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Master's degree in international relations

Chair of Comparative Politics

Reproductive Rights in Compound Democracies: A Comparison between the United States and the European Union

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ID Number: 656492

Academic year: 2024- 2025

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Abstract

The thesis analyses the distribution of competence in the field of reproductive rights, in particular of abortion, in the European Union and in the United States. Through a comparative approach combining legal-institutional analysis and political science, the work examines how two systems of compound democracy - characterised by fragmented sovereignty and polycentric governance - address one of the most controversial issues. In the case of the European Union, the absence of binding legislative powers and competence in the areas of health and morality has relegated the institutions' action to the use of soft law instruments, parliamentary resolutions and policy strategies, which have mainly symbolic and normative value but do not directly affect national legislation, as the implementation of these resolutions depends on the will of the member states. In the United States, on the contrary, the Supreme Court has played a central role: from *Roe v. Wade* (1973), which constitutionalised the right to abortion for almost fifty years, to *Dobbs v. Jackson Women's Health Organisation* (2022), which overturned it, restoring full jurisdiction to individual states. The comparison highlights how the European model produces stable de jure pluralism, based on the sovereignty of member states, while the American model has undergone a sharp shift, moving from a centralised regime to de facto fragmentation after Dobbs. Both systems show significant limitations in ensuring uniform and secure access to reproductive rights, with consequences in terms of territorial inequalities and vulnerability of reproductive autonomy. The thesis concludes that, in contexts of multilevel governance, the protection of reproductive rights is inevitably conditioned by the distribution of powers and the capacity of central and subnational institutions to mediate between divergent values. Reproductive autonomy thus emerges as a test of the resilience of composite democracies in balancing pluralism and the protection of these rights.

INTRODUCTION

Women's reproductive rights, and in particular access to abortion, provide an analytical lens through which to examine how different legal systems distribute competences between central and subnational authorities. The regulation of abortion sits at the intersection of health policy, morality, and autonomy, domains in which tensions between central authority and sub-national autonomy emerge with particular force. Comparing the European Union (EU) and the United States (US) is analytically valuable because both are examples of what can be described as compound democracies (Fabbrini, 2007): unions of states and citizens characterized by fragmented sovereignty and polycentric governance. Yet, despite belonging to the same "political genus" (Fabbrini, 2008), the institutional design of each polity produces markedly different approaches to competence and to the protection of rights.

In the European Union, the framework of the Treaties reserves primary responsibility for health and moral issues to the Member States (European Union, 2012). As a result, the EU lacks binding legislative power in this field, yet its institutions have increasingly sought to influence the debate through soft law instruments, parliamentary resolutions, and communications aimed at shaping common standards and affirming shared values. In the United States, by contrast, the Supreme Court has long played a decisive role in shaping reproductive rights, first with *Roe v. Wade* (1973), which constitutionalized a right to abortion, and more recently with *Dobbs v. Jackson Women's Health Organization* (2022), which overturned Roe and returned full competence to individual states. These developments have produced two different legal and political models: on one side, a European Union that aspires to act as a community of values but lacks harmonization tools; on the other, a federal system where constitutional jurisprudence has cyclically redrawn the boundaries of competence.

The central research question guiding this thesis is therefore:

How is competence over women's reproductive rights distributed in the European Union and in the United States? How does the supranational level act when competence is national, and what similarities and differences emerge between the United States and the European Union in the field of women's reproductive rights?

To answer these questions, the thesis adopts a comparative perspective that combines legal-institutional analysis with the study of political dynamics. Methodologically, it draws on the examination of normative and jurisprudential sources, from EU Treaties to Supreme Court rulings, from European parliamentary resolutions to state legislation in the US, supplemented by doctrinal and scholarly literature. This is combined with a political science approach, considering the role of institutional actors, political parties, social movements, and transnational advocacy networks. The thesis is structured in three parts. The first chapter addresses the European Union, beginning by reconstructing the legal framework that defines the Union's limited competence in the field of health and reproductive rights, focusing on the principles laid down in the Treaties, such as subsidiarity and Article 168(7) TFEU (European Parliament, 2012), which explicitly reserves health policy to the Member States and excludes harmonization. Against this background of constrained formal powers, the chapter then analyses the instruments through which EU institutions have nonetheless sought to act at the supranational level. Particular attention is devoted to the recourse to soft law - resolutions of the European Parliament, communications and strategies of the Commission, and Council conclusions - that, while lacking binding force, function as normative signals and political tools. The chapter assesses how these instruments have been used to promote a common understanding and standard of sexual and reproductive health and rights, and to exert pressure on national governments to align with broader human rights and gender equality standards. In doing so, it evaluates both the potential and the limits of soft law as a means of shaping political and normative debates within the Member States and highlights the tensions that arise when supranational aspirations confront national prerogatives in one of the most contested policy areas. The second chapter focuses on the United States. It traces the evolution of reproductive rights from the pre-Roe era, when abortion regulation was left almost entirely to the states, through the landmark decision of *Roe v. Wade* (1973), which for the first time constitutionalized a right to abortion grounded in the right to privacy. The chapter then examines the *Planned Parenthood of Southeastern Pennsylvania v. Casey* compromise (1992), which replaced the trimester framework with the "undue burden" standard[1], allowing greater state regulatory power

[1] The "undue burden" standard refers to the legal principle established by the Supreme Court in Casey (1992), which states that states cannot impose a significant or unjustified obstacle to a woman's access to

while maintaining a constitutional core of protection. Finally, it analyses the seismic shift brought about by *Dobbs v. Jackson Women's Health Organization* (2022), which overturned Roe and Casey altogether, returning full competence to the states and triggering a rapid proliferation of divergent state laws ranging from near-total bans to strong statutory protections. Beyond the jurisprudential milestones, the chapter also considers the role of Congress and federal institutions, noting the limits of federal legislative authority in this area, especially considering polarized party politics. The analysis highlights how the United States exemplifies a federal system in which competence over abortion has oscillated dramatically between judicial interpretation at the national level and legislative experimentation at the state level. Within this chapter, the reconstruction of this shifting and unstable balance highlights the changing nature of the American model, in which the protection of women's reproductive rights is strongly influenced by the composition of the Supreme Court and the political orientation of the federal states. The final chapter presents a comparison between the European and American models, comparing the different institutional spheres and the allocation of competences regarding reproductive rights. Points of convergence and divergence are highlighted, with a particular focus on the use of European Union soft law and the dependence of the United States on constitutional judgement. Through an analysis of supranational and federal structures, this chapter highlights how the institutional configurations of the two different models impact the realisation and protection of women's reproductive rights, facilitating or hindering their uniform access within the territories.

abortion, while still allowing state regulation of abortion based on legitimate interests, such as the protection of the woman's health or the potential life of the fetus.

CHAPTER I: The European Union: Competence and Constraints in Reproductive Rights Governance

1.1 Introduction

Abortion rights in the European Union sit at the intersection of national sovereignty and supranational values. The EU's founding treaties do not grant its institutions general authority to legislate on reproductive rights or other core areas of family and health law. Health policy and moral issues remain primarily within the competence of member states, in line with the principle of subsidiarity and respect for national cultural and constitutional identities. At the same time, the Union's commitment to an "ever closer union among the peoples of Europe" contained in the Article 1 of the TEU (European Parliament, 2012) generates pressure to address issues that go beyond the explicit competences of the treaties. Abortion, however, is among the most contested questions in contemporary politics, making it difficult to argue that the pressure flows only in one direction. Instead, EU institutions find themselves in a paradox: while some actors urge them to articulate reproductive rights as part of a broader human rights agenda, others resist such moves as illegitimate incursions into national sovereignty. Over the past three decades, this tension has given rise to a growing, though non-binding, body of EU-level action. Through resolutions, declarations, and political statements - forms of soft law - supranational actors have sought to guide or influence member states national policies, either to advance reproductive freedom or to resist democratic backsliding.

This dynamic prompts a central inquiry: In what ways do supranational institutions address abortion rights in the European Union, given that formal authority remains with member states? This chapter uses a framework of comparative and multilevel governance. It explores the legislatures and national legal systems of the 27 member states on abortion. The analysis identifies patterns of convergence, stagnation, and divergence. Next, the chapter examines the supranational framework, focusing on the European Parliament, the Commission, and the Council. It also looks at the tools they use. The analysis pays special attention to soft law and the political and institutional processes involved.

The chapter evaluates the limitations and strengths of broader influence mechanisms. This includes the spread of rules, transnational support, mobilization of backlash, and Eurosceptic resistance. It also highlights the dual nature of soft law. On one hand, it serves as a channel for regulatory innovation and sharing policies. On the other hand, it operates within a politically limited and often disputed form of governance.

1.2 Competence, Limits, and Soft Law on Abortion

The structural limitations and regulatory tools used by the EU institutions are necessary to better understand how the issue of women's reproductive rights is addressed within the union. In fact, the European Union does not have direct legislative competence and authority in this area, as this range of rights falls within the sphere of sovereignty of the Member States, particularly in the areas of public health, bioethics and moral norms. Despite this lack of binding authority, the EU institutions have not remained passive. The EU has clarified its regulatory position, seeking to influence national abortion policies through the mechanisms of so-called soft law. The term *soft law* is generally used to describe legal instruments which, although not formally binding, nevertheless influence national abortion policies and shape expectations. As defined by the European Center for Constitutional and Human Rights (ECCHR, n.d.), "The term soft law is used to denote agreements, principles and declarations that are not legally binding. Soft law instruments are predominantly found in the international sphere. UN General Assembly resolutions are an example of soft law. Hard law refers generally to legal obligations that are binding on the parties involved and which can be legally enforced before a court". This definition is adopted here as it originates from an authoritative source with expertise in international and European legal frameworks, providing a clear and concise explanation suitable for a political-legal analysis of the EU context. While other academic definitions emphasize different aspects - such as norm diffusion - the ECCHR's formulation is particularly relevant for this work as it reflects the operational understanding of soft law frequently applied within supranational institutions, including the EU.

The use of soft governance tools reflects both institutional constraints and political ambition. The EU seeks to promote common values such as gender equality and physical autonomy through soft law, while avoiding formal overreach. The use of these instruments allows European institutional actors to define expectations and, at the same time, signal shared standards and encourage political convergence among Member States. The strategic value of soft law lies in its ability to address politically sensitive issues without triggering legal conflicts or accusations of overlapping competences.

Scholars such as Sandra Lavenex (2015) highlight soft law's capacity to diffuse norms within the EU, particularly in areas of low formal integration. Slominski and Trauner (2020) argue that soft law serves as a means of signalling normative expectations, enabling institutions to coordinate national responses where binding law is politically unfeasible. Shaffer and Pollack (2009) further underscored that soft law could have tangible implications for fundamental rights, not only by shaping political expectations but also by preparing the ground for future hard law and serving as an interpretive guide for judicial bodies. Kochenov and Pech (2015) add that repeated references to soft instruments can cumulatively build normative authority, even in the absence of formal enforceability. At the same time, critiques of soft law focus on its democratic legitimacy and uneven impact, as bypassing formal legislative processes, there is the risk of obscuring lines of accountability. Petropoulou Ionescu and Eliantonio (2021) caution that the legitimacy of soft law depends on transparency, participation, and institutional accountability - elements often lacking in practice. Furthermore, Weiss (2022) warns that over-reliance on soft law may undermine democratic deliberation by circumventing checks and balances. Moreover, its effectiveness is uneven: while soft law enables consensus-building, it also allows states to ignore supranational norms without consequence.

From European Parliament resolutions condemning national restrictions, to Commission communications promoting access to reproductive healthcare, soft law has become the EU's primary means of engagement. This reflects the Union's efforts and commitment to redefining abortion as a fundamental right within a binding legal framework. The intention is to establish a set of shared values and influence national debates, empower civil society and encourage governments to adhere to broader European standards. However, the success of these instruments is relative, as it depends heavily on internal political will, and in deeply polarised contexts their impact remains limited. As Gozdecka[9] points out, soft law can shape narratives and agendas, but translating normative signalling into material change requires overcoming entrenched resistance at the national level.

1.3 Impact and Limitations of soft law

Despite its lack of binding force, the EU's use of soft law has become a central strategy for promoting reproductive rights norms, leveraging influence through political and social channels even as it faces inherent constraints. European Parliament resolutions and similar instruments have framed access to abortion as a fundamental human right and called for its recognition at the EU level (Peroni & Bucholc, 2025). By doing so, EU institutions engage in a form of "normative entrepreneurship" (Finnemore & Sikkink, 1998), understood as the strategic promotion of new norms by actors seeking to redefine standards of behaviour, thereby projecting a unified, values-based stance and exerting what has been described as internal cultural diplomacy to shift perceptions on abortion policy (Peroni & Bucholc, 2025). These non-binding interventions indirectly impact national arenas: they cannot override member state laws, but they can promote new standards, highlight domestic practices and shape debate by conferring legitimacy or stigma. For example, a European Parliament resolution condemning a member state's restrictive law can impose reputational costs on that government, effectively signalling it as regressive vis-à-vis European values, a dynamic akin to naming-and-shaming commonly used by advocacy actors when states diverge from shared norms (Szent-Iványi & Timofejevs, 2021). The naming-and-shaming dynamic (European Parliamentary Research Service, 2016) has been used in the European Parliament's resolution of Poland's near-total abortion ban (Marques-Pereira, 2023), which stated that the ruling "puts women's health and lives at risk" and "fails to protect the inherent and inalienable dignity of women" (European Parliament, 2020), thereby framing it as incompatible with the Union's normative commitments to women's health and reproductive rights. Such criticism, in turn, places pressure on the targeted state by raising scrutiny and empowering opposition actors. Conversely, EU soft law also bolsters domestic advocacy networks: when European institutions endorse comprehensive sexuality education or call for decriminalizing abortion, local NGOs and reformist politicians gain an authoritative reference to back their demands (Finnemore & Sikkink, 1998). In Ireland, for instance, campaigners to repeal the abortion ban drew inspiration and legitimacy from European Union and high-profile cases - such as the case of an American woman who was hospitalized in Malta after experiencing severe bleeding in her 16th week of pregnancy

(European Parliament, 2022) - to frame their efforts in rights-based terms, contributing to a narrative that culminated years later in the 2018 referendum.

In addition, mechanisms of policy learning and norm diffusion operate through soft law. By facilitating the exchange of best practices via forums and the Open Method of Coordination, the EU "aims to spread best practice and achieve convergence towards EU goals in those policy areas which fall under the partial or full competence of Member States" (European Parliamentary Research Service, 2016) - for example, expanding access to contraception or post-abortion care in line with European partners. Gradually, these harmonizations and efforts create a de facto European standard on various matters, including those considered fundamental rights (Office of the United Nations High Commissioner for Human Rights [OHCHR], 2023). These processes are accompanied by a juridical effect: although the resolutions and other instruments used by the EU are not legally binding, the principles and standards promoted can, with varying rapidity, find their way into legal reasoning. Courts, including the European Court of Human Rights, increasingly take note of an emerging "European consensus"; when adjudicating abortion restrictions, thereby influencing the scope of states' margin of appreciation (Kapelańska-Pręgowska, 2021). EU soft law interventions can serve as a political catalyst (or foil) within member states. Some governments invoke European recommendations to legitimize domestic policy changes as aligning with European values, whereas others portray EU criticism as unwarranted interference and frame their response in nationalist terms. In this way, the EU's normative stance becomes a talking point domestically - capable of either accelerating reform or reinforcing divides.

For all these avenues of influence, however, soft law's capacity to advance reproductive rights is fundamentally limited by legal, political, and cultural constraints. At the legal-institutional level, the European Union remains "a legally constrained space for pursuing abortion rights" (Hervey & Banerjee, 2023). EU treaties expressly withhold any competence over abortion or broader public health morality policies (EUR-Lex, n.d.) (e.g. Article 168(7) TFEU), meaning that soft law operates only in a realm of voluntary cooperation). No matter how strongly the European Parliament or Commission pronounce on abortion, such acts carry merely declarative weight; member states are under no obligation to comply in practice. Unlike a directive or regulation, a resolution cannot be enforced in court or used to invalidate national laws. There is no formal

monitoring or sanction for ignoring soft law: the EU cannot compel governments to report on implementation nor penalize non-compliance. Recalcitrant states may simply dismiss Brussels' recommendations without repercussion. This lack of enforcement mechanisms not only undermines effectiveness but can also produce a two-speed Europe - some states heed EU calls and advance their policies, while others stand pat, thereby widening the gap rather than harmonizing standards. Scholars indeed warn that soft law's flexibility comes at the cost of accountability and impact: as Trubek & Trubek (2005) argue, soft law instruments "bypass normal systems of accountability," generating expectations that often cannot be enforced, thus enabling states effectively to ignore resolutions and non-binding standards without consequence. In short, soft law tends to stay soft; it is the maximum the EU can do in this domain given the current treaties, and even ambitious proposals like adding abortion to the EU Charter of Fundamental Rights are expected to yield only modest legal effects within member states (Hervey & Banerjee, 2023).

Equally important are the political and cultural constraints that circumscribe soft law's influence and impact. In societies where abortion is highly contested, EU advocacy often triggers nationalist backlash rather than compliance. As documented by Kuhar and Paternotte (2017), governments against abortion across Europe have systematically reframed EU initiatives on gender equality, sexual and reproductive rights as an external imposition that will to undermine national sovereignty and traditional values. In this narrative, European criticism does not foster compliance but rather provides fertile ground for conservative political actors to present themselves as defenders of national identity against EU values. In the Polish case, according to the authors, mobilizations against reproductive rights were strongly intertwined with a rhetoric depicting the Union as a source of alien values threatening Catholic traditions and national autonomy (Kuhar & Paternotte, 2017). Such reactions illustrate a paradox: soft law pressure can, at times, entrench the very resistance it seeks to overcome, especially when external norms are perceived as foreign impositions. This shows how the Union must tread carefully to ensure promoting of a well-intentioned norm does not prove counterproductive by legitimizing claims of moral imperialism and fuelling a sovereignty-based backlash.

Beyond politicized backlash, deep-seated cultural and religious attitudes in many EU countries pose a more subtle barrier to the efficacy of soft law. Normative pronouncements from Brussels do not land on a blank slate; rather, they encounter

entrenched belief systems that change only gradually. In regions with strong religious influence or traditionalist views on gender roles, local publics may simply reject EU norms on reproductive freedom as incompatible with their values. Recognizing this, EU institutions often resort to cautious, consensus-driven language in their texts (Van der Vleuten, 2007). Yet that very moderation dilutes clarity: references to access to sexual and reproductive healthcare allow divergent interpretations, enabling conservative governments to ignore soft law. For instance, a 2018 European Parliament study referred broadly to "safe and quality sexual and reproductive healthcare" without explicitly mentioning abortion, thereby leaving room for diverse interpretations (European Parliament, 2018). As Lombardo and Forest (2015) observe, EU gender equality concepts are often discursively "stretched, shrunk, or bent" to fit divergent domestic contexts, resulting in diluted or ambiguous formulations that facilitate multiple interpretations by member states. Such ambiguity in soft law diminishes its normative effectiveness. Practical and material factors further limit what soft law can achieve in practice. Policy changes in sensitive areas like reproductive health require not just normative endorsement but resources, infrastructure, and administrative will. Soft law provides no funding or implementation tools on its own, and a state struggling with poor healthcare capacity will Although the EU can support financially through structural funds or programs related to gender equality, but here again, the adoption and acceptance of these values by member states depends on their willingness to adapt to a national standard and to national cooperation. Similarly, there are obstacles to the right to abortion that the EU cannot address. These issues are beyond the scope of any European resolution or commitment. For instance, the common use of conscientious objection by doctors and the stigma around abortion in communities need to be tackled through national laws, professional regulations, and cultural shifts. None of these can be directly enforced by EU soft law. The European Parliament may insist that conscientious objection should not impede access but enforcing that principle requires domestic measures (like hospital staffing rules) that Brussels cannot impose (European Parliament, 2018). In short, soft law can highlight such issues and encourage adherence to best practices, even endorsing WHO guidelines on matters like doctor training or public information campaigns (European Parliament, 2021), yet concrete progress hinges on local implementation and value shifts that exceed the EU's purview. The Union's influence is thus by necessity mediated

through domestic politics and society at every step. Given these significant limitations, the impact of EU soft law on reproductive rights has been uneven, as critics have consistently emphasized soft law's lack of binding force leads to variable uptake and fragmented outcomes across Member States (Trubek & Trubek, 2005).

The European Parliament has tried to keep its soft law relevant by varying its approach - for instance, coupling broad resolution of Sexual and Reproductive health and rights (SRHR) principles with country-specific condemnations or invoking high-profile events like the rollback of abortion rights in the United States to underscore urgency (European Parliament, 2022). However, without the prospect of binding action, such rhetorical changes can only contribute to a limited extent. Additionally, external geopolitical forces have at times undercut the EU's normative efforts, reinforcing internal resistance. Transnational conservative networks - often bolstered by allies outside Europe - actively contest the liberal norms Brussels promotes. A notable example is the "Geneva Consensus Declaration of 2020" coalition spearheaded by the U.S. government, which aligned with EU members like Poland and Hungary to oppose the framing of abortion as a human right (US Congress, 2022; Barbé, 2023). This episode demonstrated how a world power's agenda, alongside faith-based movements, can embolden European actors to oppose to the EU. The reaction of some countries against sexual and reproductive rights has created a context in which the EU, lacking competence in this area, struggles to challenge. Instead of a unified front, we see a polarized landscape: while the EU projects a normative vision of expanding reproductive freedom, a countervailing bloc resists that vision, giving local opponents additional backing. Gozdeka (2020) observed that women's reproductive rights have long oscillated between normative advances and reactive pushback, with progress often met by "strengthened narratives of politicized religion and nationhood" that renew challenges to women's autonomy. The EU's soft law endeavour, for all its good intentions, is inevitably affected by this broader struggle.

In sum, the EU's soft law on reproductive rights is a double-edged sword, a vital driver of normative change and solidarity, yet one sharply constrained by the realities of sovereignty and politics. On one hand, it has succeeded in elevating abortion rights onto the European agenda, forging a common language of fundamental rights and pressuring governments to justify restrictions through the mechanism of "shaming" (Trubek & Trubek, 2005). The sustained series of resolutions and communications since the 2000s

has helped legitimize the notion of abortion as a European value, supporting liberalizing trends in some countries and emboldening pro-choice actors across borders. On the other hand, soft law's nature means its primary power is to name and shame; to encourage and exhort - it cannot directly change national laws. These signals carry moral and political weight, but ultimately, implementation depends on member states.

Thus, while EU soft law can encourage dialogue, shape norms, and gradually influence behaviour, it cannot overcome strong opposition or legal barriers on its own. Soft law can act as a guiding force, but its impact will always be limited by the willing of the states as the future of reproductive rights is still in their hands. Ultimately, the EU's non-binding measures on abortion rights show both the ambition and the limitations of European regulatory power. They reflect a Union that aims to express common values but is still confined by its legal framework and the differing beliefs of its Member States.

1.4 National Abortion Law Frameworks Across EU Member States

Each EU Member State holds the power to decide and regulate the legal conditions that allow a woman to obtain an abortion. It is possible to classify these laws using a range extending from liberal laws, where abortion is available on request with few conditions, to highly restrictive laws, where abortion is prohibited or permitted only in exceptional circumstances. In this paragraph, the classification below is taken from the comparative study by Marques-Pereira (2023), in which the 27 EU Member States are divided into five different types based on the legal framework and practical accessibility of abortion. Analysing the legislation of each state is essential as it represents the context in which the European Union operates. Over the last few decades (1990-present), many European countries have liberalized their abortion policies, often simultaneously with broader secularization and women's rights movements. However, a few countries have maintained or introduced more restrictive frameworks, creating a varied legal landscape within the EU. Below are the major categories of national abortion regimes in the Union, along with examples and references to the relevant legal provision:

1. Liberal "On-Request" Regimes (Type 1): In a subset of mostly Northern European countries, women have the right to terminate a pregnancy in early stages without needing to provide specific justification. These states ensure easy access to abortion on request, usually in the first trimester, coupled with robust public healthcare support for reproductive services. Denmark, Sweden, Finland, and the Netherlands exemplify this model. In these countries, abortion rights were achieved relatively early (in the 1970s or 1980s), and today access to contraception, youth sex education, and counselling are also available. The legal time limits vary: in Denmark the Consolidation Act No. 95 of 7 February 2023 on the Termination of Pregnancy allows abortion on request up to 12 weeks (Danish Ministry of Health, 2023); in Sweden, the Abortion Act (SFS 1974:595) permits abortion on request up to 18 weeks (Government of Sweden, 1974); in Finland, the Act on Induced Abortion (239/1970, as amended by 1081/2022) allows abortion on request up to 12 weeks (Finland Ministry of Justice, 2022); in the Netherlands, the Termination of Pregnancy Act (Wet afbreking zwangerschap, Stb. 1981, 257) permits abortion on request up to 24 weeks, with later terminations allowed on broad "social" grounds (Government of the Netherlands, 1981).

These nations generally report high accessibility and low procedural barriers: while Denmark and the Netherlands do allow doctors a conscientious objection opt-out, abortion services remain broadly available (with systems in place to refer women to willing providers). In Finland and Sweden, the law does not explicitly recognize a provider "conscience clause," emphasizing that the healthcare system must guarantee services. Public health insurance covers abortion costs in most of these countries, underscoring the view of abortion as standard healthcare. Outcomes in these liberal regimes include comparatively low abortion rates (often attributed to effective contraception and education) and minimal health complications, evidencing that permissive laws correlate with safer reproductive health environments (European Parliament, 2024).

2. Moderate "Conditions-Linked" Regimes (Type 2): Another group of Western European countries permits abortion either on request or broad grounds, but within a framework of additional conditions or justifications - essentially partial liberalization. Belgium, France, and Luxembourg (and until its exit, the UK) fall into this category (Marques-Pereira, 2023). In Belgium, the Loi du 3 avril 1990 relative à l'interruption volontaire de grossesse, as amended by the Loi du 15 octobre 2018, allows abortion up to 12 weeks after conception following a mandatory consultation and a reflection period of at least six days, with exceptions beyond that period for serious medical reasons (Moniteur belge, 2018). In France, the Code de la santé publique, Article L2212-1, as amended by Loi n° 2022-295 du 2 mars 2022, allows abortion on request up to 14 weeks of pregnancy, having removed the previous "state of distress" requirement in 2014 (Journal officiel de la République française, 2022). In Luxembourg, the Loi du 17 décembre 2014 relative à l'avortement permits abortion on request up to 12 weeks after conception following mandatory consultations (Journal officiel du Grand-Duché de Luxembourg, 2014).

   These countries provide abortion services through medical facilities and require that certain procedures (like consultations or brief reflection delays) be followed, aiming to balance access with ethical considerations. Standards of access remain high in practice: abortions are performed in hospitals or clinics, costs are covered or reimbursed, and doctor objection clauses exist but are regulated. For example,

in Belgium, doctors can refuse to perform abortions on moral grounds, but they must refer the patient elsewhere, and overall availability is ensured by the healthcare system. As a result, while classified as having partial or conditional legalization, these countries achieve near-universal access in effect.

