

Annotated Bibliography

Topic:

This paper will examine the history of abortion laws before and including *Roe v. Wade*, and the effect of abortions on the individual and society

"Abortion." *The Journal of Criminal Law and Criminology* 64(1973): 393-399.

"Abortion" is a Supreme Court Review of *Roe v. Wade* and *Doe v. Bolton*. This article summarizes the litigation and explains the decision of *Roe*. *Roe v. Wade* involved a woman who believed that the prohibition of abortion was a violation of her personal liberty as detailed by the Ninth Amendment and her choice to terminate her pregnancy. "Abortion" also explains the Model Penal Code of the American Law Institute, which contained provisions permitting abortions. This is important to my research because the Moral Penal Code governed the legality of abortions before *Roe v. Wade*. Interestingly, "Abortion" states that most of the courts that upheld abortion laws recognized a woman's right to privacy. If this is the case, then why is a woman required to have an abortion at a specialized clinic that reports its findings to the state? Although a woman's name is withheld, her procedure and medical information are not. Additionally, "Abortion" examines when life actually begins. Unborn children are not recognized as persons under any other law. They do not have legal rights or property rights. If the unborn are not considered people, they cannot be protected under the law. "Abortion" does not believe that the decision reached in *Roe v. Wade* is a proper constitutional foundation to govern the law or enforce provisions on abortion.

Constitution of the United States of America. Reprinted in

<http://www.archives.gov/exhibits/charters/constitution.html>. Retrieved on 7 Oct 2008.

The United States Constitution is very important to my paper and crucial to understanding my research. Firstly, *Roe v. Wade*, the backbone of my paper was tried in the Supreme Court because Jane Roe believed that abortion violated the provisions of Amendment Nine of the Bill of Rights. The Supreme Court ruled in her favor and legalized abortion, because an individual's right to privacy included a woman's right to abort her fetus, if she desired or it was deemed medically necessary. In order to fully understand the decision, it is necessary to review the content of the Ninth Amendment in regards to the right of privacy. Additionally, the United States Constitution needs to be reviewed simultaneously with the *Roe v. Wade* decision to compare the decision to the law. Additional sources cite the Fourteenth Amendment as a violation of an individual's right to privacy and property. This amendment is cited because several sources argue that an individual's right to property includes any substance, organ, or parasite living inside her. The woman is free to abort the fetus if she desires, because the fetus is her property. This amendment will also be reviewed in accordance with the claims of other sources.

Craig, Barbara Hinkson, and David M. O'Brien. Abortion and American Politics. Chatham, New Jersey: Chatham House Publishers, 1993.

Craig examines the public opinion of abortion. Fifty-eight percent of people want *Roe v. Wade* to be overturned. Only thirty-four percent of people support the *Roe v. Wade* decision. Public opinion, concerning abortion, has been measured over thirty-one years, and details the conditions of an abortion (health of the mother, rape, economic condition, etc). This is significant to my research because it supplies the public opinion concerning abortion in the years before and after *Roe v. Wade*. Craig also compiled research on demographic of the people who were surveyed, including sex, education, marital status, political identification, race, religion, and age. This information is very important because it could skew the public opinion results. It is important to get a broad sample to insure that diverse groups of people with varying opinions are surveyed. Craig also compares two different surveys, conducted by Gallup/ Newsweek and CBS/New York Times, which has vastly different results, although the surveys were conducted in the same year. Craig believes that the survey's differing results are because the questions were phrased differently. Craig also details survey results regarding people morals beliefs towards abortion. Many people believe that abortion is morally wrong. This information can be compared with Finnis' argument based on morality and natural law.

Donohue III, John J., Steven D. Levitt. "The Impact of Legalized Abortion on Crime." The Quarterly Journal of Economics 116(2001): 379-420.

