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WHAT'S YOURS IS MINE— Anti-abortion Advocacy's Roots in Controlling Our Bodies

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Advocacy often boils down to messaging. It frankly doesn't matter how right or wrong you are if you can persuade an audience on other grounds. There is no better persuasion tool than a child representative of a cause; children invoke a sense of vulnerability and a desire to protect that become stronger the younger the child is. Fetuses are the epitome of this phenomenon, making them the natural foundation for anti-abortion activists to base their messaging. This tactic has been frustratingly effective due to its tendency to shield unassuming and ambivalent individuals from the truth: those who oppose abortion do so out of a desire to exert control over an individual's—usually a woman's—body.¹ If the façade of protecting children is stripped away, anti-abortion activism maintains its roots in denying individuals with uteruses full control over their bodies and reproduction.

Abortion has a long history in the United States and, perhaps surprisingly, has been a legal and normalized part of that history for more than half of this country's existence.² From the nation's founding through around 1900, abortion was legal and accessible at any point before quickening, the point at roughly fourteen weeks at which the pregnant person begins to feel the fetus kick.³ By 1910,

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1. While I make every attempt to use gender neutral language, the words “woman/women” are used at times throughout this piece, typically in reference to societal trends or data. I apologize for any harm or discomfort this causes.

2. See, e.g., Ranana Dine, *Scarlet Letters: Getting the History of Abortion and Contraception Right*, CTR. FOR AM. PROGRESS (Aug. 8, 2013), <https://www.americanprogress.org/article/scarlet-letters-getting-the-history-of-abortion-and-contraception-right> [<https://perma.cc/2JV5-F4F8>].

3. See *id.*

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however, abortion was criminalized in every state.⁴ The beginning of this radical shift in abortion policy arose from a number of societal trends that threatened the control of white Protestant American elites, including an influx of Catholic and non-white immigrants and a sudden decrease in the white Protestant birth rates.⁵ These racial elites began to fear being outnumbered by those they deemed less than, and wanted to prevent this demographic switch—and potential change in the race and ethnicity based societal hierarchy—from occurring by any means.⁶ By and large, these means meant anti-abortion restrictions. While demographics played a large role in the development of anti-abortion sentiment, the movement would not have been as successful without the efforts—and misogyny—of physician Horatio Storer.

In the 1850s, Storer joined the newly created American Medical Association (AMA) and began intense anti-abortion lobbying. From its founding in 1847, the AMA made no mention of abortion until Storer petitioned for the creation of an exploratory commission in 1857. By 1859, the AMA had unanimously accepted Storer's findings and adopted restrictive abortion stances.⁷ Storer and other prominent anti-abortion physicians effected this quick change in public opinion by replacing the previously accepted maternal/fetal relationship model—in which a fetus is merely a part of the pregnant person's body—with the idea that a fetus is “an autonomous form of life.”⁸ Despite their claim to want to protect fetal life—a claim that has also come to define the modern anti-abortion movement—Storer and his associates fundamentally believed that “medical men are the physical guardians of women.”⁹ While some “wretched women . . . [were] murdering their children . . . through ignorance,” Storer wrote, “[for women who] have been influenced . . . by fashion, extravagance of living, or lust, no language of condemnation

4. *See id.*

5. *See* Katha Pollitt, *Abortion in American History*, ATLANTIC (May 1997), <https://www.theatlantic.com/magazine/archive/1997/05/abortion-in-american-history/376851> [<https://perma.cc/4KTF-2TBD>].

6. *See* Malcolm Potts, *Changing Attitudes Toward Abortion (Controversial Issues in Medicine)*, 131 W.J. MED. 455, 456 (1979).

7. *See* Nina Renata Aron, *The Father of American Gynecology Fought to Criminalize Abortion in the 1850s*, TIMELINE (Mar. 27, 2017), <https://timeline.com/horatio-storer-criminal-abortion-c433606491da> [<https://perma.cc/379P-VKDZ>].

8. Reva Siegel, *Reasoning From the Body: A Historical Perspective on Abortion Regulation and Questions of Equal Protection*, 44 STAN. L. REV. 261, 290 (1992).

9. *Id.* at 296.

can be too strong.”¹⁰ Regardless of the pregnant person’s reasoning, Storer did not believe in a woman’s ability to make an informed choice about her own reproduction.

