



Roe vs Wade: Reproductive Rights Are Human Rights

By Cassandra Veney



When a major event occurs that is life-changing or life-threatening, we all remember where we were and what we were doing. The Supreme Court's ruling in *Dobbs vs. Jackson Women's Health Organization* on Friday, 24 June 2022 was no exception. I was in North York, Canada. I had just finished eating breakfast. I then sat down to check messages and news on my cell phone. I had not paid attention to the announcement that the ruling had been scheduled for that day. I, like many Americans, learned that the Court's draft ruling had been leaked in May 2022. One did not have to be a constitutional scholar to understand what was to come. For years, *Roe vs. Wade* had been suffering a slow burning death. It was put on medication to subdue the pain. Its cuts were covered with bandages as state legislatures, state courts, federal courts, and finally the Supreme Court chipped away at the three pillars of the 1973 ruling. *Planned Parenthood vs. Casey* and *Dobbs vs. Jackson's Women's Health Organization* (before it reached the Supreme Court) were the final cuts that put it on life support. The 6-3 ruling by the Supreme Court in the *Dobbs* case pulled the plug on reproductive rights and health that many Americans and many around the world view as human rights.

I taught American Government and Politics for eight years in central Illinois. One cannot teach this course without covering the constitution and the Bill of Rights. Therefore, Supreme Court cases that addressed privacy issues within the original constitution and the 14th amendment, which is

supposed to undergird civil rights, were discussed and examined. The three addressed in the ruling and explained in the media were included: *Griswold vs. Connecticut* (1965), *Roe vs. Wade* (1973), *Casey vs. Planned Parenthood* (1992). By the time the *Dobbs* case made its way to the Supreme Court, I had moved to Nairobi, Kenya, where I taught Comparative Politics under the theme of Liberal Democracies that included the United Kingdom, Japan, and the United States.

Most of my students could not understand why I put on the syllabus *The United States: The Road to Democracy*. They were under the impression that the United States had always been democratic and liberal. They had bought into Hollywood's version of a country made up of immigrants with a pull-yourself-up-by-your-bootstraps individualist mentality who were all equal under the constitution. I had to fulfil my duty and responsibility as a professor, African American, and woman. I had to teach the cold, hard facts about the exclusion of American citizens from the polity due to race, gender, nationality, and citizenship. The students needed to understand the systemic, structural, and institutional barriers that produced second- and third-class citizens in the land of the free and home of the brave. They needed to know that the United States has no leg to stand on when it comes to lecturing and even bullying Kenya, other African countries, and other countries in the global south on women's rights, minority rights, and human rights. It cannot take the moral high ground and point its finger at female genital mutilation, forced marriages, early marriages, wife inheritance, denying women the right to an education, employment, and any other rights that women are prevented from exercising.

Students needed to know that it was not until 1920 that women were given the right to vote and even then, it was not all women. Indigenous women were given the right to vote in 1924 with the Indian Citizenship Act. African American women did not get voting rights until 1965 under the Voting Rights Act. Still, to this day, some African American women and other women are denied the right to vote depending on which state they live in as voting registration and casting a ballot have become more and more contingent on where one lives. The right to vote was given to Black men in the 15th Amendment (1870). It was overturned in the Supreme Court's ruling in *US vs. Reese* (1876). This decision was accompanied by states erecting all manner of roadblocks to prevent Black men from voting: poll taxes, grandfather clauses, literacy tests, and citizenship tests.

The most glaring observation from the *Dobbs* ruling, despite its ability to deprive millions of women of their civil rights, is the insistence by many that the United States remains a full democracy. It is not. The US has not been a full democracy (if it ever has been) for the last six years according to the Economist Intelligence Unit's Democracy Index. According to its rankings, the US is at best a flawed democracy.

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The point of this essay is to situate the ruling in the *Dobbs* case within a national and international framework. The national framework is simple. The court's ruling is a loud pronouncement that there are categories of citizenship in the United States. The four white men, one black man, and one white woman determined that women's citizenship rights, when it comes to reproductive rights and health, are at the mercy of the states. There is no federal remedy if the states violate your basic citizenship right. This ruling harkens back to Reconstruction cases that gutted portions of federal legislation that were designed to protect the civil rights and the lives of African Americans in the south. Simply put, when the Supreme Court ruled in the *Slaughterhouse Cases* (1873), *US vs. Cruickshank* (1876), and the *Civil Rights Cases* (1883), millions of people's civil rights under the 14th amendment were removed from a system of law provided by the federal government and turned over to states. For

example, when African Americans (men) were killed or beaten by a mob when they attempted to vote, they were not protected by the federal government under the Enforcement or Klan Act. Their protection would have to be provided by the state! In sum, Supreme Court rulings during Reconstruction and in later years ensured that states maintained a tight reign over access to equal housing, employment, education, transportation, and even marriage. Furthermore, the Supreme Court ruled that the 14th Amendment's due process and equal protection clauses did not allow federal protection of these rights that would have provided first-class citizenship to everyone.

