

Weariness Among the Physicians

Marvin Olasky, Ph.D.

Dr. Olasky is Associate Professor of Journalism at the University of Texas at Austin and Senior Fellow with the Capital Research Center in Washington, D.C. He is the author of seven books. The following article is from a history of abortion which he is currently writing, tentatively entitled, The Containment of Abortion, 1652-1962.

Within state and local medical societies, the crucial turning point on abortion often came not in the 1960s but during the first third of the century, as more doctors told stories like the following three by Robert Ferguson of Charlotte, North Carolina:

A few years ago there came under my observation a young woman in her first pregnancy and vomiting severely, who had made up her mind that she would not carry the pregnancy to fruition. She was taken to the hospital by her family physician with whom I saw her in consultation. The mother was on hand and took charge of the case. All questions addressed to the patient were answered by the mother ... this patient had another consultant called in and was curetted immediately.

The first year I started out to practice, on a Sunday morning, a beautiful young woman wearing many large diamonds appeared at my office and told me her troubles, the same old story, and said she had to have an abortion. I told her that was not my line of work and she would have to look elsewhere. She insisted and said she did not know where to go and if it was the fee that held me back all I would have to do would be to state my price, that she did not care what it cost, she was going to get rid of it. Although I was several thousand dollars in debt for my education I told her that a million dollars would not influence me in the least and that has been my stand ever since I got my diploma. Most doctors

are importuned many times each year to produce these abortions of convenience and, inevitably, some succumb.

About two years ago a lady on whom I had previously operated sent her daughter of 14 years to my office to examine on account of persistent nausea. The girl was three months pregnant and I asked her mother over the telephone to come to my office. She, like all the others, wanted to know what she could do to get rid of it - said it just couldn't be permitted to go on. I told her the law and that there was nothing I could do. She said she did not expect that I would do anything for her but thought I might tell her of some doctor who would help her out. I told her I did not know of any such. She remarked that she would go the rounds till she found one. A short time later she visited my office and informed me that she had found a doctor in Charlotte who produced an abortion on her daughter. I asked her the point blank question what he charged and she said he charged \$500, and while that was a big fee, she did not mind anything to get her daughter out of trouble.

Although many doctors were performing abortions, the leadership and rhetoric within local medical societies tended to be anti-abortion, and in city after city during the century's first three decades, local leaders called meetings to discuss ways to fight abortion.

These meetings developed a typical pattern, beginning

with the opening remarks by a theologian who examined religious and ethical issues. In Toledo, for example, doctors in 1905 assembled to hear Reverend F. Heirmann, S.J., criticize an abortionist who had said, "I would as leave kill, if necessary, an unborn child as a rat." Heirmann then posed the question: "Whether abortion is murder or whether the human embryo must be considered a person who has a right to life?" He quoted scientific studies showing the unborn child to be human life from the moment of conception, and told the assembled doctors that "the positive law of God" showed them how to react in the face of that knowledge. Heirmann also suggested explicit language: "Instead of resorting to big Latin compounds, foeticide, infanticide, let us use the strong and powerful Anglo-Saxon, child murder, murder of the unborn ..."

Next on the typical agenda came an estimate of abortion incidence, with commentary by a local medical opponent of abortion. For example, in 1904 Dr. Charles Bacon told the Chicago Medical Society that at least ten to thirteen percent of all pregnancies nationwide ended in induced abortion. Bacon pleaded with fellow doctors to oppose abortion, since "The right to life is the most fundamental right of an individual." Bacon acknowledged that some said the unborn child's dependence on a mother reduced its rights, but he suggested that such thinking would lead to infanticide, since a baby "needs the breast and the care of the mother for a long period ... This human being is just as much an independent being at the beginning of its intrauterine life as after it has reached a condition of extrauterine viability."

Tunes of "Onward, medical soldiers" spluttered to a halt, however, when local district attorneys or lawyers were called upon. For example, W.S. Carroll, an assistant district attorney for Erie County, told the Erie County Medical Society in 1908 that "under common law abortion was homicide or manslaughter ... but the modern law does not look upon the offense in such an atrocious light." Anti-abortion laws were virtually "a dead letter," Carroll reported, with no recent cases of offending physicians or midwives being jailed or even having their licenses revoked. Evidentiary hurdles, he observed, were significant; a doctor, called to attempt to repair part of the damage caused by abortion, could

not testify about anything the woman told him unless she explicitly answered a series of questions acknowledging her words to be a dying statement. Dying declarations were admissible in criminal (although not in civil) cases, but a doctor who attained such information while treating a patient was not allowed to communicate anything that "shall tend to blacken the character of the patient without her consent."

Local officials told doctors that if an anti-abortion case was not developed precisely, evidence would not hold up in court. At one medical convention, St. Louis attorney Earnest Oakley reminded doctors that statements by a dying woman to a doctor were not admissible in court, unless she said the required words: "I am going to die ... I have abandoned all hope of recovery."

