

Roe v. Wade Decision Is an Attempt to Restore Intellectual Probity



by Theodore Dalrymple

When President Joe Biden said that the Supreme Court's recent decision in the matter of Roe v. Wade removed a *constitutional* right from women, he put his finger on precisely what was at issue—getting the answer wrong, of course, with his almost infallible nose for error.

Irrespective of the rights and wrongs of the deliberate termination of pregnancy, it seems to me obvious that the Constitution of the United States has to be tortured by dishonest rationalization to yield women's universal right to abortion. On this matter, as on most subjects, the Constitution and its amendments is silent. It no more grants a

right to abortion than it grants a right to a new car every year. On the most unbiased reading, it leaves it to the states to legislate on the question.

The whole debate, it seems to me, is bedeviled, and rendered very crude, by the word *rights*. Where two opposing rights, both deemed by their upholders to be absolute, clash, what can result except endless conflict without resolution? Ignorant armies clash by night, as Matthew Arnold put it.

The two opposed rights are that to life on the one hand, and that of a woman to dispose of her body as she sees fit on the other. These rights are incompatible. It seems to me that neither of them is absolute, and therefore that some compromise, on the basis of something other than rights, is necessary.

Let us take the right to life first. To be consistent, everybody who asserts it in this context must be a complete pacifist: and, as a matter of empirical fact, most people who assert it are not. Moreover, most such people would grant that abortion is justified in certain circumstances: that of a 10- or 11-year-old child, for example, who has been raped. I do not think that many people will be found to insist that such a child should be obliged to go through with a pregnancy right to its end, and if this is accepted, the question of induced abortion becomes one of judgment rather than of absolute prohibition. The conditions laid down may be lax or severe, according to legislation, but the right to life is no longer what is at issue.

Again, if we imagine a situation in which the life of either the mother or that of the fetus can be saved, but not both, it surely would not be morally indifferent which we saved, as it should be if there were an absolute abstract right to life, the right to life of the mother and that of the fetus being precisely equal. And yet we would surely save the life of the mother in these circumstances.

But sovereignty over one's own body, to the extent of having a right to any operation whatsoever done on it by another, is also clearly limited. I have the right to refuse an amputation, for example, but not the right to demand and be granted such an amputation. Moreover, a conceptus or a fetus is *not* just another part of a woman's body, shall we say like her appendix or a blemish on her skin, but something essentially different. Many women who have had abortions implicitly recognize this; they do not regard abortion as simply a minor medical procedure like any other. Some do: I have known women say something like "Take that thing away!" as if the new life within them were merely an inconvenience or an interruption to their pursuit of pleasure. But I have also known women who have ruminated on what they have done, or have had done to them, for many years afterward. For them, an abortion is not a morally neutral removal of a blemish—even if they think that, all things considered, they did the right thing in the circumstances.

Until there is parthenogenesis (offspring of an ovum unfertilized by a spermatozoon), a new human life in a womb is the product of two people, not of one; and while I do not say that this gives any special rights to fathers in the matter of abortion, a society in which fathers are not habitually consulted in the matter of starting, continuing, or arresting a pregnancy is a very crude and brutal one, destined for much avoidable misery. Yet that is the society that abortion as a right subjected to no other considerations deems, at least in part, desirable.

I conclude that the question of induced abortion is *not* simply one of conflicting rights but one that requires judgment to answer. If it isn't a question of rights, it isn't properly a question for the Constitution. It's a question of passing laws that try, as humanely as possible, to reconcile different and not entirely compatible desiderata. It isn't desirable that we should live in a society in which new human life is treated as

if it were a tumor to be removed; but neither is it desirable that we should live in a society in which women should be forced to go through with pregnancies in all circumstances whatsoever.

It's very difficult to frame laws that reconcile these two things, and there's a tendency in modern societies for legal limitations (such as those that the British law on abortion places) to be disregarded or dissolved away by means of sophisticated reasoning such as that which the Supreme Court employed in reaching its original decision in *Roe v. Wade*. And this itself points to a wider social problem, namely the absence of intellectual probity in the supposedly thinking classes. First comes the conclusion that they desire, then come the alleged arguments, such as a shamefully bogus constitutional right to abortion, in its favor.

The Supreme Court decision, then, is an attempt to restore some semblance of intellectual probity. Let Congress enact a constitutional amendment, if it so wishes, guaranteeing a right to abortion. Until then, it is for the states to decide, which will be an interesting natural experiment to discover what legislation is the most humane—not what legislation best accords with absolute but conflicting rights.

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