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Law and Cultural Attitudes Towards Abortion: Ancient Civilizations to Present

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Abstract: Abortion, the termination of a pregnancy, has been practiced throughout history in various forms and frequencies. The controversy of the procedure has prevailed similarly, evident from its earliest documentation to recent legal decisions. In ancient civilizations, statutory legal sanctions were scarce, and differing opinions were recorded in early medical, religious, and philosophical texts. These texts influenced centuries of common law & cultural attitudes towards the practice. Debate about the role of fetal viability, ethicality, and safety of the procedure wove their way into the public conscience. These ancient conceptions influenced the widespread emergence of statutory abortion law in the 19th century. Legislation was further shaped by state attempts at population regulation, improved medical technology, and shifting cultural opinions about bodily autonomy and women's rights. Today, abortion law remains in flux, although trends towards liberalization are shown in the latter half of the twentieth century and the beginning of the twenty-first century. This paper is split into two sections: abortion in ancient civilizations (prior to the emergence of statutory law) and abortion in the 19th century-present (following the emergence of statutory law). In the first, the influence of ancient texts on ancient & modern opinions is examined chronologically. In the second, connections between ancient thought and 19th-20th century legislation is further analyzed, taking into account additional socio-political factors in each country that shaped its unique stances on the procedure.

Abortion in the Ancient World

In ancient civilizations, various methods and opinions about abortion were recorded in religious, philosophical, and medical texts. Public opinion varied between and within different societies: there was no general consensus on the ethicality and safety of the procedure. These early texts continue to influence modern religious groups & cultural attitudes towards the practice, reflected in recent legal decisions across the world¹

Statutory abortion law was rare in ancient societies, however, an early example is found in the Code of Assyrians, or the Middle Assyrian Laws (MAL). Written between 1450 and 1250 BCE, MAL deals with relations between men and women, covering a range of topics that vary from divorce to domestic abuse. Abortion is punishable by death by impalement in MAL: "If she dies from dropping that which is in her, they shall crucify her, they shall not bury her."² Many historians believe that this law was only directed towards the mother, and that infanticide was permitted by the father. Abortion was less of a moral issue in the Assyrian Empire, rather, its codification was to ensure the decision about the survival of offspring should be given to the father.

Abortion was also practiced throughout Ancient Egypt. Proof of the practice is embedded within the Ebers Papyrus, a medical text of herbal knowledge written in approximately 1550 BCE. According to the papyrus, abortion could be induced with a variety of herbal methods, including a mix of dates, onions, the fruit of the Acanthus, and honey, which would be applied to the vulva.³

In the Persian Empire, the teaching of Zoroaster influenced cultural acceptance of abortion. Many Holy Scriptures of Zoroastrianism⁴ mention abortion, including Avesta, Shayast-Nashayast, and Arda Viraf Nameh. Zoroastrianism revolves around the belief in one God, *Ahura Mazda*, and the revival of previous Aryan gods as reflections of *Ahura Mazda*

¹ Recent United States Supreme Court cases cite ancient history to justify modern arguments about federal abortion protection. In the 1973 case *Roe v. Wade*, the Court examined the opinions of Aristotle and Plato; and denounced the importance of the Hippocratic Oath in the public sphere. In contrast, the Court in the 2022 case, *Dobbs v. Jackson* claimed the Court in *Roe* misconstrued ancient history in its opinion.

² Yaron Reuven . "The Middle Assyrian Laws and the Bible." *Biblica* 51, no. 4 (1970): 549–57. <http://www.jstor.org/stable/42615698>.

³ Martha Campbell, Malcolm Potts . "The Global Library of Women's Medicine's." *Global Library of Womens Medicine*. Accessed January 18, 2023. <https://www.glowm.com/section-view/item/375#.Y8dxJ-zMI6U>.