Donohue and Levitt explore the impact of legalized abortion on crime in the years following *Roe v. Wade*. The authors believe that legalized abortion has decreased crime rates because the potentially delinquent children are being aborted, rather than birthed. Women who have abortions, typically are teenagers, unmarried women, and the economically disadvantaged, are the most likely to give birth to delinquent children. Donohue and Levitt believe that this may account for up to fifty percent of the decrease in crime rates. If there are fewer delinquent children, they cannot commit as many crimes, causing the decrease. Crime is also separated into three sections: violent crime, property crime, and murder. Delinquent teenagers and people in their early twenties most frequently cause property crime. Donohue and Levitt cite a number of studies that examined the delinquency rates of children who were born to women who were denied the right to have an abortion by their state. Although these women kept their children, the children were not raised properly and grew up feeling as they were "unwanted." I will use Donohue and Levitt's research to examine if the state had always allowed abortions, would the United States' crime rate be much lower? Arguably, as I will explore in my research, if the majority of criminals are unwanted children, the answer would be yes.

Finnis, John M. "Natural Law and the Rights of the Unborn." Abortion and the Constitution. Ed. Dennis J. Horan, Edward R. Grant, Paige C. Cunningham. Washington DC: Georgetown University Press, 1987.

John M. Finnis explains his beliefs through a counterargument to an unnamed young philosopher's presentation on life's beginning. He argued that human life begins when the brain is sufficiently developed to support consciousness. He argues that until this point, the fetus is considered "brain dead." The author of this essay believes that brain death is the loss of integrated neocortical functions and consciousness, not the loss of life. True death, Finnish argues, is when a physical mass cannot be kept functioning by "mechanical or quasi-mechanical means." Finnis bases much of his argument on moral obligations to uphold natural law. Finnis explains that natural law is the law that governs human life. Finnis bases much of his argument on his moral, stating that fetuses are liable to be killed and that abortion doctors "have a duty" to kill. This is compared to a loss of individuality from utilitarianism. Utilitarianism, as agreed on by philosophers, is described a systematic loss to recognize individual people. The author argues that the unborn have a right to life because they have a potential to have a vocation and moral or philosophical responsibilities. Because the unborn have these proposed duties, they are entitled to the decrees of natural law. This essay is beneficial to my research because it compares views of abortion in reference to one's morals or sense of the law. In an aspect of my paper I will explore morals and case law and their basis to form a new law.

Garrow, David J. Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade. New York: MacMillan Publishing Company, 1994.

David J. Garrow outlines the Supreme Court Justices by giving a short biography of their political, legal, and judicial careers before their nominations. This information is crucial to the decision in *Roe v. Wade*. A Supreme Court Justice must have enough legal experience to put aside their morals and religious beliefs to determine if a law is constitutional or unconstitutional. However, this chapter is limited because it is difficult to say that a Justice's biography and time of nomination made him vote a certain way in regards to *Roe v. Wade*. Additionally, Garrow describes the stories of several individuals who were either directly or indirectly affected by abortion. These people are women who have had an abortion or have had a friend or significant other who has had an abortion. This is important to the content of my paper because it allows me to understand how abortion has affected real people's lives, both positively and negatively. Garrow also details a significant amount of medical research to support the medical facts unexplained in the published decision of *Roe v. Wade*. It is much easier to understand why the Supreme Court Justices divided a woman's pregnancy into three stages with three different conditions of abortion, when it is backed by medical fact and expertise.

Hansen, Susan B. "State Implementation of Supreme Court Decisions: Abortion Rates Since *Roe v. Wade*." The Journal of Politics 42(1980): 372-395.

Susan B. Hansen does not explicitly state if she is for or against abortion. However, she does detail the effects of the *Roe v. Wade* decision and the legalization of abortion on society, through "welfare, civil liberties, race relations, religion, and women's rights." Hansen compares abortion rates before and after abortion was legalized. However, there are several limitations with Hansen's research. The first is that the number of abortions performed before *Roe v. Wade* is unknown, because they were done illegally. The number is an estimate, but it may be wrong. It is important to remember that this number is purely a guess; it is not fact. Additionally, Hansen's essay was published in 1980. It is difficult to conduct research trends when there is only seven years to measure data. The trends with abortion may be very hard to detail with such few years of data. Additionally, Hansen's research does not explain the variance in abortion rates between state abortion rates. Despite this, Hansen's research does compare the abortion rates between different religious groups, separating the women who have an abortion because their religion does not approve of sex before marriage, from the women who have abortions because of poverty or other inability to care for their children or because of health reason.

