

The Truth About Roe vs. Wade
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“The hairsplitting difference between formed and unformed makes no difference to us,
Whoever deliberately commits abortion is subject to the penalty for homicide.”

St. Basil the Great, c. 340-520 A.D.

In 1973, the U.S. Supreme Court¹ made the decision that abortion was legal

¹ Hereafter referred to as the “Court” or the “Supreme Court”

throughout the entire nine months of a woman's pregnancy. Despite the Court's attempts to show otherwise, the Roe v. Wade case was not supported by the U.S. Constitution.² In fact, their decision was not supported by the majority of the evidence they presented in an attempt to show that abortion was legally correct! Legally correct refers to a decision made in accordance with the Constitution and previous legal decisions made by the United States of America and other countries, throughout the history of mankind. The intent of this paper will be to prove that the Roe v. Wade decision was legally and constitutionally incorrect.

In researching for this essay, media from several Pro-life organizations, such as the American Life League and Priests for Life was obtained. References are also made to the case itself, an article by Stephen Krasen and William Hollberg, and several books recommended by other reliable sources. This research supports the belief that the abortion decision reached by the Supreme Court of the United States in Roe v. Wade was neither legally correct nor was it in keeping with Natural Law.

Historical legal evidence does not support a woman's right to abortion. In Roe v. Wade, the Supreme Court endeavored to prove that the abortion laws which they chose to dissolve were of "relatively recent vintage."³ However, there were very early laws which had sections dealing with abortion, such as the Code of Hammurabi in Babylon, c. 1727-28 B.C., the laws of Assyrian King Tiglath-Pileser I, c. 15th-12th centuries B.C., and even the Hittites, c. 2nd century B.C.⁴ The Court ignores these examples, and moves on

² Hereafter referred to as the "Constitution"

³ Roe v. Wade, 93 S. Ct. 705 (1973) at 83 in the *American Government Course Manual*, Seton Home Study School, 2000 (NOTE: all further references made to the Roe v. Wade case are based on the page numbers in the course manual.)

⁴ Krasen, Stephen and Hollberg, William. "The Law and History of Abortion: the

to “greener pastures,” to find its solace in the supposedly permissive societies of the Ancient Greeks and Romans, saying that abortion was “resorted to without scruple.”⁵ Even this example, however, is faulty and taken out of context. Abortion was punished by Roman law from at least 31 B.C.-13 A.D by way of banishment, confiscation of one’s goods, and, in some cases, death. One may then conclude that history did not condone abortion, as the Supreme Court purported.

The Supreme Court also tried to discredit the Hippocratic Oath, an oath traditionally taken by newly graduated physicians to observe the ethical standards of their profession, specifically to seek to preserve life. This Oath has a passage which states, “I will neither give a deadly drug to anyone if asked for it, nor will I make a suggestion to this effect. Similarly, I will not give to a woman an abortive remedy.”⁶ The Court attempted to say that the Oath was merely from a religious standpoint, and that it represented “only a small segment of Greek opinion,”⁷ and was not widely accepted. However, it would seem that the author to whom the Court referred was only interested in the origin of the Oath, and was not passing judgment on its moral or legal acceptability.⁸ The Court decided to use this to its advantage, and attempted to use this false interpretation to show that the Hippocratic Oath was invalid as a medical, legal, or moral standard. By misrepresenting this information, it seems possible that the Supreme Court was eager to legalize abortion, regardless of the evidence that abortion was most

Supreme Court Refuted” (1984). *American Government Course Manual*. Seton Home Study School, 2000. Page 104

⁵ Wade at 83-84

⁶ Krasen at 107

⁷ Krasen at 107

⁸ Krasen at 107

often considered an unacceptable practice throughout history.

