

July 25, 2016; What Led to Roe v. Wade

On January 22, 1973, the earth beneath the legal world shook violently. On that date, the U.S. Supreme Court decided what has become one of the Court's most important, and certainly one of its most controversial decisions, *Roe v. Wade*, the case that legalized abortions across the nation. If there was a counterpart of the Richter scale to measure the magnitude of legal decisions, undoubtedly *Roe v. Wade* would have measured 9.9. The decision set off a social tsunami so powerful that 43 years later violent waves of discord and disagreement continue to surge across our country, churning up strongly conflicting emotions within the American populace.

Like the evolution of a powerful earthquake, the origins to the dramatic release of pent up emotions caused by the *Roe* decision were years in the making. For decades tension in America over the topic of abortion had been mounting. However, this tension was not immediately detectable because the emotional and political shifts were often quite subtle and dispersed across the nation. There was no central focal point to concentrate the positions and arguments of the conflicting sides.

This lack of centrality was due largely to America's unique political structure that allows each state to individually decide many important legal issues. For nearly 200 years, this included the subject of abortion. Legislatures from each state were free to regulate abortions as they and their constituents saw fit. Battles over abortion rights raged among the 50 states and territories, but these were local battles, frequently confined to the states' geographical boundaries. For a long time, there was no centralized debate within the United States over the topic of abortion.

However, in the 1960s, growing opposition to the Vietnam War and combative struggles for racial and gender equality began to dissolve the geographic political boundaries. Among these struggles was a major push for women's rights and equality. One of the issues embraced by this movement was the demand for information about, and access to, reproductive choices. Tentacles of this debate slowly intertwined themselves into local and statewide political movements across the country, dissolving intrastate political and social boundaries and eventually unifying positions. Social, political, and religious organizations galvanized support and sharpened their attacks. As the arguments for and against these positions became more focused and grew stronger, major media outlets, including newspapers and TV stations, began covering the stories, further escalating tensions to a level that threatened political and social stability.

In 1965, within this social and political environment, the Supreme Court decided the case of *Griswold v. Connecticut*. An 1879 Connecticut law provided that "any person who uses any drug, medicinal article or instrument for the purposes of preventing conception shall be fined not less than forty dollars or imprisoned no less than sixty days." In addition, the law

stated that “any person who assists, abets, counsels, causes, hires or commands another to commit any offense may be prosecuted and punished as if she were the principle offender.”

Despite the law, there were groups and individuals who provided women with information about, and access to contraceptives. Among them were Estelle Griswold, the executive director of Planned Parenthood League of Connecticut, and Dr. C. Lee Buxton, doctor and professor at Yale Medical School. Both were arrested and convicted as accessories to providing illegal contraception and each was fined \$100. They appealed their convictions to Connecticut Supreme Court which upheld their convictions.

Griswold and Buxton then appealed to the U.S. Supreme Court, arguing that the law violated the U.S. Constitution. Those defending the Connecticut law argued that the use of contraceptives was not a constitutional right. Therefore, under the 10th Amendment, which gives states the exclusive right to legislate matters not specifically delegated to the U.S. by the Constitution, Connecticut had the right to pass the law.

The U.S. Supreme Court agreed with Griswold and Buxton and reversed their convictions. In a 7-2 decision, the Court ruled that the Connecticut law violated a constitutional “right to privacy.” The justices differed on where in the Constitution this right was found. However, they did agree on its existence and labelled it a “fundamental” right. Under American law, a statute that restricts a “fundamental” constitutional right can only survive judicial scrutiny if the state can prove that the restriction is “compelling” and “absolutely necessary.” The Supreme Court held that Connecticut failed to meet this burden and for this reason ruled the law unconstitutional.

This decision is important to those who support abortion because the legal reasoning behind the decision has become the legal linchpin for the argument defending the right of a woman to decide whether or not to abort a fetus. And, those who argue against abortion, cite the Griswold case as a classic example of the Supreme Court engaging in judicial activism by inventing a constitutional “right” out of thin air.

The Griswold case set the legal stage for the Supreme Court’s decision in *Roe v. Wade*, and helped frame the arguments for and against a woman’s right to pursue an abortion in stark terms of black and white rather than in more subtle shades of gray. Next week we’ll take a close look at this pivotal case.

