

The American Experience of Abortion: An Interdisciplinary Approach

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ABSTRACT: This is a brief overview of the history of abortion in the United States, from colonial times to the present. Factors such as family structure, the role of children in a family's economic life, the science of embryology, social mores, attitudes toward women, and political power have had an impact on the legal treatment of unborn children and their mothers. Legal changes were brought about in response to these changes and the interaction of factors must be considered when planning further course of action. Abortion presents a question that is core to our understanding of American democracy.

THE AMERICAN EXPERIENCE with abortion cannot be understood merely as a chronological series of events that have led inexorably to today's status quo. The story of abortion in America is the story of how changes in medicine, demographics, lifestyles, economic conditions, philosophy and politics alter views of morality, liberty and public policy. It is a study of American history.

The legality of abortion presents a unique challenge to the founding principles of the American republic: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit

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of Happiness.”¹ When a woman is pregnant, which right should be protected: a child’s life or a woman’s liberty? The answer may be clear from the perspective of morality and religion, but it is not clear as a matter of current American law. It is this very “clash of absolutes” that has made abortion controversial throughout American history.

Public opinion polls verify our national schizophrenia. In a recent NPR poll, 59% of respondents agreed that it was wrong.² Yet 52% said it should remain legal in all or most cases. So, if we take out the 48% who said abortion should be illegal in all or most cases, that means at least 11% of people believe abortion should be legal even though it is wrong. As a nation, we have been schizophrenic about when the child’s rights begin and when the mother’s rights end.

When Europeans first arrived on the American continent, they brought with them a variety of legal traditions. Many colonies passed “reception laws” that incorporated the laws of the homeland. From England this meant the adoption of “concealment” statutes intended to prosecute the concealment of the birth or death of a child of an unwed mother. Records are very sketchy but it appears that abortion was rarely attempted inside or outside of marriage because of the danger to the woman. Concern for the child was real, however. Abortion, when prosecuted, was treated as infanticide, which is what abortion was considered to be. Blackstone, the great recorder of the common law, described abortion as a high misdemeanor, and if the child were born alive, as murder. Most of those convicted during this time period were servants, slaves, or outcasts.³

The social mores of colonial America viewed the crime as “a rejection of the entire social and human order.”⁴ The attitudes toward pregnancy and children during this period were based on the desire to protect women and infants as well as the needs of the economic system. Children were an economic asset during colonial times. An economy based on agriculture (and without today’s farm machinery) needs people to work the land.⁵

¹ The Declaration of Independence.

² NPR Poll, March, 2011.

³ Joseph W. Dellapenna, *Dispelling the Myths of Abortion History* (Durham NC: Carolina Academic Press, 2005), p.115.

⁴ Dellapenna, p. 115.

⁵ Dellapenna, p. 111.

Most unplanned pregnancies among single women led to marriage. By the time of the Revolutionary War, a full third of brides had children within nine months of marriage. Marriage due to pregnancy did not have the same stigma that it came to develop during the Victorian Era. Pragmatically, colonies did not permit women to own land or inherit in their own name, so there was no ability to survive except in connection to a man, whether father, husband, brother, or son. The early laws were intended to protect women from unscrupulous men and to ensure the stability of the community.

The 1800s saw the beginning of the statutory age, with less dependence on the common law. England did not pass a law that specifically dealt with abortion until 1803, after the era of reception laws (those laws that were adopted from British common law as it existed prior to American independence). The first American state statute prohibiting abortion was passed by Connecticut in 1821. By 1841 there were 10 states and one territory with laws prohibiting abortion (there were 26 states at the time) and by the end of the century there were 17 (there were 45 states at the time). Eventually every state banned abortion at some point in the pregnancy. There is no evidence of widespread use of abortion in the 1800's, although many records were lost during the Civil War.

In the period leading up to the Civil War, there were three groups of women who fell victim to abortion. First, there were prostitutes whose economic survival was not enhanced by pregnancy. Second, there were those from the lower socio-economic classes who were often employed as servants and were routinely taken advantage of sexually, until they became pregnant and were forced into having abortions. Third, there were married women who were adherents of a movement called Spiritism, which advocated free sex. As would be expected, this inevitably led to unplanned pregnancies and abortion. Spiritists approved of abortion because they saw it as more beneficial to abort a child than to raise the child as unwanted.⁶ There were churches and voluntary associations that tried to provide housing and other services for these women, but attempts to curtail houses of prostitution or abuse of women servants met with little success. Part of the problem was that those who wanted to continue availing themselves of houses of prostitution and abortion also had influence with the courts and law enforcement. There was support among the elites

⁶Marvin Olasky, *Abortion Rites A Social History of Abortion in America* (Wheaton IL: Crossways Books, 1992), p.70.

(mostly men) for abortion as a method of destroying the evidence of promiscuity.

By the early 1900's, abortion laws were an accepted part of the culture, with many police departments having incorporated regular protocols for enforcement. Illegal abortions were being performed but the number has been widely disputed. Doctors who believed a pregnant woman's life was in danger were permitted to perform an abortion. American law and culture seemed to be at a point of equilibrium on the abortion issue.

The truce lasted about fifty years, from about 1890 until 1940, when the agitation for change began again. Under the surface, the culture was changing in ways that opened the door to more abortions.

First, the early 1900's saw the beginning of the American eugenics movement. The movement came as a reaction to immigration and the development of social Darwinism, the belief in the "survival of the fittest." Courts incorporated these beliefs into laws permitting sterilization and isolation of the "defectives." These beliefs were immortalized by Justice Oliver Wendell Holmes's infamous statement in defense of compulsory sterilization laws: "Three generations of imbeciles is enough."⁷ The notion that the possession of human biology was not enough to earn human rights was a seed that bloomed fully in *Roe v. Wade*.

