The Future of Abortion Rights:

A Step in the *Right* Direction?

An Honors Thesis

by

Sarah Moore

Thesis Advisor

Judy Gray

Ball State University

Muncie, Indiana

May 2005
Abstract

In a nation where dreams are within reach, it is easy to take things for granted. Not excluded from such an abuse are the rights that the U.S. Courts uphold in Constitutional Law. The particular right to decide whether or not to have an abortion is currently in a precarious position. Over the years, the original decision of Roe v. Wade has been amended multiple times, with each revision pulling the reigns in on reproductive freedom. With existing conditions, this entitlement is in jeopardy of revocation. With the re-election of President Bush and the impending Supreme Court Justice changes, coupled with landmark decisions being made about criminal law regarding unborn children, many changes may be made in the next few years. No matter what one’s personal beliefs are it is important to be informed on the issue in order to make educated decisions and know where to take action. Social workers have a special interest in this duty. As advocates for clients, their connection to the needs of others compels them to work much harder to keep up on anything that may endanger the freedoms clients rely upon. It is a tough feat, but education is the first step towards effective action.

Acknowledgements

I would like to greatly thank Judy Gray. A highly intelligent and compassionate woman, I came to her first with entreaties to be my advisor. Having been her student last semester, I knew she would provide me with just enough guidance and encouragement to complete this thesis effectively. And while I may not have been the perfect thesis student, she has been ever patient with me and deserves much more reward than the praise a tiny glib on paper could provide to her. Thanks from the bottom of my heart, Judy!
Introduction

When the Revolutionary War won freedom of religion from the Church of England, the United States earned its own nationality. Ever striving to be a pioneer in the human rights, the Constitution was made to ensure the American peoples’ best interests, from the right for every man and woman to vote to equal opportunity employment. Americans have a strong national pride, even pledging allegiance to the flag. But what will happen with an issue that makes the sacred phrase “liberty and justice for all” self-contradictory?

For as long as reproductive rights have been around, they have sparked controversy over whether a woman’s right or an unborn child’s right should take priority. For most people, this is not simply an issue of right and wrong. Every year new bills are created, their supporters hoping they will be passed in order to create some semblance of what should be. This debate is, no doubt, far from over, as even when those bills are passed, they face huge opposition and appeal processes. But with current political conditions, including the re-election of President Bush, multiple pending Supreme Court turnovers, and controversial court cases making new precedents, America comes closer and closer to ground-breaking decisions that could change what pregnancy means to America’s young women.

Whatever personal beliefs one holds, it is important to explore the issue fully, as wise opinion is based upon fact. As advocates for others, social workers have not only the duty to know the facts, but also an obligation to know what stand the National Association of Social Workers (NASW) takes and to carefully abide by the Code of Ethics. As will be seen, the issue of reproductive rights is packed with passionate beliefs
and moral dilemmas, sometimes making that adherence to standards a tough, personal struggle.

**Before Roe v. Wade**

Reproductive rights became a national concern when the Supreme Court ruled in favor of a mother's choice in the landmark case *Roe v. Wade*. Prior to this decision, laws concerning abortion were left up to the states. Five states in the nation: California, New York, Washington, Alaska, and Hawaii, had legalized all abortion by 1970, while 9 others legalized abortion only if the mother's health was in danger (Kalist 2004). An interesting study was done concerning the effect of these pre-*Roe v. Wade* abortion laws on the female labor force, hypothesizing that "access to abortion (and other forms of contraception) reduces fertility which, in turn, increases labor force participation among women" (Kalist 2004). It showed that "in states where abortion was made legal prior to *Roe v. Wade*, strong evidence exists that abortion positively affected female labor force participation, especially of single black women" (Kalist 2004). The results also "indicate that there was no effect on female labor force participation" from the more modest reforms that allowed abortion only to save a mother's life (Kalist 2004). But regardless of the labor force factor, abortion had been long deliberated by American women, even if it took until 1973 to meet a national venue.

**Arguments For and Against**

In the most basic sense, abortion is one option available to women deciding what to do about unwanted pregnancies. "Abortion is defined as 'the termination of a pregnancy before the fetus can survive outside the uterus'" (Zastrow 2004). In spite of what one's personal beliefs about abortion are, pressing arguments for both sides exist.
Believing in the right of each unborn baby to live, "pro-life" is the name given to those opposed to abortion, while "pro-choice" denotes those who believe in each woman's right to choose whether or not to have one.

