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## Who Deserves the Right to Decide on Abortion?

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# Who deserves the right to decide on abortion?

**W**hy do the abortion wars rage on 40 years after Roe v. Wade? Why didn't the Supreme Court's decision resolve this issue?

To answer these questions, let's identify the core issue in Roe and try to resolve it ourselves. Doing so will help us appreciate why the abortion controversy defies any simple solution.

The central question in Roe was this: Does the Constitution limit the government's ability to stop a woman from terminating a pregnancy?

For some, the answer is obvious. Since the Constitution nowhere mentions a right to

abortion, the right does not exist.

But the Supreme Court has recognized many rights not mentioned in the Constitution. It has said certain matters are so central to a person's autonomy – such as decisions about whom to marry, whether to use contraceptives or how to rear one's children – that they are integral to the “liberty” (a term mentioned in the text) the Constitution protects.

The question in Roe was whether this liberty right encompasses a woman's choice to end a pregnancy.

Abortion rights supporters say it does. After all, the decision to have a child is one of the most important and impactful decisions a woman can make in her life.

Yet the logic of protecting a woman's privacy goes only so far. No one doubts, for example, that the government

could stop a woman from terminating the life of a baby after it was born.

But what if the woman wanted to terminate the pregnancy the day before the baby was due? Does the simple fact that the baby is still in her body negate any government interest in protecting the fetal life? Or is there a point in the pregnancy when the fetus is sufficiently developed that the government's interest in protecting life overrides the woman's right to choose?

Now consider a woman's right to choose during the earliest stages of pregnancy. Abortion opponents would say this is already too late for an abortion. Once the egg is fertilized, human life has begun and the state can protect that life by preventing the woman from terminating the pregnancy.

But pro-choice advocates

would say the state's interest in protecting a newly fertilized egg is considerably weaker than its interest in protecting a full-term baby.

So where does that leave us? If a woman's decisional autonomy should trump the state's interest in protecting the fetus in the early stages of pregnancy but not in the later stages, where is the line between the two? And who should draw that line? Is this a decision for nine unelected Supreme Court justices or for representatives elected by the people?

Of course, policy choices in a democracy are usually made by elected officials. But legislators are barred from making choices that infringe upon constitutionally protected rights. Thus, elected representatives cannot suppress unpopular ideas even if most people dislike them. And the

South could not return to Jim Crow even if a majority of Southerners wanted to.

Should the same be true of a woman's right to choose? Is the decision to carry a child to term, at least in the early stages of pregnancy, one that should be immune from political control?

If the answer is yes, we're right back to where the Supreme Court was in Roe v. Wade. That means we have to draw a line between when a woman has a right to terminate a pregnancy and when she does not.

Drawing this line is certain to be morally fraught and painfully difficult. Would you like to be the one making this decision? Do you think you could find a resolution that would satisfy everyone?

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