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The Economic Impact of Access to Reproductive Healthcare: A New Constitutional Argument

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The Economic Impact of Access to Reproductive Healthcare: A New Constitutional Argument

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DEDICATION

For all the brilliant women who paved the way for me, the bold women building a more equitable future, and the young women ready to change the world.

PREFACE

I have always believed that women should have absolute control over their bodies. My thesis presents an argument for women's access to reproductive healthcare by showing how women's economic liberties are restricted when women do not have bodily autonomy.

From beginning my college career with the 2016 election to the confirmation of Justice Kavanaugh, the threat to a woman's right to choose has been a formative part of my time in Claremont, so this felt like the appropriate way to end my time in college.

Ensuring that all women have real access to reproductive healthcare is of incredible importance. All women, regardless of socioeconomic status and race, need to be able to decide for themselves whether they want to be mothers. Access to reproductive healthcare must be protected because without access to safe and legal abortions, women's lives will be lost.

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This thesis could not have come together without the support of many individuals in my life. I would like to take a moment to thank them.

To my readers: Professor Hollis-Brusky and Professor Brown. I would like to express my deepest gratitude for your support and excitement as I wrote this thesis. I could not have put this together without your confidence in me and encouragement to be bold. Thank you both for being incredible role models. I have been consistently blown away and inspired by your compassion and intellectual brilliance.

To my parents: While I'm sure you occasionally regret it, thank you for teaching me how to fight for what I believe in. You made me bold and confident and I can't thank you enough for that.

To my sister: Thank you for being my biggest fan and forcing me to always dream bigger.

Finally, I would like to extend a thank you to all of the brilliant teachers and Professors in my life. You encouraged me to be provocative and push conventional limits. Thank you for teaching me how to tackle big problems with creativity and compassion.

Table of Contents

Introduction

The History of Abortion Access in the United States

Rules of etiquette state that improper dinner conversations include religion, politics and sex. Sitting at the intersection of these three subjects is abortion. And in the United States every conversation about abortion inevitably includes a discussion of *Roe v. Wade*. The landmark 1973 case has developed the same universal recognition as cases such as *Brown v. Board of Education* and *Plessy v. Ferguson*.

Today, in 2020, the threat to Roe is more palpable than ever before. The confirmation of Justice Kavanaugh to the Supreme Court gave the conservative movement a majority that can be used to overturn Roe. Because the threat level has increased substantially, it is necessary to consider how to best protect a woman's right to choose. *Roe v. Wade* was argued based on a claim of a fundamental "right to privacy." However, a stronger argument would be that a woman's right to choose is fundamental to her ability to develop and deploy her human capital: to limit women's ability to invest in and employ their talents as they see fit, is to deny women their liberty as guaranteed by the 14th Amendment.

To understand the politics surrounding reproductive health today, we must start at the Roe decision and trace how the conversation around abortion access has progressed.

The History of *Roe v. Wade*

States began to pass laws making abortion illegal in the mid to late 1800s. As a result, many women who wanted abortions were forced to get "back-alley" abortions which were substantially more dangerous. In the years leading up to the 1973 Supreme Court decision of *Roe*

v. Wade, estimates of illegal abortions range as high as 1.2 million per year.[1] Between the late 1960s and the early 1970s, one-third of states amended or repealed their criminal abortion laws.[2]

In 1971, there were two abortion cases argued before the Supreme Court: *Roe v. Wade* and *Doe v. Bolton*. The decisions were released simultaneously and intended to be read together. *Doe v. Bolton* held that a Georgia law regulating abortion was unconstitutional as it violated the implicit right to privacy found in the 14th Amendment. Justice Blackmun delivered the 7-2 majority opinion in Roe, protecting a woman's right to choose to have an abortion. This opinion struck down the remaining anti-abortion laws across the country.

Roe was a challenge to the constitutionality of the Texas abortion laws which were similar to the laws of the majority of states. The Texas laws made it a crime to "'procure an abortion,' as therein defined, or to attempt one, except with respect to 'an abortion procured or attempted by medical advice for the purpose of saving the life of the mother.'"[3]

The Opinion

At the center of the opinion was the determination that the Texas laws infringed upon the "liberty" of the plaintiff (Roe) as embodied in the Fourteenth Amendment's Due Process Clause. More specifically, the opinion stated that the laws infringed upon women's "right to privacy." The notion of a "right to privacy" was established in *Griswold v. Connecticut* in 1965.[4] Justice Blackmun directly addresses that the "right to privacy" is not found in the Constitution in explicit terms writing "The Constitution does not explicitly mention any right of privacy. In a

[1] "History of Abortion" (National Abortion Federation, n.d.), https://prochoice.org/education-and-advocacy/about-abortion/history-of-abortion/)
[2] Ibid
[3] Roe v. Wade, 410 U.S. 113 (1973)
[4] Griswold v. Connecticut, 381 U.S. 479 (1965)

line of decisions, however, going back perhaps as far as Union Pacific R. Co. v. Botsford, 141 U.S. 250, 251 (1891), the Court has recognized that a right of personal privacy, or a guarantee of certain areas or zones of privacy, does exist under the Constitution."[5] The opinion continues on to acknowledge that to force women to continue pregnancies that they do not want would have many terrible repercussions, including the mental and physical health of both the mother and child. However, the opinion does not grant women with the absolute right to choose, stating:

> "appellant and some amici argue that the woman's right is absolute and that she is entitled to terminate her pregnancy at whatever time, in whatever way, and for whatever reason she alone chooses. With this we do not agree. Appellant's arguments that Texas either has no valid interest at all in regulating the abortion decision, or no interest strong enough to support any limitation upon the woman's sole determination, are unpersuasive."[6]

In this opinion, the focus then shifts to the State's interest and the extent to which the State can involve itself. The standard for State involvement in regulating a woman's right to choose is whether or not there is a "compelling state interest." However, even within regulations, the opinion reads "legislative enactments must be narrowly drawn to express only the legitimate state interests at stake."[7]

The opinion goes on to state that a State may assert itself in the interest of "safeguarding health, in maintaining medical standards, and in protecting potential life."[8] From here, the discussion shifts to weighing the right to privacy of the woman against the state's interests. The

[5] Roe v. Wade, 410 U.S. 113 (1973)
[6] Ibid
[7] Ibid
[8] Ibid

Court identifies two distinct interests of the State: "preserving and protecting the health of the pregnant woman" and "protecting the potentiality of human life."[9]

Regarding these two interests, the opinion reads "Each grows in substantiality as the woman approaches term and, at a point during pregnancy, each becomes 'compelling.'"[10] In speaking to the first interest of the State, the opinion reads that if the State has interest in protecting the fetus after viability, "it may go so far as to proscribe abortion during that period, except when it is necessary to preserve the life or health of the mother."[11] Fetal viability is defined as the ability of an unborn child to survive outside the womb, approximately after the second trimester.[12]

For the second interest of the State, the health of the mother, the "compelling" point is deemed to be at approximately the end of the first trimester.[13] After the first trimester, the State "may regulate the abortion procedure to the extent that the regulation reasonably relates to the preservation and protection of maternal health."[14] The opinion even provides suggestions for the types of regulations that would be permissible including: the facility in which the procedure is to be performed, the licensing of the facility and the qualifications of the individual performing the abortion. *June Medical Services LLC v. Gee* is a case before the Supreme Court today about the "Unsafe Abortion Protection Act" of Louisiana. If the Louisiana Act passed, it would require doctors performing abortions to have admitting privileges at a nearby hospital. If this was made law, Louisiana would only have two legal abortion providers.[15]

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[9] Ibid
[10] Ibid
[11] Ibid
[12] Ibid
[13] Ibid
[14] Ibid
[15] Kate Smith, "Louisiana Could Become the First State without Abortion Access as Soon as next Year," CBS News (CBS Interactive, October 18, 2019), https://www.cbsnews.com/news/louisiana-abortion-case-supreme-court-state-could-become-first-without-abortion-access-next-year-2019-10-18/)

Ultimately, the opinion struck down the Texas law on the basis that it was too broad and "makes no distinction between abortions performed early in pregnancy and those performed later, and it limits to a single reason, "saving" the mother's life, the legal justification for the procedure."[16]

Additionally, it is worth noting what the Court chose not to answer and what ideas it rejected. The Judiciary chose to not attempt to answer the question of when life begins. The opinion also completely rejected the argument that the usage of "person" in the Fourteenth Amendment includes the unborn.

Impact of the Decision

While the anniversary of Roe is celebrated by pro-choice organizations for granting women choice, Roe also created clear guidelines for anti-choice organizations to use to limit women's access to abortions. The repercussions of the use of this language are becoming increasingly evident as lawmakers continue to implement restrictions to limit the number of providers in their states and make it difficult to gain access to an abortion. Many lawmakers do not miss an opportunity to limit abortion access, including as the world experiences a pandemic of epic proportions. During the COVID-19 outbreak of 2020, states attempted to implement abortion restrictions through emergency orders.[17]

After Roe

After the Roe decision in 1973, the Supreme Court revisited the issue of abortion many times. The rulings in the following cases changed the precedent set by Roe: *Planned Parenthood v. Casey* (1992), *Gonzales v. Carhart* (2007), *Whole Women's Health v. Hellerstedt* (2016). At

[16] Roe v. Wade, 410 U.S. 113 (1973)
[17] Sabrina Tavernise, "Texas Allows Abortions to Resume During Coronavirus Pandemic," The New York Times (The New York Times, April 22, 2020), https://www.nytimes.com/2020/04/22/us/coronavirus-abortion-texas.html)

the same time, abortion became an increasingly partisan issue and the culture surrounding abortion changed immensely as well.