The pro-life stance revolves around the belief that "human life, and therefore, personhood, begins at conception, and so an embryo, at any stage of development, is a person. Therefore...aborting a fetus is murder, and...the government should make all abortions illegal" (Zastrow 2004). Supporters feel that the right of an egg is basic, and the aborting mother is selfish, "preferring her own pleasure over the life of her unborn child" (Zastrow 2004). They also assert that contraceptives are readily available and logically, there should not be a need for abortion at all. Responsibility for one's actions is a basic belief of pro-life groups.

The pro-choice argument is that "a woman has a right to control what happens to her own body and to 'care for her life, her happiness, her well-being (and in some cases the well-being of her present and future family and children)'" (Zastrow 2004). Supporters of this side believe that if abortions were made illegal, women would still find ways to obtain them, as they have in the past, with not all procedures being performed in a safe environment. Pro-choice also poses that "no contraceptive method is perfectly reliable, ... and services are not readily available and accessible to all women" (Zastrow 2004). They assert that abortions are "necessary in many countries with soaring birth rates" (Zastrow 2004). Self-determination is the basic belief of pro-choice groups, but ideology plays only a part in the big picture of making a decision about abortion.

Circumstances tend to blur the lines of perceived right and wrong, and also make lawmaking a difficult task for government officials. The use of an abortion to save a
mother’s life has almost always been a given before, but there are other conditions that are more wrenching. For example, the condition of the fetus has posed multiple questions for those involved with decisions. Zastrow (2004) asks, “If the fetus is severely damaged or defective, should the mother be forced to carry it to term?” Should she also “be forced to provide the huge resources necessary for maintaining such a child?”

Another circumstance that could cause doubt about one’s stance on abortion and reforms is that passing certain restrictive legislature tends to discriminate against the lower classes. For example, some clinics require patients to undergo counseling and/or wait 24 hours before following through with the procedure. If a mother doesn’t have that expendable income, she doesn’t have the option to stay. Her efforts are thwarted. Similarly, some states also require expensive tests for pregnancies that ascertain whether a fetus would be viable outside of the womb. Yet again, only women of higher classes can afford these deterrents. If restrictions are to be made, they must be made fairly.

Above all others, the factor that has most made its way into current lawmaking is the length of gestation and when the government can step in to set limitations. Divided into three segments of development, or trimesters, restrictions on abortion increase as the fetus develops. There are relatively few restrictions on first trimester abortions. Second trimester abortions are regulated by individual state governments, while third trimester abortions require extensive circumstances to merit allowance.

Methods of Abortion

Although abortion dates back to before the Egyptians, with ancient scrolls proving its presence, modern technology has much improved our methods from mixtures of thorns, dates, honey and plant fibers (Riddle 1997). There are risks involved with all
Abortion Rights?

procedures, but the risks involved in any of these types of abortion are still far less than the risks involved in delivering a child. During the first trimester, the method of vacuum aspiration is most often used, accounting for 90% of all abortions (Zastrow 2004). It is performed through “dilating the cervix...by inserting a series of metal rods with increasing diameters. Next, a small tube is inserted into the vagina and then through the cervix into the uterus. The tube is connected to a suction machine that vacuums out the fetal tissue from the uterus. The physician may then use a scoop-like instrument called a curette to scrape out any remaining tissue” (Zastrow 2004). The entire procedure requires only about ten minutes.

Most effective during the first 7 weeks of pregnancy, another method common to first trimester is the use of Mifepristone, aka RU 486 (Zastrow 2004). Abortion-inducing drugs “prevent(s) the uterine lining from getting the hormones it needs to continue supporting the fertilized egg, which then dies” (Zastrow 2004). Relatively new to the United States, RU 486 has been showing promising results in treating many diseases, possibly even AIDS (Zastrow 2004). In addition, a study published in the American Journal of Epidemiology showed that overall, birth from women “with one previous mifepristone-induced abortion had a lower rate of preterm delivery and their infants tended to be heavier at birth in comparison” (Chen et al. 2004).

Dilation and evacuation, performed during the second trimester, is an extended version of vacuum aspiration. Because “a greater amount of fetal material must be removed...general anesthesia instead of local is used,” adding the risks of an anesthetic to those already present (Zastrow 2004).
Most expensive and complicated is aborting by induced labor. Drugs are given to the mother to trick her body into giving premature, still-born birth. Lengthy and dangerous, it is now “used in only 1 percent of all abortions in the United States” (Zastrow 2004). Seemingly innocent, this segmented approach to view pregnancy, set down by Roe v. Wade 32 years ago, is just one of the many sources of its many appeals, all aimed at reforming this benchmark decision.

