

Blog post by Judy Lewis 7/15/22

On community website which is no longer operational

Final Decision of United States Supreme Court “...procuring an abortion is not a fundamental constitutional right because such a right has no basis in the Constitution’s text or in our Nation’s history.” *DOBBS v. JACKSON WOMEN’S HEALTH ORGANIZATION*, US Supreme Court, June 24, 2022

This is the news we all heard on the last Friday morning of June, the news that had been leaked but we had hoped for some revision. Let us leave the issue of there being no mention of abortion rights in the Constitution, although this is critical because women did not legally exist in the Constitution and so had virtually no rights.

I would like to explore the conclusion that *such a right has no basis in our Nation’s history*. This is based on an extensive exploration of English law “dating all the way back to the 13th Century. The SCOTUS decision does not find the common law lack of criminalization of abortion before quickening as a right. But again, women’s rights were very few and far between in English and common law. And the decision certainly does not examine the historical fact that abortion has occurred in almost every society over the course of human history. So, women have abortions with or without a “right.”

If we assume the autonomy of women to be a universal right based on its universal existence in women’s lives, then we can more clearly explore the history of abortion in our Nation. Many historians have documented that abortion was frequently practiced in North America during 1600-1900. First nations with a much longer history on the North American continent used black root and cedar root as abortifacients. Legality varied under colonization based on the European origin of governance, abortion before quickening was legal if performed before quickening or approximately 4 months of gestation. Home medical guides suggested recipes for commonly known herbs that could be used to “bring on the menses.” Of course, none of this was overtly available to slave women whose owners wanted as many children as possible.

By the mid-eighteenth century, commercial abortifacients could be easily found, but many of these were toxic or fatal. This led to the first statutes in the 1820s and 30s to prevent poisoning. But these laws were largely ineffective. Leadership to criminalize abortion came from the newly formed American Medical Association (AMA) which began a lobbying campaign in 1857. A large motivator for this was to eliminate competition from midwives and homeopaths, and ensure medical dominance. Further evidence of the unspoken acceptability of abortion is reflected by the fact that the Catholic Church did not condemn abortion until 1895. By this time social and religious conservatives and the AMA had joined forces to criminalize abortion in every US state. Racism also played a role because of concerns about declining birth rates to white women at the same time immigrants of color were increasing.

Once abortions were criminalized, women continued to have them just more covertly and often with greater danger to their lives. Despite the AMA position, many doctors continued to provide abortion and often midwives did the same. The depression proved that abortion was also an economic issue as abortions increased, women would lose their jobs if they had a child, and birth-

control clubs were created to where women would make regular contributions so that funds would be available to those women in need of abortion. During this time period enforcement of abortion laws lessened somewhat.

In the 1940s and 50s the legal and medical professions combined to disrupt collective abortion payment groups and providers. Women with financial means were still able to get therapeutic abortions but there were many more barriers. Estimated abortions in the 1950s and 60s were between 200,000 and 1.2 million a year. New groups formed in the 1960s to create underground abortion referral and support networks, these were composed of diverse actors including clergy, community activists and feminists. A few states began to decriminalize abortions and many women traveled to these states for care.

Legalization of abortion had major public health consequences. One year after abortion was legal in New York state, the maternal mortality rate decreased 45%. Roe v. Wade expanded abortion legalization across the nation, creating a major change in the abortion landscape while remaining controversial. Unfortunately, from the moment Roe v. Wade was implemented anti-abortion advocates began to limit it at the state level. By the time Dobbs v. Jackson Women's Health Organization was decided 1,381 abortion restrictions had been enacted since 1973. So, the effort has been incremental but devastating for women's health. A study of the association between state-level abortion restrictions and maternal mortality in the United States between 1995-2017 found that states that restricted abortion had higher maternal mortality rates (MMR) than states that were either neutral or protected them. In 1995, they all had similar rates but by 2017 states that restricted access had 70% higher MMR than states with protections. The neutral states had rates midway between. Abortion access has critical impact on maternal mortality. Other studies have shown relationships between abortion access and higher levels of other maternal health indicators as well as improvements in infant mortality and child health.

The US Supreme Court has ignored both the history of abortion in North America through the lived experience of women. 40 million women (58% of women of reproductive age) live in states hostile to abortion rights. These women, their children and their families will be most affected by the Dobbs v Jackson ruling in terms of mortality, other negative health outcomes, and a broad range of socioeconomic limitations. Some women will continue to get abortions as they always have, but in a much more contentious environment. Many others will not due to limited geographic and financial resources. Abortion has a long history in the United States and the world. We must continue to advocate to make it legal and safe.