

The Evolution of Privacy and Abortion Rights: A Comparative Legal Analysis of The United States and The European Union

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Abstract. The legal frameworks governing abortion rights have seen profound shifts in both the United States and the European Union, shaped by contrasting principles of constitutional law and human rights law. In the U.S., abortion was historically protected under the 14th Amendment's right to privacy, as established in *Roe v. Wade* in 1973. This precedent was later modified by the undue burden test from *Planned Parenthood v. Casey* in 1992, which allowed states to regulate abortion as long as no substantial obstacles were placed on a woman seeking the procedure. However, the recent *Dobbs v. Jackson Women's Health Organization* in 2022 ruling overturned *Roe*, giving individual states the authority to legislate abortion access, resulting in a highly polarized and fragmented legal landscape. In contrast, the EU regulates abortion through a human rights-based approach, under Article 8 of the European Convention on Human Rights, which guarantees the right to private and family life. The margin of appreciation doctrine, employed by the European Court of Human Rights, grants EU member states discretion to regulate abortion based on cultural, moral, and religious norms, leading to significant variation in abortion laws across Europe. This paper undertakes a comparative legal analysis of the U.S. and EU approaches to abortion, examining the evolution of privacy and human rights frameworks. It further explores the practical implications of these legal systems, focusing on access to abortion and the impact on vulnerable populations. The analysis also considers the future legislative trends in both regions, with attention to the political forces shaping potential reforms.

Keywords: Abortion Rights, Right to Privacy, Constitutional Law.

1. Introduction

Abortion rights have long been central to legal, political, and social debates, with significant variations in how nations approach the intersection of reproductive rights, privacy, and state regulation. In the U.S., abortion was historically grounded in the 14th Amendment's right to privacy first recognized in *Roe v. Wade* in 1973, which established a women's right to terminate a pregnancy [1-3]. This framework was modified by *Planned Parenthood v. Casey* in 1992, introducing the undue burden test, allowing states to impose abortion restrictions as long as they did not create substantial obstacles [4,5]. However, the Supreme Court's 2022 ruling in *Dobbs v. Jackson Women's Health Organization* returned the authority to regulate abortion to individual states, leading to a highly fragmented legal landscape [6].

In contrast, the European Union approaches abortion rights through a human rights-based framework rooted in Article 8 of the European Convention on Human Rights, which guarantees the right to private and family life [7,8]. The European Court of Human Rights does not recognize an explicit right to abortion, instead employing the margin of appreciation doctrine, allowing member states to regulate abortion based on their cultural, moral, and religious values [9]. This has resulted in significant variation in abortion laws across the EU, with countries like Ireland liberalizing their laws in recent years, while others, like Poland, maintain highly restrictive regimes.

The growing tension between state discretion and individual rights in both the U.S. and the EU raises critical questions about the future of abortion legislation. This paper provides a comparative legal analysis of the evolving doctrines surrounding privacy and human rights in these regions and examines the practical implications for access to abortion, especially for vulnerable populations. Finally, it explores political and legal trends that may drive future legislative changes, with a focus

on harmonizing abortion rights within the EU and addressing the polarization surrounding reproductive healthcare in the U.S.

2. Comparative Evolution of Privacy and Abortion Rights in the United States and European Union

2.1. U.S. Legal Evolution: From *Roe v. Wade* to *Dobbs v. Jackson*

Abortion rights in the U.S. were first federally protected in *Roe v. Wade* (1973), which established a woman's right to privacy under the 14th Amendment, allowing abortion until fetal viability [1,3,10]. The decision used a trimester framework where state regulation was limited in the early stages of pregnancy. This framework shifted in *Planned Parenthood v. Casey* in 1992, introducing the undue burden test, which allowed states to regulate abortion as long as these regulations did not pose significant obstacles to access [4,5].

