

ABORTION HISTORY

Anyone who is honestly interested in the history of abortion in the United States, and is willing to put in the time to get it, need look no further than Marvin Olasky's *Abortion Rites*.¹ It is thorough, honest, meticulously well-researched, and will defy the over-simplified history that people on both sides of the debate often give it.

For those who support legal abortion, there is a tendency to argue that abortion has always been widely practiced and broadly accepted in America. Those who oppose abortion, however, generally argue that the permissive and widespread use of abortion is a recent phenomena. The research of Mr. Olasky puts the truth somewhere in between. On the one hand, abortion has been used with alarming frequency for much of the nation's history. On the other hand, though abortion has long been popular on the fringes of society, it was not until recently that it began to enjoy anything like "mainstream" support. The research provided in *Abortion Rites* is the foundation for the brief survey of abortion history below. Unless otherwise noted, all quotes come from Mr. Olasky's book.

Prior to the 1800's, most states practiced some variation of English Common Law which generally lacked explicit codification. Add to this the fact that solid statistics about abortion and/or unwed pregnancy simply do not exist for the time period, and you begin to see why it is so difficult to compile an accurate history of abortion in early America. Individual accounts, from journals, periodicals or court records, are all we can rely on for acquiring the anecdotal evidence necessary to make some conclusions.

The first known conviction for the "intention to abort" was handed down in Maryland in the year 1652.² Four years later, also in Maryland, a woman was arrested for murder after procuring an abortion, but the case was thrown out when she married the only witness, who then refused to testify.³ A 1710 Virginia law made it a capital crime to conceal a pregnancy and and then be found with a dead baby.⁴ Likewise, a 1719 Delaware law made anyone who counseled abortion or infanticide an accessory to murder.⁵

[Anecdotal] records suggest that, overall, infanticide was probably the most frequent way of killing unwanted, illegitimate children...Physical and social reasons made abortion the less preferred mode of infant murder. Surgical abortion was virtually a guaranteed double-killer, due to poor knowledge of anatomy and the great risk of infection. Abortifacients were known and used in early America, however...Since ingesting savin or other abortifacients was like playing Russian roulette with three bullets in the chambers, it is unlikely that colonial women would use the substances voluntarily unless they felt they had no other choice. (26, 27,29)

While individual state laws were varied and didn't always have specific legislation for abortion and/ or infanticide, those that did all shared a common problem. It was almost impossible to produce the evidence necessary to convict. Pregnancy was hard to confirm, there was almost never a corpse or witness, and there was always a great deal of jury sympathy for desperate and abandoned women. Nevertheless, there were a number of non-legislative factors that all worked against the widespread use of abortion and infanticide. One of the chief of these factors was the existing social pressure that expected a man to "act honorably" and propose marriage if he impregnated a woman out of wedlock. "In one Massachusetts county during the 1760s over 80 percent of non-maritally conceived births were legitimated by the marriage of thier parents, and counties in other colonies had similar records...Where fathers resolutely refused marriage, courts in Virginia and other colonies ordered payment. Thus

economic desperation was unlikely to drive most unmarried, pregnant women to infanticide or abortion.” (31)

Adding to the influence of society in general was a religious community that uniformly condemned abortion, both for the way the Bible speaks of unborn children and for the testimony of well-known church pillars, the likes of John Calvin, who explicitly forbade abortion. The scientific community, from the 1600’s all the way through to the 1800’s, believed that babies actually existed before conception, in either the sperm or the egg. Such thinking, faulty though it was, was another anti-abortion influence. Finally, the very difficulty of confirming pregnancy before quickening, made early abortions almost impossible, and late term abortions ruined marriage prospects and were extremely dangerous. “With physical, social, theological and ‘scientific’ reasons all making abortion unacceptable, only those in extreme duress or with contempt for existing standards would resort to it.” (36)

Nevertheless, as America grew and expanded, many of the support mechanisms which helped provide for women during “crisis pregnancies” began to wane. Increased social isolation and separation through urbanization removed the societal and familial safety nets which pregnant, unwed women had been able to fall back on. “The probability of premarital intercourse leading to marriage declined as mobility increased and community enforcement of moral codes decreased.” (39) Because of the physical obstacles and risks still associated with abortion, concealment of pregnancy before birth and the smothering of the baby after birth, was a more likely “choice”. Nevertheless, abortion itself was starting to gain a foothold. It was still not considered legitimate or legal, but it’s frequency increased as more young women found themselves pregnant and alone, and more men were willing to pressure towards and perform abortions. It was at this point in the nation’s history that Dr. John Trader of Missouri, “contended that men were (the ones) pushing women into abortion: ‘We do not affirm, neither would we have you think for a moment, that the onus of this guilt lies at the feet of women. Far from it. In the majority of cases, they are more sinned against than sinning.’” (43)

