



The American Voice 2004: A Pocket Guide to Issues and Allegations

Issues and Allegations: Abortion and Contraception

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Background

Contraception and abortion have been practiced in virtually all human communities from the earliest times.[1]

In determining whether to impose restrictions on abortion many cultures took into account the age of the fetus. The most influential scholar of ancient times, Aristotle (ca. 350 BC) developed a gestational time line that proved remarkably durable. Aristotle believed embryos pass through three distinct stages: 1) the nutritive/vegetative stage, characteristic of plants; 2) the sensitive stage, characteristic of animals, and, finally; 3) the intellectual/rational stage, where it becomes fully human. He maintained that the male fetus reached the recognizably human stage at about 40 days while the female arrived at that stage in 80-90 days.[2]

Many religions made a distinction between the early embryo and later embryonic stages. Jewish law, for example, imposed few restrictions on abortions taking place before the fetus is first 40 days, a time when it is viewed as "mere water".[3]

Most Islamic scholars believe that abortion after "ensoulment" is prohibited except to save the mother's life. They differ on when ensoulment occurs. Some calculate 40 days, others 80 days and still others 120 days.[4]

The early Christians adopted Aristotle's typology. Augustine, Bishop of Hippo (ca. 415 AD), one of the most influential Catholic theologians, proposed that abortion should not be regarded "as homicide, for there cannot be a living soul in a body that lacks sensation due to its not yet being formed." [5] For Augustine an abortion required penance only for the sexual aspect of the sin. Echoing Aristotle, Augustine believed that "hominization" took place at 40 days after conception for males and 80 days for females. Thomas Aquinas (ca. 1250) also embraced Aristotle's view that a fetus is first endowed with a vegetative soul, then an animal soul, and then -- when its body is fully developed -- a rational, human soul.[6]

At the beginning of the 13th century Pope Innocent II proposed that "quickening"(the time when the woman first feels the fetus move within her) was the moment at which abortion became homicide. Abortions occurring prior to that moment constituted a less serious sin. In 1591, Pope Gregory XIV proclaimed that quickening occurred after 116 days. His declaration that early abortion was not grounds for excommunication guided Church policy until 1869.[7] In 1869, Pope Pius IX eliminated the distinction between the animated and non-animated fetus and required excommunication for abortions at any stage of pregnancy. This was written into the Code of Canon Law in 1917.[8]

On the civil side, English common law from 1307 to 1803 did not punish abortions occurring before the fetus moved perceptibly. In 1803, for the first time, England criminalized abortion. Abortion after quickening became a capital offense. Abortions performed prior to that time incurred lesser penalties. [9]

In the mid 19th century, spurred on by newly formed associations of doctors, many countries and American states began to criminalize abortion. In many cases these laws were justified as a way to protect the health of the mother rather than to protect the fetus. For example, the first statutes, enacted in the 1820s and 1830s, sometimes were called "poison control measures" because

At a Glance...

The conservative view:

- Widespread availability of contraception and abortion encourages sexual irresponsibility.
- Abortion devalues human life, and has dangerous physical and emotional consequences for women.
- Emergency contraception (the morning-after pill) is abortion, because it prevents a fertilized egg from implanting in the uterine wall.
- Abortion for genetic or developmental reasons gives rise to discrimination. Carried to an extreme, it could lead to eugenic policies.
- Reasonable restrictions on access to abortion, such as waiting periods and parental notification laws, ensure that women and their families can make informed decisions about abortion.
- The Partial Birth Abortion Ban Act prohibits only a particularly gruesome late-term abortion procedure. This procedure is never medically necessary, and is used mainly for elective abortions.
- Advances in medical technologies give the country reason to reevaluate Roe v. Wade's trimester framework. A fetus can now survive outside the womb before the end of the second trimester.
- The Unborn Victims of Violence Act is not related to abortion; in fact, the law provides an explicit exception for abortion with the woman's consent or acts by the woman herself.

The liberal view:

- Contraception is the key to avoiding abortions.
- Emergency contraception has already contributed to a reduction in the number of unintended pregnancies and abortions. It should be made available without a prescription, so that women have easier access to it.
- About 90 percent of abortions occur before the 12th week, well before fetal viability. Later abortions are often the result of financial or other barriers, including waiting periods and parental consent laws.
- Wider availability of Mifepristone (RU-486), which has been safely

they banned the sale of dangerous or fatal drugs used by women to induce abortion. These statutes did not ban abortion per se.[10]

From the second half of the 19th century to World War II abortion was outlawed in most parts of the world and in all American states.

In the 1830s, reliable contraceptives like rubber condoms and cervical caps were introduced. By the 1870s they had become widely available. For a variety of reasons, states enacted laws that restricted the sale of contraceptives.[11] In 1872, the U.S. Congress criminalized the distribution of obscene materials, the definition of which included contraceptives, via the postal service.

