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**“How Rights Went Wrong”:
On the 50th Anniversary of *Roe v. Wade***
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Today is the fiftieth anniversary of *Roe v. Wade*. On January 22, 1973, the U.S. Supreme Court ruled 7–2 that the Constitution protects the right to choose to have an abortion. As Jamal Greene notes in his book *How Rights Went Wrong*, it is perhaps surprising to remember that that majority opinion was signed by **“five Republican appointees...as well as the only Catholic justice on the Court”** (117).

Nevertheless, six months ago in *Dobbs v. Jackson Women's Health Organization*, a very different Supreme Court overruled *Roe* in a 6-3 vote, **“giving individual states the power to regulate any aspect of abortion not protected by federal law”** ([Wikipedia](https://en.wikipedia.org/wiki/Dobbs_v._Jackson_Women's_Health_Organization)).

This decision created a patchwork quilt for abortion access. In some states, abortion remains legal or “legal but limited” in various ways. Then there is the large swath of states with a full ban on abortion. (For more details, see *The New York Times* article [“Tracking the States Where Abortion Is Now Banned.”](#))

A statement from our own Unitarian Universalist Association recently highlighted the fact that abortion bans cause “disproportionate harm for already vulnerable communities, including people of color, young people, poor and working-class people, and those living in rural areas. We also know that reproductive care is healthcare and it is essential to the well-being and safety of individuals and families” ([UUA](https://www.uua.org)).

In a post-*Roe* world, there is renewed urgency in the struggle for reproductive justice. Following the influential work of the SisterSong Women of Color Collective, the movement for reproductive justice is now often organized around three core values related to "the human right to maintain personal bodily autonomy." These three core values are: **"The right to have a child, the right to not have a child, and the right to parent a child or children in safe and healthy environments"** ([Wikipedia](#)).

I considered adding context to how we reached our current situation by taking a scenic tour through the 1965 Supreme Court case *Griswold v. Connecticut*, and the 1992 case *Planned Parenthood v. Casey* but I don't want to get lost in those legal details. Instead, I will focus on a few major points.

At the risk of oversimplifying: the *Roe v. Wade* decision boiled down to a conflict between two competing interests. On the one hand, *Roe v. Wade* argued that the Due Process Clause of the Fourteenth Amendment to the U.S. Constitution provides a "right to privacy," which arguably protects women and other pregnant people who choose to terminate their pregnancy. On the other hand are those who argue that, **according to *Roe*, this individual right must be "balanced against the government's interests in protecting prenatal life"** ([Wikipedia](#)).

Some would argue that the government's actual interest was in *men* controlling women's bodies, but I'll focus now on the logic upon which *Roe* was decided. *Roe* attempted to balance these two competing interests through the medical trimester system, in which different unfolding pregnancy options were possible depending upon how far along the pregnancy was.

It is important to recognize that from the time *Roe* was decided, many legal scholars — both liberal and conservative — were skeptical about whether the Fourteenth Amendment actually included a right to privacy. You may recall hearing about the "penumbras" and "emanations" on which *Roe* was argued (Mystal 182). I won't go into all that today.

Indeed, many pro-choice legal scholars have long been on record saying that *Roe* was a mostly good result based on flawed legal reasoning, which all matters not only for strengthening reproductive justice, but also for buttressing many other Constitutional rights including contraception, interracial marriage, and same-sex

marriage. These rights, all of which are rooted within a similar logic to *Roe's* — rights which are now vulnerable since *Roe* was overturned.

So what might we as citizens do differently to better secure our rights? One recent guide that is equal parts profound and provocative is a book titled *Allow Me to Retort: A Black Guy's Guide to the Constitution* by Elie Mystal, a graduate of Harvard Law School, and justice correspondent at *The Nation* magazine. Be forewarned that this book contains a *lot* of profanity. I mean, a *lot*. On balance, I'd say the cursing is hilarious — and warranted — given the state of things, but your mileage may vary.

Mystal contends that instead of trying to build a Constitutional right to privacy on the shifting sands of the Fourteenth Amendment's due process clause, a much sturdier foundation could be a different section of the Fourteenth Amendment: the Equal Protection clause.

