

this fact, but does not have the courage to admit this. When he admits this reality, then he must also admit his involvement because he is a part of the collective white America. It is only to the extent that he recognizes this that he will be able to change his reality.

Another concern is how does the white radical view the black community and how does he view the poor white community in terms of organizing. So far we have found that most white radicals have sought to escape the horrible reality of America by going into the black community and attempting to organize black people while neglecting the organization of their own people's racist communities. How can one clean up someone else's yard when one's own yard is untidy?

A thorough re-examination must be made by black people concerning the contributions that we have made in shaping this country. If this re-examination and re-evaluation is not made and black people are not given their proper due and respect, then the antagonisms and contradictions are going to become more and more glaring, more and more intense until a national explosion may result.

When people attempt to move from these conclusions it would be faulty reasoning to say they are ordered by racism, because, in this country and in the West, racism has functioned as a type of white nationalism when dealing with black people. We all know the habit that this has created throughout the world and particularly among nonwhite people in this country.

Therefore any re-evaluation that we must make will, for the most part, deal with identification. Who are black people, what are black people; what is their relationship to America and the world?

It must be repeated that the whole myth of "Negro citizenship," perpetuated by the white elite, has confused the thinking of radical and progressive blacks and whites in this country. The broad masses of black people react to American society in the same manner as colonial peoples react to the West in Africa and Latin America, and had the same relationship—that of the colonized toward the colonizer.

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LIFE AND CHOICE



Except for a brief "baby boom" period after 1945, the number of children born to the average American woman has steadily decreased since the early nineteenth century. She had seven children on average in the early 1800s, four in the late 1800s, three in the early 1900s, two in the late 1900s. In the nineteenth century, the chief methods for limiting births were primitive contraception, abstinence, and, especially, abortion. In the early twentieth century, however, abortion became illegal in most states, and abstinence in marriage was less acceptable to husbands and wives. Improved contraception and delays in first marriages therefore became increasingly important birth-limiting measures. The falling birthrate since 1960 has come chiefly from a dramatic improvement in contraceptive techniques, especially contraceptive sterilization, the pill, the intrauterine device, and the vaginal sponge. Less important but still significant has been a rise in abortion rates, most notably in the five years that followed the historic 1973 Supreme Court decision in *Roe v. Wade*, which ruled restrictive state abortion laws unconstitutional.

Roe v. Wade reflected major changes in American society. These included advances in birth control technology, a desire to limit family size, and, especially, increased attention to the rights of women. One of these rights, according to modern feminists, is "reproductive freedom," of which abortion on demand was a crucial part. *Roe v. Wade* also typified a notable long-term shift in how the Supreme Court has viewed constitutional "rights"—or at least the question of which rights are the truly vital ones. In theory, all rights in the Constitution are of equal value, but over the years the Court, reflecting changes in social values, has always cherished some rights as more important than others. In the nation's early days, private property was given special consideration; later this came to include the rights of businesses and liberty of contract. Then, in the 1930s and 1940s, economic rights lost pride of place to the rights enumerated in the First Amendment. Later, the right to vote and to attend racially integrated schools was

judged to be of fundamental importance. With the *Roe v. Wade* decision, so was the right to privacy.¹

Justice Harry Blackmun's decision, which invalidated the statutes of thirty states that forbade abortions except to save the mother's life, sparked bitter controversy. "Pro-life" forces, most affiliated with religious denominations and uncompromisingly opposed to abortion, denounced the ruling. They called for a constitutional amendment defining human life as beginning at conception, picketed abortion clinics, and successfully urged Congress to curtail most Medicaid funds for abortions. Meanwhile, "prochoice" advocates organized in support of the right of a woman (rather than the state) to choose whether or not to have an abortion. They also supported doctors' rights to perform abortions and poor women's rights to obtain them. By the 1980s, a political candidate's position on abortion could make or break a campaign, just as a Supreme Court nominee's position on *Roe v. Wade* could make or break a Court nomination.

Harry Blackmun, author of the *Roe v. Wade* decision, was born in Illinois in 1908. He grew up in the Minneapolis-St. Paul area and then headed east to attend Harvard College and Harvard Law School. Blackmun returned to Minneapolis to open a private practice before moving to Rochester, Minnesota, as legal counsel for the world-famous Mayo Clinic. A hard-working, serious-minded, moderate Republican, he was first appointed to the federal judiciary by President Dwight Eisenhower in 1959. Blackmun, a boyhood friend of Chief Justice Warren Burger, was promoted to the Supreme Court in 1970 after the Senate had rejected Richard Nixon's first two nominations to fill a recent vacancy. Although Blackmun was initially perceived as Burger's "Minnesota twin," the *Roe v. Wade* ruling (from which Justices Byron White and William Rehnquist dissented) marked the beginning of his drift away from the conservative Burger wing of the Court toward the more liberal wing associated with Justice William Brennan.