In 1916, Margaret Sanger was arrested shortly after opening the nation's first birth control clinic. The New York State Court of Appeals upheld her conviction. But it ruled that licensed physicians had the right to provide birth control advice to married women for health reasons.

In 1930 Pope Pius XI officially condemned any "artificial" means of birth control as mortal sins and grounds for excommunication. These included using condoms, diaphragms, douches and spermicides.[12] According to Church doctrine, tampering with the "male seed" was tantamount to murder.[13] Pope Paul VI reaffirmed this view in 1968[14] as did Pope John Paul II in 1993.[15]

When the U.S. Food and Drug Administration approved the birth control pill in 1960, 30 states prohibited the sale of contraceptives to married and unmarried persons. In 1965 the Supreme Court overturned all state laws that denied married people access to contraceptives.[16] In 1972, it extended the right to contraception to unmarried persons.[17]

Today contraception is legal for all people in all states. The Catholic Church continues to view the use of contraceptive devices as a sin. Virtually all protestant denominations allow birth control devices that prevent the sperm from fertilizing the egg.[18]

The reexamination of statutes regarding contraception led to a reexamination of statutes regarding abortion. Between 1967 and 1972, thirteen states changed their laws to allow for abortion in cases of rape, incest, danger to the physical or mental health of the mother, or fetal defect.[19]

In 1973, the Supreme Court overturned all state laws prohibiting abortions.[20] It extended the right to privacy, first embraced as a constitutional right in 1965 in its decision overturning Connecticut's ban on the sale of contraceptives to married couples, to abortion. The right to privacy, the Court concluded, "is broad enough to encompass a woman's decision whether or not to terminate her pregnancy." [21]

The Court did not allow abortion in all cases. Instead, taking a page from Aristotle and most religious and civil law through the ages, the Court permitted increasingly severe restrictions by the state depending on the age of the fetus. In the first 12 weeks, which largely coincided with the traditional definition of the time before "quickening," the Court prohibited states from imposing any restrictions on a woman's right to an abortion. In the second trimester, states may regulate abortion procedures to protect the health of the woman. In the third trimester (after 24 weeks), when fetuses may be viable outside of the womb, states may restrict abortions.

Thirteen states and the District of Columbia have not repealed their pre-Roe v. Wade abortion bans. [22] Two enacted laws banning abortion after Roe.[23] These state laws would come into force if the Supreme Court were to overturn Roe.[24]

In the 1970s and '80s, the Supreme Court struck down a variety of parental and spousal consent laws, waiting periods, and restrictions on the type of abortion that could be performed in the second trimester. The Court did uphold restrictions on the use of public funds for abortions, and allowed restrictions on where and by whom abortions can be performed.[25]

In 1989, the Supreme Court upheld a Missouri law declaring that life begins at conception. It also upheld Missouri's ban on the use of public facilities to perform abortions not medically necessary and its requirement that doctors perform fetal viability tests before performing abortions after the 20th week of gestation.[26]

In 1992 the Court allowed states to enact restrictions on abortion – including mandatory waiting periods, and parental consent requirements – so long as they do not create an undue burden for women seeking abortion.[27]

In November 2003 President Bush signed the Partial Birth Abortion Ban Act into law.[28] The Act imposes prison sentences for doctors who perform the procedures defined in the legislation. It does not provide exceptions to protect the health of the mother. The law is blocked from going into effect pending the outcome of legal challenges. In **Stenberg v. Carhart** (2000), the Supreme Court struck down a Nebraska law similar to the Partial Birth Abortion Ban Act. The government argues that the law is constitutional despite the court's ruling because it is based on Congressional findings that the banned procedure is never medically necessary.[29] Federal District Judges in San Francisco and New York have declared the new law unconstitutional, consistent with the Carhart decision, and a judge in Nebraska has yet to rule on another challenge. The Justice Department is appealing the decisions.[30]

In April 2004, the Unborn Victims of Violence Act became the first federal law to recognize a fetus in any stage of development as a legal person. The law makes it a separate crime to harm or kill a fetus during the commission of a federal crime. In the law, a "child in utero" is defined as "a member of the species homo sapiens, at any stage of development, who is carried in the womb." [31]

used by women in Europe for more than a decade, increases the likelihood that women who choose to abort can do so early in pregnancy.

- Legal abortion is a safe procedure with a low incidence of negative physical or psychological side effects. Illegal abortions are dangerous; the incidence of maternal death from abortion declined dramatically after abortion was legalized.
- A woman's ability to delay childbearing increases the likelihood that her family will be healthy and stable.
- Laws that identify the fetus as a person, like the Unborn Victims of Violence Act, lead to government policing of pregnancy.
- The Partial Birth Abortion Ban Act is unnecessary because states already have the right to restrict access to abortion after the 24th week. The Supreme Court ruled in 2000 that a similar law was unconstitutional.

In May 2004 the Food and Drug Administration voted not to allow over the counter sales of so-called "morning after" birth control pills.[32]

What are the Problems?