Despite the Supreme Court's best attempts to say otherwise, common law did not condone a woman's right to procure an abortion. Common law is the body of law developed as a result of custom and judicial decisions, as distinct from the law laid down by legislative assemblies. It is the basis of all law that is applied in England and most of the United States. The Court did not even truly resolve the issue, but only glazed over a few "facts" and concluded that it was "doubtful"⁹ as to the criminal status of abortion at common law. Take, for instance, the Court's use of the quote from Coke¹⁰ that abortion was a "great misprision, and no murder."¹¹ The Court, either in ignorance or purposefully, relies on the generally accepted translation of the word "misprision" being equal to the term "misdemeanor." However, the term "misprision," translated according to the legal terms used in Coke's day, was much more severe than the Supreme Court would admit. According to Mr. Krasen, Coke "emphasized that abortion was a great misprision"¹² and the gravity with which Coke used the term would imply that abortion was treated "as some felonies today which are not punished by death,"¹³ but are nevertheless punished severely. Also, Blackstone, an early authority on English common law said the following, "Qui in utero, est pro jam nato habetur quoties de ejus commodo quaeritur: One who is in the womb is held as already born, whenever a question arises for its benefit."¹⁴ This

⁹ Wade at 86

¹⁰ Edward Coke, common law authority in the seventeenth century

¹¹ Wade at 85

¹² Krasen at 109

¹³ Krasen at 109

¹⁴ Clifford Stevens, *The Rights of the Unborn from Common Law to Constitutional Law*,

quote shows us quite clearly that the unborn were considered to have the same worth as an already born human being, and that common law preserved rights for them. This was long before we had the extensive obstetric medical knowledge we have today! These examples provide evidence that English common law of 400 years ago considered abortion a legally punishable offense.

Early American law does not support a woman's right to abortion. The first abortion legislation in America was adopted in the 19th Century. The Court tells us that, prior to this, the English common law was the standard for abortion legislation. The Court also says that, "It was not until after the [Civil War] that [abortion] legislation began generally to replace the common law."¹⁵ This is false, as "a full thirty-one of the eventual fifty states had statutes punishing abortion before the Civil War."¹⁶ The Court, after some consideration of a few state court cases, comes to the conclusion that the statutes against abortion at that time were "solely for the protection of the woman."¹⁷ The main three cases upon which the Court relies to "prove" this are State vs. Murphy, 1858; Smith vs. States, 1851; and In re Vince, 1949. By looking closer at these three cases, one finds that the Supreme Court was incomplete in its interpretations. First of all, State vs. Murphy bases its conclusions on a NJ statute which was intended to close gaps left by the common law and stated that "the procuring of an abortion, or an attempt to procure an abortion, with the assent of the woman, was not an indictable offense, as it affected her, but only as it affected the life of the fetus."¹⁸ The case not only showed that abortion legislation was not only to protect the woman, but it also established that

¹⁵ Wade at 87

¹⁶ Krasen at 111

¹⁷ Krasen at 111

¹⁸ Krasen at 112

abortion was a crime at common law. Secondly, *Smith vs. States* concluded the exact opposite of what the Supreme Court said it did, which is that a woman may not be held criminally responsible for abortion. Lastly, *In re Vince* referred back to the same NJ statute consulted by *State vs. Murphy* to say that a woman was “chargeable criminally,” for procuring abortion. There were two other cases, *State v. Gedlicke*, 1881; and *State v. Siciliano*, 1956, which proved that the NJ statute had the welfare of the unborn child in mind.

The Texas cases to which the Court referred did not truly support its conclusions either. At first light, they do appear to support the Court’s decisions. However, it is clear that the woman was not the only concern in these cases. None of them specifically refer to the woman as the only victim and they did not only arise because of the woman’s death. Also, abortion was not classified as assault and battery upon the woman, but was separated into its own category. This would seem to indicate that the court which handled these cases was also concerned about the welfare of the unborn child. Some other cases which support the above conclusions are: *Trent v. State*, 1916; *State v. Miller*, 1913; *Dougherty v. People*, 1872; *Nash v. Meyer*, 1934; and *State v. Alcorn*, 1901.¹⁹ We can see, therefore, that the Supreme Court was not efficient in their research into early American law, and must have purposely overlooked these important facts. Conclusively, one may now see that these observations demonstrate that early American law did not support or condone abortion.