Oakley told doctors that they must prompt such statements by asking women hard questions, or else give up all hope of convicting an abortionist. Other officials also strove to lower expectations. M.O. Heckard, Registrar of Vital Statistics in Chicago Department of Health, spoke of "a girl from one of our best families who has made a mistake."

Heckard asked whether he should "report this matter to the proper inquisitorial officers, and have the distress of the relatives advertised, who are already bowed down with grief and shame." He said he would "if there were any possibility of bringing the criminal to justice," but argued that this would not happen: The evidence is destroyed. If the physician does his duty to the law, makes this report directly to the Coroner, can he expect another call from that family or their immediate friends? And it is not every physician in the city who can afford to sacrifice a family under such circumstances. What can he do?

Frustration showed in the words of attorneys such as prosecutor Fletcher Dobyns:

There are approximately from six to ten thousand abortions produced in this city each year; there are something like two hundred deaths from that evil each year. We can count on the fingers of one hand

the convictions for criminal abortion that have been secured during the last half dozen years ... In one case, the physician who took the stand for the defense said it would be impossible for a doctor, even after curetting the parts, as he said he did, to say whether it was fetal tissue ... Another physician took the stand and showed how the same condition could have existed from something else, and that death could have resulted from other cause or causes.

J.M. Sheean, attorney for the Medico-Legal committee of the Chicago Medical Society, similarly said, "The decisions and enactments on our statute books are but reflections of the public conscience ... The law as it stands is further advanced than apparently the public demand for its enforcement would require..."

An article in the Providence Medical Journal in 1903 reported the "First conviction for Abortion in the State of Rhode Island," but in doing so showed "the difficulties encountered in the effort to convict for criminal abortion in Rhode Island." The convicted offender was a long-time abortionist with a record of previous cases dismissed, and in this case a strong ante-mortem statement and ample evidence of abortion as the cause of death made conviction possible. Even so, the sentence of the abortionist was only two years.

After hearing from law officials at local and national meetings, doctors repeatedly bemoaned the difficulty of enforcement. Dr. Henry D. Holton of Vermont told the American Academy of Medicine, "I have seen a good deal of trouble in securing conviction and have experienced it in trying to convict men whom I know, and everybody had a sort of common knowledge, were guilty, but to get the legal evidence was practically impossible." Dr. Edward T. Abrams of Dollar Bay, Michigan, told fellow AMA members in 1908, "For the past two years I have been a member of the Michigan legislature and also chairman of the committee on public health of that body." During that time, he said, he had been unable to find a way to make abortionist arrest and conviction more likely. In response to one law-tightening proposition, Abrams reported, "I was assured

by the best authority in our state that there would be no more powerful inducement for the concealment of abortion than to make a woman a party to the criminality of the act, because it will destroy absolutely the method of getting evidence."

Doctors such as Charles Bacon of Chicago argued that prosecutors could be successful if more physicians cared deeply enough about abortion to take abortionists to court and not let them off the hook. Bacon complained that few doctors put up with the many disagreeable annoyances attendant upon fighting abortion: the loss of time resulting from attendance at the Coroner's and the Grand Jury and finally at the trial... attacks to be expected from the defendant's attorney... the enmity of the friends of the accused midwife or physician is a factor that will cause many to hesitate to do anything that promises no return except loss of time and money, and worry and annoyance.

Bacon cajoled his fellow doctors to try harder, but he acknowledged,

Ordinarily it is very difficult to get satisfactory evidence against a professional abortionist. The relatives or others interested in the case are generally very anxious to prevent any publicity for obvious reasons, and even in case of the death of the mother it is frequently impossible to get any member of the family to take action in the matter.

Dr. W.H. Wathen of Louisville suggested that doctors "ostracize any man who will produce a criminal abortion," but such unity seemed unlikely.

Even Dr. Rudolph Holmes, who had led Chicago's successful campaign against abortion advertising in newspapers, fell victim to the spiritual depression that seemed to creep over anti-abortion physicians. He had told the Chicago Medical Society that it must maintain vigilance, for the ads "undoubtedly will reappear in a new guise..." And yet, when that even happened in 1910 exactly as Holmes had predicted, he seemed close to despair. Holmes noted that abortionists, denied newspaper advertising space, were printing more

business cards and distributing them through brothels and rooming house landlords. He reported that Chicago abortionists had their own legal department, with witnesses on tap and ready to swear that "the young woman had an operation elsewhere and the doctor was merely performing a life-saving operation." Holmes described the working methods of an abortionist who managed to stay out of jail year after year:

The cardinal principle of their actions is never to perform an operation with a witness present; her companion is rarely if ever allowed in the room. If discovery is made it is her word against his; if she dies he stands alone. A very popular way is for two or more operators to work in harmony; one will make all the arrangements for the procedure, and then when all is ready another will slip in and do the work.