In *Planned Parenthood of Southeastern Pennsylvania v. Casey*, the law in contention was the Pennsylvania Abortion Control Act of 1982. The legislation had a few provisions including:

1. A woman seeking an abortion must give her informed consent prior to the procedure, and that she be provided with certain information (specified by the legislation) at least 24 hours before the abortion is performed [18]
2. The informed consent of one parent for a minor to obtain an abortion [19]
3. Unless there are certain exceptions, a married woman seeking an abortion must sign a statement indicating that she has notified her husband [20]

To make this decision, the Court relied upon the "undue burden" standard. This standard states that a law is invalid if its "purpose or effect is to place substantial obstacles in the path of a woman seeking an abortion before the fetus attains viability."[21] Ultimately, the Court chose to uphold all the provisions of the Pennsylvania legislation except for the husband notification. In deciding the case, the Justices chose to throw out the trimester standard and replaced it with pre- and post-viability tests. But the most prominent impact of this decision was the adoption of the "undue burden" standard to evaluate abortion laws.

Gonzales v. Carhart took on the Partial-Birth Abortion Ban Act signed by President Bush and Congress in 2003. Ultimately, the Court ruled 5-4 finding the law Constitutional.[22] This case was noteworthy for two reasons. First, the ruling in Gonzales reversed the Court's previous

[18] Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992)
[19] Ibid
[20] Ibid
[21] Ibid
[22] Gonzales v. Carhart, 550 U.S. 124 (2007)

decision in *Stenberg v. Carhart*. In Stenberg, the Court found a Nebraska law that prohibited partial-birth abortions to be unconstitutional.[23] The second reason this case is noteworthy is that the statute was found to be constitutional, even though it did not include an exception for cases in which the mother's health is in danger.[24] This was a substantial departure from previous rulings which required laws to include health provisions for the mother.

The 2016 case of *Whole Woman's Health v. Hellerstedt* used the undue burden standard set by Casey to strike down unnecessary restrictions in Texas.[25] The restrictions in the legislation included that any physician performing an abortion must have admitting privileges at a hospital within 30 miles of the location at which the abortion is performed and that the facility must meet the standard set for ambulatory surgical centers.[26] The court held that each restriction "places a substantial obstacle in the path of women seeking a previability abortion, each constitutes an undue burden on abortion access…and each violates the Federal Constitution."[27] By using the undue burden standard, this case emphasized that lawmakers should not create unnecessary barriers to abortions. However, this has not prevented many from trying.

Public Opinion

The Constitutional arguments about abortion are only a portion of the political conversation about abortion. The other side of the coin is the public opinion surrounding abortion and the extent to which abortion is becoming an increasingly partisan issue. According to the Pew Research Center, overall public opinion on abortion has not shifted immensely in the last two decades. In 1995, 60% of Americans believed that abortion should be legal in all/most

[23] Stenberg v. Carhart, 530 U.S. 914 (2000)
[24] David Masci, Ira C Lupu, and Eleanor Davis, "A History of Key Abortion Rulings of the U.S. Supreme Court," Pew Research Center's Religion & Public Life Project, January 16, 2013, https://www.pewforum.org/2013/01/16/a-history-of-key-abortion-rulings-of-the-us-supreme-court/)
[25] Whole Woman's Health v. Hellerstedt, 579 U. S. ____ (2016)
[26] H.B. No. 2 (Texas 2013), https://capitol.texas.gov/tlodocs/832/billtext/html/HB00002F.HTM
[27] Whole Woman's Health v. Hellerstedt, 579 U. S. ____ (2016)

cases compared to 61% in 2019.[28] However, there is a deepening partisan divide as 62% of Republicans and those who lean Republican, say that abortion should be *illegal* in most or all cases. Meanwhile, 82% of Democrats and those who lean Democratic, say that abortion should be *legal* in most or all cases.[29] However, the greatest consensus about abortion surrounds Roe. Seven in ten surveyed stated that they do not want to see the Supreme Court overturn *Roe v. Wade*, while 28% want to see the decision overturned.[30]

Today, there are a number of organizations dedicated to protecting a woman's right to choose. From lobbying organizations such as NARAL Pro-Choice America to organizations focused on supporting and electing pro-choice candidates such as EMILY's List to organizations providing reproductive healthcare such as Planned Parenthood, pro-choice activists are organized and prepared for whatever comes next. There are also a number of anti-choice organizations across the United States, such as National Right to Life, March for Life and many Evangelical groups.

Critiques of Roe

As we discuss an alternative argument to Roe for abortion access, it is worth noting that there are other prominent critiques of the Roe decision. There are two major categories of critiques, that can simply be broken down into pro-choice critiques and anti-choice critiques. There are people who have critiques of Roe because they do not believe that abortion should be legal in most (or any) circumstances. However, the following is from the other category: a critique of the decision, while supporting a woman's right to choose.

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[28] "Public Opinion on Abortion" (Pew Research Center, April 29, 2019), https://www.pewforum.org/fact-sheet/public-opinion-on-abortion/)
[29] Ibid
[30] "U.S. Public Continues to Favor Legal Abortion, Oppose Overturning Roe v. Wade" (Pew Research Center, August 29, 2019), https://www.people-press.org/2019/08/29/u-s-public-continues-to-favor-legal-abortion-oppose-overturning-roe-v-wade/#most-americans-oppose-overturning-roe-v-wade)

The Roe decision has been critiqued in the following way by many, but arguably the most high profile critic is Associate Justice of the Supreme Court of the United States, Ruth Bader Ginsburg. Justice Ginsburg is known to be a fierce advocate of women's rights which is why it may come as a surprise that she has strong objections to the Roe decision. At a talk at the University of Chicago law school, Ginsburg expressed that she was troubled that the focus of the decision was privacy, not women's rights.[31] In previous opinions, Ginsburg expressed the perspective that she sees abortion access as a question of equal protection, not privacy. Her objection to Roe is that it still did not give women sole control over their fertility which she sees as necessary for a woman's ability to be independent and by extension, an equal citizen.[32]

Now what?

The "right to privacy" argument used in *Roe v. Wade* created a specific framework for thinking about abortion. The conversation became about two things: making the decision and competing interests. The "right to privacy" argument stated that choosing whether to get an abortion is a private decision for a woman to make and that should be free from government interference. While the Court granted women with some autonomy over their bodies, the Court also ruled that the right to privacy is not absolute and that there are situations where the State's interest is greater than the woman's right to privacy. What if instead of a woman's right to privacy, the State had to prove a more compelling interest than a woman's right to self-

[31] Meredith Heagney, "Justice Ruth Bader Ginsburg Offers Critique of Roe v. Wade During Law School Visit: University of Chicago Law School," Justice Ruth Bader Ginsburg Offers Critique of Roe v. Wade During Law School Visit | University of Chicago Law School (The University of Chicago Law School, May 15, 2013), https://www.law.uchicago.edu/news/justice-ruth-bader-ginsburg-offers-critique-roe-v-wade-during-law-school-visit)

[32] Robert Barnes, "The Forgotten History of Justice Ginsburg's Criticism of Roe v. Wade," The Washington Post (WP Company, March 2, 2016), https://www.washingtonpost.com/politics/courts_law/the-forgotten-history-of-justice-ginsburgs-criticism-of-roe-v-wade/2016/03/01/9ba0ea2e-dfe8-11e5-9c36-e1902f6b6571_story.html)

determination? What if the State had to prove a more compelling interest than a woman's investment in her human capital?

The problem with the "right to privacy" framework is that it limits the impact and repercussions of making a decision about one's reproductive health. When women decide to have children, or have an abortion, their decision is about much more than just their privacy at the time of making that decision. Depending on what path a woman chooses, it will greatly impact the trajectory her life takes. The right to privacy framework does not address what women go through after making their decision.

If women cannot freely make decisions about their reproductive healthcare, they do not have the ability to invest in their own human capital and development. I will begin by proving that there is a negative economic impact on women when their access to reproductive healthcare is limited. Next, I will use previous cases that have come before the Supreme Court to display the Constitutional basis for women's economic liberty.

The idea that abortion is an issue of freedom and economic liberty is not a new argument. Margaret Sanger was an activist for the birth control movement and women's reproductive healthcare in the 60s. In 1919, she published an article in which she wrote,

> "The basic freedom of the world is woman's freedom. A free race cannot be born of slave mothers. A woman enchained cannot choose but give a measure of bondage to her sons and daughters. No woman can call herself free who does not own and control her body. No woman can call herself free until she can choose consciously whether she will or will not be a mother."[33]

Abortion has always been, continues to be, and will always be an economic issue.

[33] Margaret Sanger, "A Parents' Problem or Woman's?," March 1919.

Chapter One

Abortion Access & Investment in Human Capital

The Economic Evidence

Before I present the Constitutional argument for a woman's right to choose, the economic impact of women having choice must be established. The crux of the argument is that when women do not have control over their bodies, they suffer economically and this is unconstitutional. It is intuitive that limited choices will limit future potential but intuition is insufficient to serve as evidence for a constitutional argument. This chapter will demonstrate the relationship between women's access to reproductive healthcare and women's economic opportunities, particularly the ability to invest one's human capital.

