The Social Circumstances that Criminalized Abortion in the 19th Century

**Abstract:** To say abortion is a controversial subject is an understatement. While there was no federal law against abortion in the 19th century, the majority of the states in the U.S. introduced anti-abortion laws after the Comstock Laws outlawed the drugs and practices that made abortion possible in 1873.[[1]](#footnote-1) Legal or not, women have been subject to unrelenting criticism regarding the termination of unwanted pregnancies for centuries. In order to form realistic conclusions about abortion in the 19th century, it is essential to take into consideration more than the debate of morality. Regulation of abortive practices was, as this paper will indicate, less about medical safety and gestational awareness than sexual inequality and racial disparities; the aim of this research is to determine the social circumstances that influenced the conceptualization of abortion and inspired legal action against it.

Much like any other historic topic, we must put aside our modern perspectives and beliefs when studying abortion in the 19th century. Medicine looked considerably different in the 1800s than it does today: childbirth was extremely dangerous, maternal and infant mortality rates were shockingly high, and the medical technologies we rely upon today to determine pregnancy were yet to be developed. Not only did pregnancy and childbirth look very different, so did the medical field itself – medicine was only just beginning to be professionalized through education and certification. Unorthodox medicine was comprised of a variety of healers with different methods and practices, including herbal remedies typically learned from the Indigenous people who were familiar with the uses and benefits of local plant life. Orthodox medicine relied upon heroic therapy, which operated on the concept of purging; these practices often involved harsh methods such as bloodletting, laxatives, and emetics. Within this medical sphere existed midwives, who today are recognized primarily as birth attendants, but in the 19th century would have served their communities as herbalists, nurses, and physicians. Women had a diverse selection of readily available options from health practitioners of numerous fields and specialties. It is important to consider this context of medicine and childbirth when trying to understand the history of and cultural developments surrounding abortion in the mid to late 1800s, so that we might understand the driving forces that influenced society’s transition from not recognizing the termination of a pregnancy as abortion at all to attempting to enforce legislation that would make such an act illegal. By presenting my research on the topic of the social attitudes toward abortion in the 19th century, I will demonstrate the various factors that led Americans to believe that abortion should be controlled and, eventually, criminalized. Contrary to popular opinion–likely inspired by anecdotal evidence from our current societal standards and practices–the initial condemnation of abortion did not originate in the admonitions of the clergy. Instead, as I will indicate throughout this paper, the consequence of the American public’s desperation to cling to traditional gender roles and established political hierarchies was that the practice of abortion came to be regarded as sinful. Presenting abortion as a moral concern was less about protecting the morality of ignorant American citizens than it was a means of carrying out a political agenda tainted with gender and racial disparities.

Abortion throughout the 1800s was a notion defined by the concept of quickening.[[2]](#footnote-2) This term was used to describe the feeling of fetal movement, which would typically occur a few months into the pregnancy as the baby developed. Because medicine was not yet advanced enough to determine pregnancy, let alone how far along a pregnancy was, mothers and doctors alike relied upon quickening to conclusively detect whether or not a woman was pregnant. Horatio Storer was a Harvard medical student who is recognized by historians for his publications about the practice of abortion. As a result of these widely accepted declarations, his presentation of the medical opinionwithin the second half of the 19th century are an exceptionally valuable primary source. Storer’s anti-abortion activism appears alongside jurist Franklin Heard’s legal perspectives on the topic in their co-authored book *Criminal Abortion*. In the text Storer indicates the unreliability of quickening, describing it as: “a period usually occurring from the one hundredth and fifteenth to the one hundred and thirtieth day after conception, but varying within still more appreciable limits in different women… probably occurring a little earlier with boys than with girls… often absent, even throughout the pregnancy.”[[3]](#footnote-3) His insight is important because it helps us to understand that even the people of the time recognized the flaws in their ability to discover pregnancies. Accomplished medical historian James Mohr explains that a fetus was officially acknowledged in the legal sphere only after the event of quickening,[[4]](#footnote-4) and this is the context in which Storer draws attention to the shortcomings of 19th century medicine. Storer intended to criminalize and stigmatize abortion by suggesting that the public shift their definition of abortion away from the concept of quickening, which he deemed an inaccurate confirmation of life.In advocating for a new comprehension of pregnancy that would recognize a fetus as living from the moment of conception, he was able to enforce the belief that the intentional interruption of human life, regardless of fetal movement or gestation phase, must be understood as murder.[[5]](#footnote-5) It is worth noting that the moral crisis Storer raised in 1868 is still at the heart of anti-abortion campaigns today – the question of whether or not it is humane to terminate a pregnancy after a certain stage of fetal development is one that society has not yet been able to answer unanimously.

