

Aborting the Women's Rights Movement: Why abortion was a poor first choice for the women's
rights movement

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Abstract

This paper explains why abortion was a poor first step for the women's rights movement based on a timeline of court cases regarding abortion. Abortion is too complex to be considered simply a woman's right; the six complexities are discussed. Better first steps are also discussed.

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Why are women's rights so controversial? What is it about "feminism" that infuriates people on all sides of politics? Is it that some men do not want to relinquish power or that some men are afraid that women are incapable of protecting themselves? The answer might be surprising to some. Although *Roe v. Wade* was decided in hopes of aiding the women's rights movement, it ultimately failed to do so and tied a controversial issue to the movement. The right to an abortion began as a women's rights issue, but the complexities of the practice have taken over, so that abortion is no longer simply a women's rights issue. Thus, the right to an abortion was a poor first major judicial decision in the women's rights movement and harmed women's rights more than it helped. This paper will demonstrate the six complexities of abortion through *Roe v. Wade*, *Planned Parenthood v. Casey*, and *Gonzales v. Carhart*; discuss the underlying problem with abortion; and provide better options for the first steps in the women's rights movement.

Complexity of Abortion

Abortion is undoubtedly a divisive issue in American politics today. The two major political parties, Democratic and Republican, hold opposite positions on the matter. The official Republican platform for the 2016 election states "We call for a permanent ban on federal funding and subsidies for abortion and healthcare plans that include abortion coverage" (Platform). The official Democratic platform states "We believe unequivocally, like the majority of Americans, that every woman should have access to quality reproductive health care services, including safe and legal abortion" (Our Platform).

In addition, people have polarized opinions of the constitutionality and ethical nature of abortion. A 2015 Gallup Poll indicated that the importance of abortion in choosing a candidate to

vote for is on the rise. In fact, 46% of polled Americans stated that abortion is one of the most important issues they will consider in elections (Riffkin, 2015). Interestingly, the importance of abortion is more significant among pro-life Americans than pro-choice Americans (Riffkin, 2015). This further hurts the women's rights movement because it is tied to abortion. Although the importance of abortion has fluctuated, the issue remains salient for most Americans. It is one of many important factors people consider when voting.

Timeline of Abortion Cases

Analyzing the timeline of abortion cases demonstrates the complexities of abortion and why it was a poor first step for the women's rights movement.

Roe v. Wade

Roe v. Wade (1973) is likely the most well-known abortion court case in the United States because it made abortion legal in all 50 states. The landmark case determined that under the right to privacy established in *Griswold v. Connecticut*, a woman had the right to have an abortion because the decision to do so was between her and a doctor. Medical decisions are a zone of privacy; thus, abortion is legal under the right to privacy.

Contrary to popular belief, *Roe* (1973) did not allow unfettered abortion. Instead, it created the first structure of the familiar trimester system. This original system provided almost unlimited abortions in the first trimester, limited abortions in the second based on state legislation, and banned them in the third (Roe, 1973).

Although *Roe* (1973) was likely decided to help the women's rights movement, it did little to nothing for it. Because the case was pitched as a women's rights issue, abortion has been inherently tied to the feminist movement ever since. When people hear about women's rights or feminism, one of the first associations they make with it is abortion. The problem with this association is that abortion is too complex to be considered simply a women's rights issue.

Furthermore, it is controversial because many people consider abortion to be murder of an unborn child. Thus, at first glance *Roe* (1973) helped the women's rights movement, but it harmed it because the issue is too complex and controversial.

Planned Parenthood v. Casey

The first complexity of abortion is that the decision to have an abortion is not just the mother's. This complexity is demonstrated in *Planned Parenthood v. Casey* (1992). This case began the slow shift from abortion as a woman's rights to a fetus' rights. Pennsylvania changed its abortion laws in the late 1980s so that doctors had to ensure informed consent, require a 24-hour waiting period between when the procedure was requested to the actual procedure, minors had to have the consent of one parent, and married women had to demonstrate that their husband was aware of the decision. In a 5-4 decision, all the provisions were upheld, except the husband notification requirement (*Planned Parenthood*, 1992).