Historically, “the impulse of short-sessioned early nineteenth-century legislatures was to pass laws only when necessary, and generally only after near unanimity was achieved.” (93) Social pressure and education had been effective abortion deterrents in the past, but as the morality of America grew more relaxed, “non-governmental means of containment seemed inadequate”. (85) Abortion gained a larger foothold in American life, so lawmakers had to start dealing with it specifically and explicitly. In 1821, the first abortion legislation was passed in Connecticut, and lawmakers elsewhere did their best to keep up (New York legislation changed on abortion 10 times between 1828 and 1881).⁶ The frequency of abortion, however, continued to increase.

Newly established abortion laws, like the less explicit laws that had gone before, still faced a real problem of convictability. Since juries would not generally convict a person of a capital crime without conclusive proof, the penalties associated with abortion were often reduced in an attempt to secure more convictions.

The refusal to make abortion a capital crime did not mean that the committee was viewing the unborn child as less than human life; the committee explicitly stated that the being in question was ‘alive from conception and all intentional killing of it is murder.’ The question was one of how best to put abortionists out of business...The New York Times praised the bill as one ‘far-reaching enough to catch hold of all who assist, directly or indirectly in the destruction of infant life; it constitutes the crime of felony, and it imposes an imprisonment of not less than four years on...the rogues male and female who carry on their hideous trade. (98)

The precedent, at this time, was that women themselves would not generally be prosecuted for abortion. Those who performed the actual abortions were the ones who faced sentencing.

“Some states gave immunity to women from all criminal liability, partly because women pregnant after seduction were considered desperate victims rather than perpetrators, and partly because of the search for any kind of edge in prosecution. New Jersey, New York, and other states gave women immunity from prosecution in exchange for testimony...By providing either no or low penalties, so that a woman would testify that she had been pregnant, prosecutors had a chance to leap the evidentiary hurdles of convincing a jury an abortion actually had occurred.”
(99)

During the 1840's and 1850's, 13 states passed laws forbidding abortion at any stage. Three others made abortion illegal after quickening. In 1856, the Iowa Supreme Court held that pre-quickening abortion was not a crime, but in the next legislature, the prohibitions against pre-quickening abortions were restored 27-0 and 53-1.⁷ Despite this newfound devotion to legislative intervention, abortionists continued to make inroads. They began advertising heavily in the *Penny Press*, though never using the word “abortion”. Women were offered instant relief from “menstrual suppression”, or were told of pills that were so effective at restoring a woman's regular monthly cycle that they should never be taken by pregnant women (wink, wink).

Abortion made its biggest gains, however, on the back of another infamous and fast-growing American institution: prostitution. Increased industrialization made business travel far more common for many American men, and the anonymity that went along with such travel gave them far more opportunities to seek the “comforts” of a prostitute. For the prostitutes themselves, higher wages for a lot less “work” was hard for many young women to pass up. By the middle of the century, there were somewhere in the vicinity of 60,000 prostitutes employed in America.⁸ With not much in the way of birth control, and with an average of 30-40 sexual encounters a week, frequent pregnancy was a given. Since being pregnant would put them out of work, abortion became the happy alternative. New York detective John Warren noted that abortionists were “flourish[ing] and grow[ing] rich from prostitution as a source of income”.⁹ Many doctors agreed, “Our profession is not entirely clear of complicity in the crime of feticide. Tempted by thirty pieces of silver ... individuals may be found in whom the honorable instincts and teachings of the guild are lost in the influence of unprincipled cupidity.”¹⁰ Then, like today, many abortionists entered the field driven by profit rather than principle, and saw an opportunity to secure “loans” and guarantee wealth. Those seeking out abortion have always valued their anonymity, and abortion providers have not always been scrupulous in their demands to not leak information. One of the 19th century's most notorious abortionists, Madame Restell made an art of securing large “loans” from former clients, loans that were never returned. According to the *New York Times*, “The residence of Mme Restell is one of the best known in New York...Her wealth is entirely the proceeds of her criminal profession.”¹¹

Marvin Olasky estimates, based on a careful 10-point equation, that approximately 100,000 prostitution-related abortions were occurring each year at this point in American history (57). The moral relaxation that seemed to be sweeping much of America began to have a significant impact on public opinion. For the first time, abortion wasn't just a dirty little secret, there were actually people beginning to defend the practice in public. Detective Warren further lamented that, “Social crimes like infanticide, that were once placed on the same level as murder, are now not only looked upon with complacency... but are defended on principle by certain theorists.”¹² Despite the growing support that these “theorists” provided, the most significant members of the medical community continued to stand firmly against abortion. Dr. Stephen Tracy writes:

Whoever for the sake of gain, or for any other possible reason, designedly destroys [the fetus] excepting in cases where it is certainly and indispensably necessary, in order to save the life of the mother, commits a most awful crime, and will be called to give an account at the judgement of the Great Day...

