

Dialogue after *Dobbs*: Introduction

M. Therese Lysaught, Mari Rapela Heidt,
Mary Doyle Roche, and Kate Ward

ON JUNE 24, 2022, THE SUPREME COURT of the United States (SCOTUS) issued an historic and controversial ruling in the case *Dobbs v. Jackson Women's Health Organization*.¹ In *Dobbs*, SCOTUS overturned its landmark decisions in *Roe v. Wade* (1973), which had established for women a constitutional right to abortion prior to fetal viability (determined on a trimester basis), as well as in *Planned Parenthood of Southern Pennsylvania v. Casey* (1992), which had affirmed *Roe*'s essential holding but implemented an "undue burden standard" for evaluating state-level abortion restrictions.²

Overturning fifty years of assumptions and practices in regard to reproductive matters, *Dobbs* was a striking decision based on two main claims. The first was an historical claim, that neither the "right to privacy" cited by *Roe* as a key basis for its decision nor the "right to abortion" itself is "deeply rooted in the Nation's history and tradition."³ The second claim presented a particular interpretation of the 14th amendment's concept of "ordered liberty," giving priority to states rather than the federal government in adjudicating competing interests.⁴ Based on these claims, SCOTUS concluded that there is no constitutional right to abortion in the US and that the question of the legal status of abortion should be determined at the state level.

¹ Supreme Court of the United States, *Thomas E. Dobbs, State Health Officer of the Mississippi Department of Health v. Jackson Women's Health Organization*, June 24, 2022, www.supremecourt.gov/opinions/21pdf/19-1392_6j37.pdf.

² Laura Temme, "Roe v. Wade Case Summary: What You Need to Know," *FindLaw* (updated December 9, 2022), supreme.findlaw.com/supreme-court-insights/roe-v--wade-case-summary--what-you-need-to-know.html and "Planned Parenthood v. Casey—505 US 833, 112 S. Ct. 2791 (1992)," *LexisNexis Law School Case Brief* (n.d.), www.lexisnexis.com/community/casebrief/p/casebrief-planned-parenthood-v-casey.

³ Supreme Court of the United States, *Dobbs*, Syllabus, 2; Decision, 5, 9–30, et passim.

⁴ Supreme Court of the United States, *Dobbs*, Syllabus, 2; Decision, 30–31. Notably, although the decision leans heavily on its claim regarding "ordered liberty," this argument receives scant treatment in the Court's argument.

Initial public responses to the *Dobbs* decision ranged from celebration to confusion, fear, and outrage. While reversing *Roe v. Wade* was a longstanding goal for some sectors of US Catholicism, Roman Catholic responses were equally varied. One claim, repeated with frequency, was that—in the words of the US Conference of Catholic Bishops—*Dobbs* marks a new era: it is “a time for healing wounds and repairing social divisions; it is a time for reasoned reflection and civil dialogue” on the issue of abortion.⁵ The Catholic faithful, along with those concerned in any way with reproductive issues, were thus called to reconsider sometimes entrenched assumptions and positions and look at the issues involved with fresh eyes. In light of fifty years of medical research, moral reflection, and social changes, such a reconsideration might yield deeper and more reasoned reflection and build consensus on this polarizing issue.

More than six months later, these aspirations have yet to materialize. As with the multi-headed hydra, rather than resolving the fractious issue of abortion the Court’s act of striking down *Roe* simply multiplied the battle sites from a singular focus (SCOTUS) to fifty discrete arenas. Some states reverted to laws that had been in force prior to *Roe v. Wade*, including laws enacted in the nineteenth century.⁶ In other states, new restrictions on abortion crafted in anticipation of the *Dobbs* decision—including several unconditional bans—immediately took effect. Several of these “trigger laws” were subsequently appealed, with varying outcomes.⁷ In still other states, various legislative bodies acted quickly to affirm reproductive rights or loosen restrictions. An amendment to remove abortion rights protections from the Kansas State Constitution was unexpectedly defeated in August.⁸ In the November mid-term elections, California, Michigan, and Vermont approved ballot measures to support abortion rights, while Kentucky and Montana voters rejected amendments that would have placed further restrictions on the practice.⁹ As a result, the

⁵ US Conference of Catholic Bishops, “USCCB Statement on Supreme Court Ruling in *Dobbs v. Jackson*,” June 24, 2022, www.usccb.org/news/2022/usccb-statement-us-supreme-court-ruling-dobbs-v-jackson.

⁶ Scott Bauer, “Wisconsin Senate Convened for 15 Seconds, to Gavel in and Adjourn Special Session Called by Evers,” *Associated Press* (updated October 4, 2022), www.wisn.com/article/wisconsin-senate-convened-to-gavel-in-and-adjourn-the-special-abortion-session-called-by-evers/41516542.