3. "Mid-Range" Restrictive Regimes with Exceptions (Types 3 & 4): A large portion of EU member states permit abortion, but under more restrictive conditions and often with procedural hurdles that can impede access. We can distinguish two subgroups here, though they share overlapping characteristics:

- Southern/Central European Model (Type 3): These include countries such as Germany, Austria, Italy, Spain, Greece, Cyprus, and Portugal, as well as Ireland since it legalized abortion in 2018 (Marques-Pereira, 2023). Generally, these nations allow abortion on request up to a certain gestational limit (commonly around 12 weeks) but require one or more conditions like mandatory counselling, waiting periods, or parental consent for minors. Many also formally require the pregnant person to state socio-economic or emotional grounds rather than granting an unrestricted right. For instance, in Germany abortion is regulated by the Strafgesetzbuch (German Criminal Code) (Federal Ministry of Justice, n.d.) and the Schwangerschaftskonfliktgesetz (Pregnancy Conflict Act) (Federal Ministry of Justice, n.d.). Technically, abortion is still contained in the penal code, but it is not punishable within the first 12 weeks if preceded by state-mandated counselling and a waiting period. In Austria, abortion is permitted within the first three months under § 97 of the Strafgesetzbuch (Criminal Code) (Republic of Austria, n.d.). In Italy, the Legge 22 Maggio 1978, n. 194 allows abortion on request within 90 days, subject to a brief waiting period (Gazzetta Ufficiale della Repubblica Italiana, 1978), even though an exceedingly high rate of doctors invoke conscientious objection, which is permitted by the law. Spain moved from a strict indications law to allowing abortion on request up to 14 weeks in 2010 under the Ley Orgánica 2/2010 (Boletín Oficial del Estado, 2010), yet at one point faced a reversal attempt: a 2013 draft law sought to reintroduce tighter limits (Consejo Fiscal, 2014), provoking massive protests and eventual withdrawal of the proposal. Portugal legalized abortion via referendum in 2007 up to 10 weeks under the Lei n. º 16/2007 (Diário da República, 2007), but later added new

administrative hurdles, such as user fees and obligatory counselling, in 2015. In Greece and Cyprus, abortion is lawful on broad request: In Greece, abortion is regulated by Law 1609/1986 (Government Gazette of the Hellenic Republic, 1986), which permits termination within specified time limits (up to 10 or 14 weeks) and conditions. Cyprus amended its Criminal Code through the Criminal Code (Amendment) Law 115(I)/2018, allowing abortion on request up to 12 weeks and up to 19 weeks in cases of sexual offences (Republic of Cyprus, 2018). Besides the laws, stigma and inconsistent service provision can pose barriers (Marques-Pereira, 2023).

Ireland, after repealing its near-total ban by referendum in 2018, enacted a law in 2019 permitting abortion up to 12 weeks and in limited later cases (risk to health or fatal fetal anomaly) (Irish Statute Book, 2018). Early evidence from Ireland shows improved access, though issues like uneven regional availability and continued influence of Catholic healthcare ethos are being monitored (Department of Health, 2023). Across these countries, while abortion is legally available, practical access can be hampered by factors such as mandatory wait times, limited clinic networks, or doctors' refusal to provide services. Hence, they are seen as having moderate abortion laws on paper but sometimes restrictive outcomes in practice.

- Post-Communist Eastern European Model (Type 4): In contrast to Southern Europe's historical Catholic influence, many Central and Eastern European (CEE) countries had relatively liberal abortion laws during the socialist era, which continued after 1990 - yet they now experience de facto limitations owing to resource gaps, new regulations, or conservative trends. Countries like Poland's neighbours (Czech Republic, Slovakia, Hungary), Balkan EU members (Romania, Bulgaria, Slovenia, Croatia) and the Baltics (Estonia, Latvia, Lithuania), all officially permit abortion on request or broad grounds, mostly during the first trimester. In Czechia, abortion is regulated by Act No. 66/1986 Coll. on Artificial Termination of Pregnancy (Czech National Council, 1986) and Decree No. 75/1986 Coll. (Ministry of Health of the Czechoslovak Republic, 1986), which permit abortion on request up to 12 weeks of pregnancy, and up to 24 weeks in cases of serious medical indications; later terminations are allowed

only under specific health-related circumstances. In Slovakia the relevant framework is Act No. 73/1986 Coll. on Artificial Termination of Pregnancy (Slovak National Council, 1986), it allows abortions up to 12 weeks (with extensions for health reasons) but requires multiple counselling sessions and a certificate of "distress" - a holdover from earlier policy that introduces delay and moral unease. In Hungary the Act LXXIX of 1992 on the Protection of Fetal Life (Government of Hungary, 1992) regulates abortion up to 12 weeks and in 2022 Decree No. 29/2022 (IX.12.) of the Ministry of Interior (Ministry of Interior of Hungary, 2022) introduced a requirement for women to listen to the fetal heartbeat before termination - a symbolic hurdle reflecting growing anti-abortion sentiment, although the legal right remains intact. In Romania, abortion is regulated by the Criminal Code and the Law No. 95/2006 on Healthcare Reform, permitting abortion on request up to 14 weeks of pregnancy and later only in cases of serious medical conditions or fetal anomalies (Parliament of Romania, 2006). In Bulgaria, abortion is regulated by the Health Act, allowing abortion on request up to 12 weeks, and up to 20 weeks for medical or social reasons; later terminations are allowed only in cases of life-threatening conditions or severe fetal anomalies (National Assembly of the Republic of Bulgaria, 2004). In Slovenia, abortion is governed by the Act on Health Measures in Exercising the Freedom of Choice in Childbearing (Republic of Slovenia, 1977/1993), permitting abortion on request up to 10 weeks of pregnancy, and later only under specific medical, fetal, or ethical grounds. In Croatia, the Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece (Narodne novine, 1978/2009) permits abortion on request up to 10 weeks; the Constitutional Court confirmed its constitutionality in 2017 (Ustavni sud Republike Hrvatske, 2017). In Estonia (under the Termination of Pregnancy and Sterilisation Act) (Riigi Teataja,1998), Lithuania (under Ministry of Health regulations and the Criminal Code) (TAR, n.d.) and Latvia (under the Sexual and Reproductive Health Law) (Official Gazette of the Republic of Latvia, n.d.) abortion is permitted up to 12 weeks.

In Lithuania and Latvia, proposed bans or tighter laws have surfaced in parliament from time to time, but none have passed; however, public funding is limited, and societal disapproval can be a deterrent (Marques-Pereira, 2023). In summary, this

cluster of countries has nominally permissive laws but "restrictive access" due to practical impediments. Abortion rates in some of these countries remain high (a legacy of historically limited contraception), though trends show declines as contraception use improves. Importantly, all these nations (except one outlier, Poland) still legally uphold women's choice, meaning they align with the European consensus that outright bans are a violation of modern public health standards.

4. Highly Restrictive or Prohibitive Regimes (Type 5): Only two EU member states now fall at the extreme restrictive end of the spectrum, imposing near or total bans on abortion. Poland and Malta are the last remaining EU countries in which abortion is effectively illegal except under extremely narrow circumstances. In Malta, abortion is outlawed in all cases - the country's criminal code threatens hefty prison terms for women who undergo abortions and for anyone assisting. Until very recently, Malta provided no explicit exceptions even to save a woman's life; in 2023, after a high-profile case of a tourist denied a life-saving termination (European Parliament, 2022), the law was debated for reform. However, the change made was minimal: under Article 243B of the Maltese Criminal Code, introduced by the Criminal Code (Amendment No. 2) Act, 2023, doctors are now provided with a legal defence if they perform an abortion to save a woman's life or protect her health from "imminent" danger (House of Representatives of Malta, 2023). Poland likewise had a relatively liberal abortion law under communist rule, but in 1993 it adopted the Act of 7 January 1993 on Family Planning, Protection of the Human Fetus and Conditions for Permissibility of Abortion (Sejm of the Republic of Poland, 1993), a restrictive law permitting abortion only in cases of rape/incest, threat to the mother's life or health, or severe fetal abnormality. In October 2020, the Constitutional Tribunal issued judgment K 1/20, declaring the fetal abnormality ground unconstitutional. As a result of this ruling, abortion in Poland has since been permitted only when the pregnancy poses a risk to the life or health of the woman or results from a criminal act (Constitutional Tribunal of the Republic of Poland, 2020). The consequences have been severe: Polish women with means increasingly travel abroad (to clinics in Germany, Czechia, etc.) or obtain abortion pills online, while those without resources carry unwanted

pregnancies to term or resort to unsafe methods. Tragic cases have also emerged of women dying in hospitals because doctors, fearing legal repercussions, delayed necessary abortion care even when the woman's health was deteriorating - at least six women have died in such circumstances since the 2020 ruling, according to recent reports cited in the European Parliament (European Parliament, 2024). Poland and Malta thus stand in stark opposition to the trend elsewhere in Europe; their governments have justified their policies on grounds of moral and religious values (Catholicism being influential in both) and national sovereignty. These two countries have also faced increasing pressure and criticism from European partners, which will be discussed in later sections. Notably, public opinion in both places is not monolithic - polls suggest most of Poles support some liberalization of the law (CBOS, 2024), and Malta has an active, if minority, movement for change (Doctors for Choice Malta, 2020). As of 2024, a potential policy shift in Poland is on the horizon due to a change in government (a new coalition has vowed to liberalize abortion laws, though implementation is pending). In Malta, limited reforms are being debated but strong opposition remains.

This classification captures the current legal landscape across the EU, but it is also important to recognize that abortion law in Europe has not remained static. Since 1990, many member states have undergone significant legal and political shifts, marked by a general trend toward liberalization alongside moments of resistance, retrenchment, and backlash. These dynamics have unfolded unevenly across the EU. In the 2000s and 2010s, several traditionally Catholic societies relaxed their bans: Portugal (2007) and Ireland (2018) moved from prohibition to allowing abortion on request, reflecting both internal societal change and the influence of international human rights discourse. In Central Europe, most post-socialist states retained access despite rising conservatism, though they introduced more procedural constraints than under the old regimes (often framing abortion as a difficult moral choice rather than an outright right). Spain's legal evolution (liberalized in 2010, attempt to regress in 2013 defeated after public outcry) exemplifies how liberal norms have taken hold such that outright re-criminalization faces. Even in Italy and Germany, where abortion was legalized decades ago, ongoing debates focus on removing abortion from the criminal code or addressing access gaps (e.g. In June 2025,

the Region of Sicily in Italy sought to modify the hiring criteria for public hospitals, preventing conscientious objectors from being hired (Assemblea Regionale Siciliana, 2025); however, the national government referred the law before the Constitutional Court, as announced in the official communication of the Council of Ministers n.138 (Presidenza del Consiglio dei Ministri, 2025). This episode illustrates that tensions over competence and values are not confined to the supranational sphere: they can also emerge within a single national legal order. The clash between Sicily and the central government mirrors, in a different setting, the same dynamic observed between the European Union and its Member States, or between the U.S. federal government and individual states. In each case, the regulation of reproductive rights becomes a site where multiple levels of authority assert their prerogatives, producing conflicts over sovereignty, democracy, and the scope of fundamental rights. Conscientious objection by medical providers has become a key practical issue in medium-regime countries; for instance, the Council of Europe's Social Rights Committee found in 2015 that Italy failed to uphold women's rights when too many doctors refused care (Council of Europe, European Committee of Social Rights, 2015). On the other hand, backlash movements have gained force in some countries since the 2010s, in parallel with a global rise of populist and traditionalist politics. Poland's regression is the most evident result of this trend, but others include proposals (not enacted) in Lithuania and Slovakia to tighten laws and sustained political rhetoric against gender ideology and reproductive rights in Hungary and elsewhere. These opposing currents - progressive liberalization versus conservative retrenchment - form the context in which EU institutions operate, increasingly compelled to respond to both internal divergence and transnational mobilization.

1.5 Political Triggers and Multilevel Mobilization

Given the clear differences in how abortion rights are addressed, the question that arises is why European institutions have only recently started to take a stand? Political pressure and advocacy efforts have expanded the EU's role in abortion policy. It's important to consider the mechanisms of influence and response: how statements made at the EU level impact national discussions, how Member State governments react (whether by supporting, consenting, or resisting) and how non-state actors leverage the EU in their agendas. The interaction between supranational and national politics can be understood through concepts like policy diffusion, normative entrepreneurship, and backlash mobilization. Several factors can be identified to explain why EU institutions, particularly Parliament, took up the issue of abortion rights only in recent years.

Perhaps the strongest driver has been high-profile developments within member states that created a sense of urgency or outrage beyond that country's borders. For instance, Poland's near-total ban in 2020 sparked Europe-wide protests (e.g. solidarity demonstrations in many capitals) and extensive media coverage of Polish women's plight (European Parliament, 2020). MEPs from across Europe were inundated with appeals from citizens and NGOs to act. The Parliament's swift resolution in November 2020 condemning Poland was a direct answer to that call. Similarly, the case of an American tourist in 2022 - who nearly died in Malta after being denied a termination of a non-viable pregnancy - was referenced in European Parliament discussions to underscore the risks posed by complete abortion bans (European Parliament, 2022). Ireland's 2012 Savita Halappanavar tragedy (a woman who died of sepsis after being denied an abortion during miscarriage) was another turning point that resonated across Europe; while there was no EU action per se (Ireland itself changed its law for life-threatening cases in 2013 as a result) (Ireland, 2013), it fed into a narrative in Brussels about the unacceptable costs of extreme restrictions. In essence, when national incidents expose the harms of restrictive laws, they provide moral leverage for EU actors to speak out under the banner of human rights and health.

External events have played a role as well. The example of the US Supreme Court's *Dobbs v. Jackson Women's Health Organization* decision (2022) is instructive.

Although it occurred outside Europe, it sent shockwaves through global reproductive rights circles. Several Members of the European Parliament raised concerns about a potential contagion effect, warning that this could embolden anti-abortion actors across the EU. Among those speaking out were Stéphane Séjourné (President of Renew Europe at the time) and Terry Reintke (Co-President of the Greens/EFA Group), who both highlighted the risk that conservative shifts in the U.S. could inspire retreats in European reproductive rights (European Parliament, 2022). By calling for the right to abortion to be enshrined at the European level, the European Parliament wanted to demonstrate that Europe would not follow the rollback of sexual freedoms and rights taking place in the United States. This decision was driven by the results of several polls showing that European citizens disapproved of the overturning of Roe (Pew Research Center, 2024). This synergy between global and local sentiment is an example of the spread of norms: international norms on gender equality and human rights - reinforced by decades of United Nations conferences, such as the Beijing Declaration and Platform for Action (United Nations, 1995) and the ICPD Programme of Action (United Nations, 1994), as well as by the Convention on the Elimination of All Forms of Discrimination against Women (United Nations General Assembly, 1979) - have created expectations that states such as those in Europe should be leaders in protecting certain values, considered fundamental to the union itself, including reproductive rights (European Parliament, 2024).

In addition, transnational advocacy networks have been instrumental in putting abortion on the EU agenda. Organizations such as the European Women's Lobby, Amnesty International's European office, the European Network of the International Planned Parenthood Federation (IPPF-EN) and Human Rights Watch regularly lobby EU institutions on Sexual and reproductive health (SRHR) issues. European Parliamentary Forum for Sexual and Reproductive Rights (EPF) has acted as a bridge, sharing information about legislative developments in different countries (like the Polish ban or successes like the Irish repeal) and helping coordinate responses. On the opposite side, anti-abortion advocacy networks have also become transnational and active in Brussels. Groups like Federation of Catholic Family Associations in Europe (FAFCE), One of Us (which after the ECI evolved into a lobby network), and organizations with U.S. ties (such as the ADF International or Ordo Iuris from Poland) have tried to influence EU policy by

meeting with conservative MEPs, submitting briefs, and even pursuing legal challenges (e.g., the aforementioned case at the EU Court after the Commission rejected the ECI) (European Commission, 2014). They mounted a vigorous campaign against the Matić report - for example, Ordo Iuris launched a campaign to contest the Matic report, accusing the EP of trying to impose radical policies (Ordo Iuris Institute for Legal Culture, 2021). At one point, before the 2021 vote, MEPs reported receiving tens of thousands of identical emails orchestrated by anti-choice groups urging them to reject the report (Marques-Pereira, 2023). Conversely, pro-choice groups ran public campaigns supporting Matić, including a petition and letters from health professionals. The presence of these advocacy coalitions essentially made Brussels another battleground for the abortion debate, demonstrating what scholars call multi-level advocacy - activists engage at local, national, and supranational levels to pursue their goals, moving fluidly across scales.

The European dimension of abortion is also propelled by the agendas of European political groups. The center-left Party of European Socialists (which includes Spain's PSOE, Germany's SPD, and Sweden's Social Democrats) and the liberal/centrist Renew Europe (previously ALDE, including France's Renaissance, the Netherlands' VVD, and Czechia's ANO) have generally included support for SRHR in their platform, viewing it as part of their progressive social policy stance. The European Green Party (including Germany's Bündnis 90/Die Grünen, Belgium's Ecolo, and the Netherlands' GroenLinks) is strongly in favour of women's bodily autonomy. These political families coordinate national party positions too. For example, socialist and liberal leaders across Europe often show solidarity on these issues; after the Matić report was adopted as a resolution, socialist prime ministers from Spain and the Nordic countries publicly praised it. On the other side, the European Conservatives (ECR, anchored by Poland's PiS and Italy's Fratelli d'Italia) and Identity & Democracy (ID, including Le Pen's RN from France, Lega from Italy, and Austria's FPÖ) take firm stances against EU involvement in abortion, aligning with a broader anti- "gender ideology" narrative. Even within the traditionally broad church of the EPP (center-right), a cleavage has emerged between liberals and conservatives on social issues. Over time, some EPP delegations (like those from Nordic countries or Benelux) became more openly pro-choice, while others (the Spanish PP, Polish PO to an extent, etc.) remained more conservative. This intra-group

tension has occasionally led to compromises or ambiguous stands by EPP leadership. For example, the EPP official line on Matić was critical, but a minority of EPP members still supported Matić, defying their whip. The shifting composition of the Parliament (with far-right gains in 2019) also introduced more vocal opponents; nonetheless, the pro-SRHR side held, partly thanks to liberal and left cooperation (European Parliament, 2021). However, divisions and disagreements are not limited to centre-right groups: within the centre-left Progressive Alliance of Socialists and Democrats (S&D), some Maltese MEPs voted against the Matić resolution, challenging the group's official position, a divergence visible in the minutes of the roll-call vote of 24 June 2021 (European Parliament, 2021)

All these factors and stakeholders have played a key role in the initiatives of European institutions, which have increased their efforts and commitments since the 2000s. These efforts relied on soft law tools, which allowed the European Union to establish a normative standard without officially overstepping national boundaries. The next section analyses how the Union has engaged in this delicate and sensitive area, following the development of these tools over time.

1.6 From Normative Ambition to Political Constraint: The Evolution of EU Soft Law on Abortion (2000–2024)

Since the early 2000s, and then more intensively since 2010, the European Parliament (EP), as a direct expression of the will of EU citizens, has been the most active EU institution in using soft law to address human rights issues, even in areas outside its legislative competence, such as abortion rights. The EP has adopted several resolutions, as stated above not binding, calling for better access to abortion and reproductive health care in all Member States. These resolutions are important in setting EU priorities and pressing national governments. Over time, EP resolutions reveal a trajectory from acknowledging member state competence but encouraging exchange of best practices to increasingly declaring abortion access as a fundamental right that should be upheld Union-wide.

A first significant initiative was the 2002 "Van Lancker report" on sexual and reproductive health and rights in Europe, named after Belgian MEP Anne Van Lancker. Adopted as a resolution by the European Parliament on July 3, 2002, the report was at the time the EU's most detailed document on reproductive rights, referring to all major international agreements and pointing out the wide disparities between member states (European Parliament, 2002). Considering safe abortion and contraception as part of public health responsibilities, the resolution urged Member States to ensure access to a full range of SRHR services. The Van Lancker resolution recognized that health policy falls within national competence, but, at the same time, the EU committed to the promotion of best practices and supporting Member States to improve reproductive health. The resolution linked the right to abortion with women's autonomy and equality, setting the stage for future positions from the European Parliament. The document was considered notable for its timing. It was adopted while the EU was getting ready to expand in 2004, including countries such as Poland, where abortion laws were particularly strict. Commentators have pointed out that the resolution aimed to establish a basis for European standards in preparation for enlargement (Zacharenko, 2023). Throughout the 2000s, the EP intermittently reaffirmed these positions. In 2007, for example, the Parliament's annual report on the state of fundamental rights in the EU included a call for member states to withdraw reservations to CEDAW ("Convention on the Elimination of All Forms of Discrimination against Women," 1979) and ensure women can fully enjoy reproductive

rights, including access to legal abortion (European Parliament, 2007). This indicated that the EP saw abortion access as part of the broader human rights commitments of EU countries. Also, during these years, the European Parliament supported resolutions related to development aid and external relations that championed SRHR, indirectly reinforcing the idea that within the EU, similar standards should be adopted. Also, during these years, the European Parliament backed resolutions on development aid and external relations that promoted SRHR. This indirectly reinforced the idea that similar standards should be adopted across the EU. (Smith, 2009).

In recent years, the European Parliament has adopted a more proactive stance, participating more frequently in legislative processes pertaining to abortion rights. Several key factors contributed to this shift: one was the growing frustration with backsliding in some countries, such as Poland's restrictive stance, strongly criticized in the 2020 resolution on the de facto ban on abortion (European Parliament, 2020). The other one was the Parliament's own composition - by the 2010s, a coalition of progressive political groups (socialists, liberals, greens, and the left) supportive of SRHR often held a majority on these issues, despite opposition from conservative and far-right MEPs. Additionally, high-profile global events, such as debates around the U.S. "Global Gag Rule" (2017), a strict anti-abortion policy that prevents foreign organizations receiving U.S. global health assistance from providing information, referrals, or services for legal abortion or advocating for access to abortion services in their country (Ray, 2025), or later the overturning of *Roe v. Wade* in 2022, have led European actors to reassert leadership on reproductive rights.

A landmark effort in the early 2000s was the "Estrela Report" on SRHR (European Parliament, 2013). Drafted by Portuguese MEP Edite Estrela, this project aimed to update the 2002 Van Lancker report and include comprehensive recommendations on sexual education, contraception, and access to abortion. The Estrela report explicitly recommended that all EU countries provide "safe and legal abortion" and ensure access to services as part of women's health rights. However, in the plenary session of December 2013, the European Parliament rejected the Estrela report by a narrow majority (334 against, 327 in favour, 35 abstentions) and instead adopted an alternative resolution tabled by the European People's Party (EPP), which emphasized subsidiarity and national competence in the field of reproductive rights (European Parliament, 2013). The Estrela

episode is important in underlining the implications of soft law, demonstrating the Parliament's ambition to influence Member State regulation and showing the counter-mobilisation that such efforts trigger. It has exposed divisions within the Union, with supporters presenting the report as a step forward for women's rights, while opponents argued that the European Parliament was overstepping its competence by interfering in national moral issues. This failure represented only a formal setback, as it was symbolically significant: it attracted media attention, announcing in practice that the battle for abortion rights had reached the European Parliament, as noted by Kantola and Lombardo (2020).

Shortly afterwards, in 2015, the Parliament managed to pass a more modest statement in the so-called “Tarabella resolution.” Belgian MEP Marc Tarabella wrote a report on gender equality in the EU that included a clause reaffirming that women should have control over their sexual and reproductive rights, including access to safe abortion, with the qualification "as provided for by national law" (Tarabella, 2013). Despite opposition, this report was adopted as a resolution by the European Parliament in March 2015. The adoption of the Tarabella resolution suggested a growing acceptance among MEPs that support for the right to abortion was part of the EU's gender equality agenda, even if legally it was only a recommendation to Member States, so without binding force. Tarabella's approach of integrating sexual and reproductive health and rights into a general report on equality met with sufficient consensus to be approved.

From 2015 onwards, EP resolutions on abortion/SRHR became more frequent and issue-specific, underlining the urgency of the issue. The Parliament began to address the individual situations in the member states. For instance, when Poland’s government or courts took steps to further restrict abortion, the EP reacted with urgency resolutions For instance, when Poland’s government or courts took steps to further restrict abortion, the EP reacted with urgency resolutions (under Rule 150 of the EP Rules of Procedure - “Debates on cases of breaches of human rights, democracy and the rule of law” - which culminate in an immediate vote on motions for resolutions) (European Parliament, 2025). In September 2016, as Poland debated a near-total ban (eventually stalled by mass protests), MEPs held debates condemning the plans - though a formal resolution was postponed amid political sensitivities. After Poland’s Constitutional Tribunal imposed a near-total ban in October 2020, the European Parliament issued a strong resolution in

November 2020 on the de facto ban on the right to abortion in Poland. This 2020 EP resolution is notable for its tone, as it condemns Poland's actions, stating that the ruling "puts women's health and life at risk" and "fails to protect the inherent and inalienable dignity of women" (European Parliament, 2020). It urges Polish authorities to "refrain from any further attempts" to restrict women's rights and calls the denial of abortion a form of gender-based violence and a violation of human rights. For a soft law document, this language was quite impactful. Poland's government dismissed the criticism, but the resolution was considered significant as it was bringing together the EU's democratic institutions with the thousands of Polish women protesting in the streets at that time.

On the 24th of June 2021, the European Parliament voted in favour of a landmark report presented by Predrag Fred Matić on "The situation of sexual and reproductive health and rights in the EU." This was the first comprehensive European Parliament report on sexual and reproductive health and rights in the EU in over a decade. The document, adopted as a resolution by the EP, calls on member states to decriminalize abortion and remove obstacles to reproductive health services, as it highlights that even in jurisdictions where abortion is legal, there are procedural barriers (waiting times, refusal of treatment on grounds of conscientious objection, etc.) hindering access to it. It also highlights the importance of accessing all essential SRHR services, including comprehensive sex education, contraception, abortion, maternal health, and fertility services, and preventing and addressing sexual and gender-based violence (European Parliament, 2021). This development constitutes a milestone for the European Parliament's position, as it affirms in principle that abortion is a fundamental right that should be accessible to all women in the European Union.

In recent years, and especially after the US Supreme Court ruling in *Dobbs v. Jackson Women's Health Organization* (2022), the European Parliament has intensified its advocacy for the protection of sexual and reproductive rights within the Union. In July 2022, it adopted a resolution that not only condemned the US backsliding but also called for action in Europe: it urged the European Council to convene a Convention for the revision of the Treaties, in the framework of which the EU Charter of Fundamental Rights should be amended to explicitly include the right to abortion (European Parliament, 2022). The resolution, passed in a 324-155 vote, argued that adding such a right would solidify a European value and potentially enhance cross-border access, even if it

acknowledged the limited legal effect on national laws (Hervey & Banerjee, 2023). This proposal to update the Charter was symbolically significant. It represented an aspiration to lock in reproductive rights at the highest EU constitutional level, pre-empting any future backsliding. An idea suggested by the same resolution was to attribute health and SRHR to the shared competence of the EU and member states, to give the union a direct role in safeguarding access to services (Ray, 2024). The resolution is, however, not legally binding on the member states, despite its importance and strong message by the European Parliament. According to Article 48 TEU, amending the EU Charter of Fundamental Rights would require unanimity among all 27 member states and national ratifications (European Union, 2012), making such reform unlikely to happen soon (Hervey & Banerjee, 2023). While the Parliament has continued to push for greater recognition of SRHR, the European Commission has also responded with a long-term policy framework to address systemic inequalities. In summary, the European Parliament's non-binding legislation on the right to abortion since 2000 has evolved from occasional broad statements to frequent, targeted, and normatively ambitious resolutions.