The life of this new human being is sacred, and no one but God himself either has, or can have, the least shadow of a right or liberty to take it away. To destroy its life, for the sake of saving one's self from exposure and mortification, is but to add a greater to a lesser crime...

At forty-five days, the form of the child is very distinct... The head is very large; the eyes, mouth, and nose are to be distinguished; the hands and arms are in the middle of its length – fingers distinct . . . at two months, all the parts of the child are present . . . the fingers and toes are distinct. At three months, the heart pulsates strongly, and the principal vessels carry red blood.”¹³

Ironically, the unrest leading up to the Civil War also became an opportunity for abortion to make more inroads. “For better or worse, the priority for many northern reformers became the evil down south rather than the evil in their own backyards.” (147) As a result, “great opportunities were missed [when] good citizens often felt themselves called to deal with the great problems hundreds of miles away rather than the equally severe ones close to home.” (148)

It was around this same period, that abortion began to be associated with married women for the first time (though it was a very specific group of married women). The spiritist revolution of the mid-century enticed large numbers of people into throwing off all religious constraint so as to pursue their own sexual satisfaction in any way they saw fit. Married partners swapped spouses with great celebration, but certainly didn't want to deal with the offspring of these illicit affairs. Olasky here estimates, again as laid out in a detailed 6-point equation, that during 1860, there may have been as many as 45,000 abortions performed on the roughly 600,000 spiritist women (77). When these married women first began seeking abortions from Dr. Charles D. Meigs in 1842, the Philadelphia doctor described them as “persons so ignorant of their own moral duties, or so uninstructed as to the character and duties of medical men, [that they came to him] with a bold-faced proposition to procure an abortion.” His only answer to “all such requests: by common law [abortion] is felony, and by the law of God murder.”¹⁴

Still, not all doctors agreed with Dr. Meigs clear assessment. A national debate was brewing, and the arguments both in favor of and in opposition to abortion sounded very much the same as they do today. Meanwhile, most churches of the time didn't know what to do with abortion. Some were bold in their testimony, as evidenced by an 1868 Congregational church conference declaration on abortion:

Full one third of the natural population of our land, falls by the hand of violence; that in no one year of the late war have so many lost life in camp or battle, as have failed of life by reason of this horrid home crime. We shudder to view the horrors of intemperance, of slavery, and of war; but those who best know the facts and bearing of this crime, declare it to be a greater evil, more demoralizing and destructive, than either intemperance, slavery or war itself.¹⁵

Still, there was only one denomination at that time to expressly condemn abortion. The Presbyterian Church in the United States officially declared that, “the destruction by parents of their own offspring before birth,” is, “a crime against God and against nature.”¹⁶

The whole power of the ministry and Church of Jesus Christ should be put forth in maintenance of the truth...We also exhort those who have been called to preach the gospel, and all who love purity and truth, and who would avert the just judgement of almighty God from the nation, that they be no longer silent or tolerant of these things, but that they endeavor by all proper means to stay the flood of impurity and cruelty.¹⁶

Most other churches had very “little appetite for exposing wrongdoing when many members and some ministers wanted their own wrongdoing to be let alone.” (165) In 1891, Brevard Sinclair, in his book *The Crowning Sin of the Age* stated that, regarding abortion, Americans witnessed “the Church asleep”.¹⁷ Nevertheless, in the decades leading up to the 20th century, abortion was clearly losing ground. The allure of “spiritism” had faded, and the *American Medical Association*, despite the perennial problem of convictability, began pursuing more stringent anti-abortion laws, primarily for the educational impact these laws would have on American morality. Many other abortion opponents began to realize that laws, by themselves, were not enough. Dr. Joseph C. Stone, entered Congress in 1877 with the intention to “pass good laws when possible, but to stress conversion and education.” (129) When a noteworthy physician was interviewed by the *National Police Gazette* and asked what the best hope was for preventing abortion, he answered:

