

The history of abortion access in the US

November 2 2022, by Brandon Baker



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For many, the *Dobbs v. Jackson* decision, which ended nearly a half-century of federal abortion rights, came as a shock. To historians, however, it's one more link in a chain that extends much farther into the past than is immediately obvious—only the latest episode in a saga of U.S. history that spans centuries.

A brief history in the U.S. goes something like this: Policing of women's bodies in the American colonies can be traced to a 1625 statute adopted from Britain that asserted women who gave birth to stillborn children would be found guilty of infanticide if they hadn't taken certain steps to prepare for the birth—preparing the appropriate child bed linens, for example.

Abortion itself didn't show up in a criminalized fashion until the early 19th century, when Britain began to outlaw [abortion](#). This became a precedent for the U.S., referred to by doctors there who saw it as a scourge on their own profession that women could terminate their own pregnancies.

This notion of professionalizing ultimately came to shape discourse around abortion.

"Some reasons [for attention on abortion] early on have to do with professional authority over women's bodies: 'Who really knows what's going on with women's bodies? Who has authority to regulate those bodies?' And there's a general feeling among male, academically trained practitioners that most of what women bring to bear on treatment of their bodies is suspect," says Kathleen Brown, the David Boies Professor of History in the School of Arts & Sciences (SAS) and a historian of gender and race in early America.

"They're considered 'old wives' tales,' coming out of places of superstition and ignorance, and a kind of outdated folk wisdom that doesn't have a place in modern medicine in the 19th century."

These suspicious attitudes doubly applied to enslaved Black women. Brown says there was intense interest in their reproduction, though rather than pinning the blame on abortion when a pregnancy failed, physicians tended to assume enslaved women were incapable of ending

their own pregnancies. Instead, they pegged them as bad mothers, or looked to the treatment of them by those who claimed to own them—how hard they were worked in the field or the state of their living conditions.

When the American Medical Association (AMA) was established in 1847, the medicalizing of abortion accelerated. Brown says that, in her archival work, she's unearthed dissertations from Penn [medical students](#) in the 1850s that discuss the rights of the unborn, a notion that was unheard of at the time.

What grew out of this time period was a sense, Brown says, that a woman's own testimony about her body wasn't to be trusted. It could be claimed, for example, that a "quickenings," which was a term for the moment a woman can perceive movement of a fetus—and to some a legal term, for the time—could merely be gas.

"Doctors had a stake in their own medical authority and their own effort to establish objective criteria for assessing and diagnosing what was going on during pregnancy," Brown says. "And they also had a strong interest in distinguishing themselves from that older, more traditional, female 'folk' wisdom and treatment of women's bodies."

There was also, says Jessica Martucci, the associate director of undergraduate studies in the History and Sociology of Science Department in SAS, a commercial incentive: Prior to the second half of the 19th century, [reproductive health](#) was in the purview of a midwife, who delivered a child, provided herbal remedies for a slew of ailments, and generally served as counsel. This was perceived by the medical establishment as a problem.

"As medical scientific practitioners or allopathic physicians, as they were called, became more plentiful and powerful, they banded together

under the umbrella of the AMA to try to gain access to the growing [health care](#) market, because if you are a woman in the early-to-mid 19th century, and had a health problem, for the vast majority their first stop is the midwife," Martucci explains.

"So, pushing midwives out becomes really important to physicians in this period to secure a place for themselves in their very lucrative and expanding marketplace for health care, and one way they do that is to go after abortion."

Physicians, then, Martucci says, would label midwives as "irregular physicians" and cast them as unsanitary and immoral. They began expanding gynecology and obstetrics and pushed for anti-abortion laws—notably under the leadership of physician and anti-abortion activist Horatio Storer.

Criminalization of abortion took off in the late 1860s, when states began passing laws banning the procedure. By 1880, abortion was outlawed in most states. This wave of criminalizing legislation was, importantly, furthered by the Comstock laws—officially, the Comstock Act of 1873, sometimes referred to as Anthony Comstock's "chastity laws"—that criminalized "obscene, lewd, or lascivious" materials in the mail and any information that related to birth control, sex, and methods of terminating a pregnancy.

