Beyond Roe

written by Dan Davison, Ewa Pospieszyńska | August 10, 2022

On June 24, 2022, the Supreme Court of the United States (SCOTUS) in *Dobbs v. Jackson Women's Health Organization*[1] voted 5-4 to overturn *Roe v. Wade*, the landmark 1973 judgment that nationally legalized abortion in the United States

By a 7-2 majority in *Roe*, SCOTUS found that the U.S. Constitution provides an implied right to privacy "broad enough to encompass a woman's decision whether to terminate her pregnancy."[2] Initially, SCOTUS adopted a framework based on trimesters of pregnancy, but abandoned this in *Planned Parenthood v. Casey* (1992) in favor of a framework based on fetal viability and an "undue burden" standard of review. Following *Casey*, abortion restrictions were unconstitutional if they were enacted for "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion of a nonviable fetus." [3]

The George W. Bush-appointed Justice Samuel Alito wrote the majority opinion in *Dobbs*, a draft of which had been leaked on May 2, 2022.[4] *Dobbs* concerned the constitutionality of Mississippi's Gestational Age Act of 2018, which prohibits abortion after the first 15 weeks of pregnancy except in medical emergencies or in cases of severe fetus abnormality. Finding that "*Roe* was egregiously wrong from the start," the Court held that "[t]he Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision." [5] As such, the Mississippi law was upheld, and swift moves to implement an abortion ban have already been made in the 13 states with "trigger laws" designed to come into effect upon the removal of the federal right to abortion.[6]

The ruling has sparked protests around the world and reignited long-running debates about the political nature and power of SCOTUS. The Court currently has a majority of six Republican-appointed Justices to three Democrat-appointed ones, and the anti-abortion cause has become central to the American right in the decades following *Roe*.

The ruling is a wake-up call for those who assumed that abortion rights in the United States were secure. On May 11, 2022, an attempt to codify the right to abortion into federal law was narrowly defeated in the Senate amid strong Republican opposition.[7]

As such, this is a good opportunity to examine why the political struggle over abortion in the United States reached this point. It is also worth considering what strategic lessons the left might learn by comparing the experience of the American movement for abortion rights with those of other countries, Poland and Argentina being two major, recent examples.

Legalism and the "Fly-Paper Court"

A major shortcoming of the mainstream pro-choice movement has been its legalism. That is, it has tended to see the establishment and protection of abortion rights primarily in terms of legal action, with a focus on winning and defending favorable judicial precedents. This stems from a broader mythologization of the role of the courts, especially SCOTUS, in bringing about progressive social change. In Jenny Brown's words, "[b]ased on the wrong impression that abortion rights originated with the courts, the primary response to antiabortion politics has been litigation".[8]

It is understandable why this mythologization of courts is especially strong in the United States. In many ways, the U.S. legal-political system is peculiar among bourgeois democracies. Institutionally, it is extremely fragmented. Each of the 50 states has its own legislature, executive, judiciary, and body of law in addition to federal law. The federal courts of appeal are divided into 11 multi-state circuits. The federal Congress is bicameral, and one can easily have situations where one of the two main parties holds the Presidency while the other holds the Congress. This fragmentation of political power creates major inefficiencies. Additionally, partisan gerrymandering[9] and voter suppression[10] are common practices.

Considering this, one can see why so many Americans come to view strategic litigation as a means of fighting for one's interests when the legislature is inaccessible or refuses to act. This is especially true of what political scientists term "discrete insular minorities"; that is, groups who are permanently in the minority. Indeed, the combination of strategic litigation and strong judicial review power is sometimes praised as reflecting a particular conception of representative democracy; specifically, the view that courts can represent minority interests where the other branches of government do not.

This standpoint is often linked to James Madison's remarks in *Federalist No. 10* (1787) about the "mischief of factions"; that is, groups united and motivated by a common interest or passion that runs counter to the rights of others or to the community interest.[11] One possible "solution" to this "mischief" would be to set up institutions such that an interest group can be represented in one branch of government if it is shut out of the others. Therefore, it is easy to hold up *Roe* as proof of how courts can produce major social reforms that are favorable to women's rights and can represent women's interests in the face of inertia or hostility elsewhere in the political system.