This case is significant in the timeline because while it affirmed the *Roe* decision, it put significant restraints on abortion. Although the woman has the right to an abortion, the right is no longer hers alone; others' opinions matter as well. *Roe* (1973) oversimplified the decision to have an abortion. *Planned Parenthood* (1992) was the first national case to recognize that others' opinions mattered in the decision. First, there is the father. Naturally, this is not an issue in all cases, but it is for some, where the father is no longer involved in the mother's life. The entity inside the mother shares the genes of the father, too. Thus, the decision to abort the fetus cannot be the mother's alone.

Additionally, there are parents. One issue with legalizing abortion without an age restriction is that young women can have a major-medical procedure without anyone else knowing. Therefore, she might be scared to come forward if she experiences complications after

the procedure, putting her health at risk. Parents should have a say in whether women under 18 can have an abortion because abortion can negatively impact their health.

A second complexity with abortion is that it is an emotional decision. The decision to have an abortion cannot be easy for everyone. Providing education on the procedure and a waiting period can help ensure that women make the completely correct decision before subjecting their bodies, the fetus, and their minds to such a procedure.

Gonzales v. Carhart

The third complexity of abortion is the rights of the fetus versus those of the mother, most clearly discussed in *Gonzales v. Carhart* (2007). This 2007 case was brought to the Supreme Court when two circuit courts' decisions on the Partial Birth Abortion Act (2003) conflicted. In 2003, Congress passed the Partial Birth Abortion Ban Act. In effect, the Act prohibited partial-birth abortions, which the case defines as: "delivery to an anatomical landmark" (Gonzales, 2007). There is much debate over this definition. Partial birth can also refer to a botched abortion, where the fetus dies before it is removed from the mother completely. It also refers to a fetus that is already dead and then removed. In general, the term refers to late term abortion of any kind, a type of abortion that is extremely controversial.

Gonzales (2007) attempted to overrule the Act because it violated the 5th Amendment rights of the mother and it provided no exception when the health of the mother is compromised. The Court ruled that the Act was indeed constitutional because it only affected one specific type of abortion (Gonzales, 2007). This is a key turning point in the abortion argument because it upheld a decision that strictly limits a type of abortion based on the rights of the fetus, not those of the mother. Although the Court left the Act open for discussion on exceptions by the medical community, it nonetheless began a precedent of putting the fetus' rights above the mothers (Gonzales, 2007).

This case took *Planned Parenthood* (1992) a step further in recognizing others involved in the decision to have an abortion. Where do the mother's rights end and the fetus' begin? Whose rights take precedence? On the one hand, under the right to privacy, the woman has the right to an abortion because it is a zone of privacy. She is already a living being, so her rights should proceed those of the fetus'. On the other hand, the Constitution states that everyone has the right to life, liberty, and the pursuit of happiness (U.S. Const. Amendment V). It further states in the 14th Amendment that everyone had equal protection under the law (U.S. Const. Amendment XIV). Essentially, do these Amendments cover the unborn? *Gonzales* (2007) ruled that at a certain point in a pregnancy, the fetus' rights precede those of the mother's.

Fetal Pain Laws

Following the ruling in *Gonzales* (2007), nine states enacted laws that prohibit abortions after 20 weeks because after that point, the fetus arguably feels pain and can react to stimuli. For example, at this stage of pregnancy the fetus can recognize the needle and the pain it will cause, eliciting a basic fight-or-flight reaction and increasing the fetus' heart rate and blood pressure (A History of Key Abortion Rulings; Pew Research Center, 2013).

Thus, the fourth complexity of abortion is at what point does the fetus feel pain? The opposition of fetal pain laws believe that scientific evidence does not support the theory that at 20 weeks the fetus feels pain (A History of Key Abortion Rulings, 2013). These opponents add an extra 6 weeks until the fetus' neurological structures that feel pain form. They also explain that fetal pain laws prohibit special-case late abortions where the mother's health is at risk. Lastly, they argue that fetuses cannot survive outside the womb before 21 weeks, demonstrating that the fetus' body has not developed to the point of viability (A History of Key Abortion Rulings, 2013).