Holmes also complained that regular doctors were performing or commissioning abortions. He spoke of three kinds of abortionists: The young doctor "inveigled into committing his first offenses in his pressing need for money"; the established physician "who largely is engaged in ethical practice but who systematically relieves his patients in order that he may hold his families;" and the full-time abortionist, often recruited by established doctors to handle their "dirty work." Holmes noted that doctors in good standing in their local and national societies performed abortions, and that their colleagues knew of the practice but were "too weak-kneed to take aggressive action for their expulsion." He also saw governmental complicity, and asked, "What can you expect when a member of our legislature is backing financially and politically one of the most notorious abortion hospitals in Chicago?"

What apparently pushed Holmes into despair was the sense that he was virtually all alone. He wrote,

I have come to the conclusion that the public does not want, the profession does not want, the women in particular do not want, any aggressive campaign against the crime of abortion. I have secured evidence.

I have asked different physicians, who either had direct knowledge of the crime against the prisoner before the bar or who could testify as to the general reputation, to come and testify. They promised to come, but when the time for trial is at hand no one appears. On the other hand, so-called reputable members of our Chicago Medical Society regularly appear in court to support the testimony of some notorious abortionist.

Holmes complained that, "it is not possible to get twelve men together without at least one of them being personally responsible for the downfall of a girl, or at least interested in getting her out of her difficulty." His conclusion was that "legislation is not needed, at least, in Illinois. We have as good a law as perhaps can be made. It is the enforcement of law that is needed."

Other doctors were angered by silence among societal leaders from other spheres. Walter Dorsett in 1908 told the AMA's Section on Obstetrics and Gynecology that "the clergy do not seem to be at all concerned. Few sermons are preached from the pulpit for fear of shocking the delicate feelings of a fashionably dressed congregation ..." He complained that medical students were not being told about the "enormity of the crime, and that many "yield(ed) to the temptation." Women contemplating abortion, according to Dr. Edward A. Weiss, then saw "the apathy toward induced abortion on the part of their neighbors, physicians, and the world at large ..." Everyone thought "lightly of the offence" and knew that the law was seldom enforced.

Dr. M.S. Iseman in 1912 presented one of the earliest twentieth century pictures of hopelessness concerning abortion. In New York City, he wrote, "embryonic humanity has no more sanctity nor protection than the rats which infest its docks." Regular M.D.s were the leading practitioners: "So general is the demand and so common the practice, that in the competition for the traffic the ordinary criminal operator has been practically driven out of the business by the highly skilled and respectable members of the medical profession." Well-connected women could gain permission for "therapeutic abortions" from those

brilliant specialists of the art, the gynecologist, whose philanthropic and unflinching tomahawks are whetted for every embryo daring to stray within the confines of a woman's clinic."

Iseman described progressive era New York as a mecca for abortion. "While the local traffic is as much as the thousand or more abortion specialists can attend to," he wrote, "the outside contingent is simply enormous, and during the season it is difficult to say which is the stronger attraction for the lady visitors to the metropolis -- the horse-show, the opera, or the gynecologist." He reported that, "The laws against the crime of abortion are no more enforced in the great state of New York than the Revised Statutes of the United States are enforced in China. One of the scores of thousands committed every year, in some years not a single indictment follows. According to the report of the Secretary of State on the statistics of crime for the ten-year period 1895-1904, there were only nine convictions in the entire State, of which two were in New York City.

Iseman then took his readers on a city-by-city tour of abortion in America. Based on statistics concerning recorded childbirths and estimates of officials, he claimed there were 4,000 induced abortions in Washington, D.C., each year.

"It is current opinion that the swift-flowing sewers, and even the convenient and silent Potomac itself," were convenient disposal sites for aborted unborn children and killed newborns: "The fact, however, that in 1908 the bodies of 86 of these rash intruders were found abandoned and thrown out upon the streets in the parks of the city indicates that in some circles the dog or the coroner is preferred to the drains." During the five-year period from 1905 to 1909, thousands of abortions resulted in only nine indictments for abortion, and three convictions -- not enough to do more than to slow down slightly the traffic to abort. In the District, Iseman wrote, abortion referrals were made even in the "booths of the hairdressing parlors, the sanctums of the dressmaker, and the boudoir of the milliner, and what information cannot be obtained in these directories can be readily learned from the chambermaid or 'wash lady.'"

Other large cities were no better, Iseman reported. Enforcement was rare; for example, in Atlanta in 1911, "after years of suspended animation, the police made a solitary arrest for the crime of abortion ..." That was not enough to deter abortionists who hired agents to distribute advertising cards in hotels. Iseman concluded that, "except in the formal letter of the statute books, the sanctity which nearly twenty centuries of Christianity has conferred upon the unborn human being is repudiated."

The repudiation of that sanctity also made it easier to broaden indications for therapeutic abortion. "it seems that the wisdom of this can be scarcely questioned," Dr. Frank Higgins argued as early as 1904, because even though some doctors might "perform abortion in many unnecessary cases, it is believed that this will not be true to any large extent ..." In the past, Higgins continued, doctors would induce abortion "only when the patient [was] suffering from such grave disease that her life is in eminent peril," but now many believed that the "termination of pregnancy is entirely justified to prevent the advance of what might later prove to be a fatal disease." Other doctors also discussed therapeutic abortion. Charles Jewett in 1908 wrote that induced abortion was commonly accepted when it could "interrupt morbid processes that threaten to cripple permanently important mental and physical functions." He reported the contention that "melancholia may be taken as an indication for abortion if the woman's condition is manifestly growing worse."

