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Critical Analysis of Gendered Racism and Abortion Laws

Introduction

Roe v. Wade is typically seen as a monumental step forward for women across America. This case changed the course of women's health law by legally allowing women to have an abortion if she saw fit to. There is no negating the importance of this case for women of all ethnicities across the nation. However, *Roe v. Wade* only gave a choice to exercise a woman's right to an abortion, in turn leaving room for legislative add-ons and differing interpretations that disproportionately affect women of color compared to their white counterparts. The *Roe v. Wade* ruling did not offer any protection to "women whose reproductive "choices" were shadowed by economic insecurity, the absence of safe and affordable childcare, and racial and gender injustice"¹. The intersectionality of identity for women of color places them at an extreme disadvantage when attempting to receive an abortion when juxtaposed to their white counterparts.

Gendered Racism

Gendered Racism refers to oppression that stems from the intersectionality of race and gender². This type of oppression is extremely prevalent, and even more dangerous in healthcare institutions.

¹ Melissa Murray, "RACE-ING ROE: REPRODUCTIVE JUSTICE, RACIAL JUSTICE, AND THE BATTLE FOR ROE V. WADE," *Harvard Law Review* 134, no. 6 (April 12, 2021): pp. 2025-2102, <https://doi.org/https://search-ebscohost-com.du.idm.oclc.org/login.aspx?direct=true&db=a9h&AN=149792706&site=ehost-live&scope=site>.

² Lisa Rosenthal and Marci Lobel, "Gendered Racism and the Sexual and Reproductive Health of Black and Latina Women," *Ethnicity & Health* 25, no. 3 (2018): pp. 367-392, <https://doi.org/10.1080/13557858.2018.1439896>.

This oppression stems from disillusioned stereotypes towards women of color, painting them to be overly sexual and sexually irresponsible. This typecast makes women of color fearful of discrimination and judgment from doctors, which leads to “delays in seeking medical care among Black Americans and greater anxiety about seeing a doctor among Black American women”³. In addition, the harmful stereotypes often become internalized by many women of color. The internalization often leads to negative self-value and can be “associated with more risky sexual attitudes and behavior”⁴. The combination of fear about seeing medical care providers and the real-life manifestation of harmful stereotypes lead to “pregnancy-specific stress” and fear surrounding female reproductive health⁵.

Working in conjunction with the harmful stereotypes, is the historically based mistrust in the institutions surrounding women’s reproductive health. The US has a history of forced sterilization of women of color. While no longer entirely forced, sterilization of women of color is still an issue today. There is evidence of coerced sterilization of women in prison and monetary penalties afflicted on families that have additional children while receiving public assistance⁶. The US’s historical and current gendered racism has created a mistrust of birth control, high levels of pregnancy-related stress, and fear of medical professionals.

Gendered racism places a unique burden on women of color. The valid mistrust and fear of female healthcare institutions have manufactured a culture in which women of color are more likely to have unwanted pregnancies. The initial goal of *Roe v. Wade* was to provide a safe alternative to carrying a fetus to full term, thus providing a solution to unwanted pregnancies.

³ Lisa Rosenthal and Marci Lobel, “Gendered Racism and the Sexual and Reproductive Health of Black and Latina Women,” *Ethnicity & Health* 25, no. 3 (2018): pp. 370, <https://doi.org/10.1080/13557858.2018.1439896>.

⁴ Rosenthal, Lisa, and Marci Lobel. “Gendered Racism and the Sexual and Reproductive Health of Black and Latina Women.” *Ethnicity & Health* 25, no. 3 (2018): 371. <https://doi.org/10.1080/13557858.2018.1439896>.

⁵ Lisa Rosenthal and Marci Lobel, “Gendered Racism and the Sexual and Reproductive Health of Black and Latina Women,” *Ethnicity & Health* 25, no. 3 (2018): pp. 386, <https://doi.org/10.1080/13557858.2018.1439896>.

⁶ Lisa Rosenthal and Marci Lobel, “Gendered Racism and the Sexual and Reproductive Health of Black and Latina Women,” *Ethnicity & Health* 25, no. 3 (2018): pp. 371, <https://doi.org/10.1080/13557858.2018.1439896>.

However, the *Roe v. Wade* ruling did not take into consideration the legitimate unease women of color feel when seeking to find a solution to unwanted pregnancy in the same healthcare institutions that play a colossal role in the mistreatment of women of color.

The Hyde Amendment

The Hyde Amendment was one of many “patchwork restrictions”⁷ created to limit the power of *Roe v. Wade*. This law was proposed in 1977, and after much contention, was passed into legislation in the early 1980s. The Hyde Amendment limited the affordability of Abortions and, therefore, accessibility to safe abortions. The amendment restricted the use of federal Medicaid funding to only provide for abortions for women who became pregnant after rape or if the pregnancy would result in endangerment of the mother's life if the fetus is carried full term.

As to be expected, the Hyde Amendment prevented economically insecure women and women of color from seeking abortions⁸. The Committee for Abortion Rights and Against Sterilization Abuse challenged the amendment in the Supreme Court and lost under the grounds that the amendment did not hinder a woman's ability to choose to get an abortion, but instead made it less accessible, so women would not partake in activities leading to an unwanted pregnancy. The court ruling on the Hyde Amendment did not take into account that the monetary assistance provided by Medicaid allowed many women to make the choice, that they would otherwise be unable to afford to make⁹.

