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Beyond Moral Indignation - Abortion and the Left (Online Article)

Historical Note

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Content

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“The decision whether or not to bear a child is central to a woman’s life, to her well-being and dignity...When government controls that decision for her, she is being treated as less than a fully adult human responsible for her own choices.” – Ruth Bader Ginsburg

The above quote from former US Supreme Court Justice and liberal feminist Ruth Bader Ginsburg is making the rounds on social media after the Supreme Court's landmark decision to overturn Roe vs Wade. It's a beautiful quote that resonates with me: women have a right to bodily autonomy and should have the right to undergo abortion if they so desire. Ruth Bader Ginsburg herself also viewed Roe v. Wade negatively, seeing it as a case of judicial overreach that was detrimental to the abortion rights movement. Wait a minute! What exactly is going on here? Isn't Roe v. Wade supposed to represent the success of the abortion rights movement by having legalized abortion in the United States? If not, why are so many citing Ginsburg to voice their opposition to the recent decision to overturn Roe? Let's take a step back to clarify what really happened with Roe v. Wade and what the Left's response to it should be.

1. The Court's reasoning for overturning Roe v. Wade

To understand why the Supreme Court decided to overturn Roe v. Wade, we need to keep in mind the function that the Court serves in American democratic republicanism.

What we call democracy today is essentially majority rule by the people: elections, parliamentary legislation, referendums, etc. are decided by the will of the majority (or a supermajority or a relative majority, but the principle is the same). I don't know if there has ever been a pure democracy: perhaps the closest we've had are cases like ancient Athens, where the people would regularly gather and vote on all sorts of matters concerning their city-state. Today, what we usually have is not pure democracy, but liberal democracy. Liberal democracy is democracy that secures certain rights that are not under democratic debate, i.e. that do not fall within the purview of democratic majority decisions. The reason for this is that majorities can often make unjust decisions that oppress others or

deprive them of their rights, especially minority rights. Thus, most democratic countries, including the United States, have constitutions, institutions and mechanisms designed to protect basic human rights from democratic decision-making.

In the US, the aforementioned limitation of democracy is served by the Constitution and the Supreme Court. The Constitution and its various amendments codify certain inalienable rights for the citizens of the country, such as the right to free speech or the right to a fair trial, and the Supreme Court ensures that any decisions or laws passed by the people's representatives at the state and federal levels are consistent with the Constitution. As Glenn Greenwald put it in a recent article: "The Court is designed to be an anti-majoritarian check against the excesses of majoritarian sentiment. The Founders wanted to establish a democracy that empowered majorities of citizens to choose their leaders, but also feared that majorities would be inclined to coalesce around unjust laws that would deprive basic rights, and thus sought to impose limits on the power of majorities as well." [2] In other words, the role of the Supreme Court is precisely that of an undemocratic check on potential majoritarian overreach. [3]

Let's now turn to *Roe v. Wade*, the landmark 1973 Supreme Court decision that effectively decriminalized abortion in the United States. Judging by the way the decision's supporters talk, *Roe* must have been the apotheosis of democratic decision-making, the triumph of the will of the people to decriminalize abortion. The irony is that the opposite is true. As we have seen, the Supreme Court is not an institution that acts democratically. *Roe v. Wade* was a decision made by the 9 Justices of the Court regardless of the will of the people regarding abortion. The only thing the Court was tasked to consider was the constitutionality of abortion. The decision essentially held that the US Constitution protects a pregnant woman's right to choose to have an abortion and that it is unconstitutional to be prevented from having an abortion if she so desires. It struck down many state abortion laws, laws passed by the elected representatives of the people.

And finally we come to the present decision. What does it mean, at least officially? The new decision overturns *Roe* on the grounds that it lacks a constitutional basis. The Supreme Court ruled that the Constitution says nothing for or against abortion, and therefore that it is not within the Court's power to legalize or criminalize abortion. It did not prohibit or otherwise criminalize abortion, but ruled that the issue of abortion is beyond its jurisdiction and must be decided by the people and their representatives at the state and federal levels. [4] Here is an extract from the decision itself: "It is time to heed the Constitution and return the issue of abortion to the people's elected representatives. 'The permissibility of abortion, and the limitations, upon it, are to be resolved like most important questions in our democracy: by citizens trying to persuade one another and then voting.'" [5]