A second development was the changes in medical care in the early part of the twentieth century. Abortion was often performed in septic conditions and with crude instruments and dangerous drugs and compounds. Needless to say, abortions in this era often resulted in severe injuries and death for women. As the practice of medicine improved, women's health became less of an impediment to abortion. Many who became involved in legalizing abortion believed they would be helping women by making sure abortions were being performed in greater medical safety. (As discussed later, this was not the primary reason for state prohibition laws.)

Third, the industrial revolution, which gained momentum as the twentieth century progressed, also played a role. As people left the farm, large families were no longer of great economic benefit. Fitting into smaller accommodations in cities was also not conducive to a large number of children.

The post-war period beginning in the 1940s increased the number of cultural conditions that favored a greater acceptability of abortion. Women

⁷ *Buck v. Bell*, 274 U.S. 200, 1927.

entered the workforce in greater numbers during and after World War II and multiple pregnancies came to be seen as a barrier to success for some. The introduction of the contraceptive pill in 1960 increased the accessibility to sex and the acceptability of abortion as a backup when contraception failed. The introduction of the automobile provided greater opportunities for unsupervised dating for teenagers and a consequent rise in sexual activity. There was a great fear of disabled children as evidenced by the pressure to allow abortions of infants whose mothers had received a German measles vaccination or who had taken thalidomide to prevent miscarriages. The result was a greater number of opportunities to conceive children, greater pressure on women not to have children and the removal of one of the major reasons to prohibit abortions: its dangers to women. Concern for the unborn child took a backseat to economic and social pressures.

In the United States, Dr. Alan Guttmacher was the first to recommend modest changes to state abortion prohibitions at a 1942 conference on “the abortion problem” at the New York Academy of Medicine.⁸ Several magazine stories pushing for reform of abortion laws followed. The American Law Institute published its *Model Penal Code* in 1962, which called for limited legalization of abortion. This helped legitimize the idea of changing abortion law in the states. The media became increasingly willing to report on stories of women needing abortions, the most famous of which was the 1962 story of Shari Finkbine, the “Romper Room” lady, who had taken thalidomide. The push for repeal of state laws began with Colorado in 1967.

Despite a massive public relations campaign as well as an extensive and determined grass-roots repeal movement, by the time *Roe v. Wade*⁹ was decided in 1973, only four states had adopted abortion-on-demand statutes, thirteen had adopted ALI (American Law Institute) statutes, and three had made relatively minor changes to their laws. Thirty-one states still had laws prohibiting abortion except when the life of the mother was threatened. That is the reason the abortion law repeal movement turned to the courts, successfully, to eliminate abortion restrictions. In 1973, all state restrictions were removed by the Supreme Court in *Roe v. Wade*.

In the years since *Roe v. Wade* was decided, American culture has

⁸ *The Abortion Problem*. Proceedings of the Conference held under the auspices of the Committee on Material Health, Inc, pp. 50-52, 100-04.

⁹ *Roe v. Wade*, 410 U.S. 113 , 1973.

undergone several changes. The unborn child has become increasingly visible through ultrasound technology. At the same time, a vast portion of the population has been personally touched by abortion. This complicity, whether willing or not, has created in many a need to justify, or at least accept, the existence of abortion as part of normal health care. Women are still being pressured to have fewer children. Sexual irresponsibility has become the norm, with a massive increase in the number of children conceived into one-parent families. The tide appears to have shifted in favor of liberty at the expense of life, as we appear to be increasingly willing to sacrifice unborn children in favor of choice. As the Joint Opinion in the 1992 Supreme Court *Casey v. Planned Parenthood* said: “[F]or two decades of economic and social development, people have organized intimate relationships and made choices that define their view of themselves and their places in society, in reliance on the availability of abortion in the event that contraception should fail.”¹⁰ The Supreme Court validated the idea that freedom is not bound by morality or the common good or any absolute standard; it is only limited by an individual’s will.

America has reached a stalemate, with the pressure to preserve life at war with the pressure to allow destruction of life when it is inconvenient or presents challenges. Even the political party which nominally supports the overruling of *Roe* has found it difficult to build an anti-*Roe* majority on the Court. When *Roe* was last affirmed (in *Casey*), all of the justices who voted for affirmation had been appointed by Republicans.

Our economic system rewards those who strive to acquire not wisdom, justice or peace, but acquisition of material things. The liberty on which the United States was founded has been transformed from freedom to pursue the common good to the personal autonomy of choice, or doing what is only in the interest of the individual without concern for the greater good. The rancor in our political system reflects that transformation.

The clear lesson of this brief overview of the history of abortion in America is that the battle over abortion will be determined by interaction of many factors. Cultural and economic conditions currently favor of the continuation of legal abortion. History can provide insight about how to change those conditions. History can also prevent costly mistakes that waste resources on irrelevant factors or focus on one factor, such as politics, at the expense of

¹⁰ *Planned Parenthood v. Casey*, 462 U.S. at 856.

all others. The second step is to establish a new paradigm for the culture based on an understanding of change and the realities of human nature. There is still much to be learned, analyzed and planned.

Perhaps the way to begin is to resolve the conundrum presented at the beginning of this paper: whether the inalienable right to life or liberty should be paramount in pregnancy. It is really not a conundrum at all if true liberty is seen as not mere choice but as doing what is in the best interest of the community. In pregnancy, then, the only decision possible is to do what is in the best interests of the community of both mother and child. Life and Liberty will then be in balance. That is a new paradigm.