Should contraceptive devices and abortions be legal and widely available? What are the proposed solutions?

The conservative perspective

Conservatives maintain that life is sacred and cannot be ended by human intervention from the moment of conception.

Conservatives maintain that widely available contraception encourages irresponsible sexual activity, and abortion devalues life and also encourages irresponsibility.

Conservatives argue that emergency contraception (the morning-after pill) is not contraception; it is abortion because it either inhibits life (i.e. the fertilized egg) from implanting in the uterine wall or causes the attached embryo to be dislodged.[33] A recent study found that rates of sexual activity and sexually transmitted diseases among teenagers rose after the morning-after pill was made available without prescription in the U.K.[34]

Conservatives maintain that the non-prescription use of morning-after pills will endanger women's health because they will not get counseling from a doctor or pharmacists on correct usage and risks. Doctors will have a difficult time treating complications if they don't know the woman has used the morning-after pill. Conservatives also argue that over-the-counter availability means that someone other than the woman could buy the pill and slip it to her without her knowledge, making it available to pedophiles who want to cover up their abuse of adolescents.[35]

Some conservatives say birth control pills, other types of hormonal contraception – including the skin patch, the vaginal ring and injectable contraception – cause abortions.[36] They say the pill does not always suppress ovulation, and sometimes a woman who is taking the pill conceives a child (that is, the egg is fertilized). When this happens, the new life cannot attach to the hormonally altered uterine lining. Like the morning-after pill, this is a chemical abortion.[37] Conservatives who support this view say physicians and pharmacists should be legally protected if they refuse to provide or fill birth control prescriptions. Such "conscience clauses" have been enacted in Arkansas, South Dakota and Mississippi.[38]

Conservatives argue that only a small fraction of abortions are for reasons of health or rape. The vast majority are performed because the woman does not want the child for financial or other reasons.

To conservatives, the very phrase "unwanted children" is misleading. "The only difference between a 'wanted' and an 'unwanted' child is that someone who should love the 'unwanted' one does not. Whose fault is that?" asks one author.[39] Adoption is always an option for people unwilling or unable to care for a child.

Conservatives note that many women regret having had an abortion.[40] Conservatives point to the thousands of messages on sites like www.afterabortion.com that attest to widespread post-abortion anguish.[41]

Conservatives maintain that abortion has physical risks, many of which can compromise a woman's ability to have children in the future.[42] Psychological affects range from guilt and general emotional distress to suicidal impulses.[43] In the words of a public-education campaign by pro-life groups: "Abortion is a reflection that we have not met the needs of women. Women deserve better than abortion." [44]

Conservatives argue that genetic or developmental defects are not a justification for taking the life of an unborn child. Selective abortion is "a raw and lethal assertion of one human being's power over another." It gives rise to discrimination by labeling some people too much of a burden to be born. Carried to an extreme, it could lead to eugenic policies.[45]

Conservatives maintain that many of the laws that liberals view as unfairly burdensome are reasonable and defensible restrictions on abortion.[46] Parental-consent laws safeguard the autonomy of the family. Laws that require counseling and a waiting period ensure that women make their decisions on the best available information.[47]

Moreover, conservatives say that regulations on abortion, as permitted by the Casey decision, are at least partly responsible for declining rates of abortion in the 1990s.[48]

Conservatives support passage of "Holly's Law," named for Holly Patterson, an 18-year-old who died after taking RU-486, a abortion drug. The law would suspend the FDA's approval of the drug and criminalize its distribution. They also support passage of the Child Custody Protection Act, which would punish any adult who accompanies a minor across state lines for an abortion, as a way to prevent minors from circumventing parental notification laws by having abortions in states with more lenient laws.[49]

Conservatives maintain that a reversal of Roe v. Wade would not automatically make abortion illegal in all states; it would simply restore the right of states to make abortion laws. States should have the right to make these decisions. Other conservatives argue that the right to life is so important a principle that it supersedes states' rights; they advocate a federal constitutional amendment prohibiting abortion.[50]

Conservatives argue that the Partial Birth Abortion Ban Act prohibits only one abortion procedure that is particularly "gruesome and inhumane." A live fetus is partly removed from the mother's womb before the doctor kills it by puncturing its skull with a scissors. This is done without any pain management for the fetus, which would be part of the care given to a fetus born at a similar gestational age.[51] They defend the Act's broad description of the procedure because it ensures that any variation on the procedure is also banned, no matter what it is called.[52]

According to conservatives, the vast majority of partial-birth abortions are performed on healthy mothers with healthy babies. One doctor estimates that 80 percent of the abortions he performs in the 20 to 24 week range are purely elective; 20 percent are for genetic reasons.[53] The Department of Justice argues that partial-birth abortions are never medically necessary – a conclusion it says is supported by the American Medical Association and the American College of Obstetricians and Gynecologists.[54]