Human Capital

Human capital is defined as "'the skills the labor force possesses and is regarded as a resource or asset.' It encompasses the notion that there are investments in people (e.g., education, training, health) and that these investments increase an individual's productivity."[34] To invest in one's human capital is to acquire skills that would make one an asset. This applies to all fields and can take a variety of forms. It is a straightforward concept: the more skills an individual acquires (whether through education or work experience) the more attractive they are to a potential employer.

Investment in education is one of the most common forms of investing in one's human capital. Studies have shown that there is a large gap in the potential economic achievement of high school vs college graduates. For example, "'a college graduate is 177 times more likely than

[34] Claudia Goldin, "Human Capital," *Handbook of Cliometrics*, 2016)

a high school graduate to earn $4 million or more throughout their lifetime.'"[35] As well as, "'The typical college graduate will earn roughly $900,000 more than the typical high school graduate over their working life.'"[36]

Investment in one's human capital, particularly in education, is one of the strongest indicators of an individual's economic growth and development. Another report found that "education appears to play a significant role in human capital formation, over and above any role it plays as a screening device."[37] Regardless of race, gender, ethnicity, etc. education is a major indicator of future success. If women are unable to achieve their educational goals because of their inability to control their reproductive health, this directly impacts their ability to be successful in the future. Access to contraception reduces fertility, which increases women's participation in the labor force. Many studies, including some found in the chapter, have demonstrated an inverse relationship between the number of children in a family and female participation in the labor force.[38]

This chapter works to show how women's attempts to invest in their human capital can be limited by their inability to control their reproductive health. Additionally, this chapter demonstrates how motherhood impacts women's ability to accumulate, deploy and maintain their human capital: a fundamental aspect of self-determination. And abortion access is central to women's ability to control their fertility, particularly for women of color who have less widespread access to other contraceptive methods.

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[35] Derek Newton, "College Graduates Are 177 Times More Likely To Earn $4 Million Or More" (Forbes, October 1, 2018), https://www.forbes.com/sites/dereknewton/2018/10/01/college-graduates-are-177-times-more-likely-to-earn-4-million-or-more/#332762132048)
[36] Ibid
[37] OECD. 1998. *Human Capital Investment*. Paris: Organization for Economic Co-operation and Development.https://public.ebookcentral.proquest.com/choice/publicfullrecord.aspx?p=4962023.
[38] David E. Kalist, "Abortion and Female Labor Force Participation: Evidence Prior to Roe v. Wade," *Journal of Labor Research* 25, no. 3 (2004): pp. 503-514, https://doi.org/10.1007/s12122-004-1028-3)

The Pill

The invention of the pill created a whole new playing field for women. And the legacy of the pill is arguably one of the strongest argument for abortion access. The invention and mass deployment of the pill proves that when women have measures to control their fertility there are significant economic rewards. However, the pill is not independently satisfactory for women to control their reproductive health as the pill is not equally accessible to all women.

With the invention of the pill, women could invest in their careers with less concern that an unanticipated pregnancy would throw them off course. In "The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions" Claudia Goldin and Lawrence F. Katz make the argument that the pill decreased the cost of career investment for women while raising the age of first marriage for a large portion of the population.[39]

The existence of the pill itself may have had an impact on the human capital investments made by women. While direct access impacted women's decisions, the belief in the technology of the pill and the ability to control one's reproductive health, may have impacted women's decisions to invest in their human capital.[40] For example, if an 18-year-old high school graduate believed that she would have access to the pill in the near future this may have persuaded her to pursue higher education. Even if she did not actually receive access to the pill in the timeline she anticipated, her belief that she would have access shaped her decision to invest in her human capital.

[39] Claudia Goldin and Lawrence F. Katz, "The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions," *Journal of Political Economy* 110, no. 4 (2002): pp. 730-770, https://doi.org/10.1086/340778)
[40] Caitlyn Knowles Myers, "The Power of Abortion Policy: Reexamining the Effects of Young Women's Access to Reproductive Control," *Journal of Political Economy* 125, no. 6 (November 2017), https://doi.org/10.1086694293)

Goldin and Katz found that early access to the pill increased the share of women working in the fields of law and medicine. The authors argue that the pill created the opportunity for women to pursue advanced education. The study found that the pill's "initial diffusion among single women coincided with, and is analytically related to, the increase in the age at first marriage and the increase in women in professional degree programs."[41] The Guttmacher Institute found that between the 1960s and 1980, the proportion of women in medical school more than quadrupled and in the 1960s while there was one female per 100 male dental students, by 1980 the ratio was 25 women for every 100 men.[42] Ultimately, Goldin and Katz reinforce the findings of other literature that the pill had a positive effect on women's human capital investments. This proves that when women have control over their fertility, their human capital investments increase.

High School Graduation

The value of a high school diploma has fallen rather dramatically over the last few decades. According to Forbes, "a high school diploma is simply the price of admission to the real world, but it doesn't do anything for your career. College opens more doors, but even then, it just gets you what a high school diploma did 20 years ago."[43] Consequently, this also means the price of not graduating high school has also risen. Without a high school diploma, the job market is much harder to enter while a few decades ago this was not the case. The average high school graduate now makes only 60% of the lifetime earnings of a college graduate.[44]

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[41] Claudia Goldin and Lawrence F. Katz, "The Power of the Pill: Oral Contraceptives and Women's Career and Marriage Decisions," *Journal of Political Economy* 110, no. 4 (2002): pp. 730-770, https://doi.org/10.1086/340778)
[42] Adam Sonfield, et al, "The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children," Guttmacher Institute, (March, 2013).
[43] Robert Farrington, "A College Degree Is The New High School Diploma," Forbes (Forbes Magazine, September 29, 2014), https://www.forbes.com/sites/robertfarrington/2014/09/29/a-college-degree-is-the-new-high-school-diploma/#3e97a7224b44)
[44] Stephen J Caldas, "The Private and Societal Economic Costs of Teenage Childbearing: The State of the Research," *Population and Environment* 14 (March 1993): pp. 389-399, https://doi.org/10.1007/BF01270917)

In the 21st century when young women are unable to graduate high school it has a major impact on their career prospects. A study by The Institute for Women's Policy Research (IWPR) found that increased abortion access allowed women to pursue further education. The research also found that reductions in teen fertility impacted Black women more than any other group.[45] When Black women had access to abortions, they not only had higher high school graduation rates but also higher college attendance than Black women without access to abortions.[46] The research also found that when an unmarried Black teen gives birth, her probability of employment reduces by 47-58%.[47] Studies have confirmed that teen pregnancies interfere with women's ability to graduate from high school.[48] Overall, increased access to abortions increased the labor force participation of Black women by approximately six percentage points.[49] The research overall found that access to abortions had a greater impact on the lives of Black women than white women.

College Enrollment & Graduation

For women deciding whether to enroll in college, access to "the pill" was hugely influential in women's decision making. The following examples and evidence will prove that women make decisions about investing in their human capital based on their access to reproductive healthcare.

[45] Anna Bernstein and Kelly Jones, "The Economic Effects of Abortion Access: A Review of the Evidence" (Institute for Women's Policy Research, 2019), https://iwpr.org/publications/economic-effects-abortion-access-report/
[46] Ibid
[47] Ibid
[48] Adam Sonfield, et al, "The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children," Guttmacher Institute, (March, 2013).
[49] Anna Bernstein and Kelly Jones, "The Economic Effects of Abortion Access: A Review of the Evidence" (Institute for Women's Policy Research, 2019), https://iwpr.org/publications/economic-effects-abortion-access-report/)

For women in their early 20s, college enrollment was 20% higher among women who had access to the pill at 18 as opposed to women who did not have access until years later.[50] Another paper found similar results: a 12% increase in the likelihood of enrolling in college between young women who could obtain the pill and those who could not.[51]

Young women who had access to the pill before they made a decision about whether to pursue higher education obtained, on average, one more year of education before the age of 30.[52] Research also estimates that legal pill access was responsible for close to one-third of the rise of women's college enrollment in college from 1969 to 1980. Additionally, access to the pill also had an impact on whether a woman dropped out of college. The dropout rate among women with access to the pill was 35% lower compared to women without access.[53]

A 2012 paper studied college graduation rates of women who did and did not have access to the pill before the age of 21. They found that women who had access to the pill before 21, graduated college at much higher numbers than women who attended college before the pill was legalized.[54]

Research into state laws has shown a link between laws granting women early legal access to the pill (at 17 or 18) to their receiving a postsecondary education, increased earning power and a narrowing of the gender gap in pay.[55] Studies regarding young women from the late 1960s through the early 1970s indicate that the generation's access to reliable contraceptives made women more likely to pursue higher education because of the minimized economic and opportunity costs. On the other side of the market, there were also increased opportunities for

[50] Adam Sonfield, et al, "The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children," Guttmacher Institute, (March, 2013).
[51] Ibid
[52] Ibid
[53] Ibid
[54] Ibid
[55] Ibid

women with contraceptive access because they were deemed more likely to complete their educational pursuits.[56]

