
In his dissent in *Webster v. Reproductive Health Services* in 1989, Justice Harry Blackmun called abortion “the most politically divisive domestic legal issue of our time.”¹ Over two decades later, his observation retains its cogency. In 2005, state legislators enacted 34 abortion restrictions.² Only six years in later in 2011, this number almost tripled: states passed 92 provisions limiting access to abortion services.³ That same year included Congressional efforts to defund Planned Parenthood, largely because its clinics provide abortions. Speaking on the Senate floor, Republican Jon Kyl of Arizona proclaimed, “If you want an abortion, you go to Planned Parenthood, and that’s well over 90% of what Planned Parenthood does.”⁴ Kyl later recanted, given that the organization, in fact, only spends three percent of its budget on abortion services.⁵ Debate became so heated on the House floor that Representatives Gwen Moore (D-WI) and Jackie Speier (D-CA) felt compelled to share their personal experiences with unplanned pregnancy and abortion. Moore told of her first pregnancy, unplanned, at age 18.⁶ “I just couldn’t resist letting [the Republicans] know that they didn’t know what the hell they were talking about,” Moore explained.⁷ Upon hearing Republican Chris Smith of New Jersey read a particularly grisly description of a second-trimester abortion, Speier felt compelled to respond. “[T]hat procedure that you just talked about was a procedure that I endured . . . . But for you to stand on this floor and to suggest as you have that somehow this is a procedure that is either welcome or done cavalierly or done without any thought is preposterous,” she said.⁸ A year later, the Susan G. Komen Foundation’s decision to cut off funding to Planned Parenthood sparked yet

³ *Id.*
⁵ *Id.*
⁷ *Id.*
⁸ *Id.*

Abortion as a source of cultural, political, and legal conflict is not going away any time soon. In *Ourselves Unborn: A History of the Fetus in Modern America*, historian Sara Dubow sheds light on why.

In *Ourselves Unborn*, Dubow uses the fetus as a lens through which to evaluate American history. She seeks to prove how the evolution of American understandings and perspectives on the fetus have been intimately intertwined with major developments in political, legal, cultural, and scientific history from the late nineteenth century to the early years of the twenty-first century. Recognizing the multiplicity of ways in which Americans view, understand, and treat the fetus, Dubow draws on a similarly diverse set of sources: from medical textbooks to courtroom transcripts and popular media to individual histories. State and federal legislation and court cases are set against a backdrop of World’s Fairs, busing controversies, economic depressions, and world wars. No one category of sources dominates her analysis. Her wide array of sources reflects the multiplicity of “fetal meanings” that she argues circulate throughout American culture and politics.

Medical understandings and legal treatment of the fetus, Dubow argues, are about more than scientific discovery or reproductive rights. Rather, Americans have used the fetus as a blank slate upon which contemporary anxieties, assumptions, and aspirations can be projected. Dubow contends that the constantly changing discourses about and meanings of the fetus have consistently been “a window into anxieties about race, gender, and motherhood; sometimes a projection of our beliefs about the relative authority of religion, science or personal experience; and sometimes a proxy for seemingly unrelated issues like immigration, the Cold War, feminism, or liberalism.” (p. 9)

Dubow builds on scholarship from several fields. Political and legal scholars have typically delineated the history of the fetus through major precedent-setting court cases and federal legislation (p. 4). According to this view, courts and legislatures play the primary role in shaping the meaning of the fetus. Such narratives revolve around cases challenging the individual identities of the fetus and its mother, the control a woman has over the fate of a pregnancy, and the balancing of maternal and fetal rights. Medical historians extend their analysis as far back as Aristotle’s theories on human reproduction through

developments in embryology, obstetrics, fertility, and birth control technologies (p. 5). Feminist scholars attempt to shed light on “the political and ideological motives behind the transformation of the maternal-fetal relationship from one experienced and defined by the pregnant woman to one interpreted and regulated by laws and physicians.” (p. 5) This analysis is manifest in Joan Scott’s inquiry: what is the relationship between women and the power of the state? Historical scholarship, meanwhile, examines abortion as a lens through which to understand women and gender roles in society. Religious and cultural critics, sociologists, and anthropologists embrace yet more interpretations (p. 5). Each method not only identifies different historical turning points, but emphasizes different historical actors, including scientists, judges, legislators, or the women themselves (p. 6). Dubow’s interdisciplinary approach draws on these approaches while redirecting the focus to the fetus itself.