Conservatives argue that advances in medical technology have made Roe's trimester milestones inappropriate. A fetus can now survive outside the womb earlier in gestation. In the late 1980s a 23-week old baby survived 15 percent of the time; a 24-week old survived 56 percent of the time. More recent hospital data indicate an 83 percent viability rate at 24 weeks.[55]

Advances in medical technology also allow us to actually see the embryo develop. These pictures clearly show that a fetus is fully recognizable as a child by 8 weeks.[56]

Conservatives support state and federal laws that would give fetuses legal personhood. They maintain that prior to the Unborn Victims of Violence Act (UVVA) an unborn child was not recognized as a victim with respect to violent crimes that fall under federal jurisdiction. They note that the law makes an explicit exception for other types of abortion and for acts by the mother herself, legal or illegal, against her unborn child. They also note that 29 states already allow homicide charges for the unlawful killing of a fetus and that the federal Innocent Child Protection Act of 2000, which prohibits carrying out the death penalty on a woman "while she carries a child in utero" already recognizes the legal principle of UVVA.[57]

The liberal perspective

Liberals argue that contraception is the key to avoiding abortions. In 2000, about half of the nation's 6.3 million pregnancies were unintended. About 40 percent of these, or 1.3 million, were terminated by abortions.[58]

The Netherlands has no restrictions on abortion yet has an abortion rate almost 70 percent lower than that in the United States. This is because in that country contraceptive devices are widely available and free.[59] Sixty-seven percent of sexually active Dutch teen females use oral contraceptives compared to 20.5 percent in the U.S.[60] U.S. women who use contraception are 85 percent less likely to have an abortion than women who do not.[61]

Liberals argue that increased use of contraceptives is the reason behind the decline in the abortion rate. Some estimate that emergency contraceptives may account for over 40 percent of the decline in recent years.[62] Liberals note that in December 2003, two Food and Drug Administration (FDA) advisory committees unanimously concluded, based on expert testimony, that the morning-after pill could safely be made available without a prescription.[63]

Liberals point out that emergency contraception pills (morning-after pills) contain hormones that prevent pregnancy by delaying ovulation or inhibiting fertilization if taken within 120 hours of unprotected intercourse. This process cannot terminate an established pregnancy. This is distinct from the impact of a pill such as RU-486, which can cause an established pregnancy to abort.[64]

Liberals dismiss the conservative argument that hormonal contraception causes abortions because scientists cannot confirm the theory that hormonal contraception sometimes works by preventing implantation of a fertilized egg in the uterus. While women may sometimes ovulate while taking the birth control pill correctly, "There is no evidence that the Pill's effect on the uterine lining interferes with implantation", says Felicia Stewart, MD, co-director of the Center for Reproductive Health Research and Policy.[65] Joe DeCook, MD, vice president of the American Association of Pro-Life Obstetricians and Gynecologists agrees, saying the theory is "purely a speculation that became truth by repetition." [66] Even among women who are trying to become pregnant (who are therefore obviously not taking the Pill) fertilized eggs fail to implant 40 to 60 percent of the time.[67]

The long-standing definition of pregnancy, held by the American College of Obstetricians and Gynecologists, is that it starts not when an egg is fertilized but when a fertilized egg implants in the uterine lining. Pregnancy tests will not show a positive result before implantation. "It can't be an abortion before there is a pregnancy," says David Grimes, MD, a clinical professor of obstetrics and gynecology at the University of North Carolina School of Medicine.[68]

Liberals embrace the concept of "quickening" that has been used for thousands of years to provide guidance as to the stage in pregnancy at which abortion should be regulated. Liberals note that there is a pragmatic reason for viewing early fetuses differently from viable fetuses; spontaneous abortions (miscarriages) end as many as 50 percent of all pregnancies before the twentieth week.[69]

About 90 percent of abortions occur before the 12th week, 9 percent between the 13th and 20th week and one percent after the 20th week.[70] Abortions after quickening, liberals argue, often are caused by financial or other barriers, including parental notification and waiting period requirements. The Alan Guttmacher Institute has found that many women have second-trimester abortions because they are unable to obtain an abortion earlier for economic or geographic reasons.[71] After parental consent laws were passed in Mississippi, the ratio of minors to adults obtaining abortions after the first trimester increased by 19 percent. [72] The enactment of waiting period laws in Mississippi was accompanied by an increase in second trimester abortions.[73]

Liberals maintain that abortion is a very safe medical procedure. The risk of death associated with childbirth is about 11 times higher than for abortion.[74] Less than 1 percent of all abortion patients experience major complications. There is no evidence of problems with childbearing among women who have first trimester abortions. Studies show that 98 percent of women who have had abortions would make the same choice again.[75]

Liberals note that Mifipristone (commonly known as RU-486) is a safe and effective way to medically induce abortion in the early weeks of pregnancy. More than half a million women in Europe had safely used RU-486 before its approval by the FDA in 2000. It provides access to abortion for women who live in the 87 percent of counties (97 percent of non-urban counties)

that do not have a clinic that provides surgical abortion, and it is far less expensive than surgical abortion.[76] Its availability through physicians increases the likelihood that women who choose to abort can do so early in pregnancy. The two U.S. deaths that have resulted from complications after taking the pill are tragic, but no reason to ban the drug.