Harrison, Maureen, and Steve Gilbert, eds. Abortion Decisions of the United States Supreme Court: the 1970's. Beverly Hills: Excellent Books, 1993.

Abortion Decisions of the United States Supreme Court: the 1970's details Supreme Court cases concerning abortion during the 1970's. Harrison and Gilbert rewrote eight abortion cases in "plain English for the general reader" and added definitions, translations, identifications, and explanations. For the use of this paper, only the decision from *Roe v. Wade* will be used. The case details Jane Roe, who brought a suit against Texas stating that abortions are a violation of an individual's right to privacy, as outlined by the Ninth Amendment. Roe could not afford to travel to another jurisdiction, and felt that she should be allowed to have a legal abortion in her own state. The decision in *Roe v. Wade* was that the "Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." This decision details the decisions of the Supreme Court Justices and their explanations for their decisions. This case is pivotal to the main argument in my paper. *Roe v. Wade* is a turning point in abortion law. Without *Roe v. Wade*, abortion may not be legal. The other sources used in this paper will be compared and contrasted to this Supreme Court decision.

Jenkins, Sabrae. "Abortion Rights, Poor Women, and Religious Diversity." From Abortion to Reproductive Freedom: Transforming a Movement. Ed. Marlene Gerber Fried. Boston: South End Press, 1990.

Jenkins details the Religious Coalition for Abortion Rights, which is an organization of varying religious bodies that approach abortion based on theology. This belief is very different from the other sources because it relies solely on religion and theology, instead of on morals, ethics, or the law. The organization supports a woman's right to choose- whether she should have an abortion or carry her pregnancy to term. Within my paper, this source will function as a comparison for popular and public opinion on abortion based on morals and ethics. Jenkins also provides information on the Women, Infants, and Children Program (WIC), which is a governmental program that supports "nutritionally at risk" pregnant women and children who are younger than five. This program is run by the federal government. WIC keeps many children out of the hospital because it is preventing malnourishment. However, this program is not as effective as it has the potential to be, because many women are not aware that they qualify. For the purposes of this paper, I will examine if the creation WIC has an influence over abortion rates. Hypothetically, a woman may only have an abortion because she cannot afford to care for a child. If a governmental program, such as WIC, was introduced, this mother may be more willing to care for the child, because she will have governmental assistance. This paper will explore the trends of governmental programs as an influence to abortion rates.

Klick, Jonathan, and Thomas Stratman. "The Effect of Abortion Legalization on Sexual Behavior: Evidence from Sexually Transmitted Diseases." Journal of Legal Studies 32(2003): 407-431.

Klick and Stratman argue that the decision in *Roe v. Wade* has lowered the cost of sexual activity, causing individuals to have more amounts of sex, causing an increase in sexually transmitted diseases. The authors argue that more women are having abortions because the cost of having sex is lower. If a woman becomes pregnant accidentally, she has the option of having an abortion. Klick and Stratman argue that this option is more appealing to woman who would rather have an abortion than to take birth control pills, have a contraceptive device inserted, give their child up for adoption, or abstain from sex completely. Additionally, Klick and Stratman also cite multiple sources that have determined that the people who are most likely to have abortions are also apt to live in poverty and live off of welfare if they had chosen to become single parents. Klick and Stratman believe that the mother has physical, emotional, and mental effects of being pregnant, delivering the baby, having an unwanted baby or seeing the child go to another set of parents. For the purposes of the paper, this can be argued against the Modal Penal Code, which permits abortion if the health of the mother is at risk. The Code does not specify what type of health. This health can include the mother's mental and emotional state.

Luker, Kristen. Abortion and the Politics of Motherhood. Berkley, California: University of California Press, 1984.