⁷ ACLU, “Access Denied: Origins of the Hyde Amendment and Other Restrictions on Public Funding for Abortion,” American Civil Liberties Union (American Civil Liberties Union, January 2022), <https://www.aclu.org/other/access-denied-origins-hyde-amendment-and-other-restrictions-public-funding-abortion>.

⁸ Murray, Melissa. “RACE-ING ROE: REPRODUCTIVE JUSTICE, RACIAL JUSTICE, AND THE BATTLE FOR ROE V. WADE.” *Harvard Law Review* 134, no. 6 (April 12, 2021): 2052. <https://doi.org/https://search-ebscohost-com.du.idm.oclc.org/login.aspx?direct=true&db=a9h&AN=149792706&site=ehost-live&scope=site>.

⁹ Murray, Melissa. “RACE-ING ROE: REPRODUCTIVE JUSTICE, RACIAL JUSTICE, AND THE BATTLE FOR ROE V. WADE.” *Harvard Law Review* 134, no. 6 (April 12, 2021): 2052. <https://doi.org/https://search-ebscohost-com.du.idm.oclc.org/login.aspx?direct=true&db=a9h&AN=149792706&site=ehost-live&scope=site>.

The constitutional ruling on the Hyde Amendment ignored the intersectional burdens that women of color face. Without the monetary assistance of Medicaid, many women of color could not exercise their right of choice provided by the ruling on *Roe v. Wade*. The limiting framework of *Roe v. Wade* allowed for this legislative carve-out and many others like it to restrict the right of choice, placing an undue burden on women of color due to the implications of their intersectional identities.

Planned Parenthood of Southeastern Pennsylvania v. Casey

In 1992, *Planned Parenthood v. Casey* was taken to the supreme court to decide further how the language of *Roe v. Wade* was to be interpreted at the state level. A group of abortion practitioners challenged the restrictive laws on abortions passed by Pennsylvania legislators in 1989. The legislation passed required women seeking an abortion to jump through hoops to receive treatment¹⁰.

In a plurality of opinion decision from the Supreme Court, a new precedent was set. The basic principle of *Roe v. Wade* was kept; however, a new phrase was added to the rhetoric: “Undue Burden”¹¹. This phrase was used to decide whether state laws restricting abortion were constitutional or unconstitutional based on if the law placed an undue burden upon the woman seeking an abortion. The Court's decision maintained a woman's right to choose an abortion, while also affirming a state's ability to create legislation restricting abortions¹².

This was seen as a victory for the pro-choice movement as *Roe v. Wade* was still standing. However, it has not since been regarded as the victory it was initially seen as. Instead of applying a standard of strict scrutiny derived from *Roe v. Wade*, courts can now use the looser undue

¹⁰ "Planned Parenthood of Southeastern Pennsylvania v. Casey." Oyez. Accessed February 18, 2022. <https://www.oyez.org/cases/1991/91-744>.

¹¹ "Planned Parenthood of Southeastern Pennsylvania v. Casey." Oyez. Accessed February 18, 2022. <https://www.oyez.org/cases/1991/91-744>.

¹² Melissa Murray, “RACE-ING ROE: REPRODUCTIVE JUSTICE, RACIAL JUSTICE, AND THE BATTLE FOR ROE V. WADE,” *Harvard Law Review* 134, no. 6 (April 12, 2021): pp. 2073, <https://doi.org/https://search-ebscohost-com.du.idm.oclc.org/login.aspx?direct=true&db=a9h&AN=149792706&site=ehost-live&scope=site>.

burden standard. The already weak framework, provided by *Roe v. Wade*, was gutted by this decision¹³. If an undue burden cannot be proven, the state can continue to enforce legislation that restricts a woman's ability to receive an abortion if she so chooses.

This ruling dismissed the potential difficulties women of color might face as state abortion laws are now able to become stricter. This case is a dangerous precedent that allows states to tightly restrict the ability to receive an abortion without taking into consideration how restrictions will negatively affect women of color, who already struggle for access to pregnancy termination.

Conclusion

Roe v. Wade provided a greater sense of autonomy for women and a route to terminate an unwanted pregnancy. However, *Roe v. Wade* has a weak framework that does not provide protection to many women of color and has allowed for the right to choose to be taken away from women of color. The recent abortion restrictions seen across America continue to refuse to acknowledge the unique burdens faced by women of color and negate many women of color's right of choice. The weak, fragile framework of *Roe v. Wade* is directly culpable for the injustice experienced by women of color when seeking out an abortion.

¹³ Melissa Murray, "RACE-ING ROE: REPRODUCTIVE JUSTICE, RACIAL JUSTICE, AND THE BATTLE FOR ROE V. WADE," *Harvard Law Review* 134, no. 6 (April 12, 2021): pp. 2074, <https://doi.org/https://search-ebscohost-com.du.idm.oclc.org/login.aspx?direct=true&db=a9h&AN=149792706&site=ehost-live&scope=site>.

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