

Health Care in the Shadow of the Law: The Impact of Abortion Jurisprudence

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Johanna Schoen, [Abortion After Roe](#) (2015).

The Supreme Court's latest abortion case, *Whole Women's Health v. Cole*, involves a challenge to a Texas law targeting not women seeking abortions but the clinics that provide them. Yet, as [Johanna Schoen's](#) *Abortion After Roe* reminds us, we know little about how abortion regulations affect those who deliver reproductive health services. Schoen carefully documents how the Court's abortion jurisprudence has transformed what goes on in American clinics. While historians and legal scholars have often focused on the effect of the Supreme Court's jurisprudence on access to abortion, Schoen, by focusing on law's impact on abortion providers, tells a far more nuanced story.

Throughout *Abortion After Roe*, Schoen focuses on the experience of providers and patients at independent abortion clinics. While the story of Planned Parenthood and other major abortion providers deserves scholarly attention, Schoen persuasively uses the experiences of independent clinics to understand the complex relationship between feminist politics, potential profit, and legal interference that dictated practice at many American clinics. The vast majority of clinics that opened their doors in the 1970s were independent, and by telling their story, Schoen provides a valuable picture of how the medical practice and business of abortion care developed over the course of several decades in an increasingly hostile climate. Independent clinics also often challenged the strategic priorities of the political pro-choice movement. Their experiences expose the disconnect between the reality of abortion care and the rights won and lost by pro-choice lawyers.

She begins in the 1970s, a forgotten heyday for the business of abortion care. With the release of pent-up demand for legal abortion after the *Roe* decision, entrepreneurs recognized a valuable opportunity. At the same time, feminists frustrated by the apparent sexism of the medical profession pioneered woman-centered forms of care. In describing the founding of the National Abortion Federation (NAF), Schoen sheds light on the difficult partnership between the feminists, physicians, and businessmen creating a new industry. The 1970s also represented a high-water mark for technological and medical innovation in abortion care. Free for the first time from the threat of criminal prosecution, physicians inside and outside the United States developed safer abortion methods.

Schoen shows that it was pro-lifers' focus on "the aesthetic characteristics of fetal research" that initially prompted the courts to cast a long shadow over abortion practice (P. 72.) After investigating the legality of fetal research at area hospitals in the mid-1970s, Boston prosecutors brought manslaughter charges against Dr. Kenneth Edelin for performing an abortion by hysterotomy, a second-trimester procedure similar to a cesarean section. Prosecutors argued that Edelin had killed a viable baby that was still alive when he separated the placenta and would still be alive if Edelin had immediately removed it from the uterus. Edelin's conviction was ultimately overturned on appeal, but the threat of legal intervention spooked abortion providers, many of whom began privileging techniques that would eliminate the risk of a live birth during abortion—the contested issue in Edelin. NAF members and other providers later developed and commonly performed saline abortion, a technique that would all but eliminate the possibility of live birth.

The Edelin episode would set a pattern for the decades to come. Judicial involvement frightened off some of the less-committed providers and entrepreneurs unwilling to grapple with legal risk and political unpopularity. However, the possibility of judicial interference encouraged abortion providers to develop their own best practices and internal regulations, often improving the care patients received.

As Schoen shows, providers and patients were hardly passive victims. In the 1970s, providers became aware that saline abortions were often emotionally exhausting for patients and clinic staff. Providers responded by refining dilation and evacuation (D&E), a safer and less taxing procedure. The rise of D&E shows how providers sometimes successfully created room for experimentation, prioritizing “a female patient’s safety and the wellbeing of patients and staff” (P. 123.)

In the 1980s, with the spread of anti-clinic blockades and violence against abortion providers, the gap between abortion politics and medical care grew. Together with major pro-choice organizations, NAF recognized that the major protests launched by Operation Rescue represented an indispensable opportunity to raise money and rally supporters. Clinic providers argued that lobbyists and lawyers’ fixation on preserving a legal right to abortion took the spotlight off the fear experienced by providers and women braving pro-life picket lines.

Conflict between providers and the pro-choice movement came to a head during the partial-birth abortion debate. Pro-choice attorneys and lobbyists argued that physicians performed D&X only in cases of severe abnormality or a threat to the health of the woman. Independent providers characterized this approach as disingenuous and stigmatizing. Calls for more honesty about partial birth abortion ultimately backfired, further fragmenting the pro-choice community and energizing those intent on banning D&X. Nevertheless, in the wake of the partial-birth abortion wars, providers continued working to create a space for abortion counseling and medical innovation that was not so heavily influenced by constitutional doctrine or social-movement politics.

Schoen’s well-paced social, medical, and legal history makes an important contribution to scholarship on the Court’s abortion jurisprudence. But *Abortion After Roe* is also well worth reading for other reasons. Legal historians have studied the ways in which attorneys shape their clients’ ambitions. Schoen maps out the tangled relationship between providers and the many social-movement members charged with representing them. In Schoen’s story, legal constraints and political pressures inspired providers to develop safer procedures and internal regulations. At the same time, the threat of judicial involvement and political blowback forced providers to abandon certain techniques and tested the relationship between medical professionals and lobbyists, lawyers, and grassroots activists. *Abortion After Roe* suggests that the connection between law and social change is even messier than many current studies suggest

Schoen illuminates a less familiar price paid by medical professionals and patients for the constitutional victory won in *Roe* and the social movement politics that followed it. Over time, those living day-to-day with the practice of abortion would hardly recognize the medical procedure that the Supreme Court constitutionalized in 1973. Thoughtfully weaving together the history of law, politics, and medicine, the lessons offered in *Abortion After Roe* should make a difference to studies of the courts’ role in social change, even beyond the context of reproductive health.

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