Epilogue:  
Post-Roe, Post-Casey

The legalization of abortion brought immediate benefits to women. Open access to legal abortion replaced the world of illegal abortion. After Roe v. Wade, women in the United States could look in a phone book for a physician-abortionist. Abortion clinics made the procedure widely available.\textsuperscript{1} State and federal programs extended coverage of abortion to low-income women. Legal, safe abortions became accessible to women across class and race, rather than the privilege of a few. In Chicago, two abortion clinics opened and Cook County Hospital and a handful of other hospitals began providing a small number of abortions. The publication of abortion providers and their office hours on the front page of a Chicago weekly illustrated the changed legal climate.\textsuperscript{3} The legalization of abortion freed women from the fear of police raids and arrests and from wondering whether the "Dr." was in fact a skilled doctor or a "butcher." The abortion committee system was dismantled. Legal abortion was safe, safer than normal childbirth.\textsuperscript{5}

Making abortion legal improved public health: overall maternal mortality dropped dramatically. In New York City, maternal mortality fell 45 percent the year after the state legalized abortion. "In 1971," city health officials reported, "New York City experienced its lowest maternal mortality rate on record." California and North Carolina reported similar improvement.\textsuperscript{4} Septic abortion wards closed. As a public-health measure, the legalization of abortion represented an improvement in maternal mortality that ranks with the invention of antisepsis and antibiotics.\textsuperscript{5} In countries where abortion remains illegal, abortion is a
significant contributor to maternal morbidity and mortality. The open availability of safe abortions in the U.S. benefited in particular low-income women and women of color, who had had the least access to skilled practitioners and were most likely to be injured or die as a result of illegal abortion. In New York City, over half the women who had abortions after legalization belonged to minority groups.

The legalization of abortion strengthened patients' rights. The recognition of a fundamental right of women to make decisions about pregnancy reinforced the rights of patients to be protected against coercive medical treatment and to make decisions regarding their own medical care. Women's reproductive rights challenge male supremacy uniquely, but patients' rights and reproductive rights alike challenge medical authority. Both seek greater medical and legal acknowledgment of patients' decision making and autonomy. Yet this is not simply a battle between doctors and patients, because, as we have seen, the medical profession is not uniform in its thinking or practice. Indeed, this study has uncovered a long tradition of physicians listening to and learning from patients and treating health care as a partnership. A significant segment of the medical profession prefers a more egalitarian, rather than authoritarian, mode of physician-patient relations.

Contemporary disputes over living wills, the right to die, and the right to refuse treatments against medical advice, as well as abortion, all attest to continuing conflict among Americans about patients' rights, appropriate use of technology, and the proper way to live and die. The battles reveal sharp division over both how to respond to difficult issues in medical care and who should make these decisions. Our society is in the midst of a deep philosophical and political struggle over whether there are absolute answers to medical dilemmas that shall be applied to all citizens—whether those answers come from medical, state, or religious authorities—or whether a democratic society must accommodate a multiplicity of moral viewpoints and allow individuals to make difficult (and differing) decisions for themselves.

Finally, the legalization of abortion strengthened civil liberties. As the state pressed the medical profession into investigating illegal abortion, due process rights guaranteed citizens under the Constitution were eroded. When doctors and hospital staff questioned patients at the behest of the state, physicians became police, patients became suspects. Medical surveillance of patients—whether for the progress of pregnancy, the use of illegal drugs, or the presence of stigmatized infectious diseases such as HIV—compromises constitutional protections
against unreasonable search and seizure by the state as well as the rights
to bodily integrity and privacy. Furthermore, the acceptance of this
policing function by medical personnel diminishes respect for patients,
damages patient confidentiality, and threatens the health of the patients
they serve. As public-health professionals understand, making it dan-
gerous to present a particular malady to health-care workers results in
people delaying or avoiding care and risking their lives in order to avoid
punitive measures. Using health-care professionals to serve as the state’s
investigators is dangerous public policy.

A backlash in reaction to the expansion of women’s reproductive
rights and sexual freedom, nurtured by the Catholic Church, Protestant
fundamentalists, and the New Right, developed into an intense minor-
ity movement in the 1980s and 1990s. The denial of public funding for
abortions for low-income women and federal employees was the first
defeat of the coalition that won Roe v. Wade. Illinois Congressman
Henry Hyde sponsored the restrictive “Hyde Amendment” passed by
Congress in 1977. Abortion opponents have succeeded in creating a
new discourse, given the fetus new meaning as a human “life,” and la-
beled abortion “murder.” Furthermore, the antiabortion movement
has projected a fetal “voice” to compete with and discredit the voices of
real, live women, a group that only recently spoke of its experiences in
public, political arenas. The fetus has been used to shift the debate
away from women and their narratives about the crimes of illegal abortion. Silencing the political voice of women, however, is only one
aspect of a far-reaching project. The antiabortion discourse has over-
shadowed interdenominational religious opinion that supports legal
abortion, and the antiabortion movement has organized to prevent
the practice of legal abortion. The picketing of clinics and the homes of
abortion providers and patients has become routine; a climate of hatred
has fostered bombings of clinics and assassinations of physicians and
clinic personnel. The related assault on lesbians and gays harms the
feminist struggle for female sexual independence. The New Right has
pushed forward a conservative political agenda hostile to feminism, sex-
ual freedom, freedom of speech and religion, and civil rights.