Over time, states--especially conservative ones--began imposing restrictive laws, such as waiting periods and clinic regulations, often referred to as Targeted Regulation of Abortion Providers laws. These laws were aimed at limiting access to abortion indirectly. This evolving landscape culminated in the *Dobbs v. Jackson Women's Health Organization* in 2022 decision, which overturned *Roe* and returned the power to regulate abortion to individual states. This ruling has led to a fragmented legal environment, with states enacting laws that either severely restrict or protect abortion access. The *Dobbs* decision has intensified political polarization and led to numerous legal battles at both state and federal levels.

2.2. EU Legal Evolution: Privacy, Human Rights, and Abortion

The evolution of abortion rights in the EU reflects deep-rooted religious, social, and cultural influences [8,9]. In the 19th century, abortion was largely criminalized under frameworks like the Napoleonic Penal Code [7,11]. However, from the mid-20th century onwards, second-wave feminist movements advocated for reproductive rights, framing abortion as a key issue of women's autonomy [2].

As a result, countries like France, Ireland, and Spain liberalized their abortion laws during the latter half of the century [8,12]. The European Convention on Human Rights ECHR, under Article 8, recognizes the right to private and family life, which is often interpreted to include reproductive rights. However, the European Court of Human Rights ECtHR applies the margin of appreciation doctrine, allowing member states to balance privacy rights with their national cultural and religious values. As a result, there is significant variation in abortion laws across the EU, with countries like Poland maintaining restrictive policies, while Ireland, after its 2018 referendum, liberalized its abortion laws.

3. Comparative Legal Doctrines: U.S. vs. EU Approaches to Privacy and Abortion Rights

3.1. Nature of Legal Doctrines

In both the U.S. and the EU, legal doctrines have evolved to balance individual rights with state interests, but their approaches differ significantly [1,13]. The undue burden test in the U.S. is issue-specific, aimed at limiting state interference with individual autonomy in the context of abortion rights [10]. In contrast, the margin of appreciation in the EU is more flexible, allowing national governments discretion to interpret human rights based on cultural and legal diversity [6] [8] within their borders.

The undue burden test, established in *Planned Parenthood v. Casey* in 1992 and later refined in *Whole Woman's Health v. Hellerstedt* in 2016, addresses a woman's right to abortion. It serves as a judicial framework to assess whether state regulations impose excessive restrictions on this right. The test balances individual autonomy with state interests, such as women's health, but ensures that no law creates a "substantial obstacle" to accessing abortion services. The doctrine is narrowly tailored

to abortion and privacy rights, making it a specific tool to safeguard individual choices against unjustified state intervention.

In contrast, the margin of appreciation is a broader doctrine applied by the European Court of Human Rights under the European Convention on Human Rights. It provides member states flexibility in how they interpret and apply human rights, taking into account their unique legal, moral, and cultural traditions. This doctrine extends beyond a single issue and encompasses a wide range of rights, including privacy and freedom of expression. While it grants states discretion, the ECtHR ensures that state actions remain within the bounds of proportionality, thereby upholding human rights standards across Europe.

3.2. Judicial Scrutiny and Deference

In the U.S., abortion regulations are subject to heightened judicial scrutiny under the undue burden test established by *Casey*. This test ensures that laws do not create substantial obstacles to a woman's ability to seek an abortion. Courts are required to conduct a rigorous evaluation of whether a law's burdens outweigh its purported benefits, as demonstrated in *Whole Woman's Health v. Hellerstedt* in 2016.

In contrast, the EU's margin of appreciation offers greater deference to national governments. The ECtHR allows states discretion in regulating sensitive issues like abortion, particularly when a consensus is lacking across Europe. However, the principle of proportionality is applied to ensure that state actions remain within the bounds of human rights standards.

3.3. Interpretation of Privacy Rights

In the U.S., the right to privacy, particularly as it relates to abortion, was established in *Roe* and further protected through the undue burden test in *Casey*. Courts focus on whether state regulations violate a woman's autonomy in making personal medical decisions, emphasizing bodily integrity and individual choice. In *Whole Woman's Health*, for example, the Court invalidated regulations that created undue obstacles for women seeking abortions.