The inability to confirm pregnancy without quickening led to an array of complications concerning the social acceptance of abortion. Mohr indicates that society did not consider the restoration of an interrupted menstrual cycle to be abortion unless efforts were made after quickening had occurred: “actions that had the effect of terminating what turned out to have been an early pregnancy were not considered criminal… either a doctor or a woman herself could take actions designed to restore menstrual flow after one or more missed periods on the assumption that something might be unnaturally ‘blocking’ or ‘obstructing’ her normal cycles.”[[6]](#footnote-6) Not only was it perfectly legal to recover one’s menstrual cycle, it was morally acceptable and encouraged. What we now recognize to have been abortifacients were widely available, and knowledgeable tips were frequently published in newspapers or home medicine guides. Storer criticizes “the public press, which has proved itself so constantly and so dangerously an accessory to the crime… the press, if it choose, may almost annihilate the crime: it now openly encourages it.”[[7]](#footnote-7) His frustration with the press suggests that although he was writing in 1868, when society was becoming more aware of the frequency abortion, the general public did not yet share his passionate belief that it was an evil practice. What, then, inspired social ideas about abortion to change so negatively?

Though Storer’s arguments were not inspired by the clergy’s chastising, he did not waste time in enlisting their voices to increase the impact of his own. The scholar approached a bishop with the intent of procuring a religious perspective on abortion to include in his publications, and the bishop obliged enthusiastically: “‘besides being a direct crime against a positive law of God, [abortion] is also an indirect crime against society. Admit its practice, and you throw open a way for the most unbridled licentiousness; you make a woman a mere instrument for beastly lust.’”[[8]](#footnote-8) Aside from making the clergy’s feelings about abortion brutally clear, the bishop’s statement also provides insight into the public’s view of women and their deserved placed in society by casting them in a distinctly vulnerable and corruptible light. Research suggests physicians had much to gain from criminalizing and vilifying the act of abortion–by increasing people’s fears about the dangers and risks of abortion, they ensured women would be more inclined to turn to professional obstetricians than to rely upon untrained medical advisors, or worse yet, take matters into their own hands. Cultural sociologists Nicola Beisel and Tamara Kay provide counterevidence to physician’s misrepresentations: “historians have argued that while abortion was certainly painful and frightening, it was safer than childbirth.”[[9]](#footnote-9) Professor Charles King, racial representation in politics and culture specialist, explains that the true reason behind physician’s warnings about abortion was that the practice threatened the doctors who were making increasing efforts to standardize medical practice and eliminate the competition of healthcare providers who had not received official education or training. As a result of the medical community’s efforts to uphold their formal ideals, King confirms that public opinion in the 19th century saw preventative measures against reproduction as perverse behavior that could damage a woman’s social standing.[[10]](#footnote-10) An echo of King’s ideas can be found in Beisel and Kay’s writing, which elaborates upon the indispensable perspective of a society that limited the female identity to maternal potential and demonized wives for failing to provide their husbands with a traditional homelife.[[11]](#footnote-11) Women who attempted to use contraceptives were viewed with the same distaste as those who terminated unwanted pregnancies. King succinctly affirms that such women were considered to be disregarding the most essential quality of female life, which was appreciated for the ability to produce children above all else. Public fear concerning the upheaval of traditional gender roles within society created a convenient circumstance in which doctors seized power over the reproductive habits of women.[[12]](#footnote-12)

Gender disparities characterized many aspects of the abortion struggle throughout the 1800s. Near the end of the century, as prominent political activists such as Elizabeth Cady Stanton and Susan B. Anthony began to advocate for women’s rights, abortion was presented less as a moral concern than a product of inequality between the sexes. By claiming that “the cases where she [the mother] is under duress, by threat of other personal violence from her husband or seducer, and thus compelled to submit to abortion… are so rare, that, in general statement, they may be assumed not to exist,”[[13]](#footnote-13) Storer tries to disarm the argument for women wanting to terminate pregnancies that resulted from traumatic sexual violence and assault, whether done by strangers or their own husbands. Beisel and Kay reference Stanton’s objections to these assertations, demonstrating the feminist belief that “American women avoided maternity because improper use was made of their bodies, in particular, women were at the sexual disposal of their husbands. Abortion, like prostitution, resulted from women’s degraded status in society.”[[14]](#footnote-14) Stanton was not so much attempting to justify abortion as being morally acceptable as she was using society’s growing disapproval of the act to suggest that efforts of reparation be made on behalf of women and their social status.

