

What Overturning Roe v Wade Means for the USA and Beyond

Article by Agnieszka Graff, Paulina Januszewska

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The leaked Supreme Court opinion that threatens to overturn the landmark ruling on Roe v Wade has sparked public outrage in the United States. It has thrown into sharp relief the bitter divisions that exist in American society. Agnieszka Graff explains why other rights might soon be targeted, how feminist and women's movements can fight back, and which parallels can be drawn with another divided nation that has seen fierce battles over reproductive rights in recent years: Poland.

Paulina Januszewska: In the United States, there isn't and never has been a law that would limit the right to abortion on a federal level. So why are the current plans of the Supreme Court so controversial?

Agnieszka Graff: We need to bear in mind that the legal system in America is based on precedents. The precedents have decided key issues for this country and access to abortion was one of them. In Roe v Wade (1973), the Supreme Court ruled that a Texas woman known as Norma McCorvey (alias), who was not allowed to terminate her pregnancy, has rightfully accused her district attorney, Henry Wade, of restricting her rights. In this case, there was a violation of the constitutional right to privacy.

However, the judgment, which had been in force for almost 50 years, did not establish the right to abortion. It only ruled that individual states do not have the right to limit access to abortion for their citizens. The adjudicating judges, interestingly, were mostly conservatives. Back then, there was no polarisation around the topic of abortion. The sentence was an attempt to solve the medical crisis of illegal abortions and the resulting thousands of deaths.

The current Supreme Court ruling has also been decided, although not yet announced, in a specific case: Dobbs v Jackson Women's Health Organization, which challenged the Mississippi abortion restrictions. In 2018, it was forbidden to terminate pregnancy after the 15th week, i.e. almost a total ban, as according to Guttmacher Institute over 63,000 abortions are performed in America after the 15th week of pregnancy.

Exactly. This ruling concerns the last abortion clinic in Mississippi. It is shocking that there was only one such facility in this large state. Although the women running the clinic have announced that they will continue their work and create a facility in New Mexico, but – let us have no doubt – the local authorities will effectively make it very difficult for them.

The ruling was passed in the Supreme Court last December, and its justification was

prepared later and recently leaked to the media. The leak suggests that a conservative majority of judges is questioning the ruling in the case of Roe v Wade. That is, they overrule it, challenging 50 years of legal decisions and setting a new precedent. It claims that the judgment restricting the right of the states to abortion was based on a false inference.

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So it is not a de facto ban?

No, it is rather an opening of the way to restrictions, just like Roe v Wade closed the road to restrictions rather than grant American women the right to abortion. The Mississippi ruling will determine where the decision to terminate the pregnancy in the US can be made. From 1973 until now, it has been made at the federal level under the constitutional guarantee, namely the 14th Amendment, which guarantees US citizens the right to liberty and the privacy derived from it. Now it will again be up to the states to regulate abortion. And they are going to be divided about half and half.

The justification given by the Supreme Court is that it places the decision-making in the hands of the citizens themselves, through their democratically elected representatives.

This argument is deliberate and hinges on the fact that the constitution does not mention abortion. The founding fathers, who did not think of women as persons possessing rights, had no intention of including the right to terminate an unwanted pregnancy in the 14th amendment. From this reading of the constitution, the Supreme Court understands that the amendment cannot be invoked to protect the right to abortion.

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And there is nothing the Democrats can do about it?

Two months ago, Democrats made an unsuccessful attempt to introduce a law that would guarantee access to abortion as a part of medical services. It passed through the House of Representatives but was overruled by the Senate. The issue will be raised again, but the chances of success are slim – unless the Democrats win a majority in the Senate this fall.

There is also a third leg of American power, the president.

Joe Biden, who is a Catholic by the way, has expressed great concern not just for its consequences for women but also for the threat to other important precedents set in recent decades

Yes, because this opens the way for the anti-abortion lobby to introduce a ban on terminating pregnancies resulting from rape or incest. It also opens a way for other religious fundamentalists to challenge issues such as same-sex marriage. What other threats can you see?

To predict what will happen next, we need to understand the ideology driving the reversal of Roe v Wade. It comes from the religious fundamentalists and ultra-conservatives who are allied with the Republicans and often directly in their ranks. In fact, it can be said that over the past 20 to 30 years they have managed to infiltrate the most important platforms of the Republican Party, dominating internal debates and waging culture wars. Since around 1976, a few years after Roe v Wade, the radical religious right has rallied around “family values”. It began with Phyllis Schlafly’s alliance with Ronald Reagan and continues today, with varying degrees of success.