The EU approach to privacy, under Article 8 of the ECHR, grants states some flexibility in balancing individual privacy with public interests such as morality and health. While the ECtHR upholds privacy rights, it applies the margin of appreciation to accommodate the cultural, moral, and legal diversity of member states. This leads to different legal outcomes, with countries like Poland enforcing strict abortion bans while others like France and Sweden provide more liberal access. For instance, in cases like *Dudgeon v. United Kingdom*, involving homosexual acts in private, the Court used the margin of appreciation to assess whether privacy rights were unduly restricted, while recognizing the state's right to regulate certain moral matters.

In summary, while both the U.S. and the European Union seek to balance individual rights with state interests, their legal doctrines diverge in how they approach this balance. The undue burden test in the U.S. imposes strict scrutiny on laws affecting abortion rights, actively guarding individual autonomy. In contrast, the margin of appreciation in the EU provides states with more discretion but requires adherence to proportionality to ensure human rights are respected. The U.S. focus on protecting individual rights through judicial oversight, while the EU's approach reflects its commitment to flexibility and respect for the diverse legal and cultural landscapes within its member states.

4. Comparative Practical Outcomes: U.S. vs. EU in Abortion Access and Impact

4.1. Impact of Legal Doctrines on Abortion Access

The legal doctrines governing abortion in the United States and the EU led to starkly different practical outcomes in terms of access to abortion services [1,6,9]. In the U.S., the undue burden test, which was developed through *Planned Parenthood v. Casey* in 1992 and later applied in *Whole*

Woman's Health v. Hellerstedt in 2016, serves as a primary tool to determine whether state regulations impose significant obstacles to abortion access. Despite its intention to protect abortion rights, the test has enabled states to impose a wide variety of restrictions, such as waiting periods, mandatory counseling, and clinic requirements, that have significantly curtailed access in conservative states [4]. The Supreme Court's recent decision in Dobbs v. Jackson Women's Health Organization in 2022 eliminated federal protection of abortion rights, returning the power to regulate abortion entirely to the states. This has led to a fragmented legal landscape where abortion access is highly dependent on state-level policies, with some states enacting near-total bans, while others expand protections.

In the European Union, the margin of appreciation doctrine grants EU member states broad discretion in shaping their abortion laws. This flexibility has resulted in a range of legal frameworks, from liberal access in countries like France, Sweden, and the Netherlands, to highly restrictive regimes in Poland and Malta [8,13]. The European Court of Human Rights, although protective of privacy rights under Article 8 of the European Convention on Human Rights, defers to national governments on moral issues like abortion, as long as restrictions do not grossly violate human rights. This approach creates a somewhat more harmonized system across Europe than in the U.S., but still allows for considerable variance depending on national cultural, religious, and moral values.

In practical terms, access to abortion in the EU is generally more secure in the first trimester, with most countries allowing abortion on request. However, procedural barriers such as mandatory waiting periods and counseling can still hinder timely access, especially in conservative or rural areas. In countries like Poland, abortion is almost completely restricted, leading to scenarios where women must travel to other jurisdictions to seek care. In contrast, in the U.S., the fragmentation post-Dobbs means that entire regions of the country, particularly in the South and Midwest, have severely limited or even eradicated legal access to abortion services.

4.2. Legislative Influence and Political Trends

The political landscape around abortion rights has been highly influential in shaping legislative outcomes in both regions, but the dynamics differ significantly.

In the United States, abortion has become a highly polarizing issue at the heart of the political divide. The Supreme Court's decision in Roe v. Wade in 1973 originally provided a national framework for access, but the growing influence of conservative movements has led to decades of incremental erosion of abortion rights, particularly through Targeted Regulation of Abortion Providers laws and other restrictive measures [5,6]. With the Dobbs ruling, state legislatures now have full control over abortion regulations, and political affiliations have become one of the clearest indicators of whether a state will maintain or eliminate abortion access. Red states have moved swiftly to enact stringent restrictions or bans, while blue states like California and New York have expanded access and even declared themselves "sanctuaries" for out-of-state patients seeking abortions. Political trends in the U.S. suggest further polarization, with states increasingly codifying their positions on abortion into law, making future federal action on the issue uncertain.

