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The Aftermath of Dobbs: How the Criminalization of Abortion has Obstructed the Exercise of Bodily Autonomy

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This Blog addresses the topic of bodily autonomy in relation to the criminalization of abortion because everyone should be entitled to the right to make their own choices, especially when it comes to their bodies, and even greater, their selves as a whole. With the recent overturning of Roe v. Wade, the ability to exercise bodily autonomy has never been more obstructed. The Supreme Court has left the nation with the impression that they do not believe women are capable of making decisions about their own bodies or their own futures. Now, it's important to look into what the ripple effects of this decision will be because it will touch every aspect of our society. While bodily autonomy is a common thread that weaves through many discussion topics, this Blog will focus on how the recent criminalization of abortion affects the exercise of bodily autonomy, specifically in the realms of access to healthcare and the effects on women in the carceral system.

DEFINING BODILY AUTONOMY

Bodily autonomy is the right to make decisions about your own body without interference or obstacles. Decisions about your own body include the right to wear certain clothes, the right to wear your hair in certain styles, and the right to make health care choices that you believe are in your best interest. Decisions also extend past the body to having choices about the kind of life and future you want for yourself. The right to bodily autonomy encompasses the right to make your own healthcare decisions as you see fit and the right to feel physically safe in your body, whether that safety looks like wearing a mask to cover your mouth and nose or it looks like fighting against institutions that try to surveil your body without your consent.

Women do not hold as much bodily autonomy as they should because of laws, restrictions, and little to no resources that stand in their way. It's important to note that certain women in our society experience an even greater lack of access to control their own body than others, and this

can be explained by a lack of intersectionality. Coined by Black feminist legal scholar Kimberlé Crenshaw in 1989, intersectionality looks at ways in which racial and gender discrimination overlap. June Eric-Udorie, *Can We All Be Feminists?* xvi-xvii (2018). “Intersectionality highlights the multiple avenues through which racial and gender oppression were experienced so that problems would be easier to discuss and understand. Intersectionality offers us a way to understand how multiple structures – capitalism, heterosexism, patriarchy, white supremacy, and so on – work together to harm women.” *Id.* Generally, women are already marginalized based on their gender. The discrimination women experience becomes more severe when intersectionality comes into play. Women of color are further impacted, and women of color from low-income backgrounds are even more greatly impacted. Further, women of color who come from low-income backgrounds who identify as LGBTQ are the most marginalized because race, gender, and class all converge as multiple oppressive structures that produce very different outcomes for different women. Thus, when we discuss the lack of bodily autonomy women experience, we must note that some women must endure an even greater lack, simply because they exist in the middle of multiple, as opposed to just one, oppressive structures.

BODILY AUTONOMY IS GRANTED THROUGH THE CONSTITUTIONAL RIGHT TO PRIVACY

The lack of bodily autonomy afforded to women and the recent surge in the criminalization of abortion is not only unjust, it is unconstitutional. Women have a constitutionally granted right to privacy, and bodily autonomy falls under the large umbrella of privacy. Bodily autonomy requires privacy to exercise governance over our own bodies, as these are extremely personal decisions that should not require interference from anyone, especially the government.



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The right to privacy is not a new concept, it goes all the way back to the United States Constitution. The Bill of Rights enumerates many different types of guaranteed privacies. The First Amendment, “Congress shall make no law respecting an establishment of religion or

prohibiting the free exercise thereof,” grants the privacy of belief. The Fourth Amendment, “The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated,” grants privacy of your home and person. The Fifth Amendment, “...nor shall any person...be compelled in any criminal case to be a witness against himself,” grants the privacy of personal information so that one doesn’t incriminate themselves. Thus, the right to privacy goes back as early as 1791 and has been continuously enforced and advocated since then. The constitutional right to privacy has been longstanding and has been continuously affirmed throughout history, and the overturning of *Roe* should not change that. Under the constitutional right to privacy is the guarantee of bodily autonomy, as privacy is necessary for making decisions about your own body.