Charles Bacon noted in 1910 that Illinois law allowed therapeutic abortion only to save the life of the mother, but "As a matter of fact almost all therapeutic abortions are done to save the health of the mother." Edward A. Weiss, a Pittsburgh obstetrician, was a persistent critic of lenient standards for therapeutic abortion. He contended in 1913 that "life of the mother" exceptions in state laws were "so flexible that frequently the slightest indisposition of the mother is used as pretext and the life of the fetus is terminated with the conscience-satisfying excuse that it was necessary to preserve the life of the mother."

Weiss went on to argue that abortion was too common, because students were taught to think of it as a first resource:

It is the exceptional teacher and writer on obstetrics and diseases in women that properly instructs his students on this important subject; more often the contrary is true and his lectures abound with reference and explicit directions as to when and how pregnancy should be terminated.

Weiss, contending that many unborn children were dying unnecessarily, hit hard at the standard teaching: "Is it any wonder then that the student who graduates from the classroom with little of no moral instruction goes forth to follow in the steps of Herod in the slaughter of the innocent?" He argued, "If the unborn child had attorney to represent it at the courts of justice there would be a higher regard for its life ..." A decade later, at a meeting of obstetricians and gynecologists, Weiss still was insisting that "therapeutic abortions" were too common. He asked, "Is it any wonder that so many abortions are being performed by the laymen and the quack, when we, as a profession, give them so much leeway and encouragement?"

Physicians' estimates of the efficiency of law went along with their sense of how much law could accomplish. In 1917 Dr. G.D. Royston questioned 51 women who admitted 82 illegal abortions (30 self-induced, 20 done by physicians, 20 by midwives, 12 by drugs) and concluded that nothing would "deter a woman once determined to interrupt her pregnancy." That same year Dr. John Murphy of New York complained that abortionists often dispatched patients to city hospitals confident in the belief that the patients would not be pressed to reveal the source of their affliction: "City hospitals are unwitting abettors of the abortionist ... safe havens for what I might term criminally sick women." Murphy wrote of how he recently asked one patient if a doctor had "sent her to the hospital, and she answered, 'No one, I always come here after my abortions ... And I've told a number of my friends about it.'" Murphy concluded that the hospital "now seems to be a branch of the devil's workshop."

The coming of the "Great War" raised questions about what Americans were fighting for. Dr. Robert McNair wrote in 1918 of "a strong indication of the standing of the criminal abortionist in modern society today, when it

is considered how quietly and gracefully his practice is ignored." McNair told of how one abortionist was "cornered, literally red-handed," and arrested, but was soon free and "allowed to roam at large in accordance with his own sweet will. The reason, it would seem, is quite simple, expressed in two words -- public sentiment." The United States in the world war was fighting for a "world wide democracy," McNair commented, "but until we look more carefully to correcting the principles that must serve as the foundation to this great social order of progressive democracy, etc., there is serious danger of history repeating itself in the social conditions of ancient Rome ..." McNair concluded that "Huns and the Vandals came from without to pillage and destroy; in reality and it was afterward found out, that the Huns and the Vandals were within the walls of the eternal city."

Complaints continued in the 1920's as Dr. Palmer Findlay of Omaha, after estimating that one in five or six pregnancies was ending in induced abortion, wrote of how hard it was "to convince the lay public that life begins at the moment of impregnation ..." Findlay wrote that "Not one in a thousand [abortionists] is ever held accountable for the crime he commits, "due to difficulties of evidence and reluctance to file complaints. Dr. N.W. Moore similarly noted, "notwithstanding our most drastic laws, the criminal is rarely convicted. If a guilty physician is placed on trial there is very often some sympathetic doctor-friend in his community ready to throw a mantle of charity around him." When the Obstetrics Society of Philadelphia in 1923 discussed ways to limit abortion, no new answers were forthcoming; Dr. Edward Schumann called abortion "an evil which has existed through all time and will continue to exist." with the only hope of limitation "more drastic laws" and "moral training of young people." In the discussion that followed, Dr. John McGlenn said, "We should not ask the Legislature for more laws: we have more laws than we need at the present time and will only have another that will not be enforced because you cannot make people good by legislation."

Doctors who forgot that legislation is education, and stated the question that way -- can laws make people good? -- sometimes gave up when they saw that laws could not. At a symposium in 1908, Dr. Rachell S.

Yarros of Chicago insisted "You can not enforce laws ... with which the public has little sympathy. Even if we could enforce anti-abortion laws the problems would not be solved." At that symposium Dr. J.H. Carstens of Detroit held out little hope for the power of law as long as individuals thought "there is nothing earnest in this world. That it is just made for them and for their pleasure, and everything that interferes with that pleasure they object to and try to do away with ... we shall never accomplish much by law."