Questions to Consider. On what two constitutional grounds did the appellant seek to overturn restrictive Texas abortion laws? Of the three reasons commonly given to justify restricting abortions since the nineteenth century, which did Blackmun consider most important? Where in the Constitution did he find grounds for the right to privacy claimed by the appellant? Did Blackmun consider a woman's right to privacy a guarantee of an absolute right to abortion? The State of Texas (the appellee) argued that states could restrict abortion because the state has a "compelling interest" in protecting the right of an unborn fetus under the provisions of the Fourteenth Amendment. How did Blackmun deal

1. In *Rust v. Sullivan* (1991) the Supreme Court decided that medical personnel in family planning clinics receiving federal funds may not mention abortion or abortion facilities to clients.—Eds.

with this argument? Why did he call Texas's position "one theory of life"? Why did Blackmun discuss "trimesters" and "viability" at such length? If medical technology were to shift the point of viability from the third to the second trimester, would that undercut the force of *Roe v. Wade*?



Roe v. Wade (1973)

HARRY BLACKMUN

The principal thrust of appellant's attack on the Texas statutes is that they improperly invade a right, said to be possessed by the pregnant woman, to choose to terminate her pregnancy. Appellant would discover this right in the concept of personal "liberty" embodied in the Fourteenth Amendment's Due Process Clause; or in personal, marital, familial, and sexual privacy said to be protected by the Bill of Rights.

It perhaps is not generally appreciated that the restrictive criminal abortion laws in effect in a majority of States today are of relatively recent vintage. Those laws, generally proscribing abortion or its attempt at any time during pregnancy except when necessary to preserve the pregnant woman's life, are not of ancient or even of common law origin. Instead, they derive from statutory changes effected, for the most part, in the latter half of the nineteenth century. . . .

Three reasons have been advanced to explain historically the enactment of criminal abortion laws in the nineteenth century and to justify their continued existence.

It has been argued occasionally that these laws were the product of a Victorian social concern to discourage illicit sexual conduct. Texas, however, does not advance this justification in the present case, and it appears that no court or commentator has taken the argument seriously. . . .

A second reason is concerned with abortion as a medical procedure. When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman. . . . Modern medical techniques have altered this situation. Appellants refer to medical data indicating that abortion in early pregnancy, that is, prior to the end of first trimester, although not without its risk, is now relatively safe. . . . The State retains a definite interest in protecting the woman's own health and safety when an abortion is proposed at a late stage of pregnancy.

The third reason is the State's interest—some phrase it in terms of duty—in protecting prenatal life. Some of the argument for this justification rests on the theory that a new human life is present from the moment of conception.

Roe v. Wade, 410 U.S. 113 (1973).

The State's interest and general obligation to protect life then extends, it is argued, to prenatal life. Only when the life of the pregnant mother herself is at stake, balanced against the life she carries within her, should the interest of the embryo or fetus not prevail. Logically, of course, a legitimate State interest in this area need not stand or fall on acceptance of the belief that life begins at conception or at some other point prior to live birth. In assessing the State's interest, recognition may be given to the less rigid claim that as long as at least *potential* life is involved, the State may assert interests beyond the protection of the pregnant woman alone. . . .

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, going back perhaps as far as *Union Pacific R. Co. v. Botsford* (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution. . . . These decisions make it clear that only personal rights that can be deemed "fundamental" or "implicit in the concept of ordered liberty," are included in this guarantee of personal privacy. They also make it clear that the right has some extension to activities relating to marriage, procreation, contraception. . . .¹

This right of privacy, whether it be founded in the Fourteenth Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy. The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved. All these are factors the woman and her responsible physician necessarily will consider in consultation. . . .

On the basis of elements such as these, appellants argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, is unpersuasive. The Court's decisions recognizing a right of privacy also acknowledge that some state regulation in areas protected by that right is appropriate. As

1. References to prior court decisions have been omitted.—Eds.

noted above, a State may properly assert important interests in safeguarding health, in maintaining medical standards, and in protecting potential life. At some point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision. The privacy right involved, therefore, cannot be said to be absolute. In fact, it is not clear to us that the claim . . . that one has an unlimited right to do with one's body as one pleases bears a close relationship to the right of privacy previously articulated in the Court's decisions. The Court has refused to recognize an unlimited right of this kind in the past.

We therefore conclude that the right of personal privacy includes the abortion decision, but that this right is not unqualified and must be considered against state interests in regulation. . . .

Appellee [the state of Texas] argues that the State's determination to recognize and protect prenatal life from and after conception constitutes a compelling state interest. We do not agree fully. . . .