Abortion and the Politics of Motherhood is unique because Luker uses the controversy of abortion, *Roe v. Wade*, the issues of morality and religion to predict the future public opinion of abortion. Luker believes that abortion has become more socially accepted and more people are sympathetic to women who have had abortions. Luker cites a number of Gallup polls over a twenty-five year span to support her reasoning. Luker's research is crucial to my paper because it will show how abortion has changed over time. This is important because the decision in *Roe v. Wade* happened approximately thirty-five years ago and the research post-*Roe* is fairly new. Luker applies the research trends to predict future trends. From this data, we can predict how the future public opinion can influence governmental programs, such as welfare and WIC. Because Luker examines both the pro-life and pro-choice sides of the debate, there are no limitations based on the presented evidence. However, the only limitation is that Luker's entire philosophy is based on past trends in public opinion, not reality. It is impossible to present reality as a fact when it has not happened yet. Despite this limitation, Luker's predictions are very important when looking at projected public opinion.

Lunneborg, Patricia. Abortion: A Positive Decision. New York: Bergin & Garvey, 1992. Lunneborg's book states that abortion can be a positive decision because it can help women feel as if they are in control of their life. The chapter, "Abortion and Women's Mental Health," is crucial to understanding the Modal Penal Code, which predated the legalization of abortion. The Code states that women can only have an abortion, among other conditions, if the health of the mother is at risk. An aspect of this paper will explore exactly what degree of "health" constitutes a "risk." Arguably, the health of the mother includes her mental and emotional state, as well as her physical state. Lunneborg makes her argument using interviews from young women who have had an abortion. These women assert that their mental health has been restored after their abortion because they are in control of their decisions and their life was not negatively affected as a result of the abortion. A portion of this paper will examine the laws concerning abortion before the Supreme Court decision in *Roe v. Wade*. This paper will analyze the question: If a woman could have proved to the Court that her pregnancy was affecting her mental and/or emotional health, would she have been granted an abortion based on the provisions of the Modal Penal Code? However, it is important to note that Lunneborg's research is solely supporting abortions, and does not have any information on the dangers of abortion on a woman's health (mental, physical, emotional, or otherwise).

Milbauer, Barbara, and Bert N. Obrentz. The Law Giveth: Legal Aspects of the Abortion Controversy. 1st. New York: Atheneum, 1983.

Barbara Milbauer wrote The Law Giveth in collaboration with Bert N. Obrentz. Both Milbauer and Obrentz are 1980 graduates of New York Law School. The Law Giveth focuses specifically on Jane Roe's story, *Roe v. Wade*, and the impact of abortion on the government and the economy. Jane Roe was raped multiple times by three men and became pregnant as a result. Jane Roe went to court to have abortion legalized, claiming abortion was a violation an individual's right to privacy, as detailed in the Constitution. The Law Giveth includes an excerpt from the trial of *Roe v. Wade*, as well as selections from the United States Constitution. Additionally, Milbauer and Obrentz's book also details the fundamental rights and undue burdens of an unwanted pregnancy and if the state has a legitimate interest to prohibit abortion. The Law Giveth will be used for the research in this paper because it argues the impact of the decision of *Roe v. Wade* on the United States economy and governmental programs, such as Medicaid and the sale of contraceptives. This is important because these factions affect the country on a national level. Milbauer and Obrentz also explore the religious aspect of abortion and the separation of church and state, the Human Life Bill, the extent of Congressional power, specifically through the fourteenth amendment. These are also important issues that affect American society.

Rose, Melody. Safe, Legal, and Unavailable?: Abortion Politics in the United States. Washington, DC: CQ Press, 2006.

Rose's Safe, Legal, and Unavailable? details many aspects of abortion. A section of Rose's book, titled "Who Has Abortions in the United States," is particularly relevant to my research because it details the demographic of women who typically have abortions. Rose states that the typical woman who has had an abortion is between the ages of twenty to thirty, has had a previous child, is economically disadvantaged, and Christian, among other characteristics. Rose also states that the rate of abortions strongly correlates with the level of income and the level of education. This information is crucial to my research because it details the characteristics of a woman who has had an abortion. These details allow the researcher to examine this demographic of women on a sociological level, as well as construct a sort of stereotype to determine how many women in a given population are likely to have an abortion. Rose also argues that women rely on abortion as form of birth control, echoing the argument of the lowered cost of sex by Klick and Stratman. Rose also details that some women have abortions because they cannot consistently afford other methods of contraception (condoms, birth control pills, etc.) or their contraceptives failed. This information will help examine exactly why women have abortions, rather than offer their child for adoption. Many women can hardly afford the cost of an abortion, much less the pre-natal medical care and cost of a hospital stay.

