Failure to Address Basic Issues** While the Court could have heard extended arguments as to why the unborn should be considered a "person," it did not, in spite of the fact that it recognized the centrality of this issue. Indeed, the Court noted that if the personhood of the unborn was established, the pro-choice case "of course, collapses, for the fetus' right to life is then guaranteed by the [14th] Amendment."⁶ Ignoring the scientific facts of modern biology and genetics, the Court also chose not to decide the basic issue of when human life begins, stating, "We need not resolve the difficult question of when life begins."⁷ Thus, it allowed the woman's rights to prevail over that of an undefined entity.
3. **Self-Contradiction** The Court said, "...we do not agree that by adopting one theory of life [i.e. life begins at conception], Texas may override the rights of the pregnant woman."⁸ But in effect, the Court adopted another theory of life [life begins only at birth] to override the rights of the unborn. In another

contradiction, Justice Burger wrote in his concurring decision, “Plainly, the Court today rejects any claim that the Constitution requires abortion on demand.”⁹ Yet, this is exactly the policy which flows from *Roe v. Wade* and *Doe v. Bolton*, and the Court’s subsequent decisions.

4. **Faulty Medical Facts** Considering only short-term outcomes, the Court concluded that first trimester abortions are safer than childbirth for the mother. (Note however, that it permitted abortions in the second and third trimester, as well). It is doubtful that this was true in 1973, and it is certainly not true today. Studies of the long-term consequences of legal abortion indicate that it is two to four times more dangerous for the mother than childbirth.
5. **Faulty Historical Facts** Relying heavily on the subsequently debunked work of Cyril Means and others, the Court accepted the notion that early English Common Law and early American law freely permitted abortion.¹⁰ They did not. The Court also accepted the idea that the main reason states began passing anti-abortion laws in the 19th century was to protect the mother from dangerous abortion procedures. Given the state of medicine at that time, however, abortion was a relatively safe procedure, at least in the short-run. Actually, a major reason for the passage of early anti-abortion laws was the increased understanding of the early physiology of reproduction, and the fact that the life of an individual human being begins at fertilization.
6. **Faulty Social Science** Although the Court does not look to public opinion to guide its decisions, it certainly misread the public’s mind in regard to abortion. For example, it stated, “There has always been strong support for the view that life does not begin until live birth.”¹¹ Yet, in 11 national polls between January 1973 and August 2003, an average of only 12% of the public thought life does not begin until birth. Moreover, a careful reading of the polls since 1973 makes it clear that a majority of the public has never agreed with the Court’s policy of abortion on demand throughout the nine months of pregnancy for any reason.¹² The social and political turmoil which followed *Roe v. Wade* and continues to this day also indicates it did not have a good sense of the public’s will.
7. **Failure to Follow Normal Procedure.** In his book, *Abuse of Discretion: The Inside Story of Roe v. Wade*, attorney Clarke D. Forsythe outlines a number of ways the Supreme Court Justices failed to follow normal procedures in that case.¹³ We shall quote from page 92 here: “Trials and hearings are supposed to thoroughly weigh the evidence and determine the truthfulness and accuracy of the claims of the parties. This is all the more important when a case involves constitutional questions and has sweeping implications for the people and the public health in all fifty states. In the lower court hearing of *Roe and Doe*, however, the parties did not present evidence – there were no trials – and the judges did not look at evidence. The federal court hearings were conducted without examination of medical or other evidence and without hearing witnesses subjected to cross-examination. Instead, both district courts in Texas and Georgia ... merely held two hour-long oral arguments, in which much of the time was taken up with procedural and jurisdictional questions. Nor was there any intermediate review by an appeals court in *Roe and Doe*. The federal judicial system consists of three tiers: a federal trial court, an appeals (or appellate) court, and the Supreme Court. One of the purposes of this system is to have the facts and legal propositions in cases thoroughly reviewed before cases get up to the Supreme Court. But in both *Roe and Doe* the federal trial court decisions were not considered by intermediate appellate courts ...[but] went directly to the Supreme Court.”

