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Reflections on the History of Abortion

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by

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Abstract

Throughout history, women faced with unwanted pregnancies have sought abortion services regardless of religious or legal sanctions. Abortion has been practiced by virtually all communities and cultures since ancient times and was widely accepted, at least during early stages of pregnancy, until the 19th century when legal barriers to abortion became prevalent in the Western World and gradually spread to other continents through colonization. This shift in attitude was largely due to the threat midwives posed to the economic and social power of the medical establishment. Other social changes, however, also played a significant role in restricting abortion such as the antifeminist backlash, a growing popularity of humanitarian reform particularly surrounding medical practices and nationalistic and xenophobic fears of declining birth rates leading to "race suicide."

The criminalization of abortion pushed it underground and put women at great risk of harm and exploitation. Following WWII and the Universal Declaration of Human Rights, there was a liberalization of abortion laws across the Western World. Due in large part to the efforts of Trudeau's liberal government and Dr. Henry Morgentaler, Canada is one of a small number of countries without a law restricting abortion. Currently, abortion in Canada is considered a medical procedure and is governed by provincial and medical regulations rather than legislative ones. Yet even in a country with no legal restrictions on abortion, access remains a huge issue. A woman's right to reproductive choice is being challenged once again, this time by the pro-life movement, which is based predominantly on moral and religious grounds but also fetal rights. This latest polarization on the issue of abortion is perhaps another historical reflection of the social undercurrents illustrating our changing attitudes and beliefs about sexuality and reproduction.

Introduction

History is a narrative of past events that can vary a great deal depending on the narrator's viewpoint, especially with a controversial subject like abortion. For this reason, I feel it is important to mention that these are my reflections on a small portion of the history of abortion, specifically the circumstances surrounding the criminalization of abortion in the 19th century and the subsequent impacts of abortion law.

Abortion has been practiced since ancient times. The earliest records of an abortive technique date back about 4,600 years to an ancient Chinese work attributed to Emperor Shen Nung which prescribed the use of mercury to induce an abortion (Tietze and Lewit, 1969). Another example is the ancient Egyptian Ebers Papyrus, dating back to 1550 BC, that contains instructions on contraceptive and abortive techniques (Potts and Campbell, 2002). The Egyptians, along with the Greeks and Romans developed

extensive literature on the topic of abortion as it was largely accepted on social and economic grounds as a means for population control (Klotz, 1973). Klotz argues that it was not until the introduction of the Judeo-Christian ethic that abortion really began to be viewed as a crime.

A Historical Survey

Throughout history, abortion has been used to deal with social upheavals, resource limitations in personal, family or community life, in cases where maternal health may be at risk, and for many other individual reasons (*e.g*., too many children already, sexual abuse, etc). In ancient times, pregnancy termination was most often achieved by the use of natural abortifacients, toxins or physical means (*e.g*., massage, strenuous exertion, jumping up and down, etc). Surgical methods, while described and attempted, were not a common occurrence (Potts and Campbell, 2002).

Abortion is a contentious issue among leaders in medicine, philosophy, and religion due to the complicated moral and ethical issues that surround it. I would like to briefly explore a couple of historical examples that illustrate this tension.

The Hippocratic Oath, while rarely used in its original form today, is often referred to as a guide for professional ethical and moral standards in medicine. There has been controversy over the interpretation of the Hippocratic Oath as to whether or not it prohibits abortion in its phrase "I will not give to a woman a pessary to cause an abortion" (National Medical Library, 2002). Some scholars say that the Oath refers *only* to the use of pessaries (vaginal suppositories) which often caused vaginal ulcers and put the woman at risk of infection, thereby violating the principle to do no harm to the patient (Riddle, 1992). Others, however, have interpreted this prohibition as applying to abortion in a broader sense, stating that the Oath forbade the use of any abortive remedy (Riddle, 1992). It is likely that this broader interpretation arose from discrepancies in translation of the original Oath since there were no laws against abortion in Greek and Roman times and Hippocrates himself describes how he used physical exertion to induce miscarriage in one of his patients and described instruments used to dilate the cervix and curette the inside of the uterus (Klotz, 1973).

Another historical controversy existed within the Roman Catholic Church. At the center of debate around abortion in the Church was the concept of "ensoulment" which can be traced back to Aristotle and his proposed stages of soul development *in utero*, from a vegetable soul at conception that developed into an animal soul and eventually replaced with a rational soul (Klotz, 1973). Up until the 19th century, abortion in the early stages of pregnancy was largely acceptable and only after the development of a rational soul was termination of the pregnancy considered a crime. There was much disagreement among Church leaders, however, about when ensoulment actually occurred. For Aristotle and many early Church leaders, the point of ensoulment was 40 days after conception for boys and 80 days after conception for girls (Klotz, 1973). St. Augustine, one of the Church fathers and an important figure in the development of Western Christianity, stated: *"There cannot yet be said to be a live soul in a body that lacks sensation"* (Childbirth by Choice, 1992). For others, ensoulment was defined by animation of the fetus, called "quickening", when the mother is first able to feel the fetus move about 16 to 20 weeks into the pregnancy (Childbirth by Choice, 1992). In 1869, Pope Pius IX (1792-1878) ended this long standing debate by officially eliminating the

Catholic distinction between an animated and non-animated fetus. Despite the Church's disapproval for abortion and its influence over the State, it was not religion that led to the legislation of abortion in the 19th century (Boston Women's Health Book Collective, 1998).