⁷ “Tracking the States Where Abortion Is Now Banned,” *New York Times* (updated November 23, 2022), www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html.

⁸ “Kansas Abortion Amendment Election Results,” *New York Times* (updated September 28, 2022), www.nytimes.com/interactive/2022/08/02/us/elections/results-kansas-abortion-amendment.html.

⁹ Veronica Stracqualursi, Devan Cole, and Paul LeBlanc, “Voters Deliver Ringing Endorsement of Abortion Rights on Midterm Ballot Initiatives Across the US,” *CNN*

American landscape now consists of a patchwork of laws, restrictions, and criminal penalties that vary according to where a person is located. While deep divisions were apparent before *Dobbs*, the fractured landscape that resulted after the decision suggests that there is no strong moral consensus on abortion across the US. We have entered a new era where the divisions surrounding abortion and reproductive rights will be decisive factors in our politics, social interactions, and common goals, as indeed they were in the 2022 elections.

Unsurprisingly, amid the continued jockeying for legal control, dialogue has not become more civil or reasoned. Rather, national public rhetoric and the battles being fought at the state level have largely followed the pre-*Dobbs* script, relying on the polarizing categories of “pro-life,” “pro-choice,” or “pro-abortion”; labeling opponents as “extremists”; dismissing accounts of real threats to the lives and health of women and girls as overstated or—worse—fabricated;¹⁰ and largely refusing to hear the legitimate concerns of those who disagree. To date, little has been done to change the dynamics of dialogue, policy, or activism. In some places, even raising the issue has led to threats toward lawmakers and activists on either side of the political divide, and sometimes to outright violence.¹¹ Nor have we seen much evidence of concrete actions toward another post-*Dobbs* response especially prominent in Catholic spaces, namely that “now is the time to step up support for pregnant women and families.”¹² The same old ineffective disputes using the same old fruitless rhetoric continue to obscure the economic, psychological, and occasionally life-threatening realities of maternal health and complicated pregnancies. Such responses have evolved in a few short months to create situations where medical practitioners are hesitant to use established medical practices—including some that Catholic bioethics would prescribe—because of new laws or interpretations of the law, threatening lives in times of medical and emotional crisis.

(updated November 9, 2022), www.cnn.com/2022/11/09/politics/abortion-rights-2022-midterms/index.html.

¹⁰ Brian Stelter, “Some Media Outlets Backtrack as Authorities Confirm Story about 10-Year-Old Rape Victim Who Sought Abortion,” *CNN* (updated July 14, 2022), www.cnn.com/2022/07/14/media/abortion-debate-reliable-sources/index.html.

¹¹ Elizabeth Dwoskin, “‘Bring Rifles’: Extremist Groups Call for Violence over Abortion Ruling,” *Washington Post* (June 24, 2022), www.washingtonpost.com/technology/2022/06/24/extremists-violence-abortion-ruling/; and Valerie Richardson, “Attacks on Pro-Life Facilities Post-Dobbs Make up 70% of FBI’s Abortion-Related Cases,” *The Washington Times* (November 17, 2022), www.washingtontimes.com/news/2022/nov/17/christopher-wray-fbi-says-70-post-dobbs-abortion-r/.

¹² US Conference of Catholic Bishops, “USCCB Statement on Supreme Court Ruling in *Dobbs v. Jackson*.”

In light of this changed and unstable landscape, reasoned dialogue on abortion is needed now more than ever. The legal battles over reproductive rights will continue to be fought in state legislatures going forward, and important moral questions, now more confused than before the *Dobbs* decision, will continue to be debated in many arenas. With the goal of opening a dialogue surrounding this moral confusion, the *Journal of Moral Theology* invited a number of leading Catholic scholars to address the following question: what needs to change to foster “reasoned reflection and [constructive] civil dialogue” within Catholic contexts around the issue of abortion?¹³ Representing a range of positions on both the *Dobbs* decision and the question of abortion, each scholar focuses on one or two key changes or clarifications she or he thinks would help shift the discourse in a constructive direction.

Such intervention is critical not only for our national milieu, but for Catholic contexts as well. In the wake of the *Dobbs* decision, many who teach at Catholic universities voiced their own experiences of finding it difficult to initiate, let alone advance, attempts at reasoned and constructive campus conversations on abortion. The polarization of students and faculty, along with the sometimes stated, sometimes assumed positions of campus administrators, has long stifled discussion. Faculty and staff invoke fear of retribution—from both “the right” and “the left”—for holding certain views or simply attempting to complicate the analysis. Yet in our experience and that of many of our contributors, abortion remains at the top of the list of moral issues students most want to discuss. Some of this discussion occurs in classrooms where some students, especially those who have had abortions, may feel judged or condemned—or perhaps newly emboldened to speak about it. Other students may see class discussions as an opportunity to further entrench their own views, closing their minds to other possibilities. Professors, therefore, are faced with a minefield and may find themselves ill-equipped to moderate what sometimes devolves into further polarization. The easiest thing is to avoid the minefield altogether.

