

Fantasy and reality after *Roe*

**One can imagine an anti-abortion politics that started with economic solidarity or righteous fury at male sexual license. But the thought experiment only demonstrates its own absurdity.**

by [Benjamin J. Dueholm](#) in the [July 27, 2022](#) issue



Photo illustration © vural / iStock / Getty

When the Supreme Court struck down its own precedents and opened abortion to effectively unlimited regulation, the exuberance in some quarters of the anti-abortion movement was tempered with a sense of opportunity and responsibility for the future. In a [column](#) that begins with praise for the grassroots-driven victory of anti-abortion forces, Ross Douhat acknowledges that they have allied with “various toxic forces on the right.” The future of any anti-abortion consensus will depend, Douhat claims, on whether the movement embraces “a punitive and stingy politics, in which women in difficulties can face police scrutiny for a suspicious miscarriage but receive little in the way of prenatal guidance or postnatal support” or whether it

instead prods red states toward more serious and generous family and health policy.

This is clearly the hope of Leah Libresco Sargent, who [professed a goal](#) of “material support” for pregnant women and young children as a way to, essentially, hold women financially harmless while eliminating the injustice of abortion.

The welfarist version of anti-abortion advocacy favored by Douthat and Sargent even has some adherents outside the *New York Times* opinion pages, according to [a recent Atlantic profile of multiple anti-abortion figures](#). Maybe, as they hope, “abortion opponents who oppose a social safety net may come around to the idea that more social spending is the best way to reduce abortions.”

It’s a real tendency and a sincere hope. But all the pro-safety-net people described and interviewed in these pieces put together are, at best, marginal within their own coalition. Contrary to Douthat’s claim, anti-abortion groups did not “compromise” or strategically align their goals with the wider conservative agenda. They are, and have been for decades, the same agenda.

Missouri’s legislature passed an extreme “trigger law” banning virtually all abortion. The same legislature essentially overturned a state referendum expanding Medicaid. The high court that voided *Roe v. Wade* and *Casey v. Planned Parenthood* also made it extremely difficult for any level of government to regulate guns, abridged the recently granted power of Native tribes to administer justice in their own territories, and dramatically curtailed the federal government’s power to regulate greenhouse gasses (or anything else). And that’s just in the last week. The anti-abortion movement won in the courts because it is aligned out of principle and deep affinity with big employers, extractive industries, and America’s social hierarchies. Its success has come in perfect tandem with theirs.

One can, after all, imagine an anti-abortion politics that started with economic and social solidarity as a non-negotiable premise. Or one that aimed its righteous fury at abusive partners, male sexual license, and employers who hassle and mistreat pregnant employees and new parents. But the thought experiment only demonstrates its own absurdity. The prerogatives of owners, husbands, and law enforcement are fundamental to this coalition. Even male sexual license, once identified with Bill Clinton and cultural liberalism generally, has become sacrosanct on the right. One Senate candidate in Georgia has had to acknowledge secret children. A [House member in good standing](#) urged multiple abortions by his

partners, had sexual relationships with his own patients, and pulled a gun on his ex-wife. [He has an 89 percent lifetime score from Heritage Action.](#)

To the extent that any of the marginal welfarist anti-abortion voices advocate for better policies in conservative states, they will deserve the critical but unconditional support of progressives. But so far, it appears to be simply a fantasy. The “punitive and stingy” politics Douthat warns of has only accelerated in the week since the court cut its brake lines. Nothing is even being done about the disappearance of OB-GYN care in rural areas, a process that could well be accelerated if doctors decide to leave jurisdictions where they’ll be forced to choose between denying patients potentially life-saving care and going to jail. Many things are technically possible in the post-Roe world, but few of them are plausible.

If the end of *Roe* doesn’t seem to have altered anti-abortion politics outside the daydreams of its moderate intelligentsia, it is not yet clear that pro-abortion-rights politicians have changed their strategy either. For decades, the politics of abortion were framed by the status quo bias of an electorate that was comfortable with *Roe* in principle but conflicted about abortion in practice. This meant that Democratic politicians could pledge fealty to the popular 1973 court decision, and Republicans could choose battles over less popular edge cases. While on paper *Roe* and *Casey* provided for relatively broad freedom to terminate pregnancy—in many countries, on-demand abortion is available for just the first trimester or so—on the ground, access varied widely. At the national level, Democratic politicians never put sustained effort into remedying these inequalities or building grassroots support for legal abortion beyond Supreme Court appointments. What Douthat considers an unlikely victory for abortion opponents seems a lot likelier when you consider how little the other side was doing to win.

But now there is no constitutional status quo to defend and no road back to one in any foreseeable future. Senate Democrats are unwilling to alter the filibuster or expand the court. Democrats and many advocacy groups are allergic to encouraging direct action beyond the occasional polite protest march (a bashfulness not shared by their opponents). There was no plan beyond fundraising messages, no executive action, no call to the citizenry to do anything but vote—which, thanks to gerrymandering and the electoral college, is mostly just a gesture of good faith to co-partisans in the few competitive districts that remain. Outside solidly Democratic states, whatever victories come are likely be on the margins: exceptions for rape and incest, care when a miscarriage is incomplete or fetal abnormalities are

incompatible with life, limits on the power of police to harass and investigate women and doctors.

Will the Democratic Party and its affiliated advocacy groups be able to swallow the finality of the post-*Roe* world enough to fight on this narrower terrain? Will they be willing to make common cause with any soft, conflicted, and welfare-oriented anti-abortion voters in order to build the power needed to blunt punitive enforcement and provide more material support for vulnerable families? Will Democratic judges and elected leaders attempt the kinds of constitutional hardball that have served their opponents so well? The fact that the Democratic Senate so far has managed only a doomed vote to supposedly codify *Roe* in law—not even attempting narrower votes on rape and incest exceptions, which would put their opponents to the test—is not a good sign.

Critics of *Roe* spent decades pointing out the ways the decision distorted American politics around itself and around the judicial branch in general. Judicial settlements, as opposed to legislative ones, always have this effect, the critics claimed. This may have even been true at one point.

The reverse, however, is not true. Eliminating this constitutional protection will not lower the political temperature or allow a new homeostasis in which restrictions take root only where they command democratic legitimacy. The court will continue to adopt whatever attitude toward facts, law, and precedent is required to bring about its majority's preferred outcomes. The new politics of restriction and enforcement will continue merging with and accelerating the right's other obsessions with surveillance, sexuality, immigration, and social welfare programs.

When demographic polarization and gerrymandering have created a large number of one-party Republican states and others with a permanent Republican legislative veto, it will always be possible for Christian writers like Douthat and Sargent to indulge their fantasies of an anti-abortion politics of solidarity and family care. The new synthesis between social conservatism and humane family policy may be right around the corner, after all. For people on the other side, reality will control everything.