⁴ Zoroastrianism is often considered to be the first monotheistic religion, based on the teachings of the prophet Zoroaster. It was the official religion of the Persian Empire from 600 BCE to 650 CE and has similarities to early forms of Hinduism.

named the *Amshamspandam*. One of the *Amshamspandam*, *Nashu*, embodies uncleanness, typically attributed to dead bodies. To avoid *Nashu*, Zoroastrians do not bury their dead; as it is believed to contaminate the soil. Because an aborted fetus is a dead body, it is believed that the dead fetus contaminates the mother with *Nashu*, and therefore is a sin.⁵ In Hinduism, views on abortion are based on three concepts: *Ahimsa*, *Karma*, and the process of reincarnation. Abortion, or “killing of an innocent human being” directly contradicts the principle of *Ahimsa*, which advocates for nonviolence to all human beings. Abortion also interferes with the process of reincarnation and brings severe karmic consequences to whoever administers and receives the procedure.⁶

Ideas about abortion in Ancient Greece and Rome have cemented themselves into the religious, cultural, and legal acceptance of the procedure in Western society. The frequency at which abortion was performed varied between city-states and time periods, but records of legal sanctions cannot be found. According to Aristotle and Plato, abortion could be used as a method of population control. In Plato’s *Republic*, he argues that if a fetus is conceived in a non-permissible sexual affair, “the fetus shall not be allowed to see the light of day⁷..” Aristotle suggested limitations on abortion, reasoning that it should only be “practiced on it before it has developed sensation or life.⁸ This time-sensitive standard for abortion developed into the “quickening” idea that made its way into the religious attitudes & statutory law of Europe during the 19th century.

However, certain city-states & academics held different opinions. According to the Pythagoreans, the embryo was a person from the moment of conception, and therefore abortion was the destruction of a living being. The Spartans likely had similar opinions, due to their population goals for a large, militant state. The original Hippocratic Oath⁹ also condemned

⁵ Kiarash Aramesh, “Perspectives of Hinduism and Zoroastrianism on Abortion: A Comparative Study between Two pro-Life Ancient Sisters,” *Journal of medical ethics and history of medicine* (U.S. National Library of Medicine, August 5, 2019),

⁶ Kiarash Aramesh, “Perspectives of Hinduism and Zoroastrianism on Abortion: A Comparative Study between Two pro-Life Ancient Sisters,” *Journal of medical ethics and history of medicine* (U.S. National Library of Medicine, August 5, 2019), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7166242/#B3>.

⁷ OLUGBADE, KOLA. “WOMEN IN PLATO’S ‘REPUBLIC.’” *The Indian Journal of Political Science* 50, no. 4 (1989): 503–18. <http://www.jstor.org/stable/41855454>.

⁸ “The Historical Dimensions of Infanticide and ... - Marquette University.” Accessed January 19, 2023. <https://epublications.marquette.edu/cgi/viewcontent.cgi?article=3334&context=lnq>.

⁹ One of the most well-known Greek medical texts. It’s original version required medical practitioners to swear to the healing Gods that they would uphold certain ethical standards. Principles of medical ethicality described in the Oath have been foundational to modern medical ethics.

abortion. As stated in a translation by Francis Adams, “I will give no deadly medicine to anyone if asked, nor suggest any such counsel; and in like manner I will not give to a woman a pessary to produce abortion.¹⁰” While the Oath wasn’t accepted by many medical practitioners at the time, it contributed significantly to the ethical attitudes towards abortion in the Western world in the following centuries.¹¹

Early Christian texts are also central to the longstanding abortion debate in the West. However, unlike many other Christian teachings, abortion is not mentioned in the Bible’s text. The most-cited evidence of a possible biblical opinion on the issue is found within Exodus 21:22, which states, “When men strive together and hit a pregnant woman, so that her children come out, but there is no harm, the one who hit her shall surely be fined, as the woman’s husband shall impose on him, and he shall pay as the judges determine.”¹² This passage illustrates the case of a pregnant woman who becomes involved in a physical fight between two men, and as a result, has a miscarriage¹³. This excerpt has various interpretations. Some have argued that it is an example of how the fetus is valued as property, and how its status is less than its mothers, while others claim that the passage condemns an intentional miscarriage as a sin. Subsequent texts explore the issue more directly, such as *The Apocalypse of Peter, the Epistle of Barnabas, and the Didache*. *The Apocalypse of Peter* provides one of the first descriptions of Hell, recounting those who “were the accursed who conceived and caused abortion” as “having the gore up to their necks...[coming] forth from them sparks of fire and smote¹⁴.” The Didache¹⁵ states, “you shall not procure [an] abortion, nor destroy a newborn child.¹⁶” The authority these early texts take are shown in the current opinions of the Catholic Church. The Catechism of the Catholic Church still holds that abortion is a “moral evil” and its position “has not changed and remains

¹⁰ “Home - PMC - NCBI.” Contemporary Medical Students' Perspectives on the Hippocratic Oath. U.S. National Library of Medicine. Accessed January 18, 2023. <https://www.ncbi.nlm.nih.gov/pmc/>.