CHAPTER 1: DISCOVERING FETAL LIFE, 1870s-1920s

Dubow’s first chapter examines the scientific and medical advancements that took place from 1870-1920, the period during which “embryology became a modern science, obstetrics became a profession, abortion became a crime, birth control became a movement, eugenics became a cause, and prenatal care became a policy.” (p. 7) With the onset of the Industrial Revolution, the immigrant population swelled, new technologies took shape, and new professions emerged. Progressive Era reformers, Dubow contends, looked to the fetus in their broader search for order.

Dubow identifies key categories of fetal discourse that each reflected an evolving understanding of conception. The introduction of the microscope and the emergence of embryology, for example, brought new insight into human reproduction (p. 12). For the first time, medical textbooks reported that fetal life began not at “quickening,” when the woman could feel the fetus move, but at or before conception (p. 18). Building on this growing discourse, a number of physicians began advocating for the criminalization of abortion—both to

establish their own professionalism and to undermine the authority of women to make decisions about their pregnancies (p. 16). Meanwhile, threatened by the influx of immigrants and the growing Catholic population, white Protestant men sought to criminalize abortion out of fear that their own wives would stop having children (p. 20). Connecting increased rates of abortion with “the precarious state of the racial and gendered order of Victorian America,” both Protestant men and anti-abortion physicians exploited nativist anxieties and eugenic theories of race suicide (p. 20). Horatio Storer, the leader of the American Medical Association’s Committee on Criminal Abortion, galvanized the effort (p. 16). “Look westward,” he explained;

The great territories of the far West, just opening to civilization . . . offer homes for countless millions yet unborn. Shall they be filled by our own children or by those of aliens? . . . This is a question our women must answer. Upon their loins depends the future destiny of our nation. (p. 21)

Another physician echoed these concerns when he posited that the high rate of abortion among native-born American women would mean “the Puritanic blood of ’76 [would] be but sparingly represented in the approaching centenary.” (p. 21) By intertwining “women’s reproductive obligations to the nation’s manifest destiny,” these early activists made the fetus a symbol of maternal responsibility, cultural survival, and the future of the nation and the “white race.” (p. 21) Dubow notes that even those doctors who challenged such anti-abortion language still employed the same rhetoric of eugenics to support abortion (p. 23). Just as Storer opposed abortion for reducing the birthrate of “desirable” babies, physicians such as Dr. William J. Robinson, an early birth control activist, saw abortion as a means of slowing the birthrates of “less desirable” babies (p. 23).

While every state passed legislation criminalizing abortion, Dubow cites the Massachusetts Supreme Court’s 1884 ruling in Dietrich v. Inhabitants of Northampton14 as proof that lawyers and judges maintained a different perspective from the medical profession (p. 22). Holding that a fetus was a part of the mother and thus incapable of bringing a tort action for in utero injuries, the Massachusetts Supreme Court insisted on the indivisibility of the fetus and mother (p. 23). The legal community aside, Dubow argues that new fetal discourses that emerged regarding abortion, eugenics, prenatal culture, and euthenics each used the fetus as a way to express themes of the Progressive Era: “scientific racism, the regulatory state, and professionalization.” (p. 36)

