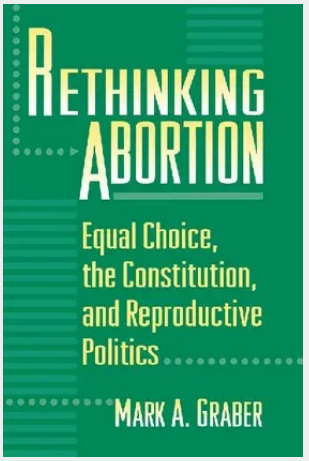
Graber

Rethinking Abortion

Equal Choice, the Constitution, and Reproductive Politics



Mark Graber looks at the history of abortion law in action to argue that the only defensible, constitutional approach to the issue is to afford all women equal choice--abortion should remain legal or bans should be strictly enforced. Steering away from metaphysical critiques of privacy, Graber compares the philosophical, constitutional, and democratic merits of the two systems of abortion regulation witnessed in the twentieth century: pre-Roe v. Wade statutory prohibitions on abortion and Roe's ban on significant state interference with the market for safe abortion services. He demonstrates that before Roe, pro-life measures were selectively and erratically administered, thereby subverting our constitutional commitment to equal justice. Claiming that these measures would be similarly administered if reinstated, the author seeks to increase support for keeping abortion legal, even among those who have reservations about its morality.Abortion should remain legal, Graber argues, because statutory bans on abortion have a history of being enforced in ways that intentionally discriminate against poor persons and persons of color. In the years before Roe, the same law enforcement officials who routinely ignored and sometimes assisted those physicians seeking to terminate pregnancies for their private patients too often prevented competent abortionists from offering the same services to the general public. This double standard violated the fundamental human and constitutional right of equal justice under law, a right that remains a major concern of the equal protection clause of the Fourteenth Amendment.

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