The Framing of a Right to Choose: Roe v. Wade and the Changing Debate on Abortion Law
Author(s): MARY ZIEGLER
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The Framing of a Right to Choose: *Roe v. Wade* and the Changing Debate on Abortion Law

MARY ZIEGLER

The Supreme Court's decision in *Roe v. Wade,* arguably the most hotly debated in recent decades, has produced an impressive body of historical scholarship.[1] The leading histories have focused on the evolution of the arguments and alliances that shape abortion debate today, rights-based pro-life and pro-choice arguments, alliances between women's rights leaders and public health advocates, and the adoption of pro-choice positions by the Democratic Party and pro-life positions by the Republicans.[2] This orientation is unquestionably a sensible one; rights-based arguments, in play

1. See, e.g., David J. Garrow, *Liberty and Sexuality: The Right to Privacy and the Making of Roe v. Wade* (Berkeley: University of California Press, 1998); Celeste Michelle Condit, *Decoding Abortion Rhetoric: Communicating Social Change* (Urbana and Chicago: University of Illinois Press, 1990); Leslie Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States* (Berkeley: University of California Press, 1997); Cynthia Gorney, *Articles of Faith: A Frontline History of the Abortion Wars* (New York: Simon and Schuster, 1998).

2. Reagan has studied how the strength of the abortion legalization or reform movements depended on the ability of ordinary women to achieve independence and power over their own lives. See, e.g., Reagan,*When Abortion Was a Crime.* 18. Condit, by contrast, has studied the development of pro-life and pro-choice rhetoric and the ultimate compromise between pro-life and pro-choice positions, a compromise that framed abortion as "a woman's choice but also as an undesirable moral act." See Condit, *Decoding Abortion,* 199. Garrow, in turn, has examined the work of the litigators and courts responsible for the Supreme Court's decision in *Roe*. See Garrow, *Liberty and Sexuality,* ix–x.

Mary Ziegler is an Oscar M. Ruebhausen Fellow in Law at Yale Law School <mary.ziegler@yale.edu>. She wishes to give special thanks to Martha Minow, Ken Mack, and Daryl Levinson for their help and patience during the course of work on this article.

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before *Roe,* have come to dominate the debate after the decision. However, by emphasizing rights-based debate before the decision, the current scholarship has mostly missed a significant change in the rhetoric and coalitions on either side of the debate that was partly produced by *Roe* itself.[3]

Before the decision, a number of policy-based arguments were at least as important to abortion advocacy as was rights-based rhetoric including, most famously, public health arguments about fatalities and injuries associated with illegal abortions.[4] A significant, but less well-known argument involved abortion as a method of population control, designed to check domestic or international population growth. When *Roe* marginalized population control arguments, the decision changed the arguments and reshaped the coalitions involved in the abortion debate. By neglecting the transition that *Roe* helped to produce, the leading histories have missed what *Roe* reveals about how judicial decisions matter politically and culturally. By reframing a political issue, a judicial decision can help to reshape the coalitions and arguments that define the debate.

In the decade before *Roe,* the coalition advocating population control reforms was a diverse one. Some of the oldest and longest-standing members of the coalition came from the eugenic legal reform movement of the early twentieth century and advocated population control reforms presumably designed to reduce the rates of reproduction of the socially undesirable. Beginning in the 1950s, other members of the coalition saw population control as an important tool in wresting economic influence from the Soviet Union in the Third World, minimizing the attraction of Communism,

3. The best-known scholarship on *Roe* and the Court's ability to produce social change questions the wisdom of Supreme Court decisions about politically controversial matters and argues that those decisions may trigger backlashes against the result announced by the Court. See Michael Klarman, *From Jim Crow to Civil Rights: The Supreme Court and the Struggle for Racial Equality* (Oxford, England; New York: Oxford University Press, 2004); Gerald N. Rosenberg, *The Hollow Hope: Can Courts Bring About Social Change?* (Chicago: University of Chicago Press, 1991). Reva Siegel and Robert Post have recently argued that these backlash theorists oversimplify the effects of political backlashes generated by influential court decisions. See Reva Siegel and Robert Post, "*Roe* Rage: Democratic Constitutionalism and Backlash," *Harvard Civil Rights-Civil Liberties Review* 42 (2007): 373–75. Siegel and Post see backlash as an important part of democratic constitutionalism, "an exchange between officials and citizens over constitutional meaning." "*Roe* Rage," 379. In the view of Siegel and Post, backlash is a natural feature of a constitutional system in which judges must balance the need for respect for the rule of law with a desire to create democratically legitimate decisions. "*Roe* Rage," 374–75.

4. For examples of pre-*Roe* discussions of the public health problems connected to illegal abortion, see generally Mary S. Calderone, "Illegal Abortion as a Public Health Problem," *American Journal of Public Health* 50 (July 1960): 948–54; *Abortion: Legal and Illegal; A Dialogue Between Attorneys and Psychiatrists,* ed. Jerome M. Kummer (Santa Monica: J. M. Kummer, 1967).

and providing an alternative to land redistribution as a way of increasing individual wealth. For related reasons, more recent converts to population control advocacy saw population control as an important tool in the war on poverty, a way to increase women's participation in the workforce, a means of increasing the amount of money and attention available to each child in poor families, or a necessary step in preserving the environment.

The diverse population control arguments made by members of the population control movement played a significant, if mostly unacknowledged, role in abortion reform advocacy before *Roe*. While the abortion reform and population control movements remained distinct before *Roe,* population control rhetoric and reasoning played an important part in the pre-*Roe* abortion reform advocacy of organizations like NOW, NARAL, and Planned Parenthood. This strategy had significant consequences for the coalitions on either side of the abortion debate. Before *Roe,* supporters of population control, now not associated with pro-choice advocacy, were willing to support abortion reform as a population control measure, designed to cut welfare expenses, reduce pollution, or cut illegitimacy rates. In turn, in spite of the numerous, non-eugenic arguments associated with population control, some politicians and members of the public remained convinced that population control reformers harbored racist or eugenic motives. Abortion opponents and pro-life activists responded by emphasizing not only the rights of fetuses but also the threat that population control reforms might pose to African-Americans and disabled Americans. Partly for this reason, some African-American leaders and members of the public who supported abortion after *Roe* opposed abortion reform when, before the decision, abortion was thought of as a method of population control.

Roe was not the only reason for the decline of these arguments in the years between 1973 and 1980. Because some African-Americans identified population control reforms with racism, organizations that favored legalized abortion had reason to set aside population control arguments in order to avoid being accused of racism themselves. Particularly after the UN Conference on Population Control in Budapest in 1974, when a variety of Third World leaders argued that population control programs were racist or economically exploitative, there were new incentives to minimize the role of population control arguments in abortion advocacy. And later, in the later 1970s and early 1980s, as pro-choice positions became a staple of the Democratic Party,[5] groups that supported legalized abortion had more

5. Mark Graber has studied the gradual adoption of pro-choice norms and rhetoric by the Democratic Party in the 1980s and the effect of that decision on American politics. See Mark A. Graber, *Rethinking Abortion: Equal Choice, the Constitution, and Reproductive Choice* (Princeton: Princeton University Press, 1996), 137–53.

reason to make arguments that appealed to racial minorities and other traditional Democratic constituencies.

But if *Roe* was not the only reason that the abortion debate changed, it was an important reason. *Roe* brought rights-based arguments into new prominence and shifted the balance in the debate away from policy-based arguments, including those related to population control. As a consequence, population control was effectively eliminated as an influence on the abortion debate. Although political discussion of population control continues to the present day, that debate is almost entirely separate from the abortion debate *Roe* helped to shape. Although *Roe* is often believed to show that courts have a very limited ability to produce social change, *Roe* also offers an example of how judicial decisions can reshape the coalitions participating in political debates and the content of the debates themselves. By minimizing the role of population control in the abortion debate, *Roe* ultimately changed the way people thought and talked about abortion, and as a result, changed the coalitions on either side of the debate as well.[6]

Part I of this article develops an account of the mainstream population control movement in the years immediately before *Roe*. As part of this inquiry, Part I examines several of the most important population control organizations and considers the role they played in the abortion debate before 1973. By studying the internal papers of the most important organizations in the campaign for legalized abortion, NARAL, NOW, and Planned Parenthood, Part II reviews the changing strategies and rhetoric of the campaign for legalized abortion. Part III studies the decline of anti-population control arguments made by religious and other organizations opposed to abortion. Some members of the African-American community were significantly more likely to support abortion after *Roe* was decided and population control arguments about abortion were marginalized.

I. Population Control and Abortion

In the decade before the decision of *Roe,* the population control and abortion reform movements evolved independently from but also parallel to one another. Members of the abortion reform movement did not primarily emphasize population control rhetoric or express concern about social problems associated with population growth. For their part, members of

6. Gordon Silverstein has studied the ways in which law has increasingly been seen as a substitute or model for the political process and thereby has influenced the ways in which some political issues have been discussed. See Gordon Silverstein, *Law's Allure: How Law Shapes, Constrains, Saves and Kills Politics* (New York; Cambridge, England: Cambridge University Press, 2008), 3–8.

the population control movement campaigned for a variety of measures unrelated to abortion, including voluntary sterilization initiatives, maternal health programs, and domestic or international contraception measures, and some population control groups never endorsed abortion reform.

Notwithstanding the differences between the two movements, abortion reformers were attracted to population control rhetoric because of the popularity and political influence of population control politics. In other instances, population control organizations endorsed the repeal or reform of abortion bans, and members of the abortion reform movement took advantage of the opportunities for new alliances with population control organizations that shared the same policy goal. An understanding of the origins of these groups, their evolution, and their positions on abortion offers insight into the nature of population control in 1970 and into the influence of population control politics on the abortion debate.

Human Betterment Association for Voluntary Sterilization Before Roe

The Human Betterment Association for Voluntary Sterilization (Human Betterment), a population control organization that became politically influential in the years immediately before *Roe,* was one of the only major population control organizations that had not endorsed abortion reform in 1970.[7] Formed in 1943, Human Betterment had succeeded an openly eugenic organization, the Human Betterment Foundation.[8] Eugenics, a term coined by the geneticist Francis Galton in 1883,[9] had come to describe the use of law to prevent the births of persons with physical, mental, and moral defects.[10] Advocates of segregation in the South and opponents of immigration joined in calling for new compulsory sterilization laws in the years between 1915 and 1935.[11] By 1935, more

7. See Judy Klemesrud, "Sterilization Is Answer For Many," *New York Times,* January 18, 1971, 24.

8. The Human Betterment Foundation was founded in 1929 in order to study the psychological, physical, and sexual effects of compulsory eugenic sterilization. For an example of the research conducted and published by Human Betterment, see Paul Popenoe, "Success on Parole After Sterilization," in *Collected Papers on Eugenic Sterilization in California: A Critical Study of the Results of 6000 Cases* (Pasadena: The Human Betterment Foundation, 1930),18.

9. See Francis Galton, *Inquiries into Human Faculty and Its Development* (London: Macmillan, 1883), 24.

10. See Michael Willrich, "The Two Percent Solution: Eugenic Jurisprudence and the Socialization of American Law, 1900–1930," *Law and History Review* 16 (1998): 67–100.

11. See, e.g., Albert Ernest Jenks, "The Legal Status of Negro-White Amalgamation in the United States," *American Journal of Sociology* 21 (1916): 666; W. A. Plecker, "The New Family and Race Improvement," *Virginia Health Bulletin* 17 (1925): 30–31.

than thirty states provided for the compulsory sterilization of defective persons housed in state facilities.[12]

When Human Betterment promoted compulsory eugenic sterilization, such laws enjoyed significant popular support: more than seventy percent of those polled by Gallup in 1937 approved of the compulsory sterilization of the feebleminded and the insane.[13] Human Betterment did not intend such laws to reduce the growth of the general population. Indeed, Human Betterment members argued that eugenically fit persons should have more children and opened marriage clinics to help the fit find mates and conceive and rear children.[14]

During World War II, news of the mass sterilizations authorized by the Nazi regime raised concerns among the leadership of Human Betterment. As the American press began, in 1940, to report these sterilizations, E. S. Gosney, a leader of Human Betterment, wrote that he feared an association with Nazism: "We have little in this country to consider in racial integrity. Germany is pushing that. We should steer clear of it lest we should be misunderstood."[15] Gosney's fears proved to be warranted. By 1943, Human Betterment was in disarray, forced to liquidate its assets, having lost members and allies who themselves feared an association with Nazism.[16]

When a new Human Betterment emerged in the years between 1945 and 1959 under the leadership of Ruth Proskauer Smith, the heads of the organization began to identify access to contraception as both an issue of individual rights and as an international population policy. Smith's intention to develop a new strategy for Human Betterment was evident in her ultimately unsuccessful efforts to win the support of Senator John F. Kennedy both for the legalization of birth control and for Human Betterment itself. In her first letter to Kennedy, Smith identified Human Betterment not as a eugenic organization but instead as an organization "concerned with civil and human rights, especially the rights of couples to plan their families."[17] Smith also claimed that Human Betterment was concerned with a potential "'population explosion' which [was] considered by many

12. For a contemporary study of compulsory sterilization laws, see J. H. Landman, *Human Sterilization* (New York: Macmillan, 1932).

13. "Gallup Poll," *Gallup News Service,* January 17, 1937.

14. See Molly Ladd-Taylor, "Eugenics, Sterilization and Modern Marriage in the USA: The Strange Career of Paul Popenoe," *Gender and History* 13 (2001): 298.

15. David Valone, "Eugenic Science in California: The Papers of E. H. Gosney and the Human Betterment Foundation," *The Mendel Newsletter: Archival Resources for the History of Genetics and Allied Sciences,* New Series No. 5 (February 1996): 13–15.

16. See ibid.

17. See Ruth Proskauer Smith, President of the Human Betterment Association of America, to Senator John F. Kennedy (May 4, 1959), in The Ruth Proskauer Smith Papers, 77–M164, Carton 1, Folder 5, Schlesinger Library, Harvard University.

a great threat to peace and prosperity in the world."[18] However, in the correspondence with Kennedy, Smith made clear that Human Betterment still sought not only to reduce the total number of children born in the United States and abroad but also to prevent the births of future criminals or persons on public relief.

As the Kennedy correspondence suggested, by 1959, the leaders of Human Betterment had started to see population control arguments as central to the organization's efforts to redefine its image and to reshape public attitudes toward sterilization. The organization hired a publicity agency to reform its image.[19] As part of this effort, the organization no longer endorsed compulsory eugenic sterilization. In that year, Human Betterment also began a long alliance with Dixie Cup Company founder, Hugh Moore, who further assisted the organization in reshaping its image by distancing Human Betterment from eugenic reforms and arguing that sterilization was instead a method of population control.[20] Surprised, Moore wrote to Smith about a recent statement issued by Human Betterment: "The statement of policy enclosed with your letter of the 16th, I thought was excellent. . . . The only question I have on first reading is the HBA is unalterably opposed to compulsory sterilization. I thought we favored legal sterilization of imbeciles and the like."[21]

By 1964, Moore himself understood that Human Betterment needed to distance itself from the eugenic legal reform movement of the early twentieth century. In accepting the position of President of Human Betterment, Moore explained, "I had become convinced . . . that sterilization is one of the most likely means of saving civilization and that the public should be made aware of it and understand what it is. As a businessman, I have spent my life selling ideas, and by that means products."[22] What was needed, Moore explained, was a better effort in "selling sterilization."[23] Given the growing political influence of the population control movement, Smith and Moore were convinced that access to voluntary sterilization, like access to abortion, was best framed as a population control issue.

