

From Roe to Dobbs

HILR Spring Semester 2023

Longer Description of the Course

The majority opinion in *Dobbs v. Jackson Women's Health*, which overruled *Roe v. Wade*, has been heavily criticized with some commentators predicting that it will come to be seen as one of the worst Supreme Court decisions of all time. We'll consider many of the cases leading up to the decision and focus extensively on three topics concerning constitutional interpretation which are at the heart of the criticism: originalism, substantive due process, and *stare decisis*.

We'll read the *Dobbs* majority, concurring and dissenting opinions carefully to understand the structure of the arguments each makes. This will require a lot of background so we'll read *Roe* (1973) and its successor *Planned Parenthood v. Casey* (1992) to understand their arguments and, in particular, the shift in jurisprudence which occurred in *Casey*.

Roe was the culmination of a long line of cases which established rights which are not mentioned explicitly in the Constitution and we'll survey those cases to understand the developing doctrine of a right of privacy within certain spheres.

If this sounds like law school, in some ways it is. You can expect to develop an ability to closely analyze and criticize an argument and other similar skills. I will take great care to provide clear explanations of the legal jargon and background so that non-lawyers will not be at a disadvantage. But in the end, an understanding of our subject requires rigor and attention. This may require more time in preparation for our class discussions than you're accustomed to and may well exceed the three hours/week stated in the catalog.

A useful exercise to test your enthusiasm would be to read the eight-page summary of the majority opinion prepared by the Court's Reporter of Decisions called the [Syllabus](#). Don't be concerned about the details which are unfamiliar. Ask yourself whether you'd enjoy learning, for example, what the "liberty" protected by the Fourteenth Amendment is ("nor shall any State deprive any person of life, liberty or property without due process of law"). If so, please join us!

Readings: Please note that there is in fact a very recent book which we will read and which you should gain access to: *Worse Than Nothing: The Dangerous Fallacy of Originalism* by Erwin Chemerinsky, Dean of the law school at Berkeley.

A note about style:

Every study group has different expectations of SGMs. Because I want no one to be disappointed, let me spell out what sort of experience you can expect. You'll be expected to complete the assigned readings before class so that you can actively participate in the discussion. The emphasis will be on precise analysis of the cases we'll have read and descriptions of the relationships among them.

My habit is to prepare a set of slides containing the questions we'll discuss and then limit discussion to the question being projected at the moment. There will of course be designated times for questions or comments on any topic. I'm grateful at any time to hear suggestions for how the study group could be improved and hope that you won't hesitate to tell me your opinions.