ROE V. WADE: A FAULTY LEGAL DECISION

Many lawyers, whether personally pro-life or pro-choice, believe that from a legal standpoint, Roe v. Wade was poorly decided. Quotes from some of their critiques follow:

**Justice William Rehnquist:**

“I have difficulty in concluding, as the Court does, that the right of ‘privacy’ is involved in this case. ... The fact that a majority of the States, reflecting after all the majority sentiment in those States, have had restrictions on abortions for at least a century seems to me as strong an indication there is that the asserted right to an abortion is not ‘so rooted in the traditions and conscience of our people as to be ranked as fundamental.’ ... To reach its result the Court necessarily has had to find within the scope of the Fourteenth Amendment a right that was apparently completely unknown to the drafters of the Amendment.”

**Justice Byron White.**

“I find nothing in the language or history of the Constitution to support the Court’s judgment. The Court simply fashions and announces a new constitutional right for pregnant mothers and, with scarcely any reason or authority for its action, invests that right with sufficient substance to override most existing state abortion statutes.”

**Archibald Cox, Esq.:**

The Justices “sweep away established law supported by the moral themes dominant in American life for more than a century...” They “read into the generalities of the Due Process Clause of the Fourteenth Amendment a new ‘fundamental right’ [the right to privacy] not remotely suggested by the words.”

**Robert M. Byrn, Esq.:**

“Upon analysis, it becomes evident that the structure of the Court’s opinion in Roe v. Wade is defective.”

**Robert A. Destro, Esq.:**

“The reasoning of the Court has been examined and found to be wanting legally, historically, scientifically, and philosophically.”

**John D. Gorby, J.D.:**

“... the fetus ... never enjoyed his ‘day in court.’ The Supreme Court had every opportunity to hear arguments [that] the fetus was a ‘constitutional person’ [whose life was therefore protected]. However, the Court chose not to take advantage of this occasion.”

**Justice Sandra Day O’Connor.:**

“... there is no justification in law or logic for the trimester framework adopted in Roe v. Wade ...”

**Justice Ruth Bader Ginsburg:**

“Women were lobbying around [the abortion] issue. The Supreme Court stopped all that by deeming every law – even the most liberal – as unconstitutional. That seemed to me not the way courts generally work.”

“Roe v. Wade ... ventured too far in the change it ordered and presented an incomplete justification for its action.”
References


For additional critiques of the Supreme Court’s Roe v. Wade decision, see the following: