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Roe v. Wade's Nightmare: The Current Legal State of Abortion Rights in the Dominican Republic

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ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

**ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS IN
THE DOMINICAN REPUBLIC**

Note

Sharly Larios¹

INTRODUCTION

The detriment that the State would impose upon the pregnant woman by denying this choice altogether is apparent. Specific and direct harm medically diagnosable even in early pregnancy may be involved. Maternity, or additional offspring, may force upon the woman a distressful life and future. Psychological harm may be imminent. Mental and physical health may be taxed by child care. There is also the distress, for all concerned, associated with the unwanted child, and there is the problem of bringing a child into a family already unable, psychologically and otherwise, to care for it. In other cases, as in this one, the additional difficulties and continuing stigma of unwed motherhood may be involved.²

Forty-one years ago, in *Roe v. Wade*, the United States Supreme Court envisioned a potential world where a woman would not be able to choose where and when she would have a child. These were the living conditions that the Court prophesized awaited a woman if these bans on abortions were allowed. For this reason, the Court chose to affirm a lower court's decision and allow abortions to be performed in the United States.³ Unfortunately, this battle still rages on in other parts of the world and the United States Supreme Court's prophecy has come true in the Dominican Republic.

In October 2009, the Dominican Republic approved an amendment to its constitution that would include a right to life from the date of conception.⁴ With this

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²*See* *Roe v. Wade*, 410 U.S. 113, 153 (1973).

³*Id.* at 154 (concluding that "the right of personal privacy includes the abortion decision").

⁴*See* Constitución de la República Dominicana, proclamada el 26 de enero. Publicada en la Gaceta Oficial No. 10561, del 26 de enero de 2010, art. 37 [hereinafter Dominican

amendment, the government implicitly outlawed abortions and abolished every girl and woman's right to choose whether she would have a child regardless of her circumstances.⁵ Supported by the nation's strong Catholic beliefs,⁶ the amendment was approved by a majority vote of 128 to 34 in the Dominican Parliament.⁷ However, this amendment appears to be in direct opposition to the equal protection of women and their rights that the constitution also provides for,⁸ which traditionally includes a right to self-determination.⁹ Also, Articles 26 and 74 of the Constitution, which state generally that the Dominican Republic will apply domestically the international treaties to which it is a signatory to,¹⁰ also appear to be in conflict with this amendment since some of these treaties explicitly protect a woman's reproductive rights.¹¹

Republic Constitution], *translated in* Dominican Republic's Constitution of 2010, WILLIAMS S. HEIN & CO. (Mar. , 2015), https://www.constituteproject.org/constitution/Dominican_Republic_2010.pdf. *See also* Amnesty Int'l, *Dominican Republic delivers "huge blow" to women's right to life*, <http://www.amnesty.org/en/news-and-updates/news/dominican-republic-delivers-quothuge-blowquot-women039s-right-life-20090918> (last visited Mar. 11, 2015).

⁵*See* Código Penal de la República Dominicana [hereinafter Penal Code of the Dominican Republic] art. 317. *See also* Amnesty Int'l, *supra* note 4 (noting that the amendment: "could severely limit the availability of safe abortions, even in cases when a woman is suffering from life-threatening complications or is in need of life-saving treatment incompatible with pregnancy – such as that for malaria, cancer or HIV/AIDS. Furthermore, access to safe abortion for women or girls who are pregnant as a result of rape or incest would become even more restricted.").

⁶Translated by Eduardo Ávila, GLOBAL VOICES, *Dominican Republic: Constitution Bans Abortion in All Cases*, (Oct. 1, 2009), <http://globalvoicesonline.org/2009/10/01/dominican-republic-constitution-bans-abortion-in-all-cases/>(last visited Mar. 11, 2015).

⁷Amnesty Int'l, *supra* note 4.

⁸Dominican Republic Constitution, *supra* note 4, art. 39.

⁹*See* Mia So, Note, *Resolving Conflicts of Constitution: Inside the Dominican Republic's Constitutional Ban on Abortion*, 86 IND. L.J. 713, 718 (2011).

¹⁰Dominican Republic Constitution, *supra* note 4, art. 26 (stating that the Dominican Republic will apply domestically all General and American International Law in the way the public powers have applied them); *Id.* Art 74 (stating which gives Constitutional status to all of the international agreements that the Dominican Republic is a signatory to,

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

At first glance it seems that when this amendment is read in conjunction with the other provisions of the Dominican Republic's Constitution, its Penal Code¹² and the international treaties to which it is signatory to, the laws contradict each other in terms of a woman's right to have an abortion.¹³ Further, these regulations have been governing the nation for years without any sign of reform. Nevertheless, when one reads the laws in the Dominican Republic without applying a western perspective, it is apparent that there is a coherent Dominican abortion story that describes the immense obstacles a woman faces in obtaining an abortion and highlights what the United States Supreme Court was afraid would happen in America if *Roe* was not decided. With a government that does not include reproductive rights in its idea of equal protection or acknowledges a woman's right to privacy, women in the Dominican Republic face an even bigger battle than women in the United States did before *Roe*.

This Note will analyze the multilayered opposition against a woman's reproductive right in the Dominican Republic and the bleak future that a pregnant woman faces in her fight to receive an abortion. Part I will discuss how the ban on abortion is a

which includes those that protect a woman's reproductive rights (translated by the author)).

Id.

¹¹See So, *supra* note 9, at 713 n.6, (citing to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), opened for signature Mar. 1, 1980, 1249 U.N.T.S. 20 [hereinafter CEDAW]).

¹²Penal Code of the Dominican Republic, *supra* note 5, art. 317 (stating that women who cause their own abortions and those who help them in the process are subject to an unspecified prison term. Further, any person who aids a pregnant woman by putting her in contact with someone else for the purpose of committing an abortion, will be subject to a potential sentence of six months to two years, regardless of whether the abortion actually ended up occurring. Medical professionals who cause or cooperate in an abortion procedure are also subject to a potential imprisonment of five to twenty years if the abortion is successful (translated by author)).

¹³See So, *supra* note 9, at 713-18.

contemporary issue in the Dominican Republic, much like it was during *Roe* in the United States, while examining the current legal state of abortion rights in the Dominican Republic. Part II will provide an explanation as to how the laws have been functioning in the Dominican Republic in their seemingly paradoxical legal framework. Part III will analyze the social elements that have influenced the development of these abortion bans. Part IV will discuss the ineffectiveness of these bans in both the United States before *Roe* and currently in the Dominican Republic. Part V will evaluate the detrimental consequences the laws have had on the majority of the female population in the Dominican Republic. Part VI will examine the possibility of a *Roe* transition in the Dominican Republic. Ultimately, this Note will show how the current laws in the Dominican Republic appear to be the nation's way of appeasing the Catholic Church and Pro-Life politicians while the Dominican government disregards the women that are directly being affected by the laws.

I. A CONTEMPORARY BAN

The United States Supreme Court acknowledged in *Roe* that laws banning abortions were a relatively recent legislative development, stemming from the latter half of the 19th century.¹⁴ The Court stated: “[i]t is thus apparent that at common law, at the time of the adoption of our Constitution, and throughout the major portion of the 19th century, abortion was viewed with less disfavor than under most American statutes currently in effect.”¹⁵ Ultimately, the Court found that a woman's right to an abortion

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¹⁵*Id.* at 140

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

was inherently protected as a right of privacy under the Constitution.¹⁶ However, since the Dominican government does not include reproductive rights in their conception of equal protection or acknowledges a woman's right to privacy, women in the Dominican Republic face an even more difficult fight today.

Article 37 of the Dominican Republic's Constitution provides that every person has an inviolable right to life from the date of conception.¹⁷ However, this amendment, which was passed only a few years ago in 2009,¹⁸ appears to have an intrinsic contradiction with Article 39.¹⁹ Article 39 provides for the equal protection of women under the law in the Dominican Republic.²⁰ This protection is traditionally viewed to include a woman's fundamental right to self-determination and reproductive choice.²¹

¹⁶*Id.* at 154. The Court did note however that this right was not absolute and had to be "considered against important state interests in regulation." *Id.* The Court later reasoned that the State does have an important and legitimate interest in both "protecting the health of the pregnant woman" and "protecting the potentiality of human life." *Id.* at 162-63.

¹⁷Dominican Republic Constitution, *supra* note 4, art. 37 (translated by author).

¹⁸Amnesty Int'l, *supra* note 4.