¹¹ Marco Vecellio, “I Swear by Apollo’ — on Taking the Hippocratic Oath -.” Accessed January 19, 2023. <https://marcovecellio.net/downloads-10/downloads-13/files/the%20hippocratic%20oath.pdf>.

¹² Craig, Jay. “The Law of Exodus and Abortion.” Whig, January 16, 2021. https://www.whig.com/lifestyles/religion/the-law-of-exodus-and-abortion/article_895b9efb-5d39-5bfc-9525-6bc26d6b5b.html.

¹³ B., P; Blair Wilson-kastner. “Biblical Views on Abortion: An Episcopal Perspective.” Conscience (Washington, D.C.). U.S. National Library of Medicine. Accessed January 18, 2023. <https://pubmed.ncbi.nlm.nih.gov/12178933/#:~:text=The%20word%20%22abortion%22%20is%20not,men%20and%20has%20a%20miscarriage.>

¹⁴ “Apocalypse of Peter.” The Apocalypse of Peter (translation by Roberts-Donaldson). Accessed April 3, 2023. <http://www.earlychristianwritings.com/text/apocalypsepeter-roberts.html>.

¹⁵ The Didache, or the *Lord’s Teaching Through The Twelve Apostles to the Nations*, is an early Christian treatise composed before 300 AD.

¹⁶ “Abortion.” Church Fathers. Accessed March 29, 2023. <https://www.churchfathers.org/abortion>.

unchangeable¹⁷.” Despite the profound impact of these texts, stances on the issue for many Christians today are swayed by the role that religiosity plays in their modern lives, and societal ideas about reproductive rights and bodily autonomy.¹⁸

In Judaism, perspectives are often based on the teachings of the Talmud¹⁹ According to Mishnah, (Ohalot 7:6), “If a woman has [life-threatening] difficulty in childbirth, one dismembers the embryo within her, limb by limb, because her life takes precedence over its life once head has emerged, it may not be touched, for we do not set aside one life for another.²⁰” This idea has created a general consensus amongst the Jewish community that abortion is permissible if it is to save the life of the mother; and its status is less than an infant. As said by the Talmudist Rabbi Rashi, “Whatever has not come forth into the light of the world is not a full human life.” However, the permissibility of abortion in non-threatening circumstances has diverged between denominations historically, although recent trends indicate that opinions are becoming increasingly liberal.²¹

¹⁷ Catechism of the Catholic Church - IntraText. Accessed April 3, 2023.
https://www.vatican.va/archive/ENG0015/_P7Z.HTM.

¹⁸ Masci, David. “American Religious Groups Vary Widely in Their Views of Abortion.” Pew Research Center. Pew Research Center, May 30, 2020.
<https://www.pewresearch.org/fact-tank/2018/01/22/american-religious-groups-vary-widely-in-their-views-of-abortion/>.

Jehovah’s Witnesses, Mormons, Seventh-Day Adventists, Catholic, and Orthodox Christians hold some of the more conservative abortion views: 75%, 70%, 50%, 47% and 45% believe that abortion should be illegal in all, or almost all circumstances, respectively. In the Episcopal, Presbyterian, and Evangelical Lutheran Church of America, 79%, 65%, and 65% believe abortion should be legal in all, or almost all circumstances.

¹⁹ A series of Rabbinical commentaries and laws written in 1CE.

²⁰ Silber, Tomas J. “Abortion: A Jewish View.” *Journal of Religion and Health* 19, no. 3 (1980): 231–39.
<http://www.jstor.org/stable/27505578>.

²¹ “Do Abortion Bans Violate Jews' Religious Rights?” Do Abortion Bans Violate Jews' Religious Rights? | June | 2022 | The Jewish Experience | Brandeis University. Accessed April 2, 2023.
<https://www.brandeis.edu/jewish-experience/social-justice/2022/june/abortion-judaism-joffe.html>).