Again, our modern misconceptions might lead us to believe that the history of abortion concerned only the most desperate, young, single, or impoverished of women. This is dramatically incorrect–in fact, Storer strengthens his argument by affirming that women who aborted their pregnancies belonged to a variety of social demographics: “we have already seen the position these mothers hold in the community, high as well as low, rich as well as poor, intelligent and educated as well as ignorant, professedly religious as well as of easy belief, not single alone, but married.”[[15]](#footnote-15) James Mohr helps contemporary readers understand this phenomenon by reminding us that contraceptive methods in the 19th century were not as common or accessible as they are today, and they were certainly not as socially acceptable. Married women practicing abortion was not, as Stanton’s declarations might lead us to believe, always the result of marital rape and husbands subjecting unwilling wives to their sexual desires. Instead, abortion was seen by many as a form of contraception – as Storer has indicated, people did not yet equate uterine secretions with the presence of human life. If quickening had not yet been felt despite a woman’s period being absent for more than a month, her use of abortifacients to restore her menstrual cycle was considered a more effective method of family planning than the use of contraceptives, which were far from failproof. As Mohr clarifies, “American men and women wanted to express their sexuality and mutual affections, on the one hand, and to limit their fertility, on the other.”[[16]](#footnote-16) Many couples of the past, just as today, wished to achieve financial stability before producing dependents. Others had perhaps reached their financial capacity to support children, and could not afford to add another to an already populous family. Abstaining from sex was not a convenient option for couples with mutual desires; consequently, abortion became a regular practice among all demographics of women. In this sense, women were not attempting to neglect their reproductive potential that society so desperately depended on to maintain familiar gender spheres, but simply endeavoring to make conscientious decisions about their families – with the knowledge and support of their husbands.

It is also important to address the racial disparities between white Anglo-Saxon women, and nearly every other immigrant population that existed within America throughout the 1800s. Beisel and Kay make an important distinction that demonstrates the depth of the anti-abortion campaigning that took place in this time period: “suffragists and physicians made claims about women’s reproductive capacity as a social resource, but their claims about motherhood were not about all women, but rather the women of the dominant race.”[[17]](#footnote-17) This statement is imperative to our understanding of why such social changes took place around the conceptualizations of abortion during the later years of the 19th century, why outspoken academics like Horatio Storer weaponized the moral beliefs of the clergy, and why physicians and politicians alike made such efforts to eradicate women’s reproductive autonomy. Through their extensive research, Beisel and Kay argue that a driving force behind a great majority of these efforts to criminalize abortion in the public’s eye was a decrease in the reproductive rates of the ‘dominant’ race: white Anglo-Saxons.[[18]](#footnote-18) This racially privileged demographic felt that their native-born population was threatened by the appearance of foreign immigrants with higher fertility rates and rapidly growing communities.[[19]](#footnote-19) Unwilling to sacrifice their elite social positions, these American citizens sought a means to prevent being outnumbered by foreign peoples, whom they deemed less worthy of political positions in society, but who would surely come to occupy them if they continued to procreate at superior rates. Women were berated about their use of abortion as a method of family limitation because they were considered to be “[shunning] their responsibility to the race, with the consequence that the Anglo-Saxon race not only lost political power, but also faced extinction. This made abortion a crime against the nation,” and subsequently led to the introduction of a plethora of anti-abortion legislation by the end of the 1800s.

Fear about the health concerns and immorality of abortion were not, as notable historic figures such as Horatio Storer would have us believe, the primary causes of the development of anti-abortion attitudes in a society where such a procedure was quite commonly practiced. Storer was not wrong in attempting to influence America to redefine their understanding of pregnancy as something characterized by quickening, and therefore to reconsider the act of abortion as encompassing more than just the latest stages of gestation. Based on the subsequent research provided throughout this paper, we cannot assume that Storer’s intentions – and those of the physicians with whom his ideologies were so popular – were as simple as alerting the public to a moral wrong being committed. Instead, as I have demonstrated by referencing the studies done by Mohr, King, Kay and Beisel, we can conclude that the shift from social acceptance of abortion to its condemnation was the result of political interests, racial discrimination and gender inequalities, including the desire to control the one aspect of women’s status that made them valuable to society in the 1800s: their fertility. It is important that we consider more than just morality when attempting to understand what led Americans of the 19th century to attempt to criminalize the act of abortion.

Bibliography

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[**Note**: I have followed the lead of contemporary historians by referencing Storer individually – Heard was a jurist who contributed to and supported Storer’s beliefs, but the proclamations I have cited are recognized as being written primarily by Storer himself.]

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3. Horatio Storer and Franklin Heard, *Criminal Abortion: Its Nature, Its Evidence, and Its Law*(New York: Arno Press, 1974): 12. [↑](#footnote-ref-3)
4. Mohr, “Abortion in America,” 203. [↑](#footnote-ref-4)
5. Storer, *Criminal Abortion*, 1-9. [↑](#footnote-ref-5)
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