CHAPTER 2: INTERPRETING FETAL BODIES, 1930s-1970s

While the first chapter addressed the initial discovery of fetal life and the subsequent ways interest groups appropriated the fetus, Dubow’s second chapter examines the ways in which fetal images continued to serve economic, political,
and cultural imperatives. The 1933 Columbian Exposition afforded visitors the opportunity to view actual fetal specimens on display (p. 39). Americans increasingly flocked to both carnivals and museums to examine fetal bodies in person (pp. 38-66). Science emerged as the driving cultural force behind this change and emerging tort law doctrines reflected the growing respect paid to scientific authority (p. 54). For example, sixty years after the Dietrich decision explicitly denied the personhood of the fetus, the D.C. District Court, in Bonbrest v. Kottz, rejected that characterization, holding that a child is considered human from the moment of conception and establishing, for the first time, that a child could recover damages for harms incurred while a viable fetus in utero (p. 52). Dubow cites contemporaneous law journals as evidence of the legal community’s acceptance of the subordination of precedent to science (p. 54). The Nebraska Law Review, for example, lauded the Bonbrest decision, arguing, “a system of law that disregards scientific advancements cannot presume to be practical.” (p. 54) In 1949, the Supreme Court of Minnesota held viability as the legal standard for recognizing fetal life. The law now treated a fetus as an independent life and a person from the moment it was “determined to have the capacity to live separately from the mother.” (p. 56) (emphasis added) By 1960, eighteen states had awarded damages for prenatal injury and death (p. 55). The 1953 decoding of DNA also influenced the increasing focus paid to the moment of conception (p. 58). This new “understanding that the ‘secret of life’ resided in DNA meant that one’s identity was determined primarily at the moment of fertilization between egg and sperm.” (p. 58) The law reflected such emerging scientific knowledge by identifying conception—not viability—as a “more biologically sound standard for personhood.” (p. 58)

Dubow locates the shift from attributing personhood at conception, rather than viability, in the Cold War context in which it took place (p. 58). Protection of the fetus, she suggests, was just one articulation of the American commitment to individuality and personal rights (p. 57). Here, Dubow builds on a model previously utilized by historian Mary Dudziak. In Cold War, Civil Rights, Dudziak argues that “domestic racism and civil rights protest led to international criticism of the U.S. government.” As the Federal Government claimed to be fighting communism for the sake of preserving liberty and democracy, such negative attention compelled federal efforts at civil rights reform, “in order to make credible the government’s argument about race and democracy.” Dubow makes an analogous argument, proposing that the same rights rhetoric was appropriated to suggest that a failure to recognize the independence of fetal life “would similarly compromise the country’s commitment to democracy.” (p. 57) To support this proposition, Dubow cites such child development experts as Dr.
Benjamin Spock, who promoted the idea that the mother-child relationship was “democratic, not despotic.” (pp. 57-58) Although such experts did advocate that democracy was a way of life that began “at the beginning,” Dubow’s argument loses some credibility in light of how many westernized nations legalized abortion during that period.19

Dubow’s work fits into a broader body of historiography on the political and social construction of motherhood. Historians have, for example, traced the political, cultural, and legal roles inscribed in motherhood to the early republic.20 To be sure, Dubow acknowledges that she is contributing to, and not creating, this field of historiography (p. 51). The significance of the Cold War family has also received attention from other academics. Just as historian Elaine Tyler May explained, for instance, the home was seen to be “a metaphor for the cold war on the home front,” where “dangerous social forces of the new age might be tamed,” Dubow suggests that the fetus similarly reflected anxieties about the increasingly tumultuous Cold War.21 While the fetus and the family both served psychological and political objectives, Dubow misses the opportunity to highlight why the fetus was different or particularly effective compared to those other appropriations of domestic symbolism. In other words, she fails to address what we can learn from the history of the fetus that cannot be found elsewhere.

CHAPTER 3: DEFINING FETAL PERSONHOOD, 1973-1976

By the late 1960s, these conflicting views on the status of the fetus appropriated the personalities of the various social movements that emerged in that era. In her third chapter, Dubow explores the Supreme Court’s ruling in Roe v. Wade,22 and the subsequent conservative backlash, as evidence of the increasingly contentious politics of race, the political downfall of New Deal liberalism, and the rising dominance of New Right conservatism (pp. 67-111).