HOW AGE AFFECTS EXERCISE OF BODILY AUTONOMY



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There has never been a time in our country where the bodies of women were not policed. To this day, women fight every day for the basic right of exercising bodily autonomy—making their own decisions about what they do with their bodies without government or parental interference. One of the biggest issues regarding exercising bodily autonomy is the right to a safe abortion. Restrictions on abortions vary from state by state. States like California have designated themselves as “sanctuary states,” deeming that abortions will remain legal and accessible to women no matter the Supreme Court ruling. On the other side of the spectrum, states like Texas have trigger bans on abortions with little to no exceptions and have introduced bounties as an incentive to stop women trying to obtain safe abortions. [In 2021, there were a record number of abortion restrictions introduced and upheld by conservatives](#): 108 restrictions across 19 states

and in the first month after *Roe* was overturned, many abortion clinics have ceased provided care out of fear of prosecution. Age affects access to exercising bodily autonomy, especially when it comes to a minor's ability to access abortion services.

Emily Buss, writer of *The Parental Rights of Minors*, has posed several arguments that explore a minors' rights to obtain safe abortions. In *The Parental Rights of Minors*, [Buss asks why we don't put as many restrictions on minors choosing to be parents as we do on minors choosing to have abortions](#). While this is a valid question to explore, Buss also discusses how choosing to parent as a minor is a detrimental choice for everyone involved, including the immediate family of the minor, extended family, and society as a whole. I agree with Buss in that it doesn't make sense that choosing an abortion has more restrictions than choosing parenthood, a decision that requires the same level of, if not more, maturity than an abortion. However, I don't think the best way to make that argument is to shame the minors that do choose parenthood, which is what Buss does in her writing. The focus should not be on how terrible it is to be a minor parent, but instead how terrible it is to not be able to make the choice of being a parent or not. When we talk about restrictions surrounding abortions, we are talking about the restriction of choice. The argument is not that we should restrict minor parenting as hard as we restrict abortions because minor parenting makes society crumble, but instead that the choice to do either should not be so heavily policed. Buss is shaming the girls that choose minor parenthood, which is the equivalent of shaming the girls that don't – the entire antithesis of her argument.

Minors trying to exercise bodily autonomy through the basic right of a safe abortion is made even more unduly burdensome by the judicial bypass process. [A majority of states in the U.S. require minors to either notify their parents or obtain permission from their parents, or both, before they can get an abortion](#). A way around this overreaching law is to be granted a judicial bypass, which is an order entered by a court that allows the minor the performance of the abortion without notification to and consent of a parent or a guardian. A minor could only be granted a judicial bypass if the court finds there is clear and convincing evidence that the minor is mature and sufficiently well informed to make the decision to have an abortion performed without notification to or consent of a parent or guardian, or the notification and attempt to obtain consent would not be in the best interest of the minor. What appears to be a relieving loophole for minors, is actually a very subjective law that allows judges complete discretion to make decisions about a girl's body. ["Girls who present evidence that the plan they have for their life would be destroyed by a child are considered calculating;](#) girls who present no such evidence of calculation seem to have made a decision on a whim. Sexual histories are combed through. A girl may be quizzed on how she could have arrived at the decision to seek an abortion if she is religious, and pressed on her spiritual commitments." This is a blatant disregard for the United States' claim to the separation of church and state, as judges are openly allowing their own religious beliefs to dictate the lives of others. It is completely up to the judge if they believe that a minor is mature enough to obtain an abortion without parental consent, and the judge can impart whatever bias they so choose into what the meaning of "mature" is. Judges have complete discretion when it comes to the minor's best interest, no matter the case that is made by the minor. Thus, judicial bypass is a predatory law that gives the judge an immense amount of power, allows far too much room for bias, does not follow any standards, and is an insufficient solution to allowing girls to make decisions about their own bodies. Exercising bodily autonomy

does not have a minimum age requirement, and girls under the age of eighteen will have an even harder time with the criminalization of abortion, as the existing processes are already so abysmal.