¹⁹*See So, supra* note 9, at 713-18. In her Note, the author points out the apparent inconsistencies within the Dominican Republic's constitution from a constitutional construction point of view in order to suggest a potential solution to these conflicts by looking at the constitutions of the United States, Turkey and Columbia; ultimately determining that Columbia's approach is "the most practical choice." *Id.* at 714.

²⁰Dominican Republic Constitution, *supra* note 4, art. 39 (translated by author).

²¹*See Dawn Johnsen & Marcy J. Wilder, Article, Webster and Women's Equality, 15 AM. J. L. AND MED. 178 (1989).* Traditional legal discourse in the United States tends to include a woman's right to choose to have an abortion under an equal protection guarantee, especially after *Roe v. Wade*:

[C]ontinued constitutional protection of a woman's fundamental right to choose abortion is guaranteed by the liberty-based right to privacy. Further, we argued that this right is essential to women's ability to achieve sexual equality. In order to participate in society as equals, women must be afforded the opportunity to make decisions concerning childbearing. Women's unique reproductive capabilities have long served as a principal justification for their unequal and disadvantageous treatment by the state. Restrictive abortion laws continue 'our Nation[']s . . . long and

Therefore, it appears that the governing document of the Dominican Republic contains an inconsistency within its own provisions.

Moreover, Articles 26 and 74 of the Constitution present further inconsistencies in the text. Article 26 provides that the Dominican Republic will apply all General and American International Law in the way the public powers have applied them.²² Article 74 gives constitutional status to all of the international agreements that the Dominican Republic is a signatory to, some of which protect a woman's reproductive rights.²³ The Dominican Republic is a signatory to the Convention for the Elimination of All Forms of Discrimination Against Women (CEDAW)²⁴ and the International Covenant on Civil and Political Rights.²⁵ Both of these treaties protect a woman's right to choose when to have a child²⁶ and her right to self-determination.²⁷ Thus, the constitutional ban on abortion also comes into direct conflict with these articles.

unfortunate history of sex discrimination' by depriving women of the freedom to control the course of their lives.

Id.

Although the authors did not make this argument in the setting of the Dominican Republic, western scholars usually assume that the argument would also apply to any equal protection guarantee in a constitution.

²² Dominican Republic Constitution, *supra* note 4, art. 26 (translated by author).

²³ *Id.* at art. 74 (translated by author).

²⁴ See Convention on the Elimination of All Forms of Discrimination Against Women: States Parties, Dominican Republic ratification on Sep. 2, 1982, U.N. Treaty Collection, https://treaties.un.org/pages/viewdetails.aspx?src=treaty&mtdsg_no=iv-8&chapter=4&lang=en.

²⁵ See Status of International Covenant on Civil and Political Rights, U.N. Treaty Collection, http://treaties.un.org/Pages/ViewDetails.aspx?src=treaty&mtdsg_no=iv-4&chapter=4&lang=en.

²⁶ CEDAW, *supra* note 11, art. 16(1)(e) (giving women the right to ' ' decide freely and responsibly on the number and spacing of their children and to have access to the information, education and means to enable them to exercise these rights' ')), U.N. Entity for Gender Equality and the Empowerment for Women, <http://www.un.org/womenwatch/daw/cedaw/text/econvention.htm>. See also U.N. Entity for Gender Equality and the Empowerment of Women, "Text of the Convention" (stating

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS IN THE DOMINICAN REPUBLIC

II. REMOVING THE WESTERN PERCEPTION OF THE DOMINICAN LEGAL FRAMEWORK

At first glance it would appear that the Dominican Constitution is an unworkable document with its inherent inconsistencies. However, what appear to be inconsistencies in the text can be attributed to a western reader analyzing the Dominican Constitution under a United States constitutional construction lens. At no point in the Dominican Republic's Constitution does it explicitly state that a woman's reproductive rights are protected.²⁸ An assumption under western ideology that the protections explicitly offered under the Constitution include a woman's right to reproductive choice under Dominican law is incorrect.²⁹ The following explains why.

A. Applicable Treaty Interpretation and the Dominican International Voice

that: "The Convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces shaping gender roles and family relations.") <http://www.un.org/womenwatch/daw/cedaw/cedaw.htm>.

²⁷See U.N. Human Rights, Int'l Covenant on Civil and Political Rights, adopted and opened for signature, ratification and accession by General Assembly resolution 2200A (XXI) of 16 December 1966 entry into force 23 March 1976, in accordance with Article 49, art. 1, <http://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx>.

²⁸See Dominican Republic Constitution, *supra* note 4.

²⁹However, there are arguments that suggest that a state's inaction in providing safe abortions is a form of violence against women, which the Dominican Constitution protects against. See *Symposium: Access to Information on Safe Abortion: A Harm Reduction and Human Rights Approach*, 34 HARV. J. L. & GENDER 413, 429 (2011), where Joanna N. Erdman equates unsafe abortions to violence against women by stating that:

State responsibility based on the failure to act is explicit in the interpretation of unsafe abortion as a form of violence against women and as a human rights violation on this basis. This interpretation is more common in Latin America than other regions, likely due to the strong articulation and application of violence against women as a human rights concept in the Inter-American system. Violence against women is defined as acts or conduct based on gender, that is, directed against a woman because she is a woman or that affect women disproportionately, and which cause death or physical, psychological, or sexual harm or suffering. The fact that only women engage in unsafe abortion and are thus uniquely subject to its risks and harms formally qualifies the practice as violence against women under this definition.

When viewed through the proper international norms of treaty interpretation, it is evident that the Dominican Republic has continuously supported the ideology of a right to life from the date of conception.³⁰ The Vienna Convention on the Law of Treaties established that treaties can be interpreted by “any subsequent practice in the application of the treaty which establishes the agreement of the parties regarding its interpretation” and “any relevant rules of international law applicable in the relations between the parties.”³¹ This gives state parties the ability to interpret the treaties they are signatories to³² subject to any reservations the country may have, provided that the reservations are not compatible with the object and purpose of the treaty.³³ Therefore, the Dominican Republic can choose to protect women’s rights generally and follow the CEDAW and International Covenant on Civil and Political Rights, while also banning a woman’s right to receive an abortion.³⁴

³⁰See generally Ligia M. De Jesus, *Article: Treaty Interpretation of the Right to Life Before Birth by Latin American and Caribbean States: An Analysis of Common International Treaty Obligations and Relevant State Practice at International Fora*, 26 EMORY INT’L L. REV. 599 (2012).

³¹*Id.* at 601 (citing to Vienna Convention on the Law of Treaties art. 31(3)(b)-(c), May 23, 1969, 1155 U.N.T.S. 331).

³²*Id.*

³³See *Reservations to CEDAW*, UNITED NATIONS, <http://www.un.org/womenwatch/daw/cedaw/reservations.htm> (last visited Mar. 25, 2015), where the United Nations noted that “[t]he Convention permits ratification subject to reservations, provided that the reservations are not incompatible with the object and purpose of the Convention.”

³⁴Notably there have been scholars who have argued that the CEDAW does not actually protect a right to an abortion. See Harold Hongju Koh, *Why America Should Ratify the Women’s Rights Treaty (CEDAW)*, 34 CASE W. RES. J. INT’L L. 263, 272 (2002). Dean Koh (of Yale Law School) refutes the claim that “CEDAW supports abortion rights” as “flatly untrue.” *Id.* He asserts that:

There is absolutely no provision in CEDAW that mandates abortion or contraceptives on demand, sex education without parental involvement, or other controversial reproductive rights issues. CEDAW does not create any international right to abortion. To the contrary, on its face, the

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

Moreover, the Dominican Republic is also a signatory to several other international treaties that do protect an unborn child's right to life. For example, the Preamble of the Convention on the Rights of the Child states that the protections offered under the treaty apply to unborn children before and after birth.³⁵ Also, that treaty affirms that states are to "ensure to the maximum extent possible the survival and development of the child."³⁶ Another example is the American Convention on Human Rights, which protects every person's right to life from the moment of conception.³⁷

Further, the Dominican Republic's government has voiced its opposition against a woman's reproductive choice on numerous occasions. During the negotiations of the Declaration of the Rights of the Child, the Dominican Republic affirmed its view that the

CEDAW treaty itself is neutral on abortion, allowing policies in this area to be set by signatory states and seeking to ensure equal access for men and women to health care services and family planning information.