Table 1 below provides a timeline of select EP resolutions and their main content:

Table 1

Year	**European Parliament Soft Law Instruments**	**Key Content on Abortion Rights**
2002	***Resolution on SRHR in Europe (Van Lancker Report)***	Urged member states to ensure access to contraception and safe abortion; highlighted stark disparities within EU and framed reproductive choice as essential to women's autonomy. Acknowledged EU competence limits but

		promoted sharing of best practices.
2007	*Resolution on Fundamental Rights in the EU (annual report)*	Reaffirmed necessity of reproductive rights as part of fundamental rights. Recommended that member states withdraw reservations to CEDAW and ensure women can exercise abortion rights safely, to avoid high-risk illegal abortions
2013	*Attempted Resolution on SRHR (Estrela Report) – defeated in EP.*	Proposed comprehensive sex education, contraception access, and **safe, legal abortion as a human right.** Blocked due to subsidiarity arguments and heavy lobbying by anti-abortion groups. Exposed deep divisions; no resolution was adopted.
2015	*Resolution on Gender Equality in the EU (Tarabella Report) – adopted by EP.*	Recognized women's right to control their fertility. Called on member states to facilitate access to contraception and abortion (while noting national competence). Marked an EP majority endorsement of SRHR language post-Estrela.

2020	*Resolution on the de facto abortion ban in Poland.*	Strongly condemned Poland's Constitutional Tribunal ruling and the near-total abortion ban. Stated that denying abortion care violates women's dignity and rights and constitutes gender-based violence. Urged Polish authorities to reverse course and EU Commission to support SRHR initiatives.
2021	*Resolution on SRHR in the EU (Matić Report).*	Declared SRHR "fundamental women's rights" that must be upheld by all member states. Urged all member states to decriminalize abortion and remove barriers to legal abortion services. Noted EU has no direct competence but invoked human rights and gender equality obligations.
2022	*Resolution on Global Threats to Abortion Rights (post-Dobbs).*	Called for adding a **right to abortion in the EU Charter of Fundamental Rights**. Proposed making SRHR a shared competence of the EU. Expressed solidarity against

		abortion rollbacks worldwide and reaffirmed EU commitment to advance access within and beyond Europe.

Compared to Parliament, the European Commission and the Council of the EU have been more reserved in their soft law treatment of abortion, yet notable developments have occurred. The Commission, as the EU's executive, tends to focus on policy programs and funding rather than explicit normative statements on member state laws. For many years, Commission's communications on health or gender equality avoided direct mention of abortion, given the political sensitivity and lack of legal basis. However, recently, the Commission has started to promote SRHR in its strategies in careful ways.

The EU Strategy for Gender Equality 2020-2025, introduced by the von der Leyen Commission, marked a significant change. This strategy was the first in years to reference sexual and reproductive health and rights (SRHR) within an internal EU context. It promised to "integrate a gender perspective into health policies" and promote the exchange of best practices between Member States on SRHR. Although the language was cautious, emphasizing that health remains a national competence, the strategy confirmed that the Commission recognizes SRHR as part of women's rights and health needs that the EU should support. Additionally, the strategy committed the EU to continue backing SRHR in its external actions, an area where the EU has been more vocal, such as supporting family planning in development assistance. The inclusion of SRHR pleased advocacy groups, who noted it as progress that the Commission was willing to use the term and take modest coordinating actions (European Commission, 2020). In March 2025, the Commission released the Roadmap for Women's Rights 2025. This Roadmap, announced during a time of growing anti-gender movements, clearly reaffirms support for SRHR, including abortion. It states that "every woman has the right to the highest

attainable standard of health, notably with a focus on SRHR," and that the Commission will support member states in this field "in full respect of the Treaties" (IPPF Europe & Central Asia, 2025). It further emphasizes that SRHR are part of EU values and links them to gender equality and combating gender-based violence. Concretely, the Roadmap mentions ensuring access to abortion care as an integral part of high-quality obstetric and gynecological care and condemns practices like the denial of abortion care as forms of obstetric violence. While still being considered as a soft law or a declaration of intent, this document is significant as a Commission-endorsed text: it treats access to safe abortion as a normal component of women's healthcare rights and places the issue on the EU's policy agenda for the coming years. In essence, the Commission has begun to play a facilitative and agenda-setting role, committing to use funding, coordination, and future gender equality initiatives to bolster SRHR in member states. This is a notable evolution from prior decades when the Commission would avoid mentioning the issue in official strategies. It aligns the executive's stance more closely with Parliament's long-standing calls, albeit in a supporting capacity.

The Council of the European Union has unsurprisingly been the most cautious actor in the landscape of the European institutions. As an intergovernmental body, the Council reflects the positions of national governments, which are generally reluctant to concede prerogatives in sensitive domains such as health and reproductive rights. While consensus requirements increase the likelihood that conservative governments can block references to abortion or SRHR, the deeper reason is institutional: member states defend their competence in these areas, and Council conclusions therefore rarely mention abortion explicitly. However, the Council has at times agreed on language supporting sexual and reproductive health and rights in general terms. For example, in conclusions on gender equality or health, the Council has echoed international commitments: a 2015 Council Conclusion on gender in development "reaffirmed the commitment to ensure universal access to sexual and reproductive health and rights" as per the ICPD and Beijing agendas (Lenzu, 2022). More recently, in November 2022, the Council adopted conclusions on Women, Peace, and Security that, inter alia, reiterated commitment to SRHR even in humanitarian crises, affirming the right of every individual to exercise autonomy in decision-making about their sexuality and reproductive health, free from coercion and violence (Council of the European Union, 2022). While these statements

were in the context of war and conflict response, they reflect a broader EU value that includes access to reproductive healthcare. Such consensus wording indicates that, at least formally, all EU governments have signed on to the idea that SRHR are fundamental. Notably, these conclusions tend to use general terms and avoid explicitly instructing member states to change specific laws like abortion regulations. The Council's soft law contribution is thus more diplomatic and outward-facing, reinforcing international standards and supporting EU-level strategies (for instance, endorsing the Gender Equality Strategy 2020-2025, which included SRHR). The Council has not openly criticized any member state's abortion policy- that push has been left to Parliament.

In summary, EU-level soft law on abortion has over time seen a general trend of increasing assertiveness and specificity, led by the Parliament and gradually followed by other institutions. From a hesitant start of merely encouraging dialogue on reproductive health, the language of EU soft law has evolved towards an increasingly explicit endorsement of abortion as part of fundamental rights and health standards. These soft instruments have created a body of European "quasi-norms" on abortion rights, which express the expectation that all Member States will ensure safe, legal, and accessible abortion as part of their obligations towards women. However, developments since 2010 - including strong European Parliament resolutions (e.g., 2020, 2021, 2022) and the mainstreaming of sexual and reproductive health and rights in Commission policies - underline that, despite the EU's efforts to exert influence through regulatory pressure, the EU remains constrained in this area as competence remains at the national level.

1.7 Conclusion

The EU's engagement with abortion rights through non-binding instruments from 2000 to the present reveals a complex interplay of normative aspiration and practical constraint. On one hand, EU soft law has clearly exercised a normative function: it has progressively articulated a European standard of values and ideals that views access to safe and legal abortion as part of the fabric of fundamental rights and gender equality. Through European Parliament resolutions, the Commission's communications, and Council conclusions, the EU has helped shape the narrative and expectations around reproductive rights. The very concept of abortion as a European standard has gained credence due in part to these sustained soft-law efforts (Gozdecka, 2020). On the other hand, EU soft law's symbolic function is equally prominent. In the absence of binding power, these instruments serve to symbolize the EU's commitment to women's rights and solidarity with those denied access. They send important political messages: to women in restrictive countries, a message that Europe has not forgotten them; to national governments, a message that their policies are under the gaze of their peers and citizens abroad. Soft law acts as the conscience of the Union - staking out a moral position even when legal action is impossible. The European Parliament commitment is symbolic: it keeps human rights at the forefront of European discourse.

These symbols can have psychological and mobilizing effects, even if they do not immediately change statutes. For instance, the symbolic inclusion of SRHR in the EU's Gender Equality Strategy (European Commission, 2020) signalled to activists and health professionals that their work is validated at the highest policy level. Yet the EU's soft law on abortion also illustrates the limits of symbolism without enforcement. As a governance tool, soft law has not uniformly translated into uniform practice. A stratified reality persists - from very liberal frameworks in much of Western Europe to very restrictive ones in parts of Eastern and Southern Europe - demonstrating that soft law alone cannot harmonize highly sensitive policies. This fragmentation reflects not only political and cultural divergences but also the structural limitations of EU competence. Health policy, including reproductive health and abortion, remains primarily within the remit of member states under Article 168(7) of the Treaty on the Functioning of the European Union (TFEU), which explicitly excludes harmonization in this domain (Hervey & McHale, 2015). As a result, the Union's soft law initiatives operate within a landscape of legal

heterogeneity, where national legislatures retain ultimate authority over abortion access and regulation. This jurisdictional structure has produced a union in which significant disparities persist in women's access to reproductive rights. The contrast between progressive regimes, such as those of the Netherlands and Sweden, and highly restrictive environments, such as Malta or Poland, exemplifies a deeply fragmented normative order (Lombardo & Forest, 2015). In this sense, soft law initiatives may illuminate a shared normative direction, promoting the values of the union, but they do not erase the fundamental asymmetry of legal frameworks across the Union. The outcome is a paradoxical polity: a political union that aspires to act as a community of values yet lacks the legislative cohesion to guarantee those values uniformly (Sajó, 2004).

CHAPTER II: The United States: Federalism, Judicial Landmarks, and the Evolution of Abortion Rights

2.1 Introduction

In the United States, the federal model established by the Philadelphia Convention is the main feature of the American political system. The US Constitution divides powers and competencies between the federation and the federated states, which are components of the Union. As a federal system, jurisdiction is divided between the states and the federal government into:

- Matters under the exclusive jurisdiction of the states.
- Matters under the exclusive jurisdiction of the federal government.
- Matters under mixed or concurrent jurisdiction.

According to the Tenth Amendment, powers not delegated to the federal government by the Constitution are explicitly reserved to the states or the people (United States Senate, 1789). One question that has long been at the centre of constitutional tensions is which level of government holds the competence to regulate reproductive rights, particularly abortion. Historically, abortion rights have largely been regulated at the state level, with their legal status influenced by several key factors, including shifts in social, political, and religious opinions. Abortion has been at the centre of legal battles, particularly in recent decades, where the balance between state sovereignty and federal protection of individual rights has been strongly contested (Hodge, 2022).

The expansion and restriction of these rights by political movements in recent years have intensified this tension, reflecting wider ideological divisions in American society (Isailović, 2024). The current state of abortion law in the US is shaped by this ongoing conflict. In the 1970s, the landmark ruling *Roe v. Wade* (1973) saw the Supreme Court interpret the Fourteenth Amendment to include a constitutional right to terminate a pregnancy, thereby imposing a uniform federal standard across the nation. However, in 2022, the Dobbs ruling marked a dramatic shift. After almost 50 years, the new decision eliminated the federal constitutional protection of abortion rights, restoring the ability of states to pass their own laws, allowing total prohibition (Fabbrini, 2024). As a result, more than half of the states have moved to heavily restrict abortion; in 14 states, abortion is

now prohibited from the moment of conception (Hickey, Shimabukuro, & Staman, 2023). These bans have been promoted using moral or ethical rhetoric, although they reflect broader political shifts, with state laws mirroring the values of their local populations. At the same time, several states have acted to expand or protect access to abortion, emphasizing commitment to individual rights and public health (Ziegler, 2020). This division has deepened the fragmentation, especially considering the inequality in access for individuals who lack the resources to travel across state borders for abortion care (Isailović, 2024). The Dobbs ruling has shifted the legal and political battle over abortion from the federal to the state level, leading to widespread debate about the future of reproductive rights and growing uncertainty for women seeking abortions. Supporters of abortion rights - the "pro-choice" movement - argue that the new ruling undermines the constitutional protections for women's autonomy and health that were previously guaranteed by Roe. Pro-life advocates, by contrast, praise Dobbs for allowing what they view as a more democratic approach to policymaking on this issue, restoring decision-making to the states (Cohen, Donley & Rebouché, 2022). The Dobbs case is emblematic because of the shifting of competence regarding abortion, marking a significant change in the distribution of powers. The dynamics that had characterised the United States of America for half a century were radically reversed with the overturning of the Roe v. Wade ruling in 2022. Today, the country remains deeply divided on a wide range of issues, including politics, society and morality. The question of which level of government has the authority to regulate abortion policy remains a matter of debate. While many states have moved to restrict access to abortion, others have sought to protect or expand it, further highlighting the tensions between federalism and the protection of individual rights (Donley, 2023). These ongoing controversies underscore the continuing struggle for balance between state authority and federal oversight in regulating reproductive rights, a battle that remains unsolved and continues to evolve in the broader context of gender equality, personal autonomy, and government intervention in private decisions (Isailović, 2024). To explore this question, this chapter will provide the historical evolution of abortion rights by tracing the pre-Roe legal landscape and then analysing three landmark Supreme Court decisions - Roe, Casey, and Dobbs - each of which marked a significant realignment of institutional power. With a focus on the implications of these decisions, whether in limiting or protecting abortion rights, the chapter analyses how each decision

redefined jurisdiction and influenced the federal framework. At the end of the chapter, the implications and contemporary trends of Dobbs are also considered, including growing legal fragmentation and debates regarding the role of the federal government in protecting what may be considered fundamental rights.

2.2 Before and After *Roe v. Wade*

Before 1973, abortion in the United States was not federally regulated; instead, each state set its own laws governing the procedure. In the mid-20th century, abortion was prohibited in 30 states, while in the remaining, it could be practiced under limited conditions (such as fetal deformity, rape, or danger to the mother's life). States had criminalized abortion at every stage due to a convergence of medical professionalization, moral reform movements and demographic concerns (Mohr, 1978). In the 1960s and 1970s, however several states began to review and liberalize their abortion laws. For instance, the state of California enacted the so-called "Therapeutic Abortion Act" (1967); states such as New York and Colorado soon followed with reforms permitting abortion in cases of risk to women's health, fetal abnormalities, or socio-economic difficulties under broader circumstances (including cases of rape or socioeconomic difficulty). These legal changes were part of a broader rethinking of reproductive rights. Several key factors influenced this shift. For instance, the feminist movement gained strength and people recognized the dangers women faced from illegal abortions. (Ziegler, 2020). It was precisely in this context of patchwork laws and changing social attitudes that the Supreme Court decided *Roe v. Wade*, leading to a shift from exclusively state competencies to a federal judiciary, marking an important change in American history.

Roe v. Wade (1973)

The *Roe v. Wade* judgment of 1973 was a Supreme Court decision, considered a milestone in US abortion jurisprudence. The case involved a young woman, Norma McCorvey, alias Jane Roe, who challenged a Texas law that banned abortion except when necessary to save the mother's life. McCorvey was represented by attorney Sarah Weddington, and the defendant Dallas County District Attorney Henry Wade defended the Texas law. A three-judge federal district court ruled in favour of Roe reasoning, in line with arguments grounded in the Ninth Amendment[2], that the list of rights in the

[2] The Ninth Amendment to the United States Constitution states that the enumeration of certain rights in the Constitution does not imply the denial or disparagement of other rights retained by the people. The Court relied on this principle to recognize that the right to privacy, though not explicitly mentioned, extends to a woman's decision to terminate a pregnancy, thus protecting reproductive autonomy under the Constitution.

Constitution is not exhaustive and that a right to privacy extended to a woman's decision to terminate a pregnancy. Wade appealed, and the Supreme Court took up the case in 1971 (and, after a re-argument, issued its decision in January 1973). In a 7-2 decision, the Court struck down the Texas abortion law (and, by implication, the similar laws of dozens of other states), which criminalized abortion except to save the life of the mother.

The majority held that the Due Process Clause of the Fourteenth Amendment - specifically its protection of "liberty" comprehends a fundamental "right to privacy" that includes "a woman's qualified right to terminate her pregnancy" (Roe v. Wade, 1973). Because this right was deemed fundamental, Roe applied strict scrutiny, ruling that only a compelling state interest could justify restricting it. The Court acknowledged that the state has legitimate interests in protecting maternal health and the potential life of the fetus, but it found that those interests become compelling only at later stages of pregnancy, not from the outset. To balance these interests, Roe established a trimester-based framework that imposed a uniform national rule: roughly during the first trimester of pregnancy, the decision to obtain an abortion (and the method) was left to the woman and her physician, free from state interference; during the second trimester, the state could enact regulations reasonably related to maternal health; and in the third trimester - once the fetus was deemed "viable" (capable of living outside the womb, at roughly 24-28 weeks) - the state could prohibit abortion, except where necessary to protect the life or health of the mother. In short, no state could ban abortion before fetal viability. In a single judicial move, abortion policy went from a patchwork of state laws to a rule governed by constitutional mandate. The Supreme Court had, in effect, nationalized abortion law: by recognizing a federal constitutional right to abortion, Roe fundamentally limited the regulatory competence of all 50 states. The political and institutional consequences of Roe were immediate and far-reaching. With this decision, the Supreme Court established a standardised right to abortion at the national level, thereby repealing all relevant state laws. In doing so, the ruling became part of a highly controversial social debate, with its opponents claiming that it had been introduced unlawfully. From a federalism perspective, Roe was a high-water mark of federal judicial power trumping state policy choices. Laws that state legislatures had enacted (reflecting local moral values or public health judgments) were suddenly void if they conflicted with Roe's uniform guidelines. The Court had removed the abortion issue from ordinary politics by declaring it a

constitutional right that legislatures could not infringe. In this sense, Roe exemplified the Supreme Court's role as a national policymaker (Epstein, Knight & Martin, 2001).

At the time Roe was decided, a growing segment of the public (and of professional organizations like the American Medical Association) supported liberalizing access to abortion, as evidenced by the reform laws passed in numerous states. Roe can be seen as ratifying an emerging national trend. However, by effectively overruling the laws of many states and foreclosing ongoing legislative compromises, Roe also provoked immediate claims of "judicial activism" (Finney, 2010) and usurpation of state authority. Indeed, Roe immediately sparked a fierce political backlash, both from those morally opposed to abortion and from proponents of states' rights. First, Roe galvanized the nascent religious right and anti-abortion (pro-life) movement. Before the landmark decision, abortion had not been as deeply partisan or as nationally salient an issue; after Roe, it rapidly became a litmus test for political candidates and a rallying cause for social conservatives. Scholars have observed that Roe "not only announced a constitutional right to abortion but also mobilized a right-to-life opposition that continues to play a prominent role in American politics to the present day" (Post & Siegel, 2007). Pro-life activists, who previously often operated at the state level, are now unified in a national campaign to reverse Roe. Because Roe had swept away dozens of state laws at once, these activists concluded that only by capturing national institutions (especially the Supreme Court itself) could they achieve their goals. This realization shifted political energy toward the federal arena: influencing presidential elections (since the President appoints federal judges), Senate confirmation battles, and even constitutional amendment efforts. In the decades after Roe, battles over Supreme Court nominations - from Robert Bork in 1987 to Clarence Thomas in 1991 and beyond - often centered on the nominee's stance (or presumed stance) on Roe (Dutra, 2007), reflecting how the decision turned the Supreme Court into a focal point of intense public scrutiny. As Professor Sanford Levinson quipped, Roe turned the Court into an object of "litmus tests" for officeholders, and abortion became nationalized not only in law but in politics (Levinson, 2005).

In addition, Roe faced criticism for its implications on American federalism. Several constitutional law scholars highlighted that the Supreme Court's landmark decision improperly assumed powers that are reserved to the states. They also argue that

the Court overstepped its authority by involving the federal judiciary in matters traditionally handled by the states, rather than the federal government. As John Hart Ely famously observed, “what is frightening about Roe is that this super-protected right is not inferable from the language of the Constitution, the framers’ thinking respecting the specific problem in issue, any general value derivable from the provisions they included, or the nation’s governmental structure” (Ely, 1973). Furthermore, Justice Byron White, in dissent, famously castigated the Roe decision as “an exercise of raw judicial power”, accusing the Court of imposing its own solution and cutting short the democratic process (Roe v. Wade, 1973). Especially among advocates of states’ rights, Roe represented the apex of a process of imperial judiciary overriding democratic choices. Constitutional theorist Bruce Ackerman has suggested that truly enduring constitutional changes in the United States require broad popular endorsement (a “constitutional moment”), and by that measure Roe - a judge-driven change lacking an explicit democratic mandate - was on shaky ground. Commentators have argued that, at the time of Roe, American public opinion was ambivalent, whereas Casey more closely mirrored prevailing polling trends that favoured a regulated access model (Murray & Shaw, 2024). In other words, Roe’s establishment of a uniform national rule occurred without a strong national consensus and thereby remained vulnerable to sustained resistance. Not everyone, however, agreed that Roe violated federalism principles. Some scholars, such as Reva B. Siegel (2007), argued that the decision was consistent with the federal structure as it set a minimum national standard for a fundamental right while still allowing states leeway to regulate fewer central aspects of abortion (such as licensing clinics or providers). In this view, the Court in Roe was fulfilling its proper role in enforcing constitutional limits on state power (analogous to striking down state laws that violate free speech or equal protection), thereby affirming federalism by delineating the spheres of state and federal authority - with the individual right as a federal matter and implementation details remaining with states. Later decisions would further refine this joint federal-state interplay.

Regardless of the normative debate, the practical effect of Roe was clear: it shifted the competence over abortion policy dramatically toward the federal (judicial) level. No state had the power to ban abortion anymore, as any law would have been invalidated under the Roe precedent. Roe had temporarily resolved the political issue at the national level, but only on the surface. This new uniformity had been imposed, and this triggered

new political dynamics. Abortion quickly became a defining issue that polarized the major parties: by the 1980s, the Republican Party officially embraced a pro-life, anti-Roe platform, while Democrats became increasingly committed to defending Roe (Ziegler, 2020). Congress was drawn into the fray as well. Although Roe barred states from prohibiting abortions, it did not compel the government to fund them, and in 1976 Congress passed the Hyde Amendment, barring the use of federal Medicaid funds for most abortions - a policy the Supreme Court upheld in 1980 (Hyde Amendment, 1976). In the early 1980s, social conservatives in Congress pushed, unsuccessfully, for a Human Life Amendment to the U.S. Constitution to overturn Roe (U.S. Congress, 1981). President Ronald Reagan and subsequent republican presidents explicitly pledged to appoint judges who opposed Roe. Thus, Roe had the effect of elevating the abortion conflict to a national level: battles that were once held in statehouses have now been transferred to Congress, the White House, and particularly the federal courts. Looking back, *Roe v. Wade* stands as a prime example of high-level judicial intervention in the American cultural wars and a decisive redistribution of political authority. The 1973 Supreme Court majority had hoped to resolve a problem that had caused divisions once and for all, but the ruling changed the institutional landscape, triggering a long-term struggle for its legitimacy. The Roe framework was the setting for the struggle that lasted for almost two decades after Roe, as opponents attempted to restrict the ruling and supporters struggled to back it. *Planned Parenthood v. Casey* in 1992 was a crucial decision in history, where the Court revisited, but ultimately maintained, Roe's essence while regulating the federal-state balance in remarkable ways.

2.3 The "Middle Ground" of *Planned Parenthood v. Casey*

By the early 1990s, *Roe v. Wade*'s future was questioned. A series of changes in the composition of the Supreme Court - notably with judges appointed by Presidents Reagan and Bush - emboldened more conservative states to begin to enact increasingly restrictive abortion laws to test Roe's limits. This set the stage for *Planned Parenthood of Southeastern Pennsylvania v. Casey* (1992), a case that challenged several provisions of Pennsylvania's Abortion Control Act of 1989. The Supreme Court's answer was both yes and no: the court reaffirmed the "essential holding" of Roe - that women have a constitutional right to choose abortion before fetal viability and that states may not ban abortion outright prior to viability - but it modified the framework governing abortion regulations. The result was a middle ground, a compromise between federally protected abortion rights and complete state autonomy. A new balance was established that would govern US abortion law for the next three decades.

In Casey, a deeply divided Court issued a joint plurality opinion co-authored by Justices O'Connor, Kennedy, and Souter. This plurality "retain[ed] and reaffirm[ed]" Roe's essential holding - namely, that a woman has a right to choose to have an abortion before fetal viability without undue interference from the state, that the state may restrict or ban abortions after viability if it provides exceptions to protect the woman's life or health, and that the state has legitimate interests throughout pregnancy in protecting the health of the woman and the life of the fetus. In this respect, the federal constitutional guarantee recognized in Roe remained in place - the Court did not cede back to states the power to proscribe abortion in the early months of pregnancy (Planned Parenthood of Southeastern Pennsylvania v. Casey, 1992). However, Casey did reject Roe's rigid trimester scheme and introduced a new standard for evaluating abortion regulations: the "undue burden" test. Under this standard, states could impose regulations on abortion, even in the first trimester, as long as those regulations did not have the "purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion before fetal viability." In practical terms, this opened the door for a variety of state requirements - such as informed consent counselling scripts, 24-hour waiting periods, parental consent for minors (with judicial bypass options), record-keeping and reporting mandates for clinics, etc. - many of which had been struck down under Roe's stricter regime. The Casey plurality explicitly overruled Roe on the point of a strict trimester framework and the

accompanying strict scrutiny standard, replacing them with a more flexible balancing test that gave states greater scope to assert their interests in fetal life and maternal health, as long as the basic right to choose was not essentially nullified by an undue burden. The Pennsylvania law at issue in Casey itself included multiple provisions: a mandatory informed-consent consultation followed by a 24-hour waiting period; parental consent for minors; spousal notification for married women; and various reporting and recordkeeping requirements for providers.

Applying the new undue burden standard, the Court upheld all but one of these provisions - the spousal notification was struck down as an undue burden, given the evidence that it would likely deter or endanger women (for example, by exposing some women to domestic abuse if they were forced to notify their husbands). The other measures were deemed permissible. In this way only an absolute ban would have failed the constitutional review, whereas many other forms of state regulation would have passed. In effect, Casey partially devolved policy authority back to the states, allowing them to impose restrictions and limitations as long as they were deemed "reasonable" and did not constitute substantial obstacles, reflecting local values or policy judgements. From a federalist perspective, Casey marked a partial step backwards from Roe's centralisation. States were no longer completely obstructed in shaping abortion policy prior to viability - they could experiment with different regulatory approaches (clinic licensing standards, mandatory counselling laws, etc.), and many did exactly that in Casey's wake. For instance, after Casey, dozens of states instituted waiting periods and parental involvement laws; by the late 1990s, most states had adopted at least one form of Casey-style restriction (Guttmacher Institute, 2009). These laws often had a significant practical impact on access (especially for young or low-income women), but under Casey's doctrine they were presumptively valid unless challengers could prove that a regulation imposed an undue burden on a large fraction of affected women - a high bar that courts often did not find met (Ziegler, 2020). Legislative competence over abortion had shifted again: whereas Roe had placed abortion largely beyond the reach of state lawmakers, Casey involved state legislatures back into the arena (albeit under judicially enforced limits).