In the European Union, political influence on abortion laws tends to reflect broader shifts in societal values and public opinion [11,12]. Countries like Ireland, which was once among the most restrictive, dramatically liberalized its abortion laws following a 2018 referendum that repealed its near-total ban. This move followed years of public advocacy and a growing recognition of women's reproductive rights. However, Poland has moved in the opposite direction, tightening its abortion laws in recent years, a move supported by the country's conservative government and the Catholic Church [2,7]. In contrast to the U.S., where abortion debates are more partisan, EU abortion reforms often reflect public health policy shifts or the outcome of public referenda rather than stark party-line divisions. Nevertheless, the EU is not immune to political fluctuations, and in countries with strong religious or conservative influences, legislative rollbacks on abortion rights are still possible.

4.3. Impact of Religion and Social Factors

Religion plays a significant role in shaping both abortion legislation and societal attitudes toward abortion in both the U.S. and the EU, but its influence manifests in distinct ways [4,10].

In the United States, religious beliefs, particularly those of Evangelical Christians and Catholics, have been a driving force behind the anti-abortion movement [3,9]. The rise of conservative Christian advocacy groups has fueled efforts to restrict access to abortion, particularly in more religiously conservative states where Evangelical and Catholic populations are predominant [3,4]. The pro-life movement has framed abortion as a moral issue, arguing that life begins at conception, which has significantly impacted public policy. The Religious Right has become a powerful political force, particularly within the Republican Party, shaping the national discourse on reproductive rights. As a result, states with large religious constituencies, especially in the South, have moved rapidly to restrict abortion following the Dobbs decision. Public opinion on abortion in the U.S. remains deeply divided, with religious affiliation being a key factor in individuals' positions on the issue.

In the European Union, the influence of religion is also profound but varies more significantly from country to country. In historically Catholic countries like Poland, Malta, and until recently Ireland, the Catholic Church has played a crucial role in maintaining restrictive abortion laws. The Church's emphasis on the sanctity of life has been a central element in these countries' resistance to liberalizing abortion. However, societal changes, particularly in Western Europe, have led to a decline in religious adherence, weakening the Church's influence on public policy. The repeal of Ireland's abortion bans in 2018 is a clear example of how shifting social norms and declining religious authority can lead to significant legal reform.

Nonetheless, religion remains a key factor in more conservative EU member states. For example, in Poland, the influence of the Catholic Church continues to reinforce strict abortion laws, and public opinion on the issue is more aligned with traditional religious views [2,12]. This has created a cultural and political divide between more liberal Western European nations and the conservative, religiously influenced nations of Eastern Europe.

In conclusion, the impact of religion and social factors on abortion access in both the U.S. and the EU is substantial, shaping not only the legal landscape but also the broader public discourse around reproductive rights. In the U.S., religious groups have successfully influenced legislative outcomes in many states, while in the EU, religion's impact is more variable, reflecting broader societal trends and cultural diversity across the region.

5. Current Legal and Political Implications

5.1. United States: Post-Dobbs Responses and Evolving Landscapes

During the pandemic, U.S. states took drastically different approaches to abortion access. In some conservative states, like Texas and Oklahoma, abortion was deemed non-essential and access was severely restricted under the guise of limiting non-emergency medical procedures [14]. This move exacerbated pre-existing inequalities in access, especially for low-income women and women of color. In contrast, progressive states like California worked to maintain access through telemedicine, allowing medication abortion to continue despite the health crisis [1].

Following the Dobbs v. Jackson Women's Health Organization ruling in 2022, the U.S. legal landscape has become increasingly polarized. States have full authority to regulate abortion, resulting in a patchwork of access where some states, such as California and New York, have expanded abortion protections [5,6,14], while others, like Alabama and Mississippi, have enacted near-total bans.

Emerging legal battles focus on interstate travel for abortions, as states like Texas seek to penalize those who assist women in obtaining out-of-state abortions, raising questions about the legal bounds of state authority across borders. States like California have become "sanctuary states" for those seeking abortions, while other states are exploring punitive measures against providers or individuals

who aid out-of-state abortions. Additionally, the use of medication abortion by mail has sparked legal battles, as conservative states seek to block access to abortion pills across state lines.

