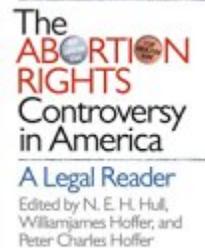


# H-Net Reviews

in the Humanities & Social Sciences

N. E. H. Hull, Williamjames Hoffer, Peter Charles Hoffer, eds. *The Abortion Rights Controversy in America: A Legal Reader*. Chapel Hill: University of North Carolina Press, 2004. viii + 343 pp. \$27.50 (paper), ISBN 978-0-8078-5535-5; \$59.95 (cloth), ISBN 978-0-8078-2873-1.

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## A Delicate Balance

Finding neutral ground on abortion is impossible. The appropriate terminology is normatively loaded. Are opponents of that practice “pro-life” or “anti-abortion?” Is the procedure directed at a “fetus,” the “unborn,” or a “child?” Pedagogical efforts to present representative arguments on both sides of the issue do not escape the problem of philosophical choice. Given scarce classroom time or manuscript space, which of the innumerable defenses of *Roe v. Wade* published in law reviews and presses over the past three decades merit presentation? If limited to a single reading, should the essay criticizing *Roe* take the position that the unborn have a Fourteenth Amendment right to life or merely that states may choose how to balance the various interests at stake in the abortion debate? How scholars make these decisions inevitably reflects their beliefs on the substantive issues at stake in contemporary moral and jurisprudential debates.

*The Abortion Rights Controversy in America: A Legal Reader* does a good job navigating the philosophical shoals that challenge any effort to present a balanced view on reproductive freedoms in the United States. The editors, N. E. H. Hull, Williamjames Hoffer, and Peter Charles Hoffer, provide numerous documents covering the history of abortion in the United States, the main constitutional arguments for and against legal abortion, the important judicial opinions on legal abortion, and the political struggles underlying those judicial opinions. The selections are relatively comprehensive and accessible to

the non-expert. The first chapters present materials on the history of legal abortion. The middle chapters offer readings on the contemporary legal debate, with particular emphasis on the legal and political background of *Roe v. Wade* (1973) and *Webster v. Reproductive Health Services* (1989). The last chapters discuss such regulatory issues as partial birth abortions, the gag rule, and access to abortion clinics. The *Reader* includes substantial excerpts from all important Supreme Court opinions on abortion policy, selections from the legal briefs, and a good range of opinion on the constitutional merits of legal abortion. The editing is quite helpful. Arguments flow even when sections of opinions have been cut. The result is a fine text for undergraduate classroom use, undergraduate research, or general public consumption.

Hull, Hoffer, and Hoffer do a particularly good job providing material on the historical, political, and cultural background of the abortion controversy. Readings highlight the medical campaign against abortion responsible for the legal bans enacted during the nineteenth century, and the cult of motherhood that fostered pro-natalist policies during the first third of the twentieth century. The volume rescues from potential obscurity such gems as Roswell Johnson’s polemic against women’s colleges on the ground that education limits the birth rates of “superior” women (p. 45). Selections from the oral arguments during *Roe* emphasize the concern many Supreme Court justices had with the constitutional status of the fetus (pp. 138-144). Another selection from

oral argument raises questions whether the decision in *Roe* was partly a consequence of an inept presentation by the attorney for Texas. Beginning a presentation before the Supreme Court with such sexist banter as “It’s an old joke, but when a man argues against two beautiful ladies like this, they are going to have the last word” (p. 133) may not have been the most appropriate framing of a constitutional argument, even in 1972.

The commentary in *The Abortion Rights Controversy* is sometimes mistaken or misleading. The editors claim that Justice Sandra Day O’Connor in *Rust v. Sullivan* (1991) voted to declare unconstitutional an administrative regulation prohibiting doctors at institutions receiving federal funds from advising their patients about abortion (p. 292). In fact, Justice O’Connor’s opinion interpreted a congressional statute in ways that avoided the first amendment issue. More seriously, the first chapter draws a sharp distinction between the liberal orientation of the early women’s movement and the more statist ambitions of the movement for public schools which the editors then connect to the demands for bans on abortion. Nowhere does the text acknowledge that many prominent proponents of women’s suffrage during the nineteenth century favored bans on abortion, believing that men tended to coerce women in order to avoid responsibility for their biological children. Many prominent proponents of women’s suffrage in the nineteenth century supported government reform, and such movements as temperance and public schooling. A common argument for women’s rights was that women helped civilize the public sphere (and a common argument against female suffrage was that voting would make women as uncivilized as men). Many early American suffragettes relied on more liberal ideas, but *The Abortion Rights Controversy* is wrong to suggest that abortion issues in the nineteenth century were structured by a “debate between those who favored ‘liberal’ reform and those who preferred reform ordered by government” (p. 13).

Whether pro-life readers will agree that the authors “take no position on any of” the issues discussed in *The Abortion Rights Controversy* is doubtful. The history in

the first two chapters is largely the history presented by the brief of legal historians in *Webster*, a brief that has been criticized by opponents of abortion and one of its signatories. The four legal opinions presented in the first chapter all reverse convictions for performing or advertising abortions, even though the editors recognize that many convictions for abortion were sustained by lower courts. The real enforcement problem, Hull, Hoffer, and Hoffer correctly note, involved problems of prosecution and the unwillingness of juries to convict even when presented with clear statutory violations. Some language choices reflect a clear pro-choice bias. When discussing laws and injunctions concerned with demonstrations at abortion clinics, the text asks, “could local, state, and federal governments regulate anti-abortion protests” (p. 291). When the issue shifts to the doctor-patient relationship, the editors query “could the federal government muzzle doctors and health care professionals who wanted to counsel women about abortion” (p. 291). Persons with a different political perspective might think injunctions “muzzle” protest while the policy at issue in *Rust* merely regulates doctors.

These issues are largely minor annoyances in a fine collection. Hull, Hoffer, and Hoffer offer readers a wide array of information on the abortion controversy. They might have been a bit more open about their normative preferences, acknowledging that scholars, no more than politicians, can find fully neutral ground on abortion. The best we can do is present the evidence on which we form our opinions. Fortunately, *The Abortion Controversy in America* presents much relevant evidence that readers can use to form their own opinions. If the headnote on abortion protests might be rephrased, that sin is more than expiated by the lengthy excerpt from Randall Terry justifying Operation Rescue practices and demonstrations. How readers feel about these demonstrations is likely to be more influenced by the selections than by a few phrases in the headnotes. All choices in abortion politics and scholarship are controversial, but the choices Hull, Hoffer, and Hoffer made have resulted in an important educational tool.

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