Mystal argues that you can make the case for reproductive justice in three sentences. Here is a taste of his delightful sense of humor:

1. Women, being people, should have the right to control their reproductive system, just as men-people do....
2. This right flows from the Fourteenth Amendment's guarantee of Equal Protection, which we now recognize includes the right to have sexual intercourse without risking "internal" reproductive consequences.
3. We note that men-people have technically enjoyed this right to sex-without-incubation for five-to-seven million years, depending on when you start the clock on anatomically modern humans. (181-182).

The justices were well aware at the time *Roe* was being argued that they could have chosen to make an argument from the equal protection clause, but instead chose the weaker due process clause. Mystal invites us to consider that their reasoning was as straightforward as it is rage-inducing: **"Once you start giving women equal protection of laws, the whole damn patriarchy starts to crumble"** — and the justices don't want that (183). Keep in mind that the first female Supreme Court justice was not appointed until 1981, almost a decade *after Roe*.

Mystal further challenges us that we have neglected the protections for reproductive justice that are arguably inherent in the *Thirteenth* Amendment. In his words:

The same amendment that prohibited slavery surely prohibits the state from renting out women's bodies, for free, for nine months, to further its interests. Forced *labor* is already unconstitutional.

Anyone who has been pregnant already knows in a direct, personal, intimate way (far beyond what any man can know) all that being pregnant for nine months and giving birth requires of you — physically, emotionally, mentally and on every other level. For this reason, Mystal is no-holds-barred about his view that, "It is barbaric to force a woman...to carry an unwanted pregnancy to term.... **'Forced birth is [wrong and] can never be compelled by a legitimate government' in a free society** (188-189, 200).

If men could become pregnant, no way would forced birth be legal. So, from the perspective of equal protection, forcing *women* to give birth violates the equal rights amendment. Too often, legal arguments have been framed almost exclusively from the perspective of — and for the benefit of — rich, heterosexual, white men. I appreciate Mystal's emancipatory perspectives.

To say more about where reproductive justice might go from here, I invite you to consider two additional points. First, let's look at the currently wide spectrum of personal opinions surrounding the subject of reproductive justice. Americans are not nearly as polarized about abortion as it might sometimes appear. Next we'll consider some of the diverse ways religious traditions have approached reproductive justice. Surely, conservative Christianity should not be the only voice in the room where the ethics of reproductive justice are being discussed and defined.

Next, let's look at the wide spectrum of personal opinions about reproductive justice. As our guide, I'll be drawing from a fascinating new book titled *20 Myths about Religion and Politics in America* by Ryan Burge, a professor of political science at Eastern Illinois University. After closely analyzing public opinion polls, he focused on one often-neglected finding: **"As a country, we are not nearly as polarized about abortion as sometimes seems to be the case."**

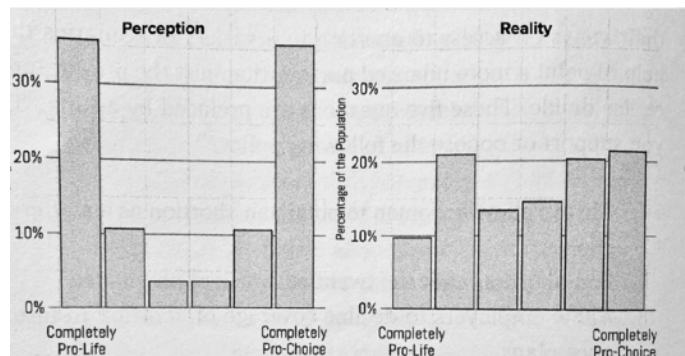
One can make the case that the actual preferences of the American public are surprisingly practical about abortion rights — much more so than the leanings of our current extremely conservative Supreme Court majority.

Here's an example of one common way a public poll about abortion might be worded. Respondents to this poll are asked to choose where they would locate themselves with regard to each of the following positions:

1. 100% pro-choice — Always allow a pregnant person to obtain an abortion as a matter of choice.
2. Ban abortion after the twentieth week — the halfway point of the average pregnancy.
3. Allow pro-life employers to decline coverage of abortion in insurance plans.
4. Prohibit the use of federal funds for abortion.
5. 100% anti-abortion option — Make abortion illegal in all circumstances.

