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How can feminists respond to the decision in *Dobbs v. Jackson Women's Health Organization*?

Flora Renz and Marian Duggan*

Introduction

The decision in *Dobbs v. Jackson Women's Health Organization*¹ in June 2022 fundamentally changed the reproductive rights landscape, both in the US and beyond. The case focused on a law introduced in Mississippi in 2018, which would have banned most abortions occurring after the first trimester. The law had initially been subject to injunctions from lower courts, due to the fact that it was counter to the rulings in *Roe v Wade*² and *Planned Parenthood v. Casey*³, which established that the US Constitution did include a right to abortion and did not allow states to pass laws banning abortions taking place before the point of foetal viability, i.e., before 24 weeks. Mississippi appealed these injunctions on three points a) that the viability standard set in *Casey* was no longer accurate, b) that the viability standard did not address the protection of “potential life” adequately, and c) that the Supreme Court should allow states to prohibit “inhumane” procedures. The Court’s decision consisted of a 6-3 majority judgment in favour of Mississippi’s appeal. The Majority opinion overturned both *Roe* and *Casey* and declared that the US Constitution did not provide a right to abortion and that this was therefore a matter for individual states to regulate.

As a consequence of *Dobbs*, so-called trigger laws, which had been prepared in several states prior to the decision in *Dobbs*, came into immediate effect and created significant restrictions on abortion access in states such as Louisiana and Texas. In other states abortion and reproductive

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¹ *Dobbs v. Jackson Women's Health Organization*, No. 19-1392, 597 U.S. (2022).

² *Roe v. Wade*, 410 U.S. 113 (1973).

³ *Planned Parenthood v. Casey*, 505 U.S. 833 (1992).

healthcare providers quickly challenged newly introduced abortion restrictions, several of which banned all abortions.⁴ Of course, this sudden shift in the reproductive rights landscape had an immediate effect on the rights of women and pregnant people in the US in need of reproductive healthcare. However, in today's global society the impact of *Dobbs* can be felt beyond the jurisdiction of the US. While many political leaders in the Global North immediately condemned the decision, other leaders including Brazilian president Jair Bolsonaro and German far right politician Beatrix von Storch celebrated this new restriction on reproductive rights and expressed their hope that their own countries would soon follow the example set by the US.⁵

The global context

The decision in *Dobbs* also comes at a time when reproductive rights in many countries are increasingly under threat. For instance, Poland passed a near total ban on abortion in 2020, despite unprecedented protests from women and feminists across the country.⁶ In Hungary, Prime Minister Viktor Orbán has declared the need for women to have more children to counter what he perceives as the negative impact of migration, as part of often racist and antisemitic attack on migrants in Europe.⁷ Rather than explicitly restricting access to reproductive healthcare, his policies have tried to implicitly deter women from having fewer children by introducing tax breaks for women with more than four children, better mortgage terms for larger families and improved funding for childcare.⁸ Similarly, UK media has seen an increasing concern over women's decision to have fewer children, by emphasising the negative impact

⁴ See, e.g. <https://edition.cnn.com/2022/08/05/politics/indiana-state-house-abortion-bill/index.html>; last accessed 23 October 2022.

⁵ See, e.g. <https://www.washingtonpost.com/world/2022/06/24/global-reaction-roe-abortion-supreme-court/>; last accessed 20 October 2022.

⁶ See <https://www.hrw.org/news/2022/10/22/two-years-polands-abortion-crackdowns-and-rule-law#:~:text=The%20tribunal's%20decision%20eliminated%20one,result%20of%20rape%20or%20incest>; last accessed 18 October 2022.

⁷ See <https://www.theguardian.com/world/2019/feb/10/viktor-orban-no-tax-for-hungarian-women-with-four-or-more-children>; last accessed 18 October 2022.

⁸ See <https://ec.europa.eu/social/BlobServlet?docId=22505&langId=en>; last accessed 19 October 2022.

realistic portrayals of childbirth,⁹ childcare costs and fears about the climate crisis,¹⁰ and influencers on TikTok¹¹ may have on already declining birth rates. Even if such measures take less restrictive forms than outright abortion bans, they nevertheless designate reproductive healthcare decisions as a matter for public debate and policy and imply that having more children is inherently good and important for society. Consequently, it is unsurprising that, even in countries such as the UK where reproductive healthcare is generally available, women and others still frequently face harassment and abuse for utilising such healthcare.¹²

Given both the decision in *Dobbs* and wider global developments, it now seems more vital than ever for feminist academics and activists to renew their attention to reproductive justice. As editorial board members of the open access journal *feminists@law*, we envisage this Rapid Response series as contributing to these important discussions and developments. While the Rapid Response format may appear unfamiliar and unconventional, we believe the urgency of this unfolding situation warrants such an approach. Traditionally, academic publishing has struggled to offer accessibility in the sense that access to published works often requires institutional membership. It has also been marred by temporality, in the sense that the nature of publishing frequently creates long delays between crucial events and the availability of relevant materials. This Rapid Response engages with reproductive rights and the decision of *Dobbs* from a range of different perspectives, and will be supplemented with expert feminist insights on an ongoing basis for as long as necessary.

This launch edition comprises of the first set of responses we have received. It includes a reflection on end-of-life care and surrogacy by Pamela White, an analysis of medical professionals' views on abortion in the UK by Hannah Pereira, a focus on criminalisation and criminal law in the context of abortion by Emma Milne, a spotlight on the role of religion and religious views by Kellie Turtle and Fiona Bloomer, and a call for global feminist engagement

⁹ See <https://www.telegraph.co.uk/tv/0/going-hurt-could-turn-generation-women-having-children/> ; last accessed 19 October 2022.

¹⁰ See <https://www.telegraph.co.uk/opinion/2022/01/29/women-often-given-reasons-not-have-children/> ; last accessed 19 October 2022.

¹¹ See <https://www.telegraph.co.uk/family/parenting/child-free-choice-birth-rate-crisis-gripping-west/> ; last accessed 19 October 2022.

¹² See for instance recent attempts to enshrine buffer zones around abortion clinics in law to combat harassment by anti-abortion protesters: <https://www.bbc.co.uk/news/uk-politics-63302710> ; last accessed 24 October 2022.

with *Dobbs* by Martha Davis. We will update this information accordingly as further contributions are provided.