Roe v. Wade to Present Day

“To reach it’s decision in Roe, the Supreme Court drew on decades of case law that established that the government cannot interfere with certain personal decisions about procreation, marriage, and other aspects of family life” (Planned Parenthood… 2005). Through Griswold v. Connecticut and Eisenstadt v. Baird, the Supreme Court held up the right of married persons and single persons respectively to use birth control. When Roe was taken all the way to the top Court, 12 other similar cases across the nation were also challenging abortion bans too. People were already beginning to expand on these two cases, not knowing they would pale in comparison with what was soon to come.

In all but 14 states all abortion was illegal, yet the decision was still made for Jane Roe, a Texas woman fighting for her right to obtain an abortion in her home state. As is typical of previous landmark decisions rendered by the courts laws, the specifics left much room for state interpretation. “Over the next two decades, the Supreme Court was repeatedly called upon to decide whether a wide range of abortion statutes violated a woman’s right to privacy” (Planned Parenthood… 2005).
*Harris v. McRae*, the case between a Medicaid recipient and the Secretary of Health and Human Services, debated whether Medicaid should pay for medically necessary abortions. Siding with Medicaid, the Court upheld that *Roe v. Wade* did not guarantee “the financial resources to avail herself of the full range of protected choices” (Goldman “*Harris v. McRae*” 2004). This was the first of many financial stipulations to *Roe v. Wade* that were supported, both on state and national level.

The Supreme Court has also upheld part of the statute fought in *Hodgson v. Minnesota*, requiring that dual parental notification and a 48-hour waiting period be instituted for minors desiring an abortion. The law did allow for exception from this clause, should the minor “maturely demonstrate that notification be unwise” (Goldman “*Hodgson v. Minnesota*” 2004). The final ruling of the court approved all stipulations in question except that it deemed consent from only one parent necessary.

In 1992, with the court case *Planned Parenthood v. Casey*, the Supreme Court once again held up the decision of a woman’s right to privacy laid down nearly 20 years ago then. But although the basic decision remained the same, some major changes were enacted. In this battle of the legal system, Pennsylvania statutes were being fought for violating decisions standardized with *Roe v. Wade*. Again, waiting periods were contested, along with parental notification for minors. These requisites were maintained, while the more conservative condition of spousal notification was discounted in favor of the “‘undue burden standard’” which bans the government from passing “laws that have ‘the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion’” (Planned Parenthood… 2005). It was also decided that the fetus’ viability outside the womb would be the critical construct of whether abortion was appropriate
instead of what trimester limit the pregnant woman was inside. (Goldman "Planned Parenthood..." 2004).

Most recently, the Partial-Birth Abortion Ban Act, a hopeful bill since the mid 90’s, was signed by President George W. Bush at the end of 2003 with the approval of Congress. Explained by President Bush himself, the Partial-Birth Abortion “involves the partial delivery of a live boy or girl, and a sudden, violent end of that life...In the course of the congressional debate, the facts became clear... As Doctor C. Everett Koop, the pediatrician and former Surgeon General has pointed out, the majority of partial birth abortions are not required by medical emergency. Congress found the practice is widely regarded within the medical profession as unnecessary, not only cruel to the child, but harmful to the mother, and a violation of medical ethics” (The White House 2003). An extremely controversial law for some pro-choice supporters, the signing was struck down by U.S. District Court Judge Phyllis Hamilton of San Francisco, “on three grounds: it places an undue burden on a woman seeking a second trimester abortion, the language is unconstitutionally vague, and the law does not have the required exception for procedures that preserve a woman’s health.” (Gill 2004). Despite these arguments the law remains intact and unchanged, having seemingly more support than opposition.

Current Trends and Circumstances

It hasn’t been appealed yet. Delays may be attributed to the precarious situation of the majority vote in favor of Roe. With the newly reconsidered stance of Justice Anthony Kennedy, the nine are head-locked at 5-4. With the crucial decision pending on just one vote, much depends upon the fate of three current justices. Sarah Weddington, the Texan lawyer who argued for Jane Roe comments, “I never, never, never thought
we’d be in this position...At the time, I thought it had been written in concrete, and now I see it’s sandstone” (Women’s News 2005). Sandra Day O’Connor, John Paul Stevens and Ruth Bader Ginsberg are all up for retirement soon. Should any of these three happen during this administration, President Bush has made clear that he will appoint a conservative judge on the issue of reproductive rights. Since there is also a majority of Pro-life supporters in the Senate who must approve the nomination, the nomination will surely be approved. A resignation or death by any of the five supporters could reverse the vote ratio on Roe v. Wade. It is estimated that if this happens, “17 states could face sweeping criminal bans” (Cooper 2003). Changes will be made if the composition of the Supreme Court shifts. But these changes will be well publicized and have a sudden onset, while a group of more subtle laws have been appearing in the court system, sufficiently scaring pro-choice supporters and pleasing pro-life supporters (Katz 2004).