At the same time, Casey maintained a crucial federal check on state power. The ultimate authority over abortion's legality still resided with the federal Constitution as

interpreted by the Supreme Court. Although states could regulate pre- and post-viability abortions, Casey required exceptions in cases of danger to the woman's life or health. The Casey decision justified preserving Roe's core holding in explicitly institutional and pragmatic terms. The joint opinion famously invoked the importance of stare decisis (key principle of the legal tradition of common law systems, according to which the judicial precedent is given binding force) and the Court's legitimacy, warning that overruling Roe outright would come at the price of "profound and unnecessary damage to the Court's legitimacy, and to the Nation's commitment to the rule of law" (Garner, 2019; Planned Parenthood of Southeastern Pennsylvania v. Casey, 1992). The plurality also made a sociopolitical observation about reliance interests: for two decades, women and families had organized intimate relationships and made life choices in reliance on the availability of abortion if contraception failed, and the Court should not lightly undermine that reliance. As the opinion noted, the ability of women to participate equally in the economic and social life of the Nation had been facilitated by their ability to control their reproductive lives (Post & Siegel, 2007). Uprooting Roe's promise after 19 years could unsettle those societal arrangements.

In a passage echoing political scientist Robert Dahl's insight (1957) (that courts generally align with enduring public sentiments), the Casey plurality suggested that Roe had become part of the fabric of American life - that while most Americans supported some abortion restrictions, a majority did not favour returning to a pre-Roe regime of outright bans. Casey attempted to find a compromise that would achieve greater legitimacy, reaffirming the core of Roe while also allowing greater state discretion through the undue burden standard (Greene, 2012). In particular, the "undue burden" standard played a moderating role, as it advanced the idea that women should have autonomy over their own bodies, but at the same time upheld the conservative principle that the state has legitimate interests in the life of the foetus and in maternal health, even in early pregnancy (Ziegler, 2020). Hard-liners on both sides were dissatisfied: abortion opponents still decried the fact that abortion remained broadly legal, and abortion-rights advocates lamented the Court's dilution of strict protections and worried that "undue burden" would prove a pliable standard allowing ever-tighter restrictions. Nevertheless, Casey did succeed in deflecting the immediate push to overturn Roe. By reaffirming the core right, the Court deflected a potential crisis of legitimacy and by allowing more state

discretion, the Court perhaps reduced, for a time, the pressure on the federal political system to resolve everything. The Casey decision led to a fragmented battle over abortion fought at the state level - fights over waiting periods, clinic regulations, ultrasound requirements, etc. - rather than one big battle over a constitutional amendment. From 1992 until the late 2010s, Casey and its progeny defined the constitutional landscape of abortion. The Supreme Court, during this era, repeatedly applied Casey to invalidate certain especially onerous restrictions (a broad Nebraska ban on so-called "partial-birth abortion" was struck down in *Stenberg v. Carhart* (2000) for lacking a health exception; another example is the spousal requirement that was invalidated in Casey itself). But the Court also upheld some regulations: notably, in *Gonzales v. Carhart* (2007), a more conservative Court upheld a federal ban on specific late-term abortion procedures, signalling that the balance within Casey's boundaries could shift as the court's composition changed. Throughout, however, the fundamental compromise held no outright bans pre-viability, but substantial regulation allowed. In effect, Casey created what one might call a constitutional middle road - the Court functioned as an umpire, keeping states within broad guardrails but otherwise letting the democratic process operate within those bounds (Greene, 2012).

In terms of federalism theory, some commentators argued that Casey restored a measure of federalist balance by acknowledging the states' dignity and autonomy to legislate on sensitive moral issues, at least up to a point (Ziegler, 2009). Unlike Roe, which critics said had violated the limitations imposed by federalism by nullifying state abortion laws wholesale (Ely, 1973), Casey could be framed as more state-friendly. It respected the constitutional role of the states by affording them the opportunity to regulate abortion as long as they did not extinguish the right altogether. On the other hand, Casey still asserted judicial supremacy in a critical way: it was the Supreme Court that decided just how far states could go, and the meaning of "undue burden" remained subject to the Court's interpretation. In Keith Whittington's terms (2007), the Casey majority itself functioned as a kind of super-legislature on this issue, as it removed certain policy choices from electoral contestation, (e.g., an outright ban on pre-viability abortions remained off the table). The tension inherent in Casey's middle path was perhaps best captured by Justice Scalia's dissent, which ridiculed the plurality's compromise as judicial legislation in disguise - though from the plurality's perspective, this was statesmanship, not

arrogance. Casey sought to preserve the Court's constitutional principles and accommodate federalism by letting states reflect local values in the implementation of abortion rights.

In sum, *Planned Parenthood v. Casey* represents a crucial chapter where the Supreme Court deliberately adjusted the balance of competence between the federal judiciary and the states. It preserved the nationwide constitutional floor set by Roe (maintaining federal-level protection for individual rights), yet simultaneously empowered states with greater room to decide on abortion policy. Politically, Casey can be seen as an attempt to de-escalate a spiralling conflict by crafting a principled compromise. For a time, Casey seemed to have established a stable equilibrium by banning the most extreme laws while allowing different states to have different regulatory regimes, thereby reflecting a certain degree of local democratic choice. However, as the next section explores, this equilibrium was not permanent. The underlying ideological divide over abortion and changes in the composition of the Supreme Court eventually led to Casey's demise. With Dobbs in 2022, the pendulum of competence swung decisively back toward the states, overturning the careful balance Casey had tried to maintain.

2.4 Dobbs and the Reinvigoration of State Authority

On June 24, 2022, the Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*, upending nearly 50 years of jurisprudence. In a 6-3 ruling, the Court explicitly overruled Roe and Casey, holding that the Constitution confers no fundamental right to abortion. The majority proclaimed that Roe was "egregiously wrong" from the start and that "[t]he Constitution makes no reference to abortion, and no such right is implicitly protected by any constitutional provision, including the one on which the defenders of Roe and Casey now chiefly rely - the Due Process Clause of the Fourteenth Amendment" (Dobbs v. Jackson Women's Health Organization, 2022). The immediate legal effect was dramatic: the question of abortion regulation was essentially returned to the people and their elected representatives. As Justice Samuel Alito wrote for the majority, the authority to regulate abortion, which had been federalized by Roe, was restored to the state level. In practical terms, this meant that each state (and potentially Congress, within the scope of its powers) could now set its own abortion policy without the constraints of Roe or Casey. For the first time in two generations, state governments regained the competence to ban, restrict, or protect abortion as they deemed appropriate at any stage of pregnancy. This was a profound reordering of authority in the federal system.

The Dobbs case concerned a Mississippi law banning most abortions after 15 weeks of gestation (Gestational Age Act, H.B. 1510, 2018), squarely violating Roe's viability line rule. Rather than merely uphold the 15-week ban by carving out a narrower exception to Roe, the Court's conservative majority took the maximalist step of overturning the prior precedents entirely. The majority opinion portrayed this move as a restoration of democratic decision-making: Roe and Casey, in the majority's view, had improperly "short-circuited the democratic process" on a profoundly moral question, stripping the American people of the power to decide abortion policy through their elected representatives (Dobbs v. Jackson Women's Health Organization, 2022). Now, by overruling those precedents, the Court cast itself as neutrally returning the issue to democratic governance at the state level. This reasoning echoed a familiar argument long made by Roe's critics - including jurists like Robert Bork, - who argued that Roe had taken away the democratic political process's role in discussing and deciding on abortion (Bork, 1990). The Dobbs majority presented its decision as an act of judicial humility and

a principled adherence to federalism, correcting what it saw as Roe's overreach. Henceforth, the majority insisted, abortion policy would be resolved "by citizens trying to persuade one another and voting" - in Justice Scalia's words (Planned Parenthood of Southeastern Pennsylvania v. Casey, 1992) - like other contentious issues in a democracy. The immediate consequences of Dobbs for the distribution of power were stark. With the federal constitutional right gone, several state laws - some long-dormant, others "trigger laws" designed to take effect upon Roe's demise - came into force. In more than a dozen conservative-leaning states, near-total or very stringent abortion bans were in force within weeks of Dobbs. For example, states such as Missouri, Texas, and South Dakota had enacted laws (many with only narrow exceptions for medical emergencies) that became operative almost immediately once Roe was overruled. In contrast, other states, like California, New York, and Illinois, moved to fortify abortion rights, some by codifying protective language in state statutes or even state constitutions (Ziegler, 2009). The result was a widening policy divergence among the states: abortion access came to depend almost entirely on where one lives.

A vivid illustration came just weeks after Dobbs: in August 2022, in traditionally conservative Kansas, voters rejected a proposed state constitutional amendment, "Value them both", that would have removed protection for abortion rights under the Kansas Constitution - thereby keeping abortion legal in Kansas (Kansas Secretary of State, 2022). Meanwhile, neighbouring Oklahoma had banned abortion outright (Oklahoma Legislature, 2022), and shortly after Dobbs, Indiana became one of the first states to pass a new near-total ban through its legislature (Indiana General Assembly, 2022). In America's federal system, Dobbs produced a dramatic decentralization of policy: some jurisdictions now treat abortion as a serious crime, while others treat it as a fundamental right (in some cases even a health service to be publicly supported).

From a federalism point of view, Dobbs represents a remarkable reassertion of state-level sovereignty over a deeply contested moral and social issue. For the current Supreme Court majority, this devolution of authority aligns with a broader jurisprudential trend of bolstering states' powers. As recent scholarship observes, the Roberts Court has "defied the historical trend of federalism rebalancing by empowering states without a material rebalance of empowering the federal government," exhibiting "a unique commitment to federalism in its frequency of state-strengthening decisions" (Federalism

rebalancing and the Roberts Court, 2025). Dobbs is a flagship example: it explicitly overturned a half-century-old federal precedent in the name of allowing states to legislate freely on abortion. Some supporters of the decision, including conservative legal scholars and advocacy groups like the Heritage Foundation (2022) and Americans United for Life (2025), hailed it as a victory for the Tenth Amendment and local self-government. In their view, in a pluralistic society, issues like abortion are best left to state communities to decide, reflecting local values and mitigating national polarization (for instance, John Roberts, Chief Justice of the Supreme Court, has consistently emphasized the importance of returning controversial issues like abortion to state legislatures, arguing that such decisions are better handled locally rather than by a centralized federal judiciary) (Dobbs v. Jackson Women's Health Organization, 2022). There has also been frequent invocation of Justice Louis Brandeis's classic notion of states as "laboratories of democracy" (Siegel,2023). With Dobbs, each state can now experiment, whether it's Texas prohibiting abortion from the moment of conception or Vermont entrenching abortion rights in its state constitution. Over time, this could in theory allow policies to adjust to constituents' preferences and even enable a form of policy learning across jurisdictions.

However, the Dobbs majority's professed deference to the people and their elected representatives has been scrutinized and criticized on multiple grounds. Critics argue that devolving an issue to the states does not automatically produce healthy democratic outcomes, especially if the democratic processes within certain states are themselves distorted. For instance, organizations like the Brennan Center for Justice have features such as partisan gerrymandering and malapportionment in state legislatures (e.g., state senate districts that over-represent rural interests) that can skew lawmaking away from the preferences of most voters (Brennan Center for Justice, 2022). Indeed, public opinion surveys consistently show that most Americans - and even majorities in many "red" states - support legal abortion in at least some circumstances (AP-NORC Center for Public Affairs Research, 2025). Despite the preferences recorded in various surveys, some of those same states, after Dobbs, implemented near-total bans, raising doubts as to whether these policies truly reflect the will of the majority or rather the influence of well-organized minority factions. Professors Melissa Murray and Katherine Shaw have pointed out that the Dobbs opinion had a rather myopic view of democracy - focusing narrowly on state legislatures while overlooking other democratic institutions and rights (such as state

courts that enforce rights under state constitutions, direct voter referenda, and the ways in which voter suppression or campaign finance asymmetries can affect "the people's" actual ability to influence policy) (Murray & Shaw, 2024). In short, returning an issue to the people is more complex than the Dobbs narrative acknowledges, and the immediate aftermath (with some states enforcing bans that polls suggest are unpopular locally) underscores this complexity.

Second, Dobbs brought to the fore an inherent tension: If one believes abortion involves fundamental rights (to liberty or to life), can a patchwork of 50 different policies be an acceptable long-term compromise? Attorney Halley Townsend has provocatively compared the post-Dobbs landscape to the antebellum arrangement over slavery, when whether a person could be enslaved depended on the state they were in. That 19th-century arrangement ultimately collapsed because neither abolitionists nor pro-slavery forces were content to let the issue be decided by geography; the moral stakes were too high. Townsend (2023) suggests a similar dynamic now looms: few on either side of the abortion debate truly believe that having abortion treated as murder in one state but as a protected right in another is a stable or just solution. If one views abortion as the unjust taking of a human life, one will logically seek a national ban so that no state can permit what one considers murder. Conversely, if one views access to abortion as an essential liberty tied to gender equality, one will not be content to watch women in half the country lose those rights, but one will push for federal guarantees. Thus, paradoxically, Dobbs' devolution of authority could escalate the conflict at the national level, rather than defuse it. Abortion will remain the subject of national conflict, as both sides turn to Congress (Murray & Shaw, 2024). Indeed, since Dobbs, it is possible to highlight several signs of this: Republican lawmakers in Congress have proposed nationwide abortion restrictions, for example, bans after 15 weeks or fetal heartbeat bills (Protecting Pain-Capable Unborn Children from Late-Term Abortions Act, 2022; Heartbeat Protection Act of 2021, 2021), and Democrats in Congress have attempted (so far unsuccessfully) to advance legislation to codify Roe at the federal level (Women's Health Protection Act, 2022). What was once a fight over the Court may simply shift to a fight over federal legislation, with federalism hanging in the balance.

The reinvigoration of state authority post-Dobbs has also raised a host of new legal and policy dilemmas that test the limits of state power and inter-state relations. For

example, some states are exploring punitive measures against their own residents who travel out of state to obtain abortions (for instance in the state of Missouri, it was proposed a bill that would have allowed a civil action against any person who performs or induces an abortion on a resident of this state, regardless of where the abortion occurs (Missouri House of Representatives, 2022), raising questions about the constitutional right to travel and weather or how federal government can protect interstate movement for medical care. Additionally, these dynamics create controversies and conflicts between state laws: consider that the FDA (the U.S. Food and Drug Administration) has approved abortion medications as safe and effective, but certain states have moved to ban or heavily restrict those medications. This scenario poses a potential conflict between federal regulatory standards and state criminal laws, bringing into play the Constitution's Supremacy Clause (which generally makes valid federal laws paramount over conflicting state laws) and Congress's power to regulate interstate commerce. These controversies illustrate that the boundary between state and federal competence is not neatly demarcated, and they ensure that legal battles over authority will continue even after Dobbs.

In a sentence issued just one day before Dobbs, the Supreme Court struck down a New York State law on firearms control in *New York State Rifle & Pistol Association v. Bruen* (2022), broadly interpreting the Second Amendment in a manner that curtailed the states' ability to enact certain handgun licensing restrictions. Furthermore, the Court has demonstrated a tendency to disregard or overrule state policies in other contexts, including the reduction of state regulation of greenhouse gases and the invalidation of positive state initiatives in the field of education. This pattern shows that the Court selectively applies federalism. It strengthens state rights in areas that match specific conservative goals like banning abortion or limiting federal regulation of businesses. At the same time, this choice dismisses state decisions in areas that conflict with other conservative priorities, such as expanding gun rights or easing economic regulations. Essentially, "returning some issues to the states", as noted in Dobbs (2022), was not just about returning power but was tied to significant ideological goals. This points to a broader issue: the distribution of competence in the US system often reflects the dominant values of the ruling coalitions. Robert Dahl (1957) observed that the Supreme Court usually aligns with "the policy views dominant among the lawmaking majorities" of its time.

The success of the anti-Roe movement in shaping the Court's composition - a product of decades of electoral politics and judicial nominations - ultimately enabled the federal judiciary to hand power back to the states on abortion, advancing a particular vision of moral and social policy. In summary, the *Dobbs v. Jackson Women's Health Organisation* case reversed a federal judicial doctrine that had governed uniform national standards for half a century and ushered in a new era of state abortion policies. States thus become the primary actors, while federal courts (for now) largely exiting the field of abortion regulation. This represents a major shift in both the federal balance of power and in immediate and intense social and political consequences, as will be discussed in the next section. Whether the Dobbs framework - essentially, 50 different abortion regimes under the umbrella of federal union - can endure in the face of deep national polarization is an open question. The stage may be set for further clashes, either resulting in a new national settlement (legislative or constitutional) or a protracted stalemate of divergent state policies.

Before turning to those forward-looking considerations, the following table summarizes how constitutional jurisdiction over abortion has shifted with the Supreme Court's three landmark decisions - Roe, Casey, and Dobbs:

Table 2

Case	Competence	Implications
Roe v. Wade (1973)	**Federal**	The Supreme Court establishes that the Constitution protects the right to abortion as part of the right to privacy, limiting the ability of states to ban it, at least until fetal viability. Abortion becomes a federal issue, with the Supreme Court holding control over state laws.
Planned Parenthood v. Casey (1992)	**Balancing**	The Court reaffirms the right to abortion as established in Roe but allows states to impose regulations if they do not place an "undue burden" on a woman seeking an abortion. The decision grants more autonomy to individual states but maintains federal oversight over more restrictive laws.
Dobbs v. Jackson Women's Health Organization (2022)	**States**	The Court overturns Roe and Casey, returning the authority over abortion regulation solely to the states. Each state is now free to regulate abortion as it sees fit, without federal constitutional protection. This decision marks a full return to state competence on the matter.

2.5 Contemporary Political Implications and Federalism Reconsidered

The fallout from Dobbs has been swift, underscoring how legal shifts in competence reverberate through the political system. One clear consequence is the increased polarization and relevance of abortion in American politics. Although abortion has always been a sensitive issue in US politics, the removal of federal rights baseline has thrust the issue to the forefront in recent electoral contests (notably in 2022 and 2023).

In 2022 midterm election cycle, for instance, abortion policy became a key issue in several state-level races (including for governors, attorneys general and state legislators), as those officials now directly determine abortion access within their jurisdictions (Sirin & Villalobos, 2022). Voter turnout and registration - particularly among women - has increased in some areas, and pro-choice ballot measures, even in conservative states such as Kansas (Amos & Middlewood, 2024), outperformed expectations. This suggests that Dobbs not only returned the authority to the states but also sparked an unprecedented level of voter engagement and policy activism at the state level. The era when abortion could be somewhat sidelined in elections (because Roe set a stable nationwide baseline) is over; now the issue is a visceral and immediate part of policy debates from state capitols to Congress. The democratic process is responding to the Supreme Court's abdication of national policymaking on abortion - whether this ultimately leads to eventual policy reconvergence or continued division remains to be seen. Another major implication of Dobbs is the growing divergence in state policies and the resulting patchwork of rights. The United States has effectively split into distinct zones: in some jurisdictions, abortion is mostly illegal and access is severely constrained; in others, abortion remains legal and is often protected (even subsidized) by state law (Donley, 2023). This divide has practical effects on citizens (including travel burdens, inequalities in healthcare, legal risks, etc.), but it also carries a symbolic effect on the federation: it has sharpened the contrasts between "red" and "blue" states, reflecting a kind of moral federalism wherein fundamental values differ by territory. Some observers celebrate this as precisely what federalism is meant to facilitate - allowing communities with different values to enact their preferences without imposing them nationally. Indeed, legal scholar Heather Gerken's concept of "progressive federalism" posits that state and local governments can serve as sites of resistance and policy innovation, especially when the national government is gridlocked (Gerken, 2008). It is possible to notice it in the

reaction of many "blue" states post-Dobbs: several have positioned themselves as "sanctuaries" for reproductive rights, passing laws to shield abortion providers and out-of-state patients from legal liability and even allocating state funds to support abortion services for non-residents (Cohen, Donley & Rebouché, 2023). This mirrors Gerken's observation (2008) that states can "set the national agenda" by forcing issues into the spotlight. In the 2010s, with new, strict anti-abortion laws in red states, political pressure made its way to the Supreme Court, setting the stage for the Dobbs ruling. While blue states are fighting for the right to abortion, sparking a national discussion about safeguarding reproductive rights, conservative states are exploring novel restrictions such as defining life at conception in state constitutions or banning abortion pills via new state law. This evolving landscape raises the question: Is the United States headed toward a stable equilibrium of decentralized policy, or are we in a transitional phase toward a new national settlement on abortion? Townsend's comparison (2023) to pre-Civil War slavery policy is a cautionary note: a federated solution on a deeply moral issue may prove inherently unstable.

Already, there are growing calls on the political right for Congress to enact a federal abortion ban (which, if passed, would swing the pendulum of competence again, this time from states back to federal legislature) (Cohen, 2024). On the left, there are continued calls for Congress to codify Roe's protection nationwide via statute, or even to pursue structural reform of the Supreme Court (e.g., expanding the number of justices), reflecting frustration with leaving fundamental rights to the vagaries of state law (Reform Congress, Not the Court, 2024). In other words, the battle over which level of government should decide abortion policy is far from over; it has simply shifted from the judicial arena to the political one. The reconfiguration of competence post-Dobbs has also prompted a broader reconsideration of federalism in American public discourse. Traditionally, states' rights rhetoric was associated with the conservative cause (Kramer, 2000) and often met with skepticism by progressives (who recalled that states' rights were invoked to resist civil rights in the 1950s-60s). Abortion has somewhat scrambled this alignment. Progressive thinkers, like Gerken (2014) have for some years urged liberals to "take a more favourable view of federalism," noting that empowering states can sometimes advance liberal aims (for instance, state-level environmental or labour regulations going beyond federal minimal). After Dobbs, many progressives are indeed

embracing state-level action: strategizing to win key state elections, using direct democracy tools like ballot initiatives to entrench abortion rights in state constitutions, and forming interstate coalitions, for example, an agreement among the West Coast states of California, Oregon, and Washington to cooperate in protecting abortion access regionally (Multi-State Commitment to Reproductive Freedom, 2022). Meanwhile, some conservatives - long the advocates of devolving power - are now openly supporting federal intervention (such as a nationwide abortion ban), revealing an ideological flip. This role reversal underscores a pragmatic truth: political actors often champion whatever level of government is more likely to favour their desired policy outcome. Commitment to abstract federalism principles can prove thin when substantive objectives are at stake. American liberals and conservatives have "switched positions" at times on questions of judicial restraint versus activism, and on federal versus state power, whenever it suits their policy goals (Graber, 1993).

The abortion issue vividly demonstrates this phenomenon: for decades, opponents of Roe spoke the language of federalism and majoritarian democracy; post-Dobbs, with many states banning abortion, it is abortion-rights supporters who now extol the virtues of local democracy (at least in blue states) while many conservatives contemplate federal overrides of state choices. Beyond the intergovernmental war, the saga of Roe and Dobbs has also affected public perceptions of the Supreme Court's legitimacy and the stability of constitutional law. Casey was, in part, an attempt to shore up the Court's legitimacy by demonstrating that the Court could rise above politics and adhere to precedent. Dobbs, however, showed that over the long run, political forces (through the judicial appointment process) can indeed shift the Court's doctrine. Public opinion polls after Dobbs indicated a steep drop in public trust in the Supreme Court, suggesting that many Americans view the Court as driven by partisan agendas rather than neutral principles (Pew Research Center, 2024). This has fuelled discussions about Court reform and about the proper role of the Court in a democracy. Critics of the Constitution's counter-majoritarian features argue that relying on nine unelected judges to decide major social policy is problematic (Zoffer & Grewal, 2020). In a sense, Dobbs validates that critique: a change in the Court's composition led to a sudden reversal of policy of a half-century of constitutional doctrine, even though - as dissenting Justices pointed out - Dobbs' outcome was contrary to what a supermajority of Americans consistently had said they preferred. This tension between

judicial power and majority will is a classic facet of the "counter-majoritarian difficulty" in constitutional law. Some observers, drawing on Robert Dahl's insight that the Court cannot remain out of step with dominant political coalitions for long, suggest that the backlash to Dobbs could signal the beginning of a broader political realignment, one that may eventually compel either the Court or Congress to bring abortion policy closer to majority sentiment (assuming current polling trends persist). As Murray and Shaw note (2024), Dobbs disrupted democratic deliberation by removing the issue from established channels of negotiation, a dynamic that may in turn intensify political pressures for such a realignment.

In reassessing the role of federalism in relation to abortion, one should also note how the interplay of federal and state actions can produce complex outcomes. Roe prompted national partisan sorting which, decades later, produced the conditions for Dobbs. Dobbs, in turn, may invigorate efforts at the national level (through elections) to curtail what states do. The U.S. system allows for this dynamic interaction: neither level has permanent hegemony. Federalism is not a zero-sum competition but rather a continuous negotiation where states can shape national policy and vice versa (Gerken, 2008). It is possible to highlight it, considering the aggressive anti-abortion measures of some states over the years have pushed the Supreme Court to gradually accept more restrictions and eventually overturn Roe. Furthermore, by considering how protective actions in other states and public opinion signals are pressuring national political parties to respond. Federalism, in this sense, has provided safety valves and points of resistance: when the federal courts entrenched abortion rights, the opposition-built power in the states and the electoral branches; now that states have free rein, the opposition to abortion bans is activating different mechanisms (state referenda, federal legislation campaigns). In summary, the contemporary scene after Dobbs is one of intense contestation and realignment. The result is a deeply fragmented nation, as jurisdiction over the regulation of abortion rights has shifted from the federation to the states. These dynamics have brought the Americans back to the question of the role of states vis-à-vis the federal government in guaranteeing the individual rights of citizens, highlighting the strengths of federalism (policy innovation, local adaptation of the law, checks on federal authority), but also its weaknesses (inequalities between States, guarantees of rights based on geography and difficulties in dealing with national issues).