So right to abortion is going to be the first to go?

Yes. I think this is the first shot in the coming wave of struggles. This is a new phase of culture wars. Conservatives will seek to ban various forms of contraception, sex education, and the right to transition. Next, we can expect an attempt to transfer the right to same-sex marriage to the state level. But they might also surprise us.

In what way?

Firstly – I would bet that they will try to push for the abortion ban by Supreme Court. After all, they consider abortion to be genocide. But I would also not rule out going back to the roots.

Do you mean white supremacy?

Yes. However, it would not be open racism, but firstly increasing the powers of the police, and secondly, influencing the education system, for example by instituting a ban on “critical race theory.” Thirdly, gradual and almost invisible reduction of the already narrow scope of immigrant rights. After all, such attempts have already been made. For example, Texas plans to abolish the right to education for immigrant children – which will challenge another Supreme Court ruling from 1982. In the South, disenfranchising African Americans and Hispanics is a common practice. This is normally achieved through administrative harassment and various kinds of obstruction, or exploitation of loopholes in federal law.

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The intensifying culture wars may sound very familiar to people who live in Poland...

The Polish organisation Ordo Iuris is the counterpart of the radical religious right that is waging this war. However, American polarisation is much deeper than anywhere in Europe and has a history that led to the Civil War. The division around abortion may be the beginning of the creation of a completely new form of political system in the US. It concerns not only the different access to a specific medical service, but de facto the subjectivity of women in each state. This means that, for example, a woman in Louisiana will be deprived of her civil rights to decide on her life and body, as the local authorities are already preparing to punish abortion by prison sentence. Meanwhile, a resident of the state of New York can terminate their pregnancy at any time. Racism is an important factor here in terms of geography and wealth. Restrictions resulting from the repeal of Roe v Wade will hit the poorest women, usually from ethnic minorities. In Mississippi, 69 percent of procedures concern Black and Hispanic women.

Given the fact that ultraconservatives gain enormous influence and put a lot of money into anti-gender, pro-life lobbying across the globe, will this have a symbolic or real significance to the rest of the world?

This is not a new situation. Under the Bush administration, conservatives implemented a policy that restricted federal funding for aid programs that guaranteed access to reproductive rights in developing countries. There is considerable concern among feminist organisations across the globe about potential impacts on the Global South. However, I think that for now, the ruling will have a bigger impact on America.

According to the Center for Reproductive Rights, if Roe v Wade is revoked, 23 states will ban abortion. That is a lot.

This number excludes Kansas and Florida – states that are hesitant but would likely implement a ban too. When you look at the map, you can see how difficult inhabitants of the Deep South will have it. Mississippi is surrounded by red spots, which means that if the abortion clinic there collapses, the person willing to terminate the pregnancy will have to travel hundreds of miles to do so. Not everyone will be able to afford it. Certainly not a young, poor African American or Latino woman.

In some ways, it will be a secession, because the South and parts of the Midwest will just stop pretending to be fighting discrimination in any way. It won't be another Poland or Ireland before the Eighth Amendment was repealed, but rather another El Salvador. And they will depart from the rest of civilisation, turning into places where profoundly gendered and racialised economic inequality will become the accepted norm. If you look at it from a historical perspective, you can see a return of the 1950s, when the persecution of racial minorities in southern states were questioned. The Civil Rights Movement made it impossible, but now the South has shifted again. It now claims: "You can discriminate and you don't have to use classical segregation to do it."

How else could it be done?

By using the "war on drugs" and privatising the prison system. And now by limiting the access to abortion for Black women. I do not see the Supreme Court's decision only through a feminist perspective. I believe that the polarisation we are observing has now entered a phase of rupture. This no longer represents a worldview difference within the same

American society, but a gulf between two different American societies. Young African American women are not members of either of them, but hostages of ultra-conservative white southerners. Because white women belonging to the middle class will be able to cope.

Does this signal a new phase for the feminist movement?

Yes. A phase of fighting, not necessarily by legal methods. Feminism as a lifestyle, feminism as a coaching and therapeutic language, feminism as an abstract academic discourse – all of this will now be marginalised. The time has come to fight for lives. This is something America has never seen before.

What about in the 1970s?

More like the turn of the 1960s and 1970s – yes, it was the time of radicalism when the feminist movement gained historic victories. But it should also be remembered that the Roe v Wade case was successful not only thanks to the lawyers involved. At that time, the religious right was not yet consolidated and the atmosphere in the US was favourable towards progressive changes. And these changes were supposed to last forever.

