

Abstract

The inflammatory debates surrounding abortion in the United States are characterized by contentious moral disagreements. These debates, often regarding the equating of abortion with murder out of concern for fetal viability, have severe social, legal, political, and cultural consequences. In 2022, the Supreme Court overturned *Roe v. Wade* in *Dobbs v. Jackson Women's Health Organization*, revoking the constitutional right to abortion after nearly 50 years, leading to a rapid increase in recriminalization across the nation. This thesis argues that the recurring criminalization of abortion is much more than an issue of constitutional doctrine dictated by moral debates regarding fetal viability. Instead, the criminalization of abortion operates in a system the thesis refers to as “gendered governance” – the use of legal institutions and state authority to regulate sexuality and reproduction in ways that reinforce gender norms and hierarchies.

To explore the criminalization of abortion within this broader framework, the thesis consists of two case studies. The first study examines the initial criminalization of abortion in the nineteenth century through Madame Restell – an abortion provider – and Anthony Comstock – a moral crusader that sought to criminalize abortion under obscenity regulation, deeply embedding ideas of sexual purity into abortion politics. The second study turns to the twenty-first century, and examines the transformation of *Roe* to *Dobbs* through anti-abortion activism. In connection to Restell, this chapter will also introduce the case of Dr. Margaret Carpenter, the first provider formally charged for mailing abortion pills under *Dobbs*. Synthesizing the core findings of the case studies and the continuum of abortion criminalization, the thesis will ultimately show that the recent wave of abortion criminalization should not be understood solely as a change in constitutional rights, but as a continuation of a longstanding legal tradition that polices sexuality and enforces gendered norms about sex, purity, and motherhood.

**“Obscene, Lewd, and Lascivious”: Women’s Sex and Reproduction Under the Criminal
Law of Abortion**

A Thesis Presented for
Honors in the Department of Politics
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Spring 2026

Table of Contents

Chapter One

Abortion, Sex, and Purity: The Recurring Criminalization of Abortion in the United States..... 4

i. Research Question and Argument

ii. Literature Review: Existing Scholarship and Missing Connections

**Camp One: Feminist Theories of the State – Abortion Criminalization as Sexist State Power*

**Camp Two: Reproductive Justice – Abortion Criminalization as Structural, Racialized Oppression*

**Camp Three: Historical Accounts – Obscenity Regulation and Abortion Criminalization in the Nineteenth Century*

**The Missing Link: Expectations of Sexual Purity and the Criminalization of Abortion*

ii. Chapter Overview

Chapter Two

Reproductive Autonomy and Sexual Governance: Hypotheses, Research Methods, and Contextual Foundation26

i. Hypotheses, Research Methods, and Case Studies

**Hypothesis One: Moral Regulation through Sexual Governance*

**Hypothesis Two: Technological Change and the Adaptation of Enforcement*

**Research Methods*

**Case Selection, Validity, and Sources*

ii. Foundational Information: Concept Clarification and Abortion’s Legal History

**Concept Clarification*

Chapter Three

Obscenity and Morality: Abortion Criminalization in the Case of Madame Restell and Anthony Comstock 34

i. Historical Emergence of Abortion Criminalization

ii. Madame Restell: “Unlawful Female Physician”

iii. Anthony Comstock: A Moral and Malicious Man

iv. The Two Meet: Madame Restell’s Final Arrest

v. Reflections and Relevance: Enforcing Sexual Purity through Abortion Criminalization and Gendered Governance

Chapter Four

“Take Responsibility for Your Orgasms”: Contemporary Abortion Criminalization and Anti-Abortion Activism from *Roe* to *Dobbs*..... 55

*i. Anti-Abortion Activism from *Roe* to *Dobbs**

**Roe v. Wade*

**Dobbs v. Jackson*

*ii. Abortion Pills: Increasing Access Under *Dobbs**

*iii. The Case of Dr. Margaret Carpenter: Abortion Recriminalization Under *Dobbs**

iv. Case Reflections and Relevance: Key Concepts, Frameworks, and Foucauldian Theorization

**Thesis Concepts and Frameworks*

**Sexual Subjects Under Abortion Criminalization: A Theoretical Analysis*

Chapter Five

The Politics of Purity and Defending Sex: Findings and Implications of Historical and Contemporary Abortion Criminalization 74

i. Returning to the Research Question: Continuity in State Regulation of Sex and Reproduction

ii. Key Findings

**Abortion Criminalization as Gendered Governance*

**Differential Harm and Unequal Enforcement*

**The Role of Sexual Purity in Reproductive Regulation*

iii. Implications

**The Material and Social Harms of Criminalization*

**Reproductive and Sexual Autonomy: Limits of Legal Protection*

iv. Looking Forward: Protecting Sexual Freedom and Reproductive Rights

Chapter One

Abortion, Sex, and Purity: The Recurring Criminalization of Abortion in the United States

On February 11, 1878, Anthony Comstock, self-appointed moral guardian of the American public, stormed the New York residence of Madame Restell, one of the most infamous abortion providers of the time. The house functioned both as her residence and as a clinic where women received reproductive care, including abortions. During the raid, women recovering from abortions screamed from the upstairs rooms while Comstock collected surgical tools, correspondence, and pamphlets – evidence he would use to build a criminal case. The day her trial was to begin, Restell committed suicide. She became one of the first women arrested under anti-abortion laws, and one of the most infamous examples of how criminal law could be used to destroy a reproductive care provider.