Id. Further, international treaties did not have much influence on a state's domestic laws until recently. See Jacob Reynolds and Richard G. Wilkins, *International Law and the Right to Life*, 4 AVE MARIA L. REV. 123, 129 n.21 (2006), noting:

Just a decade ago, scholars suggested that the norms adopted at international negotiations might have little meaning because they are often adopted merely to reach a "consensus" or to "appease popular or politically correct sentiment." ... Even the "hard" law language of treaties was often disregarded in the recent past. One writer noted that, in a conversation with a Latin American lawyer-diplomat over a decade ago, he was told that treaties signed by the lawyer's country were "negotiated by the Ministry of Foreign Affairs, and when approved ... were ' ' locked in a cabinet and almost never looked at thereafter."

³⁵U.N. Human Rights, Convention on the Rights of the Child, Adopted and opened for signature, ratification and accession by General Assembly resolution 44/25 of Nov. 20, 1989 entry into force Sept. 2, 1990, in accordance with article 49, <http://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

³⁶*Id.* at art. 6(2).

³⁷Organization of American States, American Convention on Human Rights, art. 4(1), Nov. 22, 1969, O.A.S.T.S. No. 36, 1144 U.N.T.S. 123, http://www.oas.org/dil/treaties_B-32_American_Convention_on_Human_Rights.htm.

child's right to life was to be protected from the moment of conception.³⁸ Similarly, at the International Conference on Population and Development:

the Dominican Republic entered an express reservation regarding the content of terms: "reproductive health," "sexual health," "safe motherhood," "reproductive rights," "sexual rights" and "regulation of fertility" when those terms include "the concept of abortion or interruption of pregnancy." The Dominican Republic entered its reservation in accordance with its constitution and laws and held that "as a signatory of the American Convention on Human Rights, it fully confirms its belief that everyone has a fundamental and inalienable right to life and that this right to life begins at the moment of conception."³⁹

Also:

At the Fourth World Conference on Women in Beijing, the Dominican Republic objected to the interpretation of "reproductive rights" and related terms including abortion or the voluntary interruption of pregnancy by stating that "the Dominican Republic, as a signatory to the American Convention on Human Rights, and in accordance with the Constitution and the laws of the Republic, confirms that every person has a right to life, and that life begins at the moment of conception."⁴⁰

Accordingly, notwithstanding its agreement to certain international treaties that have been interpreted by western scholars to protect a woman's right to an abortion, the Dominican Republic has consistently and continuously opposed abortion rights.

III. Social Influences on the Abortion Bans

Various similar factors contributed to abortion bans in the United States prior to *Roe* and the current bans in the Dominican Republic. Nevertheless, it is evident that those factors have had a more substantial effect on the Dominican Republic's legislation and have contributed to the strength of the nation's opposition against abortions.

A. *The Church*

In *Roe*, Justice Blackmun made a reference to the American Medical Association

³⁸De Jesus, *supra* note 30, at 608.

³⁹De Jesus, *supra* note 30, at 615. *See also* Int'l Conference on Population and Development, Cairo, Egypt, Sept. 5-13, 1994, Report of the Int'l Conference on Population and Development, ch. II, Principles, at 143, U.N. Doc. A/Conf.171/13 (Oct. 18, 1994).

⁴⁰De Jesus, *supra* note 30, at 616.

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

Committee on Criminal Abortion's calling the attention of "the clergy of all denominations to the perverted views of mortality entertained by a large class of females – aye, and men also, on this important question."⁴¹ This, however, was the only mention of religion in the opinion.⁴² Although the separation of church and state is a well-established ideology in the United States through the First Amendment of the Constitution,⁴³ religion has been an influential factor in the history of anti-abortion legislation in America. "From its foundation, the [Catholic] Church took the position that abortion was murder."⁴⁴ Since legislatures cannot explicitly enact any laws on the basis of religion, the Church's influence is exerted through "formal lobbying groups or by individuals, whose moral character is partly founded upon their religious beliefs."⁴⁵ However, only approximately 25 percent of the American adult population in 2008 identified themselves as Catholics.⁴⁶ Because of the existence of the separation of church and state ideology and the fact that there are numerous other religions in the United States aside from Catholicism,⁴⁷ the Church "will never have the same political power in

⁴¹ See *Roe supra* note 2, at 142.

⁴² *Id.*

⁴³ See U.S. CONST. amend. I. See also Cornell University Law School, *First Amendment: An Overview*, http://www.law.cornell.edu/wex/first_amendment (last visited Mar. 12, 2015) noting that the First Amendment "enforces the 'separation of church and state.'"

⁴⁴ Rishona Fleishman, Comment, *The Battle Against Reproductive Rights: The Impact of the Catholic Church on Abortion Law in Both International and Domestic Arenas*, 14 EMORY INT'L L. REV. 277, 281 (2000).

⁴⁵ *Id.* at 301.

⁴⁶ See U.S. Census Bureau, *Self-Described Religious Identification of Adult Population*, POPULATION: RELIGION, <http://www.census.gov/compendia/statab/2012/tables/12s0075.pdf> (last visited Mar. 12, 2015).

⁴⁷ See generally *id.* Table 75 lists about 49 religions and non-religions being practiced in the United States from Catholic to Wiccan, from 1990 to 2008. *Id.*

the United States as it does in predominantly Catholic nations.”⁴⁸

Although Pro-Life advocates faced a difficult battle in the United States before and during the *Roe* dispute because of America's separation of church and state philosophy, their Dominican counterparts are currently involved in a less challenging debate in the Dominican Republic. “Roman Catholicism is the official religion of the Dominican Republic, established by a Concordat with the Vatican.”⁴⁹ In 2012, the Dominican population was estimated at 10.1 million.⁵⁰ At that time, approximately 40 percent were “practicing” Roman Catholic and 29 percent were “non-practicing” Roman Catholic.⁵¹ Since the majority of the Dominican population is Catholic and the nation does not have a separation of church and state ideology in its legal system, the Catholic Church has always played a major role in Dominican legislation and the ban on abortion is a primary example of that.⁵²

The Archbishop of Santo Domingo, Cardinal Nicolas de Jesus Lopez Rodriguez, was one of the main officials who successfully lobbied to get the prohibition on abortion without exception ratified.⁵³ Although civil society organizations, women organizations and the United Nations have criticized the government for allowing the Church to

⁴⁸Fleishman, *supra* note 44, at 302.

⁴⁹Jonathan Hartlyn, *A Country Study: Dominican Republic – Religion* (Dec. 1989), [http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field\(DOCID+do0045\)](http://lcweb2.loc.gov/cgi-bin/query/r?frd/cstdy:@field(DOCID+do0045)) (last visited Mar. 12, 2015)

⁵⁰U.S. Dep't of State, *Dominican Republic 2012 International Religious Freedom Report, Section I: Religious Demography*

<http://www.state.gov/documents/organization/208686.pdf> (last visited Mar. 12, 2015).

⁵¹*Id.*

⁵²*See Dominican Republic: Contemporary Affairs*, BERKLEY CENTER FOR RELIGION, PEACE AND WORLD AFFAIRS, GEORGETOWN UNIVERSITY, <http://berkeleycenter.georgetown.edu/essays/dominican-republic-contemporary-affairs> (last visited Mar. 12, 2015).

⁵³*Id.*

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

interfere in legislation,⁵⁴ there is nothing in the Dominican Constitution that outlaws the Catholic Church's influence over the laws in the Dominican Republic.⁵⁵ The Church has even caused the topic of abortion to be taboo in the nation.⁵⁶ The Archbishop has also publicly made the following criticisms in support of the ban on abortion:

Does a woman know the physical and psychic damage, in addition to sin, which she causes herself with abortion? Has she thought sometimes about what happens to a machine when an essential part is suddenly and violently destroyed? The entire machine suffers the consequences. It is the same with the woman who aborts. All of her suffers at the violent end of the gestation on which her entire organism insists. Her body suffers. Sooner or later the consequences will appear that forever transform her health. And her psyche deteriorates.⁵⁷

The Catholic religion has also been the inspiration for some obstetricians to follow their career path.⁵⁸ One Dominican obstetrician described the Church's influence while explaining why he decided to become an obstetrician:

Why study OB/GYN? I am the seventh of fifteen [children]. For five years I was an altar boy in the Catholic Church. I grew up in the bosom of the Catholic Church, and the branch [of medicine] most linked with life and the human being was obstetrics. When we help a labor, we are helping a new life. In that moment I don't know whether it's my ego or the spirit that's giving life to that product. This is a spiritual practice. I worked with nuns during my "pasantia" [year of national health service]. I gave away my sister last week-she began her novitiate. We are completely tied up with the Catholic Church.⁵⁹

Ana Teresa Ortiz, who interviewed this doctor, went on to note that:

⁵⁴ *Id.*

⁵⁵ See generally Dominican Republic Constitution, *supra* note 4. Unlike the United States Constitution which contains the Establishment Clause and Free Exercise Clause in the First Amendment, the Dominican Republic's Constitution does not have any indication of separation of church and state.