Publicity. Let people know that is going on around them. There is no remedy for a great social secret sin like exposure.¹⁸

While the nature of the abortion-related arguments were virtually the same 150 years ago as they are today, the lines of support have clearly shifted. In that day and age, “anti-abortion and anti-prostitution campaigns were liberal causes, carrying forward the solid anti-slavery impulses.” (128) Some of the most outspoken and courageous abortion opponents were members of the mainstream media. The aforementioned *National Police Gazette* devoted itself to exposing abortionists, and the *New York Times* emphasized that the fight against abortion was a fight against money and power: “Great mansions on grand avenues are occupied by disgusting ‘practitioners’ who continue to escape prosecution.”¹⁹

While newspaper editorials pulled no punches in their condemnation of abortion, the ad departments often undermined their efforts by selling increasing numbers of ads to abortion providers. In 1904, Dr. Rudolph Holmes set out to address this grievance by convincing the Chicago Medical Society to form a Committee on Criminal Abortion. The committee then went after all the papers in Chicago who sold “veiled” ads to abortion providers. Despite, significant loss in ad revenue, most papers succumbed to Dr. Holmes’ request for fear of the exposure he would have brought were they to continue such practice. The result was, that while “a typical issue of the Chicago Tribune in March 1905 contained seventeen abortion ads,” by the end of the year, “there were no noticeable ads for abortionists [left]” (195).

On top of the public pressure applied both by the medical community and by the major media outlets, there also was a growing commitment to establishing more practical support measures to help pregnant, unmarried women. In 1895, Chicago, itself was known to have dozens of shelters for just such women. Eventually, though, the victories gained by the pro-life movement began to be undermined and reversed. Abortionists, instead of advertising in the newspaper, printed up thousands of business cards to be directly distributed in brothels and boarding-houses. “Chicago abortionists had their own legal department, with witnesses on tap and ready to swear that ‘the young woman had an operation elsewhere and the doctor was merely performing a life-saving operation’.” (227) Many of those who had worked so tirelessly in opposing abortion fell into public despair as their efforts began to fade. Dr. Holmes

lamented in 1908:

I have come to the conclusion that the public does not want, the profession does not want, the women in particular do not want, any aggressive campaign against the crime of abortion. I have secured evidence. I have asked different physicians, who either had direct knowledge of crime against the prisoner before the bar or who could testify as to general reputation, to come and testify. They promised to come, but when the time for trial is at hand no one appears.²⁰

Holmes concluded that while Illinois abortion law could not be improved on paper, a total lack of enforcement made such laws almost useless. He also noted the growing problem of national complicity. "It is not possible to get twelve men together without at least one of them being personally responsible for the downfall of a girl, or at least interested in getting her out of her difficulty." Clergy were condemning abortion less and less, medical students were not being adequately informed of the enormity of the crime, laws continued to go unenforced and a general public apathy all combined to have a tragic snow-ball effect. Dr. M.S. Iseman concluded in 1912, that "except in the formal letter of the statute books, the sanctity which nearly twenty centuries of Christianity has conferred upon the unborn human being is repudiated."²¹ Dr. Matthew Liotta writes in 1931, "Never before in all past ages has there been such merciless killing of innocent, helpless and unborn human beings as is going on at the present time."²²

Gradually, even the opposition to abortion began to lose much of its moral framework. In medical text books, abortion was counseled against for the potential risks it presented to women rather than for the life it destroyed. "The right to destroy," in fact, became central to the belief system Margaret Sanger began espousing in her publication, *The Woman Rebel*. She celebrated the "virtue" of sexual promiscuity and attacked any women's shelter which counseled otherwise. Margaret Sanger would go on to found Planned Parenthood, which remains the largest abortion provider in the U.S. Much to Sanger's delight, social work began to be secularized. Government funding required the removal of all religious indoctrination, and "professional social workers" replaced "evangelically-oriented matrons." (249) The notion of compassion shifted from helping people do what was right to helping people do whatever they wanted to do. Major media outlets had long returned to the lucrative business of abortion advertising, and it wasn't long before the editorial departments fell into line with the publisher's desire to better accommodate their advertising partners. Distinctions were suddenly made between "good" abortionists and "bad" abortionists. Those promoting contraception touted that it "would do away entirely with the evil of abortion"²³ Whether they ever actually believed this in private is debatable, but the sexual emancipation that the widespread promotion of birth-control helped accommodate certainly added to the business of the professional abortionist.