In his book *The Hollow Hope*, first published in 1991, the political scientist Gerald N. Rosenberg provides a controversial but detailed challenge to the view of courts as powerful engines of social change.[12] In Rosenberg's view, when considered together, the doctrinal, institutional, and cultural constraints upon courts make it almost impossible to generate significant social reforms via litigation.

In respect of *Roe*, Rosenberg finds that SCOTUS was unusually able to overcome its structural barriers because, at the time, there was sufficient legal precedent to justify the change and large sections of both the political and professional elite either supported or were indifferent to abortion reform.[13] Additionally, the opening of abortion clinics when hospitals refused to carry out abortions meant there was a means of implementing the Court's judgment.[14] The victory of *Roe* therefore had little to do with the Court's own power as a vehicle of social change. Nor does Rosenberg find evidence to support the intuitive view that *Roe* served as a catalyst for change by, e.g., publicizing the issue of abortion or spurring the other governmental institutions into protecting and enlarging abortion rights.[15] Indeed, the executive and congressional action that followed *Roe* was aimed at *undermining* those rights.

Major shifts in public opinion, abortion, and women's rights were certainly taking place when *Roe* was decided, but these were already in progress by that point in history and the available data does not suggest an increased rate of support for abortion in the years immediately following *Roe*.[16] In

Katha Pollitt's words, "to the Supreme Court—and to the public, a majority of which supported liberalization—the ruling ratified and expanded social changes that were already under way," making a common but illegal and sometimes extremely dangerous operation legal and safe.[17]

As Leslie J. Reagan observes in her in-depth historical study of abortion in the United States, "[t]he transformation of law that began in the mid-1960s and culminated in *Roe*…grew out of women's long-standing demand for abortion and ability to communicate, first to individual doctors in private conferences and then to society as a whole in public arenas, their need for abortion."[18] Between, on the one hand, a lively, widespread feminist movement spearheading major social shifts and, on the other hand, changing views on abortion among elites, it is unsurprising that, rather than producing social change in its own right, SCOTUS was playing catch-up.

As Rosenberg puts it, "courts act as 'fly-paper' for social reformers", luring them to waste time and resources on litigation instead of substantive political battles.[19] Even major case victories are "often more symbolic than real", thereby "providing only an illusion of change." [20]

Reliance on the courts weakened pro-choice forces. In at least some parts of the movement, political organization and momentum dissipated in the wake of *Roe*, with multiple state-level groups disbanding. In the words of Janet Beal, an activist in the National Abortion Rights Action League (NARAL): "Everyone assumed that when the Supreme Court made its decision in 1973…we'd got what we wanted and the battle was over. The movement afterwards lost steam."[21]

In 1976, the Hyde Amendment passed, which banned Medicaid and other federal funding for most abortions. Before it came into effect in 1980, an estimated 300,000 abortions per year were performed with federal funds. While exceptions to the Hyde Amendment were made afterwards, these only covered abortions necessary to save the mother's life or where the pregnancy arose from rape or incest. This left millions of women with the formal right to abortion but no practical access. Perhaps surprisingly, one factor in the Hyde Amendment's success was *pro-choice* legislators making a strategic gamble to pass it in the hopes that the resulting piece of legislation would be so conservative that SCOTUS would have "no choice" but to overturn it.[22] In other words, misplaced reliance on the judiciary directly contributed to one of the U.S. anti-abortion movement's first and most long-lasting victories.

Admittedly, one must be cautious when claiming that the abortion rights movement simply demobilized in the immediate aftermath of *Roe*. As Suzanne Staggenborg shows in detail, despite some decline in local group involvement between 1973 and 1976, the movement remained active overall, laying the organizational groundwork for its expansions in the late 1970s and early 1980s in response to the countermovement's victories.[23] In the post-Hyde period, pro-choice groups like NARAL and the National Organization for Women (NOW) increasingly turned their attention towards Congress and the electoral arena in general, but still worked to develop constituencies of politically active women. NARAL based its "Impact 80" strategy on that of the anti-abortion movement, with a network of local political units to match the "pro-life committees" that the National Conference of Catholic Bishops' Pastoral Plan for Pro-Life Activities called for in parishes and political districts across the country. In contrast to these more mainstream pro-choice organizations, feminist groups initiated direct action tactics, continuing the women's liberationist tradition of consciousness-raising. In response to the blockades of clinics by the anti-abortionist organization Operation Rescue, groups like Women Organized for Reproductive Rights (WORC) and its offshoot the Emergency Clinic Defense Coalition organized counterdemonstrations.