What about Ginsburg? In 2013 she noted in an interview that the *Roe* decision was wrong for two reasons: 1) it was a case of overstepping the court's authority, and 2) it was damaging to the abortion rights movement. Regarding (1), Ginsburg's view is similar to the current rationale for overturning *Roe*. She also noted that *Roe* "isn't really about the woman's choice," but instead "It's about the doctor's freedom to practice...it wasn't woman-centered, it was physician-centered.." Regarding (2), Ginsburg noted that *Roe* undermined the then nationwide push toward democratic legislation of such rights, and gave anti-abortion activists a very tangible target to rally around in the four decades that followed, polarizing society on the issue. Although Ginsburg was strongly in favor of abortion rights, she believed that they should have been secured more gradually and with the involvement of state legislatures. [6]

2. How we can ensure and preserve the right to abortion

It follows from the above that one cannot defend *Roe v. Wade* on the grounds of democracy. *Roe* was a Supreme Court decision, not a democratic majority decision. One can only defend *Roe* by explicitly

defending anti-majoritarian, anti-democratic values: namely, that the issue of abortion should be decided by a panel of unelected judges, not by the people or their elected representatives.

It also implies that one can be for the right to abortion and against Roe as the best way to secure that right. This was the position of both Ginsburg and some socialists, such as that of the Socialist Workers Party of the United States (SWP). In her statement on the Roe reversal, SWP leader Mary-Alice Waters echoed Ginsburg, claiming that: the decision - made by the Supreme Court on a political rather than constitutional basis - "short-circuited the momentum that was gaining ground in the political fight to win a majority of the working class, male and female, to recognize that a woman's right to decide whether or not to carry a pregnancy to term is a precondition for women's equality. And to understand that ending women's status as the "second sex" is central "to the program the working class must fight for on the road to emancipation." [7]

Given these facts, the reversal of Roe poses the following question to the supporters of the right to abortion, including most of the Left: what is the best way to ensure and protect this right? One might hope for a new Court decision, but that can only happen if the Court's conservative majority is overturned, which is not likely to happen any time soon. A more promising avenue is the one already mentioned by Ginsburg and Waters, namely, securing abortion through legislation at the state level or through a constitutional amendment to secure the right to abortion at the national level. One can choose this second route both on principle and on pragmatic grounds.

In principle, one might argue that the abortion issue should not be undemocratically determined by unelected judges. This is the view of many people who oppose Roe's reversal: they unwittingly agree with its rationale. As Waters noted, "The job of the courts is not to impose legislation," as it did in this case, "but to uphold rights and protections that have been wrested from the ruling class in struggles going back to the Bill of Rights." [8] On a pragmatic level, in addition to the aforementioned point that Roe struck at the pre-existing struggle to legalize abortion, one might reasonably also be skeptical about securing abortion through judicial decision, as this makes the right to abortion precarious, dependent on the composition of an unelected judiciary and the arcane details of constitutional interpretation.

Unfortunately, this discussion is not taking place. Instead, there is an atmosphere of moral panic and outrage, driven by the 'liberal' media parroting the Democratic Party's positions. The overturning of Roe v. Wade is undoubtedly a negative development for women in the US, particularly for poor women who live in Republican-led states and lack the resources to travel to another state to have an abortion. [9] However, contrary to the current rhetoric dominating the media, it is not true that a law was passed criminalising abortion in the US, nor is it true that the lives of all women are threatened as a result of the decision. The US has not turned into a dystopia like *The Handmaid's Tale*. Such rhetoric is being driven by 'liberal' and 'progressive' petty bourgeoisie in Democrat-led states where abortion is legal, with the conscious or unconscious purpose of scaring and blackmailing people into voting for the Democratic Party. The left in turn is a victim of this logic, unable to chart any other way forward except to support whatever measure the Democratic Party proposes.

Most importantly, the reversal of the decision is presented as a traumatic event for all women. This paternalistic attitude not only does not empower women to take control and responsibility for their own lives: it encourages active feelings of helplessness and hopelessness, making women more likely to react to the decision by seeking 'safe spaces' rather than organising a fight for their rights. Psychotherapy is increasingly replacing politics, or politics is increasingly being confused with psychotherapy. Mass demonstrations are taking place, it is true, but they are driven more by blind anger than by sober politics, as the prevailing rhetoric suggests. We need to take seriously Luxemburg's dictum that to be human is to "gladly throw one's whole life, when need be, onto the

'great scale of destiny.'"[10]

How did the Democrats react? Given the gridlock in Congress and, therefore, the difficulty of overcoming 'filibustering' and codifying abortion rights into federal law, they have focused on asking Biden to use his executive powers to protect abortion, but not much can be done without violating the limits of executive authority. [11] Alexandra-Ocasio Cortez, in addition to repeating the false rhetoric about democracy,[12] tweeted that men are to blame for the decision, despite the fact that the 1973 decision was made entirely by men while the current decision had the support of one of the two women on the Supreme Court. She and many other Democrats try to present themselves as defenders of bodily autonomy, but our experience with mandatory vaccination and the increasing surveillance being pushed by Democrats in the US demonstrates their hypocrisy. We should not trust them for either our privacy or our bodily autonomy.

