

Comparative Analysis: U.S. and Europe's Perspectives on Reproductive Rights and Gender Equality

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Abstract. This paper considers reproductive rights as a legal and human rights issue. It outlines the U.S. constitutional trajectory from *Roe v. Wade* in 1973 to *Dobbs v. Jackson* in 2022, noting how the termination of federal abortion protection has created a patchwork of abortion laws at the state level. The paper situates these changes in light of international law--particularly in the CEDAW and ICCPR frameworks--and compares them to trends in Ireland, France, and Poland. The former two have brought domestic law into conformity with international law, while the latter has imposed strict limitations on abortion access, illustrating the continued tension between national sovereignty and global human rights obligations. Ultimately, the paper argues that limiting abortion access is detrimental to equality and dignity, and that reproductive autonomy remains a vital component of women's rights under international law.

Keywords: Reproductive rights, abortion, gender equality, International Law, CEDAW, *Roe v. Wade*, *Dobbs v. Jackson*, human rights.

1. Introduction

Reproductive rights are understood in many academic and UN / WHO documents as encompassing the right of individuals to decide freely if, when, and how often to have children [1]; to attain the highest standard of sexual and reproductive health; and to make decisions about reproduction free of discrimination, coercion, and violence [1]. For example, the World Health Organization defines sexual and reproductive health and rights as including the ability to “decide if, when and how often to have children,” to have healthy pregnancies and births, safe and satisfying sexual lives, and access to contraception and comprehensive health services. These rights are widely recognized as fundamental to gender equality [1]. These rights ensure that women and other pregnant people can control if and when to have children, which directly affects their social, economic, and political status [2].

International human rights norms have connected abortion access to other guarantees of equality, privacy, and bodily autonomy. In this context, this paper surveys how constitutional and treaty law shape abortion rights in the United States (*Roe v. Wade* to *Dobbs*) and international law (notably CEDAW and the ICCPR), with a particular focus on examples in Europe (Ireland, France, Poland) [3,4]. It shows how recent developments in the United States, which terminated the federal abortion right, diverged from the former's international obligations. The paper highlights how domestic policy changes have strained tensions with global obligations. Specifically, it examines how limiting reproductive rights may violate human rights law.

2. U.S. Constitutional Law: *Roe v. Wade* through *Dobbs v. Jackson*

In 1973, the U.S. Supreme Court in *Roe v. Wade* held that the Due Process Clause of the Fourteenth Amendment protected a “right to privacy” encompassing a woman’s decision to have an abortion [3]. *Roe* established a framework allowing states to regulate abortion by trimester: early in pregnancy, the state could not ban abortion; during mid-pregnancy, it could impose regulations in furtherance of maternal health; and after fetal viability, it could prohibit abortions except to save the mother’s life [4]. For nearly fifty years, this ruling meant that abortion was “fundamentally legal” in

all 50 states, and strict state bans were unconstitutional [3]. Under *Roe*, Pennsylvania's ban (at issue in *Roe*) and many similar statutes were struck down as violating this right to privacy.

This constitutional right to abortion was reaffirmed in *Planned Parenthood v. Casey* (1992), which replaced *Roe*'s strict scrutiny test with an "undue burden" standard. Under *Casey*, states could not impose laws having "the purpose or effect of placing a substantial obstacle in the path of a woman seeking an abortion" before fetal viability [4]. But in June 2022, *Dobbs v. Jackson Women's Health Org.* dramatically changed this landscape. Justice Alito's majority opinion in *Dobbs* overruled *Roe* and *Casey*, holding that the U.S. Constitution does not confer a right to abortion at all. The Court explicitly rejected *Roe*'s reasoning: future "unenumerated rights" must be "deeply rooted in the Nation's history and tradition," and the majority found that abortion is not. Thus, *Dobbs* removed any federal protection for abortion, returning the issue entirely to the states, as the Brennan Center summary explains, "Not under the U.S. Constitution, according to the current Supreme Court. In *Dobbs*... the Supreme Court overturned *Roe v. Wade* (1973), which guaranteed a constitutional right to abortion" [3]. This decentralization is the root cause of increasingly pronounced interstate differences in abortion access [5,6]—one state might enact near-total bans while its neighbor enshrines abortion protections—laying the groundwork for the patchwork regulation discussed below.

In the wake of *Dobbs*, the legal status of abortion in the U.S. became highly fragmented. Some states have enacted laws affirmatively protecting abortion (often via state constitutional or statutory guarantees), while others have banned abortion almost completely. For example, state supreme courts in Alaska, California, New Jersey, and several others have held that their constitutions independently safeguard abortion rights. But a large number of states passed "trigger laws" or resumed old bans that make abortion illegal or severely restricted. As one analysis notes, "following *Dobbs*, reproductive rights are being decided state by state... Many states, however, have made abortion illegal" [3]. This patchwork means that the practical availability of abortion now depends entirely on local law: a fundamental right in some jurisdictions and a felony in others [5].