2.6 Conclusion and Forward-Looking Commentary

From 1973 to 2022, the abortion issue in the United States crossed a remarkable circle in terms of federalism and institutional competence. In 1973, *Roe v. Wade* swept aside several state abortion laws and established a uniform national rule - an assertion of judicial power that profoundly centralized authority over abortion policy at the federal level. Nineteen years later, Planned *Parenthood v. Casey* preserved the essence of that national right but deliberately crafted space for state regulation, attempting to balance the federal guarantee with state interests. Eventually, in 2022, *Dobbs v. Jackson Women's Health Organization* eliminated the federal constitutional right altogether, restoring to states the power to ban or protect abortion as they see fit. This shift of interpretations of the Constitution by the Supreme Court reallocated policymaking power between levels of government, with each shift carrying significant societal consequences. The distribution of competence over abortion is overwhelmingly state-centric, more so than at any time in at least 50 years. The federal judiciary has stepped back, and Congress has not stepped in with any overriding legislation, meaning the landscape is defined by state-by-state outcomes. This marks a victory for one vision of federalism - one that celebrates local control and heterogeneous solutions. It is, in a sense, a return to the 19th-century norm where states were the primary regulators of social policy. Yet, the country of 2025 is vastly different from that of 1875. America today is a tightly integrated nation with high mobility, national media, and deeply nationalized political parties. In this context, having reproductive rights vary dramatically across state lines is testing the limits of what citizens will accept and what the federal system can accommodate. Looking ahead, several future trends, consequences and possibilities emerge:

Intergovernmental Conflict and Cooperation: There might be collisions between state policies and federal authority, around intergovernmental conflict such as abortion medication for instance. The Food and Drug Administration (FDA), under its statutory authority, has approved drugs such as mifepristone and misoprostol as safe and effective for terminating early pregnancies. Although the FDA does not create rights, its decisions establish a federal standard for the availability and distribution of these medications. When a state enacts a law banning or severely restricting the use of abortion pills, it may directly conflict with this federal framework. As asserted in the last paragraphs, under the Constitution's Supremacy Clause, valid federal law generally pre-empts conflicting state

measures (United States Senate,1789). Therefore, future litigation may test whether FDA approval precludes states from prohibiting or limiting access to medications that federal law has authorized for the national market (Grossi & O'Connor, 2023). Additionally, if states attempt to extend their abortion restrictions beyond their borders (punishing travel, etc.), that could trigger constitutional challenges implicating federal power to protect interstate liberty. Conversely, we may also witness cooperative federalism in surprising ways, perhaps compacts between like-minded states (e.g., a coalition of pro-choice states pooling resources to facilitate access, or pro-life states sharing legal defence strategies). In this sense, it is important to recall that cooperative federalism is a specific doctrinal and institutional arrangement, in which federal and state governments share overlapping responsibilities and jointly administer public programs, rather than acting in discrete spheres of authority. Its constitutional foundation rests on an expansive reading of the Supremacy Clause, the Necessary and Proper Clause, and a narrowed interpretation of the Tenth Amendment (Encyclopedia of Federalism, n.d.). Historically, this model became prominent during the New Deal, when federal programs such as land grants, welfare schemes, and infrastructure initiatives required extensive collaboration with state governments. Over time, cooperative federalism evolved into creative and coercive forms, but its essence has always been the integration of state and federal authority in administering national policies. Applied to the abortion context, cooperative federalism might emerge through new forms of intergovernmental collaboration (Gerken, 2008): for instance, blue states creating regional agreements to protect abortion access, while red states may pool legal strategies to defend restrictive laws. The dynamic nature of U.S. federalism suggests that these interactions will continue to evolve, producing novel arrangements as the dust settles.

National Political Resolution (or Oscillation): The question of a national legislative settlement loom. It is possible that one party gains sufficient control of Congress and the Presidency to enact a nationwide law on abortion - be it a ban after a certain gestational age or a federal statute protecting access. Such a law would undoubtedly face challenges (political and legal), but if upheld, it could in effect recentralize abortion policy, superseding divergent state laws. However, any federal law could just as easily be reversed by a later Congress, resulting in oscillating national policies, consider the swings on issues like Title X "gag rule" regulations under different

administrations. First promulgated under the Reagan administration in 1988 (U.S. Department of Health and Human Services, 1988), the rules prohibited Title X - funded clinics from providing counselling or referrals for abortion. These restrictions were later rescinded under President Clinton (U.S. Department of Health and Human Services, 1993), only to be reinstated in more stringent form under President Trump (U.S. Department of Health and Human Services, 2019), and once again rolled back under President Biden (U.S. Department of Health and Human Services, 2021). The repeated imposition and revocation of such rules illustrates the volatility of national policy in this domain, contingent on the partisan control of the executive branch. Another path to national resolution could be a constitutional amendment - though in the current polarized climate, garnering the supermajorities needed for either a pro-life or pro-choice amendment seems remote. Still, if the gridlock and disparity persist, the pressure for a more permanent national fix may grow, much as the irreconcilability of slavery's expansion led to constitutional confrontation in the 19th century (Townsend, 2023). A stable federal consensus on an issue touching basic rights and morality may be elusive. In the long run, the federal system might oscillate until a clearer national majority for one approach solidifies and translates into federal action (or a new Court decision) (Post & Siegel, 2007).

Jurisprudential Developments: The Supreme Court's role post-Dobbs could evolve in unpredictable ways. One line of speculation is that Dobbs is not the end point but a waypoint: the opinion left open the door, at least in Justice Thomas's concurrence, to reconsidering other substantive due process precedents (like contraception or same-sex marriage) (Dobbs v. Jackson Women's Health Organization, 2022). The majority tried to distinguish those issues, but if such cases reach the Court, the same states' rights logic could be applied (though political backlash could deter it). Alternatively, the Court might face cases attempting to establish fetal personhood under the Fourteenth Amendment - essentially the inverse of Roe. If a future Court were to hold that a fetus is a "person" with a right to life, that would nationalize an even stricter rule (banning abortion nationwide, regardless of state law), a result some anti-abortion advocates openly desire (Craddock, 2025). While this is speculative, it underscores that the competence pendulum could swing even further; Dobbs transferred authority to states, but a different Supreme Court composition or theory could either entrench that (by staying out) or seize authority again

in a new way. Much will depend on the composition of the Court and the broader political environment in the coming years.

Impact on Federalism Debates: The experience from Roe to Dobbs will likely influence academic and public debates on federalism beyond the abortion context. One lesson is that devolving contentious issues to states can both diffuse and exacerbate conflict. It allows policy to better fit local values (reducing grievance in some places) but also creates stark injustices or disparities that fuel moral crusades for national intervention. Scholars like Heather Gerken (2008) suggest that harnessing federalism's flexibility can empower minorities (ideological or demographic) to have a voice in a diverse union. It is possible to notice this in Dobbs: religious conservatives, a minority in some national respects, used state power effectively to challenge what they saw as an imposed national norm, and they succeeded. Now abortion-rights minorities in red states have few options except maybe local resistance or migration, whereas majorities in blue states feel their sovereignty validated. The pendulum may encourage everyone to think more strategically about federalism: progressives might invest in state capacity and rights provisions, and conservatives might become more amenable to certain federal standards to avoid policy "patchwork" on issues they care about. In essence, the Roe-Dobbs saga has made clear that federalism is not inherently partisan; it is a tool that can serve different values at different times. This could pave the way for a more nuanced public understanding that neither states' rights nor federal supremacy is inherently good or bad - it depends on how each is used to advance democratic governance and protect rights.

In closing, the half-century journey of U.S. abortion law is a vivid microcosm of American federalism in action. It reveals a constitutional system capable of dramatic change and countermovement: rights can be declared by judicial fiat and later withdrawn by judicial fiat, powers can flow from states to Washington and back again, and through it all, the polity adjusts, reacts, and renegotiates the social contract. As Roe's legacy gives way to Dobbs' era, the United States stands at a crossroads of federalism. The coming years will test whether a union so divided in law can remain united in spirit - or whether the pressures of moral disagreement force a new assertion of national unity on the issue of abortion. This episode underscores the importance of institutions: the allocation of decision-making authority can be just as crucial as the substantive policy outcome in shaping the course of a nation's political and social life. The narrative is ongoing, yet one

clear lesson emerges: the interaction between federal and state power is a continuous process, with each progression in this dynamic leaving a profound and enduring impact on American society.

CHAPTER III: A Comparative Analysis of Reproductive Rights in Compound Democracies: The European Union and the United States

3.1 Introduction

The question of how reproductive rights are governed within multi-layered constitutional systems is especially revealing when comparing the European Union (EU) and the United States (US). Both are examples of "compound democracies" (Fabbrini, 2007) that disperse authority across different levels of government, yet the institutional design of each produces markedly different dynamics in the regulation of abortion. In the United States, the federal constitution and the judiciary have historically functioned as central instruments in defining nationwide standards, as illustrated by the landmark *Roe v. Wade* ruling, which recognised a constitutional right to abortion that invalidated the previous state bans. In contrast, the EU's architecture, rooted in the principles of conferral and subsidiarity, prevents its supranational institutions from legislating directly on abortion, leaving competence almost entirely to the member states.

This chapter analyses and compares two different institutional frameworks: the US federation, with a single constitution binding all states, on the one hand, and the European Union, founded on treaties and composed of sovereign members, on the other. These two different frameworks produce divergent approaches to competence and intervention in the field of women's reproductive rights. The working hypothesis is that in the United States, due to its federal structure, it has been possible to establish a more binding and uniform influence through judicial decisions, while in the EU, the lack of binding instruments and the reliance on soft law have led to limited influence. Nevertheless, the validity of this hypothesis is being tested in the context of recent developments, including the Dobbs ruling (2022), which returned the authority to individual states, thereby creating a patchwork of different legislation and a "European" Future of American Abortion Law (Fabbrini 2023). By examining institutional structures, legal doctrines, and the interplay of national and supranational norms, we can better understand how each system navigates the tension between unity and diversity in protecting or limiting reproductive rights. This comparative analysis not only maps the

legal competencies and limits in each system but also situates them in federalism theory - including Professor Fabbrini's notion of "compound democracy" and constitutional pluralism - to assess how polycentric governance impacts the protection of rights closely tied to personal autonomy, including reproductive choice. The inquiry carries significant implications for human rights and federalism debates: it illustrates the potential and limits of multilevel constitutionalism in safeguarding women's rights and highlights the equality concerns that arise when access to rights depends on one's jurisdiction within a union or federation.

3.2 Analysis of the United States

The constitutional model of the United States reflects a "polycentric" checked model of government, meaning that there is not a single institution that constitutes the exclusive locus of political power (Fabbrini, 2007). The authority is split between the federal level (or supra-state dimension) and the federated states (or inter-state dimension). The Constitution's vesting clauses and the writings of the Framers, particularly in The Federalist Papers, emphasized that the accumulation of legislative, executive, and judicial powers in the same institution would threaten liberty (Hamilton, Madison & Jay, 2008). For this reason, in the US, there is a clear separation of powers, ensuring a system of mutual interaction and check and balance. The Constitution divides legislative authority between two chambers - the Senate and the House of Representatives - which together constitute Congress, distinct from the executive power vested in the President. This distinction is based on different electoral bases and specific time constraints for each body (National Archives, 1787). Congress is directly elected, symbolizing popular sovereignty both by population and by states, while a single executive - chosen through the national electoral college - leads the federal administration and symbolizes the authority of the union, particularly in matters such as foreign policy or national crises. The federal judiciary completes the structure, with the Supreme Court - composed, since 1869, of nine judges appointed for life - and the lower federal and district courts. Institutionally, the Supreme Court and the other courts ensure uniform interpretation of federal law and the Constitution across all states. Judicial review (established since *Marbury v. Madison*, (1803) allows courts to strike down laws that violate the Constitution, thus policing the boundaries of each institution's authority and protecting rights nationally. Each of these powers has been able to preserve substantial autonomy thanks to constitutional guarantees. In general terms, the model of separation of powers is based on a horizontal and anti-hierarchical logic, while systems of fusion of powers tend to take on a vertical and hierarchical structure (Fabbrini, 2007). This distinction allows for a better understanding of the complexity of the historical process that led to the institutionalisation of the US system (U.S. Senate, 2023). Unlike a parliamentary system, the executive is not drawn from the legislature, underscoring a strict separation. This arrangement aims for coherence through compromise - no law can pass or policy endure without agreement (or at least acquiescence) among branches, theoretically yielding balanced governance.

Scholars such as Professor Sergio Fabbrini (2005) have observed that the American system thus institutionalized a compound republic, simultaneously drawing legitimacy from individual citizens and from the states, and creating a separation of powers both vertically and horizontally. Federalism adds another dimension to this structure. As Gregory Ablavsky (2019) has argued, the United States represented a novel constitutional experiment in which sovereignty was deliberately concentrated in "only two legitimate sovereigns": the federal government and the states, both deriving their independent authority from the people. The federal government's powers, though constitutionally enumerated, have expanded over two centuries, especially via the Commerce Clause and Spending Power (National Archives, 1787), enabling national coherence on many policies (e.g. civil rights, environmental standards). Still, states retain broad residual powers (U.S. Senate, 2023b) over areas like criminal law, family law, education, and health - leading to inter-state policy diversity and a patchwork of different policies. The Supremacy Clause (U.S. Congress, n.d.)[3] ensures federal law overrides state law when acting within its constitutional sphere, securing a baseline of national coherence. The system's democratic legitimacy flows primarily from the people. The House, the Senate, and the President are chosen through elections, and federal judges, although unelected, derive legitimacy from their appointment by elected officials and their role as guardians of the constitutional order. This vertical chain of accountability is bolstered by a mature party system and a national public sphere, which reinforces the perception that federal actions represent a national political will (Mechkova, Lührmann & Lindberg, 2019). Thanks to federal supremacy and broad federal powers, the U.S. can often implement coherent national policies. For example, federal civil rights legislation in the 1960s (*Heart of Atlanta Motel Inc v. United States,* 1964) overrode state segregation laws, ensuring a uniform standard of non-discrimination. The presence of a powerful central executive, embodied by the President, enables rapid national response in areas of clear federal jurisdiction (e.g. defence, monetary policy, pandemic response coordination). However, the same separation of powers that protects liberty can sometimes hinder effectiveness: if branches or the two houses of Congress disagree, policy gridlock can result (Kavanagh, 2016). The checks and balances mean consensus or compromise is usually required,

[3] U.S. Const. art. VI, cl. 2 ("This Constitution, and the Laws of the United States which shall be made in Pursuance thereof… shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitution or Laws of any State to the Contrary notwithstanding.").

which can slow decision-making. In contrast, states can innovate or tailor policies to local preferences in their domains (a polycentric strength), but divergent state policies can also reduce overall coherence (as seen with highly varying state laws on matters like firearm regulation or education standards).

Reproductive rights starkly illustrate the interplay of polycentric governance in the US for nearly 50 years; the U.S. Supreme Court has ruled in favour of federal protection of abortion rights. In *Roe v. Wade* (1973), the Court held that the Due Process Clause of the 14th Amendment encompasses a fundamental right of privacy "that includes the abortion decision" (at least in early pregnancy). This ruling effectively nationalized reproductive rights - no state could ban abortion in the first two trimesters, enforcing coherence by judicial fiat. However, in *Dobbs v. Jackson Women's Health Organization* (2022), the Supreme Court overturned Roe, declaring that the Constitution does not protect a right to abortion. The Dobbs decision returned authority to the states on this issue, immediately creating divergent legal regimes across the country. In terms of democratic legitimacy, Dobbs arguably restored the issue to democratic processes at the state level, enhancing local accountability, as state legislatures now decide abortion policy reflecting local electorates. However, it also undermined coherence and equality of rights nationwide - a person's rights now depend on their state of residence. The federal Congress could, in theory, intervene (either to protect or restrict abortion nationally), but as of 2025 no federal law has resolved the patchwork (Murray & Shaw, 2023). The U.S. model heavily relies on constitutional adjudication to settle abortion rights, reflecting the judiciary's outsized role in American federalism for protecting individual rights. When the Supreme Court enshrined the abortion right in *Roe*, it imposed uniformity by nullifying contrary state laws - a top-down, judicially driven harmonization. This had the advantage of creating a single national standard (ensuring minimum access everywhere), but it also bypassed legislative compromise and became vulnerable to the Court's changing composition. The *Dobbs* reversal - enabled by a conscious ideological shift in the Court - demonstrates the volatility of rights founded on judicial precedent rather than broad political consensus (Post & Siegel, 2007). The decision explicitly framed the issue as one of federalism and democratic self-governance, returning autonomy to states to reflect local values. As outlined in Chapter 2, proponents of *Dobbs* laud this as restoring states' freedom to protect fetal life and tailor policy to constituents, while critics argue it

abandoned the Court's role in safeguarding women's rights equally nationwide (Supreme Court of the United States, 2022). It is important to note that even with states now in charge, the federal system is not entirely hands-off: constitutional limits still apply at the margins (for instance, states cannot criminalize women traveling out-of-state for an abortion due to the constitutional right to interstate travel (Fabbrini, 2023), and federal courts will adjudicate new disputes such as access to abortion medication across state lines). Additionally, federal executive actions and agency policies (e.g. The Food and Drug Administration (FDA) regulation of abortion pills, or Department of Justice (DOJ) challenging state laws that purport to restrict travel) are emerging as partial checks on the most draconian state measures, although these to face judicial review. Overall, the U.S. legal framework has shifted from one of centralized judicial enforcement (pre-2022) to one of decentralized legislative primacy (post-2022), with the balance between state power and federal oversight still evolving through litigation and political contestation; this transition is reflected in the Dobbs Court's insistence on restoring "ongoing democratic deliberation" to state legislatures rather than allowing the Court to dictate policy (Murray & Shaw, 2023). In practical terms, Dobbs eliminated the federal floor of protection and empowered each state to set its own abortion policy unrestricted by 14th Amendment privacy doctrine (Roe v. Wade, 1973). The result has been immediate legal fragmentation: several conservative-led states moved to enforce pre-existing trigger bans or new prohibitions, while progressive states strengthened statutory protections for abortion. Consequently, the new decentralised system has led to marked inequalities in access to care, as access to abortion now depends heavily on the state of residence (Fabbrini, 2023). Women in states banning abortion must either carry unwanted pregnancies to term, seek clandestine/unsafe options, or travel to distant jurisdictions. Those with financial means and mobility can often arrange out-of-state care, whereas poor, rural, and otherwise marginalized women face far greater obstacles - raising serious concerns about de facto equality, since the principle of equal protection is undermined when rights central to personal autonomy vary by jurisdiction. This echoes dynamics previously seen in Europe - e.g. Irish women traveling to Britain for abortions prior to 2018 (Garnsey, Zanini, De Zordo, Mishtal, Wollum & Gerdts, 2021) - and is indeed why scholars characterize post-*Dobbs* America as entering a "*European future*" for abortion law (Fabbrini, 2023). Interstate legal conflicts are also intensifying for example,

neighbouring states have adopted opposing policies (Texas banning almost all abortions vs. New Mexico protecting them), prompting issues like whether aiding travel or mailing abortion pills can be penalized across borders. These uncertainties are being tested in courts and legislatures, meaning the post-*Dobbs* landscape remains in flux**.**

In summary, the U.S. framework now provides no guaranteed uniform right to abortion; instead, access hinges on state-level decision-making, mitigated only by residual federal constitutional doctrines (travel, speech, etc.) and the prospect of future federal legislation or constitutional amendment (neither likely soon). The volatility of this arrangement - where a single court decision radically altered half a century of nationwide rights - stands in stark contrast to the EU's more gradual and politically mediated approach, as discussed next.

3.3 Analysis of the European Union

The EU has an "institutionally pluralist" design distinct from the U.S. separation-of-powers model (Fabbrini, 2008). The Union's governance is often described in terms of "institutional balance" rather than a strict Montesquieu-style separation (Conway, 2011). Key institutions include the European Council (heads of state or government of the member states), the Council of the EU (ministers of member states), the European Commission (executive body), the European Parliament (directly elected legislature), and the Court of Justice of the European Union (CJEU, judiciary). Legislative power is split between the European Parliament and the Council, which in most policy areas act as co-legislators through the ordinary legislative procedure. The Parliament represents EU citizens directly (elected every five years), while the Council represents the governments of member states. The European Commission has sole right of legislative initiative and acts as the executive in implementing and enforcing EU law. It is headed by a President nominated by the European Council, considering the results of the European Parliament elections, and confirmed by Parliament. Unlike a parliamentary cabinet, however, the Commission does not depend on the continued confidence of Parliament for its tenure. Although Parliament has the power to dismiss the Commission through a vote of censure, this requires a two-thirds majority of votes cast representing a majority of MEPs, making it an exceptional and rarely exercised mechanism (European Union, 2012). Meanwhile, the European Council, which brings together the heads of state or government of the member states and defines the Union's overall political direction and priorities, does not legislate but may be understood as functioning in many respects as a collective head of state for the EU. Finally, the CJEU ensures the uniform interpretation and application of EU law, interprets the treaties and has the authority to annul EU acts that violate the treaties or fundamental rights and to adjudicate disputes between EU institutions or between the Union and its member states. While the member states of the EU are historically organized according to a monocentric logic (Fabbrini, 2008), with sovereignty concentrated in a single state centre and hierarchical relations toward the periphery, the Union itself operates according to a polycentric logic. As Fabbrini (2004) observes, the EU has "gradually evolved into a system of separated institutions sharing governmental power", where different institutions "enjoy distinct and separate sources of legitimacy" but must cooperate in the lawmaking process. This polycentric separation of

functions means the EU system has multiple power centres: member states (through the European Council and Council), citizens (through Parliament), and the independent Commission and Court. Decision-making often requires agreement across these centres - for example, a law typically needs approval by both the Council and Parliament, and a proposal by the Commission (European Union, 2012). This separated institutions sharing power's structure has been likened to the US in the sense that each EU institution has a distinct source of legitimacy - member states' governments, the European electorate, and supranational appointment - forcing negotiation and consensus. The EU does not have a single, unitary executive or a majority-elected government; this can dilute clarity of responsibility but also prevents domination by any one body.

The hallmark of EU governance is multi-level governance, a layered authority structure from local to national to supranational (Council of Europe, 2023). Sovereignty is shared or pooled rather than ceded entirely to a central entity. The treaties enumerate the competences of the Union; in all other areas, member states retain full authority (European Union, 2008). Even in shared competence areas, if the Union has not exercised its power, member states can act (and even when the Union has legislated, states typically implement and enforce EU law domestically). This stands in contrast to the U.S., where the federal government can often legislate broadly under flexible constitutional clauses, leaving few purely state-only domains. In the EU, areas like foreign policy, defence, taxation, education, culture, and key moral and social issues mainly fall under national competence. The EU offers non-binding support in these matters. The principle of conferral establishes that the Union can only act within the limits defined by the Treaties. For these non-exclusive competences, the principle of subsidiarity requires decisions to be made at the lowest possible level, with the Union stepping in only when Member States, acting on their own, cannot reach the set goals. Together, these principles institutionalize a high degree of polycentric governance (European Union, 2012). This arrangement may result in less uniformity; each country, for instance, has its own health and social policies. However, it aims to respect different national identities and democratic choices at the state level.

When the EU does act within its competence, its regulations and directives are binding on all member states, creating uniform rules in those domains. The CJEU's

jurisprudence in cases like *Van Gend en Loos* (1963) and *Costa v. ENEL* (1964) established that EU law has direct effect (individuals can invoke it in national courts) and primacy (national law must give way to conflicting EU law) (European Union, 2012). This ensures a degree of coherence in the internal market and other integrated areas: for example, a product standard or competition rule decided at the EU level applies uniformly across Europe. However, because the scope of EU law is limited by conferral, there is far more policy heterogeneity across the EU in many fields. Each member state retains its own constitution (in fact, multiple constitutional orders co-exist) and legal system, subject only to the minimum harmonization or mutual recognition required by EU law. In practice, this means, for instance, that criminal justice, education, and healthcare systems vary widely between, say, Sweden, Poland, and Portugal. The EU provides frameworks for cooperation and sets some common standards (e.g. basic human rights via the EU Charter of Fundamental Rights (European Union, 2012), applicable when implementing EU law) but does not equalize all policies. Coherence in the EU is strongest in economic and regulatory matters necessary for the common market (like trade, competition, product regulations) and weaker in culturally sensitive or social matters (Majone, 1998).

The polycentric nature of the EU can make decision-making cumbersome. Legislative processes require coordination between Commission, Council, and Parliament - effectively a trisection of power that can lead to stalemate or lowest-common-denominator outcomes. Unanimity requirements in areas like foreign policy or treaty revision give each state a veto, sometimes hampering collective action (European Union, 2012). On the other hand, when agreement is reached, it often carries strong legitimacy because all states and political factions had a say. The EU has shown effectiveness in certain domains: for instance, its single market regulations are rigorously enforced across Europe, and its trade negotiators speak with one voice for all member states, giving the Union significant clout (a coherence and effectiveness that individual countries might lack alone) (Majone, 1998). The multi-level structure also allows policy experimentation and diversity: member states can be laboratories for social or economic policies suited to their contexts without needing one-size-fits-all EU rules in many areas (somewhat analogous to US states, though EU countries have even greater autonomy in non-harmonized fields). However, this also means that coherence is limited - there is no single European policy on healthcare or education or taxation to the degree that the U.S.

has federal standards; instead, there are 27 policies, loosely coordinated (Marques-Pereira, 2023).

From a governance perspective, scholars have noted that the EU's structure disperses power intentionally: rather than concentrating authority, the EU spreads power among institutions and levels. This dispersion has been called a "compound democracy" or "compound republic," highlighting similarities to the US federal system while acknowledging the even greater complexity in the EU (Fabbrini, 2008). Indeed, Professor Sergio Fabbrini (2008) terms the EU and U.S. both compound democracies - "unions of asymmetrical states and their citizens" with power separated among multiple actors. In the EU's case, the asymmetry is that member states remain masters of the treaties (they can ultimately change the rules by unanimous agreement) and retain attributes of sovereignty like their own constitutions, whereas U.S. states gave up that level of independent constitutional authority in 1789 (they cannot unilaterally override the U.S. Constitution). This makes the EU more polycentric and less hierarchically coherent than the U.S. In contrast to the US, the European Union has never had a centralized abortion law or right imposed across all member states. Under the treaties, the EU has no express competence to legislate on abortion or most aspects of family law and healthcare ethics - these matters fall under member state authority (with the Union at most having a supporting role in public health) (European Council, 2021). As a result, reproductive rights are defined by each country's laws, reflecting local moral and political values. In practice, there is a spectrum: e.g. historically, countries like Malta, and Poland have had very restrictive abortion laws, while others like Sweden, Finland, and the Netherlands allow broad access (Marques-Pereira, 2023). The EU's polycentric framework allows for this heterogeneity as an expression of national sovereignty. The EU's own Court of Justice has never recognized a fundamental right to abortion under EU law (and likely would say it lacks jurisdiction, since abortion is not covered by EU law except tangentially). The European Court of Human Rights (ECtHR) - a Council of Europe body, not an EU institution, but relevant for broader Europe - similarly has not found a right to abortion in the European Convention on Human Rights. Instead, it gives states a wide margin of appreciation on this sensitive issue. However, European courts and relevant courts in Europe did establish narrower transnational rights: notably, the ECtHR's *Open Door and Dublin Well Woman v. Ireland* (1992) ruled that Ireland could not prohibit people from

receiving or imparting information about lawfully available abortions abroad, as that violated freedom of expression (Fabbrini, 2023). It also held that women must be free to travel to other countries for abortion services (a right reinforced when Ireland amended its constitution in 1992 to guarantee the freedom to travel and obtain information). In the EU context, the free movement principles and EU citizenship indirectly support these rights: no EU citizen can be barred from traveling to another member state for medical care, and under EU law, patients even have some rights to seek healthcare across borders, and abortion is treated as part of healthcare provision in those states where it is legal - though its classification as ordinary medical care remains deeply contested (European Commission, n.d.). Thus, while one member state cannot impose its abortion law on another, the interaction of jurisdictions led to a kind of compound solution: women in very restrictive states could exercise their personal autonomy by going to more permissive states, and national bans could not extend to censoring knowledge of that option (Fabbrini, 2023). This scenario played out especially in Ireland before it liberalized its law in 2018 - thousands of Irish women travelled to Britain for abortions annually, an outcome accepted as a de facto outlet that allowed women to exercise autonomy despite domestic restrictions (Maloy, 2024).