Many people believe that huge portions of the public score at the extremes — with either a zero or a five. They believe that when it comes to abortion, almost no one's opinions fall in the messy middle. But what is the nuanced reality of public opinion?

Consider **this chart**. The *lefthand* side shows our collective perception of what we *think* our fellow citizens think about abortion ;most Americans assume that about a third of the U.S. public is “completely pro-life” in all situations; that another third is “completely pro-choice” in all situations; and that a final third fall somewhere in the middle (36).



But it turns out that public opinion about reproductive justice is one of those places in which Brené Brown would say, “The story I’ve been telling myself about this is...” — acknowledging the stories we tell ourselves that are not always fully aligned with the complexity and nuances of the actual situation.

In the chart on the *right*, we see what people *actually mean*, their *actual* opinions on abortion. Notice how comparatively *flat* the distribution is in reality, compared with the polarized extremes of opinion we too often imagine to be the case:

No score on the scale is much lower than 10 percent of the population, and no score is higher than 21 percent. **Americans are truly all over the map in their thinking about access to abortion....** The least popular position is for abortion to be completely illegal.... The other end of the scale—support for access to abortion in all scenarios—occurs about twice as frequently” (35).

To summarize, only one-third of the public is at either extreme end of the polarity. The remaining two-thirds (the vast majority) fall somewhere in the middle.

To me, there is some good news here, that in overturning *Roe*, the Supreme Court has stepped way out of line with the opinions of the vast majority of the American public. If you feel angry about the extremity of the *Dobbs* decision, you are not alone; we have reason to be hopeful about the potential to organize for reproductive justice apparent in recent elections.

Next let’s consider the similarly wide range of American *religious* views about reproductive justice. It is vitally important not to allow *conservative* Christianity to be the only voice in the room whenever and wherever the ethics of reproductive justice are defined and discussed. It really matters if you are in “the room where it happens,” because **“if you are not at the table, you might end up on the menu.”**

It is important to remember that conservative Christianity was not always so strongly anti-abortion. Having grown up Southern Baptist, I’m old enough to remember a time when many evangelical Christians dismissed anti-abortion stances as merely a Catholic issue. That wasn’t intended as a slam on Catholics; rather, this is generally the way abortion was talked about in my earliest memories — as a primary issue for Catholics, but of a much lower priority for most evangelicals.

Prior to the fundamentalist takeover of the Southern Baptist Convention in the 1980s, many Southern Baptist pastors publicly supported abortion in a number of instances, including when the woman’s mental or physical health was at risk, or in the case of rape or a congenital disorder. Indeed, at multiple meetings of the Southern

Baptist Convention throughout the 1970s, resolutions were passed *supporting* legal abortion in such cases ([The Conversation](#)).

Additionally, since a Reform Jewish congregation has been renting this congregation's sanctuary for more than a decade, let me offer an additional point of comparison from Judaism. Jewish law has traditionally been interpreted as teaching that life does not begin until the baby emerges from the mother. Throughout pregnancy, the Jewish tradition has always held that the mother's welfare is primary. To quote a representative rabbinical view: **"The fetus is unknown, future, potential...the mother is known, present, alive and asking for compassion"** ([The New York Times](#)).

We Unitarian Universalists have also regularly been at the vanguard of the movement for reproductive justice. Starting in 1963 (a decade before Roe), we passed a series of resolutions at our annual General Assemblies supporting **"the right to choose contraception and abortion as a legitimate expression of our constitutional rights"** (Dirks and Relf 116). In total, we have passed twenty-one statements over the years about reproductive justice. The most comprehensive statement was passed in 2015. and the most recent statement was passed this passed this summer. All are available on the UUA's website ([Social Witness Statements](#)).