⁵⁶ See Ávila, *supra* note 6 (noting that "[t]he issue of abortion is taboo in the DR, overly influenced by the churches and religions. To even mention the word is even poorly seen by many. Those who dare to question the status quo, those who dare to say 'let's stop to think' are immediately censored and condemned by the public debate.").

⁵⁷ Ana Teresa Ortiz, "Bare-Handed" *Medicine and Its Elusive Patients: The Unstable Construction of Pregnant Women and Fetuses in Dominican Obstetrics Discourse*, 23 FEMINIST STUDIES 263, 273 (1997).

⁵⁸ *Id.* at 272-73.

⁵⁹ *Id.*

It is in deference to the teachings and power of the Catholic Church that abortion is illegal under any circumstances in the Dominican Republic. The secular imagery of a uterine machine obediently engaged in production which permeates much biomedical discourse has its counterpart in the metaphors deployed by the Catholic Church in its ongoing campaigns to dissuade Dominican women from seeking illegal abortions.⁶⁰

Since religion is so deeply embedded in the Dominican social fabric, it is logical that the Catholic Church would have such an immense impact on the ban on abortion.

1. Contraceptives

The United States has a history of opposition against contraceptive use but the practice was completely legalized in 1972.⁶¹ In *Griswold*, the United States Supreme Court reasoned that a marriage was a relationship with an inherent privacy right to which “forbidding the *use* of contraceptives rather than regulating their manufacture or sale ... [has a] destructive impact upon that relationship.”⁶² However, the Court limited that privacy right in contraception use to married couples only in *Griswold*.⁶³ Then in 1972, the Court extended this privacy right to unmarried people and stated “[i]f the right of privacy means anything, it is the right of the *individual*, married or single, to be free from unwarranted governmental intrusion into matters so fundamentally affecting a person as the decision whether to bear or beget a child.”⁶⁴

The Dominican Republic does not have similar case law. Instead, the nation's social norms and established gender roles in the Dominican Republic support the general acceptance of the ban on abortion.⁶⁵ Indeed, there is a common rejection of all

⁶⁰ *Id.* at 273.

⁶¹ See *Eisenstadt v. Baird*, 405 U.S. 438, 453 (1972) (extending the ruling in *Griswold v. Connecticut*, 381 U.S. 479 (1965) to unmarried persons, to allow married couples to use contraceptives). See also *Griswold*, 381 U.S. at 485–86.

⁶² *Griswold*, 381 U.S. at 485.

⁶³ See *id.* at 481.

⁶⁴ See *Eisenstadt*, *supra* note 61, at 453.

⁶⁵ See Vicki Breitbart et al., *Con un pie en dos islas: Cultural Bridges that Inform Sexual*

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

contraceptives in the nation. Contraceptive use between stable relationships is considered offensive and many Dominicans have negative views towards it.⁶⁶ In her study of Dominican women, Vicki Breitbart reported that:

Participants described using condoms predominately with partners who were not their husbands or not their more stable relationships, because to ask a partner to use condoms was commonly interpreted by the man as a declaration of infidelity on behalf of the woman or an accusation of infidelity of the man. They described the consequences of condom negotiation possibly leading to termination of relationships, violence or cutting of remittances and therefore not always an advantageous discussion with guaranteed beneficial or positive outcomes.⁶⁷

Unfortunately because of this mindset, many Dominicans do not take advantage of the family planning services the country offers.⁶⁸ When a woman does use contraceptives though, it is often believed to be her sole responsibility to protect herself from pregnancy.⁶⁹ In contrast, there is a high regard for motherhood and

and Reproductive Health in the Dominican Republic and New York, 12 CULTURE, HEALTH & SEXUALITY NO. 5, 543, 546–551 (2010). “This paper documents a qualitative research study of the cultural framework that influences the sexual and reproductive health of Dominican women both in the Dominican Republic and in New York City.” *Id.* at 544.

⁶⁶ *Id.* at 548.

⁶⁷ *Id.*

⁶⁸ See UN, *Dominican Republic Abortion Country Profile: Abortion Policy*, (last visited Mar. 10, 2015), <http://www.un.org/esa/population/publications/abortion/profiles.htm>, which reports:

Family planning and maternal-child health services are provided in the Dominican Republic in more than 700 public institutions located throughout the country. The State provides a wide range of contraceptive methods ... providing training and technical assistance to more than 100 private clinics, PROFAMILIA also sells low-priced contraceptives through a large network of distributors in communities around the country ... This assistance is complemented with information, education and services that target adolescents in particular, given the high rate of adolescent pregnancies (22.7 percent of adolescents 15-19 were mothers or pregnant in 1996). Sterilization is also provided through the public sector.

⁶⁹ See Breitbart et al, *supra* note 65, at 551 (stating that:

Dominican women ... reported limited condom use in conjugal and serious relationships and believe that contraceptives are a woman's responsibility ... women in the focus groups agreed that if they were to

positive attitudes towards having children in the Dominican Republic, but, ironically, pregnancies are not usually planned.⁷⁰

Though women are aware of the ban on abortion in the country, they still know where to go for illegal abortions and other contraception methods if they want them.⁷¹ Dominicans have an overall distrust for western medicine⁷² and usually rely on their relatives or friends for health information.⁷³ The various illegal and dangerous abortion methods include: “‘avocado leaves’, ‘pine wood’, ‘oak bark’ and ‘the peel of the Mamon fruit’ in ‘bottles prepared by women,’”⁷⁴ as well as Citoten.⁷⁵ Thus, a woman is left with the beliefs that she should not use protection with her partner, that she should not go to a medical professional for health advice and if she does become pregnant, she has little choice other than to have the child no matter what her circumstances are or to use an illegal and potentially life threatening abortion method.

B. The Fruitless Effect of the Ban

ask their husband or primary partner to use protection, their fidelity and loyalty would be brought into question. They stated that if a woman does not want to have more children, she should protect herself without telling her partner.)

⁷⁰ *Id.* at 548.

⁷¹ *Id.*

⁷² *Id.* at 551.

⁷³ *Id.* at 546 (noting that

[P]articipants reported that they talk mostly to their female relatives about their health. Most talked with their mother, grandmother, older sister, cousin or sister-in-law. However, some talked with males including uncles, nephews and male cousins; this was said to be ‘because men know more things than women’. As Maria, a 35-year-old woman described, Dominicans turn to each other first for health guidance because, ‘Look, in Santo Domingo, we are all doctors; we all know a lot about medications’.)

⁷⁴ *Id.*

⁷⁵ *Id.* (noting that Citoten is “probably comparable to Cytotec, also known as Misoprostol, prescribed to reduce the risk of induced gastric ulcers.)

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

The United States Supreme Court was aware that the abortion bans were ineffective during *Roe*.⁷⁶ “[B]efore *Roe v. Wade*, the estimates of illegal abortions ranged as high as 1.2 million per year. Although accurate records could not be kept, it is known that between the 1880s and 1973, many thousands of women were harmed as a result of illegal abortion.”⁷⁷ The Court saw the ineffectiveness of these laws as more of a reason for states to regulate abortions rather than imposing an outright ban on the procedure.⁷⁸

Similarly, though both the Dominican Constitution⁷⁹ and the Penal Code⁸⁰ ban abortions, this has not stopped women from having them.⁸¹ In 2012, there were 24,404 reported abortions in the Dominican Republic.⁸² There is not one reason for the large number of abortions in a country that completely outlaws them, but several factors help to clarify the paradox.

⁷⁶ See *Roe*, *supra* note 2, at 150.

⁷⁷ See National Abortion Federation, *History of Abortion*, <http://prochoice.org/education-and-advocacy/about-abortion/history-of-abortion/> (last visited Mar. 25, 2015).

⁷⁸ See *Roe*, *supra* note 2, at 149–150.

⁷⁹ Dominican Republic Constitution, *supra* note 4, art. 37.

⁸⁰ Penal Code of the Dominican Republic, *supra* note 5, art. 317.