In order to put reproductive control in the hands of male physicians, Storer and other anti-abortion activists had to wrest it away from husbands, whose decision-making authority as heads of their households extended to their wives’ pregnancies. Women were believed to owe children not just to their husbands, but also to society at large, making restrictions on abortion necessary for the public interest.¹¹ In fact, the early anti-abortion movement believed that women had made a tacit promise with the state to bear children.¹² Anything that interfered with marital procreation, including contraception and masturbation in addition to abortion, was deemed a “physiological sin” that physicians were uniquely situated to tackle in their self-appointed role as the guardians of women’s bodies.¹³ Family planning practices were viewed as a societal problem with women’s decision-making as the root cause. The entanglement of pre-existing misogyny, xenophobia, and activism from chauvinistic male physicians made anti-abortion activism devastatingly effective.

Legal prohibitions on abortion that arose after the AMA’s anti-abortion stance did not end the practice but instead pushed abortions to occur in secret. Some individuals, namely those who were upper class and white, continued to access safe abortion services, but others were not as lucky. In the late 1920s, 15,000 women per year died from abortion complications.¹⁴ Those who sought aid after a botched abortion procedure were routinely denied medical attention unless they confessed to the transgression of abortion.¹⁵ In the 1930s, there were an estimated 681,000 abortions of varying legality performed per year; anywhere between 8000 to 10,000 of these ended in death, particularly from illegal or back-alley abortion procedures.¹⁶ By the time *Roe v. Wade* came before the U.S. Supreme Court in 1973, abortion deaths were no longer as common but nonetheless remained a regular occurrence, with an estimated

10. Aron, *supra* note 7.

11. Siegel, *supra* note 8, at 297.

12. *Id.*

13. *Id.* at 296.

14. Pollitt, *supra* note 5.

15. *Id.*

16. Lauren MacIvor Thompson, *Women Have Always Had Abortions*, N.Y. TIMES (Dec. 13, 2019), <https://www.nytimes.com/interactive/2019/12/13/opinion/sunday/abortion-history-women.html> [https://perma.cc/B3HH-GCQZ].

thirty-nine deaths occurring in 1972.¹⁷ The status quo of abortion restrictions was not only wrong, but also untenable.

Roe marked the beginning of modern-day American abortion jurisprudence. In a decision that invalidated dozens of state abortion bans, the Supreme Court held that the constitutional right to privacy “is broad enough to encompass a woman’s decision whether or not to terminate her pregnancy.”¹⁸ While the right to an abortion is not absolute, a forced pregnancy violates an individual’s constitutional right to liberty and to make private medical choices. According to the Court, liberty cannot exist without the right “to define one’s own concept of existence, of meaning, of the universe, and of the mystery of human life.”¹⁹ When the state moves to intervene and supplant “its own vision of the woman’s role” by forcing individuals to carry a pregnancy to term, it is an explicit endorsement of the idea that people with uteruses’ bodies’ reproduction can be controlled by the state and a denial of their personal autonomy.²⁰

If the veneer of children’s rights is removed, anti-abortion advocacy remains true to its roots as an expression of societal control over people with uteruses. Regardless of the arguments made by anti-abortion activists of the past or present, abortion restrictions are fundamentally a rejection of the full personhood of people with uteruses. Denying people with uteruses “some control over the divide between what is inside and what is outside their bodies” is a violation of an individual’s sense of self that underpins the advocacy of the anti-abortion movement.²¹

Modern anti-abortion activism teems with sexism in more ways than one. A 2019 national survey found that among people who think abortion should be illegal in all or most cases, more than half of respondents (54 percent) agreed that men are better leaders than women and less than half of respondents (47 percent) supported having an equal number of men and women in positions of power.²² If people with uteruses attempt to exert bodily autonomy the way a cisgender man can, anti-abortion activists demonize

17. *Roe v. Wade*, 410 U.S. 113 (1973); Rachel Benson Gold, *Lessons From Before Roe: Will Past Be Prologue?*, GUTTMACHER POL’Y REV., Mar. 2003, at 8, 10.

18. *Roe*, 410 U.S. at 153.

19. *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833, 851 (1992).

20. *Id.* at 852.

21. Julia E. Hanigsberg, *Homologizing Pregnancy and Motherhood: A Consideration of Abortion*, 94 MICH. L. REV. 371, 384 (1995).