And yet, some doctors understood that the law did deter some abortions and save some unborn lives, and that persecution of a few abortionists sent many more running for cover, at least temporarily. In 1927, for example, Dr. E. A. Ficklen of New Orleans argued that hopes for "total abolition of the practice" could not be met, for in 25 states, over a ten-year period, only 44 abortionists were convicted. Ficklen explained why so few convictions were obtained under a Louisiana law that had been tightened in 1919: "In many instances there was a moral certainty of the guilt of the accused, but ... drastic changes in criminal law with the requirements for evidence very much reduced would be necessary before we could expect more convictions." Ficklen concluded that those changes would not be forthcoming, since the community was divided on abortion. And yet, he did not conclude that current laws, although porous, were worthless. Laws that could not put abortionists in jail could at least restrict their practice

As early as 1906 some medical leaders who saw partial success as failure spoke of abandoning anti-abortion laws. Those who were pro-abortion then began to take advantage of such weariness. Dr. Henry Marcy argued in the *Journal of the American Medical Association* that "the product of early impregnation is of so little importance that abortion will not be seriously established as a criminal offense.

Maximillian Herzog closed one meeting of the Chicago Gynecological Society by opposing the idea of treating abortion at all stages as murder: "To look on an embryo four weeks old as a human being seems to be an exaggerated view." Furthermore, Herzog saw doctors as god-like and argued that even dying declarations

should not be allowed in court, since the physician's authority should outweigh a judge's: "Whatever is confided to a physician is not to be divulged in court under any circumstances. The relations of physician and patient ought to be those of absolute confidence."

Dr. William Robinson, who became a leading spokesman for abortion, told the Eastern Medical Society in 1911 that some unmarried women were right to abort their children, and wrote in 1915 that "The evil of abortion is one of the most terrible evils in our society," but only because of its danger to women. Once he saw the problem as one of avoiding unnecessary risk at the hands of a quack, Robinson was able to conclude that "Under our present social and economic conditions the professional abortionist, much we may despise and condemn him, has more than once proved a real benefactor, in preserving the sanity, the health and the life of a frantic young woman and frantic family."

By the early 1930's there was more such talk, and three different positions on abortion had emerged among physicians. On the left Robinson had become openly pro-abortion; he argued that infanticide (under the guise of accidental suffocation or drowning, medical overdose, exposure to cold, or simple abandonment) still was frequent, and that "the legalizing of abortion" would solve the problem. Robinson stated that it was "better to permit the removal of a few inanimate cells" than to have an "unwanted" child born. On the other end of the spectrum from Robinson was Dr. Matthew Liotta, who insisted "on the rights of the unborn child as a human being from the moment of its conception ..." Liotta based his condemnation of abortion squarely on biblical grounds: "The commandment, 'Thou shalt not kill,' binds all men." He saw his fellow physicians as accomplices:

...Never before in all past ages has there been such merciless killing of innocent, helpless and unborn human beings as is going on at the present time.

Atheistic "knowledge" and technical skill were fighting biblical morality, Liotta argued: "It is all very well to know science. What is most needed is the art or skill

which enable one to apply the principles of science in a manner pleasing to God."

Many physicians, however, seemed to be in the middle. Robert Ferguson of Charlotte, for example, saw abortion as killing but wanted to be "compassionate." The changed understanding of compassion was evident when Ferguson told of a 14-year-old pregnant girl and asked, "Should not we as organized bodies of medical men apply to the Legislatures of the various States for relief for these unfortunate young girls?" After all, Ferguson argued, "Conceptions of right and wrong change from time to time, and theology, jurisprudence and medicine present radical differences on various points in different countries. "He proposed that "The medical profession should work to the end that certain changes might be made in our National and State laws that would permit the prevention of the attaching to our girls of 14 years of age and under the stigma of having borne and illegitimate child." By 1930 the inevitability of induced abortion was assumed, and articles in medical journals debated the effectiveness of conservative or radical post-abortion treatments of women without suggesting ways to avoid that choice in the first place.

At least in hindsight, a reading of hundreds of abortion-related articles in medical journals from the first third of the century shows that when anti-abortion doctors tried to come up with effective "rationalistic" appeals, they sometimes emphasized arguments that had immediate usefulness but would, as it turned out, backfire later on. Rudolph Holmes, for example, proposed that "Arguments concerning the danger of having the operation done are to my mind more effective than too strong presentation of the moral aspect..." However, as abortion became physically safer for the mother, the downplaying of morality began to hurt. So did the tendency of some to decree that religious concerns should play no part in the abortion debate. Although a Cleveland doctor, Rolande E. Skeel, complained after one discussion of "a very unfortunate thing indeed that a theological viewpoint has been allowed to enter that which should be a calm scientific consideration of a medical viewpoint," calm examinations apart from biblical presuppositions tended to lead to more abortions. This was particularly true as -- in the words of Dr. J.D. Roberts -- "parents of illegitimate children,

prompted by the anxiety of the situation with disgrace and ostracism before them, "pleaded with doctors to find them "any path out of the difficulty, regardless of law and morals."