Liberals note that women will terminate their pregnancies regardless of the legality of it. Indeed, by some estimates illegal abortion before Roe v. Wade was almost as common as legal abortions are today.[77] But illegal abortions are dangerous. Abortion caused 17 percent of all maternal deaths in 1965; by 1975 that number had been cut by 90 percent.[78]

Liberals quip that for conservatives life begins at conception and ends at birth. A comprehensive review of abortion and child welfare policies in all 50 states found that states with the most restrictive abortion laws spend the least on education, on facilitating adoption and on nurturing poor children. The study's author, Jean Reith Schroedel, concludes that states with "pro-life" abortion laws "are consistent in according lower political, social and economic status to women" and "less likely than pro-choice states to provide adequate care to poor and needy children." [79]

Liberals argue that a woman's decision to delay childbearing until she can emotionally and financially support a child increases the chance that when she has a family, it will be healthy and stable.[80]

Liberals fear that endowing the fertilized egg with personhood could severely interfere with a women's autonomy. "If a fetus is a person, there is no limit on the state's power to police and punish pregnant women," maintains lawyer Lynn Paltrow.[81]

Currently no states have laws that specifically criminalize conduct while pregnant. However, approximately 275 women in 30 states have faced criminal prosecution for drug use during pregnancy.[82] In 2003, the U.S. Supreme Court refused to review the conviction of a homeless woman with a cocaine addiction and an IQ of 72 who was charged with homicide for the stillbirth of her child.[83]

Thirty-five states have laws that deal with prenatal narcotics exposure, including drug-screening tests for recipients of state medical assistance. In eight states, a positive drug test is considered evidence of abuse or neglect under child welfare statutes. Minnesota permits involuntary commitment of women who use controlled substances while pregnant. South Dakota and Wisconsin permit involuntary commitment of women who use drugs or drink alcohol. South Dakota defines drinking alcohol while pregnant as child abuse.[84]

In 1997 the South Carolina Supreme Court upheld a law allowing a pregnant woman to be arrested for activities, whether lawful or unlawful, that pose a threat to the health of her fetus.[85]

Liberals note that if a woman fears prosecution for fetal endangerment she will not seek pre-natal care or treatment for addiction, raising the risk to the baby.[86]

Liberals maintain that the federal Partial Birth Abortion Ban Act is unnecessary because states already have the right to prohibit abortions in the third trimester. More than 40 states do so.

Liberals say the law is so broadly written that it could prohibit not only the procedure conservatives say it prohibits (dilation and extraction, or D&X) but also a procedure that accounts for nearly all abortions between the 12th and 20th weeks (dilation and evacuation, or D&E). The Supreme Court found in 2000 that a similarly written Nebraska law could be used to arrest and prosecute doctors who perform otherwise legal second trimester abortions using dilation and evacuation procedures. Because of this, the court ruled that the law imposed an undue burden on a woman's right to make an abortion decision prior to fetal viability.[87]

Liberals point out that the law does not provide for an exception to protect the health of the woman. They point out that one alternative to D&X is D&E, which would likely also be banned by the law, involves the risk of perforating the uterus. The other alternative is to induce labor using a substance that kills the fetus, which can take several days and is physically and psychologically painful to the woman.[88] In the Nebraska case, the Supreme Court specifically rejected the argument that dilation and extraction is never necessary to protect a woman's health, saying "a statute that altogether forbids D&X creates a significant health risk." [89]

Liberals note that in addition to the Supreme Court ruling against the Nebraska ban, laws banning partial-birth abortion have been stuck down in 20 times in other federal and state courts.[90]

Notes and Sources

- **A note on internet sources**

[1] George Devereux, "A Typological Study of Abortion in 350 Primitive, Ancient and Pre-Industrial Societies", in *Therapeutic Abortions*, Ed. Harold Rosen. NY: The Julian Press. 1954. Since reliable contraception was not widely available until very recently, abortion often has been the major form of birth control. Indeed, the biological nature of conception itself was misunderstood until the mid 1840s when scientists discovered that conception occurs when the egg is fertilized by the sperm. Prior to that, it was assumed that men created life and women just provided a home for it. **The American Experience: The Pill**. PBS.

[2] These estimates supported Aristotle's belief that men are more rational than women. See Aristotle, *Natural History*, Book VII, Chapter 3.

[3] The Mishna (Ohalot 7:6) explicitly requires that a fetus be aborted if the continuation of pregnancy might imperil the life of the mother. Orthodox Judaism disapproves of abortion in any circumstances except to save the mother's life. Conservative Judaism considers it justifiable if pregnancy or birth might cause the mother severe physical or psychological harm or when the fetus will be highly defective.