The Last Two Hundred Years

During the 19th century, there were increasingly restrictive laws in the United Kingdom, United States, and Canada that criminalized abortion. Prior to this, abortions before "quickening" were generally thought to be morally and legally acceptable. The impacts of illegal abortion on women were enormous (Boston Women's Health Book Collective, 1998). Many women risked legal repercussions and death from illegal abortion providers. The women who could afford it were able to find more reputable providers or travel to a destination where they could get the procedure done legally, though at their own expense. Many illegal abortion providers exploited women's desperation financially and sexually in exchange for providing services that were far below the standard of practice for the time and often endangered women's lives or left the woman with permanent damage that led to infertility. The criminalization of abortion had the most severe impact on vulnerable populations of women, particularly poor women and women of colour, who made up 75% of the deaths from illegal forms of abortion in 1969 in the United States (Boston Women's Health Book Collective, 1998).

Prior to the 19th century, abortion was not clearly defined in common law. Throughout the 19th century and into the early 20th century a succession of laws were introduced to reduce access to legal abortion. In 1803, abortion law was implemented in Britain, followed by Canada in 1868 and most of the United States by 1880 (Boston Women's Health Book Collective, 1998). Initially the public did not support the new abortion legislation since there was a long standing precedent that abortion in the early phase of pregnancy was acceptable. There are various theories for why there was a shift in public opinion in the 19th century, the most popular of which was the growing popularity of humanitarian reform throughout the first half of the 19th century. Abortion at that time was a risky procedure with a high mortality rate, therefore the criminalization abortion was seen as a way to "protect" women from a potentially life threatening procedure. This humanitarian movement broadened liberal support for abortion, which up until that point had been lacking, and won the public over (Boston Women's Health Book Collective, 1998). Some legal theorists disagree that abortion legislation evolved to protect women because abortion was punishable regardless of whether harm befell the pregnant woman and punished both the abortionists as well as the women who hired them. Humanitarian reform, however, was likely not the only factor that led to the shift in public opinion because other risky surgical procedures were not limited during that period and even after Joseph Lister's antiseptic surgical techniques came into practice in the later 19th century and abortion procedures became safer than carrying a pregnancy to term, it did not change the law (Childbirth by Choice, 1992).

Another theory for the change in public opinion is that prohibiting abortion was a way to counteract the growing feminist movement by limiting women to their childbearing role. Without access to abortion or contraception it was harder for women to break out of this traditional role (Gordon, 1990). Women's increasing control over their fertility and understanding of contraception was also viewed as a threat to population and economic growth. The declining birth rate at the end of the 1800s among the white "native" born

population and higher birth rates among the newly arriving immigrants triggered fears of "race suicide" among certain governments and religious groups and that this served as impetus to restrict women's access to contraception (Boston Women's Health Book Collective, 1998).

Lastly, it has been proposed that the medical establishment played a significant role in restricting abortion services in an attempt to tighten control over the male-dominated medical profession (Mohr, 1979). There is a rich history of women helping each other with abortion and birthing. At the beginning of the 19th century, almost all babies were delivered by midwives. However, midwives were seen by some physicians as a threat to their social and economic power. With legislation severely restricting abortion services and the medical establishment gaining more control over women's health, the traditional role of midwives declined dramatically to the point that most deliveries by the end of the 19th century were performed by surgeons (ibidem).

So what did the criminalization of abortion look like in Canada specifically? As mentioned above, abortion was made illegal in 1868, punishable by life imprisonment. It was not until after World War II and the formation of the Universal Declaration of Human Rights in 1948 that the liberalization of abortion laws in Canada began to occur. When Pierre Trudeau (1919-2000) was Justice Minister, he made an amendment to section 251 (now section 287) of the Criminal Code which was passed in 1969. The result was the legalization of homosexuality, birth control and abortion as long as a woman's health was at risk. Trudeau is famous for stating: "The view we take here is that there's no place for the state in the bedrooms of the nation" (McLeran and McLeran, 1997).

Even though it was now legalized, there were still considerable restrictions that decreased a woman's access to abortion. A hospital first had to elect to set up an abortion committee, which was not required by law so many hospitals never even offered abortion services. A three member Therapeutic Abortion Committee then had to agree that the "health" of the woman was in danger, however, "health" was not defined and so these rulings were often inconsistent as to the reasons why women were approved for abortions. The committee hearings were also untimely with delays that averaged eight weeks from the time a request was submitted and humiliating for the woman involved (Childbirth by Choice Trust, 1992).