Nevertheless, two related points are worth stressing. Firstly, as the mainstream pro-choice organizations were drawn into party politics and institutionalized lobbying, their demands narrowed to the single issue of defending legal abortion. This was due in part to a sense that, with the

countermovement's gains in Congress and the courts, they could not "afford the luxury" of being multi-issue.[24] This contrasts with the more radical and grassroots organizations' efforts to integrate legal abortion into a wider set of related concerns like "reproductive rights," "women's health," or (later) "reproductive justice." By narrowing its political horizons, the pro-choice mainstream found itself taking a largely reactive rather than proactive stance. It valorized *Roe* despite the ruling's tremendous inadequacies from the perspective of reproductive freedom. The 2014 ballot measure on Tennessee Amendment 1 aptly illustrates this narrow, defensive approach. The amendment specified that nothing in the state's constitution prevents the legislature from banning abortion, even in cases of rape or incest, or "when necessary to save the life of the mother."[25] The pro-choice side lost the vote by 47 percent to 53 percent. One of the campaign's major weaknesses was its failure to talk in a direct and political way about abortion and its significance for women's freedom. As Brown observes, this demonstrates how "legalistic arguments have affected our movement's thinking and strategy." [26]

Secondly, the mainstream pro-choice movement shifted approach after *Casey* in 1992. National organizations increasingly focused on federal policy and defending legal access to abortion in the federal courts, while neglecting local chapters and affiliate groups in the states. In contrast, the anti-abortion movement used incremental restrictions at the state level to chip away at abortion access. As Amy Littlefield puts it, "[t]he national movement's strategy of relying on the courts as a firewall meant that advocates were often playing Whack-a-Mole against the growing onslaught of anti-abortion laws coming out of the states."[27] While the Republicans unwaveringly focused on limiting abortion, the Democrats failed to take up abortion rights as a central political cause, let alone legislate on it. In 2017, Nancy Pelosi claimed that abortion was "kind of fading as an issue." [28] A recent Associated Press and NORC Center for Public Affairs Research poll found that only 13 percent of Democrats saw abortion rights as a high priority.[29]

In short, the movement was left acting defensively with a neglected political base in the states and with *Roe* and subsequent precedents as the only guarantee of legal abortion at the federal level. Now *Dobbs* has starkly demonstrated just how precarious that guarantee was.

Lessons from Poland

If that was what went wrong with the abortion rights movement in the United States, then what might we learn by comparison with the successes and setbacks of recent, high-profile abortion rights movements elsewhere in the world?

In 2020, Poland saw some of its largest protests since 1989. These were sparked by a Constitutional Court judgment on October 22, 2020, which further restricted an already narrow abortion law. Under the Family Planning, Human Embryo Protection and Conditions of Permissibility of Abortion Act, adopted on January 7, 1993, abortion was allowed only where the pregnancy posed a threat to the mother's health or life; where there was a high probability of severe and irreversible impairment of the fetus, including incurable life-threatening disease; or where there was a justified suspicion that the pregnancy was the result of a prohibited act (typically rape or incest). The 1993 Act was enacted in the context of Poland's transition from nominal "communism." This involved a so-called "Compromise" between Catholic Church representatives and the coalition government of the Democratic Left Alliance and the Polish People's Party. This left Poland with some of the most restrictive abortion laws in Europe.