3. Socialists and abortion

What would a socialist perspective on abortion look like? Abortion today is divorced from politics and understood and discussed as primarily a moral issue. There have been endless debates about whether abortion is moral or not: the 'pro-life' portion of the world sees abortion as ending the life of an unborn human being, while the 'pro-choice' portion sees abortion as a legitimate choice necessary for a woman's physical and social autonomy. Historically, however, socialists have understood that the debate about the morality of abortion is of little importance as abortions will take place under capitalism no matter what. Working-class women often have abortions because they cannot afford to raise children they would otherwise prefer to have, i.e. they have abortions because of poverty and economic insecurity. This will continue as long as poverty and economic insecurity continue - that is, as long as capitalism continues. Other women postpone or refuse to have children because they would rather have a career, which will also continue as long as society requires people to work in order to survive and be successful. And let's not forget that sometimes abortions are necessary to protect the health of pregnant women, or desirable because the pregnancy is the product of rape or a problematic relationship. Since abortion is a necessity under capitalism, socialists have traditionally supported the decriminalization of abortion and its free and immediate availability.

However, while socialists recognized the need for the right to abortion under capitalism, they also understood that very often (though not always) abortion was only the lesser of two evils for many women and families.[13] As I mentioned above, many women want to raise children but cannot afford to do so. While morality is about doing "the right thing," under capitalism it tends to be limited to choosing the lesser of two evils. Too often abortion is an indicator of our lack of freedom, our lack of good choices. Moreover, socialists understood that the role of abortion in capitalism is increasingly that of promoting the production of surplus value by facilitating women's entry into the workforce, and also that of a measure of austerity, a way for capital to mitigate the discontent of the poor: they are given the choice of not having to raise a family and having more mouths to feed. If abortion did not have such a role, I find it doubtful that it would be legalized in many capitalist states: if and when there is a shortage of labor, there is always the possibility that a state will try to revoke the right to abortion.

Given the role of abortion in capitalism, socialists supported not only the right to abortion, but reproductive freedom in general. Reproductive freedom is one's freedom to reproduce or not to reproduce. Socialists understood that under capitalism women need the freedom not to reproduce, but they also recognised and fought for women's freedom to reproduce and to raise families when they want to. In other words, they were not satisfied with accepting abortion as a necessity: real reproductive freedom and freedom of choice for women means having both the choice to abort and the choice to reproduce and have families. One can support both the right to abortion and social assistance in raising children, and socialists have historically advocated both. Those who don't want

children should not be forced to bear them against their will, but also, those who do want children should not be forced to not have them because of social disadvantage.

Socialists also recognised that the state is unreliable in terms of such rights and choices, and therefore, instead of focusing only on the demand for the legalisation and funding of abortion by the state, and the demand for state subsidies for people who want to start a family, they also attempted to provide such resources themselves. They provided contraceptive assistance and education to women seeking to prevent pregnancy, assistance to those facing pressures to terminate a pregnancy they would prefer to continue, and safe and affordable abortions regardless of whether the abortion was legal or not. After all, the historical task of the left is to organize civil society against the state, not to rely on a paternalistic state for help.

Today the left seems to have forgotten this approach to abortion. It has long ago ceased to link the right to abortion with other economic requirements designed to promote reproductive freedom, and is content to be the tail of the liberals in their moralizing on the issue. The left is now only interested in making abortion available, not unnecessary. It increasingly sees abortion as a positive good, not an often necessary evil whose necessity must be addressed and overcome. The necessity of abortion is normalized due to the fact that capitalism and the bourgeois state have been normalized and therefore accepted by the left. Raising children is increasingly seen as a luxury, whereas it is a luxury only under capitalism. There is no socialist vision beyond and independent of the state - the Left is reduced to asking Democrats to use the state to better run society.[14] Even worse, the more lukewarm the Left's demands and actions on abortion become, i.e. the more the Left feels powerless to address the systemic causes that impede reproductive freedom, the more it targets and demonizes the 'pro-life' opponents of abortion. This is unfortunate because a significant portion of the American working class opposes abortion, and that portion must be won over to the cause of socialism that includes reproductive freedom.[15]