Teen Pregnancy

"How Does Adolescent Fertility Affect the Human Capital and Wages of Young Women?" by Klepinger, Lundberg and Plotnick focuses on the impact teenage fertility has on young women's economic and educational attainment. The paper identifies two major ways that women's wages are affected by teenage fertility: reducing human capital accumulation and affecting the rate of return to these investments.[57] This paper found the following numbers: White teen mothers complete 2.4 years less schooling, have 40% less early work experience and their mean hourly wage is 24% less than women who were not teen mothers. For Black women, the difference was 1.6 years less schooling, 33% less early work experience and hourly wages of 17% less.[58]

Waite and Moore's "The Impact of an Early First Birth on Young Women's Educational Attainment" found large negative effects of early childbearing on educational attainment. This paper found that the educational decrement caused by an early birth is about half as large for young black women as for their white counterparts.[59]

Studies also find that the individual costs of teen births fall mostly on mothers and not on fathers. This is because the majority of teen births are out of wedlock and a young father is the least likely to contribute financially to a child at that age.[60] Since the majority of the parenting

[56] Ibid
[57] Daniel Klepinger, Shelly Lundberg, and Robert Plotnick, "How Does Adolescent Fertility Affect the Human Capital and Wages of Young Women?," *The Journal of Human Resources* 34, no. 3 (1999): pp. 421-448, https://doi.org/10.2307/146375)
[58] Ibid
[59] Linda J Waite and Kristin A Moore, "The Impact of an Early First Birth on Young Women's Educational Attainment," *Social Forces* 56, no. 3 (March 1978): pp. 845-865, https://doi.org/10.1093/sf/56.3.845)
[60] Stephen J Caldas, "The Private and Societal Economic Costs of Teenage Childbearing: The State of the Research," *Population and Environment* 14 (March 1993): pp. 389-399, https://doi.org/10.1007/BF01270917

responsibilities fall to the mother, studies find that young mothers struggle to balance both schooling and parenting. If a young mother is working a minimum wage job she is likely to spend as much as a quarter of their income on day care costs.[61] As a result, it is often more profitable to stay at home. However, the tradeoff is that mothers are then forfeiting not only their formal education but also any on the job training which would help them develop their human capital.[62]

The Motherhood Tax

To understand why women need to control if and when they become pregnant, we must understand the impact that becoming a mother has on women's careers. To start, "Motherhood is one of the most highlighted explanations for the gender wage gap and gender differences in human capital investments."[63]

Women are more represented in the workforce today than ever before. Women are a larger portion of the workforce, making more money than ever before and shattering glass ceilings. As previously alluded to, this uptick can be traced back to the 1970s. The ratio of female/male average weekly earnings for full-time workers was 56% in 1969, 58% in 1979, 68% in 1989 and 72% in 1994.[64] This difference in wages is referred to as the "gender gap" and some argue that the "family gap" is a large contributor to the gender gap.

Research has found that even after controlling for differences in a variety of characteristics, there is a wage penalty of 10-15% for women with children compared to women without children.[65] However, this gap does not exist for men. Rather, the gap is flipped: married

[61] Ibid
[62] Ibid
[63] Herdis Steingrimsdottir, "Reproductive Rights and the Career Plans of U.S. College Freshmen," *Labour Economics* 43 (December 2016): pp. 29-41
[64] Jane Waldfogel, "Understanding the 'Family Gap' in Pay for Women with Children," *Journal of Economic Perspectives* 12, no. 1 (1998): pp. 137-156
[65] Ibid

men with children earn up to 10-15% more than other men.[66] A study on wage changes from 1978-1994 reveals that women's wages are based on both whether they are mothers as well as their marital status. Women were best off without any children, followed by married women with children and finally, unmarried women with children.[67] There are a variety of theories about why this gap exists and there are efforts to reduce the gap but for now, women pay an economic penalty for being mothers.

There are some ways that women are able to offset these effects. For example, studies have shown that women are better off when they can plan, delay and space their births. Delaying pregnancies can help to reduce the family gap, reduce women's chances of needing public assistance and has been found to increase women's lifetime earnings.[68] For college-educated women, if they became mothers after the age of 30 they earned about 13% more than college-educated mothers who had children before 30.[69] Planning, delaying and spacing out births are all dependent upon women being able to control their reproductive health.

The gender gap persists even at the highest levels of educational attainment. In "Dynamics of the Gender Gap for Young Professionals in the Corporate and Financial Sectors" Bertrand, Goldin, & Katz show how the family gap presents for women with MBAs. In 1970 women made up 4% of total MBAs, and by 2006, women had increased their presence to 43%.[70] However, the increase in the educational sector has not extended to the workplace. As of June 2019, there were only 33 female CEOs on the Forbes Fortune 500 list. This statistic is also the

[66] Ibid
[67] Ibid
[68] Adam Sonfield, et al, "The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children," Guttmacher Institute, (March, 2013).
[69] Ibid
[70] Marianne Bertrand, Claudia Goldin, and Lawrence F. Katz, "Dynamics of the Gender Gap for Young Professionals in the Corporate and Financial Sectors," *National Bureau of Economic Research*, 2009, https://www-nber-org.ccl.idm.oclc.org/papers/w14681.pdf)

new record: 6.6% is the highest representation of women the list has ever seen.[71] In the study focused on female MBAs, the authors concluded "The presence of children is associated with less accumulated job experience, more career interruptions, shorter work hours, and substantial earnings declines for female but not for male MBAs."[72]

In "Evolution of the Marriage Earnings Gap for Women" Chinhui Juhn and Kristin McCue investigate how earnings differentials associated with marriage have evolved over time. Their study found that among the most recent cohort of childless women, marriage increases earnings relative to single women without children.[73] The overall findings were that while marriage is no longer associated with lower earnings, the motherhood gap still remains. Married women with pre-school children have 35% lower earnings compared to married women without children and married women with school-aged children have approximately 15% lower earnings.[74] While women were able to overcome the negative economic impact of marriage, women are still trapped by the motherhood gap.

The Racial Gap

If abortion access is limited moving forward, it will disproportionately impact women of color and women in poverty. Unintended pregnancies are most common among women without a high school education, poor women and women of color.[75] The majority of abortion patients are poor women with 53% of women paying for their abortion out of pocket.[76]

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[71] Ibid
[72] Ibid
[73] Chinhui Juhn and Kristin McCue, "Evolution of the Marriage Earnings Gap for Women," *American Economic Review* 106, no. 5 (May 2016): pp. 252-256, https://doi.org/10.1257/aer.p20161120)
[74] Ibid
[75] Luu Ireland, "Who Are the 1 in 4 American Women Who Choose Abortion?," University of Massachusetts Medical School, June 27, 2019, https://www.umassmed.edu/news/news-archives/2019/05/who-are-the-1-in-4-american-women-who-choose-abortion/)
[76] Ibid

The above statistics may be related to the disparities in the method of birth control used by women of different racial backgrounds. Black women are more likely to use what are considered "low efficacy" methods (condoms, withdrawal) as compared to White women. As a result, they are three times more likely to have an unintended pregnancy compared to White women.[77] Hispanic women are less likely to use "high efficacy" methods (IUD, hormonal methods) and twice as likely to have an unintended pregnancy, compared to White women.[78] Studies have also found that Black and Hispanic individuals were more likely to believe that the government encourages contraceptive use to limit minority populations.[79]

This difference extends to actual abortion rates: at all income levels, Black women have the highest abortion rates, except for women below the poverty line where Hispanic women have the highest rates. There have been many studies and attempts at identifying where this gap comes from. Some hypotheses have been that geographic access to services impacts what birth control a woman chooses to use.[80] Another is that the ability or inability to afford the more effective birth control options impacts what method women use.[81]

Angrist and Evans (1999) studied the schooling and labor market outcomes of teen mothers prior to *Roe v. Wade* in the states that had legalized abortion. Their study reinforces what the aforementioned research indicated: Black women experienced the greatest benefits of abortion access. The study found that Black women had the largest increases in high school

[77] Carolyn Payne and Nicole Fanarjian, "Seeking Causes for Race-Related Disparities in Contraceptive Use," *Virtual Mentor* 16, no. 10 (2014): pp. 805-809)
[78] Ibid
[79] Ibid
[80] Susan A Cohen, "Abortion and Women of Color: The Bigger Picture," *Guttmacher Policy Review* 11, no. 3 (2008)
[81] Ibid

graduation rates, college attendance, and employment rates.[82] It also found that state abortions reforms prior to Roe reduced the number of Black teenagers giving birth by 8-10%.[83]

In the previous sections (high school graduation, college graduation, teen pregnancy) all the evidence showed that women of color experienced the greatest benefit from increased access to abortions. And if abortion access is stripped from women, women of color will be disproportionately negatively impacted.

Ease of Access

In discussing abortion access, it is vital to clarify that the access should not be restrictive, as that continues to hinder women's economic mobility. In "Do US TRAP Laws Trap Women Into Bad Jobs?" the authors show a variety of other factors (beyond the strict legality of abortion) that impact whether women have control over their reproductive health and their economic mobility. First, public funding for medically necessary abortions increases full-time occupational mobility. Second contraceptive insurance coverage increases transitions into paid employment and third, women in states with Targeted Restrictions on Abortion Providers (TRAP) laws are less likely to move between occupations and into higher-paying occupations.[84] The authors argue that TRAP laws increase the "job lock" for women. Job lock is where someone stays in a job to maintain health benefits. However, when there is public funding for abortions and increased insurance coverage, it is easier for women to access employment and move among jobs. The paper found that one of the biggest reasons why women did not procure abortions they wished to

[82] Joshua D. Angrist and William N. Evans, "Schooling and Labor Market Consequences of the 1970 State Abortion Reforms," *Research in Labor Economics*, January 1996, pp. 75-113, https://doi.org/10.1016/s0147-9121(99)18020-8)
[83] Ibid
[84] Kate Bahn et al., "Do US TRAP Laws Trap Women Into Bad Jobs?," *Feminist Economics* 26, no. 1 (2019): pp. 44-97, https://doi.org/10.1080/13545701.2019.1622029)

receive was the cost of the procedure.[85] If abortions are not affordable, women remain in jobs that may not be best for their economic mobility.

