

Abortion: History of Abortion Law Before *Roe v Wade* (1973)

What attitudes did the people of ancient civilizations have towards abortion?

In early antiquity, the majority of ancient civilizations opposed abortion. These included the Hittites, Assyrians, Indians, Zoroastrians, and Buddhists. (Horan 62) In ancient Greece, attitudes were lenient but there was a growing opposition to abortion. Examples include the trial of the wife of Antigenes, who was being prosecuted by the sophist Lysias for having an abortion. Dated to 400 B.C, she was tried for murder or “φονος,” which made the case more serious than if she had just deprived Antigenes of an heir through abortion. (Horan 165) In addition, temple inscriptions have shown that some religious communities disapproved of abortion. One example, dated to 130 B.C. is the temple of Dionysius in Philadelphia, in the region of Lydia. The temple beckons all men and women, free and slave, to enter the temple, but it bars entry to anyone who has obtained an abortion, contraceptive, or has committed infanticide. (Horan 168) The Pythagoreans, followers of the philosopher Pythagoras, were in direct opposition to abortion as is shown by the Hippocratic oath that originates from their community (which is used in a modified form in many present-day medical schools): (Horan 161)

“I SWEAR BY APOLLO THE PHYSICIAN . . . AND I TAKE TO WITNESS ALL THE GODS, ALL THE GODDESSES, TO KEEP ACCORDING TO MY ABILITY AND MY JUDGMENT, THE FOLLOWING OATH . . . I WILL PRESCRIBE REGIMENS FOR THE GOOD OF MY PATIENTS ACCORDING TO MY ABILITY AND MY JUDGMENT AND NEVER DO HARM TO ANYONE. TO PLEASE NO ONE WILL I PRESCRIBE A DEADLY DRUG NOR GIVE ADVICE, WHICH MAY CAUSE HIS DEATH. NOR WILL I GIVE A WOMAN A PESSARY TO PROCURE ABORTION. BUT I WILL PRESERVE THE PURITY OF MY LIFE AND MY ART . . .”

What attitudes did the early Christians have towards abortion?

Christians throughout history, and especially early Christians, overwhelmingly rejected abortion because of its sinful nature. The only debate related to abortion was when an unborn child received a soul, which most commonly occurred in the writings of Augustine and Aquinas. However, abortion was considered a sin even before a fetus received a soul or was “formed” (as shown in the quote from St. Basil the Great listed below) because it involved the taking of human life and the disruption of the holy process of procreation. This attitude would remain within the Church for over a thousand years with early Church penances for abortion being severe, even for unformed fetuses. Some penances included being excluded from the Church for ten years. (Horan 126)

Christian Testimony Opposing Abortion

“You shall not procure abortion, nor destroy a newborn child” - Didache [Teaching Manual of the Apostles] 2:1 from (150 AD)

“Thou shalt not slay the child by procuring abortion . . .” - Letter of Barnabas, 19, (74 AD).

“Some, when they find themselves with child through their sin, use drugs to procure abortion, and when (as often happens) they die with their offspring, they enter the lower world laden with the guilt not only of adultery against Christ but also of suicide and child murder.” - St. Jerome, Letter to Eustochium, 22.13 (384 A.D.)

“A woman who deliberately destroys a fetus is answerable for murder. And any fine distinction between its being completely formed or unformed is not admissible among us.” - Saint Basil the Great, *First Canonical Letter* (A.D. 329-379)

“The fetus, though enclosed in the womb of its mother, is already a human being and it is a most monstrous crime to rob it of the life which it has not yet begun to enjoy. If it seems more horrible to kill a man in his own house than in a field, because a man’s house is his place of most secure refuge, it ought surely to be deemed more atrocious to destroy a fetus in the womb before it has come to light” - John Calvin – Protestant Reformer - (1509-64) - *Commentarius in Exodum*, 21,22)

Sources for Christian Testimony Opposing Abortion

Clowes, Brian. *The Facts of Life*. Human Life International, Virginia, 1997. (P. 205)

John Calvin Quote: <http://www.issuesetc.org/resource/archives/klsdorf2.htm>

How did English common law treat abortion?