Roth, Paul A. "Personhood, Property Rights, and the Permissibility of Abortion." Law and Philosophy 2(1983): 163-191.

This article begins by examining if a fetus is a person. If the fetus is a person, then the fetus would be entitled to certain rights under the law and would be entitled to use a woman's stomach for personal gain (life). The fetus is still entitled to the womb even if the mother refuses. If the fetus is not a person, then the mother is entitled to choose to allow the fetus to use her body or not. Roth explains his position through a belief called the "Samaritan situation," which is defined as a situation in which a person is morally free to choose to help or not. A person is under no obligation to donate help. Roth argues his point by citing two court cases, in which sick people rely on their relatives for bone marrow. The decision in these cases determined that the court cannot force people to donate themselves in order to save someone else's life. Roth compares the decision in these cases to abortion. If the case law is the same, a woman would be able to abort a fetus at any stage of her pregnancy, without state intervention. Roth's argument must be taken into consideration, because it relies on case law, not morals, ethics, or religion. This is important to my research because Roth's argument echoes the decision made in *Roe v. Wade* as a violation of the Ninth Amendment. Roth's argument further explains the Supreme Court's decision, but simultaneously provides a new perspective when examining abortion as a violation of an individual's right to privacy.

Rubin, Eva R. Abortion, Politics, and the Courts: Roe v. Wade and Its Aftermath. 1st. Westport, Connecticut: Greenwood Press, 1982.

Rubin's book will be used primarily to focus on the impact of abortion on governmental programs and spending. Several court cases, known as the "Medicaid Decisions," debate the legality of supplying Medicaid to elective abortions, rather than "therapeutic abortions," which are required for health reasons. The Supreme Court Justices believed there was great difference between permitting abortions and publicly funding its costs from government organizations. The rulings permitted the states to eliminate all spending for therapeutic abortions if they chose to do so. Several years later, Congress agreed upon Medicaid funding for abortions on three conditions: if the mother's life was endangered, in cases of rape or incest, or prolonged poor health as a direct result of the pregnancy. This is important to the research of this paper because it expands on the arguments made in Milbauer and Obrentz's book. Rubin also details the Hyde Amendments as a method of separating elective abortions from therapeutic abortions. Before the Hyde Amendments, the federal government had been paying for approximately 250,000 abortions per year. In 1979, after the Hyde Amendments, the federal government was paying for 2,421 abortions. This is almost a ninety-seven percent decrease in the number of abortions that are funded by the federal government. A later court case, the *McRae* case, determined if low-income women should be entitled to Medicare benefits for an elective abortion. This research is crucial to my paper because it allows the individual to see abortion impacting the government and economy at a national level.

Sarvis, Betty, and Hyman Rodman. The Abortion Controversy. 2nd ed. New York: Columbia University Press, 1974.

A chapter of The Abortion Controversy details Supreme Court decisions that deal specifically with abortion. Sarvis and Rodman quote the actual decisions in *Roe v. Wade* and state the reasons why abortion was declared unconstitutional. Additionally, Sarvis and Rodman detail the new abortion laws and their impact of an individual's right to privacy and property. My paper will examine abortion laws as decided by *Roe v. Wade* to determine how they affect society. A woman is only allowed to abort the fetus on her own free will during the first trimester. During the second trimester, a woman can abort the baby if a doctor believes that the pregnancy is damaging the health of the mother. Abortions are prohibited in the last trimester, unless the health (life) of the mother is in jeopardy. This paper will examine the stipulations regarding the second and third trimesters to determine if they are unconstitutional. This paper will examine the meaning of "health" and whether it includes mental health. This source will be used primarily to explain and clarify arguments made in other sources. Additionally, Sarvis and Rodman also explore the public's reaction to the Court's decision. This relates to my paper because it explores the impact of abortion and *Roe v. Wade* on the sociological level.