18. Ibid.

19. Smith hired a publicity agency to help Human Betterment reform its image and was advised to emphasize that all sterilizations carried out by the organization were voluntary. Cass Canfield, Chairman of the Editorial Board of Harper Brothers Publishing, to Hugh Moore (December 10, 1959), in The Hugh Moore Papers, MC 153, Box 15, Folder 10, Seeley Mudd Manuscript Library, Princeton University.

20. See ibid.

21. Hugh Moore to Ruth Proskauer Smith (October 19, 1962), in The Hugh Moore Papers, MC 153, Box 15, Folder 6.

22. Hugh Moore, Speech Made in Acceptance of Position as President of the Human Betterment Association for Voluntary Sterilization (November 20, 1964), in ibid.

23. See ibid.

But while Human Betterment increasingly used population control rhetoric in the early 1960s, its programs related at first only to domestic population control efforts. The programs of the early 1960s were intended to show that sterilization, as population control, helped reduce poverty in poor rural or African-American communities, consisting of those Smith called "the poor and uneducated who stand in such desperate need of help in controlling family size."[24] In 1961, the organization began operating a voluntary sterilization program in a Fauquier County, Virginia, hospital that served the medically indigent.[25] With the reception of sizeable donations in 1964 and 1965, Human Betterment, renamed the Association for Voluntary Sterilization (AVS) in 1965, set up the "Hartman" and "McClintock" Plans for providing similar services.[26] Organizational publicity still emphasized population control, both at home and abroad, but the programs of the early 1960s focused primarily on the sterilization of poor, American women.

However, Moore's interest in domestic and international control was genuine and related to his beliefs about the Cold War policy interests of the United States. Moore was best known for the 1955 pamphlet *The Population Bomb,* which argued that "food shortages and population pressures are already contributing to the conditions that can lead to social unrest and war."[27] In 1964, the year he became President of the newly renamed Association for Voluntary Sterilization (AVS), he reiterated arguments that population growth threatened world stability and American military and economic interests in the Third World.[28] As President, Moore hoped to change AVS's rhetoric and programs to emphasize sterilization as a method of international population control.[29]

Nonetheless, before 1968, the organization relied on the rhetoric of international population control without ever creating a program to implement its arguments.[30] This was the case for a variety of reasons. First, the organization had to overcome hostility to sterilization expressed by family planning administrators and personnel abroad, especially in Latin Ameri-

24. "Clinic Defended on Sterilization," *New York Times,* October 7, 1962, A1.

25. See ibid.

26. See note 22.

27. Hugh Moore, *The Population Bomb* (December 1959), 14, in The Hugh Moore Papers, MC 153, Box 20, Folder 5.

28. In Moore's 1966 pamphlet, *Famine Stalks the Earth,* he argued that "hunger brings turmoil, and as we have learned, creates the atmosphere in which the communists seek to conquer the earth." See Paige Whaley Eager, *Global Population Policy: From Population Control to Reproductive Rights* (Aldershot, Hants, England; Burlington, VT: Ashgate Publishing, 2004), 94, note 26.

29. Hugh Moore to John Rague et al., Memorandum (April 25, 1967), in The Hugh Moore Papers, MC 153, Box 15, Folder 7.

30. Ibid., 2.

ca.[31] As importantly, AVS had not yet committed significant resources to international population control efforts. The 1967 budget plan set aside $150,000 dollars for publicity, $50,000 for research, and only $30,000 for any international initiative.[32] Indeed, the International Population Committee, created in early 1959, had not met or received any funding by the spring of 1967.[33]

Still, in the early 1970s, because of the political attraction of population control arguments, AVS stressed similar rhetoric in its campaign for the removal of sterilization restrictions on Office of Economic Opportunity (OEO) family planning funds. As part of that campaign, in the years between 1969 and 1971, AVS led conferences about the role of sterilization in conservation and population control efforts,[34] and gave press interviews about the rising popularity and benefits of voluntary sterilization as a method of population control.[35]

In the same period, AVS began using highly publicized test cases to promote voluntary sterilization as a method of population control. With the ACLU, AVS began Project Lawsuit, a series of test cases initiated in East Coast hospitals, intended to shed light on "irrational" policies against voluntary sterilization and to illustrate the relationship of those policies to problems of population control.[36] Struggling financially, some of the women who served as plaintiffs were indigent, dependent on municipal health care, already supporting five or more children, and unable to seek out other methods of contraception.[37] Project Lawsuit thus offered examples of how voluntary sterilization could serve those who were contributing to the problems associated with population growth.

Although the strategies used by AVS changed between 1970 and 1972, the organization remained committed to population control rhetoric, and between 1971 and 1972, this commitment proved worthwhile. In 1971, the OEO finally removed sterilization restrictions,[38] and only a year later, AVS

31. Ibid.

32. AVS Budget (April 1967), in ibid.

33. Hugh Moore to the Board of Directors of the Human Betterment Association for Voluntary Sterilization (October 5, 1966), in ibid.

34. Bayard Webster, "Overpopulation Unites 2 Groups," *New York Times,* October 2, 1969, 49. AVS leaders told the press that the National Conference on Conservation and Voluntary Sterilization, held in the fall of 1969, was meant to show the role of "voluntary sterilization as a major solution to family and population problems." Ibid.

35. See, e.g., Ellen Graham, "Vasectomies Increase as Concern Over 'Pill,' Overpopulation Grows," *Wall Street Journal,* November 11, 1970, 1.

36. See, e.g., "Mother of 10 Sues Over Sterilization," *New York Times,* February 10, 1971, 71; Deborah Carmody, "Hospital Shifts on Sterilization," *New York Times,* July 4, 1970, 18.

37. See above, e.g., note 36, "Mother of Ten."

38. Louis Kohlmeier, "In '72, U.S. Financed 100,000 Sterilizations," *Chicago Tribune,* December 2, 1973, A12.

received its first USAID grant to pursue international population control research.[39] For the abortion reform movement, the success of AVS demonstrated the potential benefits of using population control rhetoric. AVS had rehabilitated its own image and the image of sterilization, winning allies in government and in public interest organizations like the ACLU.

The Population Council Before Roe

Other population control organizations, unlike AVS, endorsed abortion reform and thus offered members of the abortion reform movement the possibility of forming productive strategic alliances. One such important organization was the Population Council. Founded in 1952, the Council had also originally welcomed some leaders of the eugenic legal reform movement of the early twentieth century, including Frederick Osborn, who served simultaneously as the Council's first president and as President of the American Eugenics Society.[40] At the organization's founding conference in 1952, some members argued that eugenic problems of "quality" were inextricably linked to problems of population growth.[41] Some of those present agreed that "[a] removal of selection which normally balances the detrimental mutations necessarily results in a downward trend in the genetic quality of the population."[42] Yet, even in 1952, founding members disagreed about the relevance of eugenic issues.[43] Ultimately, the organization's mission statement omitted any discussion of eugenics, instead detailing a mission to reduce hunger and promote population control by conducting research, providing funding, and influencing public opinion.[44]

More significantly, the founding members discussed a blueprint for making international population control more effective. First, the members proposed, the Council should fund the education of foreign doctors and the establishment of foreign facilities.[45] In addition, some members suggested that "birth control programs could be put across better as maternal

39. See Executive Director's Progress Report, in The Association for Voluntary Sterilization Records, Box RC 110, Folder 21, Social Welfare History Archives, University of Minnesota.

40. John D. Rockefeller, "On the Origins of Population Control," *Population and Development Review* 3 (December 1977): 493. For an example of Osborn's writings while he was serving as president of both organizations, see Frederick Osborn, "Population Problems and the American Eugenics Society," *Science,* May 1954, 3A.

41. Rockefeller, "Population Control," 496.

42. Ibid.

43. Ibid.

44. Ibid., 494.

45. Ibid., 498.

health measures" and proposed that maternal and child health programs be combined with family planning.[46] As the Council tested this blueprint over the next few decades, the leaders of the organization stressed that population control reduced poverty and hunger in the Third World and thus promoted international stability and peace.[47]

This strategy began to prove effective when, in 1963, the Council received its first grant from the Ford Foundation to continue work with Pakistani officials in providing family planning services.[48] Between 1964 and 1971, the organization completed a number of similar "feasibility studies" in nine countries, including Tunisia, Taiwan, and Indonesia.[49] The Tunisia program was exemplary; the Council worked there with the government to educate local medical personnel, midwives, and social workers about contraception and then constructed maternal health centers that both provided medical care and promoted the use of contraception.[50] Council officials explained that the Tunisia project was designed to reduce poverty, improve individual standards of living, and strengthen existing democracies.[51] In the press, the Council cited the effort as evidence of the relationship between population control, public health, and international stability.[52]

The organization refined its message and program several times before 1971, when President Bernard Berelson announced a uniform plan that "would prevent millions of unwanted births and at the same time improve maternal and child health."[53] Berelson laid out a plan for maternity centers and satellite clinics designed to "capitalize on the fact that women are most receptive to family planning right after they have given birth."[54] As leader of the Council, Berelson affirmed that population control reflected both genuine concern about healthcare in the Third World and a belief that the poor were not always capable of making the right family planning choices without inducement, persuasion, or even manipulation.

Between 1970 and 1972, as the Population Council gradually increased its public support for legalized abortion, members of the organization fo-

46. Ibid., 499.

47. See below, notes 50–51.

48. Joseph L. Myler, "Scientists Call for Curbs on Population Growth," *Washington Post,* April 18, 1963, E2.

49. Jane Brody, "Population Group Offers Care Plan," *New York Times,* April 20, 1971, 36.

50. "Tunisia Puts Hope in Birth Control," *New York Times,* December 27, 1964, 21. For an example of a similar program, see Seymour Topping, "Taiwan Program Curbs Births, Contraceptive Loops Praised," *New York Times,* June 13, 1965, 10.

51. See above, note 50, "Tunisia Puts Hope," 21.

52. See ibid.

53. See above, note 49, Brody, "Population Group Offers Care Plan," 36.

54. Ibid.

cused on similar issues, especially the effects of legalized abortion on the health, economic well-being, and rates of reproduction of the poor. John D. Rockefeller III, the longtime chairman of the Council, was appointed by Nixon in 1969 to lead a new Commission on Population Control and the American Future.[55] After Rockefeller's appointment, in a six-month period between January and June of 1972, the Council funded two pro-reform studies by Dr. Christopher Tietze, who had been associated for some years with the pro-reform Association for the Study of Abortion.[56] One of the studies noted a decrease in illegitimacy resulting from legalized abortion and predicted that legalized abortions would be safer, as a matter of health, as well as more available to the poor.[57] The abortion studies released by the Council in 1972 thus presented abortion as serving the same goals as did its international efforts: reducing population growth, fighting poverty, and promoting maternal health.

In the same period, some members of the Council began to attend conventions on how best to achieve the repeal of abortion bans and to make the same policy-based population control arguments that had characterized Tietze's studies. For example, Emily Moore of the Council was one of the key conservative voices at the July 1971 Women's National Conference on Abortion.[58] One delegate at the conference called for the recognition of both lesbianism and abortion as issues of women's rights.[59] Speaking to the *New York Times* on behalf of the Council, Emily Moore called this request strategically "fool[ish]."[60] "I recognize," she added, "that the issues of feminism and [women's] control of their own bodies [are involved] in abortion, but this was an abortion meeting, not a feminist meeting."[61] Moore spoke for those in the Council who viewed abortion as a method of population control that could and should be separated from the advocacy of women's rights. She believed that using population control arguments was a more effective way to achieve the repeal of abortion bans.[62] "We have to be single-minded," she told the *New York Times*. "We have to go before gray-haired legislatures all over this country."[63]

In early 1972, the Council's association with the movement for abor-

55. "Population Student," *New York Times,* March 17, 1969, 27.

56. See above, note 1, Garrow, *Liberty and Sexuality,* 341; "Legal Abortions Are Topic of Study," *Washington Post,* January 6, 1972, A7; Jane Brody, "Study Finds as Legal Abortions Rise, Safer Procedures Are Sought More," *New York Times,* June 8, 1972, 53.

57. See above, note 56, Brody, "Study Finds," 53.

58. Laurie Johnston, "Nationwide Drive for Abortion Planned Parenthood in 3–Day Session Here," *New York Times,* July 20, 1971, 30.

59. Ibid.

60. Ibid.

61. Ibid.

62. See ibid.

63. Ibid.

tion reform culminated in the release of The Report of the Commission on Population Control and the American Future (the Rockefeller Report), which endorsed a broad variety of economic, social, and educational measures, including a call for the repeal of all criminal abortion laws.[64] The Report described the repeal of criminal bans as a population control measure.[65] Public attention was directed almost exclusively toward the Report's recommendation that all legal restrictions on abortion be removed.[66] The *Chicago Tribune* echoed the sentiment of many when it called the Report "the Abortion Report."[67]

By the late spring of 1972, a fully developed political discussion of abortion as a form of population control had emerged in response to the Report. At the 1972 Republican and Democratic Conventions, many abortion reform advocates used the terms "abortion" and "population control" interchangeably.[68] Republicans and Democrats could be found on either side of the issue. President Nixon, a Republican, explained: "from personal and religious beliefs, I consider abortion an unacceptable means of population control" at least in the case of "unrestricted abortion and abortion on demand."[69] Senator Edward Kennedy, a Democrat from Massachusetts, similarly rejected abortion reform as a kind of population control reform because of a "deep moral feeling."[70]

By 1972, the Council had offered a powerful example of the strategic alliances available to abortion reform organizations with those in the population control movement who supported the repeal of abortion bans. As importantly, the Council had demonstrated the possible uses of anti-poverty, cost-saving arguments tied to population control in arguing for abortion reform.

Zero Population Growth, Inc. Before Roe

A more obvious opportunity for a strategic alliance came with Zero Population Growth, Incorporated (ZPG). Founded in 1968 by a Mystic, Connecticut, lawyer, Richard M. Bowers, the organization rose to national promi-

64. See, e.g., "The Abortion Report," *Chicago Tribune,* March 20, 1972, 20.

65. The Report stated that "there is little doubt that legal and illegal abortions exert a downward influence on the United States birthrate." See *Population and the American Future: The Report of the Commission on Population Growth and the American Future* (New York: New American Library, 1972), 85–89.