There is much debate about abortion within the Orthodox denomination. Some Orthodox scholars argue that non-threatening abortion is forbidden, while others argue that if a condition causes the mother immense suffering, she should be permitted to undergo the procedure, as the Talmud required the alleviation of pain and suffering. The Conservative sect offers a moderate perspective. According to a statement by the movement’s Committee on Jewish Law and Standards, “Neither viability nor a woman's right to choose is the basis of Jewish law on abortion, although they play a role only indirectly; what matters in Jewish law is the woman's life and health, both physical and mental.” Reform & Reconstructionist Jews typically take a similar approach, arguing that abortion is a decision to be made by the pregnant individual.

Abortion law (19th century-present)

The 19th century marks the beginning of codified abortion law across the world. Prior to this, common law, religious, and cultural standards dictated the frequency at which abortion was performed & the moral attitudes towards it. The revival of ancient knowledge in the Enlightenment period, eugenics, industrialization, militarism, and new ideas about women's rights and bodily autonomy influenced the emergence of abortion law in the 19th century & its fluctuation through the 20th century.

In 19th century Japan, the country was suffering from a population stagnation that conflicted with imperial goals of rapid industrialization and militarization. These governmental objectives helped to advance anti-abortion arguments made earlier in the century by Confucians and Kokugaku followers. Directly after the Meiji Restoration in 1868, abortion was criminalized. This was accepted socially, coinciding with popular “family values” important to Japanese society during the latter half of the nineteenth century and the first half of the twentieth century.

Following the end of WWII in 1945, the social and economic rebuilding of Japan fueled changes of thought surrounding the abortion ban. Concerned about the lack of resources to support an exploding population, a general Buddhist view of abortion being a “necessary suffering” was revitalized. In 1948, the Eugenic Protection Law was passed, making Japan one of the first countries to legalize induced abortion. Currently, abortion in Japan is allowed under the 22-week term limit, in cases of endangerment of the health of pregnant women, economic hardship, or rape, under the Maternal Health Protection law, and is widely practiced²²

In the West, Aristotle's ideas about a “quick²³” fetus were woven into early statutory law. In England, the Malicious Shooting or Stabbing Act was passed in 1803, imposing the death penalty upon people who received an abortion post-quickening . In 1837, this law was amended to remove the distinction between pre-and post-quick fetuses, abolishing the death penalty as a punishment as well. Despite this, abortion prevailed, often in the form of dangerous procedures. The illegality of abortion was reaffirmed by the Infant Life Preservation of 1929, criminalizing any destruction of life that was “capable of being born alive”. An obvious loophole was quickly identified, as the mother of infants that died during birth could not be punished for abortion or

²² エラー. Accessed January 18, 2023.

https://www.mhlw.go.jp/web/t_doc?dataId=00ta9675&dataType=1&pageNo=1%29.

²³ “Quickening” refers to the time before the first movement of the fetus in utero, typically around 16-20 weeks.

murder. Post WWII, the question of abortion was brought back into the British political arena.²⁴ In 1967, the Abortion Act was passed and later amended by the Human Fertilization and Embryology Act of 1990, which is still good law currently.

In the United States colonial period, the legality of abortion reflected the law or attitude of the European country that owned each colony. For example, in British colonies, abortions were legal if performed before quickening, while in Spanish colonies abortion was illegal entirely.²⁵ Post-Revolution, most states followed the standards established by English common law, permitting abortion that occurred prior to “quickening.” In 1821, Connecticut became the first state to enact abortion legislation, followed by Illinois in 1827, Ohio in 1834 and Alabama in 1841. By the late 19th century, the “quickening” standard disappeared from statutory law, and the penalties for abortion generally increased. By the end of the 1950s, most states had banned abortion unless in the case of saving the life of the mother. According to the majority opinion in *Roe v. Wade*²⁶ stricter abortion laws emerged because of three main factors: One, to protect Victorian-era illicit sexual standards, two, to protect a woman’s life from a harmful procedure, and three, to protect the life of an unborn fetus. Trends toward liberalization began in the 1960s, when approximately 1/3 of states adopted less stringent provisions. The Supreme Court declared abortion to be a fundamental right of privacy in the 1973 case *Roe v. Wade*, protecting abortion across the nation. In the 1990s, *Roe* was weakened by *Planned Parenthood v. Casey*, and then later overturned by *Dobbs v. Jackson* in June of 2022. As of 2022, abortion in the United States is not federally protected. States may decide their abortion laws. According to the Washington Post, over 20 million Americans of reproductive age have lost access to abortion services with the passing of *Dobbs*.²⁷