What suggestions do these scholars offer for defusing the mines and advancing the dialogue? Their responses are unique and varied, addressing both law and morality and incorporating their own experiences and observations in pursuit of constructive suggestions for moving forward. The contributing scholars represent different social and professional locations; several of them may disagree, but all have given deep thought to the social, emotional, and moral implications of the conversation after *Dobbs*. Our symposium begins

¹³ This symposium is modeled on a colloquium hosted by the *Journal of Religious Ethics* in August 2020 on “COVID-19 and Religious Ethics,” onlinelibrary.wiley.com/doi/full/10.1111/jore.12328.

with contributors who offered insights on theoretical factors that have hampered *dialogue* about abortion. We follow with three essays focused on the crucial question, often bypassed in current commentary, of *women's bodily integrity and governance*. We conclude with a series of essays on *Christian practices* necessary for fostering reasoned, responsible, and—dare we hope—productive dialogue around abortion on Catholic campuses. Here are just a few words about each contribution and their individual recommendations on the question at hand:

As **M. Cathleen Kaveny** notes, part of what fuels the seemingly intractable debate is not only that parties on opposite sides start from irreconcilable premises. More determinative are two broader and fundamental moral frameworks at play: an intention-based and a rights-based framework. Kaveny deftly and carefully outlines how the logic of each plays out in the law, tracing how both are inadequate to the realities of abortion. What is needed, she rightly suggests, is a different frame.

Simeiqi He shares reactions to the *Dobbs* decision from family and friends in China, reminding us that just as US policies take place in an international context, so our US Catholic universities are also international communities in microcosm—and part of a church transcending national boundaries. She calls Catholic colleges and universities to inculcate a “radical orientation toward a fundamental universal communion,” of which reasoned dialogue around complex topics can serve as a precursor and incremental step.

David DeCosse turns to the twentieth-century Polish poet and essayist Czesław Miłosz, who called upon the artistic community to resist intellectual captivity under totalitarianism. In light of Miłosz's insights, DeCosse offers three important cautions as colleges and universities in the US continue the abortion debate post-*Dobbs*. These are, first, to acknowledge our relatively privileged position in the Western academy and the naivete that may result; second, to challenge monolithic approaches to Catholic thought that help fuel the rise in Christian nationalism; and third, to turn to the poets and artists of our times to recapture the complexity and mystery of human experience.

Jane Sloan Peters describes the challenges and rewards of pursuing moral inquiry with students who often struggle to incorporate emotion properly in reasoned argument or recognize that scientific experts make philosophical or even religious claims. Modeling reasoned discourse through examples drawn from the post-*Dobbs* legal landscape, Peters concludes: “One of the most important parts of the Catholic intellectual tradition is the assertion that humans are rational beings, capable of discovering the truth and freely choosing

the good. We honor this when we help students recognize their own ability to think through complex moral issues.”

Where Kaveny identifies a dualism between two moral frames, **Kathleen Bonnette** challenges an additional series of dualisms. One is the one-zero binary that the only or primary “Catholic” moral position is the criminalization of abortion, regardless of the fact that data shows that efforts to decrease abortion via means other than legal prohibitions are more effective. A second surrounds the category of intrinsic evil, which grounds efforts toward legal prohibition. Bonnette complicates this position, noting that in the Catholic tradition, the violation of (women’s) bodily integrity is equally identified as an intrinsic evil. She highlights how these claims stand in tension with “the Church’s theology of women [which] focuses primarily on the renunciation of the embodied female self in favor of sacrificial motherhood or virginity.”

M. T. Dávila calls Catholic colleges and universities to reflect on their mission commitment to the formation of students and asks us to consider how the dialogue might shift if we engaged in the exploration of women’s personhood that foregrounds their many varied lived experiences. She highlights the ways in which our accompaniment of young people is stunted by the bifurcation of issues related to social justice and those related to gender, sexuality, and reproduction.

Holly Taylor Coolman also examines the question of bodily autonomy, a key concern of those who argue for legal abortion, through philosophical and legal methods accessible to interlocutors of any or no faith commitments. For Coolman, the existence of “duty-to-rescue” laws suggests that the law may and does impose obligations at odds with absolute bodily autonomy. The logic behind such laws also points to the obligation of communities at large to support those providing immediate rescue to those in danger, pointing to the need for communities to financially support families through law and policy.

