

THE INSIDIOUS ORIGINS OF THE “MORAL” ARGUMENT AGAINST ABORTION RIGHTS

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One of the most common arguments levied against a woman’s right to choose is the idea that abortion is “murder,” and the killing of an innocent fetus is the most heinous sin a woman can partake in.¹ This view is supposedly grounded in a deep reverence for human life.² However, the origin of this belief is less humanistic than its current proponents would like to believe. The crusade against women’s bodily autonomy was invented, perpetuated, and executed by male doctors in the mid-nineteenth century in a bid for financial gain and the domination of a market over which, at the time, they had no control.³ In order to solidify their control, they painted women seeking abortions as murderesses devoid of morals, punishing babies for their own failings.⁴

The criminalization of abortion – and the accompanying demonization of women – has not always been the norm, even in recent history. In the eighteenth and early nineteenth centuries, abortion was a relatively widely practiced and largely accepted procedure in America.⁵ At common law in England and in the United States, abortion only became illegal around the fourth month of a pregnancy, when the first movements of the fetus were detectable, in a phenomenon termed “the quickening.”⁶ An abortion performed before the “quickening” was considered criminal only if the procedure resulted in the death of the woman, indicating that the primary concern of abortion restrictions was to deter conduct that endangered women’s lives.⁷

Changes in American economic and family life during the nineteenth century both increased the visibility of and the demand for abortions. While large families were the norm in America from the mid-eighteenth through the early-nineteenth century, this began to change following a shift from farming to urban life with fixed wages for many families.⁸ By the mid-nineteenth century, many women viewed the large families of seven or more children, which had once been seen as typical, as a “burden to be avoided.”⁹

In response, abortion rates increased, and the number of abortion providers also increased proportionally to meet the growing demand.¹⁰ Unlike in the modern

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¹ See Don Marquis, *Why Abortion is Immoral*, 86 J. OF PHIL., 183, 183 (1989).

² See *id.*

³ See e.g., EVA R. RUBIN, *THE ABORTION CONTROVERSY: A DOCUMENTARY HISTORY* 14 (1994).

⁴ See *id.* at 16.

⁵ Samuel W. Buell, *Criminal Abortion Revisited*, 16 N.Y.U. L. REV. 1774, 1780-81 (1991).

⁶ LESLIE J. REAGAN, *WHEN ABORTION WAS A CRIME* 8 (1998).

⁷ RUBIN, *supra* note 3, at 14; Buell, *supra* note 5, at 1782.

⁸ RUBIN, *supra* note 3, at 12.

⁹ R. Sauer, *Attitudes to Abortion in America*, 28 POPULATION STUD. 53, 54 (1974).

¹⁰ RUBIN, *supra* note 3, at 12-13.

day, however, it was not licensed practitioners who provided most abortions, but rather, female abortionists.¹¹ Male doctors were not exclusively tasked with the practice of abortion. Instead, it was a sphere in which female practitioners had a substantive amount of influence. Women often turned to other women to terminate their pregnancies.¹² Notably, women had the agency of announcing their own “quickenings,” which would then render them ineligible for an abortion.¹³

During this time, however, ongoing changes to the regulation of the medical profession began to alter this dynamic. The American Medical Association (AMA) was founded in 1847,¹⁴ as medicine was becoming a more established and regulated practice. At the time, the organization was composed exclusively of white, male physicians, and soon after its founding, the AMA became staunchly and publicly opposed to abortion rights.¹⁵ To that end, Horatio Storer, a prominent physician, led the crusade to criminalize abortion and “medicalize” pregnancy, removing authority about women’s reproductive health from the hands of women and transferring it to white, male medical practitioners.¹⁶ In 1859, the organization released a statement discouraging the use of abortion.¹⁷ This communication includes the exceptions to an abortion ban commonly included in modern legislation, such as cases of rape, incest, or when the health of the mother is imperiled.¹⁸ However, one requirement to obtain an abortion stands out: the requirement that two “physicians chosen because of their recognized professional competence” have approved of the procedure.¹⁹ In other words, in order to obtain an abortion consistent with the AMA’s standards, a woman would have had to involve not one, but three men in her decision to terminate a pregnancy.

Since physicians would not provide abortions outside of the new, strictly set parameters outlined by the AMA, women increasingly turned to the unlicensed female abortionists in their communities to access abortion services.²⁰ Naturally, this was an undesired and unacceptable response for the male, licensed doctors.²¹ Therefore, the AMA decided that the only way to gain *complete control* over the burgeoning abortion industry was to criminalize the practice.²² Horatio Storer was

¹¹ *Id.* at 13.

¹² Reagan, *supra* note 5, at 10.

¹³ *Id.* at 8-9.

¹⁴ Erin Blakemore, *The Criminalization of Abortion Began as a Business Practice*, HISTORY (May 15, 2019), <https://www.history.com/news/the-criminalization-of-abortion-began-as-a-business-tactic>.