The EU institutions have occasionally engaged the issue in soft-law or political terms. The European Parliament (despite lacking hard power in health policy) has passed resolutions calling for access to reproductive healthcare and even proposed adding a right to abortion in the EU Charter of Fundamental Rights after the US Dobbs decision (European Parliament, 2024). These resolutions are not legally binding but signal a push for more coherence on values. Notably, after Dobbs, some commentators observed that the U.S. had moved closer to Europe - not in the sense of policy substance (since many European countries actually liberalized abortion laws in recent decades, whereas Dobbs restricted rights), but in the sense of multi-level governance: abortion in the U.S. post-Dobbs is now handled at the state level, akin to how it is handled by individual countries in Europe. Professor Federico Fabbrini (2023) explicitly calls this “the ‘European’ future of American abortion law,” noting that America is now grappling with interstate questions - like traveling for abortion or accessing information - that Europe faced decades ago. Europe’s experience shows that a polycentric approach can preserve local democratic choice (each country/state decides) but can also create inequalities. The EU has so far not

attempted to harmonize abortion laws; the limits of its competence and the political sensitivity make that unlikely. Instead, the emphasis has been on ensuring minimum cross-border rights (travel, information) and upholding other core values like the life/health of the pregnant person in extreme cases (the ECtHR in *A, B & C v. Ireland* (2010) did require Ireland to clarify an exception allowing abortion to save the mother's life). This is a markedly different approach from the U.S.'s once-monocentric rights model under Roe. It reflects the EU's philosophy of subsidiarity: moral questions are for national resolution unless fundamental human rights (within Convention or Charter scope) demand otherwise.

In terms of coherence, the EU's handling of reproductive rights has been less coherent than (pre-2022) America's - rights vary by jurisdiction. In terms of democratic legitimacy, however, one could argue that each member state's policy is the product of its own democratic process (e.g. Ireland's constitutional ban was approved by voters in 1983, and its repeal by referendum in 2018 reflected a change in public will). The trade-off is that a person's ability to exercise a right is contingent on geography, a situation Europeans have been willing to accept considering national sovereignty. The EU's stance also shows its effectiveness limits: where member states deeply disagree (as on abortion), the Union itself remains largely hands-off, avoiding a legitimacy crisis that might arise from imposing one standard.

3.4 Comparative Analysis

The governance of abortion rights in polycentric constitutional systems - notably the European Union (EU) and the United States (US) - illuminates how structural and institutional differences shape the capacity of higher-level authorities to influence sub-national policy on sensitive and controversial issues. Both the EU and the US disperse sovereignty across multiple levels of government, but they do so in distinct ways. In the US federal system, the Constitution and judiciary historically played a direct role in defining reproductive rights nationwide (e.g. the *Roe v. Wade* decision in 1973 recognized a constitutional right to abortion that invalidated state bans) (Fabbrini, 2023). In contrast, the EU's supranational institutions operate under the principles of conferral and subsidiarity that sharply limits any direct legislative or judicial intervention in member states' abortion laws (European Parliament, 2024).

Before 2022, the US federal structure (at least until recently) enabled more binding, uniform influence through judicial decisions, whereas the EU relies on soft law, normative pressure, and indirect mechanisms given its lack of formal competence over abortion. Recent developments, however, complicate this picture: the US Supreme Court's 2022 Dobbs decision returned abortion policy to the states, ushering in a patchwork akin to Europe's long-standing variation. The EU and US exemplify two models of what professor Sergio Fabbrini (2008) calls "compound democracy" defined as "polities that have the features of both an interstate (confederal, intergovernmental) and a supra-state (federal, supranational). A compound polity is a union of states and their citizens". Although both can be classified as compound democracies or polycentric governance, their institutional arrangements lead to markedly different capacities for protecting or restricting abortion rights from the centre. In a shared-sovereignty union like the EU, the supranational institutions are constrained both legally and politically from intruding on core moral policy of member states, since health policy remains their exclusive competence and the EU has no general authority to define access to abortion (Isailović, 2024). In a federation with a single sovereign constitution like the US, the central institutions (especially the Supreme Court) have much greater latitude to define individual rights applicable in all sub-units - but this power is contingent on constitutional interpretation and can be retracted, as illustrated by the Court's reasoning in *Roe v. Wade* (1973) and the subsequent critiques of its substantive due process foundation (Tribe,

1973). One useful lens is federalism theory: the US has been traditionally seen as a more integrated federal system, whereas the EU is often described as a pluralist, multi-level system lacking a unitary sovereign - effectively, as stated by Professor Fabbrini (2008), “two different species of the same political genus”. The abortion issue lays bare the implications of these differences.

In the US, constitutional supremacy means that when the Supreme Court recognized a right to abortion (Roe), that decision had binding force across all states, overruling their laws (Fabbrini, 2023). Similarly, if tomorrow either a constitutional amendment was adopted or the Court reversed Dobbs, a new uniform rule would immediately displace state discretion. Thus, the federal system concentrated decision-making in one apex institution on this question for a time. In the EU, no such hierarchical override is possible in the abortion domain because the Union’s constitutional order does not grant EU organs the competence to make that decision in the first place (European Parliament, 2024). The CJEU cannot suddenly proclaim an EU-wide right to abortion absent any legislative basis, and the EU legislature cannot pass a binding law on it without an amendment to the treaties. The principle of conferral in EU law and the lack of a clear fundamental right to abortion in the EU Charter impose a structural limit that has no direct analogue in the US system (where the main limits are substantive - e.g. the text of the Constitution - rather than jurisdictional). Put differently, the US federal government could act on abortion (subject to judicial review of whether it stays within enumerated powers), whereas the EU definitively cannot act because it has no competence in this field. This explains why the EU’s influence is channelled through softer mechanisms: soft law, political persuasion, funding, and linkage to other competences (like free movement or non-discrimination in employment). For example, the EU might invoke its competence in public health support or gender equality to fund projects on reproductive health or to gather data, but it must carefully frame these actions to avoid encroaching on national policy choices and competence (Isailović, 2024). The US federal government, by contrast, has been able to directly set conditions, like the Hyde Amendment on funding (U.S. Congress, 2013), or standards (through court rulings) that pre-empt state choices - until those federal decisions were undone by new federal decisions.

Another key difference lies in the institutional pathways for change. In the US, courts have been primary drivers of nationwide abortion policy, reflecting the American

reliance on judicial review to resolve rights controversies. Roe and Dobbs are emblematic: a handful of judges on the Supreme Court altered the legal landscape for millions of people, an embodiment of what Alexander Bickel (1962) called the "counter majoritarian difficulty" but also a testament to the Court's authority. In Europe, courts play a far more limited role on this issue - the CJEU has engaged only tangentially (e.g. in service provision or employment equality cases involving abortion-related questions), and the ECtHR, while important, has mostly deferred to national legislatures via the margin of appreciation (Isailović, 2024). Change in Europe has instead come from legislative and societal processes within each state, sometimes prodded by European soft law or pressure but not dictated by a single judicial fiat. The recent liberalization in Spain (Jefatura del Estado, 2010) or in Ireland (Government of Ireland, 2018), and conversely the regression in Poland (Trybunał Konstytucyjny, 2020)[4], were fundamentally domestic political (or politicized-judicial) changes, even if European human rights discourse provided a backdrop. Supranational political bodies like the European Parliament add rhetorical weight but cannot force a state to change its law. The open method of coordination (European Parliamentary Research Service, 2016) and other soft governance tools in the EU create forums for discussing best practices[5] (European Commission, 2025; De La Rosa, 2018), but compliance is voluntary (European Parliament, 2024). In contrast, the US Supreme Court left states with no choice but to fall in line (under Roe) or to exercise their restored discretion (Dobbs freed them to ban or protect as they wish). The US Congress likewise could - at least theoretically - pass a law establishing a national standard (either direction), which would directly bind states under the Constitution's Supremacy Clause (National Archives, 1787). Indeed, the lack of congressional action during the decades of Roe (when federal abortion protections rested solely on the Court's decision) and the present inability of Congress to either codify Roe or enact a nationwide ban, underscores political divisions rather than lack of authority (Post & Siegel, 2007). In the EU, even if a political majority wanted to introduce abortion rights, it lacks the legal authority to do so at the EU level without treaty changes (European Parliament, 2024).

[4] Trybunał Konstytucyjny (2020) refers to the 2020 decision by the Constitutional Court of Poland, which imposed a near-total ban on abortions, except in cases of rape, incest, or when the mother's life is in danger.

[5] The EU Health Strategy might be used as an example as it highlights the importance of reproductive healthcare, providing a platform for member states to share best practices and coordinate efforts in improving public health policies.

Thus, the hurdle in the EU is structural, whereas in the US it is presently political (and judicial).

Furthermore, both systems face the challenges of polycentric governance (Fabbrini, 2008) - multiple semi-autonomous units with their own laws and norms. How conflicts between these units are handled is instructive. In the US, the Constitution provides conflict-of-law rules: federal law is supreme, and even among states, certain clauses, such as Privileges and Immunities, Full Faith and Credit, Commerce Clause (National Archives, 1787), limit how one state's policies can affect another. For example, states generally cannot prosecute someone for an action that was legal in another state (e.g. if a woman travels from State A, where abortion is banned, to State B where it is legal, and State A punishes her or the doctor in State B raises constitutional red flags under the right to travel and interstate comity). While these issues are being tested post-Dobbs, the strong tradition of interstate mobility rights in the US suggests that attempts to enforce one state's abortion ban extraterritorially will be struck down by courts (Ziegler, 2020). In the EU, a similar dynamic exists via the free movement principle: a Member State cannot prevent its citizens from going abroad for services, nor can it sanction foreign providers who act legally in their own country (Court of Justice of the European Union, 2003). This was seen in the Irish context and is part of the reason Ireland had to allow travel for abortion even before its own law changed (Fabbrini, 2023). Thus, both systems embed escape valves whereby individuals can, to some extent, avoid their home jurisdiction's restrictions by leveraging the wider union's freedoms. However, the consequence is a kind of abortion tourism or interjurisdictional reliance that raises equity concerns: only those with sufficient resources or knowledge can benefit, leaving poor and vulnerable women effectively trapped in restrictive environments (De Zordo, Zanini, Mishtal, Garnsey, Ziegler & Gerdts, 2020). In the US, this is now acutely felt: someone in Texas with means can fly to New York for care; someone without means may be forced to continue an unwanted pregnancy. In the EU historically, a Polish or Maltese woman with money could go to England, whereas others could not. Neither system has fully solved the distributive inequality that federalism coupled with divergent local laws creates. The new legal geography of abortion in the US is in fact reminiscent of the old EU pattern, and it carries similar normative baggage (Fabbrini, 2023).

Another point of comparison is the role of constitutional culture and pluralism. The EU is characterised by what scholars call constitutional pluralism (Avbelj & Komárek, 2014). According to MacCormick, Walker and Weiler's theories, the relationship between EU law and national constitutions is not structured within a single hierarchy, but within a pluralistic framework of hierarchy and constitutional tolerance. In this framework, both levels coexist and must engage in dialogue (Jaklic, 2014). In the area of fundamental rights, this means that EU member states can maintain their constitutional identity, even when these positions diverge from emerging European normative standards expressed through EU soft law and the European Court of Human Rights' doctrine of European consensus. Examples include Ireland's previous constitutional ban on abortion and Poland's current constitutional position strongly protecting foetal life. The EU allows for a certain range of divergence under the umbrella values of Article 2 TEU (European Union, 2012) (respect for human dignity, human rights, etc.), intervening only when a state's actions might cross into violation of core democracy or rule-of-law principles - the EU has been more willing to act against Poland for judicial independence issues (European Commission, 2017), for instance, than for abortion restrictions.

In the US, there is a single national Constitution and the expectation (post-Civil War) that states' laws must conform to national rights norms - yet the Dobbs era signals a kind of de facto constitutional pluralism within the US (Ziegler, 2020). States like California or Illinois now recognize abortion as a fundamental right under state law, while neighbouring states like Missouri or Tennessee recognize fetal rights instead (Calkin, Freeman & Moore, 2022). While all are subordinate to the U.S. Constitution, that document as currently interpreted is neutral on abortion, allowing this pluralism to exist. We see red states amending their laws to ensure no abortion rights, and blue states doing the opposite. This is a striking development: the US is experiencing internal constitutional divergence on a basic right to an extent not seen since perhaps the pre-14th Amendment era (Dickinson, 2025). However, the U.S. system has a built-in resolution mechanism: the Supreme Court could eventually arbitrate conflicts (for example, if state laws begin to clash over cross-border issues). In the EU, resolution of value clashes is more political and incremental - requiring consensus or attrition (e.g., Ireland's shift came from within, not from EU coercion (Government of Ireland, 2018). Despite the structural limits,

supranational bodies in both systems find ways to influence outcomes. The EU, as noted, used economic integration to soften the impact of bans and the European Parliament has been the primary institutional arena for articulating the Union's soft law on abortion (Isailović, 2024). The Council of Europe (outside the EU framework but overlapping membership) developed human rights standards that, while not mandating abortion access, did require procedural fairness (as in the case of *Tysiąc v. Poland* I (2007) and *R.R. v. Poland* (2011), where the ECtHR criticized Poland not for banning abortion per se but for failing to implement exceptions like fetal abnormality). These interventions change conditions at the margins and signal that the most restrictive state measures (as classified in Chapter 1) would violate European human rights commitments (Isailović, 2024). In the US, even when the Supreme Court stepped back, other federal actors leaned in: the Justice Department formed a Reproductive Rights Taskforce to monitor and challenge overly aggressive state enforcement (U.S. Department of Justice, 2022), and federal executive guidance was issued clarifying that emergency medical care laws require hospitals to provide abortions if a pregnant patient's life or health is at risk, overriding any state ban. These actions use existing federal laws, like the Emergency Medical Treatment and Labor Act (U.S. Department of Justice, 2023), to secure a baseline of care regardless of state law. Thus, polycentric governance does not mean complete inaction by higher levels; it means working within structural confines to guide or buffer lower-level policies. The EU's reliance on political economy channels - such as using economic integration and human rights frameworks to regulate reproductive access- illustrates how indirect pathways gain importance when direct lawmaking is constrained (Isailović, 2024). In the US, the current reliance on piecemeal federal and state-level measures reflects a similar dynamic of decentralized responses in the absence of unified federal (Dickinson, 2025). For example, companies and civil society also play a role: in the US, large employers have announced they will cover travel costs for employees needing out-of-state abortion care, essentially using economic power to mitigate state restrictions (Long, Sobel, Salganicoff & Pestaina, 2022). In the EU, NGOs and cross-border networks (often funded by EU grants or enabled by EU free movement) have long helped women from strict countries obtain services abroad (Miani, O'Brien & Gerdts, 2021). These non-state or hybrid actors are part of the multilevel picture: they fill gaps left by governmental limitations.

A critical dimension of this comparative analysis is the impact of these institutional arrangements on women's equality and rights protection. Reva Siegel (2007) and other feminist legal scholars have argued that reproductive rights are deeply intertwined with principles of equal citizenship and liberty for women. A polycentric system that allows wide divergence can put those principles at risk, particularly if women in some jurisdictions are denied rights enjoyed elsewhere (Cohen, Donley & Rebouché, 2023). The US experience both affirms and challenges this view. During the Roe era, one could say there was a nationally recognized baseline of gender equality in reproductive decision-making (Post & Siegel, 2007) (albeit imperfectly realized), which Dobbs has undone. Professor Federico Fabbrini (2023) observes that Dobbs has produced a "European future" for American women in the sense that their rights now depend on state of residence, "a federal system in which women can escape draconian abortion bans… [but] the ability of women to opt out of abortion bans is ultimately dependent on financial resources," leading to discriminatory effects along lines of class and race. In other words, decentralization in a context of value divergence tends to exacerbate inequalities: wealthy, urban, or socially privileged women find ways to exercise their rights (through travel or private care), whereas poor, rural, or marginalized women are disproportionately burdened by restrictive local laws. This was true in Europe for decades - for example, in Ireland's pre-2018 era, thousands of women travelled to England annually, but some could not afford it or hid their crises (Side, 2016); similarly, Poland's current ban most hurts those who cannot go abroad or navigate underground networks. In the US, we already see evidence post-Dobbs of a surge in out-of-state patients in clinics in abortion-friendly states, while many others carry unwanted pregnancies to term because they lack the means to travel (Cohen, Donley & Rebouché, 2023). Thus, polycentric governance, when it comes to fundamental rights, can undermine the ideal of equal protection under the law. The US Constitution's Equal Protection Clause (National Archives, 1868) is meant to secure equal citizenship, but when a fundamental aspect of bodily autonomy is contingent on state lines, the spirit of equal protection is arguably compromised - a point the Dobbs dissent highlighted, noting that women in red states will have fewer rights than women in blue states (Supreme Court of the United States, 2022). In the EU, the principle of equality is a core value, yet the Union allows for stark differences in reproductive freedom. One might argue that this is tenable because the EU is not a full federation and

issues of moral contestation are deliberately left to national democratic debate. Indeed, proponents of decentralization contend that it allows policy experimentation and cultural accommodation: each polity can reflect its constituents' values, and over time, there may be convergence through democratic choice (Gerken, 2008) (as happened in Ireland). Hypothetically, the alternative - a uniform rule imposed from above, even if it were possible - could provoke negative reactions or fail to consider deeply rooted differences. The US and EU experiences both show the political backlash phenomenon: Roe was followed by a strong anti-abortion movement that felt a national rule was illegitimate (Post & Siegel, 2007); conversely, in Poland the EU's criticism of abortion restrictions feeds narratives of external imposition on national identity (Bucholc, 2022). Polycentric arrangements can defuse such tensions by leaving decisions closer to the people. However, that very deference can come at the cost of leaving minorities (in this case, women seeking abortions) without recourse if their local majority is opposed. Scholars have described the EU's limited engagement on abortion as a problem of so-called "missing rights". While the Union proclaims equality and human rights as founding values and promotes the idea of a European standard (Article 2 of the Treaty on European Union and the Charter of Fundamental Rights of the European Union), it has remained largely silent on one of the most sensitive gender-related issues. According to this view, this sends an ambivalent message about the Union's role in protecting rights. This coexistence of national restrictions and supranational commitments to rights creates tensions and inconsistencies within national systems (Fabbrini, 2011). While such dynamics can encourage reform, they also highlight the structural limits of EU competence. Unlike in the United States, where constitutional interpretation has imposed uniform standards across states, the EU lacks the legal authority to harmonise abortion legislation (Greenhouse & Siegel, 2011).

The theoretical frameworks of federalism and constitutional design help explain these outcomes but also force us to confront their limits. In the United States, especially after the 1950s civil rights revolution, federal institutions came to play a strong role in enforcing rights uniformly across states - for example, through Supreme Court rulings striking down segregation laws. This trajectory, however, reflects a particular model of federalism rather than an inevitable feature of federations: comparative federalism scholarship shows that other federations, such as Canada or Switzerland, have left

ethically sensitive issues largely to subnational decision-making (Watts, 2008). The EU, by contrast, has been described as a "heterarchical" federation where sovereignty is divided and no single final arbiter imposes social policy (Brookings Institution, 2008). Yet today, the US is inching closer to that heterarchical model on abortion: state supreme courts and legislatures are the final say unless the federal level re-engages. Meanwhile, the EU might be slowly inching in the other direction rhetorically: there are increasing calls to treat women's rights (including abortion) as part of the Union's fundamental values that all states must respect, perhaps one day justifying EU action if a gross violation occurs (some jurists speculate, for instance, whether a total ban without exceptions could violate Article 2 TEU values and trigger consequences for a Member State). This interplay suggests that polycentric systems are dynamic. They can become more or less centralized depending on political and social currents. The US swung from a more centralized mode (protecting abortion nationally) to a decentralized one; the EU could perhaps swing from decentralized towards a modest increase in central involvement (e.g. funding pro-choice initiatives, using soft law mechanism, speaking out against backsliding).

Finally, it is worth noting how path-dependent each system is. The US could formally resolve the abortion question through a constitutional amendment, either to guarantee reproductive freedom or to ban abortion nationwide. Such an amendment would override all state laws and be truly uniform. However, the amendment process is extraordinarily difficult (requiring supermajorities) and highly unlikely on this polarized issue. Any expansion of the European Union's competence in health or human rights - for instance, to allow legislation on abortion - would require a formal treaty revision. Such revisions fall exclusively within the authority of the Member States acting unanimously in the European Council and are subject to national ratification (Article 48 TEU) (European Union, 2012). Given these demanding procedures and the explicit opposition of several governments, the prospect of such reform remains exceedingly remote (European Parliament, 2024). Therefore, both systems face structural inertia: absent extraordinary consensus, they will continue to handle abortion through existing mechanisms (state-level policy in the US, member-state-level policy in the EU, with limited top-down guidance in each). This recognition tempers some theoretical aspirations. For instance, some commentators hope the EU might become more like the

US in rights protection - but without treaty reform, it cannot. Conversely, some in the US federalist camp might prefer the EU's model of deferring completely to states, but the US Constitution's history and the potential for Congress to act mean the centralizing force is dormant, not eliminated.

3.5 Conclusion

While both the European Union and the United States operate as polycentric constitutional systems (Fabbrini, 2008), their trajectories in the regulation of abortion illustrate the structural consequences of competence allocation. In the U.S., for half a century the Supreme Court imposed a nationwide framework, only to later withdraw it in Dobbs, producing a sudden return to fragmentation. In the EU, by contrast, abortion has always remained primarily a matter of national sovereignty, with supranational institutions exercising only marginal influence through soft law, free movement rights, or human rights discourse. These differences underscore how institutional design determines the ability of central authorities to shape policies on ethically contested issues.

Yet, characterizing abortion exclusively as a women's right risks flattening a more complex reality. As numerous scholars observe, opposition to abortion also mobilizes female constituencies, and thus the political and social debate cannot be reduced to a simple gender divide (Grace & Anderson, 2018). Moreover, reproductive freedom involves not only the right to terminate a pregnancy but also the right not to be coerced into abortion (Coleman, Hellberg, Hopkins, Thompson, Bruening & Jones, 2023). The literature on forced abortion - ranging from state-imposed practices in authoritarian regimes to familial, social, or economic pressures in democratic contexts - reminds us that autonomy is jeopardized both when abortion is denied and when it is imposed. In this sense, the core issue is best understood through the lens of reproductive autonomy, defined as the individual's ability to make free, informed, and voluntary decisions about pregnancy without interference from state or third-party coercion.

From this perspective, both systems reveal vulnerabilities. In the United States, the post-Dobbs landscape has created deep territorial inequalities: in some states, access to abortion is effectively eliminated, while in others it is constitutionally protected. This variation reflects local democratic choices but also exposes individuals to a geography of rights, where reproductive autonomy depends on one's residence and resources to cross state borders. In the EU, diversity among Member States has always been the norm, and coercive practices or overly restrictive regimes have been addressed, if at all, through national reforms rather than supranational intervention. The absence of a central competence means that supranational institutions cannot guarantee uniform safeguards against either denial of access or coercion into abortion, leaving gaps in protection.

Thus, the comparative lesson is that multilevel governance complicates the safeguarding of reproductive autonomy. Polycentric systems allow pluralism and respect local values, but they also generate disparities and expose individuals to inconsistent levels of protection. Both the U.S. and the EU illustrate that autonomy in reproductive matters is precarious when its protection depends on shifting judicial interpretations, fragmented state or national laws, and uneven enforcement mechanisms. The challenge is not simply whether abortion is permitted or prohibited; it is whether institutional arrangements can ensure that reproductive decisions are genuinely autonomous - free from state prohibition, free from coercion, and consistent with broader commitments to dignity and equality.

In sum, the comparative analysis shows that neither system offers a definitive model. The U.S. demonstrates the potency but also the fragility of judicially enforced uniformity, while the EU reveals the endurance but also the inequities of decentralized pluralism. Both highlight that in compound democracies, the allocation of competence has profound implications not only for legal coherence and democratic legitimacy, but also for the lived experience of autonomy. Abortion, whether restricted, permitted, or coerced, becomes a litmus test for the capacity of multi-level governance to reconcile diversity with the protection of fundamental personal choices. The durability and credibility of both polities as rights-protecting orders will in part depend on whether they can address this tension without leaving reproductive autonomy to the accidents of geography, politics, or power asymmetries.

CONCLUSION

This thesis has sought to answer a central and pressing question:

How is competence over women's reproductive rights distributed in the European Union and in the United States? How does the supranational level act when competence is national, and what similarities and differences emerge between the United States and the European Union in the field of women's reproductive rights?

The analysis has been conducted through a comparative constitutional and political framework, examining how multi-tier governance structures affect the protection of reproductive rights. Methodologically, the research juxtaposes the constitutional arrangements, legislative competences, and judicial decisions in the EU and US from 1973 through 2025. Key primary sources included EU treaties (especially the Treaty on the Functioning of the EU, TFEU) and US constitutional jurisprudence - notably *Roe v. Wade* (1973), *Planned Parenthood v. Casey* (1992), and *Dobbs v. Jackson Women's Health Organization* (2022). These are supplemented by secondary literature in law and political science. The theoretical lens was drawn from Sergio Fabbrini's compound democracy model, which views the EU and USA as "two different species of the same political genus" (Fabbrini, 2007) - unions of states and citizens blending federal and confederal features. Through this lens, both systems can be understood as multi-level democracies where sovereignty is divided between a central authority and constituent units. This last chapter synthesized the findings on each system and then compared their structural dynamics, before reflecting on the broader normative and democratic implications. The approach remains descriptive and analytical, seeking to articulate how institutional design has shaped the contested landscape of reproductive rights.

Findings on the European Union illustrates the limits of supranational authority in a treaty-based polity defined by the principle of conferral. Article 168(7) TFEU explicitly reserves competence in health policy to the member states and precludes harmonization, leaving abortion regulation within domestic jurisdiction. The EU therefore lacks the formal authority to legislate on reproductive rights. The Union has relied on soft law

instruments - resolutions of the European Parliament, communications and strategies of the Commission, Council conclusions - which, though legally non-binding, serve symbolic, discursive, and normative purposes. These instruments articulate values such as gender equality and human dignity, seek to promote common standards, and provide rhetorical and political support for reformers at the national level. The EU has thus engaged indirectly, shaping the normative environment without displacing national sovereignty. This approach has yielded some cross-border effects: the free movement framework prevents member states from restricting travel for abortion services abroad, and EU law on cross-border healthcare enables limited claims for reimbursement when treatment is sought in another member state. Yet these are tangential rather than substantive rights. The CJEU has consistently avoided pronouncing on abortion as a fundamental right, and the EU Charter of Fundamental Rights contains no explicit reference to abortion. The Council of Europe's European Court of Human Rights, though relevant for the wider European context, has also refrained from declaring a general right, instead recognizing narrow procedural guarantees. The consequence is a Europe characterized by heterogeneity. Some member states (e.g. Sweden, France, the Netherlands) provide broad access, while others (e.g. Poland, Malta) severely restrict abortion. In short, the EU's architecture ensures decentralization on abortion by design. The supranational level's influence is limited to encouragement, normative persuasion, and the indirect spillovers of other competences. This model respects national sovereignty but perpetuates inequalities of access across the Union.