Most recently, I was intrigued to learn about a group of pro-choice clergy in Florida that included two Christians, three Jews, one Unitarian Universalist and a Buddhist; they were suing the state of Florida over its abortion law (which makes no exceptions for rape or incest) — as a violation of *their* First Amendment freedoms of religion. In their words, **"I am pro-choice not in spite of my faith, but because of my faith."**

My colleague The Rev. Tom Capo, one of the plaintiffs and the minister of the Unitarian Universalist Congregation of Miami, underscores that our UU [First Principle](#) regarding "The inherent worth and dignity of every person" is a deeply religious value guiding his advocacy for reproductive justice. He says, **"It continues to be her body throughout the pregnancy and that worth and dignity needs to be respected.** It has to be her conscience that decides whether that child becomes a person, to have say over her own body and how she chooses to use it" ([The Washington Post](#)). It will

be interesting to follow what becomes of these lawsuits seeking to highlight religious beliefs in this country include not only pro-life theologies, but also pro-*choice* theologies.

These lawsuits remind me of another significant piece of UU history that is freshly relevant in our current post-*Roe period*. In 1967, six years before *Roe*, on May 22, 1967, the Clergy Consultation Service on Abortion made the front cover of *The New York Times* with the following headline above the fold: “Clergymen Offer Abortion Advice: 21 Ministers and Rabbis Form New Group...to assist women seeking abortions (The New York Times). The Clergy Consultation Service on Abortion was the “first organization in the the U.S. to publicly offer abortion referrals.” The founders included The Rev. Duke Gray, minister of First Unitarian Church in Brooklyn. There was a phone number to call, a free meeting offered with a member of the Clergy Consultation Service, and, at the risk of being arrested for making a referral at a time when abortion was illegal in many states, the name of a doctor who was trusted, licensed, and safe provided to women choosing abortion. (Dirks and Relf 3).

As soon as that *New York Times* article was published, the hotline began ringing off the hook. Over the next six years, before *Roe* legalized abortion nationwide, the Clergy Consultation Service on Abortion had referred hundreds of thousands of women for abortions without a fatality, and (helped) establish the safety of abortion as an outpatient procedure” (4-5).

When members of the Clergy Consultation Service were asked why they risked arrest to openly refer woman to safe abortion providers, they consistently shared a variation on a single reason: directly witnessing the impact of an illegal abortion gone horribly wrong had “opened their eyes to the problem and motivated them to join the CCS” (10).

To share a brief excerpt from their official statement:

As [members of the clergy] there are higher laws and moral obligations transcending legal codes; we believe that **it is our pastoral responsibility and religious duty to give aid and assistance to all women with problem pregnancies.** To that end, we are establishing a

Clergymen's Consultation Service on Abortion which will include referral to the best available medical advice and aid to women in need. (28)

To learn more, I recommend the book *To Offer Compassion: A History of the Clergy Consultation Service on Abortion* by Doris Andrea Dirks and Patricia A. Relf.

Historic support of progressive religious movements for women's equality and reproductive justice, is one of the reasons that immediately after the *Dobbs* decision, you heard me here at UUCF highlighting three ways to support the struggle for reproductive justice in a post-*Roe* world:

1. **DONATE to a local abortion fund** to ensure that everyone who needs an abortion can afford one: abortionfunds.org **LEARN about self-managed abortions and medical abortions.** Self-managed Abortion; Safe & Supported (SASS) is a gender-inclusive site for up-to-date medical and legal abortion information: abortionpillinfo.org. Unless you are a licensed physician, you are on much safer ground referring people to this website rather than attempting to give medical advice yourself. Also, for basic information about at-home abortion pill options, check out plancpills.org; they also offer a counseling hotline, information about how medication-abortion works and about how to find medications like mifepristone and misoprostol.
2. **JOIN an organization taking action for reproductive justice** such as SACReD (the Spiritual Alliance of Communities for Reproductive Dignity): sacreddignity.org. As the saying goes, **"If you are feeling overwhelmed as one person, stop being one person!" We are stronger together.**

The Unitarian Universalist Association's Side with Love organizing collective is also offering a 3-session online **Reproductive Justice Organizing Training** starting next Sunday, January 29 at 4pm. Learn more and register at sidewithlove.org

Unitarian Universalism is a big tent with room for a diverse spectrum of opinion. We are also historically committed to being a safe place for women and all pregnant people. Together we are holding all this in our hearts, as we build a better world with peace and justice, not just for some, but for *all*.