66. See above, note 64, "The Abortion Report," 20.

67. Ibid.

68. See Marlene Cimons, "Women's Caucus Will Offer Strong Rights Plank to GOP," *Los Angeles Times,* August 16, 1972, H3.

69. Nick Thimmesch, "Abortion and the 1972 Presidential Race," *Chicago Tribune,* July 25, 1971, A5.

70. See ibid.

nence after the publication of *The Population Bomb,* a book by Stanford biologist Paul Ehrlich.[71] In spite of Ehrlich's reputation as an alarmist,[72] ZPG proved to be a moderate organization, different in significant ways from other members of the population control coalition. One difference involved the organization's early support for abortion reform: by April 1969, Bowers, the founder of ZPG, argued in favor of the complete legalization of abortion as a population control measure and tied population control to the preservation of the environment.[73] Another difference, apparent by 1970, involved the organization's membership, which consisted of educated, mostly white, men and women, often teaching in or founding student branches of ZPG at universities from California to Connecticut to Virginia.[74] Unlike the Council, ZPG promised, in the early 1970s, to be more political by using education and lobbying to promote population control policies.[75] And unlike either AVS or the Council, ZPG primarily used environmental arguments to promote population policies.[76]

The press often justifiably grouped ZPG with other new environmentalist organizations forming on college campuses.[77] In February 1970, Professor Robert Feldmeth of UCLA stated that ZPG sought to reduce domestic population growth in order "[t]o reduce pollution . . . [and the] drying up of our natural resources."[78] Rank and file members advanced similar arguments to those made by ZPG national president, Larry Barnett, who stated in October 1970 "that the best way to solve the problems of pollution and poverty is to work on them while population is held at its present level."[79]

71. Ray Ripton, "Fear for Environment Reaches Grass Roots," *Los Angeles Times,* February 15, 1970, WS1.

72. Ehrlich promoted "involuntary" population control measures, including the elimination of aid to countries with growing populations and the introduction of luxury taxes on items like diapers. See "Dr. Guttmacher Is Evangelist of Birth Control," *New York Times,* February 9, 1969, SM32.

73. See "Forum Set on Abortion," *Hartford Courant,* April 9, 1969, 10B.

74. See above, e.g., note 71, Ripton, "Fear for Environment," WS1 (describing operation of UCLA branch); "Campus Meeting Scheduled on Over Population," *Hartford Courant,* March 4, 1970, 14D (describing formation of ZPG unit at Eastern Connecticut College); "Group Forms to Quell Population," *Los Angeles Times,* July 18, 1970, 56 (formation of Caltech unit); "Zero Population Unit Seeks Va. Legislation," *Washington Post,* May 12, 1971, B13 (formation of University of Virginia branch).

75. See above, note 71, Ripton, "Fear for Environment," WS1.

76. See ibid.

77. See ibid.

78. Ibid.

79. Jill Landesfield, "Overpopulation Adherent," *Los Angeles Times,* October 26, 1970, 566 (describing Barnett's position); Judy Klemesrud, "To Them Two Children Are Fine, But Three Crowd The World," *New York Times,* June 12, 1971, 30 (relating the views of several members of ZPG New York).

Between October 1970 and March 1972, ZPG activists increasingly campaigned for better access to alternative reproductive techniques as a tool to preserve the environment and achieve zero population growth. Because abortion was seen to be one such technique, state-level ZPG affiliates participated in rallies for the complete legalization of abortion in Connecticut and Illinois and worked as part of the national legalization effort.[80] Whereas the Council became associated with abortion reform primarily because of the statements of a few prominent members like John D. Rockefeller III and Christopher Tietze, the rank and file of ZPG often participated actively in pro-reform protest.[81] The ZPG leadership, in turn, consistently characterized abortion as an important form of population control.[82]

However, ZPG's endorsement of voluntary sterilization as another "alternative" method of population control affected public perceptions of the group's abortion-legalization rhetoric. In 1971, Larry Barnett and other ZPG leaders participated in AVS's Project Lawsuit,[83] serving as plaintiffs in test cases and providing low-cost sterilization clinic services to men and women. Barnett, the former president of ZPG, served as the plaintiff in a test case brought in California and pursued by ZPG, the ACLU, and AVS.[84] Even before *Roe,* for some African-American leaders, sterilization in particular raised the specter of racist or eugenic motives.[85]

Nonetheless, between 1971 and 1973, ZPG steadfastly supported voluntary sterilization and described it as a method of population control, like abortion.[86] Thus, in spite of the organization's environmentalist orientation and young membership, ZPG sometimes found itself in the middle of the "black genocide" controversy surrounding sterilization programs thought to target lower-income African-Americans.[87]

Together, the experiences of AVS, the Council, and ZPG demonstrated some of the potential political costs and benefits to members of the abor-

80. See, e.g., Kit Barnett, "Where Have All the Shrinking Violets Gone," *Chicago Tribune,* May 17, 1970, W4 (describing the participation of Illinois branch of ZPG in a pro-legalization rally); Elaine Johnson, "Abortion Law Repeal Pondered at Parley," *Hartford Courant,* January 17, 1971, 9A (describing participation of state-level ZPG affiliate in discussion about repeal of all abortion bans).

81. See, e.g., ibid.

82. See, above, e.g., note 71, Ripton, "Fear for Environment," WS1.

83. "Teacher Sues Over Vasectomy Refusal in Sterilization Test," *Los Angeles Times,* December 1, 1971, A3.

84. Ibid.

85. See, e.g., "Blacks Say Control of Births Is a Plot," *Hartford Courant,* November 19, 1972, 29.

86. See above, note 79, Klemesrud, "To Them," 30.

87. Harry Schwartz, "The Fear that Birth Control May Mean Genocide," *New York Times,* May 2, 1971, E7.

tion reform movement of adopting population control arguments before *Roe*. By using mostly empty population control rhetoric, AVS had managed to rehabilitate voluntary sterilization, win important allies in the conservation movement, achieve domestic legal reform, and obtain international funding. The Council's population control programs were even better funded, and the organization had put into circulation a variety of effective arguments tying population control to abortion and both of these to maternal health, poverty reduction, international stability, and lower welfare costs. ZPG brought attention to an equally effective argument that connected abortion to population control and conservation. In the decade before *Roe,* the potential costs to the abortion reform movement were equally clear. Some organizations, like AVS, grew out of the eugenic legal reform movement. Other groups, like ZPG, provoked fears about eugenic motives behind the movement for population control by campaigning for voluntary sterilization.

Roe *and* Doe

The Supreme Court's decision in *Roe* shifted the balance of rights- and policy-based arguments in pro-reform advocacy and minimized the role of population control in the abortion debate.[88] *Roe v. Wade* involved a Texas law that prohibited all abortions except those performed to save the mother's life.[89] The law that was challenged in *Doe v. Bolton,* the companion case to *Roe,* permitted a woman to have an abortion if her doctor found that there was a danger to her life or health, if the fetus was likely to be born with a serious defect, or if the mother had been raped.[90] The law also required that all women obtaining abortions be Georgia residents, that the hospital performing the abortion be accredited by the Joint Commission on Accreditation of Hospitals, and that the abortion decision be approved or confirmed by a hospital staff abortion committee and two licensed physicians.[91] When seven members of the Court first conferenced the two cases on December 16, 1971, a majority agreed that the Texas law at issue in *Roe,* which prohibited all abortions except to save the life

88. Some pro-life advocates continue to point out links between support for legalized abortion and support for eugenics or population control, either by playing up the involvement of pro-contraception figures in the eugenic legal reform movement or by arguing similarities in the goals or rhetoric of the contemporary pro-choice and earlier eugenics movements. See, e.g., Nat Hentoff, "The Specter of Pro-Choice Eugenics," *Washington Post,* May 25, 1991, A31; Henry J. Hyde, "Their Dirty Little Secret," *Human Life Review* 19 (Fall 1993): 95.

89. *Roe v. Wade,* 410 U.S. 113, 117–19 (1973).

90. *Doe v. Bolton,* 410 U.S. 179, 182–84 (1973).

91. Ibid., 184–85.

of the mother, was unconstitutional.[92] The Conference was more divided on the constitutionality of the Georgia statute challenged in *Doe*. Chief Justice Burger explained that he "would hold [the] act constitutional."[93] Justice White agreed that "the state has struck the right balance here," as did Justice Blackmun.[94]

As importantly, the concerns expressed about the statute were not related to any rights-based argument but instead were about "whether in operation the system is discriminatory."[95] Justices Douglas and Marshall worried that, as applied, the statute might raise equal-protection issues, and Justices Blackmun and White agreed that a hearing about whether the statute guaranteed "[e]qual protection for those on Medicare" might be appropriate.[96] Even Justice Brennan, who favored striking down the statute's requirement that a three-doctor committee authorize an abortion, did not favor the Court's reaching a rights-based ninth-amendment argument.[97]

However, after both cases were reargued and then re-conferenced on October 13, 1972, the Court struck down both the Texas and Georgia laws and did so, not on the basis of the Equal Protection Clause of the Fourteenth Amendment, but on the basis of the Due Process Clause.[98] Writing for a seven-justice majority in *Roe,* Justice Blackmun quickly surveyed the history of law and medical opinion about abortion, devoting particular attention to the positions of the American Medical Association and the American Public Health Association.[99] From this survey, Justice Blackmun cited a list of important interests that the State had in regulating abortion, including the interest "in protecting the woman's health and safety" and "in protecting prenatal life."[100] On the other side of the issue, Justice Blackmun reasoned, was a "right of personal privacy" rooted in the Fourteenth Amendment.[101] "This right of privacy . . . is broad enough to encompass a woman's decision whether or not to terminate her pregnancy," wrote Blackmun, but because the

92. *Roe v. Wade,* Conference of December 16, 1971, in The William O. Douglas Papers, Box 104, Folder 1, Library of Congress; *Doe v. Bolton,* Conference of December 16, 1971, in ibid.

93. *Doe v. Bolton,* Conference

94. Ibid.

95. Ibid..

96. Ibid.

97. See ibid.

98. *Roe,* 164–65; *Doe,* 194–95, 198.

99. *Roe,* 140–48. In *Doe,* the Court set aside several provisions of the Georgia statute on fourteenth-amendment grounds, including requirements that abortions be performed in an accredited hospital, be authorized by a committee of physicians, and be approved by two physicians and a consulting doctor. See *Doe,* 194–95, 198.

100. *Roe,* 150–51.

101. Ibid., 153.

right was not absolute, it had to be weighed against State interests already set forth by the Court.[102]

After concluding that a fetus was not a "person" as defined by the Fourteenth Amendment,[103] the majority set out a trimester framework: after viability, the State could proscribe abortion except when necessary for the health of the mother; after the first trimester, the State could regulate to preserve the life or health of the mother.[104] In the first trimester, however, "the abortion decision [was] . . . left to the medical judgment of the pregnant woman's attending physician."[105]

The initial press coverage of the decision was neutral, if not positive, closely tracking language of the decision defining the right to abortion as a due-process right and stating that the abortion decision was to be made by a woman and her physician.[106] However, by June 1974, the decision had already generated several controversies. The best known debate asked whether *Roe* was right on the merits. Leading massive letter writing campaigns and well-attended rallies, anti-abortion organizations questioned whether *Roe* had correctly analyzed the personhood of the fetus, the rights assigned to it, or the opposing privacy rights belonging to the woman and her physician.[107] As Part II discusses, pro-reform organizations increasingly defended *Roe* by making rights-based arguments of their own, drawing on or redefining the decision.

In the development of these arguments a second, more subtle debate evolved between 1973 and 1978 about the meaning of the due-process privacy right defined in *Roe*. The Court had described the right as one belonging to the woman *and* the physician, as part of a gender-neutral right of privacy rooted in the Due Process Clause.[108] But even in early 1973, some abortion reform advocates interviewed by the press, especially women's rights activists, described the decision as one that protected a woman's right, not the right of the woman *and* her physician. Bella Abzug, a veteran women's rights leader and congresswoman, described *Roe* as "a giant step toward the recognition of the rights of women to control their own

102. Ibid.

103. Ibid., 158.

104. Ibid., 164–65.

105. Ibid., 164.

106. See, e.g., Glen Elsasser, "Top Court Strikes Down Abortion Laws," *Chicago Tribune,* January 23, 1973, 1; John P. MacKenzie, "Supreme Court Allows Early Stage Abortions," *Washington Post,* January 23, 1973, A1. The *New York Times* praised the *Roe* Court for making "a major contribution to the preservation of individual liberties and free decision-making." See "Respect for Privacy," *New York Times,* January 24, 1973, 40. Similarly, the *Los Angeles Times* called *Roe* "a sensible decision, persuasive both in its historical and legal arguments." See "Abortions and the Right of Privacy," *Los Angeles Times,* January 23, 1973, C6.

107. See below, notes 259, 265.

108. *Roe,* 153, 164–65.

bodies and to have abortions by choice."[109] Women's liberation activists from Connecticut to Illinois likewise praised the decision for "upholding a woman's right to privacy" or guaranteeing that "women alone [would] have the option of deciding whether to bear a child."[110]

As Part II describes, *Roe* brought these and a variety of rights-based arguments into new prominence and thereby marginalized arguments based on population control. However, other factors also contributed to the declining importance of population control arguments in the abortion debate. First, when abortion was no longer discussed as a population control measure, population control organizations had fewer incentives to endorse what had become a controversial, rights-based issue unrelated to policy or population considerations. The second factor relates to the controversy that surrounded the population control movement in the years between 1973 and 1979. Third World leaders, no longer willing to participate in programs like those funded by the Council in Tunisia and Taiwan, began arguing that population control policies had been motivated not by humanitarian concern but by racism or colonial economic interests. In 1973, the revelation that two African-American teenage girls in Alabama had been involuntarily sterilized created a scandal that set off a wave of lawsuits and accusations about sterilization abuse and its connection to the population control movement. The experiences of AVS, the Council, and ZPG after *Roe* demonstrate the interplay of these factors.

AVS After Roe

Of the three organizations, AVS would have been the most likely to be unaffected by *Roe*. AVS leaders had never endorsed abortion reform. Indeed, John Rague, a leader of AVS, had always promoted sterilization as a superior alternative to abortion, the "Cadillac" of contraception.[111] Instead, the organization was gradually affected by the sterilization abuse scandal.