Findings on the United States illustrates the capacity of a federal constitution and judiciary to impose uniform standards across a union of states - but also the fragility of such uniformity when grounded in judicial interpretation. For nearly fifty years, *Roe v. Wade* (1973) and *Planned Parenthood v. Casey* (1992) established and preserved a federal constitutional right to abortion. Roe recognized abortion as encompassed within the right to privacy under the Fourteenth Amendment, imposing a trimester framework that invalidated conflicting state laws. Casey reaffirmed the core holding but replaced the trimester scheme with the undue burden standard, allowing states greater regulatory authority provided they did not impose substantial obstacles to pre-viability abortions. This judicial settlement provided a uniform national baseline while accommodating state-level variation in regulation. The eventual overruling of Roe and Casey in *Dobbs v.*

Jackson Women's Health Organization (2022) revealed the vulnerability of rights founded solely on judicial precedent. Dobbs declared that the Constitution contains no right to abortion, returning full competence to the states. Therefore, trigger laws and newly enacted bans came into force in conservative states, while progressive states strengthened statutory protections. The US thus shifted from a centralized regime of constitutional protection to a fragmented patchwork of state laws, with women's access now determined by residence. Dobbs has led to widespread inequality in access and intense polarisation. The absence of federal legislative action has reinforced decentralisation, although debates about potential congressional action (a national ban or codification of the Roe ruling) remain on the political agenda. The US experience therefore demonstrates both the potential and the perils of centralization. Judicial review enabled the creation of a uniform national right in 1973, but the absence of durable political consensus left that right precarious. Once the Supreme Court's composition shifted, the right was withdrawn, revealing the volatility of relying on courts rather than legislatures for the protection of contested rights.

Comparing the EU and the US reveals both structural parallels and critical differences in how compound democracies handle deeply divisive rights issues. Structurally, both polities distribute governance across multiple levels - a design that reflects their nature as unions of states. Each system must deal with the tension between a central authority committed to certain shared values and autonomous sub-units with their own legal powers and cultural attitudes. In Fabbrini's terms (2007), as both can be considered as compound democracy, sovereignty is fragmented and there is an ongoing negotiation between unity and diversity. This commonality helps explain why neither the EU nor the US can ensure uniform reproductive rights without confronting internal dissent. However, the form of compoundness differs: the United States is a federation with a written constitution and federal supremacy, whereas the European Union is a treaty-based supranational union grounded in state consent and limited, enumerated competences. These differences in constitutional architecture have led to distinct dynamics in the realm of reproductive rights.

One key difference is the availability of a central legal mechanism to impose uniform standards. In the US, federal constitutional law (as interpreted by the Supreme Court) can override state laws on matters falling under federal constitutional protection.

Thus, for 49 years under Roe/Casey, the U.S. had a nationwide rule on abortion, enforced by judicial review. This top-down uniformity, however, proved to be contingent on the Supreme Court's composition and jurisprudential philosophy (Fabbrini, 2023). It was reversible, as Dobbs demonstrated. The EU has never had an equivalent top-down legal rule on abortion, because no EU institution was ever empowered to create one. The EU treaties deliberately leave core moral and divisive questions to member states (European Union, 2012), and there is no EU-wide judicial forum with jurisdiction to declare a general right to abortion in member countries absent a link to EU law.

Despite these different starting points, the contemporary reality in both systems is a high degree of decentralization on abortion policy. The EU's decentralization is de jure and longstanding: barring modest coordination efforts, each nation sets its own policy (Schütze, 2021). The US's decentralization is de facto and recent: after *Dobbs*, the absence of federal protection means each state is effectively sovereign on this issue (Buchhandler-Raphael, 2023). This convergence toward decentralization underscores that federalism is not a static binary of centralized versus local power; it is a spectrum that can shift over time. In the US, we have witnessed a major shift along that spectrum: a right that was centrally guaranteed became one that is locally determined. The EU's spectrum has remained more consistently on the decentralized end, but it could theoretically shift in the event of a formal change of the Union's primary law conferring competences in this domain, or through judicial interpretations extending the scope of existing treaty provisions to matters of reproductive healthcare. Such shifts, while currently unlikely in Europe, are not theoretically impossible in a compound system as they would represent a recalibration of the union's internal balance of power in response to political and social change.

Another comparative point is the interplay of law and politics in both systems. In Europe, the constraint on a uniform abortion policy has been as much political as legal. Even if the EU had some latent legal basis to act, there is no pan-European consensus to do so - the Union's very design demands broad agreement among member states on sensitive matters, and that consensus has been lacking on abortion. By contrast, in the United States the primary constraint that emerged was legal, a constitutional interpretation by the judiciary. The US system enabled a shift in the nationwide

framework through the interaction of judicial appointments and litigation strategies. This dynamic interplay of institutions shows that what level of government prevails on a given rights question can depend on which institutional lever is pulled: courts, legislatures, or executives. In the EU, because the judicial and legislative levers at the supranational level are disabled for abortion, the contest has played out almost entirely within national arenas. In the US, the contest has gone back and forth between state arenas and federal ones, including the unique avenue of the Supreme Court which can profoundly alter the state/federal balance. The strategies of rights advocates and opponents in each system reflect these structural conditions. In Europe, reformers who seek to expand abortion access know that the EU cannot simply mandate change; therefore, their strategies focus on indirect and bottom-up influence. They lobby EU bodies to issue supportive statements, fund sexual health programs, or include reproductive rights in broader human rights critiques - essentially using the EU's soft power to chip away at stigma and encourage voluntary convergence. Their main battles, however, occur at the national level: campaigning for domestic legal reforms, referenda (as seen in Ireland's 2018 vote to legalize abortion), or litigation in national and European courts to enforce at least incremental rights (for instance, cases to ensure existing national exceptions are effective).

Both the European Union and the United States exemplify how compound constitutional systems manage the protection and enforcement of reproductive rights in compound systems. This comparative inquiry that neither system has struck a stable equilibrium between unity and diversity, central authority and local autonomy. Both have witnessed cycles of rights expansion and retrenchment shaped by competence allocation, institutional design, and political struggle. The central thesis that emerges is this: in polycentric constitutional systems, the protection of reproductive rights is contingent, dynamic, and fragile, shaped as much by the distribution of competences as by the evolving interaction of courts, legislatures, and publics across levels of governance. For the European Union, this has meant commitments to equality but structural silence on abortion, given by the lack of competence, resulting in enduring disparities. For the United States, it has meant the imposition and withdrawal of women's reproductive rights, revealing the volatility of judicially created national standards. Together, these cases highlight the contingent and dynamic nature of competence allocation in multilevel

polities. Looking ahead, neither system is likely to converge on a final settlement. The EU will continue to rely on soft law and domestic reform, unless an extraordinary treaty change occurs. The US will continue to oscillate between state-level fragmentation and the possibility of renewed federal intervention, whether judicial or legislative. The regulation of abortion will therefore remain a site of contestation, a mirror reflecting the broader dynamics of compound governance.

REFERENCES

Ablavsky, G. (2019). Empire States: The coming of dual federalism. The Yale Law Journal, 128(7), 1792–1862.

Americans United for Life (2025, June 25). The States' Response to Dobbs v. Jackson Women's Health Organization. https://aul.org/2023/06/22/one-year-later-the-landscape-of-americas-life-protecting-laws-after-dobbs/

Amos, B., & Middlewood, A. T. (2024). All eyes on Kansas: Voter turnout and the 2022 abortion referendum. American Politics Research, 52(5), 534–545 https://law-journals-books.vlex.com/vid/all-eyes-on-kansas-1069227354

AP-NORC Center for Public Affairs Research. (2025, July 18). Majority of Americans say abortion should be legal in most or all cases, including in states with bans. Associated Press. https://apnews.com/article/5f7b5b95babbce4666d574db3e878c32

Assemblea Regionale Siciliana. (2025, giugno 13). Disegno di Legge n. 738 – Norme in materia di sanità (Stralcio VI Comm. Bis) [Disegno di legge n. 0, CED 221-9171].

Avbelj, M., & Komárek, J. (Eds.). (2014). Constitutional pluralism in the European Union and beyond. Oxford University Press.

Barbé, E. (2023). Chasing gender equality norms: The robustness of sexual and reproductive health and rights. International Relations, 37(1), 36–56. https://doi.org/10.1177/00471178221136994

Bermann, G. A., & Nicolaidis, K. (2001). Basic principles for the allocation of competence in the United States and the European Union. In K. Nicolaidis & R. Howse (Eds.), The federal vision: Legitimacy and levels of governance in the United States and the European Union (pp. xx–xx). Oxford University Press. https://doi.org/10.1093/0199245002.005.0001

Bickel, A. M. (1962). The least dangerous branch: The Supreme Court at the bar of politics. Indianapolis, IN: Bobbs-Merrill.

Boletín Oficial del Estado. (2010). Ley Orgánica 2/2010, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo. https://www.boe.es/buscar/act.php?id=BOE-A-2010-3514

Bork, R. H. (1990). The tempting of America: The political seduction of the law. New York, NY: Free Press.

Brennan Center for Justice. (2022). Extreme gerrymandering & the 2022 elections. Brennan Center for Justice. https://www.brennancenter.org/our-work/analysis-opinion/extreme-gerrymandering-2022-elections

Brookings Institution. (2008, April 29). Compound Democracies: The Growing Similarities Between the U.S. and Europe [Event transcript]. The Brookings Institution. Retrieved from https://www.brookings.edu/wp-content/uploads/2012/04/20080429_democracies.pdf

Bucholc, M. (2022). Abortion law and human rights in Poland: The closing of the jurisprudential horizon. Hague Journal on the Rule of Law, 14(1), 73–99. https://doi.org/10.1007/s40803-022-00167-9

Calkin, S., Freeman, C., & Moore, F. (2022). The geography of abortion: Discourse, spatiality and mobility. Progress in Human Geography, 46(6), 1413–1430. https://doi.org/10.1177/03091325221128885

CBOS. (2024, March 1). Poles' attitude towards abortion and the morning-after pill [Survey report]. Centrum Badania Opinii Społecznej. https://cbos.pl/EN/publications/reports_text.php?id=6756

Cohen, D. S., Donley, G., & Rebouché, R. (2023). The new abortion battleground. Columbia Law Review, 123(1), 1–99. Retrieved from https://columbialawreview.org/content/the-new-abortion-battleground/

Cohen, I. G. (2024). The New Threat to Medical Travel for Abortion. The American Journal of Medicine, 137(4), 539–542

Coleman, J. N., Hellberg, S. N., Hopkins, T. A., Thompson, K. A., Bruening, A. B., & Jones, A. C. (2023). Situating reproductive coercion in the sociocultural context: An ecological model to inform research, practice, and policy in the United States. Journal of Trauma & Dissociation, 24(4), 471–488. https://www.tandfonline.com/doi/citedby/10.1080/20502877.2022.2136026?scroll=top&needAccess=true

Consejo Fiscal. (2014). Informe del Consejo Fiscal al Anteproyecto de Ley Orgánica para la protección de la vida del concebido y de los derechos de la mujer embarazada. Fiscalía General del Estado. https://www.fiscal.es/documents/20142/102607/Informe%2Bdel%2BConsejo%2BFiscal%2Bal%2BAnteproyecto%2Bde%2BLey%2BOrgánica%2Bpara%2Bla%2Bprotección

%2Bde%2Bla%2Bvida%2Bdel%2Bconcebido%2By%2Bde%2Blos%2Bderechos%2Bde%2Bla%2Bmujer%2Bembarazada.pdf/c212f97d-73c5-513e-1c1e-ac95434ac210?t=1536235852259

Constitutional Tribunal of the Republic of Poland. (2020, October 22). Wyrok z dnia 22 października 2020 r., sygn. akt K 1/20 [Judgment of 22 October 2020, ref. K 1/20].

Conway, G. (2011). Recovering a separation of powers in the European Union. European Law Journal, 17(3), 304–322. https://ael.eui.eu/wp-content/uploads/sites/18/2014/05/Curtin-02-Conway.pdf#:~:text=B%20The%20Concept%20of%20Institutional,The%20difficulty%20with%20this%20concept

Council of Europe, European Committee of Social Rights. (2015). Decision on the merits: Confederazione Generale Italiana del Lavoro (CGIL) v. Italy, Complaint No. 91/2013 (Adopted 12 October 2015, Published 11 April 2016). Strasbourg: Council of Europe. https://rm.coe.int/168058d2ab

Council of Europe. (2023). Report on multilevel governance [CDDG(2023)12]. Council of Europe. https://rm.coe.int/report-on-multilevel-governance-final-2768-6653-0568-v-1/1680ad9120

Council of the European Union. (2022, November 14). Council conclusions on Women, Peace and Security. 14472/22. https://www.consilium.europa.eu/en/press/press-releases/2022/11/14/women-peace-and-security-council-adopts-conclusions/

Court of Justice of the European Communities. (1963). NV Algemene Transport- en Expeditie Onderneming van Gend & Loos v Netherlands Inland Revenue Administration (Case 26/62). ECLI:EU:C:1963:1

Court of Justice of the European Communities. (1964). Flaminio Costa v E.N.E.L. (Case 6/64). ECLI:EU:C:1964:66.

Court of Justice of the European Union. (2003). Müller-Fauré and van Riet, Case C-385/99, ECLI:EU:C:2003:270. EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61999CJ0385

Craddock, J. J. (2025). Personhood after Dobbs. Catholic University Law Review, 74(1), 23–58.

Czech National Council. (1986). Act No. 66/1986 Coll., on the Artificial Termination of Pregnancy. Collection of Laws of the Czech Republic. https://www.zakonyprolidi.cz/cs/1986-66

Dahl, R. A. (1957). Decision-making in a democracy: The Supreme Court as a national policymaker. Journal of Public Law, 6, 279–295. https://static1.squarespace.com/static/60188505fb790b33c3d33a61/t/6049c2bd69f212651b53aab3/1615446718720/DahlDecisionMaking.pdf

Danish Ministry of Health. (2023). Consolidation Act No. 95 of 7 February 2023 on the Termination of Pregnancy. https://www.retsinformation.dk/eli/lta/2023/95

De La Rosa, S. (2018). The OMC processes in the health care field: What does coordination really mean? European Papers: A Journal on Law and Integration, 3(1), 215–234. https://doi.org/10.15166/2499-8249/216

De Zordo, S., Zanini, G., Mishtal, J., Garnsey, C., Ziegler, A., & Gerdts, C. (2020). Gestational age limits for abortion and cross-border reproductive care in Europe: a mixed-methods study. BJOG an International Journal of Obstetrics & Gynaecology, 128(5), 838–845. https://doi.org/10.1111/1471-0528.16534

Department of Health, Education, and Welfare Appropriation Act, 1977, Pub. L. No. 94-439, § 209, 90 Stat. 1418 (1976). https://www.justice.gov/d9/2022-11/2022-09-27-hyde_amendment_application_to_hhs_transportation.pdf

Department of Health. (2023). The independent review of the operation of the Health (Regulation of Termination of Pregnancy) Act 2018. Government of Ireland. https://assets.gov.ie/static/documents/the-independent-review-of-the-operation-of-the-health-regulation-of-termination-of-pre.pdf

Diário da República. (2007). Lei n. º 16/2007, de 17 de abril. https://diariodarepublica.pt/dr/detalhe/lei/16-2007-519464

Dickinson, G. S. (2025). Abortion rights from the bottom-up (Pittsburgh Legal Studies Working Paper No. ___). University of Pittsburgh School of Law.

Dobbs v. Jackson Women's Health Organization, 597 U.S. ___ (2022). https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

Doctors for Choice Malta. (2020, November). Survey of medical doctors on abortion in Malta. Sexual and Reproductive Health Matters. https://pmc.ncbi.nlm.nih.gov/articles/PMC7888034/

Donley, G. (2023). Abortion sanctuary laws. North Carolina Civil Rights Law Review, 4(1), 1–30. Retrieved from https://scholarship.law.unc.edu/cgi/viewcontent.cgi?article=1039&context=nccvlrts

Dutra, A. (2007). Justice, abortion, and the public: The Supreme Court and abortion law in the United States. Boston University Law Review, 87(3), 1113–1163. Retrieved from https://www.bu.edu/law/journals-archive/bulr/documents/dutra.pdf

ECCHR: Hard law/soft law. (n.d.). ECCHR. https://www.ecchr.eu/en/glossary/hard-law-soft-law/#:~:text=The%20term%20soft%20law%20is,legally%20enforced%20before%20a%20court

Ely, J. H. (1973). The wages of crying wolf: A comment on Roe v. Wade. Yale Law Journal, 82(5), 920–949. https://openyls.law.yale.edu/server/api/core/bitstreams/f4a9575c-5182-4e35-bba8-402d5e757f35/content

Encyclopedia of Federalism. (n.d.). Cooperative federalism. University of Virginia Center for the Study of Federalism. Retrieved August 20, 2025, from https://encyclopedia.federalism.org/index.php/Cooperative_Federalism

Epstein, L., Knight, J., & Martin, A. D. (2001). The supreme court as a strategic national policymaker. Emory Law Journal, 50(2), 583.

Estrela, E. (2013). REPORT on sexual and reproductive health and rights | A7-0426/2013 | European Parliament. © European Union, 2013 - Source: European Parliament. https://www.europarl.europa.eu/doceo/document/A-7-2013-0426_EN.html

EUR-Lex, Public health, Glossary of summaries of EU legislation, https://eur-lex.europa.eu/EN/legal-content/glossary/public-health.html

European Commission. (2014). European Citizens' Initiative "One of Us". European Commission – European Citizens' Initiative. https://citizens-initiative.europa.eu/initiatives/details/2012/000005_en

European Commission. (2017, December 20). Rule of law: European Commission acts to defend judicial independence in Poland [Press release]. European Commission. https://ec.europa.eu/commission/presscorner/detail/en/ip_17_5367

European Commission. (2020). A Union of Equality: Gender Equality Strategy 2020–2025. https://ec.europa.eu/newsroom/just/items/682425/en

European Commission. (2025). Health and food safety: Directorate-General for Health and Food Safety. Retrieved from https://commission.europa.eu/about-european-commission/departments-and-executive-agencies/health-and-food-safety_en

European Commission. (n.d.). Cross-border healthcare overview. In Public Health. Retrieved September 4, 2025, from https://health.ec.europa.eu/cross-border-healthcare/overview_en

European Commission's new Women's Rights Roadmap includes SRHR—Now we need action | IPPF Europe & Central Asia. (2025, April 22). IPPF Europe & Central Asia. https://europe.ippf.org/news/european-commissions-new-womens-rights-roadmap-includes-srhr-now-we-need-action#:~:text=The%20Roadmap%20reiterates%20that%20every,bold%2C%20actionable%20steps%20in%20the

European Council. (2021, December 20). Council conclusions on strengthening the European Health Union (2021/C 512 I/02). Official Journal of the European Union. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021XG1220(01)

European Court of Human Rights. (1992). Open Door and Dublin Well Woman v. Ireland (Applications nos. 14234/88; 14235/88), Judgment of 29 October 1992. ECLI: CE: ECHR: 1992:1029JUD001423488. https://hudoc.echr.coe.int/eng?i=001-57816

European Court of Human Rights. (2007, March 20). Tysiąc v. Poland (application no. 5410/03) [Judgment]. HUDOC. Retrieved from https://hudoc.echr.coe.int/eng?i=001-79812

European Court of Human Rights. (2010). A, B & C v. Ireland (Application no. 25579/05), Judgment of 16 December 2010. ECLI: CE: ECHR: 2010:1216JUD002557905. Retrieved from https://hudoc.echr.coe.int/eng?i=001-102332

European Court of Human Rights. (2011, May 26). R.R. v. Poland (application no. 27617/04) [Judgment]. HUDOC. Retrieved from https://hudoc.echr.coe.int/eng?i=001-104911

European Parliament, Directorate-General for Internal Policies. (2018). A comprehensive European Union strategy on sexual and reproductive health and rights. Publications Office. https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604969/IPOL_STU%282018%29604969_EN.pdf

European Parliament, Parliamentary questions – E-002522/2022 (2 June 2022), https://www.europarl.europa.eu/doceo/document/E-9-2022-002522_EN.html.

European Parliament, Verbatim report of proceedings – US Supreme Court decision to overturn abortion rights in the United States and the need to safeguard abortion rights and Women's health in the EU, 4 July 2022, https://www.europarl.europa.eu/doceo/document/CRE-9-2022-07-04-ITM-012_EN.html.

European Parliament. (2002, July 3). European Parliament resolution on sexual and reproductive health and rights (2001/2128(INI)) [P5_TA(2002)0359]. Official Journal of the European Communities. https://www.europarl.europa.eu/doceo/document/TA-5-2002-0359_EN.html

European Parliament. (2007, March 15). European Parliament resolution of 15 March 2007 on the annual report on human rights in the world 2006 and the EU's policy on the matter (2007/2020(INI)) [P6_TA(2007)0078] §120. https://www.europarl.europa.eu/doceo/document/TA-6-2007-0078_EN.html

European Parliament. (2013, December 10). European Parliament resolution of 10 December 2013 on sexual and reproductive health and rights (2013/2040(INI)) [P7_TA (2013)0548]. https://www.europarl.europa.eu/doceo/document/TA-7-2013-0548_EN.html

European Parliament. (2018). Sexual and reproductive health and rights and the implication for EU development policy (Study requested by the FEMM Committee). Directorate-General for Internal Policies. https://www.europarl.europa.eu/RegData/etudes/STUD/2018/604969/IPOL_STU(2018)604969_EN.pdf

European Parliament. (2020, November 26). European Parliament resolution of 26 November 2020 on the de facto ban on the right to abortion in Poland (2020/2876(RSP)) [P9_TA (2020)0336]. https://www.europarl.europa.eu/doceo/document/TA-9-2020-0336_EN.html

European Parliament. (2021, June 24). European Parliament resolution of 24 June 2021 on the situation of sexual and reproductive health and rights in the EU, in the frame of women's health (2020/2215(INI)) [P9_TA (2021)0314]. https://www.europarl.europa.eu/doceo/document/TA-9-2021-0314_EN.html

European Parliament. (2021, June 24). Roll-call votes: Sexual and reproductive health and rights in the EU, in the frame of women's health (2020/2215(INI)) [Resolution adopted]. https://www.europarl.europa.eu/doceo/document/PV-9-2021-06-24-RCV_EN.pdf

European Parliament. (2022, July 11). Answer to written question E-002522/2022: Abortion law in Malta (Rule 138). Retrieved from https://www.europarl.europa.eu/doceo/document/E-9-2022-002522_EN.html

European Parliament. (2022, July 7). European Parliament resolution of 7 July 2022 on the decision by the United States Supreme Court to overturn abortion rights in the United States and the need to safeguard abortion rights and women's health in the EU (2022/2742(RSP)) [P9_TA (2022)0302]. https://www.europarl.europa.eu/doceo/document/TA-9-2022-0302_EN.html

European Parliament. (2024, April 11). Resolution of 11 April 2024 on including the right to abortion in the Charter of Fundamental Rights of the European Union (2024/2655(RSP)). EUR-Lex. https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52024IP0075(01)

European Parliament. (2024, April 3). Motion for a resolution on the inclusion of the right to abortion in the EU Charter of Fundamental Rights (2024/2655(RSP)) [Resolution]. Official Journal of the European Union. Retrieved from https://www.europarl.europa.eu/doceo/document/B-9-2024-0208_EN.html

European Parliament. (2025, July 7). Rules of Procedure of the European Parliament, 10th parliamentary term (Rule 150). https://www.europarl.europa.eu/doceo/document/RULES-10-2025-07-07_EN.pdf

European Parliamentary Research Service, The Open Method of Coordination (European Parliament, 2016), https://www.europarl.europa.eu/EPRS/EPRS-AaG-542142-Open-Method-of-Coordination-FINAL.pdf

European Union. (2008, May 9). Treaty on European Union, Article 5. In Consolidated version (OJ C 115, p. 18). Retrieved from https://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:12008M005:EN:HTML

European Union. (2012). Charter of Fundamental Rights of the European Union (2012/C 326/02). Official Journal of the European Union, C 326, 391–407. https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A12012P%2FTXT

European Union. (2012). Consolidated version of the Treaty on European Union (2012/C 326/01). Official Journal of the European Union, C 326, 13–46. Retrieved from https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:12012E/TXT

Fabbrini, F. (2011). The European Court of Human Rights, the EU Charter of Fundamental Rights and the right to abortion: Roe v. Wade on the other side of the Atlantic? Columbia Journal of European Law, 18(1), 1–72. Retrieved from SSRN: https://ssrn.com/abstract=2578665

Fabbrini, F. (2023). The 'European' future of American abortion law: Dobbs, federalism and constitutional equality. Columbia Journal of Transnational Law, 62(1), 113–158.

Fabbrini, F. (2024). The "European" future of American abortion law: Dobbs, federalism and constitutional equality. Columbia Journal of Transnational Law, 62(1), 1–54. https://static1.squarespace.com/static/5daf8b1ab45413657badbc03/t/65bbe3fbc04080256dca7e01/1742287143753/%28g%29+Fabbrini_Print_62-1+%281%29.pdf

Fabbrini, S. (2004). Transatlantic constitutionalism: Comparing the United States and the European Union. European Journal of Political Research, 43(4), 547–569. https://doi.org/10.1111/j.1475-6765.2004.00165.x

Fabbrini, S. (2005). Democracy and federalism in the European Union and the United States: exploring post-national governance. https://doi.org/10.4324/9780203414491

Fabbrini, S. (2007). Compound democracies: Why the United States and Europe are becoming similar. Oxford University Press. https://doi.org/10.1093/acprof:oso/9780199235612.001.0001

Fabbrini, S. (2008, April 29). Compound democracies: Why the United States and Europe are becoming similar. Brookings Institution. https://www.brookings.edu/wp-content/uploads/2012/04/20080429_democracies.pdf

Federal Ministry of Justice. (n.d.-a). Strafgesetzbuch (German Criminal Code) § 218a – Termination of pregnancy not punishable under certain conditions; § 219 – Counselling of pregnant women. https://www.gesetze-im-internet.de/stgb/__218a.html

Federal Ministry of Justice. (n.d.-b). Schwangerschaftskonfliktgesetz (Pregnancy Conflict Act). Retrieved August 14, 2025, from https://www.gesetze-im-internet.de/beratungsg

Federalism rebalancing and the Roberts Court: A departure from historical patterns. (2025). Harvard Law Review, 138(5), 1385–1432. https://harvardlawreview.org/print/vol-138/federalism-rebalancing-and-the-roberts-court-a-departure-from-historical-patterns/?

Finland Ministry of Justice. (2022). Act on Induced Abortion (239/1970, as amended by 1081/2022). https://finlex.fi/en/laki/kaannokset/1970/en19700239

Finnemore, M., & Sikkink, K. (1998). International norm dynamics and political change. International Organization, 52(4), 887-917. https://doi.org/10.1162/002081898550789

Finney, E. (2010). shifting towards a european roe v. wade: Should judicial activism create an international right to abortion with a., b. and c. v. Ireland? University of Pittsburgh Law Review, 72(2)

Garner, B. A. (Ed.). (2019). Black's Law Dictionary (11th ed.). St. Paul, MN: Thomson Reuters.