However, the presiding judge in *Isaacson v. Horne* (2013) upheld Arizona's rigorous pain laws. The judge found scientific evidence that supports the aforementioned theory (A History of Key Abortion Rulings, 2013). He further found evidence that suggests that the mother is at greater risk during mid to late term abortions than she is in early term abortions (A History of Key Abortion Rulings, 2013). These laws are still new and point directly to the importance of this issue because it is likely that fetal pain laws will eventually be brought before the Supreme Court due to conflicting circuit court rulings.

Although there is some debate over whether science demonstrates this theory, the point is clear that there is a new focus on the rights of the fetus as a person. Contributing to this fourth complexity are people's religious and cultural beliefs. A 2012 Gallup Poll indicates that most Christians are pro-life, while those who are not religious are mostly pro-choice (Saad, 2012). The sample size of other religious beliefs and abortion views is too small to be considered statistically significant (Saad, 2012).

Thus, the fifth complexity of abortion is religious, cultural, and personal beliefs. Every person's opinions are informed by all his/her experiences throughout life, ultimately informing his/her opinion on abortion. This makes abortion an issue that people feel strongly about. This also makes it difficult to change others' opinions on the situation, further polarizing the argument and taking the focus off women's rights.

Why Women have Abortions

The sixth and last complexity of abortion is the reasons why women choose to have abortions. At first glance, this does not seem to be a salient complexity, but it is a central question. A key argument for many supporters of abortion believe in the legality of abortion to meet the needs of rape and incest victims. However, studies indicate that this situation is not as common as people think.

A study done at the Guttmacher Institute in New York shows that rape and incest account for barely 1% of abortion cases (Finer et al., 2005). The most significant reasons women had abortions were that having a baby would dramatically change the mother’s life (Finer et al., 2005). Figure 2 shows the data table from this report.

TABLE 2. Percentage of women reporting that specified reasons contributed to their decision to have an abortion, 2004 and 1987

Reason	2004 (N=1,160)	1987 (N=1,900)
Having a baby would dramatically change my life	74	78*
Would interfere with education	38	36
Would interfere with job/employment/career	38	50***
Have other children or dependents	32	22***
Can't afford a baby now	73	69
Unmarried	42	na
Student or planning to study	34	na
Can't afford a baby and child care	28	na
Can't afford the basic needs of life	23	na
Unemployed	22	na
Can't leave job to take care of a baby	21	na
Would have to find a new place to live	19	na
Not enough support from husband or partner	14	na
Husband or partner is unemployed	12	na
Currently or temporarily on welfare or public assistance	8	na
Don't want to be a single mother or having relationship problems	48	52*
Not sure about relationship	19	na
Partner and I can't or don't want to get married	12	30***
Not in a relationship right now	11	12
Relationship or marriage may break up soon	11	16*
Husband or partner is abusive to me or my children	2	3
Have completed my childbearing	38	28**
Not ready for a(nother) child†	32	36
Don't want people to know I had sex or got pregnant	25	33*
Don't feel mature enough to raise a(nother) child	22	27*
Husband or partner wants me to have an abortion	14	24***
Possible problems affecting the health of the fetus	13	14
Physical problem with my health	12	8**
Parents want me to have an abortion	6	8
Was a victim of rape	1	1
Became pregnant as a result of incest	<0.5	<0.5

*p<.05. **p<.01. ***p<.001. †This was a write-in response in 2004 and 1987. Note: na=not applicable, because survey questions were not comparable. Source: 1987—reference 4.

Figure 2- Reasons why women have abortions, Finer et al (2005).

Since such a small percentage of abortions are for reasons outside the woman’s control, many believe that abortions should not be legal at all. This adds another layer of complexity that is yet again, not a women’s rights issue.

The Underlying Problem

There are six complexities in the legality of abortion that demonstrate that it cannot solely be a women's rights issue: 1.) others' opinions are important in the decision to have an abortion 2.) it is an emotional decision 3.) the rights of the fetus vs. those of the mother 4.) whether the fetus feels pain at a certain point of pregnancy 5.) religious and cultural beliefs 6.) reasons why women have abortions. However, the main reason that abortion cannot be considered a women's rights issue is because the essential question that informs the answers to each of the six complexities is "Is the fetus a human life or not?" If a person's answer to this is yes, then immediately the practice of abortion is not a women's rights issue, but a human rights issue.