After coming to power in 2005 and forming a coalition in 2006, the national-conservative Catholic party Law and Justice (*Prawo i Sprawiedliwość*, "PiS") attempted to ban abortion entirely. In 2007, a group of deputies pushed for a constitutional amendment for the "protection of life from conception." This failed, but PiS renewed its efforts when it returned to power in 2015. In

September 2016, the Sejm (the lower house of the Polish Parliament) deliberated the Stop Abortion (*Stop Aborcji*) Bill, which aimed to eliminate all the exceptions to the abortion ban and make anyone who participates in "the death of a conceived child" criminally liable, including the mother. At the same time, the Sejm rejected a competing bill introduced by the committee of the legislative initiative "Save the Women", which provided for unlimited abortion until the end of the 12th week of pregnancy. Women took to the streets across Poland to protest this. Since the protesters wore black and used black umbrellas as a sign of mourning, this wave of demonstrations became known as the Black Protest (*Czarny Protest*).

This marked the birth of the All-Poland Women's Strike (*Ogólnopolski Strajk Kobiet*) organization, which began to build its social media influence and bring together activists from all over Poland, including smaller towns. The bill was stopped, but PiS quickly returned with the tactic of pushing a total abortion ban through the Constitutional Tribunal, which has been the center of a major controversy since 2015 because of how five of its 15 judges were appointed.[30] The October 2020 judgment struck down the most popular exception to the abortion ban, namely fetal abnormalities, finding that it discriminates against the unborn based on their state of health and violates the right to life of every human being protected under Article 38 of the Polish Constitution.

At this point, Women's Strike already had over 400,000 Facebook followers and was reaching that threshold on Instagram. The organization used its existing profile to build on the new impetus, creating widely shared events and providing sound systems and other necessary equipment for the demonstrations. Experienced Women's Strike figures from 2016 like Marta Lempart and Klementyna Suchanow became spokespeople for the movement. Lempart traveled around Poland and supported organizers in different cities. The wider public quickly came to identify Women's Strike with the mobilizing efforts, but other organizations such as Abortion Dream Team/Abortion Without Borders also gained visibility. The latter group provided abortion pills and helped those who were over 12 weeks pregnant travel abroad for abortions. Demonstrators placed the group's phone number in various visible locations across Poland, in some cases writing it on church walls. The media would feature the protesters and the organizations they supported, which helped build their visibility and spark debate on a scale not seen before. Despite all this, the judgment was officially implemented as law on January 27, 2021. The protests began to wither away and many local Women's Strike groups disappeared with them.

Although the Polish political, cultural, and institutional context is quite distinct from that of the United States, we can see important similarities with the American experience. Both involved a politically partisan court restricting reproductive freedoms, thereby upholding a form of Christian nationalist ideology. There are certainly differences. As James Risen and Judy L. Thomas detail, the initial impetus of the modern American anti-abortion movement began with street-level protest groups operating outside the organizational structures of the mainstream churches (led first by radical Catholics like John O'Keefe in the early 1970s, then by militant evangelicals like Randall Terry) before expanding its base to form the backbone of the American religious right.[31] In contrast, the Polish Catholic Church vigorously backed the 1993 "Compromise" and subsequent restrictions from the outset. Nevertheless, over the years the situations have only grown more similar. Polish anti-abortionist groups enjoy close links with and learn tactics from their American counterparts. For example, they take images of fully developed babies and place them on propaganda materials as purported images of fetuses. Like the American evangelical lobby, the Polish Catholic right exerts political influence through churches. For example, since the Polish Parliament is required to consider bills with at least 100,000 supporting signatures collected in person, one group — led by the prominent anti-abortion activist Kaja Godek — ran stalls outside churches all over Poland to collect more than 830,000 signatures for the Life and Family Foundation's Stop Abortion (*Zatrzymaj Aborcje*) Bill in 2017.[32]

Arguably, the Polish abortion rights movement's greatest defects were organizational. Women's Strike had no membership system nor any means of politically deciding its program and bringing that program into effect as legislation. Lempart took the role of leader without any democratic process. Indeed, she has actively prevented the movement from forming anything resembling a democratic structure, associating such organizational forms with discredited political parties. In a 2020 interview, Lempart said she saw the organization's role as that of a "helpdesk" and staunchly opposed the party system, arguing that the political arena is rigged.[33] Instead, Women's Strike was registered as a charity that, in Lempart's words, "finances activities of the grassroot organizers," "has an auxiliary role," and tries "to support people who undertake various activities in almost 600 towns."[34]