[4] Azizah Y. al-Hibri, "Family Planning and Islamic Jurisprudence", In/FIRE Ethics. 3(2) 1994. Also see Fazlur Rahman, *Health and Medicine in the Islamic Tradition*. New York: Crossroad. 1987 and Yusuf Al-Qaradawi and M.S. Al-Munajjid, **Contraception**. Islam Online.

[5] Augustine, *On Exodus*.

[6] "The vegetative soul, which comes first, when the embryo lives the life of a plant, is corrupted and is succeeded by a more perfect soul, which is both nutritive and sensitive, and then the embryo lives an animal life, and when this is corrupted, it is succeeded by the rational soul introduced from without (i.e. by God)." Thomas Aquinas, *On the Truth of the Catholic Faith*, Book II, Ch. 89.

[7] Abortion was considered a venial sin requiring penance only if it was used to conceal fornication (sex by unmarried people) and adultery **Abortion: Ancient Christian Beliefs**. ReligiousTolerance.org.

[8] Jane Hurst, *The History of Abortion in the Catholic Church*. Catholics for a Free Choice. 1989.

[9] Donald P Kommers, "Abortion in Six Countries: A Comparative Legal Analysis," in J.D. Butler & D.F. Walbert(Eds), *Abortion, Medicine and the Law*. New York: Facts on File. 1992

[10] As late as 1858 the New Jersey Supreme Court, in upholding that state's new anti-abortion law noted, "The design of the statute was not to prevent the procuring of abortions so much as to guard the health and life of the mother against consequences of such attempts." See **When Abortion was Against the Law**, *Atlantic Monthly*. May 1997.

[11] Some laws were fostered by religious beliefs. Some were enacted to promote population growth in sparsely populated areas. Some were enacted out of fear that the "white" race would be overwhelmed by the rapidly swelling non-white populations and their high birth rates.

[12] "Since, therefore, the conjugal act is destined primarily by nature for the begetting of children, those who in exercising it deliberately frustrate its natural power and purpose, sin against nature and commit a deed which is shameful and intrinsically vicious..." *Christian Marriage*. 1930.

[13] **The American Experience: The Pill**. PBS.

[14] *Human Life*. 1968

[15] *The Gospel of Life*. 1993

[16] **Griswold v. Connecticut** (1965)

[17] **Eisenstadt v. Baird** (1972)

[18] However, 11 states allow some health care providers to refuse to provide contraceptive services. Two states permit pharmacists to refuse to dispense prescribed contraceptives. Ten others are considering similar laws. On the other hand, 20 states mandate that insurers provide coverage for prescription contraception that is equivalent to prescription drugs in general. In 2001, the Bush Administration proposed to eliminate the requirement that coverage of prescription contraceptives be equivalent to coverage of other prescription drugs and devices in the Federal Employees Health Benefit Program. Congress rejected that proposal. See, "**Contraceptive Coverage in the Federal Employees Health Benefits Program**." Center for Reproductive Rights. August 2003.

[19] **Lessons from Roe: Will Past Be Prologue?** Alan Guttmacher Institute.

[20] **Roe v. Wade** (1973)

[21] **Roe v. Wade** (1973)

[22] Alabama, Arizona, Arkansas, Colorado, Delaware, D.C. Massachusetts, Michigan, Mississippi, New Mexico, Oklahoma, Vermont, West Virginia, Wisconsin. Louisiana and Utah enacted laws banning abortion after *Roe v. Wade*.

[23] Louisiana, Utah. Courts in 18 states have ruled that their constitutions provide greater protection for reproductive choice than the federal Constitution. In these states even a federal ban on abortion would have little impact.

[24] **Who Decides?** NARAL. January 2000.

[25] Since 1977, the Hyde Amendment has prohibited Medicaid from paying for abortions for low-income women with federal dollars except in cases of life endangerment, rape or incest. Although states can choose to pay for medically necessary abortions with state Medicare funds, only four states voluntarily do so, and 13 more do so if there is a court order. In 9 states, abortion coverage is restricted in insurance plans for public employees, and 2 states deny abortion coverage under any circumstances. Four states restrict abortion coverage by private insurance plans to cases in which the woman's life would be endangered if the pregnancy were carried to term. For summaries of all Supreme Court decisions on abortion, see **Planned Parenthood Fact Sheet: Major U.S. Supreme Court Rulings on Reproductive Health and Rights** (1965-

2002).

[26] **Webster v. Reproductive Health Services** (1989)

[27] **Planned Parenthood of Southeastern Pa. v. Casey** (1992) The Court had previously held in **Akron v. Center for Reproductive Health** (1983) and **Thornburgh v. American College of Obstetricians and Gynecologists** (1986) that any restrictions on abortion prior to fetal viability are subject to strict scrutiny. As of April 2004, 17 states require minors who seek an abortion to obtain consent from one parent; two states require consent from both parents. Another 14 states require that one or both parents be notified. The Supreme Court has upheld parental consent laws provided that minors have the option to obtain a court's permission instead. Twenty-seven states have laws that require women to receive counseling before an abortion, including specific information detailed by the state. Twenty-one of these states require women to wait a specified amount of time between receiving counseling and obtaining an abortion. Five of these states require two visits to the provider because the counseling must be done in person before the waiting period begins. For state policies on abortion see two reports by the Alan Guttmacher Institute, **State Policies in Brief** and **State Facts About Abortion**.

