

# Inquiring Minds topic – 1 February 2019

## Adair Heath, Moderator

While most of the cases cited in this 8 part series were in very Red states, the view that the fetus is a person with equal rights to the pregnant mother has changed rapidly in the last 30 yrs at the hands of a very persistent minority of Americans and a group of opportunistic politicians. Now that there is a conservative majority on many Federal Appeals Courts and the Supreme Court, it is very likely that a case will make it to the Supreme Court and challenge or alter Roe v. Wade. The ramifications are many and profound if the court rules that the fetus has “personhood” rights under the Constitution:

- In that event, all abortions would be illegal — even in states that overwhelmingly support a woman’s right to choose. What are your thoughts and feelings on that outcome?
- Illegal, dangerous abortions would make a comeback
- If a fetus is granted equal rights, women who become pregnant may find their most personal decisions coming under state control:
  - Every health decision facing a pregnant woman that might affect the fetus would be up for scrutiny by prosecutors, the courts and expectant fathers, such chemotherapy for a pregnant woman, many forms of common birth control which erroneously are thought to be abortive rather than preventing fertilization or attachment to the uterine wall etc. How would you feel about those outcomes?
- To assert the government’s right to protect a fetus as early as fertilization, anti-abortion activists have won the passage of laws in Congress and in state capitols around the country. Is this what is really desired by the majority of Americans?

Background information and medical terminology taken from Wikipedia to clarify some of the terminology and medical facts used in the Supreme Court decision Roe v. Wade:

- As a general rule, the official gestational age in weeks/days should be based on the actual beginning of the last menstrual period
- A **fetus** is the prenatal stage between the embryonic stage and birth. In humans, the fetal stage begins from the eleventh week gestational age and continues until birth at about 40 weeks of gestational age.
- Prenatal development is a continuum, with no clear defining feature distinguishing an embryo from a fetus. However, a fetus is characterized by the presence of all the major body organs, though they will not yet be

fully developed and functional, and some not yet be situated in their final anatomical site.

- There is no sharp limit of development, age, or weight at which a fetus automatically becomes viable. According to data from 2003–05, survival rates are 20–35% for babies born at 23 weeks of gestation (5-3/4 months); 50–70% at 24-25 weeks (6 - 6-1/4 months); and >90% at 26-27 weeks (6-1/2 - 6-3/4 months) and over. It is rare for a baby weighing less than 1.1 pounds (0.50 kg) to survive.
- While there is continuing debate about the use of trimester terminology and other definitions used in *Roe v. Wade*, the consensus seems to be that the majority opinion allowed states to protect fetal life after viability even though a fetus is not a person within the meaning of the Fourteenth Amendment.

## A Woman's Rights

By The Editorial Board - NY Times - 12/29/18

You might be surprised to learn that in the United States a woman coping with the heartbreak of losing her pregnancy might also find herself facing jail time. Say she got in [a car accident in New York](#) or [gave birth to a stillborn in Indiana](#): In such cases, women have been charged with manslaughter.

In fact, a fetus need not die for the state to charge a pregnant woman with a crime. Women [who fell down the stairs](#), [who ate a poppy seed bagel and failed a drug test](#) or who took legal drugs during pregnancy — [drugs prescribed by their doctors](#) — all have been accused of endangering their children.

Such cases are rare. There have been several hundred of them since the Supreme Court issued its decision ratifying abortion rights in *Roe v. Wade*, in 1973. But they illuminate a deep shift in American society, away from a centuries-long tradition in Western law and toward the embrace of a relatively new concept: that a fetus in the womb has the same rights as a fully formed person.

This idea has now worked its way into federal and state regulations and the thinking of police officers and prosecutors. As it has done so, it's begun not only to extend rights to clusters of cells that have not yet developed into viable human beings, but also to erode the existing rights of a particular class of people — women. Women who are pregnant have found themselves stripped of the right to

consent to surgery, the right to receive treatment for a medical condition and even something as basic as the freedom to hold a baby in the moments after birth.

How the idea of fetal rights gained currency is a story of social reaction — to the Roe decision and, more broadly, to a perceived new permissiveness in the 1970s — combined with a determined, sophisticated campaign by the anti-abortion movement to affirm the notion of fetal personhood in law and to degrade Roe’s protections.

Political ambition has also played a powerful role. Out of concern for individual freedom, the Republican Party once treated abortion as a private matter. When Ronald Reagan was governor of California, he signed one of the most liberal abortion laws in the land, in 1967. As late as 1972, [a Gallup poll found](#) that 68 percent of Republicans thought that the decision to have an abortion should be made solely by a woman and her doctor.

But after Roe, a handful of Republican strategists recognized in abortion an explosively emotional issue that could motivate evangelical voters and divide Democrats. In 1980, as Mr. Reagan ran for president, he raised the cause high, and he framed it in terms of the rights of the unborn. “With regard to the freedom of the individual for choice with regard to abortion, there’s one individual who’s not being considered at all. That’s the one who is being aborted,” [he said](#) in a debate that year. “And I’ve noticed that everybody that is for abortion has already been born.”

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The crack epidemic of the late 1980s and early 1990s also had the effect of popularizing the idea of fetal rights. Many Americans became seized with the fear — fanned by racism and, as it turned out, false — that crack-addicted black mothers in inner cities were giving birth to a generation of damaged and possibly vicious children. This false fear supplied considerable force to the idea that the interests of a fetus could come in conflict with those of the woman carrying it — and that the woman may have forfeited any claim on society’s protection.

The creation of the legal scaffolding for the idea that the fetus is a person has been the steady work of the anti-abortion movement, at the national level and in every state. Today, [at least 38 states](#) and the federal government have so-called fetal homicide laws, which treat the fetus as a potential crime victim separate and apart from the woman who carries it.

The movement has pressed for dozens of other measures to at least implicitly affirm the idea that a fetus is a person, such as laws to issue birth certificates for

stillborn fetuses or deny pregnant women the freedom to make end-of-life decisions for themselves. Some of these laws are also intended to create a basis for challenging and eventually overturning Roe.

In the hands of zealous prosecutors, cautious doctors and litigious attorneys, these laws are creating a system of social control that polices pregnancy, as the editorials in this series show. Because of the newly fortified conservative majority on the Supreme Court, such laws are likely to multiply — and the control to become more pervasive — whether or not Roe is overturned.

To consider:

<http://www.pewresearch.org/fact-tank/2017/01/26/5-facts-about-abortion>

and