This "helpdesk" conception of the organization posed a serious problem because there were very real political differences both within and around Women's Strike as to what the movement's demands should be. Like in the U.S. context, there was tremendous pressure to keep the campaign single-issue. For example, Women's Strike was accused of hindering the movement's chances of winning by wanting to change the whole political system, fighting for climate justice and other causes alongside legal abortion. Had Women's Strike possessed democratic structures, it could have addressed and resolved internal disagreements in an openly political manner, then made efforts to win the public round to its decided program. This alone might not have been enough to prevent the protests' general loss of momentum after the judgment's implementation. Nevertheless, it would have helped the organization maintain an infrastructure that could nationally connect and sustain its core political base in the local groups. This would have better positioned Women's Strike to intervene effectively in the political arena when a major opening presents itself. Instead, the current movement has only brief protests when news breaks that someone has died after being denied an abortion. For many months after the protest wave of 2020-2021, the only noticeable sustained activity towards legislative change was the collection of signatures to hear a proposed bill.

To summarize, in certain respects the Polish struggle for abortion rights provides an inspiring contrast to the American movement's lapse into legalism. It shows how one can bring in wide layers of previously politically inactive people and lead them to question traditionally authoritative institutions and worldviews. However, the movement has largely failed to translate street-level protests into legislative gains, partly because of its organizational shortcomings.

Lessons from Argentina

As such, it is worth considering an abortion rights struggle that has achieved more concrete successes. In 2020, when Poland was protesting the Constitutional Tribunal's judgment, Argentinians were celebrating their Congress enacting a law that permitted abortion up to the 14th week of pregnancy.[35] This was groundbreaking for a region that has some of the world's most restrictive termination laws. Importantly, this success was made possible by a long-term campaign that united different strands of the feminist movement.

The key organization in this struggle was the National Campaign for Legal, Safe and Free Abortion. The campaign launched in 2005 and focused its mobilization on women's rights more generally. In 15 years, the national campaign grew from around 70 involved organizations to over 700. One key strategy was linking the issue of abortion with that of class. The organizations canvassed poor neighborhoods, broadening their reach by involving trade unions and especially women workers.

Campaigners used the slogan "Sex education for choice, contraception to prevent abortion, legal abortion to prevent death."[36] It aimed to show how poor standards of reproductive health and rights leave women with a broader range of major burdens. Inspired by the LGBT movement's successes in 2010, campaigners emphasized equality of access when canvassing more middle-class

neighborhoods, convincing richer women that it was unfair for them to be able to have underground abortions while denying that option to poorer women. The emphasis on legal abortions preventing deaths also shifted the focus from the fetus to the mother.[37] In comparison to both the United States and Polish campaigns, the Argentinians successfully resisted the pressure to keep the campaign single-issue and ensured that their demands were not watered down.

The movement grew and turned into Marea Verde (Green Tide), whose now-famous headscarf symbol has been proudly worn across the country. This increased recognizability brought a perception of authority. By making itself constantly visible in public spaces, the movement was better placed to win the ideological battle with the anti-abortion side, which was associated with the color blue. Before the 2020 enactment, there were eight attempts to push legislation for legal abortion through the National Congress. In 2018, the movement almost succeeded by pushing the Voluntary Interruption of Pregnancy Bill through the Chamber of Deputies (the lower chamber) for the first time. While the Senate ultimately defeated the bill, it significantly fueled hopes for change and shifted the movement's focus towards the 2019 Presidential election. This is not to suggest that the campaign narrowed its political objectives. Rather, it was a part of a broader strategy to gain parliamentary leverage that the movement had spent years pursuing systematically. In 2020, the newly elected center-left President Alberto Fernández fulfilled his promise of supporting abortion legalization and the historic vote passed on December 30.

Importantly, unlike the mainstream pro-choice movement in the United States since *Casey*, this victory has not caused the movement's leadership to abandon the ideological struggle over abortion.[38] Many widespread, damaging beliefs about abortion persist and doctors still try to scare women away from having abortions, especially in rural areas where both Catholic and evangelical churches hold considerable power. While we cannot say for certain how well the Argentinian movement will respond to the conservative backlash, it has laid valuable political groundwork in advance.