This effect was not immediately apparent: in 1974, AVS still worked to increase sterilization access by advertising sterilization as a method of population control and by using test cases to attract further publicity.[112] However, as the initial controversy surrounding sterilization abuse in 1973–1974 grew later in the decade, AVS leaders were put increasingly on the defensive about whether racism had infected the voluntary steriliza-

109. Patricia Stewart, "'Victory,' 'Slaughter,' Claimed," *Hartford Courant,* January 23, 1973, 1A.

110. Ibid.; Sheila Wolfe, "Breakthrough or Tragedy," *Chicago Tribune,* January 23, 1973, 4.

111. See above, note 7, Klemesrud, "Sterilization Is Answer," 24.

112. See, e.g., "Va. Mother Sues Over Sterilization," *Washington Post,* June 18, 1978, C2 (test cases); Leslie Aldridge Westoff, "Sterilization," *New York Times,* September 29, 1974, 259 (advertising).

tion or population control movements. In the winter of 1977, the head of the federal Health, Education, and Welfare Department, James Califano, introduced a series of monitoring and restriction guidelines designed to prevent sterilization abuse.[113] New York City was one of the state or local governments to follow.[114] A number of organizations, including the Southern Poverty Law Center, the Public Citizens' Health Group, Ralph Nader's consumer protection group, and the newly formed Committee to End Sterilization Abuse had stepped up lobbying against sterilization abuse between 1977 and 1978.[115]

Faced with accusations that the organization had been anti-woman or racist, Betty Gonzales of AVS told the press that the "greatest abuse" involved the lack of access to sterilization.[116] Gonzales' message was not as persuasive as it had been in the early 1970s. Although AVS still operates today under the name EngenderHealth, partly because of the late 1970s controversy surrounding sterilization as a form of population control, the organization no longer stresses sterilization or the importance of population control.[117]

The Population Council After Roe

Unlike the leaders of AVS, some prominent members of the Population Council had endorsed abortion reform before *Roe,* and the organization had sponsored studies about the policy benefits of legalizing abortion. After *Roe,* when population control rhetoric no longer played a significant role in the abortion debate, the Council distanced itself from abortion discussion. Thus, when Christopher Tietze began a 1975 study about the rate of legal abortions and abortion-related deaths, the Council no longer sponsored his research, and he instead pursued funding from Planned Parenthood's Guttmacher Institute.[118]

Between 1974 and 1978, after Third World leaders at the 1974 UN Conference criticized population control initiatives, the Council also publicized

113. Nadine Brozan, "The Volatile Issue of Sterilization Abuse," *New York Times,* December 9, 1977, B10.

114. Ibid.

115. Ibid.; Kay Bartlett, "Moral, Legal Dilemmas Surround Use of Sterilization," *Chicago Tribune,* July 3, 1978, 16.

116. See above, note 115, Bartlett, "Legal Dilemmas," 16.

117. Engenderhealth's current website stresses the organization's work in providing "contraception" and "informed choice" in "resource-poor countries." See Engenderhealth, About Our Work, available at <http://www.engenderhealth.org/our-work> (visited March 3, 2008).

118. Jane Brody, "Legal Abortions Up 53% Since Court Ruled in '73," *New York Times,* February 3, 1975, 1.

domestic research on the safety of oral contraception rather than international programs or abortion studies. The 1974 meeting witnessed a "backlash" against population control proposals by a bloc of developing countries, all of which requested the removal of any reference to family size in the draft of the UN's world population plan of action. Thereafter, because of a lack of cooperation by governments in developing countries, the Council focused less on international population research, focusing instead on research into or advocacy for access to oral contraceptives or other "alternatives" to abortion.[119] Because of the decreasing influence of international population politics by 1978, the Council's rhetoric no longer featured population control arguments related to poverty, food supply, or international stability.

ZPG After Roe

ZPG similarly struggled to redefine itself in the wake of the 1974 UN Conference and the sterilization abuse controversy. As population control arguments stopped playing a role in the abortion debate, ZPG stopped focusing exclusively on protecting abortion rights or even on access to contraception. In the summer of 1974, ZPG Executive Director, Robert Dennis, spoke publicly about a proposal by the organization to restrict legal immigration by 90 percent.[120] As *Roe* contributed to the decline of population control arguments in the abortion debate, and as politicians and activists on the political left began criticizing population control programs for being discriminatory or racist, ZPG had less reason to endorse only those causes embraced by the political left. Similarly, as the press carried news of forced sterilizations of poor or nonwhite women, ZPG identified itself with methods of population control not directly tied to contraception.

This new emphasis was evident even into the late 1970s as ZPG's involvement in pro-reform advocacy continued to decline. Instead of lobbying for funding for abortions or the appointment of pro-choice judges, ZPG joined the 1977 call for federally-funded "alternatives" to abortion and continued arguing that immigration policy was a central part of population control.[121] In 1978, the *Chicago Tribune* reported that the organization's

119. The Council joined other organizations in calling on the Carter Administration to provide and fund alternatives to abortion. See Victor Cohn, "Pregnancy Prevention Plan Proposed," *Washington Post,* July 20, 1977, A3. For examples of the Council's post-*Roe* research, see William Claiborne, "Pregnancy Held Greater Risk Than Childbirth," *Los Angeles Times,* February 5, 1976, A1; Jane Brody, "Researchers Seek New Male Contraceptive," *New York Times,* February 21, 1978, 18.

120. Bradley Graham, "Cutback Urged in Legal Immigration," *Washington Post,* July 5, 1974, A6.

121. See above, note 119, Cohn, "Pregnancy Prevention," A3; Carol Oppenheim, "Big Zero for Zero Population's Goal," *Chicago Tribune,* December 14, 1978, A1.

goals were "immigration reform, expansion of women's opportunities, continued emphasis on family planning, and perhaps a national policy on population."[122] Yet, with only 1,000 members and inadequate funding to pursue lobbying or print pamphlets, ZPG was no longer as influential as it had been.[123] Once a major player in the abortion debate, ZPG functionally played no role in that discussion by 1978.[124]

Between 1973 and 1974, the role of population control arguments in the abortion debate declined generally, and this decline helped reshape the coalitions on either side of the abortion debate. Part of the decline can be observed in the changing arguments made by pro-reform organizations like NOW, NARAL, and Planned Parenthood. Part II studies this evolution in more depth.

II. Population Control or Choice

The changing strategies used by NARAL, NOW, and Planned Parenthood testify to the evolving nature of the abortion debate and the changing role of population control arguments in that discussion. Of course, before the decision, population control arguments were not the only ones made by organizations that favored legalized abortion. Perhaps the best studied arguments are those related to fundamental human or constitutional rights.[125] Beginning in 1967, major abortion reform organizations did make use of rights-based arguments. Planned Parenthood argued that there was a "right of every patient to decide without coercion of any kind whether and when to have a child"[126] and that "the right to abortion must be viewed as a corollary to the right to control fertility which was recognized in *Griswold,*" the Supreme Court case that defined a right of marital privacy that covered access to contraception.[127] NARAL members argued that forced motherhood "violates . . . basic human right[s]."[128] Rights-based arguments played some role in pre-*Roe* abortion advocacy, especially in the context of state and federal litigation designed to overturn abortion laws.

122. Ibid.

123. Ibid.

124. Ibid.

125. See, e.g., Kristin Luker, *Abortion and the Politics of Motherhood* (Berkeley: the University of California Press, 1984), 91; Condit, *Decoding Abortion Rhetoric,* 199.

126. Meeting Minutes, Planned Parenthood-World Population Board of Directors (disseminated February 8, 1969), in Planned Parenthood Federation of America I, Box 49, Folder 9, Sophia Smith Collection, Smith College.

127. See above, note 1, Garrow, *Liberty and Sexuality,* 502.

128. Lyle Lilliston, "National Group to End Abortion Laws Formed," *Los Angeles Times,* February 18, 1969, E1.

However, before *Roe,* policy-based arguments, designed to sway public opinion or promote legislative change, played an equal, if not greater, role in shaping the abortion debate and the coalitions on either side of it. Perhaps the best known pro-reform policy argument claimed that illegal abortions had produced a public health epidemic. Following the publication of the American Legal Institute's (ALI) Model Penal Code in 1962,[129] early pro-reform efforts often relied on arguments about the health risks to women of unmonitored, unprofessional, illegal abortions to mothers.[130]

Some of these arguments were effective in the late 1960s. Dick Lamm, one of the leading figures behind the Colorado reform of 1967, made its supporters agree to emphasize that the reform was justified "only [as] a health matter."[131] In the later 1960s, as abortion reformers began to realize and enumerate the shortcomings of the new laws modeled on the ALI proposal,[132] their calls for the complete repeal of abortion bans also highlighted policy arguments relating to public health. At NARAL's first conference, Percy Sutton, a founding member, described criminal bans on abortion as a "major health problem."[133] In 1970, Planned Parenthood leader Harriet Pilpel similarly wrote in the *New York Times*: "Those of us who did not grow up in a rigid religious tradition . . . do not look at abortion as a philosophical problem . . . but as a social and health problem."[134] In 1971, when NARAL began a test case to challenge the constitutionality of Michigan's abortion ban, Larry Lader and Joseph Nellis, leaders of the organization, asserted that the statute should fall, because "there was no legal basis on which a state could tell a doctor how to practice medicine,

129. Model Penal Code Section 230.3 (American Law Institute proposed official draft 1962).

130. Larry Lader, "The Scandal of Abortion," *New York Times,* Apr. 25, 1965, SM32.

131. See above, note 1, Garrow, *Liberty and Sexuality,* 324, 326.

132. Lamm himself would join those who argued that reform was "not only no compromise but is counterproductive." See Dick Lamm, "Therapeutic Abortion: The Role of State Government," *Clinical Obstetrics and Gynecology* 14 (December 1971): 1205. The explanations for the failure of reform laws emphasized that doctors were still reluctant to perform abortions after the introduction of reform legislation, because they remained afraid of damage to their professional reputations or of legal liability. See, e.g., "Abortion Experts, Saying Women Should Decide on Birth, Ask End to Curbs," *New York Times,* November 24, 1965, 77; Larry Plagenz, "States Legislate Abortion Reform, But Hospitals Are Reluctant to Comply," *Modern Hospital* 113 (July 1969): 82–85. Several commentators reported that it was easier to obtain an abortion in a state that criminalized all abortions than it was in a reform state. See, e.g., Robert McFadden, "Flaws in Abortion Reform Found in 8 States Studied," *New York Times,* April 13, 1970, 1.

133. Myra MacPherson, "Abortion Laws: A Call for Reform," *Washington Post,* February 17, 1969, D1.

134. Harriet Pilpel, "The Public and Private Aspects of the Problem," *New York Times,* June 14, 1970, 252.

except that his action be in accord with generally accepted standards of good practice."[135]

The political appeal of similar policy-based arguments depended first on the perception that such arguments were less divisive or controversial than rights-based arguments. As Nellis explained, "courts would more easily strike down state anti-abortion laws if the test case were presented in terms of interference [with] medicine than if it were done on the basis that many women's rights groups have advocated—namely, the right of a woman to control her own body."[136] The support of prominent, respected professional organizations confirmed the political appeal of these arguments. By 1971, leading medical and psychiatric organizations, including the American Medical Association in June of 1970, had endorsed the repeal of all criminal bans on abortion.[137] By June of the following year, several other prominent medical organizations, including the American Psychiatric Association, had signed one of the merits briefs in *Doe v. Bolton,* the companion case to *Roe v. Wade*.[138]

Pro-reform activists were attracted to policy-based population control discourse for similar reasons: arguments about population control appealed to a broad spectrum of politicians, judges, and members of the public, and influential organizations in the population movement endorsed abortion legalization. In the years immediately before *Roe,* the political success of population control reforms increased this appeal. In June of 1969, when President Nixon was considering a bill that proposed the creation of a National Center for Population and Family Planning in the Department of Health, Education, and Welfare, the population control movement was influential as well as diverse.[139] Sponsored by twenty-three Senators and forty House Members, the bill enjoyed strong bipartisan support.[140] The bill's primary sponsors in the House, for example, were James Scheuer, a Democrat from the Bronx, and George H. W. Bush, a Republican from

135. Eileen Shanahan, "Doctor Leads Group's Challenge to Anti-Abortion Law," *New York Times,* October 5, 1971, 28.

136. Ibid.

137. The AMA used arguments similar to Nellis's, formally stating that "no physician or medical personnel should be compelled to perform any act which violates his good medical judgment." See Richard Cooper, "AMA Relaxes Its Stand on Abortion," *Los Angeles Times,* June 26, 1970, 18. After efforts by Catholic members to rescind the organization's endorsement, the AMA solidified its pro-legalization position in December of 1970. See Ronald Kotulak, "A.M.A. Wins Fight on Eased Abortions," *Chicago Tribune,* December 3, 1970, 12.

138. See above, note 1, Garrow, *Liberty and Sexuality,* 501.

139. See Nan Robinson, "Nixon Considers Proposal for a Commission on Domestic Population Reforms," *New York Times,* June 11, 1969, 20.

140. Ibid.

Texas.[141] In 1971, a resolution to declare zero population growth the official policy of the United States enjoyed similar bipartisan support.[142] Political support for population control mirrored popular support. A 1972 poll found that sixty-five percent of respondents agreed that population growth was a serious problem, and more than half stated a belief that population growth caused the nation to use up its natural resources too fast and produced social unrest and dissatisfaction.[143]

Roe helped to change the role of population control in the abortion debate. Although rights-based arguments had always been a part of abortion politics, *Roe* gave these arguments new significance. This transition took place for several reasons. First, beginning in 1973, anti-abortion organizations began campaigning for constitutional amendments and state law resolutions that would overturn the holdings of *Roe* with respect to the rights and personhood of the fetus. In a series of meetings, memoranda, and conferences, abortion reform organizations gradually concluded that the most effective way to defend legalized abortion was to emphasize rights-based arguments in favor of *Roe*. Second, by the mid-1970s, feminist lawyers occupied leadership roles in NOW and NARAL and argued in favor of the increased use of rights-based, constitutional arguments in preserving legalized abortion. Of course, NOW, NARAL, and Planned Parenthood all used different strategies that evolved in different ways. Part II considers them in turn.

Planned Parenthood

The association of Planned Parenthood with population control politics is relatively well-known. Founded in 1942, Planned Parenthood was the successor to Margaret Sanger's American Birth Control League and became the most influential birth control lobby in the United States, providing education and services in clinics operated by the organization, offering marriage counseling, and campaigning for the reform of laws restricting the distribution or advertisement of contraception.[144] By 1961, Planned Parenthood had already sponsored a fundraising effort known as the World Population Emergency Campaign.[145] When Planned Parenthood merged

141. Ibid.

142. Victor Kohn, "New Coalition Asks Crusade for Halting Population Growth," *Washington Post,* August 11, 1971, A1.

143. See Ernest Ferguson, "Zero Population Growth Isn't Zero," *Los Angeles Times,* January 30, 1972, 17.

144. For an excellent study of Planned Parenthood and the advocacy of birth control reform, see Linda Gordon, *The Moral Property of Women: A History of Birth Control Politics in America* (Urbana and Chicago: University of Illinois Press, 2002), 281–82.