For the Greater Good

Thus far, this chapter has focused on the specific economic impact on women. However, restricting access to abortions and reproductive healthcare also impacts the American economy because of the changes to the labor force as well as relevant governmental spending.

The Guttmacher Institute found that 23% of the 1209 abortion patients surveyed had an abortion because they "Can't afford a baby now" with an additional 25% stating that they were "Not ready for a(nother) child/timing is wrong."[86] Raising a child is no small economic undertaking as the cost of a child for the average middle income family is over $200,000.[87] If a woman cannot afford a child, she becomes increasingly reliant on the government to step in and assist her. Research has shown that women denied abortion access because they were too far along in a pregnancy were nearly four times as likely to be below the federal poverty level. The Guttmacher Institute also found that in 2010, publicly funded family planning services resulted in net federal and state government savings of $13.6 billion.[88] Another way to say that is that taxpayers saved more than $7 for every $1 invested in publicly funded family planning services.

Access to abortions prevents women who do not have the resources to take care of a new child from being forced into a worse financial situation. When women are required to take on the

[85] Ibid
[86] "Family Planning Funding Restrictions," Guttmacher Institute, February 15, 2018, https://www.guttmacher.org/evidence-you-can-use/family-planning-funding-restrictions)
[87] Aimee Picchi, "Raising a Child Costs $233,610. Are You Financially Prepared to Be a Parent?," USA Today (Gannett Satellite Information Network, February 26, 2018), https://www.usatoday.com/story/money/personalfinance/2018/02/26/raising-child-costs-233-610-you-financially-prepared-parent/357243002/)
[88] "Family Planning Funding Restrictions," Guttmacher Institute, February 15, 2018, https://www.guttmacher.org/evidence-you-can-use/family-planning-funding-restrictions)

cost of a child, it negatively impacts the country as a whole along with their personal financial circumstances. Additionally, it is worth noting that when access to safe and legal abortions is taken away, that does not stop women from having abortions. It just prevents women from having safe abortions.

If a woman cannot afford to have a child, she becomes reliant upon the government. If a woman is already a mother and has to have another child, but cannot afford to, both children will be worse off. Studies have shown that when women have to carry an unwanted pregnancy to term their children do worse in achieving developmental milestones related to language and motor skills as well as social and emotional skills.[89] If a woman drops out of school because of a child, that creates a less skilled workforce and a limited labor market. If women do not have the opportunity to develop their human capital to their maximum capacity, the country suffers.

Access to abortions also impacts future generations. The children of women who did have access had lower rates of poverty, lower receipt of public assistance during childhood and were more likely to graduate from college.[90] Women with early pill access were more likely to pursue both higher education and have children. This meant that children of women with early pill access were increasingly likely to have a college-educated mother.[91] Access to comprehensive reproductive health care creates a more qualified workforce, less dependency on government programs and sets up future generations for increased success.

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[89] Diana Greene Foster et al., "Effects of Carrying an Unwanted Pregnancy to Term on Women's Existing Children," The Journal of Pediatrics (Mosby, October 30, 2018), https://www.sciencedirect.com/science/article/pii/S0022347618312976)

[90] Anna Bernstein and Kelly Jones, "The Economic Effects of Abortion Access: A Review of the Evidence" (Institute for Women's Policy Research, 2019), https://iwpr.org/publications/economic-effects-abortion-access-report/

[91] Adam Sonfield, et al, "The Social and Economic Benefits of Women's Ability to Determine Whether and When to Have Children," Guttmacher Institute, (March, 2013).

Conclusion

When women do not have access to reproductive healthcare their ability to invest in their own human capital diminishes. This manifests in different ways based on the life circumstances, with some women using the pill to control their bodies and other women using abortions. This chapter demonstrates that whether women use birth control or the pill is closely related to a variety of demographic factors including race, education level and socioeconomic background. For example, women going to college are more likely to use the Pill, while women living below the poverty line are more likely to get abortions.

Regardless of which method women rely on, this chapter proves two points. First, the wage gap is exacerbated when a woman has a child. Secondly, when women have to complete unwanted pregnancies this negatively impacts them more than planned pregnancies. For some women, these factors manifest in a woman's ability to graduate high school and for other women this reflects in their opportunities after completing additional professional degrees. Either way, women are hindered in their attempts at developing their human capital and achieving their potential.

In this chapter, evidence was brought out that showed how access to reproductive healthcare increased women's high school graduation rates, college enrollment rates, college graduation rates and the rate of women's participation in the workforce. There is a direct relationship between women's increased access and the emergence of women in the workforce competing at the same level as men. Regardless of a woman's level of educational or professional accomplishment, the inability to control one's reproductive health negatively impacts her ability to invest in her own human capital. The next chapter will demonstrate that

limiting one's capacity to invest in one's human capital is unconstitutional as it violates the 14th Amendment.

Chapter Two

An Updated 14th Amendment Argument: The Right to Liberty

14th Amendment

Section 1 of the Fourteenth Amendment reads:

"All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[92]

In discussing a woman's right to choose, the noteworthy clauses are the right to liberty, Due Process clause, and Equal Protection clause.

Due Process

This argument is built on the foundation that Americans have some economic liberties and that those liberties are infringed upon when women do not have bodily autonomy. However, the right to economic liberty is not explicitly found in the Constitution.

There have been many cases that have worked to establish that Americans have economic liberties. Many of the arguments in these cases, rely on a particular interpretation of the Due Process clause. The Due Process Clause refers to the statement in the Fourteenth Amendment that the state may not "deprive any person of life, liberty, or property, without due process of law." The final phrase of that sentence is what comes up in contention. There are two prominent interpretations of the Due Process Clause: procedural due process and substantive due process.

[92] U.S. Const. amend. XIV, § 1.

Procedural due process is well accepted and considered the standard reading of the clause.[93] Procedural due process essentially refers to the justice system. Any time the government attempts to strip an individual of their life, liberty or property they must do so in a legal manner, which in essence means the individual must be given the opportunity to defend themselves in a court of law and be judged by a fair arbiter of justice.[94] Procedural due process is about the procedures implemented in order to deprive someone of their rights.

Substantive due process takes the notion of due process to a more nuanced level and is more controversial. Timothy Sandefur makes the argument in favor of the interpretation of Substantive Due Process writing

> "According citizens due process of law means to treat them, not in accordance with whatever the majority happens to desire at any particular time, or to serve the ruler's (or rulers') self-interest. Thus the overlap of "procedure" and "substance" is inevitable: to be treated lawfully means to be treated in accordance (procedural) with general, public principles (substantive)."[95]

This simply means that there is more to the process than just whether the procedural elements are correctly followed. Sandefur goes on to write "If there are inherent restrictions on the procedures by which a bill can become a law, then there would seem no denying that there are also implicit limits on the content of laws that can be made. If law is the opposite of arbitrariness, then the legislature cannot get around the prohibition on arbitrariness by simply labeling an arbitrary act 'law.'"[96] Substantive due process asserts that there are limits to what the government can and

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[93] "Fourteenth Amendment," Legal Information Institute (Cornell Law School, n.d.), https://www.law.cornell.edu/wex/fourteenth_amendment_0)
[94] Ibid
[95] Timothy Sandefur, "Why Substantive Due Process Makes Sense," Cato Unbound, February 6, 2012, https://www.cato-unbound.org/2012/02/06/timothy-sandefur/why-substantive-due-process-makes-sense)
[96] Ibid

cannot regulate. This interpretation asserts that the substance of laws is of relevance along with the procedural notions. In the cases that I will reference in order to prove the existence of economic rights, the Courts rely upon the substantive due process interpretation.