The birth control issue, split the pro-life community for many years and hamstrung their efforts during the crucial 1960's, when public opinion began to shift in significant fashion. In 1962, national news reports of a woman who died from an illegal abortion (and then was cut into pieces) horrified the nation, and "All-American" mom, Sherri Finkbine, became famous for having to go to Sweden to abort the child she feared would be disabled. The average American began to perceive illegal abortion, rather than abortion itself, as the real problem. In 1967, Colorado and California became the first states to legalize abortion for pregnancies that resulted from rape or incest, for pregnancies that threatened the life of the mother, or for pregnancies of severely handicapped children. Over the next three years, Alaska, Arkansas, Delaware, Georgia, Hawaii, Kansas, Maryland, Mississippi, New Mexico, North Carolina, Oregon, South Carolina and Virginia all followed suit. In 1970 New York became the first state to offer unrestricted abortion during the first 24 weeks of pregnancy. One year later, in 1971, the famed *Roe v. Wade* first came to trial. When the verdict was handed down in 1973, all state laws regulating abortion were stricken, and abortion on demand became the law of the land.

The history of abortion since 1973 is far more well-known and can be examined further in *The Legality of Abortion*.

In the end, examining the history of abortion in America reveals that abortion has been a significant part of the American landscape from as far back as the early 1800's. It also reveals, however, that some of the best minds in American history consistently condemned abortion, and it offers us insight for combatting abortion today. Where a resolute commitment to educating the public is in place, and where there is support for women in crisis pregnancy, and where there are laws on the books to inform public morality, the prospects for reversing the current frequency and acceptability of abortion are very promising.

1. Marvin Olasky, *Abortion Rites: A Social History of Abortion in America*. Wheaton, Illinois: Crossway Books, 1992.
2. *Proprietary v. Mitchell* in *Archives of Maryland*, Vol. 10, (Baltimore: Maryland Historical Society, 1936), pp.182-185.
3. *Ibid.*, p.464.
4. William Waller Hening, ed., *The Statutes at Large*, Vol. 3 (Philadelphia: Desilver, 1823), pp. 516-517.
5. *Delaware Laws*, chapter 22, section 6, p. 67 (1797).
6. 1828, 1830, 1845, 1846, 1868, 1869, 1872, 1875, 1880, and 1881.
7. See *Abrams v. Foshee*, 3 Iowa 274; *Journal of the House of Representatives of the Seventh General Assembly of the State of Iowa* (Des Moines: J. Teesdale, 1858), pp. 284, 388, 418, 425, 464, 480, 484, 504, 612-613, 644.
8. William W. Sanger, *The History of Prostitution* (New York: Harper and Brothers, 1858), pp. 482, 586.
9. John H. Warren, Jr., *Thirty Years Battle with Crime, or The Crying Shame of New York as Seen Under the Broad Glare of an Old Detective's Lantern* (Poughkeepsie, NY: A.J. White, 1874), pp. 37-38.
10. Henry Gibbons, "Observations on Abortion," p. 6.
11. *New York Times*, February 12, 1878, p. 8
12. Warren, Jr., *Thirty Years Battle with Crime, or The Crying Shame of New York as Seen Under the Broad Glare of an Old Detective's Lantern*, pp. 37-38.
13. Dr. Stephen Tracy, *The Mother of Her Offspring* (New York: Harper & Brothers, 1853), p. 109-111
14. Charles D. Meigs, *The Philadelphia Practice of Midwifery* (Philadelphia: James Kay, 1842), p. 134.
15. *Christian Mirror*, August 4, 1868. Cited in George Grant, *Third Time Around* (Brentwood, TN: Wolgemuth & Hyatt, 1991), p. 99.
16. Minutes of the General Assembly of the Presbyterian Church in the USA (Northern), Vol. 18 (Philadelphia: Presbyterian Publications Committee, 1869), p. 937.
17. Brevard Sinclair, *The Crowing Sin of the Age* (Boston: H.L. Hastings, 1891), p. 16.
18. *National Police Gazette*, October 16, 1880, p. 7.
19. *Restell's Secret Life*, an undated pamphlet published in Philadelphia, p. 3, in the Rare Books Collection of the Library of Congress.
20. *Journal of the American Medical Association*, Vol. 2 (1908), p. 960.
21. M.S. Iseman, M.D., *Race Suicide* (New York: The Cosmopolitan Press, 1912), p. 155.
22. Matthew A. Liotta, *The Unborn Child* (New York: Liotta, 1931), pp. 9-13.
23. William Robinson, *Fewer and Better Babies, or the Limitation of Offspring* (New York: Critic and Guide, 1915), p. 122.