Martucci says the Comstock Laws essentially began a century-long effort to restrict women's access to safe abortions. Even contraceptives were labeled as "illicit" or "obscene."

All the while, nursing as a profession remained neutral on the subject.

"Nursing has always struggled to establish its professionalizing credentials, and around issues in this case, which really come to the

forefront in the 1920s with issues around abortion and birth control in the [public discourse](#), they stay as far away from it as possible," says Patricia D'Antonio, a professor in mental health nursing at Penn's School of Nursing and director of the Barbara Bates Center for the Study of the History of Nursing. "My latest book was on public health nurses in New York in the '20s and '30s, and even the most progressive public health nurses were explicitly told not to talk about birth control with patients ... and to refer them to their physician, pastor, priest, or rabbi to get answers."

D'Antonio says nurses at the time thought commenting on abortion would cause them to become social pariahs and interfere with the naturalizing process of establishing nurses as scientific professionals. This, again, was also at the expense of midwives, who by the early 20th century were largely out of mainstream practice even as they did attempt, D'Antonio says, to evolve by accepting new medical practices. (Midwives would later see a resurgence in the 1960s and '70s, she explains, because of middle-class women seeking more natural birthing options.)

By the 1910s and '20s, says Kathy Peiss, the Roy F. and Jeannette P. Nichols Professor Emerita of American History in SAS, the birth control movement had begun, led by activist Margaret Sanger, among others, and it became evident that abortions were still taking place despite the criminal statutes.

"[Sanger] had a number of clinics that surveyed clients and found about 20 percent of all pregnancies of women who came in were intentionally aborted—working-class clients," says Peiss. "And so, the need was certainly perceived by many women, including single women and married women who had already had some children and felt they couldn't handle it financially, or had a fear of dying from being pregnant."

In the decades that followed, medical professionals began discussing how to treat patients who were seeking care after having illegal abortions and were critically bleeding or otherwise ill.

"How to help those women was a real question: Did you help them or not?" says Peiss. "A number of hospitals set up 'therapeutic abortion' committees in the 1960s to decide how to provide care and under what circumstances they would provide care. There was a reform movement among some liberal medical professionals before *Roe v. Wade* about expanding the categories for abortion to protect the life and psychological well-being of the pregnant woman."

The feminist movement eventually fought against criminal abortion laws as a sustained effort until the *Roe v. Wade* ruling by the U.S. Supreme Court in 1973, a full century after the passage of the Comstock Act. But up to the moment of the ruling, there were state efforts moving toward reform, before shifting to repeal by the beginning of the 1970s.

"The main theme, I think, is that it has been very difficult to recognize the needs of persons who are pregnant," says Peiss. "And even while *Roe* overturned abortion laws, very quickly there was denial of the idea that abortion is part of reproductive health care and that women have the freedom to make choices. Congress passed the Hyde Amendment to deny federal funding for abortion procedures under health care provision. Many women were unable to afford or access abortion as restrictions increased in many states."

With the *Dobbs* decision, Martucci says, the U.S. enters a new moment where trust in medical institutions has begun to wane, calling into question the ability of doctors to use their professional judgment when it comes to abortion. Moral arguments from lawmakers, instead, have become more salient. There are also ongoing concerns about how technology—particularly GPS, social media platforms, and health

tracking apps—can make way for a new type of information monitoring that, if not exactly a Comstock 2022 law, recalls some of its principles.

Moreover, she says, Dobbs serves as a reminder that history is not a straight line.

"The gains we have made as a society in terms of women's rights and access to appropriate health care and knowledge and all that, it has not been inevitable," she says. "People have had to fight every step of the way to get from the Comstock laws and state laws of the 1860s, '70s, and '80s, to Roe v. Wade, and that fight is going to have to continue, and setbacks do happen."

Provided by University of Pennsylvania

Citation: The history of abortion access in the US (2022, November 2) retrieved 22 June 2024 from <https://phys.org/news/2022-11-history-abortion-access.html>

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