In his critique of the 1936 abortion ban in the Soviet Union, Trotsky wrote the following: “These gentlemen have, it seems, completely forgotten that socialism was to remove the cause which impels woman to abortion, and not force her into the “joys of motherhood” with the help of a foul police interference in what is to every woman the most intimate sphere of life.”[16] He accused the Soviets of criminalizing abortion instead of addressing its causes. The same accusation can be directed at today's Left: it supports the right to abortion without addressing the causes that drive women to abortion. In other words, the Left is following the liberals in making a compliment to the necessity of abortion. With or without abortion rights, in the absence of a Left that challenges the necessities of capital, the future of humanity looks bleak.

[1] https://www.law.uchicago.edu/news/justice-ruth-bader-ginsburg-offers-critique-roe-v-wade-during-law-school-visit?fbclid=IwAR2duKA1t-tb7k88yL_-EgwhAhVNBWPnIEQuu147sj8G8CoYKJcSLOWusSs

[2] <https://greenwald.substack.com/p/the-irrational-misguided-discourse>

[3] Another important role of the judiciary is to control the executive.

[4] It is important to note here that it is possible that the decision had an ulterior motive. It may be that what the judges wanted was to criminalise abortion and that they exploited a particular interpretation of the constitution to further that purpose. I'm not here to judge that. The same can be said of the original decision: both may have been political decisions cloaked in legalistic language

about constitutionality. Whatever happened, the constitutionality argument needs to be taken seriously and addressed by abortion rights advocates, especially on the left.

[5] <https://www.foxnews.com/politics/supreme-court-overturms-roe-v-wade-dobbs-v-jackson-womens-health-organization>

[6] https://www.law.uchicago.edu/news/justice-ruth-bader-ginsburg-offers-critique-roe-v-wade-during-law-school-visit?fbclid=IwAR2duKA1t-tb7k88yL_-EgwhAhVNBWPnIEQuu147sj8G8CoYKJcSLOWusSs

[7] <https://themilitant.com/2022/06/25/taking-the-socialist-workers-partys-program-to-the-toilers/>

[8] <https://themilitant.com/2022/06/25/taking-the-socialist-workers-partys-program-to-the-toilers/>

[9] In her 2013 interview, Ginsburg said that the effect of overturning Roe would be limited primarily to poor women living in anti-abortion rights states. Many states would never ban abortion and the wealthiest women would always be able to travel to those states.

https://www.law.uchicago.edu/news/justice-ruth-bader-ginsburg-offers-critique-roe-v-wade-during-law-school-visit?fbclid=IwAR2duKA1t-tb7k88yL_-EgwhAhVNBWPnIEQuu147sj8G8CoYKJcSLOWusSs

[10] <https://www.dissentmagazine.org/article/letters-from-prison>

[11] <https://time.com/6191737/abortion-biden-democrats-legal/>

[12] https://www.youtube.com/watch?fbclid=IwAR3uqZZhpl8JAfhAxrS2kDH_cvV5C-mRiveq099cPGLzAMws1c9ga_l1sZg&v=V3poeFdZJK4&feature=youtu.be

[13] To avoid misunderstandings: I am not saying that abortion is justified just because it is necessary. What I am saying is that to the extent that it is necessary it is a problem: we want to make abortion a truly free choice for the woman in all cases.

[14] <https://jacobin.com/2021/12/abortion-rights-roe-v-wade-supreme-court-congress-legislation>

[15] According to Waters, it is important to “answer those who cloak their assaults on women’s rights — including decriminalization of abortion — under a ‘pro-life’ mantle. The working-class party that fights for the liberation of humanity is a party of life. We must take back that banner as ours.” The Left fights for both life and choice, not just the latter.

<https://themilitant.com/2022/06/25/taking-the-socialist-workers-partys-program-to-the-toilers/>

[16] <https://www.marxists.org/archive/trotsky/1936/revbet/ch07.htm?fbclid=IwAR36rALKyM1f0MP3taaQd2tOuVgHpoPfamZTLu6wt1YeJEAFVMEo50nUcJE#ch07-1>

The views expressed are the personal opinions of the authors.

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