145. Richard Eders, "Family Planning Is Goal of Drive," *New York Times,* March 20, 1960, 32.

with the Campaign in 1961 to form Planned Parenthood World Population (PP-WP),[146] the organization focused on population control advocacy related to domestic and international poverty. In 1964, with the formal announcement of President Johnson's War on Poverty, PP-WP leaders increased publicity and lobbying efforts designed to show that contraception and family planning were necessary to any attempt to reduce poverty.[147] Similarly, between 1964 and 1969, under the leadership of physician Alan Guttmacher, PP-WP also characterized international population programs as anti-poverty measures.[148] Until 1968, when the Board of Directors formally adopted a resolution in favor of the repeal of all abortion bans,[149] PP-WP was more of a population control and public health organization than a group dedicated to abortion reform. Thus, it was not surprising that population control arguments played an important role in the organization's abortion reform advocacy.

The organization's endorsement of the removal of all legal restrictions on abortion was partly designed to reduce concerns that abortion or population control more generally was racially motivated. In 1968, when the endorsement was made public, the PP-WP Board also elected Dr. Jerome Holland, an African-American sociologist, as its new chief executive officer.[150] Speaking to the press, Holland strongly condemned the view that abortion reform was a form of black genocide and stated that proponents of the theory "did not understand the real meaning of family planning."[151]

The rhetoric of the abortion endorsement itself was intended to dispel fears about population control. It described abortion access as the "right of every patient" and stated that "special vigilance must be exercised to preserve this right for welfare recipients and other dependent Americans."[152] Although the endorsement described abortion access as a right, it was a strictly gender-neutral one, the right of a "patient."[153] Moreover, the endorsement described abortion as much as a policy issue as an issue of

146. "Parenthood Aide," *New York Times,* October 27, 1967, 15.

147. See, e.g., Jeannie Rosoff to PP-WP Affiliates, Board, and Committees (October 2, 1964), in Planned Parenthood Federation of America I, Box 49, Folder 9, Sophia Smith Collection, Smith College; Donald Strauss, Chairman PP-WP, Statement to the Committee of Resolutions and Platforms of the 1964 Democratic Convention (August 18, 1964), in ibid.

148. See, e.g., PP-WP Information and Education Department to PP-WP Board Members and Affiliates, "A Top U.S. Government Official Speaks Out on the Latin American Population Explosion" (April 1964), in ibid; Felix Belair, Jr., "Congress Urged to Aid Population Control Abroad," *New York Times,* July 31, 1969, 16.

149. Morris Kaplan, "Abortion and Sterilization Win Support of Planned Parenthood," *New York Times,* November 18, 1968, 50.

150. Ibid.

151. Ibid.

152. See above, note 126, Meeting Minutes, 9–10.

153. Ibid. 9.

rights. The statement framed abortion as a back-up form of birth control and "contraception" as the "optimum method."[154] The endorsement concluded by calling abortion "a medical procedure . . . subject to appropriate provisions of the various State Medical Practice Acts."[155] The basic outline of a pro-reform strategy emerged from the 1968 endorsement. Abortion reform would be characterized as an issue of good medicine and population control, and population control measures would be defended against charges of racism.

Between 1969 and 1970, PP-WP leaders developed this rhetorical strategy. That is not to say that the organization made no rights-based arguments in the period. Harriet Pilpel, legal counsel for the organization, argued in editorials that abortion was a matter of constitutional rights for women.[156] However, the publicity and lobbying efforts of the organization focused as much on policy-based reform arguments, including those based on population control. In a 1969 interview with the *New York Times,* Guttmacher argued that abortion reform was a problem closely related to the "population explosion" and contended that population control efforts, including abortion, were intended to reduce poverty, not eliminate the poor.[157] "We're not trying to take away anyone's freedom," Guttmacher argued. "What we're trying to do is show ghetto families how to . . . avoid having children they don't want."[158]

In spite of the evident possibility of alienating some African-Americans, Guttmacher, in the early 1970s, still believed that population control arguments were an effective tool in PP-WP's abortion reform advocacy. Guttmacher had long supported reform through legislation and attributed the recent repeals of all abortion restrictions in New York and Hawaii to "the realization of the population problem."[159] "We're now concerned more with quality of population than with the quantity," he told the Associated Press in 1970, in commenting on the two New York and Hawaii laws.[160] Similar population control arguments were an important part of PP-WP's policy-based strategy between 1970 and 1972. PP-WP fieldworkers advocating abortion reform were supplied with sheets of facts that included information about the reduction in welfare costs and illegitimacy rates that would come with legalized abortion.[161] Even in 1972, when Harriet Pilpel filed on behalf of the organization an amicus brief that featured rights-based

154. Ibid., 10.
155. Ibid.
156. See above, note 134, Pilpel, "Public and Private," 252.
157. See above, note 72, "Dr. Guttmacher Is Evangelist," SM32.
158. Ibid.
159. "Abortion Reform Termed Fantastic," *Hartford Courant,* March 31, 1970, 16.
160. Ibid.
161. See, e.g., Planned Parenthood Fact Sheet (1973), in The NOW Papers, MC 496, Box 54, Folder 26, Schlesinger Library, Harvard University; see also "Time to Lobby Your Representative" (April 1974), in ibid.

arguments,[162] Planned Parenthood leaders circulated materials explaining that abortion, as a method of population control, did not represent an effort to eliminate racial minorities or to reduce their numbers.[163]

After the decision of *Roe,* it gradually became clear that population control arguments would no longer be as effective in preserving legalized abortion as they had been before *Roe*. Of course, *Roe* itself was not the only reason that population control arguments were becoming less attractive in the mid-1970s. The suspicions harbored by some African-Americans provided an independent reason for Planned Parenthood and other organizations that favored the legalization of abortion to set aside arguments that were related to population control. Similarly, later in the 1970s and into the early 1980s, as the Democratic Party became tied to support for legalized abortion, leaders of organizations that favored legalized abortion had new reason to make arguments that appealed to Democratic constituencies.

Nonetheless, for Planned Parenthood, *Roe* itself played an important role in the marginalization of population control arguments. In the wake of *Roe,* abortion opponents flooded Congress with letters denouncing *Roe v. Wade,* and a number of state legislatures began considering resolutions to give legal personhood to fetuses.[164] In response, in October of 1973, Planned Parenthood leaders met at a strategy session in Denver, Colorado. The aim of the meeting was to revamp the group's strategy on every level, including organization, fundraising, and publicity.

In a confidential memorandum, Robin Elliott, one of the conference organizers, summarized the conclusion of the Conference that an effective defense of *Roe* was central to Planned Parenthood's "program gains" in abortion and even contraception (Memorandum, 4). "[T]he reversal of the Supreme Court decisions on abortion . . . would merely take the conflict back one step further," Elliot reported (Memorandum, 4). "This society cannot afford" (Memorandum, 4).

The question was how to "stop the drive for a constitutional amendment" overruling *Roe* (Memorandum, 1). Elliott summarized the concern of Planned Parenthood operatives that opponents of the *Roe* decision had successfully called into "question . . . Planned Parenthood's credibility in its reference to a population problem" (Memorandum, 4). Those present

162. See above, note 1, Garrow, *Liberty and Sexuality,* 502.

163. For an example of the types of materials recommended by Planned Parenthood organizers, see Robert G. Weisbord, *Genocide?: Birth Control and the Black American* (Westport: Greenwood Press, 1975).

164. The Denver Conference Memorandum (November 2, 1973), in The NARAL Papers, MC 313, Carton 8, Planned Parenthood 1973–1974, Schlesinger Library, Harvard University. Subsequent references in the text are to this Memorandum.

at the conference saw Planned Parenthood's support for population control as a vulnerability, because pro-life organizers had successfully "sought to exploit to their own advantages the fears of minorities" (Memorandum, 4). Elliott suggested that abortion reform advocates adopt a new strategy involving "the reaffirmation of commitment to freedom of choice in parenthood" (Memorandum, 4).

In elaborating on this suggestion, Elliott recommended that the organization either discuss the rights-based arguments in *Roe* or reinterpret its language and holding. She suggested that Planned Parenthood publish "pieces of our own describing to . . . professional groups what might happen if the Supreme Court abortion decisions were overturned" (Memorandum, 7). Elliott also advised Planned Parenthood to create "[a] series of straightforward, popular pieces on the [Court's] rationale for legal abortion" (Memorandum, 7). In other instances, she recommended that the organization draw on, rework, and even manipulate the rights-based language of the decision. Elliott explained that "an important thematic idea to be stressed is that abortion in a pluralistic society is to be considered as a matter for determination according to personal choice" (Memorandum, 6). She advised Planned Parenthood operatives to change the abortion debate by borrowing the ideas and rhetoric of the *Roe* decision itself. What was needed, Elliott explained, was a "redefinition in the terms of public debate—for example, [from] 'Abortion: Is It Murder, or Not?' to 'Freedom of Choice in Abortion: Is it Necessary or Not in a Pluralistic Society?'" (Memorandum, 6).

Although Elliott recommended that Planned Parenthood activists draw on arguments made in *Roe,* she was also asking them to manipulate the decision's language and choose only those portions of the decision that suited the new "thematic ideas" that Planned Parenthood espoused. Planned Parenthood organizers were not instructed to emphasize the parts of the decision that focused on the rights of physicians or on the trimester framework set forth by the decision. Instead, Elliott advised Planned Parenthood activists to take some premises of *Roe* at their most abstract: *Roe* protected rights to choice, privacy, and pluralism.

The strategy described at the Denver Conference became the dominant one for Planned Parenthood only gradually, and was firmly entrenched in the late 1970s under the leadership of Faye Wattleton, the organization's first female president. Between 1974 and 1976, by contrast, when Planned Parenthood was headed by former Peace Corps leader Jack Hood Vaughn,[165] the organization still tried to balance rights-based and population control

165. See, e.g., "Vaughn Urges Business to Assist the Peace Corps," *New York Times,* February 14, 1968, 12.

arguments. Vaughn's primary interest and experience came from international humanitarian work as head of the Peace Corps and later, as Ambassador to Colombia, and under his leadership, Planned Parenthood continued framing abortion as a humanitarian method of population control.[166] At the UN Conference in Budapest, Planned Parenthood held a World Population Year and International Convocation.[167] In discussing the conference, Cass Canfield of PP-WP wrote to NARAL leader Bea Blair: "[a]t the Stockholm Environment Conference in 1972 rich and poor countries clashed bitterly. We must prevent the re-occurrence of such confrontations."[168] It was only the failure of the 1974 Budapest Conference that convinced some members of Planned Parenthood that the population control arguments that had been central to Planned Parenthood's advocacy would no longer be effective.

As a part of the search for new arguments, Planned Parenthood organizers began working with the ACLU in its Reproductive Freedom Project in June 1974. The project billed itself as a program of litigation and "public education" designed to "enforce compliance with *Roe*."[169] Denise Spalding, the program director at the ACLU, explained that the publicity and educational efforts of the Reproductive Freedom Project would draw on the rhetoric of *Roe* rather than on a variety of policy-based or population control arguments in favor of legalized abortion.[170] "The Supreme Court gave us a valuable precedent in *Doe* and *Roe,*" Spalding wrote. "Now we must do the unglamorous follow-up work to protect each woman's right to have an abortion."[171]

In the same year, Planned Parenthood leaders began developing an argument that *Roe* stood not only for a right to privacy but also for equal abortion rights for poor, nonwhite women. Planned Parenthood activists had always argued that the legalization of abortion would be of particular help to the poor.[172] By 1974, however, as population control rhetoric was pushed aside, Planned Parenthood's equality-based arguments became more significant and effective. In September 1974, when Congress voted to ban the use

166. See ibid. for discussion of Vaughn's ambassadorial appointment, and see "Vaughn Sworn In as Envoy," *New York Times,* June 6, 1969, 29.

167. See Cass Canfield of Planned Parenthood-World Population to Bea Blair, Executive Director of NARAL (April 12, 1974), in The NARAL Papers, MC 313, Carton 8, Planned Parenthood 1975–1976.

168. Ibid.

169. See, e.g., Denise Spalding of the ACLU Reproductive Freedom Project to Jane Plitt of the NOW National Office (July 12, 1974), in The NOW Papers, MC 496, Box 54, Folder 26.

170. Denise Spalding of the ACLU Reproductive Freedom Project to Jane Plitt, Executive Director of National NOW (July 13, 1974), in The NOW Papers, MC 496, Box 54, Folder 32.

171. Ibid.

172. See above, note 72.

of federal money to fund abortions, Planned Parenthood spokeswoman Diana Hart told the *Washington Post* that the measure "would discriminate against lower income women who can't afford to pay for an abortion without Medicaid."[173] Senators traditionally supportive of civil rights policies, like the Equal Rights Amendment or Voting Rights Act, joined Planned Parenthood's call for equal abortion rights.[174] Planned Parenthood, in turn, created an abortion loan and technical assistance program explicitly designed to protect equal rights to abortion.[175]

By the end of Vaughn's tenure as president of Planned Parenthood in the spring of 1976, the organization had decided to focus on rights-based arguments, including those related to equality. This change arose partly because of the reluctance of either major candidate in the 1976 presidential election to endorse a federal right to abortion access.[176] In the winter of 1976, pro-life Catholics in Massachusetts and New Hampshire organized to prevent the nomination of a pro-choice candidate, even for the Democratic Party.[177] Similarly, expressions of support for abortion access in the press most often took the form of assertions that the constitutional question of abortion had already been decided and should not be a subject of political discussion.[178] An argument that abortion could not be made a political issue was appealing when both major parties were unwilling to support the outcome in *Roe* and when the most popular arguments about abortion in the mainstream media involved fundamental rights.

But Planned Parenthood's changing arguments also reflected a fundamental shift in the organization's strategy. Vaughn, whose presidency was associated with international, humanitarian work, began arguing publicly that rights-based arguments were the most important part of the abortion debate. Speaking to the *Los Angeles Times* on behalf of Planned Parenthood, Vaughn argued that abortion was not and should not be considered a political matter.[179] "Abortion is not the sort of issue which lends itself to . . . a political campaign," Vaughn stated. "But even if this campaign were

173. "Senate Votes to Prohibit Spending of Federal Money on Abortions," *Washington Post,* September 18, 1974, A2.

174. See below, notes 273–75.

175. Connie Mooney, NARAL State Administrator, to Francine Stein, Administrator of Planned Parenthood-World Population (May 2, 1975), in The NARAL Papers, MC 313, Carton 8, Planned Parenthood 1975–1976.

176. See, e.g., Christopher Lydon, "All Candidates Fall Short on Defining the Issues," *New York Times,* January 11, 1976, E4.

177. See Christopher Lydon, "Abortion Is Big Issue in Massachusetts and New Hampshire," *New York Times,* February 9, 1976, 57.

178. See, e.g., Alex Gerber, "Campaign Brings Some Illogical Fence-Straddling on Abortion," *Los Angeles Times,* February 22, 1976, H1.