Solinger, Rickie. Wake Up Little Susie: Single Pregnancy and Race Before Roe v. Wade. New York: Routledge, 1992.

Solinger outlines the stereotypical stories of two young women who became accidentally pregnant. Solinger continues to outline the girls' stories and later separates them into race and the public opinion. This is the public opinion in the era before *Roe v. Wade*. Wake Up Little Susie is important to my research because this details a partial demographic of women who had illegal abortions before 1973. However, Wake Up Little Susie has several limitations. Solinger's book only accounts for single white and black pregnant women. It does not count for non-whites (Latinas and Asians) or married women. In the era before *Roe v. Wade*, there were certainly Latina and Asian women who were having illegal abortions. There were also married women who were having abortions because they could not afford to take care of another child. Solinger examines unwed mothers and women who have had abortions as a "threat to postwar stability." Solinger states that more women were giving birth to unwanted children, instead of illegally aborting them or putting them up for adoption. These single, unwed mothers rely on the government for welfare and other programs. They are not able to work because they must take care of their children. This aspect will be examined to see how illegal and legalized abortions affect the society as a whole, specifically the government and the economy.

Weeping, Rachel. "How Much is a Child Worth?: From Abortion to Infanticide." Rachel Weeping and Other Essays on Abortion. Comp. James Tunstead Burtchaell. Kansas City: Andrews and McMeel, 1982.

Weeping's work is crucial to understanding the stipulations of the decisions of *Roe v. Wade*. Weeping argues that aborting babies is a form of infanticide because some babies still have the potential to live after they are aborted from the womb if they are in the second or third trimester of gestation. Weeping cites medical courses that specify that doctors of abortion have had to strangle or otherwise kill aborted fetuses whose organs were developed enough to take their first breath. Hypothetically, a woman cannot have a legal abortion during her second or third trimester unless the health or life (respectfully) of the mother is seriously at risk. If the woman does not want to keep her baby, but it is developed enough to survive outside the womb, the doctor must "dispose" of it. He cannot offer the fetus for adoption because the mother did not consent and he cannot give the fetus to the mother because she refused it. The only other option is to kill it. I will use Weeping's argument in my paper when examining the second and third stipulations of the abortion laws (regarding the second and third trimesters, as mentioned above). If a fetus is developed enough to survive on its own after it is aborted, the abortion laws regarding the second and third trimesters will need to be revised. After a fetus is able to live on its own, without its mother and her womb, the fetus can be considered a person and no longer the property of the mother, as stipulated by the fourteenth amendment. Arguably, the fetus is a person and guaranteed protection by the Constitution. Does this fetus have a right to live? And should the doctor of abortion be charged with abortion if he kills the fetus? My paper will examine the depth of the abortion laws to determine the fetus's fate.

Weinberg, Roy D. Laws Governing Family Planning. Dobbs Ferry, NY: Oceana Publications, 1968.

Roy D. Weinberg, B.A., LL. B., is a member of the New York. His book, Laws Governing Family Planning is a legal reference for individuals to use to supplement their attorney's advice. It must be noted that this book was written before abortion was legalized with *Roe v. Wade*. For this paper, this book will be used to compare abortion laws before with the decision of *Roe v. Wade*. Before 1973 (the year in which *Roe v. Wade* was tried), abortion was illegal unless it is considered necessary to preserve the life of the mother. All other abortions are considered illegal. Weinberg cites *Mills v. Commonwealth*, which states that abortions are illegal from the instant that "the womb is instinct with embryo life." The first American law prohibiting abortion was in Connecticut in 1830. According to this law, abortion was punishable by jail time. In later years, other states enacted similar laws. However, in 1961, Illinois proposed an amendment stating that abortion was legal if it is medically advisable to prevent ill health to the mother or because the fetus would be born with a grave physical or mental medical condition. Lastly, abortion is considered legal if the mother is a victim of forcible rape or aggravated incest. The Illinois amendment is the most similar of the previous laws to the decision reached in *Roe v. Wade*. Additionally,

Weinberg's book will be used to further illustrate the Modal Penal Code, as referenced before in "Abortion."