Around the same time in the 1970s, Dr. Henry Morgentaler (b. 1923) began openly performing abortions without the approval of a Therapeutic Abortion Committee. He was taken to Court numerous times but kept being acquitted by the jury (Childbirth by Choice Trust, 1992). After his fourth acquittal in 1984, the federal government stepped in and appealed the decision, which Morgentaler then appealed to the Supreme Court of Canada. In 1988, the Supreme Court of Canada found that the Criminal Code violated Section 7 of the Canadian Charter of Rights and Freedoms (which states that everyone has the right to life, liberty, and the security of person) and was therefore, unconstitutional because the structure of the system regulating access to abortion had too many barriers (Childbirth by Choice Trust, 1992). The Court has never considered whether the fetus is included in the "everyone" who has a right to life and did not go so far as to declare that women have a *substantive* right to abortion, so it is still open to Parliament to impose some restrictions (Action Life, 2005). In 1990, Prime Minister Brian Mulroney (b. 1939) tried unsuccessfully to legislate abortion once more with Bill C-43, which threatened doctors with a two-year jail term if they approved an abortion when the woman's health was not in danger (Childbirth by Choice Trust, 1992). The Bill

was passed by House of Commons but died in the Senate and there have been no further attempts to criminalize abortion, which has effectively left Canada in a legislative vacuum to this day with regards to abortion law.

Although the legal status of abortion is not the only factor influencing women's ability to access abortion services, it remains a key determinant. Where access to abortion is restricted by law, medically trained providers are usually less willing to provide the service, the cost of the service in private facilities may be high and services are rarely available in public hospitals, which are often the only source of safe medical care for low-income women. Yet, even in countries that have no legislation controlling abortion, access is limited by a variety of factors (CARAL, 2003). In Canada, a lack of facilities means that many women have to travel great distances to get an abortion, especially if they are not near a large urban center or in the southern part of Canada. Unexpected travel and procedural costs due to the fact that abortion services are not always covered under reciprocal billing between provinces act as a further barrier for young women or women of lower socioeconomic status. An increasing lack of medical practitioners trained in providing abortion services is another factor limiting access to abortion. Fewer practitioners are being trained, and even among those who are trained some are electing not to provide abortion services for fear of violence. Some provinces in Canada also have legal restrictions on abortion services provided in hospitals that require parental consent for minors. And, according to a recent study by CARAL (2003), judgmental healthcare professionals act as "gatekeepers" preventing women from accessing information and care in a timely manner. Even without legal restrictions in place, women have many barriers to overcome before they are able to access abortion services.

Conclusion

In conclusion, I would like to leave you all with a couple of thoughts to reflect on this important topic. History has demonstrated that methods of pregnancy termination have been around in some form or another since antiquity and, as long as men and women continue to have sex for reasons other than reproduction, there will be unplanned pregnancies and there will be women who, for whatever reasons, need and want to get an abortion. Legal restrictions create unnecessary barriers to women who wish to access abortion services and involve the State in a decision that is very personal. At the very heart of the abortion debate is the concept of when life begins, which for many is defined by ensoulment. Ideas and beliefs about ensoulment have varied a lot throughout history and from one individual to another. This issue of personhood will likely never be resolved because everyone has a different perspective on the matter and until someone is actually in the position of experiencing an unplanned pregnancy they will not know for sure how they feel about it or what they will do. The abortion debate has always been controversial, but has become extremely polarized with the formation of the pro-life and pro-choice movements. Radical groups on either side have made it difficult to openly talk about this topic and what seems to have been lost in the crossfire is the importance of respecting the diversity of beliefs that exist around this topic.

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   This study includes international abortion statistics from 1995 and 2003, the most recent year for which abortion statistics are available in many countries; findings include:

   - There were 42 million abortions in 2003, down from 46 million in 1995.
   - The 2003 global abortion rate was 29 per 1,000 women aged 15-44, down from 35 per 1,000 in 1995.
   - The 2003 abortion rate in the U.S. and Canada was 21 per 1,000 women.
   - Western Europe had the lowest abortion rate.
   - Eastern Europe had the highest abortion rate.
   - Nearly half (48%) of all abortions in 2003 were unsafe, and most unsafe abortions (97%) were in developing countries.

   The team of researchers who worked on the study included two experts from the World Health Organization (WHO) in Geneva, Switzerland, and three from the Guttmacher Institute in New York, which focuses on sexual and reproductive health. They used the WHO's definition of unsafe abortions, which include "any procedure to terminate an unintended pregnancy done either by people lacking the necessary skills or in an environment that does not conform to minimal medical standards, or both." Based on the findings, Sedgh's team writes that "unsafe and safe abortions correspond in large part with illegal and legal abortions, respectively."
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