179. Jack Hood Vaughn, "Abortion: It Has No Place in Politics," *Los Angeles Times,* March 4, 1976, C7.

a model of reason and cool thinking, this issue should not be a part of it. The private rights of citizens are not to be decided at the ballot box."[180] Vaughn also exploited the new success of equal-rights arguments used by Planned Parenthood in congressional lobbying, describing a proposed states'-rights amendment as a "travesty of equal rights" and "an invitation to unequal application of the laws."[181]

The organization's rights-based strategy was solidified both by the success of another Medicaid bill in 1977 and by the appointment of Planned Parenthood's first female president, Faye Wattleton, in 1978.[182] The press widely described Wattleton's appointment as a signal that the organization was more committed to women's rights issues and to the preservation of legalized abortion.[183] Wattleton also told the *New York Times* that she was likely chosen to head the organization "for being a woman and because [Planned Parenthood] needed to change [its] image." That change in image involved a more "aggressive" campaign for "abortion rights" and increased emphasis on rights- and equality-based arguments.[184] Explaining the organization's new emphasis on preserving *Roe,* Wattleton told the press in the winter of 1978 that "[w]hat's really important is that black women have equal access to determine when and how they will have children."[185] By selecting Wattleton, Planned Parenthood identified abortion rights as a priority and confirmed that rights-based arguments would be central to the organization's efforts to preserve legalized abortion. The strategy first proposed in Denver—to use the language of *Roe*—had been revised. Whatever the language of *Roe* itself was, Planned Parenthood leaders suggested that the decision stood both for a right of privacy and for equal abortion access. In broader terms, however, the Denver strategy was fully in force by 1978: population control arguments had been pushed aside, and arguments about the true meaning of *Roe* had become central to Planned Parenthood's advocacy.

NARAL

Of all the abortion reform organizations this article considers, NARAL's membership and strategies changed in the most striking way. NARAL was the most prominent single-issue organization dedicated to the legalization

180. Ibid.

181. Ibid.

182. See Adam Clymer, "Senate Vote Forbids Using Federal Funds for Most Abortions," *New York Times,* June 30, 1977, 1; Judy Klemesrud, "Planned Parenthood's New Head Takes a Fighting Stand," *New York Times,* February 3, 1978, A14.

183. See above, note 182, Klemesrud, "Planned Parenthood's New Head," A14.

184. Ibid.

185. Ibid.

of abortion both before and after *Roe*. The organization was formed in February of 1969 by pro-reform organizations composed of doctors, lawyers, members of the clergy, students, women's liberation activists, and members of the American Public Health Association.[186] NARAL's founders wanted the organization to serve as the strategy center for the movement to repeal abortion bans and to guarantee that the pro-reform message was coherent and effective.[187] As a result, NARAL leaders at the founding conference had already begun to debate which arguments they should stress in lobbying for abortion reform.[188] In particular, there was serious debate about whether NARAL should characterize abortion as a woman's rights issue. At the first meeting of the organization's national Board of Directors, Betty Friedan, a founding member of NARAL and a prominent women's rights advocate, moved that NARAL "should support political groups working toward the basic purpose of the right of a woman to decide when to have or not have children."[189] The motion died for lack of a second.[190] At the same meeting, Larry Lader moved that NARAL resolve that, "to prevent increasing overpopulation, American parents in general . . . should adopt the . . . principle of the 2–child family."[191] The motion passed 26–18, as did another resolution intended to make clear that "men as well as women have the right to birth control."[192] A NARAL assistant explained that both resolutions "should appeal to groups concerned about population and conservation; these groups are important potential allies."[193]

Although rights-based arguments did play a role in NARAL's abortion reform rhetoric between 1970 and 1972, the balance of arguments was weighted toward those based on policy, including arguments tied to population control. Lader himself sought to build close relationships between NARAL and major population control organizations. In 1970, NARAL and Zero Population Growth collaborated on abortion reform efforts in Washington State and Colorado.[194] In April of 1971, the groups worked together in supporting Senator Robert Packwood's National Abortion Rights Bill.[195] The close ties between ZPG and NARAL had an effect on the

186. See above, e.g., note 133, MacPherson, "Abortion Laws: A Call," D1.

187. Ibid.

188. Ibid.

189. NARAL National Board of Directors Meeting Minutes (September 28, 1969), 2, in The NARAL Papers, MC 313, Carton 1, Board Minutes.

190. Ibid.

191. Ibid.

192. Linda Cisler, Comments on NARAL Board Resolutions (1969), 2, in ibid.

193. Ibid.

194. See, e.g., Larry Lader to Shirley Radl of Zero Population Growth, Incorporated (August 20, 1970), in The NARAL Papers, MC 313, File Box 9, Zero Population Growth.

195. See Shirley Lewis of Zero Population Growth, Incorporated to Lee Giddings, Executive Director of NARAL (April 16, 1971), in ibid.

focus of NARAL's reform efforts. Lee Giddings, the executive director of NARAL, began a concentrated effort in 1971 to convince members of the Commission on Population Growth and the American Future to endorse abortion and tie the Commission to NARAL. Giddings wrote to John Rockefeller III that NARAL had "followed [the Commission] with great interest" and hoped that the report produced by the Commission would "give substantial attention to abortion and its relationship to population control."[196] Lorraine Cleveland, the head of NARAL's Family Planning and Population Education Program, similarly wrote Charles Westoff, another member of the Commission, that total repeal of abortion bans "might go far toward reducing unwanted births and the threat of overpopulation in this country."[197] When the Commission Report endorsed abortion reform, the NARAL Executive Board came out strongly in favor of proposed population control reform measures.[198] That November, the Board published a resolution endorsing existing federal population control legislation and recommending the creation of a separate institute for population science.[199]

As importantly, NARAL used the arguments of population control advocates to promote NARAL's goals. By 1971, NARAL's official guidelines for speakers and debaters did include some rights-based arguments, including an assertion that legalized abortion was required under a constitutional "right to privacy in the bedroom."[200] However, the guidelines also emphasized a number of policy-based arguments, including a whole category related to population control. When faced with arguments that persons of genius would not have been born if people used legal abortion for eugenic purposes, NARAL activists were advised to reply that "possibly Hitler wouldn't have been born either" and that "[w]e do not miss the many people not born."[201] Other proposed arguments asserted that "[l]egal abortion will decrease the number of unwanted children . . . and possibly subsequent delinquency, drug addiction, and a host of social ills."[202] Another population control argument stated "[t]he population explosion compels us to take every means necessary to curb our growth rate" and contended: "since contraception . . . seems insufficient to reduce

196. Lee Giddings to John Rockefeller III (October 29, 1971), in The NARAL Papers, MC 313, Carton 7, National.

197. Lorraine Cleveland to Charles Westoff (November 2, 1971), in ibid.

198. Resolution of the NARAL Executive Committee (November 27, 1972), in The Betty Friedan Papers, 71–62–81–M23, Carton 42, Folder 1461, Schlesinger Library, Harvard University.

199. See ibid.

200. NARAL Speaker and Debater's Handbook Excerpt (circa 1972), in The NARAL Papers, MC 313, Carton 7, Debating the Opposition.

201. Ibid.

202. Ibid.

fertility to the point of our growth, we should permit all voluntary means of birth control (including abortion)."[203]

Partly because of *Roe,* NARAL gradually moved away from similar population control rhetoric and increasingly drew on rights-based, often constitutional arguments. The driving force behind this shift was a transition in the leadership of the organization. Between 1973 and the middle of 1974, when Larry Lader continued to be the head of NARAL, the organization remained committed to policy- as well as rights-based arguments. Thus, when the organization's Executive Committee met in 1973, the members present "agreed that to emphasize 'a woman's right to choose abortion' is sometimes not a good strategy. It is important to stress the legal and public health benefits of abortion."[204] NARAL and Zero Population Growth persisted throughout 1973 in sharing fact sheets, press advice, newsletters, and membership lists.[205] In 1974, Lader continued building alliances with population control organizations and sought a place for NARAL speakers at the UN World Population Conference.[206]

However, as early as the winter of 1974, some members of NARAL began calling for new rhetoric and leadership. In a statement to the organization's national board in February 1974, Lee Giddings asserted that it was "crucial" that the group "educate the public on the Supreme Court decision [in *Roe*] and on the responsibilities of those receiving and giving [abortion] service."[207] That spring, Sarah Weddington, one of the lawyers who argued for the victorious appellant in *Roe,* told the NARAL Board about the efficacy of rights-based arguments tied to gender equality. After speaking to Democratic Senator Birch Bayh, a supporter of the Equal Rights Amendment, Weddington reported that she had persuaded him primarily by contending that "women cannot take advantage of opportunities . . . under the ERA if they cannot control their fertility."[208] By October 1975, the organization's executive committee agreed that its meetings should be

203. Ibid.

204. NARAL Executive Committee Minutes (February 3, 1973), in The NARAL Papers, MC 313, Carton 1, Executive Committee Minutes 1973–1974.

205. See, e.g., Margaret Letterman, Editor of Zero Population Growth, Incorporated, National Report, to Lee Giddings (August 28, 1973), in The NARAL Papers, MC 313, File Box 9, Zero Population Growth, Incorporated (sharing advice on press conferences); Carl Pope, Executive Director of Zero Population Growth, Incorporated, to Lee Giddings (circa October 1973), in ibid.; Barbara Ross of Zero Population Growth, Incorporated, to Roxanne Olivo, Executive Director of NARAL (November 1, 1973), in ibid.

206. See, e.g., Larry Lader and Betty Friedan to Madame Servan-Schreiber (June 19, 1974), in The Betty Friedan Papers, 71–62–81–M23, Carton 42, Folder 1461.

207. Lee Giddings to NARAL Board et al. (February 1974), 2, in The NARAL Papers, MC 313, Carton 1, Board Minutes 1973–1979.

208. NARAL Meeting Minutes (April 13, 1975), in ibid.

used primarily to "stress the importance of continuing the national effort to protect the Supreme Court decision."[209] The committee asserted that the organization's most important accomplishment, as a matter of rhetoric, had been to "mak[e] people aware of the real threat to the United States Supreme Court abortion decision."[210] The following December, Weddington became the head of the organization.[211] When speaking to the press, Weddington again insisted that abortion reform advocates were women's rights supporters while anti-abortion activists "still [thought] that a woman's place [was] in the home barefoot and pregnant."[212]

Under Weddington's leadership, women's rights and constitutional arguments became more central to NARAL's strategy. In 1977, President Jimmy Carter invited NARAL members to the National Women's Conference in Houston, a meeting called to discuss gender inequalities and ways to overcome them.[213] It was clear that abortion would be a contentious issue at the conference. A majority of delegates were known to support legalized abortion, but a powerful minority planned to speak out against *Roe v. Wade*.[214] Phyllis Schafly, a self-styled family values supporter and abortion opponent, was also holding a "conference for the family" in Houston.[215] The NARAL contingent at the National Women's Conference was, therefore, prominent. The positions of those present at the conference would be considered the positions of the organization.[216]

The NARAL delegation took the conference as an opportunity to endorse right-to-choose arguments. Betty Friedan described NARAL's role at the conference: "When Right to Life men led a noisy demonstration in the galleries, carrying pictures of pickled fetuses, the National Abortion Rights Action League raised a single blue and white banner with the Statue of Liberty raising a torch over the 'right to choose.'. . . [Then] some women stood to sing 'God Bless America' with them."[217] Later, when anti-abortion delegates outside the conference center began singing "All We are Saying Is Give Life a Chance," the NARAL contingent led a chant of "choice, choice, choice."[218]

209. NARAL Board Meeting Minutes (October 10, 1975), in The Betty Friedan Papers, 71–62–81–M23, Carton 43, Folder 1462.

210. Executive Director's Annual Report (1974), in ibid.

211. See Joan Zyda, "Abortion Rights Leader Argues for a Free Choice for Women," *Chicago Tribune,* December 9, 1975, B1.

212. Ibid.

213. See Betty Friedan, Draft of Article Titled "Houston: How the Women's Movement Survived," in The Betty Friedan Papers 71–62–81–M23, Crate 35, Folder 1182.

214. See ibid., 4.

215. See ibid.

216. See, e.g., Megan Rosenfeld and Bill Curry, "Women's Conference Passes Abortion, Gay Rights Measures," *Washington Post,* November 21, 1977, A1.

217. See above, note 213, Friedan, "Houston," 4.

218. See above, note 216, Rosenfeld and Curry, "Women's Conference," A1.

After the 1977 conference, and again under the influence of Weddington, NARAL began instructing its activists to focus on rights-based arguments drawn from *Roe v. Wade*. In a 1978 strategy manual, NARAL operatives were instructed on how to respond to a variety of common anti-abortion arguments.[219] The proposed responses drew heavily on *Roe* itself, quoting directly the reasoning of the opinion about why a fetus could not legally be considered a person.[220] Second, NARAL operatives were instructed to deny any association with population control organizations: "Allegation: That abortion should not be used as a means of population control. [Response]: Agreed. The decision to have an abortion is and should be a private one, free from outside pressures or interferences. In a democratic, nonsectarian society, women should be free to make their own decisions regarding childbearing and contraceptive use. The term 'population control' implies the use of coercive policies and programs to limit population growth. The United States has no such policy."[221]

If population control had been the reason NARAL activists gave for supporting legalized abortion, NARAL operatives were instructed now to explain: "We are not 'pro-abortion,' we are pro-choice. If we were pro-abortion, we would urge women to have abortions (to avoid out-of-wedlock births, to avoid having a defective baby . . . to reduce welfare costs, to limit population growth, etc.). However, we do not under any circumstances urge women to have abortions. What we favor is not abortion but a woman's right to choose."[222]

NOW

The National Organization for Women, or NOW, was founded in 1966 as a women's rights organization, with task forces focusing on equal opportunity in employment, education, "social innovations for equal partnership between the sexes," "a new image of women," political rights and responsibilities, and the "war for women in poverty."[223] NOW's founders had intended the organization to campaign for better opportunities for women outside the home and to challenge then-prevailing images of men and women.[224] In the early years, NOW was a coalition of older women's rights activists like Friedan and younger, sometimes more diverse, members

219. See National Abortion Rights League [NARAL], *Legal Abortion: A Speaker's and Debater's Notebook* (Washington, D. C.: The League, 1978).

220. See ibid., 3, 5, 6, 7–9.

221. Ibid., 29.

222. Ibid., 7.

223. NOW National Organizing Conference Minutes (October 29–30, 1966), in The Betty Friedan Papers, 71–62–81–M23, Carton 43, Folder 1544.