For instance, as of early 2025, 14 states have total abortion bans (with limited or no exceptions), while about 20 states have enacted laws or constitutional protections affirming access up to viability or beyond. In the states with bans, clinics have closed and out-of-state travel has surged; in protected states, laws have been passed to shield providers and patients and expand access [6]. In short, the United States has moved from a nationally recognized constitutional right (*Roe* era) to a regime of state-level patchwork regulation (*Dobbs* era) [4].

From a constitutional theory perspective, this shift reveals tensions between individual rights and federalism. *Dobbs* represents a judicial retreat from substantive due process and equality under the Fourteenth Amendment, what Lewis describes as "a re-segregation of rights by geography," undermining the principle of equal protection [5]. Empirical analyses support this result: states' responses have polarized, with restrictive jurisdictions increasing criminal penalties and progressive ones expanding reproductive healthcare.

3. International Human Rights Standards on Reproductive Rights

International human rights law, through treaties and UN bodies, generally regards reproductive autonomy as part of core rights to health, equality, and non-discrimination [2]. Though no global treaty explicitly creates a freestanding "right to abortion," several provisions and authoritative interpretations protect reproductive rights [7,8]. Indeed, interpretative practice—through UN treaty bodies, general comments, and case law—has increasingly reinforced the idea that states have obligations to permit abortion in certain circumstances (e.g., to preserve health, life, or in cases of rape/incest), to avoid forcing pregnant people into unsafe procedures, and to eliminate discrimination in reproductive health-care access. For instance, CEDAW (the Convention on the Elimination of all Forms of Discrimination Against Women) in Article 16 recognizes that women have equal rights to decide "freely and responsibly on the number and spacing of their children," and the U.N. Human

Rights Committee (UN HRC, enforcing the ICCPR) has emphasized that restrictions on abortion must not jeopardize women's lives or health [2].

In practice, U.N. treaty bodies have repeatedly called on states to relax restrictive abortion laws. As one Human Rights Watch summary observes, "UN human rights treaty bodies... have consistently called for decriminalization of abortion and the full realization of sexual and reproductive rights, including access to safe, legal abortion" [2]. The CEDAW Committee specifically has urged states to "legalize abortion at least in cases of rape, incest, threats to the life and/or health of the mother, or severe fetal impairment," and to remove punitive measures against women who undergo abortions [7]. Similarly, the Human Rights Committee, interpreting the ICCPR, has clarified that states must not impose abortion restrictions that force women to resort to unsafe procedures or put their lives at risk. Other UN bodies – including the Committee on Economic, Social and Cultural Rights and the Committee against Torture – have stated that banning abortion can violate health rights and the freedom from inhuman treatment [7]. In sum, the international consensus among human-rights experts is that overly rigid abortion bans conflict with human rights obligations, and that governments should ensure access to safe abortion to protect women's health and equality.

4. Key international instruments and interpretations

CEDAW (1979): Article 12 requires states to eliminate discrimination in healthcare and reproductive health. The CEDAW Committee's general recommendations repeatedly link access to abortion with women's equality and health. In country reviews, CEDAW bodies have called on states to permit abortion at least under broad exceptions (rape, health risk, fetal anomaly) and to decriminalize it generally [7].

ICCPR (1966): Article 6 protects the right to life, which the HRC interprets as obligating states to protect women's lives by allowing abortion when pregnancy endangers health or life. Article 7 (freedom from cruel treatment) and Article 17 (privacy) have also been invoked. In *Mellet v. Ireland* (2016) and *Whelan v. Ireland* (2019), the HRC found that Ireland's abortion ban violated the rights against cruel, inhuman or degrading treatment (Article 7) and the right to privacy (Article 17) under the ICCPR, because the law forced pregnant persons to carry non-viable pregnancies to term, with significant psychological and physical harm. In its 2018 General Comment No. 36 on Article 6, the HRC explicitly stated that states must provide abortion services when necessary to protect life and health, and must not force women into unsafe abortions.

ICESCR (1966): Article 12 guarantees the right to "highest attainable standard of physical and mental health," which U.N. expert bodies read to include reproductive health. The Committee on Economic, Social, and Cultural Rights has warned that restrictive abortion laws undermine women's health rights.

Convention Against Torture (1984): The Committee against Torture has held that severe distress from forced continuation of pregnancy can amount to cruel or degrading treatment, and it condemns punitive abortion laws [2].