Sigmund Zeisler of the Chicago Gynecological Society proposed another method of approach that would haunt the anti-abortion movement. Zeisler wrote, "Whenever a moral question comes up for consideration, I always like to fall back on the old Kantian categorical imperative which is about as follows, 'Always act thus, that the motive underlying your actions may furnish the principle for a general law.'" The categorical imperative for an abortionist, Zeisler wrote, meant

that everybody should commit abortion and that every pregnant woman should allow or consent to the abortion. What then would become of this world? ...That anything should ever become a general practice which would result in the total annihilation of the human race cannot be contemplated with degree of ease of mind. Hence it is self-evident that abortion is wrong, that it really needs no discussion from the moral point of view.

Such an argument would not be compelling in later years when ideas of "overpopulation" became popular.

Some arguments did not take so long to turn around. Dr. Wilbur Krusen, in an echo of spiritualist thinking, argued that it "is the right of every child to be well-born," yet "many an embryo is launched even upon an ante-natal career with a justifiable grievance. "Five years later Dr. James P. Warrbasse was arguing that the

Child should not force itself upon parent that do not want it. It is so apt to find its self in an uncongenial atmosphere that three are caused to suffer where two were happy before ... Were the unconceived child to speak it might say, 'Let me be created in love and born only as a gift to parents whose hands are held out with loving welcome to receive me. Spare me

from the hostile frown of my creators.' A babe is so important a thing that it is only deserving of loving parents...

From there it was only one small step to aborting the "thing" to save it.

Other attempts to make anti-abortion arguments without regard to theology also have a modern pro-abortion ring. Dr. Allen Gilbert wrote in Pediatrics that "Individual self-consciousness does not occur until the 2nd or 3rd year of life. Only then can the child say, 'I am.' Until then the child has the 'possibility of personality.' Gilbert stated that the possibility occurs with conception, so abortion should not be allowed: "a life in utero is sacred in that it represents the possibility of self-consciousness..." But others would take that statement of "possibility" as an opportunity to treat the unborn child as sub-human.

What many of these arguments had in common was their pragmatism. Dr. J. D. Roberts of North Carolina complained that the abortion-prone were not listening to doctors:

Speak with as much authority as we may, urge as we have done for ages past as a profession, frown upon the practice, condemn it as iniquitous, censure the perpetrators as criminals, murderers, remonstrate with them with all our force, still ... the God-given edict from Sinai's Mount 'Thou shalt not kill' is disregarded [by] the people of a corrupt and profligate time.

Roberts noted that many doctors, either out of frustration or their own religious beliefs were moving away from moral appeals and speaking against abortion on utilitarian grounds. Increasingly, the anti-abortion house appeared to be built on sand. The utilitarianism was reflected in early twentieth century popular medical encyclopedias; unlike their late nineteenth century predecessors, those that contained anti-abortion warnings generally stood only on utilitarian ground. For example, *The Household Physician: A Twentieth Century Medic* warned that "various womb complaints

are the usual accompaniments" of abortion, and capable of "ruining the future life or usefulness of the woman." The *Century Book of Health* "warn[ed] women of the folly and danger" of abortion, and contended that "death frequently results from the employment of such means as are necessary to produce abortion." But with the maternal death rate in abortion about two percent, desperate women outside of marriage could possibly take the chance.

Utilitarianism was so dominant that some medical books even had titles such as *The Human Machine: Its Care and Repair*. Other popular books had only brief mentions of abortion. Edgar Maryott's *The New Medical World* simply noted that "Miscarriages criminally procured are to be deprecated, and any man or woman carrying on such unrighteous business should be dealt with as a base criminal." A monstrosly-long book such as *Health Knowledge* (1,525 pages) discussed suppression of menses, and -- in the style of an earlier century -- recommended use of Cotton root, aloes, and other medication. In all of those 1,525 pages just nineteen words specifically commented on abortion: "Criminal abortion means that the womb was emptied intentionally. This is caused by taking drugs, or opening the womb." Emphases on illegality and danger to the woman proved to be weak later in the century; once utilitarian thinking became supreme the battle, in the long run, was lost.

"We are apt to grow sluggish, we are apt to go a little with the tide," Dr. George Phillips had warned in 1896. Three decades later, Dr. W.C. Bowers observed that "pressure is brought to bear on every physician from the day he opens his office till the end of his life, to have him commit abortion." Bowers said, "If he loses sight of the criminality of the affair, and the moral responsibility he takes, he is sometimes inclined to aid people who seem in very distressing circumstances, but if he ever does he has started down the hill."

