*Roe v. Wade* Background summary & questions

In the latter part of the nineteenth century and the first half of the twentieth century, most states adopted laws strictly regulating the availability of abortions.  Many states outlawed abortion except in cases where the mother’s life was in jeopardy.  Illegal abortions were widespread and often dangerous for women who undertook them because they were performed in unsanitary conditions.

The sexual revolution that began in the second half of the twentieth century resulted in public pressure to ease abortion laws.  As some states began to relax abortion restrictions, some women found it relatively easy to travel to a state where the laws were less restrictive or where a doctor was willing to certify medical necessity.

However, poor women often could not travel outside their state to receive treatment, raising questions of equality.  Statutes were often vague, so that doctors did not really know whether they were committing a felony by providing an abortion.  In addition, government interference in sexual matters was beginning to be called into question by a changing conception of privacy.

There is no right to privacy explicitly guaranteed in the Constitution.  However, the Supreme Court has long acknowledged some right to privacy.  In earlier rulings about privacy, the Supreme Court seemed to connect the right to privacy to location, with a particular emphasis on a person’s home.  This association stemmed from notions of property rights and centered on people’s personal property.

However, in the second half of the last century, the Court’s position on privacy came to be seen as a right connected to a person, not to a location.  The change in conceptions of privacy can be seen clearly in the landmark decision of Griswold v. Connecticut (1965).  The Supreme Court ruled that a Connecticut statute outlawing access to contraception violated the U.S. Constitution because it invaded the privacy of married couples to make decisions about their families.  In that ruling, the Court identified privacy as a transcendent value, fundamental to the American way of life, and to the other basic rights outlined in the Bill of Rights.  Though the decision focused on the fundamental nature of privacy associated with marriage, the case set the stage for the Court to proceed further in its protection.  Seven years later, the Court decided a case that extended access to contraception to unmarried persons, as well.

While the word privacy does not appear in the Constitution, the argument for protecting privacy is based on the Due Process Clause of the 14th Amendment.  That clause has been found to protect certain fundamental rights against government action.

Jane Roe, a pseudonym used to protect her identity, was an unmarried and pregnant Texas resident in 1970.  She wanted to have an abortion, but Texas abortion law made it a felony to abort a fetus unless “on medical advice for the purpose of saving the life of the mother.”  Roe filed suit against Wade, the district attorney of Dallas County, Texas to challenge the statute outlawing abortion.

Roe contested the statute on the grounds that it violated the Fourteenth Amendment mandating equal protection of the laws and the guarantee of personal liberty, and a mother’s right to privacy implicitly guaranteed in the First, Fourth, Fifth, Ninth, and Fourteenth Amendments.  The state argued that “the right to life of the unborn child is superior to the right to privacy of the mother.”  The state also argued that in previous decisions where the Court protected individual or marital privacy, that right was not absolute.  The state argued that this is a policy matter best left to the legislature to decide.  A three-judge federal district court ruled the Texas abortion law unconstitutional, and the case was then appealed directly to the U.S. Supreme Court.  
 **QUESTIONS TO CONSIDER**

1. What was the Texas law at issue here?

2. How did the right to privacy change over the course of the last half-century?

3. Do you believe that privacy is a fundamental right, necessary to secure the other rights in the Bill of Rights?  Why or why not?

4. Do the Supreme Court’s decisions in the contraception cases prohibit states from outlawing abortion?  Explain.

Classifying Arguments: Roe v. Wade

**DIRECTIONS: The following is a list of arguments in the Roe v. Wade court case. Read through each argument and decide whether it supports Roe’s side (R), against the Texas law restricting abortion; Wade’s side (W), in favor of the Texas law restricting abortion.**

\_\_\_\_1. The Fourteenth Amendment says "*No State shall…deny to any person within its jurisdiction the equal protection of the laws."*Having different abortion laws in various states keeps poor women in states with restrictive laws from having access to abortions, while wealthier women can travel elsewhere to have a legal and safe abortion.

\_\_\_\_2. The Fourteenth Amendment says "*No State shall…deny to any person within its jurisdiction the equal protection of the laws*." If a fetus is a person from conception, then the Fourteenth Amendment guarantees equal protection of the laws.  The life of the fetus must be considered as having equal weight with the life of the mother.  Thus the state has a compelling interest in protecting the life of the fetus.

\_\_\_\_3. The First, Fourth, and Fifth Amendments apply to the States.  Though these Amendments do not mention the right of privacy, privacy is fundamental to the exercise of the rights that are explicitly mentioned.  As such, privacy is protected by the penumbras of the First, Fourth, and Fifth Amendments:

* + The First Amendment says "*Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."*
  + The Fourth Amendment says "*The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated…."*
  + The Fifth Amendment says "*No person shall…be compelled in any criminal case to be a witness against himself…."*

\_\_\_\_4. The Ninth Amendment says "*The enumeration in the Constitution of certain rights, shall not be construed to deny or disparage others retained by the people."*The Framers did not want the Bill of Rights to be an all-inclusive list of the rights that people in the United States have.  The Ninth Amendment says that people retain other rights that are not explicitly listed in the Constitution.  Among these rights may be the right to privacy, which would include freedom of choice in the basic decisions of one’s life.

\_\_\_\_5. It has long been an acknowledged role of the state to safeguard health and regulate medical practices.

\_\_\_\_6. The U.S. Constitution does not explicitly mention any right of privacy.

\_\_\_\_7. For the U.S. Supreme Court to determine when, where, and how an abortion should occur would be to overstep its authority as a court.  It is the job of state legislatures to determine how abortions should be regulated, not federal courts.