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WRTC 330

May 6th, 2022

The Constitution: A How-To Guide for Controlling Women

On May 3rd, 2022, a Supreme Court of the United States draft opinion written by Justice Samuel Alito was leaked and then obtained by Politico; the opinion called for *Roe v. Wade* and *Planned Parenthood v. Casey* to be overturned. The primary argument for the ruling is: “The Constitution makes no express reference to a right to obtain an abortion, and therefore those who claim that it protects such a right must show that the right is somehow implicit in the constitutional text” (Gerstein and Ward, 9). This argument is rooted in Platonic realism, the idea that language is not connected to meaning and therefore can be exclusive. The SCOTUS is invalidating the right to privacy because the language is not plainly stated within their sacred text, a document written in men’s language being used to subjugate women’s bodies. David Bleich states in the introduction to his book, *The Materiality of Language: Gender, Politics, and the University*, “Language has been our principal means of collective survival, our principal source of interpersonal stability, and the foundation for the growth of all cultures. The use of language is part of every person’s daily experience and has been since birth” (Bleich, 1). Language creates the culture and the experiences within it. The language of the Constitution should be open to interpretation and subjectivity to accurately reflect the culture because language expresses thought, feeling, and lived experience.

Institutions, like the SCOTUS, hold specific historical texts as sacred, the same way Christians view the Bible. This process creates a vacuum in which no other force or being can argue against

them. Bleich defines “the language practice that follows from the use of Platonic realism as the sacralization of texts” (Bleich, 11). By removing accessibility to the language used in the Constitution, it becomes sacred and unable to change. The writers of the document, the founding fathers, created an institution which had the power to decide the importance of the document; the Constitution became the most esteemed literature in America, the Bible following closely behind. Only a select few Americans have access to interpreting the Constitution into law, making the language inaccessible despite being the document which all Americans are expected to live by. In the SCOTUS opinion published by Politico, Justice Alito states “It is time to heed the Constitution and return the issue of abortion to the people’s elected representatives” (Gerstein and Ward, 6). The use of the word “heed” implicitly states that there is a level of submission to the power of the Constitution. The argument for the right to privacy does not fall under the protected language of the institution, therefore this defense become invalid in their eyes. Bleich explains the reasoning behind this:

“The uses of secret, sacred, standard languages depend on their artificial, declared permanence. Such declarations are rarely direct performatives but appear through other official documents issued by governments: the language of biblical commandments, of constitutions, or of laws of science, or of papal bulls, are illocutionary speech acts, part of whose action is to declare the permanence of their own language” (Bleich, 152).

To remain permanent and revered, the SCOTUS and the other branches of government must create documents which only they can interpret with language that is gatekept from the American people to decide on; they have chosen to remain unchanging for us. They use the tool of abstraction to defend ancient ideals of tradition, also known as “controlling and subjugating women.”

The abstraction of language is the ancient art of taking a sacralized document or idea and making it a universal symbol to which all ideas are held. In this case, the abstraction is the Constitution itself. The text is a manifestation of American ideals, such as truth, liberty, freedom; all of which are vague and abstract. Therefore, the Supreme Court's decision to overturn *Roe v. Wade* and *Planned Parenthood v. Casey* is defended by language that "everyday people" do not have full access to. This is explained when Justice Alito continues:

"First, we explain the standard that our cases have used in determining whether the Fourteenth Amendment's reference to 'liberty' protects a particular right. Second, we examine whether the right at issue in this case is rooted in our Nation's history and tradition and whether it is an essential component of what we have described as 'ordered liberty.' Finally, we consider whether a right to obtain an abortion is supported by other precedents" (Gerstein and Ward, 8).

Based on this quote, Justice Alito is determining if women deserve the right to bodily autonomy based on abstract concepts such as "liberty" and the "Nation's history." What do these ideas even mean? The only people who fully know are those with the power to decide what they mean: men. Institutions intentionally draw distinctions between "men's language" and "women's language" by creating spaces in which men decide what our country stands on. Everyday people do not speak in abstractions, only men in power do. Bleich states, "Who but women and children are the millions of people denied access to their own language and forced to accept the 'transcendence' of the masculine 'signifiers'?" (Bleich, 230) As a result, women are forced to live their lives on these decisions

Where is a woman's place in the "man's Constitution"? The answer is nowhere; the argument that abortion is not protected because there is no explicit language in the Constitution leaves a

door open to various arguments. There is literally no “woman” in the Constitution. The founding father’s used language and understanding that only catered to men, therefore problems like women’s bodily autonomy are not explicitly stated. In opposition to this majority thinking, the materiality of language can express the lived female experience, despite language meaning being rooted in male motives and desire. Bleich explains on page 16 of his book that:

“Those who recognized the materiality of language, who made it their business to study the “means of contact and understanding,” became socially estranged—heretics, eccentrics, magicians, witches, poets, pornographers, troublemakers, or whistleblowers; each of these groups at different historical periods has challenged conventional pathways of access to language. Yet it is also true that those who have governed societies have learned how to control access, and through this control make use of the materiality of language as an instrument of governance. Most constituents of the general population, which has only local access to language, are not in position either to recognize its materiality or to make use of it if they did recognize it.”

This same situation can be applied to those who believe the Constitution should be accessible to all, and in this case specifically, women. Those who are standing up to this decision are not being listened to; their fight for constitutional language to be respected as material has been ignored. For female language to match with their experiences in the eyes of Platonic realism, the language of the Constitution must reflect the current state of the country. Language and understanding from 1787 should not be the basis for decision making in 2022. The lived experiences of women in America have been dismissed because there is no room for women’s experience in the sacred texts of the founding fathers. How is this justifiable? Men have made the decisions for women

for all of time because they have made themselves the only people who can access such language. This battle with the explicitly stated language in the Constitution proves that.

In a recent New York Times opinion piece by The Editorial Board, they reference the point that if the specific language of the Constitution is what is being threatened or questioned, there is a lot that can be overturned following this decision. They cite *Loving v. Virginia* as a potential overrule:

“The draft opinion relies heavily on the lack of a mention of abortion in the Constitution, and therefore argues that the document cannot be the basis for the right to terminate a pregnancy. The Constitution also says nothing about interracial marriage, but that didn’t prevent the justices from finding in the 14th Amendment the guarantee that no couple may be treated differently because of the color of their skin” (The Editorial Board).

Looking at this event from the eyes of intersectionality, it is obviously an issue with broad implications. This has become an issue of equal protection under the government, an ideal I thought Americans held. By switching the view of language to represent lived experiences, institutions can protect all people, despite not being explicitly stated in sacralized texts.

In conclusion, David Bleich brings the question of meaning to language used by institutions. Considering the recent SCOTUS opinion that has been leaked, I see it as important to view “Language [as] material because it is part of the real; there is no sense in which language is removable from experience” (Bleich, 182). The Constitution should not be sacralized to the point that women have their rights stripped away. Applying abstract ideals to language that affects the lives of all women is rooted in Platonic realism. The SCOTUS should change their view of constitutional language as material, as Bleich would also argue.

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