Griswold v. Connecticut

As mentioned in the introduction, the decision in *Roe v. Wade* was based on the premise of "liberty" in the Fourteenth Amendment. The opinion stated that the Texas laws infringed upon women's "right to privacy" as established in *Griswold v Connecticut*. The Griswold case emerged from an 1879 law in Connecticut that banned the use of contraceptives. The law read "any person who uses any drug, medicinal article or instrument for the purposes of preventing conception shall be fined not less than forty dollars or imprisoned not less than sixty days."[97] The Court ruled 7-2 that the Constitution did protect marital privacy and that the Connecticut statute conflicted with this right. The Court acknowledged that the Constitution does not explicitly protect a right to privacy but asserted that between the Bill of Rights created penumbras that altogether create a right to privacy. The Court then relied upon the First, Third, Fourth and Ninth Amendments to extend the right to privacy to marriages. The opinion written by Justice Douglas reads

> "The foregoing cases suggest that specific guarantees in the Bill of Rights have penumbras, formed by emanations from those guarantees that help give them life and substance...Various guarantees create zones of privacy. The right of association contained in the penumbra of the First Amendment is one, as we have seen. The Third Amendment, in its prohibition against the quartering of soldiers 'in any house' in time of peace without

[97] Alex McBride, "The Supreme Court. Expanding Civil Rights. Landmark Cases. Griswold v. Connecticut (1965): PBS," The Supreme Court. Expanding Civil Rights. Landmark Cases. Griswold v. Connecticut (1965) | PBS, n.d., https://www.thirteen.org/wnet/supremecourt/rights/landmark_griswold.html)

> the consent of the owner, is another facet of that privacy. The Fourth Amendment explicitly affirms the 'right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures.' The Fifth Amendment, in its Self-Incrimination Clause, enables the citizen to create a zone of privacy which government may not force him to surrender to his detriment. The Ninth Amendment provides: 'The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.'" [98]

Griswold is referenced in *Roe v. Wade* as the precedent of a "right to privacy" that Roe relies upon. The crux of the Roe argument is that the government cannot interfere with a woman's choice because it falls within this universe of privacy. As demonstrated in the language of the opinion above, the "right to privacy" was created by combining a number of different clauses. The problem with the "right to privacy" is that the entire discussion is about a woman's ability to make a choice for herself and not about how that choice may impact her moving forward. And as addressed in the introduction, there have been major rollbacks to abortion rights since *Roe v. Wade*. The question posed here is – can an updated argument make it more difficult to institute further rollbacks to women's access?

The Court ruled that the right to privacy is not absolute and that there are situations in which the State's interest is greater than the woman's right to privacy. If the argument used had not been the right to privacy and instead had been the right to self-determination or the right to invest in one's human capital, the State would have had a different and arguably more difficult time proving that the State's interest was more compelling than the interest of the woman.

[98] Griswold v. Connecticut, 381 U.S. 479 (1965)

Liberty

The Fourteenth Amendment guarantee to liberty has been cited in many major Supreme Court cases. Each case has helped develop the meaning of liberty and a greater understanding of what the right guarantees. Without any of these cases, liberty is defined as "the quality or state of being free: the power to do as one pleases, freedom from physical restraint, freedom from arbitrary or despotic control, the positive enjoyment of various social, political, or economic rights and privileges, the power of choice."[99]

In this chapter, it will be proven that liberty includes the right to self-determination and the right to invest in one's human capital. The previous chapter has already proven that when abortion access is limited it inhibits a woman's ability to invest in her human capital.

9th Amendment

As we discuss the right to develop one's human capital or the right to contract, one may question "where is this right found in the Constitution?" It is not explicitly written in the Constitution in the manner that the right to free speech, right to freedom of religion or the right to bear arms are found. However, the 9th Amendment makes it clear that just because a right is not explicitly found in the Constitution does not mean that it does not exist. The 9th Amendment reads "The enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people."[100] This establishes that the right may exist even if it is not explicitly stated.

Natural Rights

When considering the meaning of the Constitution, we can glean additional insight by considering the intention of the Founding Fathers. When Justices rule on the constitutionality of

[99] "Liberty," Merriam-Webster (Merriam-Webster, n.d.), https://www.merriam-webster.com/dictionary/liberty)
[100] U.S. Const. amend. IX.

different matters, there are a variety of methods they can use to determine the meaning of the Constitution. These include originalism and Constitutional fidelity, both of which start by investigating what the original intention of the Founders would have been. The difference between the two is while originalists would try to do exactly as the Founders would have desired, Constitutional Fidelity is an effort to be faithful to the document by interpreting how the main principles would apply to present day scenarios. In discussing the Founders' beliefs, the analysis will be through a framework of Constitutional fidelity, i.e. trying to determine what the values were that the Founders cared about.

We can use the evidence of the Founding Fathers' affinity for the concept of "natural rights" to understand what rights they may have assumed to be so natural that there was no reason to write them down. In the Declaration of Independence, we find the language that men "are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness." In other writings from the time, we find that Jefferson wrote in length about liberty, writing statements such as "the God who gave us life gave us liberty at the same time" and "our right to life, liberty, the use of our faculties, the pursuit of happiness, is not left to the feeble and sophistical investigations of reason, but is impressed on the sense of every man. We do not claim these under the charters of kings or legislators, but under the King of kings."'[101] Jefferson expressed an understanding that there were certain rights that every being had and that could not be curtailed by the Government.

James Madison went further and specified what the Founding Fathers meant when they referred to "property" as a natural right. He wrote that property

[101] Chester James Antieau, "Natural Rights And The Founding Fathers-The Virginians," *Washington and Lee Law Review* 17, no. 1 (March 1, 1960)

> "embraces everything to which a man may attach a value and have a right; and which leaves to every one else the like advantage.... A man has property in his opinions and a free communication of them. He has a property of peculiar value in his religious opinions, and in the profession and practice dictated by them. He has a property very dear to him in the safety and liberty of his person. He has an equal property in the free use of his faculties and free choice of the objects on which to employ them. In a word, as a man is said to have a right to his property, he may be equally said to have a property in his rights."[102]

The phrase the "free use of his faculties and free choice of the objects on which to employ them" refers to the freedom to choose one's work and development of one's human capital as one chooses. And both Madison and Jefferson felt strongly that everyone is entitled to their natural rights and those may not be inhibited.[103] If women are denied their natural rights, this would be contradictory to the premise that the Founding Fathers believed so intently.

While it cannot be said with absolute certainty that the Founding Fathers were influenced by John Locke, there is reason to believe this may have been the case. Locke wrote his Second Treatise of Government in 1689 and wrote that everyone is equal in the sense that everyone is born with certain "inalienable" natural rights. When Locke refers to inalienable rights he means that there are rights that are given by God that cannot be taken away. And among these rights Locke says are "life, liberty, and property."[104] While property was substituted for "pursuit of

[102] Ibid
[103] Ibid
[104] John Locke, *Second Treatise of Government*, 1689

happiness" in the Declaration of Independence, Locke had previously used the phrase "pursuit of happiness" to describe freedom of opportunity.[105]

Planned Parenthood v. Casey

Planned Parenthood v. Casey was briefly addressed in the introduction in relation to how abortion rights have evolved since the Roe decision. The majority opinion in this case included a discussion of the bounds of liberty. The opinion read

> "Neither the Bill of Rights nor the specific practices of States at the time of the Fourteenth Amendment's adoption marks the outer limits of the substantive sphere of such 'liberty.' Rather, the adjudication of substantive due process claims may require this Court to exercise its reasoned judgment in determining the boundaries between the individual's liberty and the demands of organized society."[106]

There are a few noteworthy points about liberty in the aforementioned quotes. First, there are no obvious bounds to the definition of "liberty." The Bill of Rights is mentioned as not having any explicit guidelines as to the bounds. The opinion also argues that there is no precedent based on the behavior of the states at the time of the adoption of the Fourteenth Amendment. Therefore, it cannot be said that liberty definitively does not include the right to invest in one's human capital. Casey establishes that "liberty" does not have any definitional bounds.

The Slaughterhouse Cases

The Slaughterhouse Cases were ruled on by the Court in 1873, a century before Roe. The cases began in 1869 when the Louisiana legislature passed a law that granted a monopoly to the

[105] "Natural Rights," Constitutional Rights Foundation, n.d., https://www.crf-usa.org/foundations-of-our-constitution/natural-rights.html)
[106] Planned Parenthood v. Casey, 505 U.S. 833 (1992)

Crescent City Livestock Landing & Slaughterhouse Company. The law banned other slaughterhouses in New Orleans, effectively putting many local butchers out of business.[107] Local butchers sued Louisiana stating that the law stood in violation of the "privileges and immunities" clause of the Fourteenth Amendment as the butchers were deprived of the "privilege" of operating slaughterhouse companies and by extension, from earning a living.[108]

The Majority opinion found for the Slaughterhouse Company, asserting that the Fourteenth Amendment was intended to be specifically about ensuring that former slaves have the privileges and immunities of American citizenship. The Court found that this did not extend to state rights and the state was not required to grant privileges (such as owning and operating a slaughterhouse) to all citizens. Furthermore, the Court argued that the Fourteenth Amendment did not guarantee that all citizens should receive equal economic privileges by the state. The Court also argued that the butchers were not deprived of their property as they claimed because they could still earn a living wage.

However, it was the dissenting opinion by Justice Stephen J. Field that survived the test of time as later courts adopted Field's view of the Fourteenth Amendment as a protection of economic liberties.[109] Justice Field wrote that the Fourteenth Amendment was about more than just granting previously enslaved Americans the same protections under the law as free Americans. In his dissent, Justice Field wrote that the amendments were intended to "protect the citizens of the United States against the deprivation of their common rights by State

[107] Alex McBride, "The Supreme Court. The First Hundred Years. Landmark Cases. Slaughterhouse Cases (1873): PBS," The Supreme Court. The First Hundred Years. Landmark Cases. Slaughterhouse Cases (1873) | PBS, n.d., https://www.thirteen.org/wnet/supremecourt/antebellum/landmark_slaughterhouse.html)
[108] The Slaughter-House Cases, 83 U.S. 36 (1873)
[109] Alex McBride, "The Supreme Court. The First Hundred Years. Landmark Cases. Slaughterhouse Cases (1873): PBS," The Supreme Court. The First Hundred Years. Landmark Cases. Slaughterhouse Cases (1873) | PBS, n.d., https://www.thirteen.org/wnet/supremecourt/antebellum/landmark_slaughterhouse.html)

legislation."[110] He goes on to write that the abolition of slavery was intended to "make everyone born in this country a freeman, and, as such, to give to him the right to pursue the ordinary avocations of life without other restraint than such as affects all others, and to enjoy equally with them the fruits of his labor."[111] In this statement, Justice Field asserts that citizens have the right to "pursue the ordinary avocations of life." This shows an acknowledgment that citizens have the right to engage in the work of their choice without any limitation.