⁸¹ See Tatiana Soria, *Partos, cesáreas y abortos realizados en el Ministerio de Salud Pública (MSP) y en el Instituto Dominicano de Seguros Sociales (IDSS), según provincia, 2012* [Births Cesareans and Abortions Statistics in the Dominican Republic in 2012], OFICINA NACIONAL DE ESTADISTICA, (Dec. 2, 2013), <http://www.one.gob.do/index.php?module=articles&func=display&aid=3560>.

⁸² *Id.* It is important to note that since abortions are illegal in the region, not all of the procedures are reported.

Abortion being illegal, it is hard to get accurate information about the rates of abortion. The WHO bases its estimations on numbers of women hospitalized for abortion complications (where available) and information on the safety of abortion, as well as findings from surveys of women and studies using an indirect abortion estimation methodology from country where those were available.

Michelle Oberman, Symposium, *Roe v. Wade at 40: Cristina's World: Lessons from El Salvador's Ban on Abortion*, 24 STAN. L. & POL'Y REV 271 n.27 (2013).

In general, researchers have found a link between restrictive abortion laws and higher instances of abortion.⁸³ Alejandra Cárdenas, the legal adviser for Latin America and the Caribbean at the Centre for Reproductive Rights, stated “that, perversely, Latin America has some of the highest abortion rates in the world. ‘The lowest number of abortions is located in Western Europe which has the most liberalized framework on access to abortions. So it's in complete reverse.’”⁸⁴ Additionally:

[L]iberalization of abortion laws ... is associated with significantly decreased abortion-related harm. This is ... because safe abortion methods, such as those recommended by the World Health Organization, are among the safest clinical interventions with minimum morbidity and a negligible risk of death. Liberalization allows for the training of practitioners, proper facilities and equipment, and greater accessibility to information and services...“Laws that criminalize medical procedures only needed by women and that punish women who undergo these procedures” are declared inconsistent with the right to non-discrimination in health.⁸⁵

With such high abortion rates in the country, one would assume that there would also be high correlating rates of incarceration for its illegal practice.⁸⁶ Although illegal, abortions

⁸³ See CBS News Staff, *Abortion More Common Where it's Illegal: Where are rates higher?*, CBS NEWS (Jan. 19, 2012, 2:14 PM) <http://www.cbsnews.com/news/abortion-more-common-where-its-illegal-where-are-rates-highest/> (stating that “[t]he new global abortion study - that's published in the Jan. 19 issue of *The Lancet* - is from the U.S.-based Guttmacher Institute and the World Health Organization. Researchers found a link between higher abortion rates and regions with more restrictive legislation, such as in Latin America and Africa. They also found that 95 to 97 percent of abortions in those regions were unsafe.”)

⁸⁴ *Abortion ban putting women's lives at risk in Latin America*, ABC LAW REPORT (Jun. 20, 2013, 10:23 AM), <http://www.abc.net.au/radionational/programs/lawreport/abortion-in-south-america/4766408>.

⁸⁵ Erdman, *supra* note 29, at 458–59. See also Oberman, *supra* note 82, at 279 (stating that “A 2012 article in *The Lancet*, the leading British medical journal, confirms numerous earlier studies regarding the relationship between restrictive abortion laws and abortion rates. The article, written by researchers from the World Health Organization (WHO), employed a variety of methods for estimating abortion rates in countries around the world, particularly in those in which it is illegal under most circumstances.”).

⁸⁶ See Oberman, *supra* note 82, at 284–86 (discussing the prosecution of people who commit abortions in El Salvador, another Latin American country that bans the procedure. Two Salvadorian lawyers found “120 cases of abortion prosecutions in the ten-year time frame from 2000-2010”).

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

are reported to still widely performed and few cases are brought to the attention of the courts.⁸⁷ Those which have been tried generally have been cases against doctors where the woman died from the procedure.”⁸⁸

The symposium also described a woman's experience being prosecuted for an abortion in El Salvador:

“Between interrogations and while awaiting her preliminary hearing, she lay on the dirt floor of a fifteen by fifteen foot cell, trying to understand how she'd come to be charged with killing her newborn. There were no mattresses on the cell floor; her eight cellmates told her there was supposed to be a cushion for each woman ... The other cells had ten women in them...the judges decided to convict Cristina of a far more serious crime than the one with which she had been charged: homicidio agravado, or aggravated homicide ... Unlike homicidio culposo, this crime carried a thirty to fifty year sentence. Cristina received a thirty year sentence. Her lawyer declined to appeal ... The drug traffickers and mass murderers were treated the best ... The other inmates applauded them. The worst treatment, by contrast, was reserved for those who had killed their children. “Te comiste a tus hijos” (“You ate your children”), they called out in passing to her and to the others incarcerated for abortion-related offenses.

Id. at 296-298.

Though the author described Cristina's experience in El Salvador, it could be assumed that a woman might go through the same problems in the Dominican Republic.

⁸⁷ E-mail from Joan Sherer, Law Librarian, Ralph J. Bunche Library, U.S. Dept. of State, to Arundhati Satkalmi, Senior Research Librarian, St. John's University School of Law (May 12, 2014, 09:55 AM) (on file with author) (stating that the law librarian at the U.S. Department of State was unable to find any materials regarding the prosecution of people who have violated the abortion ban in the Dominican Republic).

⁸⁸ UN, *Dominican Republic Abortion Country Profile*, *supra* note 68. See also *Envía a prisión a un médico acusado de provocar la muerte a una mujer con aborto*, LISTIN DIARIO, Jul. 16, 2013, <http://www.listin.com.do/la-republica/2013/7/15/284549/Envia-a-prision-a-un-medico-acusado-de-provocar-la-muerte-a-una-mujer-con>. The news article discusses how Dr. Francisco Zarzuela Novas was sent to prison in the Dominican Republic for three months for causing the death of a pregnant woman while conducting an abortion. The procedure was done in a private house. However, the article suggested that the doctor was sent to prison because he caused the pregnant woman's death, not because he was conducting an illegal abortion, though the article does mention the illegality of the procedure (translated by author).

Contradictory, although abortion is illegal in the Dominican Republic, obstetricians are still required to learn how to conduct an abortion as part of their training.⁸⁹

Despite the illegality of the procedure, Dominican ob/gyn residents, unlike their U.S. counterparts, cannot successfully complete their specialty training without learning how to perform first-, second-, and third- trimester abortions. The procedures have become such a part of the "natural" landscape of clinical practice that physicians interviewed by Dominican sociologist Denise Paiewonsky refused to believe that they were acting in violation of Dominican law. As authorities turn a blind eye to these forbidden practices and efforts at substantive legal reform fail to materialize, the legal status of abortion may be described as an insignificant political issue in the Dominican Republic.

Despite this apparent lack of controversy, fetuses and pregnant women occupy multiple and fluctuating positions in Dominican obstetrics discourse, which frame them situationally as esteemed persons and/or as the impersonal objects of professional practice.⁹⁰

Further, a third-year OB/GYN resident explained the practical effect of this training and stated "[w]e don't do abortions but patients who arrive here, if it's an incomplete abortion we have to finish it because we aren't going to let a woman die at home. It's our duty as physicians."⁹¹ Also, the United Nations reports that, though there is an explicit ban on abortions, "the general principles of criminal legislation allow abortions to be performed" to save the life of a woman "on the grounds of necessity."⁹²

Notwithstanding this defense, women are still being denied the right to an abortion, even in life threatening circumstances. Consequently, women are often left with self-inducing abortions through illegal means. The result of which is a readily accessible black market for abortions in the Dominican Republic.⁹³

C. Hazardous Socioeconomic Consequences of an Ineffective Ban

⁸⁹ Ortiz, *supra* note 57, at 264.

⁹⁰ *Id.*

⁹¹ *Id.* at 275

⁹² UN, *Dominican Republic Abortion Country Profile*, *supra* note 68.

⁹³ *Abortion in the Dominican Republic*, DR1.COM, http://dr1.com/articles/abortion_1.shtml (last visited Mar. 25, 2015).