WHAT THE CRIMINALIZATION OF ABORTION MEANS FOR BODILY AUTONOMY

Criminalizing abortion is a massive hindrance to exercising bodily autonomy because you lose the ability to have full control over your body or the decisions you can make regarding it. Criminalization also poses a risk of being prosecuted for trying to assert control over your own body. Criminalizing abortion has a very damaging ripple effect, and it leaves a lot of uncertainty. What does criminalizing abortion mean for accessing other avenues of healthcare? What are the impacts of the criminalization of abortion for women that are incarcerated? These are the questions that will be explored in this section.

EFFECTS ON HEALTHCARE ACCESS



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The criminalization of abortion will severely impact the entirety of the U.S.'s health care system and the level of access women have to it. The U.S. operates under a health care system that considers pregnancy a “pre-existing condition” that hikes insurance prices up even higher than their astronomically unaffordable amount. Such harsh restrictions on access to abortions will continue to push women, especially women of color and women with lower incomes, further away from obtaining adequate health care. Strict bans on abortions do not stop abortions from happening. Bans force unsafe abortions to take place, leading to women experiencing complications that will lead them to emergency rooms for life saving care, and eventually overloading a healthcare system that is still reeling from the COVID-19 pandemic.

The overturning of *Roe* and subsequent criminalization of abortions will exacerbate racial disparities in healthcare. [More than half the amount of women that obtain abortions are women of color, because women of color are more likely to have limited access to health care, including](#)

[sexual healthcare such as contraception](#). Women of color are also more likely to live in areas that have limited access to comprehensive contraceptive options. Overall, the healthcare system as a whole has a long history of targeting people of color for forced sterilizations, medical experimentation, and discrimination from providers that leads to inattention to conditions that may be life threatening. Forty three percent of the women between the ages of eighteen and forty nine that are living in states where abortions have become illegal with criminal penalty are women of color; the criminalization of abortions will worsen racial disparities in healthcare that are already in existence for women of color.

Women with low to no incomes will also have their access to healthcare severely impacted by the *Dobbs* decision. Access to preventative contraception isn't readily available to all women, and an abortion may be the only form of contraception that a woman has. [The Guttmacher Institute has conducted research on how important access to safe abortions is for women with low income, because it serves as a contraceptive function](#).

Abortion has been found to be an important option, especially for low-income women, as a single abortion was less expensive than ongoing use of the pill. The reasons women give for having an abortion are quite similar to those they give for using contraception; for example, three-quarters of women seeking an abortion say that having a baby would interfere with work, school, or the ability to care for dependents. While contraception while always remain the primary method of ensuring that all births are wanted ones, abortion is an important secondary method of helping women and couples achieve that goal and should be treated as an integral part of comprehensive women's health care. -The Guttmacher Institute

[Women of lower incomes will be forced to incur heavy costs in travel since the Dobbs decision has forced almost fifty abortion clinics to cease providing abortions, at the time of this writing](#). Alabama, Arkansas, Mississippi, Missouri, Oklahoma, South Dakota, and Texas no longer have a single clinic that provides abortions, which means that women would have to take time off work, pay for transportation out of the state, pay for the abortion itself, and pay to come back home, all of which can add up to a hefty bill. Sanctuary states such as California, Washington, and Oregon, have made it abundantly clear that the right of women to obtain abortions in these states is not going anywhere. These states have publicly welcomed out of state women into their safe havens to get the care they need, but realistically, it is the women that can afford the time off, travel expenses, time to recuperate, that will be able to obtain care. The effect of criminalization of abortion on low-income women is incomparable to the women that have enough funds to obtain the care they need.

The criminalization of abortion after the overturning of *Roe* will affect access to healthcare by continuing to overload an already overwhelmed healthcare system, by making racial disparities even greater, and by stripping women with lower incomes of their reproductive healthcare options.