Regional instruments: The European Court of Human Rights [8] has consistently scolded Poland (see below) for upholding rights on paper but then failing to make them legal in practice, making abortions inaccessible. Within the EU, the Charter of Fundamental Rights protects human dignity and health, but does not mention abortion; however, the member states are obligated to the ECHR and other treaty interpretations.

These international standards present abortion access as connected to other fundamental rights. Limiting abortion is considered to impede gender equality and violate the state's obligations to protect women's health and personal autonomy. As Human Rights Watch puts it, "Access to safe, legal abortion is a matter of human rights," and the restrictions on it "undermine a range of human rights," including equality, health, and privacy.

5. Comparative Perspectives: Europe (Ireland, France, Poland)

Beyond the U.S., legal traditions in Western Europe illustrate how constitutional and international law can shape reproductive rights. In most major democracies, abortion liberalization has occurred, albeit through different pathways. Ireland and France provide interesting constitutional examples, while Poland has seen a counter-trend [9].

For four decades, Ireland had one of the most restrictive abortion regimes in the world, recognized as official state policy by the 1983 Eighth Amendment of the Irish Constitution, which declares an equal right to life of the unborn and of the mother [10]. Under this framework, almost all abortions were illegal, even in cases of rape or severe fetal impairment. The country faced sustained international criticism: a 2012 UN CEDAW review condemned Ireland's criminal penalties for abortion, and in 2016 the UN Human Rights Committee held in *Mellet v. Ireland* that Ireland's total ban violated Articles 7 and 17 of the ICCPR [10]. In May 2018, Ireland held a national referendum to repeal the Eighth Amendment, which had enshrined in the Constitution equal recognition of the unborn and the pregnant woman's lives [9][10]. Voters approved the repeal by about a 66% majority. Subsequently, the Oireachtas enacted the Health (Regulation of Termination of Pregnancy) Act 2018, which permits abortion on request up to 12 weeks of gestation, and beyond that in cases where the pregnancy poses a risk to the life or health of the woman, or where there is a fatal fetal anomaly. This statute structure, its gestational limits, and its exceptions bring Ireland into closer alignment with European norms and with recommendations from CEDAW and the Human Rights Committee. The Irish example shows how comparative and treaty-based pressure (via CEDAW, the HRC, the CRC, etc.) helped spur constitutional reform to protect women's rights.

In contrast, Poland, a modern EU state, moved in the opposite direction. Already one of only two EU countries without legal abortion on request, Poland's Constitutional Tribunal in October 2020 ruled that abortion due to fetal impairment was unconstitutional, removing what had been the most commonly used legal ground for termination [11]. This is in tension with prior European Court of Human Rights jurisprudence: *Tysi c v. Poland* (2007) is a landmark ECHR case in which the Court found that Poland violated Article 8 (right to private life) of the European Convention on Human Rights by failing to provide an effective mechanism for a woman to determine whether she qualified for a therapeutic abortion under Polish law.

The Polish law now permits abortion only in cases of rape, incest, or when the pregnancy threatens the life or health of the mother, with the fetal impairment ground removed. Poland's restriction has drawn international condemnation [13]. The UN Committee on CEDAW (via a press release in August 2024) and other UN experts have found that Poland's unduly restrictive laws violate women's rights. The policy consequences have been devastating: "The impact of Poland's laws on abortion has been serious, with the death of several women and great harm and suffering inflicted on many others," and that Poland "has incurred judgments of the European Court of Human Rights (ECHR) as far back as 2007 for lack of effectiveness in access to abortion care." [12] Indeed, in three ECHR cases (e.g., *Tysi c v. Poland*, 2007), the Court found that it had violated multiple rights because of Poland's *de facto* ban. Polish legal scholars maintain that the country's policy is a "closing of the jurisprudential horizon," which violates the rule of law and CEDAW, the ICCPR, and the ECHR [12]. The human consequences have been severe, with women dying after being denied care and UN bodies finding the law incompatible with women's fundamental rights [14]. Thus, Poland demonstrates how domestic forces—constitutional, religious, and political—can push a country in the opposite direction, triggering collisions with international human rights law.

The three European cases show how domestic responses can vary. Ireland and France have both incorporated reproductive autonomy into constitutional gender equality, while Poland has moved to a near-total ban despite human rights pressure [9]. The EU as a whole defers to member states on abortion, but EU institutions do promote gender equality and health rights. What links the examples is the role of the national constitution and international law: EU and Council of Europe members like Poland face binding ECHR judgments on abortion and states like Ireland and France respond to global gender norms when they re-order their constitutional orders.