During the Russian Revolution period, Vladimir Lenin advocated for “unconditional annulment of all laws against abortions...Such laws are nothing but the hypocrisy of the ruling

²⁴ “Child Destruction Bill Hl - Hansard - UK Parliament.” Accessed January 19, 2023. <https://hansard.parliament.uk/Lords/1928-07-05/debates/52876053-5d7c-480e-8726-d50a79c20529/ChildDestructionBillHl>.

²⁵ Acevedo Z. “Abortion in Early America.” Women & health. U.S. National Library of Medicine. Accessed January 18, 2023. <https://pubmed.ncbi.nlm.nih.gov/10297561/>.

²⁶ “Jane Roe, Et AL., Appellants, V. Henry Wade.” Legal Information Institute. Legal Information Institute. Accessed April 2, 2023. <https://www.law.cornell.edu/supremecourt/text/410/113>.

²⁷ Shepherd, Katie, Rachel Roubein, and Caroline Kitchener. “1 In 3 American Women Have Already Lost Abortion Access. More Restrictive Laws Are Coming.” The Washington Post. WP Company, August 25, 2022. <https://www.washingtonpost.com/nation/2022/08/22/more-trigger-bans-loom-1-3-women-lose-most-abortion-access-post-roe/>.

classes.” Shortly after the Bolshevik takeover in 1917, Russia became the first country to officially legalize abortion during the first trimester of pregnancy. The Stalin regime later banned and criminalized abortion in 1936, in an attempt to compensate for the Russian population decline. In 1955, the Stalin-era ban was lifted, and abortion rates skyrocketed after re-legalization. During 1960, it is estimated that $\frac{3}{4}$ of pregnancies were aborted, and many historians speculated that Russia had the highest abortion rate in the world, while others claimed it was second only to Romania.²⁸ In post-communist Russia, abortion declined considerably for a variety of reasons: one, it was more expensive now than it was in Soviet times, two, the emergence of modern contraception methods, and three, the diminishing demographic of women from the ages 20-34.

In China, Deng Xiaoping implemented the One-Child Policy in 1980 in an attempt to curb population growth. To stimulate economic growth & ensure resources were available to all citizens, China needed a flattening population. This new policy increased abortion rates, with an induced abortion rate averaging 39.32% from 1979-1994.²⁹ In the early 1990s, 26 out of 30 provinces continued to enforce the policy of mandatory IUD/sterilization/abortion. Often sex-selected abortions were done, enforcing patriarchal social values that created a sex-ratio imbalance that is still prevalent in Modern China. In the 90s, a more moderate policy was adopted, providing informed choice programs for married women. This trend continued into the early 2000s when reproductive freedoms expanded further to not require women to have an induced abortion. An alternative was presented, where families who wanted to have more than one child could pay a fine, up to 4-10x their annual income. This policy was changed into a 2-child rule in 2015, and then fully abolished in 2021.

The abortion debate has no end in sight. Historically, governments have reached temporary conclusions that fragment when its interests and the attitudes of its people shift. As ideas about natural rights, population control, and the importance of religious ideas change in the following century, abortion law is likely to change with it.

²⁸ Kääriäinen Kimmo, Vyacheslav Karpov, and “‘Abortion Culture’ in Russia: Its Origins, Scope, and Challenge to Social Development.” *Journal of Applied Sociology* 22, no. 2 (2005): 13–33. <http://www.jstor.org/stable/43736145>.

²⁹ Cuntong Wang, “Induced Abortion Patterns and Determinants among Married Women in China: 1979 to 2010.” *Reproductive Health Matters* 22, no. 43 (2014): 159–68. <http://www.jstor.org/stable/43288344>.

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Yaron Reuven . "The Middle Assyrian Laws and the Bible." *Biblica* 51, no. 4 (1970): 549–57. <http://www.jstor.org/stable/42615698>.

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