The Dobbs ruling has brought renewed attention to fetal personhood laws, as states like Georgia now legally define a fetus as a “natural person”, which could criminalize miscarriage and further complicate reproductive health services like in vitro fertilization (IVF). Additionally, discussions around the potential reconsideration of precedents such as *Griswold v. Connecticut* which guarantees access to contraception indicate that abortion-related legal changes may extend into other areas of reproductive health.

5.2. EU: IVF, and Contraception, ush for Federal or Regional Harmonization

The pandemic exposed significant disparities in abortion access across the EU. While countries like France, Ireland, and the UK adapted their policies to allow telemedicine for early medical abortions, others, such as Poland and Hungary, maintained or intensified restrictions. These adaptations included allowing women to access medical abortion without in-person consultations, particularly in countries where lockdowns impeded travel. However, these reforms were temporary and left untouched the broader systemic issues in access to abortion, particularly in conservative EU member states.

Despite regional variations, the European Court of Human Rights continues to grant member states broad discretion in regulating abortion under the margin of appreciation [7,10]. This allows for significant variance in abortion access across the EU. Progressive countries like Sweden and France have moved towards liberalizing access [5,11], but others, notably Poland, have used the pandemic and conservative political momentum to further restrict abortion, especially in cases of fetal abnormalities.

During the pandemic, some EU countries expanded telemedicine and home-based abortion care as temporary solutions to the public health crisis. Countries like England, Scotland, and Ireland implemented policies allowing women to take abortion medication at home, reducing the need for in-person clinical visits. However, not all member states adopted these innovations, with several maintaining strict in-person requirements or limiting access to medical abortion, Poland and Hungary, which retained stringent restrictions [8,14]. The future of telemedicine as a permanent solution remains uncertain, as governments debate whether these reforms should remain in place after the pandemic.

While fetal personhood debates have not gained as much traction in the EU, conservative governments in countries like Poland have introduced new restrictions on reproductive technologies, such as IVF, and maintain strict limitations on access to contraception. These restrictions reflect broader ethical debates in Europe, particularly regarding the balance between religious values and individual rights. The European Court of Human Rights continues to play a central role in navigating these tensions, especially as it adjudicates cases related to reproductive rights in conservative EU member states.

6. Conclusion

The comparative analysis of abortion rights in the United States and the European Union reveals the stark differences in how privacy, human rights, and state interests are balanced in each region. In the U.S., the framework established by *Roe v. Wade* and *Planned Parenthood v. Casey* provided federal protection for abortion rights, centered on the 14th Amendment's right to privacy. However, the recent Dobbs decision has dismantled this protection, resulting in a fragmented legal landscape where access to abortion varies significantly by state. This legal shift reflects the deep political and religious divisions in the country, which continue to shape the future of reproductive rights.

In contrast, the European Union's legal approach, while grounded in human rights law, is shaped by the margin of appreciation doctrine, allowing member states to regulate abortion according to their cultural and religious contexts. This flexibility has resulted in wide-ranging access to abortion, with

countries like Sweden and France adopting liberal policies, while others like Poland maintain highly restrictive laws. Despite efforts by institutions such as the European Court of Human Rights to uphold privacy rights, the EU has not achieved harmonized abortion access across the region.

The future of abortion rights in both the U.S. and the EU will likely continue to be shaped by political trends and societal values. In the U.S., ongoing legal battles at the state level may further polarize the country's approach to reproductive rights, particularly with the rising influence of conservative Christian groups. In the EU, while progressive states continue to expand access, conservative countries may resist further liberalization, maintaining abortion as a deeply contested issue.

In conclusion, while both the U.S. and the EU are grappling with the tension between individual rights and state regulation, their distinct legal doctrines and societal contexts suggest divergent futures for abortion rights. As debates over reproductive autonomy and privacy continue to evolve, the legal and political landscapes in both regions remain highly dynamic and subject to change.

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