Our system of law is a direct descendant of the English Common Law system. Between the 13th and 17th centuries, abortion law was handled in the ecclesiastical courts, which usually punished offenders for witchcraft or the death of the mother (which was a common complication for abortions of the time). During this time, abortion was a rarity and records of it only include hypothetical cases found in law journals, in contrast to the more common crime of infanticide. In the 13th century jurist Sir Henry Bracton wrote that abortion of a formed fetus warranted capital punishment. (Horan 145) This definition would stand until a redefining of the murder charge by Sir Edward Coke in the sixteenth century. Coke defined murder as occurring when the child was born alive and then died from his wounds obtained during the abortion, which was an easier charge to prove than death within the womb. However, he called the act of killing the child within the womb a “*serious misprision*,” or a very serious misdemeanor (in the sense of “high crimes and misdemeanors.”) (Horan 65)

Coke's decision was an integral part of English Common Law and gained more support from the opinion of Jurist William Blackstone. Blackstone, born in 1723, was a member of the King's Counsel in 1761 and wrote the much-publicized *Commentary on the Laws of England*. Early court decisions of the United States frequently cited Blackstone to resolve either common law disputes or disputes about the intent of the framers of the Constitution. In regards to abortion, Blackstone followed Coke calling it “*a severe misprision [misdemeanor] to kill a child in its mother's womb.*” (Horan 65)

How did early American law treat abortion?

By the nineteenth century advancements in medical technology were forcing legislatures to enact abortion statutes and motivating doctors to stand against the practice. The advancements during this time included the discovery of the human egg in 1827 and the discovery of the cell as the basic building block of life in 1839. (Horan 67) These discoveries helped doctors understand how conception and gestation actually functioned and how an unborn child was a human being from conception through birth. In addition, by 1750 new surgical techniques made obtaining abortions a more common occurrence, which hastened the adoption of statutes forbidding the practice. (Horan 146) Prior to the adoption of statutes though, civil cases in England ascribed humanity to the unborn. In *Doe v Clark* (1795) the court ruled that an unborn child could immediately inherit an estate with a guardian just like a born child. In *Wallis v Hodson* (1740) the court emphatically stated that the unborn had rights from conception. (Jakubczyk 18) In 1821, Connecticut became the first state to enact an abortion statute, which read in part, “*it is unlawful to destroy a child with which she is pregnant.*” (Jakubczyk 20) Prior to the Civil War, 26 states that contained 85% of the nation's population had laws in place prohibiting abortion. (Horan 146)

How did abortion law change in the twentieth century?

By the turn of the twentieth century, technology made the procedure safer and more doctors were willing to perform it. In addition, pro-abortion lobbying groups like the Clergy Consultation Service, The National Association for the Repeal of Abortion Laws (NARAL), and the National Organization for Women (NOW) worked diligently for the repeal or reform of state abortion laws. In 1967 Colorado and California became the first states to repeal their abortion laws. Alaska and Hawaii soon followed and in 1970 New York allowed abortion up to the 24th week, making it the sixteenth state to liberalize abortion laws. Of those sixteen, twelve states had only reformed their laws to allow abortion for rape, fetal deformity, or the life/health of the mother. (Willke 33) Thirty-three other states between 1970-1973 debated the issue in their legislatures and they all voted to maintain prohibitions against abortion, except when needed to save the life of a woman. (Willke 34) However, in 1973 the *Roe v Wade* and *Doe v Bolton* decisions overturned abortion statutes in all 50 state legislatures and made abortion legal for all nine months of pregnancy for virtually any reason.

Sources

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John Jakubczyk – *Resolving the Difficult Decision: Roe v Wade and The Unborn Child as a Person*, 1978.

Willke, John and Barbara. *Abortion Questions and Answers*. Hayes Publishing Company, Cincinnati, 2003.



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