

# The New York Times

---

## A WOMAN'S RIGHTS

BY THE EDITORIAL BOARD

**Y**ou 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."

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.