Consequences of Roe v. Wade and Supporting Decisions

1. **Vast Increases in Total Abortions** The most comprehensive study of the incidence of abortion determined that in 1966, the last year before our abortion laws began to change, the number of induced abortions (legal plus illegal) occurring in the U.S. was about 125,000.¹⁴ Since permissive laws began to be passed in 1967, therefore, induced abortions have increased 10 to 12 fold. From January 1, 1973 through December 31, 2011, according to figures reported by the Alan Guttmacher Institute, over 55 million legal abortions have been performed, a rate of 3,866 per day over this 39 year period. Not only are we killing

many more unborn human beings, but a much higher proportion of women are being subjected to the hazards of abortion.

2. **Reduction of Individual Rights** The rights of the human being in the womb have been negated, as well as the right of the father to have a say in the fate of his unborn offspring, even if he is married to the mother and willing to support their child. Court decisions flowing from *Roe v. Wade* have also seriously abridged parents' rights to have a say in their minor daughter's life-changing decision to have an abortion, and in some cases, even to know that their daughter is seeking an abortion. While *Roe v. Wade* has given women the right to treat her unborn child as property, to be disposed of at will, it has never been used as a legal basis for establishing any other new rights for women. Indeed, rather than empowering women, in many cases legalized abortion has made it more difficult for them to realize their desires. Today the irresponsible male is free to say, "I don't want this child. You are free to abort it. If you choose not to, don't expect me to support it." Thus, "It's the woman's choice" quickly becomes "It's the woman's problem." Clarke D. Forsythe also notes that "some feminist scholars think that *Roe* has, in fact, seriously impeded women's equal opportunity in American society ... women had what they needed – abortion -- to be equal to men in education and career, and there was no need for employers to adopt changes to allow women to more flexibly balance work and family."¹⁵

Finally, the right of doctors, nurses, pharmacists and other professionals not to participate in the abortion culture is constantly under attack by the "pro-choice" movement.

3. **Legal Abortion Harms Women** Far from being of benefit to women's "reproductive health," legal abortion harms women. We have had abortion on demand in this country for over 40 years. Many studies have demonstrated that induced abortion is associated with an increase in the incidence of breast cancer, ectopic pregnancy, suicide, substance abuse, depression, other psychological problems, and premature births in subsequent pregnancies, creating problems not only for the woman, but for her future children.
4. **Child Abuse and Child Poverty** Legal abortion was supposed to reduce the incidence of child abuse, since fewer unwanted children would be born. Yet government data show that between 1977 and 1998, when our policy of abortion on demand was in effect, the child population grew by 8.8% while child abuse rose by 259%.¹⁶ Legal abortion was also supposed to reduce child poverty, since fewer unaffordable children would be born. Yet government data from 1973 through 2000 show no direct relationship between these two variables.¹⁷ Comparing the number of abortions in a given year with the percent of children below the poverty level in the following year shows the expected pattern fails to turn up 62% of the time. That is, child poverty does not tend to decrease when abortions increase. Rather, abortions and child poverty generally increase and decrease together.
5. **Abortion as Birth Control** Despite assertions by pro-choice advocates that women would seek abortions only in the most difficult circumstances, and that they would not use it as birth control, two surveys suggest the opposite. These large-scale surveys were conducted in 1987 and 2004 at 11 large abortion clinics across the country. Their results were quite similar. The primary reasons women give for having abortions are social reasons – that is, they use abortion as backup birth control. Less than 7% of the women mention physical reasons such as the woman's health, the unborn's health, rape or incest as the primary reason for obtaining an abortion.¹⁸ Moreover, some of the health conditions were self-diagnosed, and not the result of a physician's examination. Nationally, 45% of women having an abortion in 2009 were having their second or higher order abortion.¹⁹ Data from the state of Ohio for 2012 indicate that 18% of Ohio residents having abortions in that year were having their third or higher order abortion.²⁰
6. **Government of Men, Not of Laws** Although not the only example of a disturbing trend in our society, *Roe v. Wade* is a prime example of the rule of men rather than of laws. Usurping the legislative power of the people's duly elected state and federal legislators, seven unelected men on the Supreme Court struck down the abortion laws of all 50 states and, legislating from the bench, dictated what our abortion policy

would be. In doing so they declared that abortion, something that had been recognized in law to be a terrible crime for over 100 years, was now a Constitutionally guaranteed right, and that the unborn's right to life did not exist. When we allow individual men to grant and take away rights so cavalierly, the rights of all are in jeopardy. It is time to restore a government of laws, not of men, and to allow our duly elected representatives to restore our unborn brothers' and sisters' right to life.

References

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