EFFECTS ON WOMEN IN THE CARCERAL SYSTEM



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The effects of the criminalization of abortion will be felt even harder by incarcerated women, who already have such limited access to reproductive healthcare. Many state and federal courts have held that being inside of the carceral system doesn't negate the constitutional right to a safe abortion, but prisons often undermine that right. Even when it comes to simply providing information regarding options to pregnant women, prison staff fall severely short of adequate. [“About one third of states have clear policies directing prison staff to inform women of all their reproductive options, including their right to abortion.](#) Another third use conditional wording that suggests prison staff will only discuss abortion if a woman brings it up herself.” Because the policies that require incarcerated women be made aware of their abortion options are vague and overbroad, it raises the possibility that prisons could refer women to crisis pregnancy centers that convince them to not have abortions instead of actually getting women the reproductive care they chose. Additionally, without prison staff providing clear information about abortions, including where and how to obtain one, incarcerated women are left completely in the dark, as outside resources of information are controlled by prison staff. Even if a woman is actually able to find information regarding obtaining a safe abortion inside of prison, the hurdle doesn't end there. [“Four out of five state prison systems make women pay for abortions – an even worse ratio than state Medicaid programs.”](#) The average cost of an abortion at ten weeks gestation is \$451, a significant sum for any low-income woman. This amount represents an even greater sum for women in prison, because they have no opportunity to earn that much money and must rely on the generosity of people outside. At least eleven states impose additional costs on women – from gas, tolls, and other transportation fees to the wages of the officers who take them to their appointments. Because prisons tend to be sited in rural areas and most abortion services are in urban areas, the cost of transportation and staff time is a significant barrier to abortion. Nearly \$500 for an emergency medical procedure would be a financial burden for almost any woman, but for an incarcerated woman that has no income, and little to no access to money on the outside, it makes the promise of the delivery of reproductive rights to incarcerated women

completely empty. Add in mass criminalization of obtaining an abortion, and you have a large group of women that are denied basic health care.

The handful of states that do not have any written policies on the criminalization of abortions for incarcerated women are not necessarily better serving their citizens. Without set policies, prison officials and individual staff members have the discretion to do more than just impose their view on incarcerated women; prison officials can go so far as to deny abortion rights to women simply because they themselves are anti-choice. Nell Bernstein, *Burning Down the House* (2014). Now that abortion has become illegal in many states, this will be even easier to do. Similar to the wide discretion that judges utilize for judicial bypass cases, this is an extremely harmful exercise of power that further magnifies the many hurdles that incarcerated women already have to go through to obtain safe abortions. Although women outside of the carceral system do not have prison officials restricting their resources or making decisions about bodily autonomy for them, when it comes to obtaining an abortion, they are not much better off. Access to reproductive healthcare is always saddled with many hoops to jump through, with abortion access being the most difficult, and now in some states, completely blocked. For incarcerated women, society has often deemed them exponentially unfit or unworthy to make decisions, even if it's in regard to what they do with and to their own bodies. Thus, attempting to obtain a safe abortion, or even information about resources regarding safe abortions, while incarcerated, is an unduly burdensome situation to be in. It is high time that women, incarcerated or not, be considered capable of making their own choices about their bodies, and that those choices have the proper avenues to be enforced instead of further criminalized.

CONCLUSION



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Abortions and reproductive healthcare have always been contentious topics to discuss. For decades, people have allowed personal beliefs, instead of science and objectivity, to drive the creation of laws that heavily impair a woman's ability to make choices about her own body, life, and future. For the women that exist at the intersection of multiple oppressive structures, the criminalization of abortion isn't very different than when *Roe* was upheld, as they have always had limited access to exercising bodily autonomy. But their limited access has now dropped to almost none after the Supreme Court decision, and the effects of that decision won't be felt by just certain groups of individuals. The questions explored in this writing are just a few of the slew of queries that have come about since *Roe* has been overturned and many states have banned and criminalized abortions. At the time of this writing, it has only been a little over two months since the Supreme Court made the sweeping decision to strike down access to safe abortions and many questions have come about, most importantly being what fabric of society will be targeted next? How does the criminalization of abortion affect housing, financial aid for education, voting rights? Are these all going to be stripped away from women that have exercised their right to bodily autonomy in seeking an abortion? Is the *Dobbs* decision just the first step in a long overhaul of systematic repeals of rights and protections? These questions may not have answers quite yet, but as discussed, all these rights have bodily autonomy at their core. The fight to protect the right for everyone to exercise bodily autonomy continues.

Written by Sonia Bakshi