Dubow pays little attention to the *Roe* ruling itself, an understandable decision given the vast amount of scholarship on the case already. Instead, she focuses on local and federal anti-abortion responses, using Boston as a case study (p. 68). Beginning with the publication of a controversial fetal research study that took place in Boston and continuing through the local trial and conviction of an African American doctor for providing a surgical abortion, Dubow delineates the ways in which pro-life politicians and activists used the fetus as a rhetorical device to resist rapid social change (p. 67). National debate over “fetal life, fetal personhood, and fetal rights,” she argues, “reflected a backlash against second-wave feminism focused on abortion and the Equal Rights Amendment; highlighted tensions of race, class, and ethnicity; and exploited growing concerns about the unchecked authority of physicians and scientists.” (p. 67)

Just months after *Roe*, the *New England Journal of Medicine* (NEJM) published an article on a study funded by the National Institutes of Health (NIH) and conducted at the Department of Obstetrics and Gynecology at Boston City Hospital (BCH) (p. 69). The researchers conducting the study examined tissue from aborted fetuses as part of an effort to develop antibiotics for pregnant women (p. 69). Local pro-life groups, churches, and the Boston Archdiocese attacked the study (pp. 68-72). Local conservative legislators also capitalized on the controversy (p. 68). Dubow cites the efforts of Boston City Councilor Alpert “Dapper” O’Neil to reflect how abortion politics became closely linked with other core conservative issues (pp. 68, 71-72). Following the study’s publication, O’Neil, who had long “represented the antibusing interests on the city council,” held a series of hearings into allegations of doctors “performing abortions just to get their hands on the fetuses” and researchers “cutting off fetuses’ heads and keeping blood circulating through their bodies.” (pp. 70, 72) Few doctors attended the hearings, which were dominated by local pro-life groups and the Catholic Church (p. 72). The doctors, who believed the credibility of the Boston medical community would end the debate, “misread a changing political culture, in which professional expertise was being displaced by personal testimony, and in which class tensions in Boston were expressed as antielitism.” (p. 72) Meanwhile, the pro-life movement, at “the vanguard of that cultural shift,” began appealing to antielitism to galvanize local support, learning along the way “that grassroots power wielded through public protest and moral authority could trump Harvard credentials.” (p. 72) Following the hearings, the District Attorney brought charges against several BCH doctors (p. 74). BCH suspended construction on a planned outpatient abortion clinic and banned the use of fetal tissue in research (pp. 74-75). The role of the NIH in the study gave pro-life legislators the opportunity to bring the Boston debate to Congress and, in 1974, President Nixon signed a law that placed a temporary moratorium on all fetal research (p. 78).

Dubow spends the latter portion of the chapter on the 1975 trial and conviction of the first African American Chief Resident of BCH for manslaughter following a surgical abortion (pp. 79-111). Drawing on court
transcripts and local newspaper coverage, Dubow views the trial as a microcosm
of some of the broader social conflict unfolding outside the courtroom (pp. 67-
68, 105-106). At the same time that Roe prompted large swaths of Boston’s large
Catholic population to mobilize against abortion, the city was also in the midst of
a massive political, legal, and social battle over busing (p. 71). Dubow finds a
direct correlation between pro-life and anti-busing sentiments, noting a number
of legislators, politicians, religious figures, and grassroots activists who
mobilized behind both causes (pp. 72-73, 106-109). Dubow cites local
newspaper coverage as a further indication that these conflicts reflected Irish-
Catholic struggles to maintain political and cultural dominance in the
increasingly diverse and expanding city (p. 105). Whereas some opposed
abortion and others fought busing, this community used both efforts to express a
new kind of populist politics, one that reinforced their cultural hegemony (p.
108). Even former Nixon speechwriter and conservative columnist William
Safire acknowledged as much, concluding, “the most pervasive connection
between [the busing and pro-life movements] is the resistance of most people at
the local level to rapid social change demanded at the national level.” (p. 108)
Dubow concludes by arguing that the perceived equivalence between fetuses and
babies, prominent in the discourse of the period, fueled later “efforts to regulate,
legislate, and litigate expectant women’s obligations and responsibilities toward
fetuses in contexts other than abortion,” such as their use of alcohol or drugs
during a pregnancy (p. 111). Grassroots activists, social commentators, and
politicians debated the personal choices of pregnant women, from their jobs that
involved exposure to hazardous chemicals to their refusal to consent to medical
treatment and their use of drugs or alcohol (pp. 112-115).