[28] President Clinton had vetoed similar legislation twice, in 1995 and 1997.

[29] To support its case, the Justice Department subpoenaed the records of six hospitals that provide abortions. Hospital administrators denied the request, saying it would violate their patients' rights to privacy. In response, the Justice Department said that federal law does not recognize doctor-patient privilege, and patients "no longer possess a reasonable expectation that their histories will remain completely confidential." Federal judges in Chicago and San Francisco refused to order hospitals to turn over abortion records, on the grounds that even redacted records -- with identifying information such as the patient's name, address and social security number removed -- could jeopardize the privacy of women who had abortions at the hospital. A Manhattan federal judge ruled that New York-Presbyterian must comply with the request. The hospital refused, and the Justice Department has now withdrawn its subpoenas. Susan Saulny. "Justice Dept. Drops Demand for Hospital's Abortion Files." *New York Times*. April 27, 2004.

[30] *Washington Post*, August 27, 2004.

[31] **Laci and Connor's Law. H.R. 1997.**

[32] USA Today. **"FDA rejects non-prescription morning after pill for now."** May 7, 2004.

[33] Elizabeth Bossum, **"Contraception or Deception?"** Concerned Women for America, August 22, 2002.

[34] Grace Tyndale, **Policy fuels teenage pregnancy.** *The Guardian*. April 5, 2004.

[35] Wendy Wright. **Talking Points on the Morning After Pill.** Concerned Women for America. May 5, 2004.

[36] See: **U.S. Conference of Catholic Bishops; Pro-Life America; Christian Answers Network; American Association of Pro Life Obstetricians and Gynecologists; Couple to Couple League; Human Life International; Pro Life Action; Pharmacists for Life International; Republican National Coalition for Life**

[37] Randy Alcorn, **"Does the Birth Control Pill Cause Abortion?"** Eternal Perspectives Ministries, 2004.

[38] Caroline Bollinger, **"Access Denied"**, *Prevention*, 2002

[39] Michael Schwartz. **The Invention of Unwanted Children.** Concerned Women for America. January 23, 2002.

[40] A survey of women two years after abortions found that 28 percent of women were either indifferent about or dissatisfied with their abortion decision and 31 percent said they were uncertain or would not have an abortion again. Brenda Major, et. al. "Psychological Responses of Women After First-Trimester Abortions." *Archives of General Psychology* 57.

[41] **Post Abortion Healing**

[42] Seventeen percent of women participating in a study on the effects of abortion reported that they have "experienced physical complications (e.g. abnormal bleeding or pelvic infection) since their abortion." Brenda Major, et. al., 2000. *Op. Cit.* See also Warren Hern, *Abortion Practices*. Philadelphia: J.B. Lippincott Company. 1990.

[43] Carrie Gordon Earll. **Abortion Complications.** Focus on the Family. September 2003. As many as 60 percent of women who have had an abortion experience some level of emotional distress afterwards. In 30 percent of women, the distress is classified as severe. Hanna Soderberg, et. al, "Emotional Distress Following Induced Abortion: A Study of its Incidence and Determinants Among Abortees in Maino, Sweden." *European Journal of Obstetrics & Gynecology and Reproductive Biology*. 79(2) 1998.

[44] Cathleen A. Cleaver. **Women deserve better than abortion.** U.S. Conference of Catholic Bishops. January 3, 2003.

[45] U.S. Conference of Catholic Bishops. **The Promise and Peril of Genetic Screening.** March 1996.

[46] Robin Toner. "Abortion's Opponents Claim the Middle Ground." *New York Times*. April 25, 2004.

[47] Ramesh Ponnuru. **"Some Victory: Why did pro-choicers lose their way?"** *National Review*. January 22, 2004.

[48] Michael J. New. **"Analyzing the Effects of State Legislation on the Incidence of Abortion During the 1990s."** The Heritage Foundation. January 21, 2004. Abortion has dropped from a rate of 29 per 1000 women of childbearing age (15-44 years old) to 21 per 1000 in the last 15 years.

[49] See **National Committee for a Human Life Amendment.**

[50] Carrie Gordon Earll. **Abortion Law in the United States.** Focus on the Family. September 2, 2003.

[51] M. LeRoy Sprang and Mark G. Neerhof. "Rationale for Banning Abortions Late in Pregnancy." *Journal of the American Medical Association.* 280(8) August 28, 1998.