224. See ibid.

drawn from college campuses.[225] For the most part, organization members suggested that employment equality should be the organization's primary focus: indeed, it was not until 1967 that the organization confronted the issue of abortion, when Betty Friedan, NOW's first President, proposed that NOW endorse a constitutional amendment guaranteeing a woman's right to abortion access or the complete repeal of criminal bans on abortion.[226]

At the NOW National Conference in November of 1967, its leaders were sharply divided on the abortion question. In the first day of debate, some supporters of the abortion reform resolution argued that women had a right to abortion access, as Friedan had asserted. One member commented that "not a thought has been given to women, who are most concerned with the question of abortion." Those against the resolution, including Paige Palmer, worried that a NOW endorsement of the repeal of abortion bans would make the organization seem too radical and that "[p]eople [would] not join [the] organization" if the resolution was adopted. This prompted a debate about whether abortion, as a method of population control, was racist or instead promoted racial equality. Alice Rossi stated that reform statutes aggravated "the [N]egro communities' problem of illegitimacy" and that only repeal of abortion bans demonstrated a concern for poor, nonwhite women. Another member replied that "Negro women are forced to get abortions so they will not lose their welfare checks." In the first vote taken, the opponents of the resolution had a slight edge: the resolution was voted down, forty-two to thirty-one. The next day, NOW legal counsel, Phineas Indritz, changed his view when a different resolution was presented which called only for the repeal of criminal prohibitions on abortion. Indritz made effective, pragmatic arguments about the new resolution's political practicality. After a call for unanimity by Friedan and a strong statement of support by Ti-Grace Atkinson, the Board voted for the resolution, fifty-seven to fourteen.[227]

In the period between the 1967 Conference and 1970, NOW arguments for abortion were, for the most part, women's rights arguments. Friedan's statements in Atlanta at the National Conference of 1968 were representative: "[I]t is the human right of every woman to control her own reproductive process, and to establish that right as an inalienable human, civil right would require that all abortion laws be repealed. . . . The basic idea

225. Minutes of the NOW National Conference (November 18–19, 1967), in 71–62–81–M23, Carton 43, Folder 1553, Schlesinger Library, Harvard University.

226. See Betty Friedan, Report of the President to the NOW National Conference (November 18, 1967), in The Betty Friedan Papers, 71–62–81–M23, Carton 43, Folder 1553. The resolution called for "removing contraceptive information and abortion from the penal code." See above, note 225, Minutes.

227. See above, note 225, Minutes.

of our revolution is, in the end, self-determination: that you cannot decide anything about a woman's life, especially such a thing as her reproductive process, without woman's voice itself being heard."[228]

By 1970, however, NOW leaders were debating whether they should also describe abortion as a population control issue or should form alliances with population control organizations. In 1971, the organization's executive committee held workshops on population control and its relationship to NOW's policy on abortion.[229] The organization's use of population control rhetoric arose partly out of a change in the group's leadership. Wilma Scott Heide, a behavioral scientist and nurse, became the President of NOW in 1970 and counseled NOW activists to use population control rhetoric in arguing for the legalization of abortion and the guarantee of women's rights.[230] In November 1970, Christopher Tietze of the Population Council asked Heide if members of NOW who had had abortions would participate in a study on the health effects of abortion on women and the risk factors that would exacerbate those effects.[231] In writing to NOW state affiliates, Heide recommended participating, suggesting that "[t]he request from the Population Council represents the fact that we are viewed as responsible and stable."[232] While still waiting to hear responses about the Population Council proposal, Heide also represented NOW before the Rockefeller Commission, arguing that women's rights and population control were inextricably linked. She explained: "[F]irst we must affirmatively change the [role of women] (not merely note the slowly changing role of women passively); then family size will change. . . . On the question of overpopulation . . . , no matter how safe, effective, and universally available is any contraceptive method for women or men, women will continue to be producers of excess children . . . unless they have viable significant alternatives to motherhood. . . . If you opt for quality population, you must adopt this human liberation movement."[233] When Heide ultimately refused Tietze's offer on behalf of NOW, it was because the Council did not have many women leaders and because the Council did not emphasize women's rights and population control in either

228. Betty Friedan, "Our Revolution Is Unique" (January 15, 1968), in The Betty Friedan Papers, 71–62–81–M23, Carton 44, Folder 1578.

229. NOW Executive Committee Draft Schedule (May 18, 1971), in The Betty Friedan Papers, 71–62–81–M23, Carton 44, Folder 1583.

230. Wilma Scott Heide, President of NOW, Statement in Support of Public Law 91–213, 92d Congress, *An Act to Establish a Commission on Population Growth and the American Future* (April 15, 1971), in The Wilma Scott Heide Papers, MC 495, Box 11.12, Schlesinger Library, Harvard University.

231. Christopher Tietze to Wilma Scott Heide (November 5, 1970), in The Wilma Scott Heide Papers, MC 495, 14.7.

232. Wilma Scott Heide to NOW Board of Directors et al. (Winter 1970–1971), in ibid.

233. See above, note 230, Heide, Statement in Support, 3–4.

the Rockefeller Report or in its other abortion reform studies.[234] Heide argued that NOW should emphasize rhetoric that linked gender equality to population control and abortion, arguments similar to those she had made before the Council.[235]

By early 1972, NOW had renamed its abortion task force the "Task Force for Reproduction and Its Control and the Development of Population Policy."[236] In February of that year, the NOW Board considered partnering with the Ford Foundation on a population control study.[237] In 1972, NOW also began working closely with ZPG on the campaign for abortion reform.[238]

Even after the decision of *Roe v. Wade,* while Heide remained President, NOW leaders continued to combine rights-based and population control arguments. When NBC aired an episode of the popular television program *Maude* involving abortion, a number of anti-abortion organizers led a boycott of the program's advertisers.[239] In response, speaking on behalf of NOW about abortion, Heide explained: "The issue is choice, the right of women to control their own bodies. . . . Ignorance and fear can no longer deny us choice of population quantity and quality. . . . The pressure of populations on world food supplies is coming home to America; central to the issue is the woman's need for self-definition and self-control."[240]

Gradually, because of *Roe,* rights-based arguments displaced arguments related to population control. By 1973, NOW began an abortion fundraising campaign centered on the rhetoric of *Roe,* which the organization called "a long-overdue, landmark decision for American women."[241] The true rhetorical shift, however, occurred when the leadership of NOW changed. In 1974, Karen DeCrow, another feminist attorney, became president of NOW, and shortly after called on the organization to clarify its stand on abortion. In the early months of 1974, NOW had started a local action lobbying project with the "target" of "support[ing] the Supreme Court decision [in *Roe*] and develop[ing] the strong community support of individuals and groups outside NOW for the Supreme Court decision on abortion."[242] In the same

234. Ibid.

235. Ibid.

236. Wilma Scott Heide to NOW Chapter Presidents, Task Force Coordinators, Board Officers, and Members (January 31, 1972), in ibid.

237. Wilma Scott Heide to NOW Members (February 19, 1972), in ibid.

238. See, e.g., Wilma Scott Heide to Meg Letterman of Zero Population Growth, Incorporated (October 10, 1973), in The Betty Friedan Papers, 71–62–81–M23, Carton 44, Folder 1583.

239. Press Conference (August 17, 1973), in The Betty Friedan Papers, ibid.

240. Ibid.

241. Fundraising Letter (1973), in The Wilma Scott Heide Papers, MC 495, 11.14.

242. Jan Liebman and Ann Scott to NOW State Coordinators (February 1972), in The Wilma Scott Heide Papers, 11.12.

year, the organization promulgated a Bill of Women's Rights to Choose Abortion, designated abortion rights an organizational priority, dedicated a lobbying day to the right to choose, and began a "congressional report" monitoring positions on abortion.[243]

As importantly, because of DeCrow's influence, the organization had developed a formal debating handbook by 1974, recommending that activists emphasize primarily rights-based arguments. NOW operatives were advised to compare "the Supreme Court['s . . .] recogni[tion] of the federal constitutional basis for a woman's right to limit childbearing" to the "freedom of religion or freedom of speech."[244] In particular, the debating guide recommended that NOW state affiliates avoid all policy or moral arguments in favor of legalized abortion.[245] "Don't argue the moral rights or wrongs of abortion," the manual instructed.[246] "[I]nstead stress that everyone has the right to make their own moral decision for or against abortion."[247] All NOW state legislative coordinators were provided with a set of materials featuring a copy of *Roe v. Wade* itself from which they could develop their own strategies.[248] By early 1975, under DeCrow's leadership, NOW's major abortion reform lobbying program centered on efforts to get members of Congress to endorse *Roe v. Wade* publicly.[249] NOW lobbying materials advised coordinators to coach congressmen to use the rhetoric of the decision or the women's rights interpretation of *Roe* promoted by NOW and to "declare public support for the Supreme Court Decision on the Right to Choose."[250]

Between 1974 and 1977, DeCrow repeatedly called on the national board of NOW to commit more resources to protecting *Roe* and to find new "language, slogans, catchphrases, brochures, leaflets, and press campaign[s]" to support that effort.[251] Beginning in December 1975, the NOW national board approved funding for a public relations campaign designed to protect the right to choose.[252] By the beginning of 1976, NOW leaders had opted to

243. Right to Choose Time Line (1974), in The NOW Papers, MC 496, Box 54, Folder 27.

244. Debating the Opposition, NOW Right to Choose Lobbying Kit, in The NOW Papers, MC 496, Box 54, Folder 26.

245. Ibid.

246. Ibid.

247. Ibid.

248. Ann Scott and Jan Liebman to NOW State Legislative Coordinators (February 15, 1974), in ibid.

249. Ibid.

250. See above, note 243, Right to Choose Time Line, 1; Jan Liebman and Ann Scott to NOW State and Regional Coordinators (April 17, 1974), in The NOW Papers, MC 496, Box 2, Folder 32.

251. Jeanne Clark and Janice Gleason, Right to Choose Mobilization Program (December 6, 1975), in The NOW Papers, MC 496, Box 3, Folder 15.

252. NOW National Meeting Minutes (December 6–7, 1975), in The NOW Papers, MC 496, Box 3, Folder 12.

make *Roe* itself part of that campaign. In January 1976, NOW chose to use public relations funding to pay for a public service announcement made "on behalf of all women in this country who [had] been able to choose to have an abortion" and "commend[ing] the Court on its decision" in *Roe*.[253]

Arguing that the organization had not made enough use of *Roe* or made reproductive rights enough of an organizational priority, DeCrow warned NOW leaders at the organization's national conference in April 1977 that they could not be "complacent about our right to choose" and encouraged conference attendees to pass a resolution designed to revitalize the organization's reproductive rights strategy.[254] The resolution called for the development of media tools "similar to those being used in the drive to ratify the ERA[,] including preparation of a film on the historical struggle of Margaret Sanger and her sisters."[255]

The organization ultimately settled on a historical narrative that highlighted the importance of *Roe* and the rhetoric of rights. NOW joined with Planned Parenthood in a new campaign for "reproductive rights," including tributes to Margaret Sanger and a press conference describing how her legacy related to the contemporary abortion debate and the decision of *Roe*.[256] In the new history of abortion reform offered by the organization, *Roe* was portrayed as a part of an ongoing effort to gain constitutional equality and civil rights for women and other historically disadvantaged groups. As one participant at a Sanger colloquy put it, "we cannot solve the problems of women's rights and reproductive rights unless we are concerned about . . . full employment, poverty, racism, and economic decay in the United States."[257] The influence of feminist attorneys on the organization was clear. The policy-based arguments of the early 1970s had been replaced by arguments about what *Roe* held, what *Roe* meant for women, and how the work of women's rights advocates led to a victory in *Roe*.

III. The Rise of Rights to Life

Roe v. Wade also had a significant effect on the composition of the anti-abortion coalition and the arguments anti-abortion activists made. It is true

253. Press Statement (January 1976), in The NOW Papers, MC 496, Box 30, Folder 8.

254. NOW National Conference Minutes (April 23, 1977), in The NOW Papers, MC 496, Box 24, Folder 27.

255. Reproductive Rights Resolution (April 1977), in The NOW Papers, MC 496, Box 24, Folder 37.

256. Janice Mall, "About Women," *Los Angeles Times,* September 9, 1979, 14.

257. Ann Crittenden, "A Colloquy on the Sanger Spirit," *New York Times,* September 18, 1979, B8.

that prior to the decision, many anti-abortion organizations emphasized the interests of the unborn, as a matter of both ethics and of faith. However, African-American leaders like Jesse Jackson and civil rights advocates like Ted Kennedy were also suspicious of abortion reform when it was characterized as a form of population control legislation. Before *Roe,* leaders like Jackson or Kennedy were more likely to belong to the anti-abortion coalition than to any abortion reform organization. Abortion was thus offensive to some, primarily because it posed a threat to welfare recipients or racial minorities.

In the early 1970s, anti-abortion leaders exploited similar fears. In May of 1972, when the Rockefeller Commission made public its report, abortion opposition organizations attacked it using two primary arguments.[258] One argument centered on the fetus: what it looked like, felt, and deserved.[259] Equally important were what would be called "black genocide" arguments: abortion was characterized as a method of population control designed to reduce the population of African-Americans or people on public assistance.[260] Abortion was characterized by abortion opponents both as a taking of innocent fetal life and as a danger to the rights of poor people and racial minorities.

By 1973, shortly after the decision of *Roe,* anti-abortion organizers had grown in number and had become more organized. A number of new anti-abortion organizations were formed in response to the decision, including the Ad Hoc Committee on the Defense of Life, the National Right to Life Committee, American Citizens Concerned for Life, and the Right to Life League.[261] Some believers who might have eventually come to favor abortion as a method of population control disapproved of the *Roe* Court's conclusions that a fetus was not a person, that women were entitled to have an abortion under certain circumstances, and that abortion law was related to women's rights.[262] In early 1973, however, abortion opponents still made both anti-population control and right-to-life arguments. Consider the 1973 fundraising brochure of the Ad Hoc Committee on the Defense of Life. The Committee brochure stated that abortion reformers argued: "[W]e should rid ourselves of 'unwanted' children via abortion (and next unwanted old or sick people?),

258. Backlash theorists have ably documented the effects of *Roe* on religious anti-abortion organizations. See above text accompanying note 3.

259. See, e.g., Ad Hoc Committee on the Defense of Life, Fundraising Letter (October 23, 1973), in The NARAL Papers, MC 313, Carton 8, Opposition.

260. See, e.g., ibid.

261. See Suzanne Staggenborg, "The Consequences of Professionalization and Formalization in the Pro-Choice Movement," *American Sociological Review* 53 (1988): 585, 586.