Missing from Dubow’s analysis is a discussion of the evolving religious
views of the fetus. The differing approaches to abortion by Catholics and
Evangelicals remain ripe for analysis. Scholars have paid increasing attention to
the ways in which conservative political operatives deliberately reframed the
abortion debate to draw fundamentalist Protestants away from the Democratic
Party. The early predominance of the Catholic Church in the anti-abortion
movement had effectively repelled Evangelical involvement in the issue. Only
when abortion was reframed from a religious issue to one indicative of the
dangers of feminism and the breakdown of traditional gender roles did
Evangelicals join the cause. The religious contours of this political realignment
would add another layer to Dubow’s already richly textured analysis.

23. ROBERT POST & REVA SIEGEL, Roe Rage: Democratic Constitutionalism and Backlash, 42
HARV. C.R.-C.L. L. REV. 373, 419-20 (2007) (discussing how evangelicals joined the anti-
abortion movement in the late 1970s and early 1980s).
24. Id. at 44, 46.
25. GREENHOUSE & SIEGEL, supra note 10, at 257.
OURSELVES UNBORN


The final two chapters address the emergent attention to fetal rights and fetal pain in recent history. By the 1970s, Americans’ views of the fetus reflected a “frontier anxiety,” stemming from growing economic concerns (p. 113). Just as it became increasingly clear that postwar economic prosperity could not expand indefinitely, rights at every level were reconceptualized as fixed commodities (p. 113). Dubow argues those “displaced, discomfited, and dismayed by the social, cultural, political, and economic changes . . . fought back in the name of ‘fetal rights.’” (p. 113) The rights of women were sacrificed in the process.

Dubow views such developments as referenda on the feminist movement and the Equal Rights Amendment, citing, for example, the “fetal protection policies” many prominent corporations implemented (p. 120). Such policies prohibited all women—even those who were not pregnant and did not plan to become pregnant—from working in jobs that exposed them to chemicals that could harm a fetus (p. 121). Growing in popularity during the recession, the policies typically affected women in high-paying jobs traditionally held by men (p. 121). By 1979, at least 15% of Fortune 500 companies had implemented such policies; ten years later, 20% of American chemical and electronic firms had similarly restricted women’s role in the workplace, citing potential reproductive harms (p. 121). Dubow points out that those same corporations never implemented such policies on unskilled, low-paying jobs typically held by poor women, even if they were exposed to the same hazardous chemicals (p. 132). Corporations were able to delimit the employment and reproductive rights of women in the name of protecting the fetus from the purportedly irresponsible and selfish decision of mothers to hold such dangerous jobs (pp. 121-135). The Supreme Court put an end to these “fetal protection policies” in United Auto Workers v. Johnson Controls, Inc.26 While the Court eventually held such policies unconstitutional, doctors, judges, and legislators increasingly relied on court orders to coerce unconsenting women with cesarean sections and blood transfusions (pp. 114-115, 117, 121).27 Dubow cites these developments as evidence of the ways in which the rights of women became subordinated to those of fetuses (p. 114).