[52] National Right to Life Committee. **The Partial Birth Abortion Ban Act -- Misconceptions and Realities.**

[53] Diane Gianelli. **Shock Tactic Ads Target Late Term Abortion Procedure.** *American Medical News.* July 5, 1993.

[54] House Judiciary Committee. **Hearing before the Subcommittee on the Constitution: Partial Birth Abortion Ban Act of 2002.**

[55] M. LeRoy Sprang and Mark G. Neerhof. "Rationale for Banning Abortions Late in Pregnancy." *Journal of the American Medical Association.* 280(8) August 28, 1998.

[56] Concerned Women for America. **Life, Lies and Hard Cases.** January 2003.

[57] National Right to Life Committee. **Key Facts on the Unborn Victims of Violence Act.** April 1, 2004.

[58] Alan Guttmacher Institute. **Facts in Brief: Induced Abortion.** 2003

[59] Joyce Arthur, "**Legal Abortion: The Sign of a Civilized Society.**" 1999. The U.S. abortion rate of 21 per 1000 women of child-bearing age is much higher than the Netherlands (6 per 1000) or Canada's (16 per 1000).

[60] Oral and other chemical contraceptives are the most effective forms of birth control. L. Berne and B. Huberman. **European Approaches to Adolescent Sexual Behavior and Responsibility:** Executive Summary and Call to Action. Advocates for Youth. 1999.

[61] Alan Guttmacher Institute. **Issues in Brief: The Role of Contraception in Reducing Abortion.** 1997.

[62] "Trussell and colleagues have estimated that for each pregnancy that occurs after use emergency contraceptive pills, three pregnancies are prevented...The number of abortions in 2000 was 110,000 fewer than in 1994 and an estimated 47,000 more abortions were prevented by emergency contraception in 2000 than in 1994." Rachel K. Jones, J.E. Darroch and Stanley Henshaw. "**Contraceptive Use Among U.S. Women Having Abortions in 2000-2001.**" *Perspectives on Sexual and Reproductive Health.* November/December 2002. Also see Rebecca Wind. "**Emergency Contraception Played Key Role in Abortion Rate Declines.**" Alan Guttmacher Institute.

[63] **Science Triumphs Over Ideology at FDA Hearings on Emergency Contraception.** Planned Parenthood.

[64] **Factsheet: Emergency Contraception.** Planned Parenthood.

[65] Caroline Bollinger, "**The Post Fertilization Effect: Fact or Fiction?**", *Prevention*, 2002.

[66] Ibid.

[67] Ibid.

[68] Caroline Bollinger, "**Access Denied**", *Prevention*, 2002.

[69] The March of Dimes defines a miscarriage as an unplanned pregnancy loss that occurs before the 20th week. **March of Dimes.**

[70] **Trends in Abortion In the United States, 1973-2000.** Alan Guttmacher Institute. January 2003.

[71] "Research also indicates that while many women may be able to ultimately scrape together the funds, the time this effort takes increases the delay between the decision to have an abortion and actually having the procedure. The 1983 AGI study found that Medicaid-eligible women wait on average 2-3 weeks longer than other women to have an abortion because of difficulties they have in obtaining the necessary funds. The cost of an abortion, of course, increases the longer a woman waits to have the procedure, exacerbating her difficulties. While the average cost of a first-trimester non-hospital abortion in 1997 was \$316, the charge jumped to \$618 at 16 weeks of gestation, and the charge more than tripled to \$1,109 at 20 weeks. Such delays also can have health implications, because the risk of complications following an induced abortion increases as the procedure is done later in gestation." Stanley K. Henshaw and Lynn S. Wallisch, "The Medicaid Cutoff and Abortion Services for the Poor", *Family Planning Perspectives* 16(4) July/August 1984

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[73] T. Joyce, S.K. Henshaw and J.D. Skatrud. "**The impact of Mississippi's mandatory delay law on abortions and births.**" *JAMA*, 278(8) August 27, 1997.

[74] Alan Guttmacher Institute. **Facts in Brief: Induced Abortion.**

[75] Planned Parenthood. **Factsheet: The Emotional Effects of Induced Abortion,**

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[81] Lynn M. Paltrow. ***Punishing Women for their Behavior During Pregnancy: An Approach that Undermines the Health of Women and Children.*** Advocates for Pregnant Women.

[82] Silja J.A. Talvi. **Criminalizing Motherhood.** *The Nation.* December 11, 2003.

[83] Warren Richey. "**Court Upholds Murder Verdict in Stillbirth Case.**" *Christian Science Monitor.* October 7, 2003.

[84] J.R. Schroedel. *Is the Fetus a Person? A Comparison of Policies Across the Fifty States.* Cornell University Press. 2000.

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[87] **Stenberg v. Carhart** (2000)

[88] National Organization for Women. **Partial Birth Abortion Ban Act.** September 2003. See also <http://lw.bna.com/lw/19981117/982521.htm>

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[90] Martin Kasindorf, "**Late-term abortion bans have been rejected 21 times.**" *USA Today.* October 22, 2003.

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