Justice Fields writes that prohibiting an individual to pursue work that is open to others would "deprive him of the rights of a freeman." The opinion goes on to draw a distinction between the conditions of slavery vs servitude writing that "A person allowed to pursue only one trade or calling, and only in one locality of the country, would not be, in the strict sense of the term, in a condition of slavery, but probably none would deny that he would be in a condition of servitude. He certainly would not possess the liberties nor enjoy the privileges of a freeman."[112] Justice Fields works to forcefully make the argument that limiting the work that an individual can choose to pursue is not granting that individual the full extent of their liberties. By asserting what is improper, Justice Fields is also creating a realm of what are the liberties and privileges of a freeman.

He continues on to write "The compulsion which would force him to labor even for his own benefit only in one direction, or in one place, would be almost as oppressive and nearly as great an invasion of his liberty as the compulsion which would force him to labor for the benefit or pleasure of another, and would equally constitute an element of servitude." This opinion makes the argument that if people are prevented from pursuing the work of their choice or forced

[110] The Slaughter-House Cases, 83 U.S. 36 (1873)
[111] Ibid
[112] Ibid

to labor in a particular way, this is an improper infringement of their liberty. Although women are not directly forced to pursue a particular career path, if women are unable to pursue a number of careers as a result of being unable to terminate a pregnancy, their options are restricted.

Justice Bradley wrote an additional dissent, meant to emphasize the points laid out in the dissent presented by Justice Fields. Justice Bradley's dissent and definitions surrounding liberty and referenced in other cases including *Allgeyer v. Louisiana*, discussed below. Justice Bradley wrote: "the right to follow any of the common occupations of life is an inalienable right. It was formulated as such under the phrase 'pursuit of happiness' in the Declaration of Independence, which commenced with the fundamental proposition that 'all men are created equal; that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty, and the pursuit of happiness.'"[113]

He makes his argument even more explicit later in his dissent writing "I hold that the liberty of pursuit -- the right to follow any of the ordinary callings of life -- is one of the privileges of a citizen of the United States."[114] When women do not have access to reproductive healthcare, they are stripped of their right to pursue the calling of their choice. The ability to "follow any of the ordinary callings of life" is enshrined as a fundamental right of citizens of the United States - a right that women cannot utilize without comprehensive access.

Allgeyer v. Louisiana

This case emerged from a statute in Louisiana that prohibited out-of-state insurance corporations from conducting business in the state without maintaining an agent in the state. The Court ruled that the law was unconstitutional under the Fourteenth Amendment. The Court held that the statute was in violation of the Fourteenth Amendment because it deprived the defendants

[113] Ibid
[114] Ibid

of their liberty. The majority opinion went on to define liberty in a very consequential manner writing:

> "The 'liberty' mentioned in that amendment means not only the right of the citizen to be free from the mere physical restraint of his person, as by incarceration, but the term is deemed to embrace the right of the citizen to be free in the enjoyment of all his faculties, to be free to use them in all lawful ways, to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or avocation, and for that purpose to enter into all contracts which may be proper, necessary, and essential to his carrying out to a successful conclusion the purposes above mentioned."[115]

This definition of liberty as including the right to pursue any livelihood is fundamental to the development of the "right to contract." The ultimate decision in this case was that the legislation prevents citizens from entering into contracts as they wished and it was "improper and illegal interference with the conduct of the citizen...in his right to contract and to carry out the terms of a contract validly entered into outside and beyond the jurisdiction of the state."[116] The specific language of "right to contract" is repeated in future cases and is fundamental to the notion of economic rights and liberties.

The Lochner Era

The Lochner era begins in 1895 with *Lochner v. New York*, a case about the Bakeshop Act passed in New York state. The Act prevented bakers from working more than 60 hours in a week or 10 hours a day. Lochner's attorney argued that this restriction was an infringement upon the "right to contract" provided by the Fourteenth Amendment (established by *Allgeyer v. Louisiana*) and the Court agreed.

[115] Allgeyer v. Louisiana, 165 U.S. 578 (1897)
[116] Ibid

Justice Peckham wrote in the majority opinion that the "right to contract" guarantees that "no state can deprive any person of life, liberty, or property without due process of law. The right to purchase or to sell labor is part of the liberty protected by this amendment, unless there are circumstances which exclude the right." He clarifies there that the state has the right to step in to utilize its "police powers" which are related to the "safety, health, morals, and general welfare of the public," however the Court found that none of those criteria applied to the Bakeshop Act.

The sentiment behind this decision is that as long as the labor laws are not identified as being improper in a manner that would require state intervention, the liberty of the individual is considered to be of primary importance. The ability of the individual to engage in contracts as they desire is determined to be the most important consideration. This case adds to the notion that there are certain economic liberties that belong to the citizens. The idea of citizens having certain economic liberties reinforces the importance of women having control over their ability to invest in their human capital.

The *West Coast Hotel v. Parrish* case of 1937 is thought of as ending the Lochner Era. Parrish brought the case against the West Coast Hotel, where she worked, claiming that the hotel had not paid her the minimum wage as established by the "Minimum Wages for Women" law. In previous cases, the Court had ruled that laws that fixed the terms of employment contracts violated the Due Process Clause as the clause protected the right to freely engage in contracts. In this case, the Court ruled that the Minimum Wages for Women law was a "reasonable," not arbitrary regulation. As a result, the Court found the law to be constitutional as it reasonably protected the workers.[117] While the Bakeshop Act was found to be arbitrary, the Court found that this was a reasonable interference by the government because it was directly related to the health

[117] West Coast Hotel Co. v. Parrish, 300 U.S. 379 (1937)

and welfare of the public. While this case ended the Lochner Era jurisprudence, the basis upon which the decision was made does not contradict the argument for economic rights. This decision emphasizes the importance of laws not being arbitrary but rather being specifically for the benefit of the workers impacted.

Smith v. Texas

Smith v. Texas is the 1914 case about the Texas statute that made it illegal for any person to be the conductor of a freight train without having been a conductor or brakeman for two years. The plaintiff, Smith, was sentenced to pay a fine for having served as a conductor without the necessary two years of experience. He contended that the statute he was convicted under violated the Fourteenth Amendment. The Court sided with Smith and ruled that the Texas statute stood in violation of the Fourteenth Amendment and the guarantee to liberty. The Court ruled that while there are professions and certain circumstances in which restrictions on qualifications could reasonably be placed, the Texas law does not meet that standard.[118] In the majority opinion, Justice Lamar wrote

> "Insofar as a man is deprived of the right to labor, his liberty is restricted, his capacity to earn wages and acquire property is lessened, and he is denied the protection which the law affords those who are permitted to work. Liberty means more than freedom from servitude, and the constitutional guarantee is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."[119]

The language of the "powers of his mind" is particularly noteworthy. The argument for the development of one's human capital is based on the idea that individuals must have the option to use the powers of their mind to their maximum capacity. This opinion lays the

[118] Smith v. Texas, 233 U.S. 630 (1914)
[119] Ibid

foundation that the Constitution guarantees citizens the ability to use their body and mind in any way that permitted by the law.

Plyler v. Doe

Plyler v. Doe is about a 1975 amendment to the Texas education code to prevent state funds from being used for the education of children who did not enter the United States legally.[120] The suit argued that the code was unconstitutional under the Fourteenth Amendment as it violated the Equal Protection clause. The Court first concluded that the immigration status of the children did not prevent them from receiving the protections of the Constitution. The Court then ruled that the Texas law was in violation of the Fourteenth Amendment and the state could not prove a "compelling state interest."

In this majority ruling, the Court clarifies that the right to an education is not explicitly granted by the Constitution but that education is so fundamental to the development of children that it cannot simply be dismissed as just another government benefit, similar to other forms of social welfare. The opinion cites other cases surrounding education to show the importance that the American system has always placed on education such as *Wisconsin v. Yoder*. The majority opinion cited Wisconsin writing "education prepares individuals to be self-reliant and self-sufficient participants in society."[121] The Court in Plyler then went on to state:

> "education provides the basic tools by which individuals might lead economically productive lives to the benefit of us all. In sum, education has a fundamental role in maintaining the fabric of our society. We cannot ignore the significant social costs borne

[120] "Plyler v. Doe: The Landmark MALDEF Case That Changed Education in America," MALDEF, December 1, 2018, https://www.maldef.org/2018/12/plyler-case/)
[121] Wisconsin v. Jonas Yoder, 406 U.S. 205 (1972)

by our Nation when select groups are denied the means to absorb the values and skills upon which our social order rests."[122]

Not only does the Court discuss the independent importance of education, but the Court also highlights why everyone must have access to education under the Constitution. The majority opinion read that the "denial of education to some isolated group of children poses an affront to one of the goals of the Equal Protection Clause: the abolition of governmental barriers presenting unreasonable obstacles to advancement on the basis of individual merit." This case not only reinforces the argument laid out in Chapter One about the importance of getting an education and the value add of education to overall future well-being, but also addresses inequity in access to education. If children do not all have equal access to their education, this violates the basic goals of the Equal Protection Clause.