Several states began prosecuting pregnant women who tested positive for drugs, which further called women’s rationality into question and presupposed that doctors and judges were better equipped than pregnant women to make decisions regarding the health of the fetus (pp. 116, 118). The Republican Party consistently exploited the “crack baby” epidemic, stressing the vulnerability of the fetus as a way to indict individual mothers for society’s cultural, economic,

27. In 1990, the D.C. Court of Appeals became the highest court to rule against forced cesarean sections. In re A.C., 573 A.2d 1235 (D.C. 1990).
and national security concerns (p. 137). Dubow concludes her fourth chapter with the contention that such political and legal phenomena were part of a larger political narrative that blamed social problems on individuals, especially the poor (p. 152). This strategy, she suggests, ignored the structural forces causing poverty, inequality, and addiction (p. 152). “The phenomenon of ‘fetal rights,’” Dubow writes, “can be understood as a referendum on the weakened liberalism of the late twentieth century.” (p. 152)

Dubow uses her final chapter to explore the ways in which the fetus has been used as a vehicle to further political and social agendas in recent years. In the 1980s, conservatives justified restricting abortion on the ground that the procedure traumatized women (pp. 153-154). They further expanded on the notion of fetal rights by suggesting that fetal pain justified restrictions on abortion laws, even though it has yet to be medically or scientifically proven that a fetus can feel pain in the period of development during which abortion is legal (p. 153). New legislation and court rulings collectively reflect “scientifically suspect” assumptions that abortions are “dangerous and damaging to women” and that such restrictions were meant to protect both the woman and the fetus (pp. 153, 162). In response, the mainstream medical profession persists, for example, publishing research debunking the concept of post-abortion trauma (p. 163). Like the forces that pushed for the criminalization of abortion in the late nineteenth century, nativist fears following the 9/11 attacks, economic recession, and immigration concerns have informed the latest manifestations of anti-abortion activism (p. 183).

It is here that Dubow departs from her otherwise seemingly objective treatment of the material. Using a much more overt feminist analytical framework to examine the relevant court cases of the period, Dubow almost unequivocally condemns the rulings (pp. 164-183). She rejects the opposition to partial birth abortion as “never about the saving of unborn life.” (p. 183) Dubow effectively shows how such efforts were attempts to enforce hetero-normative gender roles and “undermine the politics of 1960s liberalism.” (p. 164) By viewing rhetorical shifts on the right solely within the context of the historical narrative, however, she precludes a fully comprehensive interpretation of conservative abortion politics. By painting the anti-abortion movement with such a broad brush, she neglects to acknowledge those politicians and activists whose moral opposition to abortion grew out of religious conviction and not political objectives. While this discrepancy can be explained as a result of her overall objective of highlighting the use of the fetus to reflect social and political


29. The New England Journal of Medicine, Journal of the American Medical Association, American Psychological Association, and National Cancer Institute were among those to publicly challenge such myths.
anxieties, there is no question that religion and faith also fueled such discourses.\textsuperscript{30}

While Dubow begins with a heavy emphasis on how physicians and scientists understood the fetus, her narrative later focuses on the conflicting approaches among politicians, activists, everyday Americans, and the courts. She structures the book primarily chronologically, but also thematically, allowing the narrative to adapt to reflect the prominent discourses of each historical period. However, discussion of recent scientific and technological advances is surprisingly absent. It would be interesting to see what “fetal meanings” Dubow finds in debates over stem cell research, in-vitro fertilization, and the morning-after pill.

\textbf{CONCLUSION}

Dubow ultimately provides a convincing argument in favor of understanding the fetus as a vehicle through which people have struggled with “assumptions about science and religion, anxieties about demography and democracy, beliefs about feminism and motherhood, and ideas about conservatism and liberalism.” (p. 190) Covering over a century’s worth of scientific, medical, cultural, political, and legal history is an ambitious project to be sure. Few scholars succeed with as much depth and detail as Dubow does in \textit{Ourselves Unborn}.

\textit{Ourselves Unborn} received the 2011 Bancroft Award from Columbia University. The Prize is among the most prestigious awards in the field of historical scholarship. This is Dubow’s first book.

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\textsuperscript{30} \textit{See Hull & Hoffer, supra} note 10, at 8 (“From the first, the question of abortion called forth religious and religiously originated moral judgments.”).