Garnsey, C., Zanini, G., De Zordo, S., Mishtal, J., Wollum, A., & Gerdts, C. (2021). Cross-country abortion travel to England and Wales: Results from a cross-sectional survey exploring people's experiences crossing borders to obtain care. Reproductive Health, 18(1), 103. https://pmc.ncbi.nlm.nih.gov/articles/PMC8141157

Gazzetta Ufficiale della Regione Siciliana. dati.ars.sicilia.it/edem/ddl.jsp?idCed=9171

Gazzetta Ufficiale della Repubblica Italiana. (1978). Legge 22 maggio 1978, n. 194 – Norme per la tutela sociale della maternità e sull'interruzione volontaria della gravidanza. https://www.gazzettaufficiale.it/eli/id/1978/05/22/078U0194/sg

Gerken, H. K. (2008). Foreword: Federalism all the way down. Harvard Law Review, 124(1), 4–77. https://harvardlawreview.org/wp-content/uploads/2010/11/vol_12401gerken.pdf

Gerken, H. K. (2014). Federalism as the new nationalism: An overview. Yale Law Journal, 123(6), 1889–1918. https://www.yalelawjournal.org/essay/federalism-as-the-new-nationalism-an-overview

Gestational Age Act, H.B. 1510, 2018 Leg., Reg. Sess. (Miss. 2018). https://billstatus.ls.state.ms.us/2018/pdf/history/HB/HB1510.xml

Gonzales v. Carhart, 550 U.S. 124 (2007). https://supreme.justia.com/cases/federal/us/550/124/

Government Gazette of the Hellenic Republic. (1986). Law 1609/1986 on termination of pregnancy.

Government of Hungary. (1992). Act LXXIX of 1992 on the Protection of Fetal Life. Hungarian Official Gazette (Magyar Közlöny). https://njt.hu/jogszabaly/1992-79-00-00

Government of Ireland. (2018). Health (Regulation of Termination of Pregnancy) Act 2018. Irish Statute Book. https://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/html

Government of Sweden. (1974). Abortion Act (SFS 1974:595). https://rkrattsbaser.gov.se/sfst?bet=1974:595

Government of the Netherlands. (1981). Termination of Pregnancy Act (Wet afbreking zwangerschap, Stb. 1981, 257). https://wetten.overheid.nl/BWBR0003396/

Gozdecka, D. A. (2020). Backlash or widening the gap?: Women's Reproductive Rights in the Twenty-First Century. Laws, 9(1), 8. https://doi.org/10.3390/laws9010008

Graber, M. A. (1993). The non-majoritarian difficulty: Legislative deference to the judiciary. Studies in American Political Development, 7(1), 35–73. https://digitalcommons.law.umaryland.edu/cgi/viewcontent.cgi?params=/context/fac_pubs/article/1516/&path_info=nonmajoritariandifficulty_ocr.pdf

Grace, K. T., & Anderson, J. C. (2018). Reproductive coercion: A systematic review. Trauma, Violence, & Abuse, 19(4), 371–390. https://pmc.ncbi.nlm.nih.gov/articles/PMC5577387/

Greene, J. D. (2012). Thirteenth Amendment optimism. Columbia Law Review

Greenhouse, L., & Siegel, R. B. (2011). Before (and After) Roe v. Wade: New Questions About Backlash. Yale Law Journal, 120(8), 2028–2087. Retrieved from https://www.yalelawjournal.org/feature/before-and-after-roe-v-wade-new-questions-about-backlash

Grossi, P., & O'Connor, D. (2023). FDA pre-emption of conflicting state drug regulation and the looming battle over abortion medications. Journal of Law and the Biosciences, 10(1), lsad005 https://pubmed.ncbi.nlm.nih.gov/36938304/

Guttmacher Institute. (2009). The impact of state mandatory counselling and waiting period
https://www.guttmacher.org/sites/default/files/pdfs/pubs/MandatoryCounseling.pdf

Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241 (1964). Opinion by Justice Tom C. Clark. Retrieved from Legal Information Institute, Cornell Law School.

Heartbeat Protection Act of 2021, H.R.705, 117th Cong. (2021). Retrieved from https://www.congress.gov/bill/117th-congress/house-bill/705

Heritage Foundation (2022). Dobbs Opinion, If It Stands, Rights Supreme Court's Wrong. The Daily Signal. https://www.heritage.org/life/commentary/dobbs-opinion-if-it-stands-rights-supreme-courts-wrong

Hervey, T. K., & McHale, J. V. (2015). European Union health law: Themes and implications. Cambridge University Press.

Hervey, T., & Banerjee, T. (2023). Abortion rights in EU law: Recent developments. City Law School Research Paper 2023/08. City, University of London. https://openaccess.city.ac.uk/id/eprint/29635/8/document%20(2).pdf

Hickey, K. J., Shimabukuro, J. O., & Staman, J. A. (2023, April 17). Regulating reproductive health services after Dobbs v. Jackson Women's Health Organization (CRS In Focus No. IF12269). Congressional Research Service. https://www.congress.gov/crs-product/IF12269

Hodge J.G. Jr. (2022). Federalism's fallacy at the forefront of public health law. Journal of Law, Medicine & Ethics, 50(S1), 84–89. https://doi.org/10.1017/jme.2022.9

House of Representatives of Malta. (2023). Criminal Code (Amendment No. 2) Act, 2023 [Act XX of 2023]. Government Gazette of Malta https://parlament.mt/media/120003/01048.pdf

Indiana General Assembly. (2022). Senate Bill 1 (Special Session). https://www.indianasenaterepublicans.com/2022-special-session#:~:text=Effective%20Sept.,from%20a%20lethal%20fetal%20anomaly

Ionescu, D. P., & Eliantonio, M. (2021). Democratic Legitimacy and Soft Law in the EU Legal Order: A theoretical perspective. Journal of Contemporary European Research, 17(1). https://doi.org/10.30950/jcer.v17i1.1139

Ireland. (2013). Protection of Life During Pregnancy Act 2013 (No. 35 of 2013). Irish Statute Book. http://www.irishstatutebook.ie/eli/2013/act/35/enacted/en/html

Irish Statute Book. (2018). Health (Regulation of Termination of Pregnancy) Act 2018. https://www.irishstatutebook.ie/eli/2018/act/31/enacted/en/html

Isailović, I. (2024). EU Abortion Law After Dobbs: States, the Market and Stratified Reproductive Freedom. The Columbia Journal of European Law, 30(1), 1–51. Retrieved from https://pure.uva.nl/ws/files/233187092/EU_Abortion_Law_After_Dobbs-2.pdf

Jaklic, K. (2014). Constitutional pluralism in the EU (First ed.). Oxford University Press.

Jefatura del Estado. (2010, March 3). Ley Orgánica 2/2010, de salud sexual y reproductiva y de la interrupción voluntaria del embarazo. Boletín Oficial del Estado, 55, 21001–21014. https://www.boe.es/buscar/doc.php?id=BOE-A-2010-3514

Joanna Kapelańska-Pręgowska, The scales of the European Court of Human Rights: Abortion restriction in Poland, the European consensus, and the state's margin of appreciation, Health and Human Rights Journal (2 November 2021), available at https://www.hhrjournal.org/2021/11/02/the-scales-of-the-european-court-of-human-rights-abortion-restriction-in-poland-the-european-consensus-and-the-states-margin-of-appreciation/.

Journal officiel de la République française. (2022). Loi n° 2022-295 du 2 mars 2022 visant à renforcer le droit à l'avortement. https://www.legifrance.gouv.fr/jorf/id/JORFTEXT000045287560

Journal officiel du Grand-Duché de Luxembourg. (2014). Loi du 17 décembre 2014 relative à l'avortement. https://legilux.public.lu/eli/etat/leg/loi/2014/12/17/n2/jo

Kansas Secretary of State – Election Results (2022): https://sos.ks.gov/publications/kansas-constitution/kansas-constitution-list-of-amendments.html

Kantola, J., & Lombardo, E. (2020). Gender and the European Union. Palgrave Macmillan.

Kavanagh, A. (2016). The separation of powers. In J. Dickson & L. Eleftheriadis (Eds.), Philosophical foundations of constitutional law (pp. 259–284). Oxford University Press. https://www.law.ox.ac.uk/sites/files/oxlaw/ak_separation_of_powers_philfounds_book.pdf

Kochenov, D. & PECH, L. Upholding the rule of law in the EU: on the Commission's 'pre-article 7 procedure' as a timid step in the right direction, EUI RSCAS, 2015/24, Global Governance Programme-164, Global Economics - https://hdl.handle.net/1814/35437

Kramer, L. D. (2000). Putting the Politics Back into the Political Safeguards of Federalism. Columbia Law Review, 100(1), 215–311.

Kuhar, R., & Paternotte, D. (2017). Introduction. In R. Kuhar & D. Paternotte (Eds.), Anti-gender campaigns in Europe: Mobilizing against equality https://ereader.perlego.com/1/book/573669/6?page_number=5

Lavenex, S. (2015). The external face of differentiated integration: third country participation in EU sectoral bodies. Journal of European Public Policy, 22(6), 836–853. https://doi.org/10.1080/13501763.2015.1020836

Lenzu M. D., Council conclusions on women, peace and security (2022), European council. https://www.consilium.europa.eu/en/press/press-releases/2022/11/14/council-conclusions-on-women-peace-and-security/?utm_source=dsms-

auto&utm_medium=email&utm_campaign=Council+conclusions+on+women%2c+peace+and+security#:~:text=conferences%20and%20remains%20committed%20to,responsibly%20on%20matters%20related%20to

Levinson, S. (2005, November 28). Should liberals stop defending Roe? (with Jack M. Balkin). Legal Affairs, Web Exclusive.

Lombardo, E., & Forest, M. (2015). The Europeanization of gender equality policies: A discursive–sociological approach. Comparative European Politics. https://doi.org/10.1057/cep.2013.18

Long, M., Sobel, L., Salganicoff, A., & Pestaina, K. (2022, May 16). Employer coverage of travel costs for out-of-state abortion. Kaiser Family Foundation. https://www.kff.org/private-insurance/employer-coverage-travel-costs-out-of-state-abortion/

Majone, G. (1998). Europe's 'Democratic Deficit': The Question of Standards. European Law Journal, 4(1), 5–28. https://doi.org/10.1111/1468-0386.00040

Maloy, K. (2024). "I've Been Here Before": Women Helping Women in Irish Abortion Narratives. New Area Studies, 4(2), 66–86. https://newareastudies.com/articles/68/files/66bb0b9d7a065.pdf

Marbury v. Madison, 5 U.S. (1 Cranch) 137 (1803). https://supreme.justia.com/cases/federal/us/5/137/

Marques-Pereira, B. (2023). Abortion in the European Union: Actors, issues and discourse. Foundation for European Progressive Studies & Karl Renner Institute. https://feps-europe.eu/wp-content/uploads/2023/03/Abortion-in-the-European-Union.pdf

Mechkova, V., Lührmann, A., & Lindberg, S. I. (2019). The accountability sequence: From de-jure to de-facto constraints on governments. V-Dem Institute (Policy Brief No. 22). University of Gothenburg. Retrieved from https://www.v-dem.net/media/publications/pb_22_final.pdf

Miani, C., O'Brien, R., & Gerdts, C. (2021). The fragility of abortion access in Europe: A public health perspective. The Lancet Regional Health – Europe, 3, 100111. https://doi.org/10.1016/j.lanepe.2021.100111

Ministry of Health of the Czechoslovak Republic. (1986). Decree No. 75/1986 Coll., implementing Act No. 66/1986 Coll. Collection of Laws of the Czech Republic. https://www.zakonyprolidi.cz/cs/1986-75

Ministry of Interior of Hungary. (2022). Decree No. 29/2022 (IX.12.) of the Ministry of Interior amending certain health regulations. Hungarian Official Gazette (Magyar Közlöny).

Missouri House of Representatives. (2022). House Bill 2810: Empower Parents to Protect Their Children Act. 101st General Assembly, 2nd Regular Session. Retrieved from https://house.mo.gov/Bill.aspx?bill=HB2810&year=2022&code=R

Mohr, J. C. (1978). Abortion in America: The origins and evolution of national policy, 1800–1900. New York: Oxford University Press.

Moniteur belge. (2018). Loi du 15 octobre 2018 modifiant la loi du 3 avril 1990 relative à l'interruption volontaire de grossesse.

Multi-State Commitment to Reproductive Freedom. (2022, June 24). Agreement among the governors of California, Oregon, and Washington to defend access to reproductive healthcare, including abortion and contraceptives. Retrieved from the official California governor's website. https://www.gov.ca.gov/wp-content/uploads/2022/06/Multi-State-Commitment-to-Reproductive-Freedom_Final-1.pdf

Murray, M., & Shaw, K. (2023). Dobbs and democracy. Harvard Law Review, 137(1), 1–66. Retrieved from https://harvardlawreview.org/print/vol-137/dobbs-and-democracy/

Narodne novine. (1978/2009). Zakon o zdravstvenim mjerama za ostvarivanje prava na slobodno odlučivanje o rađanju djece [Law on Health Measures for the Realisation of the Right to Free Decision on Childbearing], NN 18/78; 88/09.

National Archives. (1787). Constitution of the United States. U.S. National Archives. https://www.archives.gov/founding-docs/constitution-transcript

National Assembly of the Republic of Bulgaria. (2004). Health Act. State Gazette (Държавен вестник), No. 70/2004. https://lex.bg/laws/ldoc/2135489147

New State Ice Co. v. Liebmann, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting).

New York State Rifle & Pistol Association, Inc. v. Bruen, 597 U.S. ___ (2022). https://supreme.justia.com/cases/federal/us/597/20-843/

Office of the United Nations High Commissioner for Human Rights (OHCHR), Regional Office for Europe. (2023). The European Union and International Human Rights Law.

United Nations. https://europe.ohchr.org/sites/default/files/2023-07/EU_and_International_Law.pdf

Oklahoma Legislature. (2022). House Bill 4327. Retrieved from https://legiscan.com/OK/text/HB4327/2022

Ordo Iuris Institute for Legal Culture. (2021, June 24). The EP has adopted the Matić Report – it is a clear declaration of the direction chosen by the EU. Ordo Iuris. https://ordoiuris.pl/en/press-newsdesk/the-ep-has-adopted-the-matic-report-it-is-a-clear-declaration-of-the-direction-chosen-by-the-eu/

Parliament of Romania. (2006). Law No. 95/2006 on Healthcare Reform. Official Gazette of Romania (Monitorul Oficial al României), No. 372/2006. https://legislatie.just.ro/public/detaliidocument/71139

Peroni, L., & Bucholc, M. (2025). Towards a common EU-abortion policy? the european parliament's resolutions on abortion as a human rights issue. European Law Journal: Review of European Law in Context, 31(1-2), 63-80. https://doi.org/10.1111/eulj.70005

Pew Research Center. (2024, August 8). Favourable views of Supreme Court remain near historic low. Pew Research Center. https://www.pewresearch.org/short-reads/2024/08/08/favorable-views-of-supreme-court-remain-near-historic-low/

Pew Research Center. (2024, May 15). Support for legal abortion is widespread in many countries, especially in Europe. https://www.pewresearch.org/short-reads/2024/05/15/support-for-legal-abortion-is-widespread-in-many-countries-especially-in-europe/

Planned Parenthood of Southeastern Pennsylvania v. Casey, 505 U.S. 833 (1992). https://supreme.justia.com/cases/federal/us/505/833/

Post, R., & Siegel, R. (2007). Roe rage: Democratic constitutionalism and backlash. Harvard Civil Rights-Civil Liberties Law Review, 42(2), 373-433. https://law.yale.edu/sites/default/files/documents/pdf/Faculty/Siegel_RoeRageDemocraticConstitutionalismAndBacklash.pdf

Presidenza del Consiglio dei Ministri. (2025, June 20). Comunicato stampa del Consiglio dei Ministri n.138. Governo Italiano. https://www.governo.it/it/articolo/comunicato-stampa-del-consiglio-dei-ministri-n138/29421

Protecting Pain-Capable Unborn Children from Late-Term Abortions Act, S.4840, 117th Cong. (2022). Retrieved from https://www.congress.gov/bill/117th-congress/senate-bill/4840

Ray, N. (2024, December 5). 10 Ways the EU is Driving Progress on Gender Equality and SRHR. Center for Reproductive Rights. https://reproductiverights.org/eu-progress-gender-equality-srhr/#:~:text=reproductive%20technologies%20and%20comprehensive%20sexuality,education

Ray, N. (2025, February 6). Trump Administration's Reinstatement of the Global Gag Rule Is a Setback for Health, Gender Equality and Human Rights. Center for Reproductive Rights. https://reproductiverights.org/trump-administration-reinstates-global-gag-rule/

Reform Congress, Not the Court, Harvard Law Review, 137(6) https://harvardlawreview.org/print/vol-137/reform-congress-not-the-court/

Republic of Austria. (n.d.). Strafgesetzbuch § 97. https://www.jusline.at/gesetz/stgb/paragraf/97

Republic of Cyprus - Official Gazette. (2018). Criminal Code (Amendment) Law 115(I)/2018.

Republic of Slovenia - Official Gazette. (1977/1993). Act on Health Measures in Exercising the Freedom of Choice in Childbearing. Official Gazette SRS No. 11/1977; Uradni list RS, No. 66/1993.

Riigi Teataja. (1998). Termination of Pregnancy and Sterilisation Act. Official Gazette of the Republic of Estonia.

Roe v. Wade, 410 U.S. 113 (1973). https://tile.loc.gov/storage-services/service/ll/usrep/usrep410/usrep410113/usrep410113.pdf

Sajó, A. (2004). Neutrality of law and neutrality of the state: the case of Europe. Human Rights Law Journal, 25(1-3), 69–90.

Schütze, R. (2021). EU competences: Existence and exercise. In R. Schütze (Ed.), Oxford principles of European Union law (Vol. I: The European Union legal order, pp. xxx–xxx). Oxford University Press. https://doi.org/10.1093/oxlaw/9780198855751.003.0006

Sejm of the Republic of Poland. (1993, January 7). Ustawa z dnia 7 stycznia 1993 r. o planowaniu rodziny, ochronie płodu ludzkiego i warunkach dopuszczalności przerywania ciąży [Act of 7 January 1993 on Family Planning, Protection of the Human Fetus and Conditions for Permissibility of Abortion]. Dziennik Ustaw, 1993, No. 17, item 78. https://isap.sejm.gov.pl/isap.nsf/download.xsp/WDU19930170078/U/D19930078Lj.pdf

Sexual and Reproductive Health Law. Official Gazette of the Republic of Latvia.

Shaffer, G. C., & Pollack, M. A. (2009). Hard vs. soft law: Alternatives, complements, and antagonists in international governance. Minnesota Law Review, 94(3), 706–799. Retrieved from https://www.minnesotalawreview.org/wp-content/uploads/2011/08/ShafferPollack_MLR.pdf

Side, K. (2016). Geopolitics of migrant women, mobility and abortion access in the Republic of Ireland. Gender, Place & Culture, 23(12), 1788–1799. https://doi.org/10.1080/0966369X.2016.1262831

Siegel, R. B. (2023). Dobbs and the dismantling of reproductive equality. Yale Law Journal, 132(3), 710–778.

Sirin, C. V., & Villalobos, J. D. (2022). The effects of empathic reactions to the overturning of Roe v. Wade on campaign participation and voter turnout: Evidence from the 2022 U.S. midterm elections. Politics & Gender, 20(4). https://www.cambridge.org/core/journals/politics-and-gender/article/effects-of-empathic-reactions-to-the-overturning-of-roe-v-wade-on-campaign-participation-and-voter-turnout-evidence-from-the-2022-us-midterm-elections/9010E350652D22D79C115729D6670A05

Slominski, P., & Trauner, F. (2020). Reforming me softly – how soft law has changed EU return policy since the migration crisis. West European Politics, 44(1), 93–113. https://doi.org/10.1080/01402382.2020.1745500

Slovak National Council. (1986). Act No. 73/1986 Coll., on Artificial Termination of Pregnancy. Collection of Laws of the Slovak Republic. https://www.slov-lex.sk/pravne-predpisy/SK/ZZ/1986/73/

Stenberg v. Carhart, 530 U.S. 914 (2000). https://supreme.justia.com/cases/federal/us/530/914/

Supreme Court of the United States. (2022). Dobbs v. Jackson Women's Health Organization, 597 U.S. ___ (No. 19-1392). https://www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf

Szent-Iványi, B., & Timofejevs, P. F. (2021). Selective norm promotion in international development assistance: The drivers of naming and shaming advocacy among European non-governmental development organisations. International Relations, 35(1), 23–46. https://doi.org/10.1177/0047117820954234

TAR – Teisės aktų registras. Criminal Code of the Republic of Lithuania; Ministry of Health Regulations on Termination of Pregnancy. Official Gazette of the Republic of Lithuania.

Tarabella, M. (2013). Report on sexual and reproductive health and rights in the European Union (A7-0171/2013). European Parliament. https://www.europarl.europa.eu/meps/en/29579/MARC_TARABELLA/all-activities/reports/8

Therapeutic Abortion Act, Cal. Health & Safety Code § 25950 et seq. (West Supp. 1971).

Townsend H. (2023) Second Middle Passage: How Anti-Abortion Laws Perpetuate Structures of Slavery and the Case for Reproductive Justice https://scholarship.law.upenn.edu/jcl/vol25/iss1/6/

Tribe, L. H. (1973). The Supreme Court, 1972 Term—Foreword: Toward a model of roles in the due process of life and law. Harvard Law Review, 87(1), 1–64.

Trubek, D. M., & Trubek, L. G. (2005). Hard and soft law in the construction of Social Europe: The role of the open method of co-ordination. European Law Journal, 11(3), 343–364. https://doi.org/10.1111/j.1468-0386.2005.00263.x

Trybunał Konstytucyjny. (2020, October 22). Wyrok z dnia 22 października 2020 r., sygn. akt K 1/20 [Judgment of 22 October 2020, case K 1/20]. https://trybunal.gov.pl/postepowanie-i-orzeczenia/wyroki/art/11362-k-120

U.S. Congress. (1981). A joint resolution proposing an amendment to the Constitution of the United States with respect to the right to life (S.J. Res. 110, 97th Congress). Congressional Record.

U.S. Congress. (2013, January 24). Hyde Amendment Codification Act, S. 142, 113th Cong. https://www.congress.gov/bill/113th-congress/senate-bill/142#:~:text=Hyde%20Amendment%20Codification%20Act%20%2D%20Prohibits,benefits%20coverage%20that%20includes%20abortion

U.S. Congress. Constitution Annotated. (n.d.). ArtVI.C2.1: Overview of Supremacy Clause. In The Constitution of the United States: Annotation by the Office of the Law Revision Counsel. https://constitution.congress.gov/browse/essay/artVI-C2-1/ALDE_00013395/

U.S. Department of Health and Human Services. (1988). Standards of compliance for abortion-related services in family planning programs (42 C.F.R. Part 59). Federal Register, 53(23), 2922–2945.

U.S. Department of Health and Human Services. (1993). Removal of certain requirements for Title X family planning programs. Federal Register, 58(29), 7462–7464.

U.S. Department of Health and Human Services. (2019). Compliance with statutory program integrity requirements (42 C.F.R. Part 59). Federal Register, 84(42), 7714–7791.

U.S. Department of Health and Human Services. (2021). Ensuring access to equitable, affordable, client-centered, quality family planning services (42 C.F.R. Part 59). Federal Register, 86(194), 56144–56271.

U.S. Department of Justice. (2022, July 12). Justice Department announces reproductive rights task force [Press release]. DOJ. https://www.justice.gov/archives/opa/pr/justice-department-announces-reproductive-rights-task-force

U.S. Department of Justice. (2023, June 22). Fact sheet: Justice Department efforts to protect reproductive rights, health, and justice [Fact sheet]. U.S. Department of Justice.

Retrieved from https://www.justice.gov/archives/opa/pr/fact-sheet-justice-department-efforts-protect-reproductive-rights-health-and-justice

U.S. Senate: Constitution of the United States. (2023b, August 7). https://www.senate.gov/about/origins-foundations/senate-and-constitution/constitution.htm

United Nations General Assembly. (1979). Convention on the Elimination of All Forms of Discrimination against Women (CEDAW). Treaty Series, vol. 1249, p. 13. https://www.ohchr.org/en/instruments-mechanisms/instruments/convention-elimination-all-forms-discrimination-against-women

United Nations. (1994). Programme of Action of the International Conference on Population and Development (ICPD). Cairo https://www.un.org/development/desa/pd/sites/www.un.org.development.desa.pd/files/files/documents/2020/Jan/un_1995_programme_of_action_adopted_at_the_international_conference_on_population_and_development_cairo_5-13_sept._1994.pdf

United Nations. (1995). Beijing Declaration and Platform for Action. Fourth World Conference on Women. https://www.un.org/womenwatch/daw/beijing/platform/

United States Senate. (1789). The Constitution of the United States of America (Senate Publication No. 103-21). U.S. Government Publishing Office. Retrieved August 20, 2025, from https://www.senate.gov/civics/resources/pdf/US_Constitution-Senate_Publication_103-21.pdf

US Congress. (2022). House Concurrent Resolution 115 (117th Congress, 2nd Session): Expressing the sense of Congress supporting the right to access to reproductive health care and condemning the Supreme Court's decision in Dobbs v. Jackson Women's Health Organization. https://www.congress.gov/bill/117th-congress/house-concurrent-resolution/115/text

Ustavni sud Republike Hrvatske. (2017). Rješenje U-I-60/1991 i dr. [Decision on the constitutionality of the abortion law]. Official Gazette NN 25/2017. https://narodne-novine.nn.hr/clanci/sluzbeni/2017_03_25_564.html

Van der Vleuten, A. (2007). The Price of Gender Equality: Member States and Governance in the European Union

Weiss, W. (2022). A proposal for solving EU soft law's challenges to rule of law and democracy. REALaw Blog. https://realaw.blog/2022/06/10/a-proposal-for-solving-eu-soft-laws-challenges-to-rule-of-law-and-democracy-by-w-weis/

Whittington, K. E. (2007). Political foundations of judicial supremacy: The presidency, the Supreme Court, and constitutional leadership in U.S. history. Princeton, NJ: Princeton University Press

Women's Health Protection Act of 2022, S.4132, 117th Cong. (2022). Retrieved from https://www.congress.gov/bill/117th-congress/senate-bill/4132

Zacharenko, E. (2023). Perspectives on anti-choice lobbying in Europe: Study for policy makers on opposition to sexual and reproductive health and rights in Europe. Humanistisch Verbond. https://www.humanistischverbond.nl/wp-content/uploads/2023/08/Study-for-policy-makers-on-opposition-to-sexual-and-reproductive-health-and-rights-in-Europe.pdf

Ziegler, M. (2009). Liberty and the politics of balance: The undue-burden test after Casey/Hellerstedt. Harvard Civil Rights–Civil Liberties Law Review

Ziegler, M. (2020). Abortion and the law in America: Roe v. Wade to the present. Cambridge University Press.

Zoffer, J. P., & Grewal, D. S. (2020, October). The counter-majoritarian difficulty of a minoritarian judiciary [Online essay]. California Law Review. https://www.californialawreview.org/online/rkdqo8hh45796kvm5cyqk1pyszwzyy