Fifty years have since passed and two generations of women have been raised firmly convinced that they were safe. In 1989, when I was studying in the USA, several dozen people from my campus went to the abortion march in Washington. I was among them. For me, a Polish woman who had just emigrated from Europe, it seemed obvious that the right to abortion must be constantly fought for and that nothing is given forever. From my American friends I heard: “Abortion? After all, we have Roe v Wade. Nobody dares to take it away from us.” Well, look where we are now.

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Will this new wave of activism against the lack of access to abortion have the characteristics of populist feminism?

I assume that you are referring to the concept that we propose with Elżbieta Korolczuk in the book “Who’s Afraid of Gender”. We used this term to envision a mass and grassroots movement that speaks on behalf of the women as opposed to the elites. This is what is happening currently, you can really see it. Social media will be playing a significant role here, as they will be used to create these safety nets and support groups. And such groups are already functioning – not only at the international level, but also locally in USA. The feminist version of couch surfing, i.e. hosting “sisters” from state where abortion is illegal, will become popular. Contrary to what mainstream Polish journals write, America will not return to the time before Roe v Wade.

What exactly do you mean?

Back then, abortion was forbidden in most of the country. It was already legalised in New York in 1970. But across the country, the abortion underground was flourishing. It is estimated that up to a million illegal abortions were performed each year in the 1950s and 1960s. About 3000 to 4000 women died every year. Those times are rightfully gone. Today's mobilisation will involve fundraising for travels for women in need of surgery and organising systems of distribution of abortion pills. Clinics in states where abortion will remain legal are already gearing up to see thousands of additional patients. The Internet is full of tutorials on how to perform a pharmacological abortion, or how to do it safely at home, using an empty jar and two tubes.

Today it's also easier to get on a plane and travel to a place where you can have a safe abortion. For many people that still creates an economic barrier, but we can organise fundraisers to overcome it. Fortunately, nobody came up with the idea of doing pregnancy tests at airports or roads leading to the northern states yet. The conservatives have not yet targeted the right to talk about having an abortion, so a lot of our resources can still go to campaigning for such "[abortion tourism](#)". I also expect mass protests. And I think that they will have a completely different character than all the previous ones, which to a large extent referred to the rhetoric of choice. Now it is time for a different strategy and a different language.

In her recent statements on the upcoming ruling, Kamala Harris unwittingly furthers the old narrative of this is an "attack on freedom and the right to privacy."

Kamala Harris gave a frigid and, to many feminists, a conservative statement. Interestingly, when talking about women's freedom, she did not use the word "abortion" itself. I have a lot of respect for her, but it was a statement by a liberal woman who is afraid that someone in the USA is undermining fundamental rights, especially the right to privacy. This is consistent with the rhetoric of American liberal feminism that was developed after Roe v Wade and during a time that allowed for the implementation of certain progressive solutions. This era has just ended.

So what next?

It is time for a new rhetoric. The way of thinking and acting, which Elżbieta Korolczuk and I have called "populist feminism", is based on a logic different from that of liberal feminism. It does not refer to abstract rights and freedoms, but to emotions like anger, despair, rage, and empathy. It is built on solidarity rather than individual rights. We always start the discussion by saying "abortion is wrong, but ...". Well, there is no "but". Abortion is a medical procedure that is essential for women to live. Period.

So the slogan "Abortion is ok" will not work?

There is a colossal difference between the slogan "Abortion is ok" and "Abortion is necessary and saves lives". Personally, I support both, but I know that in Poland the first one is perceived as a provocation. It is not about chiselling the language of radical feminism, but about a strategy that will allow feminism to reach the "ordinary people", not liberals with their "my body, my decision" attitude.

Do we need to convince the “ordinary people”?

Certainly. A lot of people may think that abortion is wrong, but when they realise what the radical anti-abortion activists are preparing for them, their hair will turn grey. The people of Alabama are not the ones who would say that abortion should always be legal (like most people in Vermont or New York State), but vast majority of them believe that abortion should be legal in the event of rape, incest, or genetic defects of the fetus. In a moment, lawmakers will take away that right, taking women hostage.

To mobilise them to defend Roe v Wade, you must appeal to compassion. One of the consequences of culture wars is the disappearing ability to communicate with the other side. We must regain this and the Irish example can be very helpful in this regard. “Your sister, your mother, your daughter, her decision”, “Put yourself in her place” – these are the slogans that touched Irish society and subsequently led to the abortion law of 2018. We must show the Americans and the Polish – including conservatives – the cruelty of these laws and the threat they pose to them personally, as well as their loved ones.

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