This decision highlights a few points: 1) the importance of education has always been acknowledged by the government, 2) lack of education can seriously hinder an individual's ability to provide for themselves, 3) the Equal Protection Clause is intended to ensure that everyone has the same opportunities to use their abilities. These points show why it is important for women to have equal access to education, which we know can be inhibited when women do not have access to reproductive healthcare.

Meyer v. Nebraska

Meyer v. Nebraska also concerns itself with access to education. Meyer was a teacher who was convicted for breaking the Nebraska law that prohibited teaching grade school children any language besides English. The Court ruled that the law violated the Due Process Clause of

[122] "Plyler v. Doe: The Landmark MALDEF Case That Changed Education in America," MALDEF, December 1, 2018, https://www.maldef.org/2018/12/plyler-case/)

the Fourteenth Amendment. The Court first clarifies that liberty does not simply refer to freedom from physical restraint but also

> "the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men."[123]

This definition is useful in proving the argument that liberty extends to the economic rights of citizens. The Court goes on to say that the precedent is that liberty may not be interfered with by the state "under the guise of protecting the public interest, by legislative action which is arbitrary or without reasonable relation to some purpose within the competency of the State to effect."[124]

On the matter of education, this opinion reiterates the value placed on education by the American system writing "The American people have always regarded education and acquisition of knowledge as matters of supreme importance which should be diligently promoted."[125] Ultimately, the Court found that while the State can compel attendance and make some regulations for schools, the State did not have the authority to step in regarding what languages can and cannot be taught in schools. The State does not have the authority to determine how people can develop their own intellectual capacity and people must be free to develop their human capital as they choose.

[123] Meyer v. Nebraska, 262 U.S. 390 (1923)
[124] Ibid
[125] Ibid

Pierce, v. Society of the Sisters of the Holy Names of Jesus and Mary

The case of *Pierce v. Society of the Sisters* was based upon the Oregon Compulsory Education Act of 1922. Barring certain exemptions, the Act required every child between the ages of eight and sixteen to attend a public school in the district they lived in. The plaintiff argued that this Act was an unreasonable interference with the liberty of the guardians to direct the upbringing of their children and therefore, violates the Fourteenth Amendment. The Act would have prevented children from attending private schools which the plaintiff argued was an improper infringement on the guardians' liberty. The Court ruled that based on the doctrine of *Meyer v. Nebraska*, the Act unreasonably interfered with the liberty of the guardians. Justice McReynolds presented the majority opinion of the Court writing that

> "The fundamental theory of liberty upon which all governments in this Union repose excludes any general power of the State to standardize its children by forcing them to accept instruction from public teachers only. The child is not the mere creature of the State; those who nurture him and direct his destiny have the right, coupled with the high duty, to recognize and prepare him for additional obligations."[126]

The decision in this case shows the ability to make decisions for oneself is included in the notion of liberty. This case was not about whether or not individuals are entitled to an education. Rather, this case goes one step further to argue that people should be able to choose how they wish to pursue their education and how they invest in their human capital. People must have the option to engage in this pursuit as they choose. This applies to the argument about women's access to reproductive care as it is not enough to state that women have equal access to

[126] Pierce v. Society of Sisters of the Holy Names of Jesus and Mary, 268 U.S. 510 (1925)

education. Women should be able to choose how they wish to pursue their educational or professional goals. Liberty is about having choice.

Upcoming Decisions

There are currently two cases before the courts that may help further shape our understanding of economic liberties in the Fourteenth Amendment. The first case is *Cook v. Raimond*o which asks what is the Constitutional promise of education. The case was filed by 14 parents against the state of Rhode Island for providing such an inferior level of education, that the state failed to meet its Constitutional obligation. Now there is no explicit guarantee to education in the Constitution. The legal team claims that the state violates the 14th Amendment Equal Protection Clause "by denying [students] a meaningful opportunity to obtain a basic education necessary to prepare them to be capable voters and jurors, to exercise effectively their right of free speech and other constitutional rights, to participate effectively and intelligently in our open political system and to function productively as civic participants."[127] If the justices find in favor of the plaintiffs, this would effectively establish a "right to education" guarantee which would emphasize the Constitutional commitment to encouraging citizens to develop their own human capital.

The second case is *Gary B. v. Snyder*. This case focuses more specifically on the right to literacy but has a similar goal to *Cook v. Raimondo* of establishing a higher standard for the level of education guaranteed to citizens. The case was filed on behalf of a class of students from Detroit who claim they have been deprived of their liberty and that they received schooling unequal to the schooling provided to other students in Michigan. If this case is found for the plaintiffs, it will establish a "right to literacy." If citizens have a right to education or literacy,

[127] "Cook v. Raimondo: The Case to Establish a Right to Education Under the U.S. Constitution," The Center for Educational Equity (Teachers College - Columbia University, n.d.), http://www.cookvraimondo.info/)

any laws that inhibit an individual's ability to take advantage of this right will have to cross a higher threshold.

Conclusion: Building the Case

Each of the aforementioned cases is a layer of the argument for women's access to reproductive healthcare. When women do not have access or choice, their economic prospects suffer and the aforementioned cases explain that the Constitution guarantees everyone the freedom to pursue their economic ends however they please. If citizens do not have the freedom to pursue their interests as they desire, it is an improper infringement of their liberty as established by the Fourteenth Amendment.

Griswold v Connecticut (as well as the 9th Amendment) establishes that just because a right is not explicitly outlined in the Constitution does not mean that the right does not exist.

Planned Parenthood v. Casey proves that "liberty" as found in the Fourteenth Amendment does not have any definitional bounds. This means that it cannot be claimed that liberty definitively does not include the right to invest in one's human capital.

The dissents in the Slaughterhouse cases argue that if people are prevented from pursuing the work of their choice this is an improper infringement of their liberty. Chapter One demonstrated that when women are forced to continue pregnancies they wished to terminate, their ability to pursue work of their own choice is inhibited. Slaughterhouse further established that citizens have the fundamental right to "follow any of the ordinary callings of life." Women lose this right when they desire reproductive healthcare but are unable to acquire it.

Allgeyer v. Louisiana proves that "liberty" as found in the Fourteenth Amendment includes the right to pursue any livelihood and the right to contract. *Lochner v. New York* used the right to contract argument and found that the ability of an individual to engage in contracts as

they please is a deeply important right. Lochner established that there are certain economic liberties that belong to the citizens. This reinforces the importance of women having control over their ability to invest in their human capital.

West Coast Hotel v. Parrish emphasizes the importance of laws limiting workers' right to contract not being arbitrary. As previously established, many new abortion restrictions are based on completely arbitrary factors – such as the dimensions of the offices where abortions may be performed.

Next, *Smith v. Texas* establishes the argument for the development of one's human capital. The opinion laid out that the Constitution guarantees citizens the ability to use their body and mind any way that the law permits. Smith establishes that individuals must have the option to use the powers of their mind to their maximum capacity.

Next, the *Plyler v. Doe* decision highlights the importance that the government has consistently placed on education and how lack of education can seriously hinder an individual's ability to provide for themselves. Additionally, Plyler shows that the Equal Protection Clause is intended to ensure that everyone has the same opportunities to use their abilities. These points show the importance and Constitutional necessity of women having unadulterated access to education. Without access to reproductive healthcare, many women lose their ability to get the education they should have.

Meyer v. Nebraska and *Pierce v. Society of the Sisters* take this a step further arguing that not only should people have access but they must have the ability to choose how they wish to develop their human capital. And in order for women to be able to choose how they wish to develop their human capital, they need access to reproductive healthcare. Access is not sufficient

to qualify as liberty – choice is liberty. And women cannot have economic choice without the choice about what they wish to do with their bodies.

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Altogether, the cases which have been discussed here establish that there is precedent for the assertion that American citizens have economic rights and liberties. Chapter One establishes the link between women's access to reproductive healthcare and women's economic mobility. The evidence provided in Chapter One proves that when women cannot plan, delay or space their births or are forced to carry a pregnancy to term that they wished to terminate, women face negative economic repercussions.

If women have a Constitutional right to improve their economic position and invest in their human capital however they choose, any laws that inhibit their ability to do so are a problem. Assuming that the economic right exists, just because a law inhibits a woman from bettering her economic standing does not make the law unconstitutional. However, the state must prove that the law encompasses a "compelling state interest." This is the same standard that is present against the current "right to privacy" standard. Currently, states simply have to prove that the compelling interest of the state is of greater importance than a woman's right to her privacy. However, if the states had to prove their compelling interest against the right to economic liberty, the bar is raised. A woman's right to privacy is about having privacy during the decision-making process. A woman's right to economic liberty is about her economic mobility for the remainder of her life. A state's ability to prove a "compelling state interest" becomes substantially more difficult when they must prove that the state's interest is greater than a woman's ability to invest in herself and the improvement of the circumstances of her life. Laws to restrict a woman's ability to choose what she wants to do with her body are able to emerge when states can prove

that their compelling interest is greater than the interest of the woman. By raising the bar for what states must establish and prove, a woman's right to choose is better protected.

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