Towards a Truly Political Movement

The United States, Polish, and Argentinian abortion rights movements met similar challenges, but differ in the extent of their success. While each movement operates in a different context, together they suggest the following strategic lessons to avoid the legalism that has inhibited the American movement.

To begin with, the organizational question matters. Without a strong (preferably membership-based) organization with democratic structures to decide its program, the movement will struggle to make effective political interventions, let alone challenge society's existing authority, and the movement's base will be unable to steer its direction. If we are serious about empowering women to take control of their lives and about extending democracy beyond its bourgeois-democratic limits, then this democratic empowerment must begin within the organizations we use as vehicles for change.

Having a strong and democratic organization would make it easier to present the right to abortion as something that still needs to be fought for, place the demand high on the left's political agenda, and situate the demand within a broader set of related concerns. This would avoid the narrowing of political horizons that occurred as the mainstream pro-choice movement in the United States became drawn into conventional lobbying practices and reliance on the federal courts.

This brings us to the issue of ideological struggle. Firstly, we must break out of the parameters of debate that the anti-abortion movement has set. In these parameters, even pro-choice advocates have come to frame abortion as a tragic necessity. Instead of adopting this "yes, it's unfortunate, but…" framing or allowing ourselves to be drawn into debates over when life begins, we should

make sustained arguments that positively explain why being able to have abortions contributes to the specific kind of personal and political freedom we want women to possess.

Secondly, we must grasp the ideological role of religion in the anti-abortion movement. It is understandable why one might react to the overturning of *Roe* by saying it is "not really" about religion, pointing to the right's apparent hypocrisies or inconsistencies when it comes to their religious commitments, and using these to suggest that they are simply "using" religion as a cynical cover for other motivations. Nevertheless, this obscures how, for the religious right themselves, it *is* about religion. Christian nationalists act as they do because they sincerely believe that souls are real, that fetuses possess them, that legal abortion is therefore licensed mass murder, and that they must take up this fight as part of an eternal battle of good versus evil. In other words, if we are to comprehend and effectively combat our opponents, we must take seriously how ideologies shape their worldview in a way that motivates and (in their eyes) legitimates their actions. Likewise, we must respond to their efforts to impose their religious beliefs on everyone else via national law and public policy by openly fighting for secular principles of government, including the separation of church and state.

The movement should actively campaign for full legislative protection of abortion rights. To help avoid narrowing our political horizons and becoming trapped within the anti-abortion movement's parameters of debate, this campaigning should include firm arguments against imposing a time limit on abortion and for ensuring equal, practical access to abortion. As socialist feminists, we believe that this should form part of a broader case for universal healthcare and that unions should confidently take up reproductive freedom as a workers' issue.

Lastly, international solidarity and cooperation are essential. Already there are feminist networks like Red Compañera, through which groups in fifteen Latin American countries coordinate with each other. Such cross-border coordination becomes even more important considering the U.S. anti-abortion movement's efforts to support its counterparts elsewhere around the globe. We do, however, stress that the organizational question remains pertinent. In other words, it is not only about creating international connections between feminist groups, but also about creating structures that enable democratic decision-making at both the national and international levels.

In these manners, supporters of abortion rights in the United States can break out of the legalistic straitjacket and build a vibrant, determined, and truly political movement that goes beyond *Roe*.

Notes

1. *Dobbs v. Jackson Women's Health Organization,* No. 19-1392, 597 U.S. ___ (2022).

2. *Roe v. Wade*, 41 U.S. 113, 153 (1973). While the majority felt this right was founded in the Due Process Clause of the Fourteenth Amendment, they also pointed to a possible legal basis in the Ninth Amendment's reservation of rights to the people.

3. *Planned Parenthood v. Casey*, 505 U.S. 833, 877 (1992).

4. Josh Gerstein and Alexander Ward, "Supreme Court has voted to overturn abortion rights, draft opinion shows," *Politico*, May 2, 2022.

5. *Dobbs*, 5-6. Chief Justice John Roberts concurred on reversing the Fifth Circuit's judgment on the Mississippi law at issue in the case and believed that the viability line established by *Roe* and *Casey* should be discarded but did not agree with the majority's ruling to overturn *Roe* and *Casey* entirely.