The women whose reproductive rights are most abridged and vul-
nerable to attack are teenagers and low-income women. The New Right
expresses particular hostility toward sexually active teenage girls, whom
they perceive as beyond parental, specifically paternal, control. This is
a change; the plight of pregnant single women garnered the greatest
sympathy at the turn of the century and evoked sympathy among many
reformers in the 1960s. Single women were then perceived as victims; today’s antiabortion movement blames them for being sexual actors. Conservative attacks on “welfare” and abortion are related, for both seek to control women and their reproduction. The efforts to dismantle welfare and to require that minors notify their parents or obtain their consent for abortion are both intended to hurt young women and to punish them for their sexual behavior. In calling for an end to Aid to Families with Dependent Children (AFDC), or for mandatory sterilization or contraception for poor women, conservatives attempt to stop one group of women (stereotyped as poor black women) from bearing children. In restricting abortion use, they attempt to force a different group (middle-class white women) to bear children. The racial stereotypes obscure the fact that both black and white women use legal abortion and social assistance; few are teenagers. Conservatives hope that making pregnancy a punishment for sex will make young (white) women either forego sex or enter marriage. Sexism, racism, and elitism are embedded in the twin assault on welfare and abortion.

Neither welfare benefits nor access to legal abortion guarantees reproductive rights. Real reproductive freedom for women requires that all women, regardless of race, class, age, sexual orientation, or marital status, be able to avoid unwanted childbearing through the use of contraception and abortion and be able to bear children without being stigmatized, impoverished, or compelled to give up their education, employment, or children.

If Roe v. Wade were to be overturned and abortion made illegal again, the history of when abortion was a crime suggests that the results would be dire indeed. The practice of abortion might dip in response to pressure, but it would not stop. Women would once again besiege physicians and other health-care workers with requests for abortion. Enforcement of new criminal statutes would no doubt be patterned on the old system. State authorities would again expect medical personnel to assist the state by reporting, interrogating, and physically examining women suspected of having abortions; police would revive the practice of raiding abortionists’ offices and capturing women. Any woman who miscarried would be treated as a potential criminal and subjected to medical examination, which could include internal “viewing” via ultrasound. Medical mistreatment of women would become routinized as the health-care system became further enmeshed in the state’s law enforcement apparatus. If abortion is made illegal, some women will die, many more will be injured. The old abortion wards
will have to be reopened, a public-health disaster recreated. Making abortion hard to obtain will not return the United States to an imagined time of virginal brides and stable families; it will return us to the time of crowded septic abortion wards, avoidable deaths, and the routinization of punitive treatment of women by state authorities and their surrogates.

However, the past will not be duplicated in every detail if abortion is again made illegal, for the historical circumstances differ. In the last twenty-five years, abortion has been politicized in new ways. We can anticipate the “private” enforcement of the laws by the antiabortion troops that now harass abortion providers and women who seek abortion. Women could be routinely prosecuted and imprisoned for having abortions, which they were not during the era of illegal abortion.

It is not impossible to imagine women in the United States being subjected to constant state surveillance of their reproductive systems similar to that recently experienced in Romania. The monitoring of female menstrual cycles, investigation of miscarriages, and the transformation of prenatal care from checkups to checks that all pregnancies are progressing to term are conceivable in the United States. With the rise of an antiabortion movement that proclaims the primacy of the fetus, prenatal care and medical thinking have already moved in the direction of putting the fetus ahead of the pregnant woman. Too often pregnant women are perceived as vessels for ensuring the best outcome of a future child. The obsessive focus on the behavior of pregnant women allows Americans to overlook the social and economic roots of this country’s high infant mortality rates as well as the general population’s difficulty in improving its eating habits or eliminating smoking and alcohol and drug abuse. Some women have been charged with “child abuse” of a fetus in utero; others have been surgically delivered by cesarean section against their will. Predictably, it is mostly low-income women, minority women, or women who hold religious views different from those of their doctors who have been charged or forced to undergo such surgery.

Discounting the rights of pregnant women weakens everyone’s rights as patients. If a pregnant woman cannot reject a cesarean section—whether for religious, political, or personal reasons—then any woman can be forced to submit to procedures deemed necessary for the fetus; any patient can be forced to comply with treatments deemed essential by medical personnel. This society rejects the sacrifice of one person in order to save another considered more important; an organ may be do-