This nuance is apparent in the example of President Bush’s declaration “that a fetus is a child under the government’s State Children’s Health Insurance Program” (Cooper 2003). When such wording as this makes its way into laws, it can set precedents to be referred to when trying new cases about the concept of a fetus as a living child.

It is not only President Bush’s wording causing strife for pro-choice activists. There have been a recent string of fetal homicide laws in the news. “More than two dozen states, including California, have adopted “fetal homicide” statutes, and prosecutors will often seek a double-murder charge when a pregnant woman is killed,” as was the case in last year’s infamous trial of Scott Peterson (Jennings 2003).

Most startling in this series of new cases is an indictment of a South Carolina woman, “found guilty of homicide...for killing her unborn child by smoking crack
cocaine while pregnant" (T.B. n.d.). This could open many doors, not only as it relates to
the fetus being a viable human being, but also whether pregnant women could also be
charged with neglect and abuse for smoking or drinking during pregnancy (T.B. n.d.).

Current Bills

The criminal courts are not the only place where the fight for an unborn child's
right is making waves, subtle though they may be. In the current 109th congress, 2 of the
3 bills relating to reproduction rights have that same goal in mind.

One such bill is S.8, which states that Title 18 should be amended. It aims to ban
the transportation of minors across state lines for the purpose of obtaining an abortion
without parental notification. The bill emphasizes the need for parental guidance in times
of difficulty for children. The bill also stipulates for parents to take civil action should
they have any damages resulting from violation of this bill. This prohibition of crossing
state lines was read twice in the Senate and referred to the Committee on the Judiciary,
where it remains now (Ensign (sponsor) 2005).

The second bill that upholds the pro-life stance on abortion is S. 51 IS, or
H.R.356. Containing astonishingly graphic descriptions, the bill's purpose is "to ensure
that women seeking an abortion are fully informed regarding the pain experienced by
their unborn baby" (Brownback (sponsor) 2005). The rationale given for this bill cites
that after 20 weeks, fetuses that undergo prenatal surgery are given anesthesia, and that
even animals in a slaughterhouse are given anesthesia, this bill would require women
attempting to obtain an abortion after that time to hear an oral statement describing that
the U.S. Congress has found:

"The Dilation and Evacuation (D&E) method of abortion is
commonly performed in the second trimester of pregnancy. In a
dilation and evacuation abortion, the unborn child’s body parts are grasped at random with a long-toothed clamp. The fetal body parts are then torn off the body and pulled out of the vaginal canal. The remaining body parts are grasped and pulled out until only the head remain. The head is then grasped and crushed in order to remove it from the vaginal canal.”

The abortion provider must then describe the risks of anesthesia and relay the costs to administer it, because with its enactment, the bill would oblige women to consider anesthetizing the fetus before proceeding. The bill does make an allowance for medical emergencies. This bill was also read twice, but referred to the Committee on Health, Education, Labor, and Pensions.

Though the third bill, S.20, proposes to reduce the number of abortions as well, it does not directly advocate for the unborn child’s right. Instead, it advocates “to expand access to preventative health care services that help reduce unintended pregnancy, reduce the number of abortions, and improve access to women’s health care” (Reid (sponsor) 2005). Providing for access to family planning for low-income families, equity in contraceptive coverage, and compassionate assistance and free emergency contraceptives for rape victims, the bill spans a large range of reproductive rights issues.

Known by their short titles, the Child Custody Prevention Act, the Unborn Child Pain Awareness Act of 2005, and the Prevention First Act all have their virtues and vices. However, by the time these controversial bills reach the public eye, it is too late for some to assert their beliefs. It is the job of an American citizen to vote in representatives and senators that will support the perspectives he or she holds to the House and Congress. Unfortunately, some do not see the eminent need for this act until the issues are in jeopardy. Although the makeup of these governing bodies will not change at all for
another two years, education upon the topic of how legislators vote may enable one to vote accordingly the next time around.