The Constitution does not define "person" in so many words. Section 1 of the Fourteenth Amendment contains three references to "person." The first, in defining "citizens," speaks of "persons born or naturalized in the United States." The word also appears both in the Due Process Clause and in the Equal Protection Clause. "Person" is used in other places in the Constitution. . . . But in nearly all these instances, the use of the word is such that it has application only postnatally. None indicates, with any assurance, that it has any possible prenatal application. All this, together with our observation, that throughout the major portion of the nineteenth century prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the Fourteenth Amendment, does not include the unborn. . . .

Texas urges that, apart from the Fourteenth Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the State has a compelling interest in protecting that life from and after conception. We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy, and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

In view of all this, we do not agree that, by adopting one theory of life, Texas may override the rights of the pregnant woman that are at stake. We repeat, however, that the State does have an important and legitimate interest in preserving and protecting the health of the pregnant woman, whether she be a resident of the State or a nonresident who seeks medical consultation and treatment there, and that it has still *another* important and legitimate interest in protecting the potentiality of human life. These interests are separate and distinct. Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes "compelling."

With respect to the State's important and legitimate interest in the health

of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now established medical fact, referred to above . . . that until the end of the first trimester mortality in abortion is less than mortality in normal childbirth. It follows that, from and after this point, a State may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health. Examples of permissible state regulation in this area are requirements as to the qualifications of the person who is to perform the abortion; as to the licensure of that person; as to the facility in which the procedure is to be performed, that is, whether it must be a hospital or may be a clinic or some other place of less-than-hospital status; as to the licensing of the facility; and the like.

This means, on the other hand, that, for the period of pregnancy prior to this "compelling" point, the attending physician, in consultation with his patient, is free to determine, without regulation by the State, that in his medical judgment the patient's pregnancy should be terminated. If that decision is reached, the judgment may be effectuated by an abortion free of interference by the State.

With respect to the State's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. State regulation protective of fetal life after viability thus has both logical and biological justifications. If the State is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period except when it is necessary to preserve the life or health of the mother.

Measured against these standards, the Texas Penal Code, in restricting legal abortions to those "procured or attempted by medical advice for the purpose of saving the life of the mother," sweeps too broadly.

To summarize and to repeat:

A state criminal abortion statute of the current Texas type, that excepts from criminality only a *life saving* procedure on behalf of the mother, without regard to pregnancy stage and without recognition of the other interests involved, is violative of the Due Process Clause of the Fourteenth Amendment.

(a) For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman's attending physician.

(b) For the stage subsequent to approximately the end of the first trimester, the State, in promoting its interest in the health of the mother, may, if it chooses, regulate the abortion procedure in ways that are reasonably related to maternal health.

(c) For the stage subsequent to viability the State, in promoting its interest in the potentiality of human life, may, if it chooses, regulate, and even proscribe, abortion except where it is necessary, in appropriate medical judgment, for the preservation of the life or health of the mother.

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CRISIS OF THE PRESIDENCY



On June 17, 1972, five men were arrested for rifling the files and tapping the telephones of the Democratic National Committee (DNC) in the Watergate office building in Washington, D.C. Thus was born the Watergate affair that transfixed the nation for the next two years. All five burglars, it turned out, were former agents of the Central Intelligence Agency (CIA). Two of the men, James McCord and G. Gordon Liddy, were currently working for the Committee to Re-elect the President (CRP, or, popularly, CREEP), an independent organization supporting President Richard Nixon's bid for reelection. McCord and Liddy had connections with another former CIA agent, E. Howard Hunt, who, like Liddy, now served as a White House aide. The other burglars were Cubans who had been associated with the Bay of Pigs operation in Cuba.

After the trial and conviction of the five burglars, McCord broke silence by indicating, first, that the head of CRP himself, none other than former attorney general John N. Mitchell, had approved the break-in and, second, that White House agents had paid "hush money" to the burglars. Newspaper reporters, the Federal Bureau of Investigation, and a special Senate committee on campaign practices opened investigations and soon learned that CRP had used extortionist tactics to raise an illegal slush fund from corporations for the 1972 presidential campaign, and that CRP had used this fund to pay for burglaries, wiretaps, forgeries, phony demonstrations, and other "dirty tricks" to discredit and punish Nixon critics.

By the summer of 1973 it was clear that President Nixon's closest aides, including advisers H. R. Haldeman and John D. Ehrlichman and counsel John W. Dean, had tried to interfere with the Watergate investigations and were withholding valuable evidence, notably tapes of White House conversations during the period under question. When the Senate committee, wondering who (including President Nixon) knew what, requested access to the tapes, Nixon pleaded executive privilege and refused to release them; and when Archibald Cox, a special Watergate prosecutor whom Nixon had appointed, asked for the tapes, the