22. SUPERMAJORITY, GENDER EQUALITY, THE STATUS OF WOMEN AND THE 2020 ELECTIONS 3 (2019), <https://int.nyt.com/data/documenthelper/1647-supermajority-survey-on-women/429aa78e37ebdf2fe686/optimized/full.pdf#page=1>.

this free exercise as murderous or genocidal.²³ The entire messaging strategy of post-*Roe* anti-abortion organizing—focusing on the fetus and its alleged rights—relegates pregnant people to behind the proverbial curtain, at the root of the abortion debate but not deemed worthy enough to center in advocacy. Whether they result from a belief that people with uteruses cannot be trusted as guardians of their bodies or from a desire to micromanage the societal experience of people with uteruses, anti-abortion policies give the state reproductive control over half the population.

Equality cannot exist if different people are afforded different rights on the basis of their ability to become pregnant. As the Supreme Court in *Planned Parenthood of Southeastern Pennsylvania v. Casey* correctly noted, “[t]he ability of women to participate equally in the economic and social life of the Nation has been facilitated by their ability to control their reproductive lives.”²⁴ Not only are pregnancy and delivery often difficult medical experiences, but mothers also earn lower wages compared to women without children.²⁵ The penalty of having children is itself intertwined with misogyny, as a man’s earnings increase after becoming a father while a woman’s decreases after becoming a mother.²⁶ While the reproduction of cisgender men has at times been at legal issue in cases such as the forced sterilization of incarcerated individuals,²⁷ people with uteruses have been the continuous targets of such coercive exercises of control and in turn have suffered the harshest consequences. The fights over contraception and abortion outline the state’s explicit desire to dictate the reproductive choices of people with uteruses. Institutional gender-based oppression, while certainly improved, still exists as evidenced by abortion policy fights before us in state legislatures all the way up to the Supreme Court.²⁸

Personal freedom is the theoretical backbone of this country. Untold amounts of blood and ink have been spilled in our country’s

23. In a December 2021 poll, 45 percent of respondents strongly or somewhat agreed that “abortion is the same as murdering a child.” YouGov, THE ECONOMIST/YOUGOV POLL 131 (2021), <https://docs.cdn.yougov.com/o8u558c9sy/econTabReport.pdf> [<https://perma.cc/HS39-DGYG>].

24. *Casey*, 505 U.S. at 856.

25. See Claire Cain Miller, *The Motherhood Penalty vs. the Fatherhood Bonus*, N.Y. TIMES (Sept. 6, 2014), <https://www.nytimes.com/2014/09/07/upshot/a-child-helps-your-career-if-youre-a-man.html> [<https://perma.cc/3W8R-65Q2>].

26. See *id.*

27. See *Skinner v. Oklahoma ex rel. Williamson*, 316 U.S. 535 (1942).

28. The U.S. Supreme Court’s opinion in *Dobbs v. Jackson Women’s Health Organization*, a case considering whether pre-viability abortion bans are constitutional, is expected in Summer 2022. Jackson Women’s Health Org. v. Dobbs, 945 F.3d 265 (5th Cir. 2019), *cert. granted*, 142 S. Ct. 2619 (2021).

history to broaden our conception of civil rights and liberties. The duality of anti-abortion advocates who cling to the creed of protecting children while simultaneously advocating against social safety nets that would benefit children and their families further illustrates the hypocrisy of the allegedly pro-child movement.²⁹ The clear individualist ethos of this country makes abortion restrictions puzzling; they are, in theory and in practice, an infringement on the bodily autonomy of the pregnant person. If viewed in terms of the extensive history of subjugation and misogyny against marginalized genders, anti-abortion activism in fact reveals its true motivations as maintaining institutional control over the bodies of people with uteruses. No matter what rhetoric anti-abortion activists use to couch their sexism, it is imperative that we reject these infringements on individual rights. Our bodies belong to us. Not to our fathers or male partners, and certainly not to the state. Any belief to the contrary must be fought.

29. An example of this hypocrisy can be seen in the rhetoric of Republican Wisconsin Senator Ron Johnson. Despite claiming that society has a duty to protect “the life of the most vulnerable among us” through opposition to abortion rights, Johnson has also stated that it’s not “society’s responsibility to take care of other people’s children.” Poppy Noor, *Childcare Spending Not Your Responsibility, Senator? What Fine Republican Hypocrisy*, GUARDIAN (Jan. 27, 2022, 4:27 PM), <https://www.theguardian.com/us-news/2022/jan/27/ron-johnson-republican-senator-childcare-society> [<https://perma.cc/P3PK-K4F3>].