References

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4. Rev. F. Heirmann, "Ethical and Religious Objections to Criminal Abortion," paper read before the Academy of Medicine of Toledo and Lucas County, January 27, 1905; Toledo Medical and Surgical Reporter, Vol. 31 (1905), p. 233. Heirmann was president of St. John's College.
5. Ibid., p. 234.
6. Ibid., p. 235. Heirmann noted that killing in "just wars" and self-defense, as capital punishment for crimes committed, was allowable.
7. C.S. Bacon, "The Duty of the Medical Profession in Criminal Abortion," symposium before the Chicago Medical Society, November 23, 1904; Illinois Medical Journal, Vol. 7 (1904), p. 18.
8. Ibid.
9. Ibid., p. 19. Bacon also opposed euthanasia: a person should not be deprived of life, Bacon said, even if "he be diseased, unconscious, worthless or for any reason whatever unless the State represented by its judicial officers decides that he has forfeited his life by his crimes and rendered its extinction necessary for the welfare of the state."
10. W.S. Carroll, "The Rights of the Unborn Child," The Pennsylvania Medical Journal, vol. 13 (1909-1910), p. 936. Carroll stated that the woman who had an abortion done upon her was not guilty under the statute particularly related to abortion.
11. Carroll, p. 941.
12. Earnest F. Oakley, Jr., "Legal Aspects of Abortion," American Journal of Obstetrics and Gynecology, Vol. 3 (1922), pp. 37-41.
13. Dr. M.O. Heckard, symposium remarks in the Illinois Medical Journal, Vol. 7 (1904), p. 42.
14. Ibid.
15. Ibid., pp. 40-41.
16. Ibid., p. 37.
17. Providence Medical Journal, Vol. 4 (1903), pp. 57-59.
18. Discussion at 1907 meeting of the Academy, Bulletin, Vol. 8 (1907), p. 347.
19. Journal of the American Medical Association, Vol. II (1908), p. 960.
20. Bacon, p. 21.
21. Ibid., p. 21.
22. Journal of the American Medical Association, Vol. III (1908), p. 957.
23. Minutes of the Chicago Medical Society, Vol. 17, October, 1905-June, 1907.
24. Dr. Rudolph Holmes, "The Methods of the Professional Abortioneer," Journal of Surgery, Gynecology and Obstetrics, Vol. 10 (1910), p. 542.
25. Ibid., p. 543. Holmes added, "In Boston, a coterie of some four or five abortionists adopted this method -- the operator would enter the room masked. One of these men confided in a lawyer that he and his associates were doing like 800 to 1,000 a year."
26. Ibid., p. 542.
27. Journal of the American Medical Association, Vol. II (1908), p. 960.
28. Holmes also placed hopes on education: Young people "will know facts and will live accordingly. Many now make themselves believe that there is no life until the movements are felt. When the false teaching in this respect is put aside good will be accomplished." Holton similarly concluded, "I believe it is a matter of education to a great extent."
29. Walter B. Dorsett, "Criminal Abortion in its Broadest Sense", Journal of the American Medical Association, Vol. II (1908), p. 957.
30. Ibid.
31. Dr. E. A. Weiss, "Some Moral and Ethical Aspects of Foeticide," a paper read at the Annual Meeting of the American Association of Obstetricians and Gynecologists, Toledo, September 17-19, 1912; American Journal of Obstetrics, Vol. 67 (1913), p. 78.
32. M.S. Iseman, M.D., *Race Suicide* (New York: The Cosmopolitan Press, 1912), p. 140.
33. Ibid.
34. Ibid., p. 141.
35. Ibid., p. 143.