ROE V. WADE’S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

During its discussion of medical treatment for abortion patients, the United States Supreme Court continuously highlighted the importance of maternal health and maintaining high standards of treatment for female patients.⁹⁴ While tracking the history of abortion legislation in the United States, the Court stated that although “[b]y the end of the 1950’s a large majority of the jurisdictions banned abortion, however and whenever performed...” this ban always maintained the exception to allow abortions when done so to “save or preserve the life of the mother.”⁹⁵ Further, the Court noted the reasoning of the American Public Health Association stated, “‘a well-equipped hospital’ offers more protection ‘to cope with unforeseen difficulties than an office or clinic without such resources.’”⁹⁶

The Court also saw the prevalence of high mortality rate at illegal ‘abortion mills’ strengthening the State’s interest in regulating the conditions under which abortions are performed, rather than merely banning abortions altogether since women were still able to receive abortions through these illegal means.⁹⁷ The Court noted that “[t]he State has a legitimate interest in seeing to it that abortion, like any other medical procedure, is

⁹⁴ See *Roe v. Wade*, *supra* note 2, at 145-146. See also *id.* at n. 40 where the Court cites to the Uniform Abortion Act which requires abortions to be performed:

[B]y a physician licensed to practice medicine [or osteopathy] in this state or by a physician practicing medicine [or osteopathy] in the employ of the government of the United States or of this state, [and the abortion is performed [in the physician’s office or in a medical clinic, or] in a hospital approved by the [Department of Health] or operated by the United States, this state, or any department, agency, or political subdivision of either;] or by a female upon herself upon the advice of the physician.

The Act also imposes a felony charge against those who conduct an abortion without following the Act’s guidelines. *Id.*

⁹⁵ *Id.* at 139.

⁹⁶ *Id.* at 145.

⁹⁷ *Id.* at 150.

performed under circumstances that insure maximum safety for the patient.”⁹⁸ Unfortunately, the Dominican Republic does not share that same concern for its female patients.

The booming not so underground black market is one of the numerous detrimental consequences the ban on abortion has had on the Dominican female population.⁹⁹ Dominican women generally know where they can receive an abortion.¹⁰⁰ One of the most prominent illegal abortion methods is the use of Misoprostol.¹⁰¹ This medication is meant to be used “as treatment of duodenal and gastric ulcers but has become a popular black market abortifacient.”¹⁰² However, complications emerge because “women in the Dominican Republic take these pills themselves, often without knowing the proper

⁹⁸ *Id.*

⁹⁹ *See Abortion in the Dominican Republic, supra* note 93 at 146.

¹⁰⁰ *See* BREITBART, *supra* note 65, at 548.

¹⁰¹ *See Usage of Misoprostol, STANFORD.EDU,*

http://www.stanford.edu/group/womenscourage/Repro_Latin/ekobash_PPHmisoprostol_Latin.html (last visited Mar. 25, 2015) (stating that “In Latin America, women frequently use misoprostol to induce abortion even though it is illegal in most countries.”) *See also* Oberman, *supra* note 82, at 281, reporting:

In Latin American countries with restrictive abortion laws, only one of the active ingredients used in Mifeprex is used in medical, as opposed to surgical abortions. Misoprostol, (also known as Cytotec) is approved for use throughout the world, including Latin America, for use in treating stomach ulcers. It also has the effect of bringing on uterine contractions. Missing from the formulation of Misoprostol is the compound that halts fetal development.

In countries where abortion is illegal, the fact that Misoprostol is on the formulary for treating ulcers means that one can find a thriving black market in abortion-related sales. Evidence of this market is in plain view on the Internet. When I typed ‘ ‘ Cytotec El Salvador’ ‘ in a search engine, I got 492,000 results. ‘ ‘ Misoprostol El Salvador’ ‘ yielded 453,000 hits. The majority of links in the first few pages lead to classified ads with e-mail addresses and phone numbers.

¹⁰² *See Usage of Misoprostol, supra* note 101.

ROE V. WADE’S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

dosage. An overdose can cause serious hemorrhaging . . .”¹⁰³ Several complications may arise from taking the medication incorrectly:

Misoprostol can be used to terminate pregnancies as late as nine weeks, and in some cases can bring on contractions even in mid-trimester pregnancies. But all of the studies of late pregnancy terminations via Misoprostol occurred under close medical supervision. Absent such supervision, there is necessarily a greater risk of severe hemorrhage or other complications.¹⁰⁴

Also, “[m]isoprotol use always carries the risk of excessive bleeding, cramping, and infection. All of these factors may be exacerbated, requiring medical and/or surgical intervention, in rare cases or in the event of incomplete abortion or advanced gestational stage.”¹⁰⁵ Women usually have to seek medical attention because of the complications that stem from the use of Misoprostol. However, there are drastic discrepancies in the quality of treatment a woman receives based on what she can afford.

To understand why the class disparities emerge, the current economic state of the Dominican population must first be explained.

Six percent of the Dominican population enjoys 43 percent of the total national income, while the poorest 50 percent divide a meager 13 percent of the national income among themselves. Thus, the poor and the institutions that serve them, including the public health sector, have borne the brunt of the sacrifices entailed by structural adjustment.¹⁰⁶

“The going rate for the drug [Misoprostol] is around \$60 per pill, with advertised recommended dosages ranging from four pills for those whose pregnancies are six weeks or fewer, to six or eight pills for those whose pregnancies are more advanced.”¹⁰⁷ As a

¹⁰³ *Abortion in the Dominican Republic*, *supra* note 93.

¹⁰⁴ Oberman, *supra* note 82, at 282-283.

¹⁰⁵ *Id.* at n.46.

¹⁰⁶ Ortiz, *supra* note 57, at 266-267.

¹⁰⁷ Oberman, *supra* note 82, at 283.

result, most of the population may not be able to afford Misoprostol and must turn to other clandestine abortion methods.¹⁰⁸

When faced with an unwanted pregnancy, those women determined to terminate their pregnancies resort to traditional methods for bringing on a miscarriage: they insert objects into their cervix, they douche with battery acid, they throw themselves down steps, they punch themselves in the stomach. Not only are these methods far less effective than Misoprostol; they often leave behind incriminating evidence.¹⁰⁹

Whether complications arise from consuming Misoprostol¹¹⁰ or from other traditional methods of causing a miscarriage¹¹¹ medical attention is usually necessary following these procedures. But, there is an immense disparity in the treatment and likelihood of being turned into the authorities between private clinics or public hospitals. Again, the financial means of the woman play a deciding role in choosing between the two facilities.¹¹²

¹⁰⁸ *Id.* at 284. *See also id.*, explaining the similar difficulties poor El Salvadorian women face in trying to attain the medication:

As a result of its high cost, Misoprostol is out of reach for the poorest women in El Salvador. When faced with an unwanted pregnancy, those women determined to terminate their pregnancies resort to traditional methods for bringing on a miscarriage: they insert objects into their cervix, they douche with battery acid, they throw themselves down steps, they punch themselves in the stomach. Not only are these methods far less effective than Misoprostol; they often leave behind incriminating evidence. Abortion-related offenses only come to the attention of El Salvador's criminal justice system when something goes wrong and such incriminating evidence is discovered. In the case of abortion, this typically means that a woman wound up in the hospital, bleeding heavily or otherwise in grave health, and that her health care provider suspected self-induced abortion as the likely source of her illness and notified the police.

¹⁰⁹ *Id.* at 284.

¹¹⁰ *Id.* at n.46.

¹¹¹ *Id.* at 284.

¹¹² Erdman, *supra* note 29, at 440 (stating:

[m]istreatment in public health care facilities of women who terminate their pregnancies is widespread. These women tend to be of lower socioeconomic status, thereby exacerbating power inequalities between provider and patient. They 'may be left to receive care after other patients

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

The Dominican government funds public hospitals.¹¹³ Accordingly, public health care workers are “more fearful of reprisal if they do not comply with prevailing governmental ideology or policies.”¹¹⁴ Health officials at public health care centers are more likely to report women who go to their facilities and show signs of a potential abortion.¹¹⁵ “Because abortion is always a criminal act, any woman who presents to a hospital bleeding from her vagina is suspected of having committed an abortion.”¹¹⁶

have been seen, they may be victims of psychological aggression, or may be punished by being forced to undergo curettage without anesthesia).

¹¹³ Ortiz, *supra* note 57, at 267 reporting:

Public biomedical care in the Dominican Republic is administered by three government agencies: SESPAS, the Secretariat of Public Health and Social Assistance; IDSS, the Dominican Institute of Social Security; and ISSFAPOL, the Armed Forces and National Police Social Security Institute. At the civilian agencies, policies are dictated centrally and from the highest levels of the bureaucratic hierarchy rather than taking into account input from ground-level practitioners and local needs. Although SESPAS is the mainstay of the Dominican healthcare system and is mandated to serve approximately 80 percent of the Dominican poor, actual coverage is estimated to be at less than 40 percent. SESPAS is funded primarily through central government budget appropriations. Because funding rarely keeps pace with inflation and is often diverted toward military and executive discretionary expenses, most facilities illegally charge their patients "recuperation" fees, in addition to exorbitant laboratory and blood-products fees, making services difficult to access for the very poorest Dominicans. Disregarding cost, SESPAS facilities are unattractive to healthcare consumers. Personnel are frequently absent from their posted work hours, and equipment at SESPAS facilities is seldom functional. A 1985 equipment survey revealed that 90 percent of incubators, 75 percent of X-ray machines and laboratory equipment, and 50 percent of autoclaves were broken.