**Policy Trends**

For instance, an intriguing study was done to assess whether or not the increasing number of women in Congress has influenced how men debate and see the issues. This is especially interesting due to the gendered topic of reproductive rights researched through studying the arguments for and against the Hyde Amendment, a statute designed to deny federal funding for abortion except where the mother's life is in danger. The researchers found "that men and women frame the abortion debate differently, and...some evidence that women members of Congress have shifted the debate over time to focus less on the morality of abortion and more on the health of the pregnant women" (Levy, D. et al. 2001)

A different way to look at possible candidates is through their partisanship and/or religion. Another study was done to see which of these two factors would be more indicative of the voting on abortion issues, and therefore would be useful information for choosing a state representative. The researchers found that as time wears on, political parties are thinking less of abortion as a topic to be avoided and are more readily facing the issues it brings to government. More and more pressure is put on legislators to follow party beliefs rather than personal ones (Scheter 2001). No matter which side advocated for, the decision of who to vote for is crucial. It is the most basic and relatively easy way to have one voice heard throughout the nation.
**NASW's Stance**

Although as personal individuals, social workers may vote for candidates that stand for their own beliefs, in the professional world, they must adhere to the NASW policy statement:

"The social work profession’s position concerning abortion, family planning, and other reproductive health services is based on the principle of self-determination....Every individual (within the context of his or her value system) must be free to participate or not participate in abortion, family planning, and other reproductive services...The profession supports...the provision of reproductive health services including abortion services that are legal, safe, and free from duress for both patients and providers. Even more specifically, NASW

- supports a woman’s right to seek and obtain a medically safe abortion under dignified circumstances
- opposes government restrictions on access to reproductive health services, including abortion services, or on financing for them in health insurance and foreign aid programs
- opposes any special conditions and requirements, such as mandatory counseling or waiting periods, attached to the receipt of any type of reproductive health care"

(Zastrow 2004)

As has been described, many of these points are endangered in the current political arena. It is the stance of NASW that social workers must work with legislative officials to protect these statutes, perhaps even by running for office (Edwards 1995). But often this adherence to code is easier said than done. If a social worker’s personal beliefs are not the same as the NASW policy, many ethical dilemmas can arise.

**Ethical Dilemmas**

Going against the guidelines of social work’s national body is not an option for a professional. When working with those that are culturally different, conflict of interest is inevitable at some time or another. In these situations, when emphasized by abortion
issues, those with a pro-life view have the more difficult task in following the Code of Ethics. Since pro-life supporters believe that a fetus becomes an unborn child upon conception, the social work value of dignity and worth of the person is often pitted against the other social work values of service, social justice, importance of human relationships, integrity, and competence.

For example, if a pro-life case manager for adults is approached with questions of advice about whether or not to have an abortion, one ethical dilemma would arise between dignity and worth of the person and service. Prizing “service to others above personal interest”, the code sets down the standard of self-determination, the determination and clarification of reasoning and decision making with the conclusions coming directly from the clients themselves (NASW Delegate Assembly 1996).

Similarly, if a woman seeking an abortion comes in with a discrimination problem on the part of the hospital she presented at, a social worker may be torn by the ethical dilemma between dignity and worth of the person and social justice. From the Code’s perspective, “social workers…seek to promote the responsiveness of organizations, communities, and other social institutions to individuals’ needs and social problems” (NASW Delegate Assembly 1996). Depending on the fervor behind a social worker’s pro-life stance or for another social work value, these situations may need to result in a referral to a less biased source as recommended by the NASW.

In working with clients who have a different belief system than one’s own, the NASW’s Code of Ethics states that “social workers should be alert to and avoid conflicts of interest that interfere with the exercise of professional discretion and impartial judgment…In some cases, protecting clients’ interests may require termination of the
professional relationship with proper referral of the client (NASW Delegate Assembly 1996). A mature action on the part of the social worker, recognizing the personal inability to address the abortion issue, collectively serves to hold up the values of importance of human relationships, integrity, and competence.

**Conclusion**

The NASW lists some of the most essential ways to ensure human rights, and a social workers’ mandate to comply with these strategies certainly makes their role a political one. That fact compels each and every social work professional to pursue the latest knowledge about issues supported by the NASW that may be jeopardized by pending legislation. In the next few years, much will be revealed about this nation, depending on the fate of the Supreme Court and the passionate strivings by pro-life supporters. Though “freedom and justice for all” may not be a feasible goal in relation to reproductive rights, American democracy allows for its citizens to fight for whatever personal belief each holds. Those who choose to act receive the greater benefit.
Works Cited