6. Domestic Restrictions vs. International Obligations

The gap between domestic laws and international human rights norms is striking. When the U.S. forbids abortion, it often invokes sovereignty or moral standards, but critics say such prohibitions can “go against international human rights law”. The U.S. has signed but not ratified CEDAW, limiting the binding force of gender-quality obligations at home and learning international norms largely persuasive rather than mandatory [5] [7]. This lack of ratification means that many of the strong obligations under CEDAW are non-binding domestic law in the U.S., creating a structural or institutional weakness: critics argue the U.S. is less accountable to international pressure regarding gender equality in reproductive rights than fully ratified states are [15]. After Dobbs, some U.S. scholars argue that denying abortion access could run afoul of treaty obligations on nondiscrimination and health, especially since the HRC’s interpretations suggest countries must protect women’s lives by allowing abortions when needed [2][6]. No U.N. treaty currently grants an affirmative right to abortion, yet the trend among treaty bodies is to treat access as part of core rights. Thus, U.S. states that ban abortion might be seen as conflicting with the spirit (if not the letter) of international gender-equality commitments [14].

In Europe, the tension is even clearer. Poland has ratified CEDAW, the ICCPR, and the European Convention on Human Rights, all of which impose duties at odds with its strict anti-abortion laws. Poland’s failure to comply with ECHR rulings (and its 2020 constitutional ruling) has been formally criticized by the Council of Europe’s Committee of Ministers (reproductiverights.org). Ireland’s old laws were found to violate ICCPR rights (HRC decisions against Ireland) and CEDAW recommendations [11]; repeal of the ban brought domestic law back in line with international norms. France’s constitutional guarantee preempts that conflict, ensuring all French laws will accommodate its CEDAW and ICCPR obligations.

7. Tensions Highlighted by Human Rights Bodies

International bodies have not been shy about calling out conflicts. For example, in August 2024, a UN press release reported that the CEDAW Committee had found that Polish women’s rights were being violated by the country’s abortion restrictions [13]. Similarly, the UN Committee on Economic, Social, and Cultural Rights and various UN Special Rapporteurs have warned that punishing abortion providers or forcing women to carry unwanted pregnancies can breach obligations to protect health and be free from torture or degrading treatment [2][7]. Even within the U.S., United Nations experts have raised red flags. In 2016, the HRC found Ireland’s refusal of abortion in Amanda Mellet to amount to cruel treatment and violation of privacy, and the same rationale could be applied to U.S. bans.

In sum, where reproductive rights are restricted, international law bodies typically find those restrictions discriminatory and harmful. As the Human Rights Watch analysis puts it, “access to safe and legal abortion is a matter of human rights,” because it is also a matter of rights to life, health, information, privacy, and equality. The practical effect is that a total ban or a prohibitive restriction on abortion may conflict with state commitments under CEDAW, ICCPR, and other regional human rights treaties. States that restrict abortion too rigorously risk being in breach of international gender-equality obligations.

8. Conclusion: Implications for Gender Equality

The modern legal reality is starkly divided. On one side, the US (post-Dobbs) and Poland have taken a step back from reproductive freedom by enacting limits on abortion in domestic law, limits that are not supported by international gender-equality standards. On the other side, Ireland and France have taken steps to liberalise abortion and even to constitutionally entrench abortion rights, moves that align abortion law more closely with international human rights expectations. The consequences of this divide are significant: limiting access to abortion is not only an assault on

women's autonomy, but – as the human rights authorities above have stated – can be an exercise of discrimination, stigma, and physical harm. The consequences of this divide are significant: limiting access to abortion is not only an assault on women's autonomy, but – as the human rights authorities above have stated – can be an exercise of discrimination, stigma, and physical harm. In the future, states or international bodies might find scope for more robust enforcement of treaty-body decisions, perhaps through regional human rights courts. There is also scope for regional constitutional guarantees (as France did in 2024) and for comparative jurisprudence to drive reform in particularly restrictive systems. Of course, states might continue to face litigation in international fora if domestic law remains in conflict with their international human rights obligations over time, which might drive legal change too.

From a legal perspective, the conflict between domestic law and international expectations remains unresolved. International treaties depend on a question of human nature – of goodwill and of pressure rather than enforcement – to drive change. But the supportive jurisprudence of international bodies (for example, the UN Human Rights Committee, the CEDAW Committee, and the ECHR) offers a robust normative argument that restrictions on abortion violate rights. It suggests that the US and Poland are outliers in a global trend towards recognizing the reproductive autonomy of women and girls as central to women's equal participation in society [16].

For women's equality, the dice are loaded. Control over having children affects women's health, economic prospects, and status. When a state “decriminalizes and legalizes abortion” (as advised by the international bodies), it is one step closer to granting equal rights. When it maintains an abortion law, it is reinforcing inequalities and violating serious human rights issues. Whatever happens, the constitutional system and the international order will “diverge or converge” on this issue. The task is to follow these developments and appreciate their legal consequences: It tells us that reproductive rights are not a political issue of the moment, but flow from well-established international commitments to gender equality and respect for human dignity.

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