Put another way, federal or congressional power to protect citizens' civil rights under the 14th amendment was ruled null and void. Millions had their fates sealed by white male justices while other white men were given the green light to engage in domestic terrorism when African American women and men found living under the yoke of lynching, disenfranchisement, and Black Codes too much of a burden to bear. The Supreme Court was determined to abolish what little gains had been made following the Civil War by narrowly interpreting the 14th amendment's Due Process and Equal Protection clauses as a power grab by the federal government (Congress). The justices could not stand by and let this happen. Instead, they embarked on a path that allowed civil rights to come under the jurisdiction of states that were controlled by white men. Now, the power is extended to white women who are state legislators, governors, attorney generals, prosecutors. It is a case of allowing the fox to guard the henhouse.

The composition of the Supreme Court has changed in recent years, but the Dobbs decision and the conservative majority make it very clear where power is tightly held in the United States. It also goes without saying that a return of reproductive rights to the states is a huge step backwards for African American, Indigenous, Latinx, Asian-descended, and immigrant populations. It seems like it was just yesterday when I wrote about the tremendous work and accomplishments these women made to get President Biden elected. They now have another fight on their hands because if they believe in freedom, and we know they do, they cannot rest. These women live in the same battlefield states (Georgia, Ohio, Pennsylvania, and Wisconsin) that have or will curtail reproductive rights and undermine reproductive health.

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It is assumed, or at least it was until recently, that the United States is a leader in the international community—a great champion of liberty, democracy, and human rights and thus, reproductive rights. Politicians, media analysts, and individuals stated over and over again that their mothers and even grandmothers had more rights than women will have in the aftermath of the Dobbs decision. This brings in the second point of the essay—to put this ruling within an international context. The United States was in the forefront in getting the international community to recognize human rights following World War II with the passage of the Universal Declaration of Human Rights (UDHR) in 1948. The UDHR states that all human beings are born free and equal in dignity and rights. In addition, signatories to the UDHR, and the United States is one, must ensure that equal rights are enjoyed by both men and women. These include economic, political, cultural, social, and civil rights. The international community later determined that reproductive rights are human rights. Other international protocols and conventions followed that provide a definition for these rights and what the states must do to protect these rights.

In addition, in 1968 the United Nations provided a framework for sexual and reproductive health and rights. Others followed, such as the Beijing Platform for Action, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and the Covenant on Civil and

Political Rights (ICCPR). The Dobbs ruling and previous ones show how the US has turned a blind eye to the provision of reproductive rights and health. Politicians and individuals on both sides leading up to the Dobbs decision equated reproductive rights to the right of a woman to have access to an abortion. The international community has recognized that abortion is a reproductive right, but it is not the end-all. Reproductive rights are connected to sexual rights and they include the right to life, privacy, education, and the prohibition of discrimination. To situate the United States within the context of the international community and advanced democracies, to which it claims membership, the country signed CEDAW. That is the first step. However, international legal agreements must be ratified before states can enforce them. In the case of the United States, these international legal instruments that are designed to protect the sexual and reproductive rights of women must be ratified by the Senate. This is the same Senate that holds hearings for Supreme Court nominees, who if confirmed, are appointed by the president to the Supreme Court.

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In the case of CEDAW, the United States is an outlier along with Somalia, Sudan, and Iran. The United States calls on countries such as Afghanistan, Iraq, and Saudi Arabia to allow women to exercise their rights, and yet, these countries have signed and ratified CEDAW. Furthermore, the embargo remains in effect against Cuba as the United States continues to call for the end of Communist rule because it deprives Cubans of their human and democratic rights. The Communist Party in Cuba remains in power, but it does not prevent women from exercising their sexual and reproductive rights. In addition, reproductive health is provided by the state throughout the country and not just for those who are fortunate to live in a particular part of the island nation. In other words, geography does not dictate where and who has access to reproductive health services beyond the right to abortion: contraceptives, treatment of fistula, counselling for rape survivors and survivors of intimate partner violence, cervical cancer screening, and mammograms.

For those women who have fought for freedom and who have ancestors who were not free, they know they cannot rest. People are waiting for the Supreme Court to drop the other shoe and rule that other civil rights are not protected by the 14th Amendment. Who knows what cases will come before the Court in 2023? Now is the time to maintain the interracial, intercultural, and intergenerational coalition that kept blue states blue and turned some red states blue in the 2020 presidential election. The same commitment and momentum have to be manifested starting now in every state legislative, gubernatorial, congressional, and presidential election.

The time to turn this flawed democratic ship around is now!

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