Excerpts From Abortion Case

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WASHINGTON, Jan. 22—Following are excerpts from the majority opinion, written by Justice Harry A. Blackmun, in Jane Roe v. Henry Wade, the Texas abortion case, and from the dissent written by Justice Byron R. White:

Majority Opinion

The Texas statutes under attack here are typical of those that have been in effect in many states for approximately a century. These make it a crime to "procure an abortion," as therein defined, or to attempt one, except with respect to "an abortion procured or attempted by medical advice for the purpose of saving the life of the mother." Similar statutes are in existence in a majority of the states.

It perhaps is not generally appreciated that the restrictive criminal abortion laws in effect in a majority of states are of relatively recent vintage. Instead, they derive from statutory changes effected, for the most part, in the latter half of the 19th century.

When most criminal abortion laws were first enacted, the procedure was a hazardous one for the woman.

Privacy Rights Unclear

The Constitution does not explicitly mention any right of privacy. In a line of decisions, however, the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution.

This right of privacy, whether it be founded in the 14th Amendment's concept of personal liberty and restrictions upon state action, as we feel it is, or, as the District Court determined, in the Ninth Amendment's reservation of rights to the people, is broad enough to encompass a woman's decision whether or not to terminate her pregnancy.

The detriment that the state would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical wealth may be taxed by child care.

There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it.

On the basis of elements such as these, appellants and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree.

The Court's decision recognizing a right of privacy also acknowleges that some state regulation in areas protected by that right is appropriate. A state may properly assert important interests in safeguarding health, in maintaining medical standards and in protecting potential life.

At the same point in pregnancy, these respective interests become sufficiently compelling to sustain regulation of the factors that govern the abortion decision.

The appellee and certain amici argue that the fetus is a "person" within the language and meaning of the 14th Amendment. In support of this they outline at length and in detail the well-known facts of fetal development. If this suggestion of parenthood is established, the appellant's case, of course, collapses, for the fetus' right to life is then guaranteed specifically by the amendment.

The Constitution does not define "person" in so many words. The use of the word is such that it has application only postnatally.

All this, together with our observation that throughout the major portion of the 19th century prevailing legal abortion practices were far freer than they are today, persuades us that the word "person," as used in the 14th Amendment, does not include the unborn.

Texas urges that, apart from the 14th Amendment, life begins at conception and is present throughout pregnancy, and that, therefore, the state has a compelling interest in protecting that life from and after conception.

We need not resolve the difficult question of when life begins. When those trained in the respective disciplines of medicine, philosophy and theology are unable to arrive at any consensus, the judiciary, at this point in the development of man's knowledge, is not in a position to speculate as to the answer.

The unborn have never been recognized in the law as persons in the whole sense.

With respect to the state's important and legitimate interest in the health of the mother, the "compelling" point, in the light of present medical knowledge, is at approximately the end of the first trimester. This is so because of the now established medical fact that until the end of the first trimester mortality in abortion is less than mortality in normal childbirth.

It follows that, from and after this point, a state may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health.

With respect to the state's important and legitimate interest in potential life, the "compelling" point is at viability. This is so because the fetus then presumably has the capability of meaningful life outside the mother's womb. If the state is interested in protecting fetal life after viability, it may go so far as to proscribe abortion during that period except when it is necessary to preserve the life or health of the mother.

Dissenting Opinion

At the heart of the controversy in these cases are those recurring pregnancies that pose no danger whatsoever to the life or health of the mother but are nevertheless unwanted for any one or more of a variety of reasons —convenience, family planning, economics, dislike of children, the embarrassment of illegitimacy, etc.

The common claim before us is that for any one of such reasons, or for no reason at all, and without asserting or claiming any threat to life or health, any woman is entitled to an abortion at her request if she is able to find a medical adviser willing to undertake the procedure.

The Court for the most part sustains this position: during the period prior to the time the fetus becomes viable, the Constitution of the United States values the convenience, whim or caprice of the putative mother more than life or potential life of the fetus.

The upshot is that the people and the legislatures of the 50 states are constitutionally disentitled to weigh the relative importance of the continued existence and development of the fetus on the one hand against a spectrum of possible impacts on the mother on the other hand.

As an exercise of raw judicial power, the Court perhaps has authority to do what it does today; but in my view its judgment is an improvident and extravagant exercise of the power of judicial review which the constitution extends to this court.

I find no constitutional warrant for imposing such an order of priorities on the people and legislatures of the states. In a sensitive area such as this, involving as it does issues over which reasonable men may easily and heatedly differ, I cannot accept the Court's exercise of *its clear power of choice* by interposing a constitutional barrier to state efforts to protect human life and by investing mothers and doctors with the constitutionally protected right to exterminate it. This issue, for the most part, should be left with the people and to the political processes the people have devised to govern their affairs.

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Justice Harry A. Blackmun

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