If a person's answer to this is no, then he/she is forced to explain what the fetus is. Even if the being is reduced to a glob of living cells, abortion is killing a living organism of some kind, bringing in a whole different set of complexities and beliefs. For example, scientists are held to high standards of ethical research especially when dealing with living organisms. Thus, those same standards would have to apply to medicinal areas, too, and abortion then becomes an ethical science issue.

Now What?

Because there are so many levels of complexities inherent to abortion, it cannot be considered simply a women's rights issue and it was a poor choice for progressing the women's rights movement. A better first choice would have been education laws allowing women more access to better education. Once women have better access to education, they have more access to better employment. Workplace laws would be the next step, then. Equal pay is a significant problem for working women. Although there is some debate over how great the gap is, research suggests the gap does exist, tracing back even to 1998. Waldfogel (1998) reported that women

with children earned only 60% of men's pay, and lags 63% to 70% behind women without children (Waldfogel, 1998).

Maternity leave is related to this pay gap between mothers and those who are not. Laws should be passed that allow women to have longer, paid maternity leave. The first major step towards maternity leave was the 1993 Family and Medical Leave Act, signed under the Bill Clinton administration (Hofferth & Curtin, 2006). Although it provided a minimum 12 weeks unpaid leave for women, it had significant limitations. The Act required that women requesting leave work for a company "with more than 50 employees and have worked 1,250 hours the previous year" (Hofferth & Curtin, 2006). Some states have made some progress beyond these stipulations. California passed a policy that required at least 6 weeks of paid leave for mothers (Hofferth & Curtin, 2006). However, 6 weeks is still not enough time for mothers to ween their newborns from them for long periods of time. Thus, there is still much room for improvement in this area.

Women should also have more access to contraceptives. Contraception is expensive because companies recognize that contraceptives are in high demand and people will pay more because they need it. For example, one tablet of Plan B is \$50 (Target, n.d.). Safety-net health care centers, such as local health departments, have made some small steps towards helping women have access to contraception at an affordable price because these centers benefit from federal government money designated for contraception (Publicly Funded Family Planning, 2016). Birth control prices are based on the woman's level of income to ensure that it is within her price range. They also provide Plan B and other emergency contraceptives at discounted prices.

Last, better laws punishing sexual harassment in the workplace should be set in place. Quid pro quo harassment (i.e. "have sex with me or I will fire you") is illegal and employers are

immediately liable for these situations. However, most other issues are not completely protected because employers can escape liability by arguing the Faragher- Ellerth defense. Essentially, this means that if employers show they took careful steps to protect employees against harassment, or that the employee failed to report the harassment, they are not liable (Reuters, 2017). This also means that employees are not protected against off-handed, flirtatious comments.

The most recent example that demonstrates the scope of sexual harassment is the #metoo social media movement. Started by Alyssa Milano following the harassment accusations surrounding Harvey Weinstein, the movement rapidly went viral with mostly women posting “#metoo” to express that they had in some way been harassed before (Zillman, 2017). In a recent poll conducted by ABC News and the Washington Post, 54% of American women reported experiencing some type of sexual harassment in the workplace (Zillman, 2017); and 25% of those women were harassed by their male superiors (Zillman, 2017). In total, some 33 million American women have been harassed and 14 million sexually abused (Zillman, 2017). These statistics demonstrate that this is still a relevant issue in 2017.

Many of these issues are still prevalent because they were not handled before abortion and abortions tie with women’s rights harmed their progress significantly. These steps would have positively progressed the women’s rights movement, instead of hurting it by associating such a volatile issue with the movement. There are better alternatives for women to protect themselves against pregnancy and continue to provide for themselves if they have a child that make abortion an unnecessary first step in women’s rights. The law should have and still needs to focus on these issues before it can ever deal with abortion well.

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