6. Victoria Bekiempis and agencies, "Republican-run US states move to immediately ban abortion

after court overturns Roe v Wade," *The Guardian*, June 24, 2022.

7. Lauren Gambino, "Democrats lose Senate vote to codify abortion rights into federal law," *The Guardian*, May 11, 2022.

8. Jenny Brown, *Without Apology: The Abortion Struggle Now* (London and New York: eBook edn., Verso, 2019), 57.

9. Richard L. Engstrom, "Partisan Gerrymandering: Weeds in the Political Thicket," *Social Science Quarterly* 101, no. 1 (2019): 23-36.

10. Brad Epperly, Christopher Witko, Ryan Strickler, and Paul White, "Rule by Violence, Rule by Law: Lynching, Jim Crow, and the Continuing Evolution of Voter Suppression in the U.S.," *Perspectives on Politics* 18, no. 3 (2019).

11. James Madison, "Federalist No. 10" (1787).

12. Gerald Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago and London: 2nd edn., University of Chicago Press, 2008).

13. Ibid 188-89.

14. Ibid 195.

15. Ibid 229-230, 235.

16. Judith Blake, "The Supreme Court's Abortion Decisions and Public Opinion in the United States," *Population and Development Review* 3 (1977): 45-62, 57.

17. Katha Pollitt, *Pro: Reclaiming Abortion Rights* (New York: eBook edn., Picador, 2014), 24-26.

18. Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (Berkeley, Los Angeles, and London: University of California Press, 1998), 254.

19. Rosenberg, *The Hollow Hope*, 427.

20. Ibid.

21. Quoted in Richard Phillips, "The Shooting War Over 'Choice' or 'Life' is Beginning Again," *Chicago Tribune*, April 20, 1980.

22. Mary Russell, "House Bars Use of U.S. Funds in Abortion Cases," *Washington Post*, June 18, 1977; Martin Tolchin, "House Bars Medicaid Abortions and Funds for Enforcing Quotas," *New York Times*, June 18, 1977.

23. Suzanne Staggenborg, *The Pro-Choice Movement: Organization and Activism in the Abortion Conflict* (New York: Oxford University Press, 1991), 57.

24. Ibid 103-104.

25. For the amended provision as enacted, see Constitution of the State of Tennessee, Article 1, Section 36.

26. Brown, *Without Apology*, 57.

27. Amy Littlefield, “Where the Pro-Choice Movement Went Wrong,” *New York Times*, Dec 1, 2021.

28. Amber Phillips, “Nancy Pelosi says abortion is ‘fading’ as an issue for Democrats. The opposite is true for conservatives,” *The Washington Post*, May 3, 2017.

29. Erin Brady, “Only 13 Percent Of Democrats See Abortion Rights As ‘High Priority’ Amid SCOTUS Battle,” *Newsweek*, Jan 3, 2021.

30. European Commission, “Rule of Law: European Commission acts to defend judicial independence in Poland,” *European Union,* Dec 20, 2017.

31. James Risen and Judy L. Thomas, *Wrath of Angels: The American Abortion War* (New York: Basic Books, 1998).

32. Gazeta.PL, “Ogromna liczba podpisów pod projektem ‘Zatrzymaj aborcję’. Projekt trafił już do Sejmu,” Nov 30, 2017.

33. Zuzanna Dąbrowska, “Marta Lempart: Mogę być ciotką tej rewolucji,” *Rzeczpospolita,* Dec 23, 2020.

34. Ibid.

35. Katy Watson, “Argentina abortion: Senate approves legalisation in historic decision,” *BBC,* Dec 30, 2020. https://www.bbc.co.uk/news/world-latin-america-55475036.

36. Human Rights Watch, “A Case for Legal Abortion: The Human Cost of Barriers to Sexual and Reproductive Rights in Argentina,” August 31, 2020.

37. Javier Corrales, “How Argentina Has Made Halting Progress on Abortion Rights,” *New York Times*, Aug 10, 2018.

38. Daniel Politi, “Abortion Is Now Legal in Argentina, but Opponents Are Making It Hard to Get,” *New York Times,* March 7, 2021.