Fundamental for charting a constructive way forward are foundational *practices* for reasoned and constructive discourse—practices that, lamentably, seem to have been lost in our current climate. As **Jana Bennett** argues, the first is the practice of telling the truth to each other, to the point of acknowledging and confronting truths revealed by those with whom we disagree. The debates about abortion are not necessarily as clear as some arguments make them seem, and lack of nuance inhibits possibilities for understanding one another and engaging in constructive discussion. This is especially difficult in the polarized milieu in which we currently find ourselves.

Symbiotic with truth-telling is the fundamental practice of *listening*, particularly listening to women highlighted by **Emily Reimer-Barry**. She also poignantly emphasizes that a pre-requisite for adequate moral analysis is careful attention to the limits of our

lived histories and how these, in concert with other factors, shape our epistemologies. She concludes by challenging intellectually and morally lazy analyses deploying tired labels and rhetorically dismissing the positions of others without making careful moral arguments.

Dan Daly makes a plea to those who identify as pro-life to examine both the rhetorical style and the substance of the argument employed in debates about reproductive justice. Grounded in commitment to a “consistent ethic of life,” Daly’s intervention prompts Catholic communities to consistency in advocating for human dignity across a range of issues and, perhaps even more vital for dialogue, between the message of human dignity and a rhetorical style that honors the dignity of women who choose abortion and all interlocutors.

Drawing on five years of experience with *The Dialogue Project* that she developed at Saint Mary’s College, **Meghan Halteman Zwart** finally offers deep insights into how intellectual hospitality—a willingness to be open to and accepting of the views of other people—helps create a more inclusive community and allows us to be empathetic toward each other. Active listening, honest and open questioning without shaming, and supportive spaces allow all human beings to flourish and grant students in particular opportunities to grow and transform their views on many topics, not just abortion. Creating the spaces for this to happen is intentional and can be difficult, but essential to the task of the theologian, the professor, and the Catholic context.

We hope our symposium models the type of reasoned dialogue we believe the current moment needs. Our contributors do not always agree on theoretical issues such as bodily autonomy, nor on their practical implications, including abortion’s legality. Respecting each contributor’s convictions, we have enjoined them to speak in their own voice, without imposing standard language to characterize, for example, positions on abortion or descriptions of pregnant people. Our contributors kindly agreed to a short length, imposing rigor on their own arguments in order to make their contributions maximally accessible to both academic and non-academic audiences.

As we were finalizing this symposium, we received word that our friend and colleague Shawnee Daniels-Sykes had died after living with cancer for nearly three years. Before her final bout of illness, she had agreed to contribute to the symposium. She sketched her initial thoughts on her contribution as follows:

The whole idea of the *imago dei* relates to all of us—we are in social relationships with each other as community. I think that if we would

focus on the context of what community and the common good means to this landscape, that would help a great deal.

For example, Jesus's infancy narrative has a great deal to say about having no place in the inn to be born. In the end, he was born in a barn along with a community of folk and animals paying homage to him. We also had the forces of evil wanting to abort him as well. What does it mean to have no place for an infant to be born? Do we dispose of it or get creative about how to give birth to human life surrounded by a community?¹⁴

We are sorry for not being able to add her complete perspective to this conversation and remain deeply saddened at the loss of Shawnee and the stilling of her important and relevant voice on moral matters. *Eternal rest grant unto Shawnee, O Lord, and make perpetual light to shine upon her.*

As Dr. Daniels-Sykes noted, we live together in community and the Christian tradition obligates us to build that community in ways contributing to the flourishing of all. Our goal in this volume has been to advance the dialogue around abortion our communities engage in, especially the communities we serve as faculty and leaders. The essays in this symposium present us with many starting points from which to move forward within those communities. Far from comprehensive, we hope it invites the broader Catholic community to identify additional conceptual and practical interventions for rehabilitating practices of reasoned reflection, courageous dialogue, and respect for all persons. We also hope it spurs reflection on the ways in which the Catholic community has often failed to embody in its public witness key hallmarks of the Catholic tradition—reason, charity, reconciliation, hospitality, humility, accompaniment, and more. In doing so, Catholic colleges and universities might witness how better to conduct conversations on difficult moral questions in other public forums—and, in fact, lead such an initiative. **M**

¹⁴ Shawnee Daniels-Sykes, personal email correspondence, August 24, 2022. For a moving tribute to the life and work of Dr. Daniels-Sykes, see Nate Tinner Williams, "Reflection: Dr. Shawnee Daniels-Sykes, Pioneer of Black Catholic Womanist Ethics, Dead at 61," *The Black Catholic Messenger*, November 11, 2022, www.blackcatholicmessenger.com/dr-shawnee-daniels-sykes-obit/.