The Constitution is not to be translated to exclude the unborn from personhood. First of all, because a “fetus” was considered a “child” and a child was considered a “person” at the time of the drafting of the Constitution, then obviously a fetus was

¹⁹ Krasen at 113 (refer to Krasen’s endnote #95)

considered a person.²⁰ This is simple, “if A = B, and B = C, then A = C” logic. It is a wonder that this simple conclusion was overlooked by the Supreme Court. In fact, simply acceding to this fact would have been less embarrassing than the inane arguments they came up with to contend for the non-personhood of the unborn. In searching for the usage of the word “person” in the Constitution, they first referred to the Articles which contain the qualifications for State Representatives, Senators, and Presidents. This is completely ridiculous. If they are going to apply these contexts to the evaluation of personhood, then anyone who does not conform to the qualifications for these offices can not “Constitutionally” be considered a person. The rest of their references are similar to this principle. They next referred to the Emolument Clause and to the Electors provisions, which would also exclude most other children and anyone unable to “[hold] any office of Profit or Trust.”²¹ They also looked to the extradition provisions to define “person.” Now, obviously this can deny personhood to anyone incapable of committing a crime, for instance, children who have not yet reached the age of reason. These ridiculously simple refutations and equally simple explanation of the personhood of the unborn shows us that the Supreme Court was convoluting these definitions to suit their own agenda and purposes.

Contrary to the conclusions reached by the Supreme Court, the 14th Amendment was written in such a way as to protect the unborn. The 14th Amendment has the clause which states: “No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law.”²² There are several instances of

²⁰ Krasen at 115

²¹ Krasen at 115

²² U.S. Constitution, amend. 14, sec. 1

federal legislation which prove that this amendment also applied to the unborn. First, there is the District of Columbia Divorce Act of 1860. This legislation stipulates that “the offspring of a second and bigamous marriage born or begotten”²³ before the divorce is finalized is legally the child of the parent who was legally capable of marriage at the time. Because “or begotten” refers to the child *before* birth, we can see that the authors of this clause had the full intention of applying legal rights to the patrimony of the unborn. Another example is that of “An Act for the Suppression of trade in, and Circulation of...Articles of Immoral Use, c. 1873”²⁴ This legislation prohibited the sale, lease and donation of any items used for abortive purposes. This shows us that the federal government had in its interest the lives of the unborn. It is also an interesting thought that this was enacted only five years after the 14th Amendment. The last case presented for evidence is that of the laws passed by the territories of Arizona, Colorado, Idaho, Montana, and Nevada in the 1860’s. They all passed laws which stated that it was unlawful to abort “a woman then big with child.”²⁵ Legally, since these states were only territories at the time, this legislation would have had to be approved by Congress. Several of the legislators who voted to approve these decrees also voted for the 14th Amendment. Furthermore, one can not rely on the Supreme Court’s application of the right to privacy in order to condone abortion. First of all, the abortion procedure is most definitely not private. One is surrounded by people totally unrelated to oneself: doctors, nurses, orderlies, etc. Not only is it not private in this way, but it is not private in the sense that it affects more than one person. It most directly affects the parents of the unborn child, but family and friends may also be involved as well. Therefore, one may

²³ Krasen at 116

²⁴ Krasen at 116

²⁵ Krasen at 116

come to see the Court's conclusions about the original intentions of the 14th Amendment were in error and do not support a woman's right to procure an abortion.

Although not consulted by the Supreme Court in the case of *Roe v. Wade*, natural law is most definitely against abortion. Natural law may be defined as "...a rule of reason, promulgated by God in man's nature, whereby man can discern how he should act."²⁶ It is obvious to see that abortion is not in keeping with natural law. First of all, abortion is intrinsically evil, being the unjust murder of an innocent human being. This is, of itself, unnatural and against the laws given to us by God. Secondly, abortion is the abnormal termination of a normal thing, that is, pregnancy. It interrupts a process which would ordinarily be carried out in the natural order of things. Aside from simply being wrong, it causes side effects, such as post abortion syndrome and other serious physical issues. It has even been linked to certain kinds of cancer. Lastly, abortion which occurs in marriage will, in many cases, lead to the estrangement of the parents, as they come to realize what they have done. It is obvious that natural law is not, and can never be, in favor of abortion.

The information provided in this paper supports the statement that the decision made by the Supreme Court in the case of *Roe v. Wade* was erroneous. They were not thorough in their research, as to its validity and to the original intentions of the authors to which they referred. They neglected obvious facts and took writings out of context to meet their own agendas. The conclusion which we may draw by observation of the known objective facts is that the Supreme Court purposefully allowed itself to disregard the truth in order to legalize abortion, leading us to conclude that the decision made by the Supreme Court was incorrect both legally and constitutionally, and was not in

²⁶ Rice, Charles, "50 Questions on Natural Law: What It Is and Why We Need It."

keeping with natural law.