36. Ibid., p. 152.
37. Ibid., p. 153.
38. Ibid., p. 158.
39. Ibid., pp. 153-154.
40. Ibid., p. 199.
41. Ibid., p. 155.
42. Dr. Frank A. Higgins, "The Proper Indications and Methods for the Termination of Pregnancy," paper read at American Medical Association's 1904 Meeting, Section on Obstetrics and Diseases of Women, in the *Journal of the American Medical Association*, Vol. 43 (1904), p. 1531.
43. Ibid., p. 1531.
44. Charles Jewett, "Indication for Artificial Abortion in the First Three Months of Pregnancy," *New York State Journal of Medicine*, Vol. 8 (1908), p. 113.
45. *Journal of Surgery, Gynecology and Obstetrics*, Vol. 10 (1910), p. 548.
46. *American Journal of Obstetrics*, Vol. 67 (1913), p. 79.
47. Ibid.
48. Ibid., pp. 74-75.
49. *American Journal of Obstetrics and Gynecology*, Vol. 3 (1922), p. 46.
50. G.D. Royston, "A Statistical Study of the Causes of Abortion," *American Journal of Obstetrics and Diseases of Women and Children*, Vol. 76 (1917), p. 582.
51. John C. Murphy, "Are Municipal Hospitals Unwitting Aids to Abortionists?" *The Medical Times*, Vol. 45 (April 1917), p. 103.
52. Ibid.
53. Robert McNair, "Status of the Abortionist in the Modern Social Order," *New York Medical Journal*, Vol. 107 (March 16, 1918), p. 503.
54. Ibid.
55. Palmer Findlay, "The Slaughter of the Innocents," *American Journal of Obstetrics and Gynecology*, Vol. 3 (1922), p. 35.
56. N.W. Moore, "Abortion, Criminal and Inevitable," paper read before the Kentucky State Medical Association, October, 1922, *Kentucky Medical Journal*, Vol. 21 (1923), p. 332. Moore added, "Many places offer help, and when an unmarried woman becomes pregnant and consults me as to how to dispose of her case, I refer her to one of these institutions."
57. Dr. Edward A. Schumann, "The Economic Aspects," *The American Journal of Obstetrics and Gynecology*, (1924), p. 485.
58. Ibid., p. 486.
59. *Journal of the American Medical Association*, Vol. 48 (1908), p. 548. She added, "Many women say that if they had a little support from the man, they would not think of having an abortion performed."
60. Ibid.
61. E. A. Ficklen, "Some Phases of Criminal Abortion," paper given before the Orleans Parish Medical Society, March 28, 1927; in *New Orleans Medical and Surgical Journal*, Vol. 79 (1926-1927), pp. 884-893.
62. Ibid., p. 886.
63. Other means of restriction also could be useful. Dr. Edwin B. Harvey of Boston, for example, argued for containment by stripping known abortionists of their medical licenses. "The whole business of medical practice is curative, treating diseased persons for the purpose of mitigation of cure," Harvey noted: "What disease is the abortionist trying to alleviate or cure?"
64. Henry Marcy, "Education as a Factor in the Prevention of Criminal Abortion and Illegitimacy," *Journal of the American Medical Association*, Vol. 47 (1906), p. 1889.
65. *Journal of Surgery, Gynecology and Obstetrics*, Vol. 10 (1910), p. 550.
66. Ibid.
67. Dr. William Robinson, "Fewer and Better Babies, or the Limitation of Offspring" (*New York: Critic and Guide*, 1915), p. 121.
68. Robinson, p. 133. Robinson also cited (pp. 224-225) a European pro-abortion literature that was springing up.
69. William J. Robinson, "Abortion and Infanticide," *American*

Medicine, Vol. 39(1933), p. 70. He expanded on these ideas in his book, *The Law Against Abortion* (New York: Eugenics Publishing Co., 1933), which will be discussed in chapter eleven.

70. Matthew A. Liotta, *The Unborn Child* (New York: Liotta, 1931) preface.

71. *Ibid.*, pp. 9, 12-13. Liotta wrote, "God's punishments are meted out to everyone who recommends or makes use of any method that will cause an abortion."

72. *Ibid.*, pp. 11-12.

73. Robert Thrift Ferguson, "Abortion and Abortionist," *Southern Medicine and Surgery*, Vol. 93 (December, 1931), p. 889.

74. *Ibid.*, p. 892.

75. H.C. Hesselstine, "Indications for the Treatment in Abortions," *Journal of the Iowa State Medical Society*, Vol. 20 (1930), p. 406.

76. Rudolph Wieser Holmes, M.D., "Criminal Abortions; A Brief Consideration of its Relation to Newspaper Advertising -- A Report of a Medico-Legal Case," *Illinois Medical Journal*, Vol. 7 (1905), p. 30.

77. *American Journal of Obstetrics*, Vol. 67 (1913), p. 81.

78. J.D. Roberts, "Criminal Abortion," *Carolina Medical Journal*, Vol. 46 (1900), p. 135. Roberts asked that educational efforts by doctors continue, but that the vice be condemned from the pulpit; he had heard that done only once, "tho' more murders are annually committed in this way than all others combined."

79. Sigmund Zeisler, "The Legal and Moral Aspects of Abortion," remarks at the 1910 meeting of the Chicago Gynecological Society, printed in the *Journal of Surgery, Gynecology and Obstetrics*, Vol. 10, p. 539.

80. *Ibid.*, p. 540.

81. *Therapeutic Gazette*, Vol. 34 (1910), p. 162.

82. James Warrbasse, "Let Me be Created in Love," in *Critic and Guide*, and Robinson, pp. 244-245.

83. Dr. J. Allen Gilbert, "The Advent of Self-Consciousness and Its Relation to the Crime of Abortion," *Pediatrics*, Vol. 13 (1902), p. 296.

84. *Ibid.*, p. 298.

85. J.D. Roberts, p. 131. Roberts noted that Christian teachings were being overlooked as pagan ideas came back into vogue.

86. *The Household Physician; A Twentieth Century Medic* (Boston: Woodruff, 1909).

87. *Century Book of Health* (Springfield, Mass: King-Richardson, 1912) pp. 486-487.

88. *The Human Machine: Its Care and Repair* (Topeka: Herbert S. Reed, 1905).

89. *The New Medical World* (Springfield, Mass.: Hampden Publishing, 1906), p. 531.

90. J.L. Corish, *Health Knowledge* (New York: Domestic Health Society, 1919), p. 69.

91. *Ibid.*

92. George A. Phillips, "Criminal Abortion: Its Frequency, Prognosis, and Treatment," *Maine Medical Association Medical Transactions*, Vol. 12 (1895-1897), p. 308.

93. Fernald, p. 64.