¹¹⁴ Oberman, *supra* note 82, at n.63.

¹¹⁵ *Id.* at 284 (stating “In the case of abortion, this typically means that a woman wound up in the hospital, bleeding heavily or otherwise in grave health, and that her health care provider suspected self-induced abortion as the likely source of her illness and notified the police”).

¹¹⁶ Oberman, *supra* note 82, at 299. Also noting:

The practical impact of criminalizing abortion is to shift the burden of proof to the woman, who must persuade her doctor that she did not provoke the bleeding. There are many causes for vaginal bleeding, though,

Consequently, “[w]omen are often deterred from seeking health care when they know that governmental officers, including police officers, could gain access to their health care information.”¹¹⁷ Geographic limitations may also hinder a woman’s ability to seek medical attention. Women living in rural areas may not have many hospitals located nearby and do not have the means to travel to a hospital in the urban areas.¹¹⁸

Ironically though, for the women that do seek medical help at these public facilities, their treatment often puts them in an even more life threatening position.¹¹⁹

Health officials in these public hospitals often reject the traditional abortion protocols used in the United States and prefer to use a barehanded method of treatment.¹²⁰ The

and it is difficult to diagnose its source, particularly when one is sick enough to require emergency care and poor enough to have sought such care at a public hospital. *Id.*

¹¹⁷ Erdman, *supra* note 29, at 441.

¹¹⁸ See *An Overview of Clandestine Abortion in Latin America*, GUTTMACHER INSTITUTE (Dec. 1996), <http://www.guttmacher.org/pubs/ib12.html>, stating:

[O]bviously, the safer the abortion procedures used in any setting, the fewer the women who will require hospitalization. However, the numbers hospitalized also depend on the availability of hospital services. Women living in rural areas are probably less likely than those living in urban areas to have access to hospital treatment, even though they are precisely the women most likely to be exposed to unsafe techniques, untrained practitioners and unhygienic settings.

See also Oberman, *supra* note 82, at 275–276, discussing the same obstacle poor women face in other Latin American countries:

Moreover, because it is a poor country, surrounded by countries with abortion laws that are only slightly less restrictive, women cannot readily avoid the law by traveling. Thus, unlike middle-class women in Chile, who can travel to receive relatively safe, if illegal, abortions, 18 or the relatively few women in Vatican City, who could readily obtain abortions in Rome, Salvadoran women live in a world in which safe abortion is truly inaccessible. *Id.*

¹¹⁹ Erdman, *supra* note 29, at 440.

¹²⁰ See Ortiz, *supra* note 57, at 269. The residents at Las Marias Maternity Hospital were interviewed regarding their general practices in the article. Ortiz reported:

It is this same ethos that permeated the practice of young ob/gyn and perinatology residents at Las Marias Maternity Hospital, a major SESPAS facility on the outskirts of Santo Domingo. Rejecting a vision of clinical

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

conduct of OB/GYN and perinatology residents and the conditions at Las Marias Maternity Hospital is exemplary of how most public hospitals in the Dominican Republic operate:

Residents would treat women bare-handed or make their privately purchased stocks go further by treating more than one woman before changing gloves. At Las Marias Maternity Hospital the sole ultrasound machine had been unserviceable for four years. The anesthesia machine had just one functioning laryngoscope, so it could only be used for one surgical procedure at a time. There was no resuscitation equipment and only one mobile oxygen tank. The obstacles to medical practice created by government inattention and the Caribbean debt crisis were confronted aggressively by the Las Marias residents. The ubiquitous power outages and budget shortfalls demanded bravura and the creative use of the limited equipment sustained by the backup generator and what would conventionally be regarded as rubbish. Francisco explained: "It wasn't just one or two patients I sutured by candlelight. I did episiotomies, even cesareans by candlelight. Sometimes the first light we would find would be the laryngoscope-it has a tiny bulb. That would be the first light." And Enrique, chief resident, said: "For example, a patient that is catheterized should have a [urine] collecting bag. Well, we tie up the bag the IV solutions come in. We don't have collectors? Well, we just tie up that bag and we have a collector."¹²¹

The conditions also included other institutional deficiencies such as "the inability to properly scrub pre-surgery, the flourishing of maggots in the blood-soaked delivery room stretchers, the shortages of mattresses (which forced the assignment of up to three women

practice derived from an idealized U.S. model of healthcare delivery, these practitioners saw themselves as engaging in a species of nationalistic, "frontier" medicine and as upholders of values of self-sufficiency and creativity which they believe to be bled out of medicine in more economically and technologically privileged settings.' Indeed, the ob/gyn residents of Las Marias saw themselves as the superiors of their U.S. counterparts, whom they considered to be overly dependent on technology, "soft," almost feminized. Replicating the masculinist discourse of Dominican ballplayers, the residents called their medical practice "bare-handed," proudly asserting that (literally often gloveless) "we work with our hands" and that "the primary virtue of a man is his adaptability. U.S. residents were portrayed as befuddled innocents, overprotected and incapable of coping with the exigencies of Third World practice.

Id.

¹²¹ *Id.* at 270. Additionally, "[n]ot all situations born of infrastructural decay and structural adjustment could be handled so successfully. During a two-week stretch in October 1990, fifteen newborns perished from hypothermia at Las Marias when lack of electrical power disabled the heat lamps and incubators." *Id.*

per bed), and the shortages of sheets (for which the torn dresses of the patients were substituted).¹²² Another challenge that women at these public hospital face is having to privately purchase the separate equipment that may be needed for their treatment.¹²³ “In Dominican hospitals, patients are expected to purchase all disposable materials, including razors, catheters, analgesics, sutures, and IV solutions. Many patients could not afford these necessary supplies.”¹²⁴ Consequently, residents at these hospitals often hoard supplies in order to help these indigent patients.¹²⁵ Arguably, a woman may be better off not seeking medical attention at all if her only option is a facility with these types of conditions and medical practices.

For higher income women who can afford a private clinic for medical treatment, the circumstances are drastically different. Abortions are performed “with impunity in private hospitals and clinics.”¹²⁶ “In private hospitals and clinics, physicians generally classify an abortion as therapeutic when it is performed to save the life of the woman, but many are performed on eugenic and health grounds.”¹²⁷ Further, “[i]n the urban areas of some countries, women with financial resources can attend private clinics that perform safe medical abortions using dilatation and curettage (D&C) or vacuum aspiration techniques. And throughout Latin America, middle- or upper-class women are generally acknowledged to obtain safe medical abortions in doctors' offices.”¹²⁸

¹²² *Id.* at 276–277.

¹²³ *Id.* at 278.

¹²⁴ *Id.*

¹²⁵ *See Id.* (stating that “residents stressed their sense of obligation toward the poor: “We have to take care of it for them. We have to be hoarding leftovers, so that when the crisis hits one says ‘I have this’; the other says ‘I have that.’”).

¹²⁶ UN, *Dominican Republic Abortion Country Profile*, *supra* note 68.

¹²⁷ *Id.*

¹²⁸ GUTTMACHER INSTITUTE, *supra* note 118.

ROE V. WADE’S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

Women who are treated at private clinics also enjoy the security of confidentiality.¹²⁹ While discussing the extent of patient-doctor confidentiality in a private hospital in the Dominican Republic, a doctor of a private clinic stated:

Here, the right to confidentiality comes with a price tag. Patients at the private hospitals buy their privacy - no one ever reveals their secrets. You could lose your medical license and spend three to six years in prison for breaching patient confidentiality. And besides, they're your patients - you know them, or their families, or their friends. Your reputation and your livelihood depend on them.¹³⁰

Some doctors also believe “that a doctor’s choice between reporting and maintaining confidentiality depends not so much upon the doctor’s beliefs regarding abortion, but rather, upon whether the patient is a paying patient in a private clinic or hospital, or is a poor woman forced to seek care at a public facility.”¹³¹ The symposium by Michelle Oberman detailing the differing conditions in private and public medical care for pregnant women in El Salvador provides more striking evidence about the disparities that support the similar socio-economic class distinctions occurring in the Dominican Republic.¹³² She discusses a study on 120 cases of abortion prosecutions in the ten-year time frame from 2000-2010 in El Salvador, which found the following:

Two things are particularly noteworthy about their findings. First, the rate of twelve prosecutions per year is at best a small fraction of the number of abortions taking place in El Salvador. And second, the majority of the cases were referred to the police from hospitals - specifically, from public hospitals. Indeed, not a single hospital report to police came from the country’s private practice doctors or private hospitals. The discrepancy between the way physicians treat cases of suspected abortion among public patients, as opposed to private, paying patients, points to a troubling discrepancy in women’s expectations of medical confidentiality. Put simply, this pattern suggests that medical confidentiality is not a right, but rather, a commodity.¹³³

¹²⁹ Oberman, *supra* note 82, at 290.

