
Limiting the Impact of Dobbs: The Potential for International Solidarity

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The U.S. is now a global outlier in terms of abortion law and access. Thirty-seven countries around the world have [liberalised abortion](#) access in the past twenty-two years. During the same period, only one, Nicaragua, increased its abortion restrictions, adopting a complete abortion ban. Other countries that maintain restrictive abortion laws include authoritarian regimes in Venezuela and Poland. With the U.S. Supreme Court's decision in [Dobbs v. Jackson Women's Health Organization](#) on June 24, 2022, the U.S. joined this rogues' gallery. Dobbs rescinded the fundamental constitutional right to abortion and gave the green light to states to adopt any and all manner of abortion restrictions, including complete bans from the moment of fertilisation.

U.S. policymakers often profess a lack of concern about worldwide comparisons, but international abortion laws and practices were at the centre of the Dobbs case. The text of the [Mississippi law](#) at issue in Dobbs began with the assertion that U.S. abortion law was out of step with the rest of the industrialised world and was instead comparable to the laws of China and North Korea – a dubious claim that, at the very least, ignored the abortion laws in the Netherlands, New Zealand, Iceland, Canada, Colombia, and the United Kingdom.

When Dobbs reached the U.S. Supreme Court, [several amicus briefs](#) submitted in support of the Mississippi clinic attempted to shed light on these comparative law issues, but found few open minds. An [amicus brief](#) that I worked on, joined by thirty international and comparative law scholars hailing from countries ranging from Iceland to Nepal, explained the nuances of comparative abortion access in detail. We stressed the complexities of comparing countries with universal health care, strong social supports, and ready exceptions to time limits that, in practice, provide abortion access up to viability, to the spotty prenatal health care and

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inadequate social supports offered in Mississippi and generally throughout the U.S. In Mississippi, for example, [more than 20% of women have no health insurance](#), and educators are [forbidden](#) from demonstrating proper use of contraception. Nevertheless, during oral argument, Chief Justice Roberts [repeated](#) the facile arguments of abortion opponents that the proposed 15-week ban in Mississippi “is the standard that the vast majority of other countries have.”

Another powerful [amicus brief](#) submitted in support of the Mississippi clinic was filed by United Nations mandate holders, including several UN Special Rapporteurs. These experts explained that international human rights law protects abortion access as a component of the rights to equality, privacy, life, health, and freedom from cruel, inhuman, or degrading treatment. The U.S. is subject to these standards through its ratification of the International Covenant on Civil and Political Rights and the Convention Against Torture, and prohibited from retrogression as a signatory to the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). The Supreme Court’s majority opinion, however, wholly failed to acknowledge the human rights at issue or to consider what obligations the U.S. might have under international law.

Within just a few weeks of the Supreme Court’s decision in Dobbs, the U.S. abortion landscape has become a chaotic and confusing [patchwork](#). In some states, such as New Mexico, the fundamental right appears to be secure as a matter of state constitutional law, at least in the near-term. In other states, such as [Montana](#), abortion opponents hope to overturn a state high court decision protecting abortion rights. And in some states, such as [Alabama](#), all abortions are now banned, even for pregnancies resulting from rape or incest. Further, several states, such as [Texas and Missouri](#), are looking for ways to control access to abortions outside of their own jurisdictions by attempting to extend their own state laws extraterritorially. For example, State A could attempt to criminalize an abortion conducted by a medical practitioner in State B, involving a patient from State A, based on the impact of the abortion in State A.

Certainly, abortion opponents’ success in the Dobbs case should be a wake-up call for feminists in the many countries worldwide that have made abortion gains in recent years.

While it would not be fair to say that U.S. abortion rights activists were ever complacent about the right to abortion, there was certainly a [tendency to rely on the courts](#) as the means to protect abortion access. In this respect, abortion was not different from other rights in the U.S. that have been ceded to the courts, like [marriage equality](#). But the Dobbs decision drives home the danger of that approach, with important lessons for activists both in the U.S. and abroad.

Beyond learning from the U.S. example, abortion rights activists worldwide can also help ensure that U.S. denial of the fundamental right to abortion comes with some consequences on the world stage. The European Union's [dogged opposition to the death penalty](#) provides an example. Like abortion, it is a [U.S. Supreme Court ruling](#) that permits individual states to make determinations regarding the death penalty, with a resulting patchwork of state laws. Recognising exercise of the death penalty as a fundamental human rights issue, the EU files briefs, conducts missions to states that permit the death penalty, and regularly speaks out at the UN and in other international fora to confront the U.S. on states' continued policies of allowing executions.

There will be similar opportunities for other nations to raise the abortion issue, to demonstrate that the U.S. is an isolated outlier, and to maintain pressure for abortion liberalisation in the U.S. For example, going forward, countries can monitor the treatment of foreign nationals in the U.S. who are denied abortion access; if foreign nationals are affected by abortion criminalisation, the [Vienna Convention on Consular Relations](#) may mandate consular notice and provide an occasion for diplomatic engagement on the issue, highlighting the denial of fundamental rights. When the U.S. undergoes its [Universal Periodic Review](#) as part of the UN human rights system, countries can use their allotted time for short statements to question the U.S. government about abortion access, just as they currently often [criticise the U.S. position on the death penalty](#). While this is a long term strategy at best, it can have the impact of pressuring the U.S. government to continue prioritizing the issue on the domestic front. Abortion rights activists worldwide can urge their own nations to use these mechanisms to continue to hold the U.S. accountable for stripping women of their fundamental right to abortion.

In the wake of Dobbs, feminists worldwide have naturally been on [alert](#), concerned about the global reverberations of the decision and its potential to strengthen the hand of abortion opponents. Given this possibility, keeping external pressure on the U.S. is in the interests of feminists globally, to ensure that the U.S. remains an outlier even as abortion rights activists work against any policy backsliding in their own countries.