262. See A. James Reichley, *Religion in American Public Life* (Washington, D. C.: Brookings Institution, 1985), 292.

'stabilize' our growth at no growth at all, which in practice would mean, inevitably, shrinking from the richest and most powerful nation history has ever known to some third-rate satellite of an Asian superpower."[263]

Rights-based anti-abortion arguments also changed in 1973. Many anti-abortion activists began spending time refuting the reasoning of *Roe v. Wade* itself. In a flurry of letters to Congress, individuals and organizations criticized the decision's holding that the fetus was not a person and that women had a right to abortion.[264] One of the letters sent to NARAL in the wake of the decision is representative of new anti-abortion arguments: "Every human being gets his or her right to live, not from the Supreme Court, but from God. . . . Where does the woman get her so-called 'right' to destroy another human life? In short, she does not have that right."[265]

The anti-abortion laws and constitutional amendments proposed in 1973 reflected the shift in anti-abortion arguments. Senator Jesse Helms of North Carolina proposed what was ultimately a successful amendment to a bill funding population control that prohibited the use of federal funds for abortions.[266] Senator James Buckley, a Republican from New York, proposed a constitutional amendment designed to refute one of the central holdings of *Roe*. The proposed amendment provided "the word 'person' as used in this article and in the Fifth and Fourteenth Amendments to the Constitution of the United States [applied] to all human beings, including their unborn offspring."[267]

The abortion opposition coalition changed again in 1974. First, major anti-abortion organizations like the National Right to Life Committee began distancing themselves from Catholicism.[268] At the same time, many right-wing organizations, including the Phyllis Schafly Report, the American Conservative Union, and the John Birch Society, were becoming prominent critics of legalized abortion.[269] As socially conservative organizations began

263. See above, e.g., note 259, Ad Hoc Committee on the Defense of Life.

264. See above, e.g., note 164, The Denver Conference Memorandum.

265. Marcia Fields to NARAL (September 23, 1973), in The NARAL Papers, MC 313, Carton 8, Opposition.

266. See Dian Terry, Edited Policy Statement (April 1975), in The Now Papers, MC 496, Box 54, Folder 26 (explaining the decision of the NOW National Conference to make abortion a national priority); Right to Choose Fundraising Campaign Brochure (Spring 1974), in ibid.

267. See above, note 266, Terry, Policy Statement.

268. Louis Kohlmeier, "Women's Lobby vs. Right to Life," *Chicago Tribune,* June 3, 1974, 16.

269. The Civic Research Institute, Incorporated, Projected Research Project for the Planned Parenthood Federation of America (Spring, 1975), in The NARAL Papers, MC 313, Carton 8, Planned Parenthood 1975–1976.

extensive lobbying campaigns and vowed in the press to make abortion an election issue in the mid-1970s, Republicans had new reason to make their opposition to legalized abortion uniform and to highlight that opposition as a part of their election campaigns.[270] By the end of fall 1978, the American press reported that right-to-life activism was a major factor in a number of national and state races, most famously, in the defeat of prominent Iowa Democratic Senator Dick Clark by a pro-life conservative, Roger Jepsen.[271] As the Democratic Party gradually identified itself with pro-*Roe* positions,[272] and as opposition to abortion developed into a key election issue for some voters, opposition to *Roe* gradually became a staple of the political right.

In the same period, over the next several years, Planned Parenthood's emphasis on equal abortion access and the abortion opposition's success in restricting Medicaid funding for abortions made it more likely that members of the political left would support legalized abortion. Senator Edward Kennedy, who had rejected the idea of legalized abortion in his 1970 Senate campaign, led a fight on the floor of the Senate in 1975 to kill an early effort to restrict Medicaid funding for abortions.[273] Kennedy, who considered himself a strong supporter of civil rights, had a harder time opposing abortion when the issue was framed as one of racial and social equality. Democratic Senator William Hathaway put it succinctly: "banning federal funds for abortion under Medicaid discriminates against the poor."[274]

Two years later, when the Medicaid ban was passed by Congress, many Democratic Senators were persuaded by Planned Parenthood activists that abortion access was related to the issue of racial equality. Commenting on the vote on the Medicaid ban, Democratic Senator Birch Bayh spoke for many when he stated that there was a "remarkable parallel" between those who voted for the Medicaid bar and those who opposed voting rights or fair housing for the poor or for members of racial minorities.[275] Partly because of *Roe,* abortion opposition was becoming an issue of the political right, and abortion reform advocacy a cause of the political left.

270. See, e.g., Marjorie Hyer, "Abortions, Congress, Churches, and Convictions," *Washington Post,* January 22, 1974, B1; Peter Milius, "Rise of Abortion Issue," *Washington Post,* September 17, 1976, A1.

271. John Herbers, "Convention Speech Stirs Foes of Abortion," *New York Times,* June 24, 1979, at 16.

272. See above, note 5, Graber, *Rethinking Abortion,* 137–53.

273. "Teddy Leads Fight Against Anti-abortion Bill," *Chicago Tribune,* April 11, 1975, 15.

274. See ibid.

275. See above, note 182, Clymer, "Senate Vote," 1.

Race and Abortion

As noted, many members of racial minorities opposed legalized abortion before *Roe v. Wade*. By 1969, these arguments were sometimes being made by mainstream African-American leaders. For example, Marvin Davies, the Florida field secretary for the NAACP, stated that population control measures were not "in the best interests of black people. Our women need to produce more babies, not less. . . . Until we comprise 30 to 35% of the population, we won't really be able to affect the power structure in this country."[276]

Davies's predictions, to some extent, would prove to be correct. By 1971, Planned Parenthood noted a marked decrease in the number of African-American women using birth control services, a net decrease of seventeen percent between 1965 and 1971.[277] A February poll taken by the *Chicago Defender* found that while only 26.4% of African-Americans generally opposed abortion reform, 63.7% of those polled professed a belief that government-funded abortions could lead to "mass genocide in the black community."[278] A poll conducted later that year by researchers at the University of Massachusetts at Amherst among several hundred African-American members of a New England city found a lower percent of respondents were convinced that abortion would actually result in black genocide, but among males under thirty, the study found that almost half believed that legalized abortion would lead to black genocide.[279] Andrew Thomas, the President of the Cook County Physicians in Chicago and the Secretary of the National Medical Association, explained: "We do not wish for any grand city planners to plan for our welfare mothers to have abortions as a form of genocide to prevent them from getting welfare money. . . . I can see how it would be possible for word to get out quietly from Springfield for welfare workers to tell black women with lots of babies already to end the pregnancies in abortion."[280]

Of course, opposition in the African-American community was far from universal.[281] Jerome Holland, an African-American, served as PP-WP chair-

276. "Reactions Mixed to U.S. Birth Plan," *New York Times,* July 19, 1969, 9.

277. "Decrease in Blacks Using Birth Control," *Chicago Defender,* May 22, 1971, 28.

278. See "Blacks Split on Sex," *Chicago Defender,* February 15, 1971, 1.

279. Ted Lacey, "Call Welfare Abortions Genocide," *Chicago Defender,* February 4, 1971, 1.

280. See ibid.

281. A number of recent histories have studied the involvement of African-American and Hispanic women in the women's rights movement and the movement for abortion reform. See, e.g., Kimberly Springer, *Living for the Revolution: Black Feminist Organizations, 1968–1980* (Durham: Duke University Press, 2005); Benita Roth, *Separate Roads to Feminism: Black, Chicano, and White Feminist Movements in America's Second Wave* (New York: Cambridge University Press, 2004).

man before *Roe* and asserted that legalized abortion would prevent the unnecessary deaths of black mothers and babies.[282] An African-American physician, Edward Keener, was working with NARAL in the Michigan test case pursued in 1971.[283] Arguably more important to the abortion reform movement were African-American women's rights activists who spoke out against the black genocide argument. At NARAL's founding conference, Mrs. Marc Hughes of the National Council of Negro Women of New York received a standing ovation after stating that she was "here to affirm very strongly [that] we don't believe abortion is Negro genocide."[284] Another African-American women's rights advocate, Congresswoman Shirley Chisholm, served as NARAL's honorary president in the years immediately before *Roe* and frequently argued that abortion reform was in the best interest of African-American women because, under present law, "the poor [and] the blacks are denied a choice available to the rich."[285] African-American women's rights activists outside of the abortion reform movement also publicly argued that legalized abortion would better protect the health and rights of black women.[286] Popular advice columns in the *Chicago Defender* similarly advised African-American women about how and why to seek contraception or support abortion reform.[287] Women's liberation activists and other African-American women supportive of abortion reform were not affected by arguments characterizing abortion as a form of population control.

Yet African-American women were divided on the question of abortion reform, at least insofar as it was framed as an issue of population control. A 1972 study published in *The American Journal of Public Health* found that fifty-one percent of African-American women polled believed that population growth was important for the survival of the race, and thirty-seven percent were convinced that "black genocide" was a genuine threat.[288]

282. See above, note 149, Kaplan, "Abortion and Sterilization," 50.

283. See above, note 135, Shanahan, "Doctor Leads Group's Challenge," 28.

284. "Genocide Denied in Birth Curbs," *Washington Post,* November 14, 1968, A17.

285. Myra MacPherson, "MDs File Abortion Lawsuit," *Washington Post,* September 30, 1969, B1.

286. See, e.g., Margaret Sloan, "Do Blacks Belong in Women's Lib? Yes!" *Chicago Tribune,* June 6, 1971, E12; see also Ellen Faulkner, "From Our Readers," *Chicago Defender,* September 28, 1971, 13.

287. See, e.g., Leontyne Hunt, "Keeping Your Family the Right Size," *Chicago Defender,* January 9, 1971, 21.

288. See "Fears of Genocide Among Blacks as Related to Age, Sex, and Region," *American Journal of Public Health* 63 (1972): 1029, 1029–34. For further explanation of the "black genocide" theory, see R. Bruce Sloane and Diana Frank Horvitz, *A General Guide to Abortion* (Chicago: Nelson-Hall Publishers, 1973); Brent Roper, Linda Heath and Charles D. King, "Race Consciousness; A New Guise for Traditionalism?" *Sociology and Social Research* 62 (1978): 430.

In 1973, shortly after the decision of *Roe v. Wade,* some African-American leaders continued to express concerns that abortion would be used as a racist form of population control. Writing in the *Chicago Defender,* The Reverend Jesse Jackson was critical of the decision, asserting: "There are indisputable traces of genocide in the possible uses of the ruling. For example, it is no accident that New York, where abortion has been legal the past two years, reported a decrease in the number of children born to families on welfare of over 10,000."[289] By March of 1973, Jackson began a campaign against legalized abortion, arguing it was not in the interests of African-Americans whose "strength was in their numbers" and who would be victimized by doctors or other officials who wanted to reduce the number of children born to mothers on welfare.[290] Jackson suggested that abortion reform was motivated as much by racism as police brutality against African-Americans had been in the South during the civil rights movement.[291] "We used to look for death from the man in the blue coat," Jackson explained, "and now it comes in a white coat."[292]

Ultimately, however, *Roe* would have a different effect on African-American support for abortion. By marginalizing population control arguments, *Roe* helped to focus the abortion debate on the issue of abortion rights. This inevitably affected the opinions of some African-Americans and members of other minority ethnic, racial, or religious groups who had felt threatened by population control politics.

A published study on race and views on abortion confirms this view.[293] Drawing on the pooled poll responses collected by the General Social Surveys (conducted by the National Opinion Research Center at the University of Chicago) between 1972 and 1980,[294] the study examined the attitudes of blacks and whites with respect to abortion in three two-year periods (1972–74, 1975–77, and 1978–80).[295] Controlling for a variety of factors likely to determine a person's views on abortion, including family income, years of education, region of residence, frequency of church attendance, and religious denomination,[296] the study found that, in the two years before *Roe,* being African-American was, in its own right, a statistically significant predictor that a person would be opposed to abortion reform.[297] In

289. See Jesse Jackson, "Country Preacher," *Chicago Defender,* March 24, 1973, 29.
290. Robert McGlory, "Opens Abortion War," *Chicago Defender,* March 21, 1973, 1.
291. Ibid.
292. Ibid.
293. Michael Coombs and Susan Welch, "Blacks, Whites, and Attitudes Toward Abortion," *Public Opinion Quarterly* 46 (1982): 510.
294. See ibid., 512–13.
295. Ibid., 513.
296. Ibid.
297. Ibid., 516.

the period three years after *Roe,* being African-American was no longer a statistically significant predictor of opposition to legalized abortion.[298]

Similarly, as the abortion debate focused on rights-based arguments, African-American leaders also changed their positions on abortion. Jesse Jackson, who had led a "war against abortion," had described abortion as a threat to African-Americans.[299] In 1983, when Jackson declared his intention to run for the Democratic presidential nomination, he promised feminist leaders to defend a woman's right to choose abortion.[300] Jackson, like Senator Ted Kennedy before him, changed his position when the meaning of a pro- or anti-abortion reform stance changed. Indeed, Jackson described a woman's right to choose abortion as a civil right, akin to the right to fair housing.[301]

When Jackson made his proposal to feminist leaders, the left-wing coalition he envisioned was already, to some extent, in place. Supporters of fair housing legislation tended now also to be supporters of abortion rights.[302] The members of the pre-*Roe* abortion reform coalition had been united by support for legalized abortion, either as a woman's right, a matter of public health, or a tool in the fight to curb population growth. After *Roe,* when abortion was no longer discussed as an issue of population control, that coalition changed. By 1980, the supporters of legalized abortion tended also to support the rights of a variety of minorities: the rights of African-Americans, Latinos, Native Americans, the disabled, homosexuals, and the elderly. *Roe* had helped to redefine abortion politics.

Conclusion

Because the current scholarship has focused on pro-life and pro-choice advocacy, there has been little discussion of the ways in which both anti-abortion advocacy and abortion reform activism changed fundamentally after, and partly because of, *Roe*. Before the decision, the coalition that called for abortion reform did not do so exclusively by invoking rights-based arguments. Population control arguments, among other policy-based arguments, played as important a role as rights-based arguments in the pre-*Roe* strategies of major abortion reform organizations like NOW, NARAL,

298. Ibid.

299. See above, note 290, McGlory, "Opens Abortion War," 1.

300. See "Jackson the Orator Has Become Jackson the Politician," *Los Angeles Times,* November 27, 1983, 1.

301. See ibid.

302. See Mike Davis and Michael Sprinker, eds., *Reshaping the US Left: Popular Struggles in the 1980s* (New York: Verso, 1988).

and Planned Parenthood. Population control organizations like ZPG or the Population Council also joined the call for the removal of legal restrictions on abortion. The abortion opposition coalition was also different before *Roe.* Certainly, many members of the anti-abortion coalition were Catholics, Mormons, and Baptists intent on protecting fetal life, but the coalition also included those like Jesse Jackson or Edward Kennedy, who were concerned that abortion, as a method of population control, would be used to harm the interests of racial minorities.

Roe was a major factor in changing the arguments and coalitions on either side of the debate. When for many, abortion was a population control issue as well as an issue of rights or public health, civil rights leaders or organizations were as likely to oppose abortion as they were to support it. *Roe* highlighted rights-based arguments related to privacy and choice. Gradually, as abortion reform activists took advantage of and manipulated this reasoning, and opposition organizations sought to cut off public funding for abortions, abortion itself seemed to be an issue of rights for women and even an issue of equal enforcement of that right for minority women.

Roe is often cited as example by scholars studying the limited effects of judicial decisions on political debates and the inability of courts to convince citizens or politicians to change their minds on controversial issues. The effect of *Roe* on the role of population control and rights-based arguments in the abortion debate suggests that this account tells only part of the story. The history of *Roe* not only shows what courts cannot do but also suggests why judicial decisions on controversial topics matter. By reframing political discussion on abortion, *Roe* helped to change the arguments and coalitions that defined that debate.