¹⁵ *Id.*

¹⁶ See Nina Aron, *The Father of American Gynecology Fought to Criminalize Abortion in the 1850s*, TIMELINE (Mar. 27, 2017), <https://timeline.com/horatio-storer-criminal-abortion-c433606491da>. See also CULTURE WARS: AN ENCYCLOPEDIA OF ISSUES, VIEWPOINTS AND VOICES 749 (Roger Chapman, ed., 2010).

¹⁷ LINDA GREENHOUSE & REVA SIEGEL, BEFORE ROE V. WADE 28 (2012).

¹⁸ *See id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ RUBIN, *supra* note 3, at 15.

²² Ryan Johnson, *A Movement for Change: Horatio Robinson Storer and Physicians’ Crusade Against Abortion*, 4 JAMES MADISON UNDERGRADUATE RES. J., 13, 17 (2017).

once again one of the most prominent advocates for making abortion completely illegal, citing the inherent moral failings of the women who he claimed were “murdering their children by thousands,”²³ stating that they were either ignorant or “influenced to do so by fashion, extravagance of living, or lust,” in his 1866 essay called “Why Not? A Book for Every Woman.”²⁴ This particular essay won a prize from the AMA for “best short and comprehensive tract calculated for circulation among females, and designed to enlighten them upon the criminality and physical evils of forced abortion.”²⁵

Storer’s argument also hinged on the idea that anti-abortion measures protected not just the fetus, but also women.²⁶ According to him, the reason for the low birth rate in the States was an increase in abortions, a clear sign of contemporary society’s moral decay.²⁷ In Storer’s writings, “general demoralization” caused by abortion is fueled by the “wide-spread popular ignorance” about the fact that life begins before the quickening.²⁸ This “misconception” is listed as the first reason for Storer’s perceived lack of morals in his society.²⁹ Perhaps not so coincidentally, Storer’s attacks on the “quickening” cut-off point served to undermine the agency of a woman to decide whether or not she could lawfully terminate her pregnancy. Additionally, Storer depicted women as “ignorant” to the “crime” they were committing while making their decision.³⁰ He wrote that doctors were meant to be the “physical guardians of women,” and thus it was their job to make sure that these misguided women were spared from making this immoral choice due to their lack of knowledge about their own bodies.³¹

Storer’s advocacy laid the foundation for the mainstream moral argument against abortion. Storer’s propaganda was highly successful in state legislative bodies.³² In 1860, only a year after the AMA officially denounced abortions, Connecticut became the first state in the country to make pre-quickening abortions illegal.³³ Under this law, abortions became a felony, and both the woman and her physician were criminally liable.³⁴ Anti-abortion laws in each state were quick to follow, and every state in the country had a law criminalizing abortion on the books by 1910.³⁵ Each state developed their own abortion laws, but they all ended up being

²³ Aron, *supra* note 15.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Horatio Storer, *Report on Criminal Abortion*, 12 TRANSACTIONS OF THE AM. MED. ASS’N 75, 75-78 (1859).

²⁷ *Id.* at 75.

²⁸ *Id.*

²⁹ *Id.*

³⁰ *Id.* at 76.

³¹ *Id.*

³² Richa Venkatraman, *Horatio Robinson Storer (1930-1922)*, THE EMBRYO PROJECT ENCYCLOPEDIA (Sept. 21, 2020), <https://embryo.asu.edu/pages/horatio-robinson-storer-1830-1922>.

³³ *Id.*

³⁴ *Id.*

³⁵ Buell, *supra* note 5, at 1784.

largely similar in that they criminalized abortion at nearly all stages of pregnancy, with the only exception being saving the life of the mother.³⁶

Additionally, new laws adopted at the federal level furthered Storer's attempts to cast abortion as a moral failing. For example, in 1873, Congress passed The Comstock Act, banning the dissemination of materials on contraception and birth control.³⁷ The text of the statute began by forbidding the possession or sale of "obscene" materials, including books, pictures, and drugs.³⁸ Included in the ranks of such "obscene" and "immoral" possessions is any drug which would act as a contraceptive or induce an abortion.³⁹ The Comstock Act enshrined in law the success of Storer's crusade to depict abortion as a crime against morality.

Nearly 150 years later, the AMA and Storer's legacy continue to define the debate over abortion rights. While many anti-abortion activists proclaim a kind of moral superiority based on their belief that they are protecting human life, the roots of their argument are embedded in the efforts of a nineteenth century all-male medical society to corner the market for medical services by stripping female abortionists of their jobs. They are merely reciting propaganda about the moral depravity of women that was invented to bolster their takeover attempts.

³⁶ *Id.*

³⁷ RUBIN, *supra* note 3, at 16.

³⁸ *See* Act for the Suppression of Trade in, and Circulation of Obscene Literature and Articles of Immoral Use, S. 258, 42nd Cong. § 3 (1873).

³⁹ *See id.*