¹³⁰ *Id.*

¹³¹ *Id.* at 295.

¹³² *Id.* at 284–286.

¹³³ *Id.* 284–286. On the other hand:

a lot of doctors think they’re obligated to report women they suspect of having done something to terminate their pregnancies; they do it because they think the law says they must. And then there are those who report because they really believe it’s a terrible crime to terminate a pregnancy

Regardless of the reasons for the differences in reporting and quality of treatment in a public and private hospital, it is evident that the ban on abortion has had disastrous socioeconomic consequences on the country's impoverished women.¹³⁴ The law in the Dominican Republic is essentially forcing impoverished women to choose between having a child they have to provide for and do not have the means to, or go through life threatening abortion procedures and if they survive, seek medical attention at a facility with potentially fatal medical protocols and conditions.¹³⁵

and they want to see the law enforced. And of course, doctors in public hospitals typically are young, hoping to build a reputation and then to start a private practice. They'll do what they need to do to avoid conflict with their nurses or their superiors.

Id. at 291.

¹³⁴ *Position Paper Networks and Civil Society on the Equal Access to Legal Abortion, Safe and Free*, COLECTIVA MUJER Y SALUD (Aug 15, 2013), http://www.colectivamujerysalud.org/index.php?option=com_content&view=article&id=336:documento-de-posicion-de-redes-y-organizaciones-de-la-sociedad-civil-sobre-el-acceso-igualitario-al-aborto-legal-seguro-y-gratuito&catid=31:general&Itemid=64. In its paper, the organization notes that:

The criminalization of abortion particularly affects young women, poor and living in vulnerable conditions, as are those who interrupt their pregnancies when they do so under conditions of high risk, and is thus an issue of social injustice and with deep roots in discrimination economic, ethnic, race, class, immigration status, among others.

Id.

¹³⁵ This idea of forcing women to maintain their pregnancies has previously been discussed by scholars. In his article, Richard G. Wilkins explains the debate date occurred over the concepts of "forced" or "enforced" pregnancy during the Diplomatic Conference of Plenipotentiaries on the Establishment of an International Criminal Court:

' ' [F]orced pregnancy and childbirth certainly constitute an intolerable bodily intrusion when imposed by the state on unwilling pregnant women ' ' ... the phrase ' ' unwilling pregnant women ' ' was not limited to women who were forced by the state to become pregnant; rather, the phrase included women who were prevented from terminating unplanned and/or unwanted pregnancies ... ' ' Forced ' ' or ' ' enforced ' ' pregnancy, in short, was designed to create a world-wide right to abortion on demand.

Reynolds & Wilkins, *supra* note 34, at 138–139.

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS IN THE DOMINICAN REPUBLIC

These damaging outcomes are not novel to the topic of abortion. Similarly, during the *Roe* debate, scholars cited the many problems women would face if there was a ban on abortion in the United States and women would be forced to have a child:

The bearing and raising of children often places severe constraints on women's employment opportunities and therefore threatens their ability to support themselves and their families. Moreover, teenagers' inability to postpone motherhood until they have completed a basic education and are psychologically and financially equipped to care for children largely predetermines the paths their lives will take before they have even developed their own identities and aspirations ... Many women lose their employment during pregnancy because employers unlawfully discriminate against them ... Some women must either accept part-time work with significantly less pay, and few if any job benefits, or move to less skilled positions so that they can work a regular schedule.¹³⁶

Taking into account that the Dominican Republic is a significantly poorer country than the United States,¹³⁷ these same arguments can be applied to the current legal state of abortion in the Dominican Republic.

D. The Possibility of a Roe v. Wade Transition in the Dominican Republic

The stark differences between the time and governmental mindset of when *Roe* was decided in the United States and the Dominican Republic's current views on abortion, present an almost impossible task for those advocating for a woman's reproductive rights in the Dominican Republic. However, there are some contemporary developments that suggest that the Dominican Republic may eventually end its ban on abortion. Pro-choice advocates in the Dominican Republic as well as other international supporters have been fighting against the ban on abortion from its inception. On September 8, 2009, "[h]undreds of women, youngsters, union leaders, academic institutions, professional and barrio associations [protested] in front of [the Dominican]

¹³⁶ Johnsen & Wilder, *supra* note 21, at 180.

¹³⁷ See Data: GDP (current US\$), THE WORLD BANK, <http://data.worldbank.org/indicator/NY.GDP.MKTP.CD> (last visited Mar, 25, 2015). Dominican Republic's Gross Domestic Product is \$59.05 billion compared to the United States Gross Domestic Product of \$15.68 trillion. *Id.*

Congress” demanding the reformation of the constitutional amendment guaranteeing the right to life from the date of conception.¹³⁸ Moreover, different women’s groups, like the Colectiva Mujer y Salud¹³⁹ and the International Campaign for Women’s Right to Safe Abortion,¹⁴⁰ have been and continue to fight for the reproductive rights of Dominican women. The most recent and promising development in the fight for Dominican abortion rights is the Dominican Chamber of Deputies’¹⁴¹ decriminalization of therapeutic abortions.¹⁴² Though the decision was submitted to the Senate for further approval, this was an immense step towards eventually completely decriminalizing abortions.

CONCLUSION

Though this ban on abortion is generally accepted, it is not having its proposed effect in the Dominican Republic. Unlike other Latin American countries with similar prohibitions on abortion, the Dominican Republic does not appear to be prosecuting those

¹³⁸ *Pro-choice groups march to the Dominican Congress*, DOMINICAN TODAY (Sept. 9, 2009, 6:45 AM), <http://www.dominicantoday.com/dr/local/2009/9/9/33180/Hundreds-of-pro-choice-march-to-the-Dominican-Congress>.

¹³⁹ COLECTIVA MUJER Y SALUD, *supra* note 134.

¹⁴⁰ *International Campaign for Women’s Right to Safe Abortion*, INTERNATIONAL CONSORTIUM FOR MEDICAL ABORTION, <http://www.medicalabortionconsortium.org/international-campaign-for-women-s-right-to-safe-abortion-invitation-to-join-the-campaign.html> (last visited Mar. 14, 2015). Notably one of the guiding principles for the campaign is: “Women must be able to take decisions about their own bodies and health care free from coercion: this includes the decision to carry a pregnancy to term or seek an abortion. No woman should be obliged to continue an unwanted pregnancy.” *Id.*

¹⁴¹ The Dominican Chamber of Deputies is part of the Dominican Republic’s bicameral Congress. The Senate is the upper house, while the Chamber of Deputies is the lower house. *See Dominican Republic: Cámara de Diputados (Chamber of Deputies)*, INTER-PARLIAMENTARY UNION, <http://www.ipu.org/parline-e/reports/2093.htm> (last visited Mar. 25, 2015).

¹⁴² Sergia Galván, *Dominican Republic: Decriminalization of therapeutic abortion – a first step*, INTERNATIONAL CAMPAIGN FOR WOMEN’S RIGHT TO SAFE ABORTION (Jun. 25, 2013), <http://www.safeabortionwomensright.org/dominican-republic-decriminalization-of-therapeutic-abortion-a-first-step/>.

ROE V. WADE'S NIGHTMARE: THE CURRENT LEGAL STATE OF ABORTION RIGHTS
IN THE DOMINICAN REPUBLIC

who violate these laws as frequently or as harshly as its counterparts. Ultimately, it appears that the ban on abortion in the Dominican Republic is simply the country's way of trying to maintain appearances for the Catholic Church and Pro-Life politicians while disregarding the vast harm it is having on its indigent female citizens. Until the Dominican Republic recognizes that it has a dual interest in protecting the reproductive rights and maternal health of these pregnant women as well as preserving the life of its unborn children, as the United States did in *Roe*, these indigent Dominican women may have to suffer in the current destructive cycle for immeasurable years to come.