Nearly 150 years later, abortion is once again at the center of American legal, political, and cultural conflict. Following the United States Supreme Court’s decision in *Dobbs v. Jackson Women’s Health Organization*, the constitutional right to abortion was overturned, unleashing a patchwork of state-level bans and legal uncertainty. According to Pregnancy Justice, an organization advancing and protecting the rights of pregnant individuals, in the first two years following *Dobbs*, “prosecutors initiated at least 412 cases charging pregnant people with crimes related to pregnancy, pregnancy loss, or birth.”¹

Anti-abortion activists have revived the strategies of Comstock himself. In particular, many have turned to the Comstock Act of 1873, which prohibited the mailing of “obscene, lewd, and lascivious” materials, including abortifacients – substances used to terminate a pregnancy.² Now, in 2025, that law is being cited in efforts to ban abortion pills, specifically mifepristone and

¹ Pregnancy Justice, “Post-Dobbs Pregnancy Criminal Cases.”

² The Comstock Act, ch. 258, 17 Stat. 598 (873).

misoprostol, which together account for more than 60% of all abortions in the United States.³ Anti-abortion legal strategists, including those aligned with President Trump, are advocating for revoking FDA approval of the medications and prosecuting providers who ship these medications across state lines.⁴ While the technologies have changed, the legal logic and rhetoric remain chillingly familiar.

Research Question and Argument

How should we understand the contemporary criminalization of abortion within the longer history of governmental regulation of sexuality and reproduction in the United States, and what conditions enable the resurgence of such forms of control over time? In this thesis, I argue that the recent wave of efforts to criminalize abortion pills should not be understood solely as a reaction to expanding reproductive autonomy, but as a continuation of a longstanding legal tradition that polices sexuality and enforces gendered norms about sex, purity, and motherhood. Historically, laws targeting contraception, abortion, and sexual expression have functioned as mechanisms through which the state regulates sex outside procreative marriage and disciplines women's sexual autonomy. While the mechanisms of enforcement have evolved – from nineteenth-century obscenity campaigns and moral policing to contemporary forms of digital surveillance, medical regulation, and data-driven law enforcement – the underlying logic has remained strikingly consistent: sexual activity is treated as morally suspect unless it results in motherhood, and criminal law becomes a tool for enforcing this expectation. By situating the contemporary criminalization of abortion pills within this broader history of sexual regulation, this thesis shows how abortion law operates not simply as a site of moral conflict about fetal life, but as part of a deeper and more enduring system of sex policing and patriarchal governance.

³ The Guttmacher Institute, “Medication Abortion.” (2025).

⁴ ACLU, “Trump Administration Announces that FDA Will Consider Imposing Greater Restrictions on Medication Abortion Nationwide.” (2025).

Literature Review: Existing Scholarship and Missing Connections

Scholars have long examined abortion criminalization in the United States as a legal, cultural, and political phenomenon.⁵ Feminist scholarship broadly agrees that abortion regulation functions as a mechanism of gendered and racialized control. However, scholars differ in how they theorize why abortion criminalization recurs across time and adapts to new legal and technological contexts. This literature can be organized into three major camps of academic scholarship.

The first camp uses the feminist theory of the state to understand abortion criminalization. These feminist theories of the state understand abortion criminalization as an ongoing mechanism of male-dominated legal power.⁶ The second camp centers on the framework of reproductive justice. This ideology places abortion criminalization within other contexts of intersecting systems of racial, economic, and gendered oppression.⁷ The third camp uses historical accounts to trace abortion criminalization as a method of regulating women and sexuality in the nineteenth century. Scholarship in this camp can be divided into two strands: first, historical work on sexual purity movements and obscenity regulation,⁸ and second, histories of abortion and its criminalization in the United States.⁹ Reading these bodies of scholarship

⁵ Luker (1984), *Abortion and the Politics of Motherhood*; Morgan and Roberts (2012), “Reproductive Governance in Latin America”; Kreitzer (2015), “Politics and Morality in State Abortion Policy”; Ross and Solinger (2017), *Reproductive Justice*; Reagan (2022), *When Abortion Was a Crime*; Slater, Heer, Schneider (2024), “Victimhood and ‘Compassionate’ Exceptions as Patriarchal Social Control in Anti-Abortion Legislation”; Ross and Fried (2025), *Abortion and Reproductive Justice*.

⁶ MacKinnon (1987), *Feminism Unmodified*; MacKinnon (1989), *A Feminist Theory of the State*; Vance (1993), “More Danger, More Pleasure”; Slater, Heer, Schneider (2024), “Victimhood and ‘Compassionate’ Exceptions as Patriarchal Social Control in Anti-Abortion Legislation”; Morgan and Roberts (2012), “Reproductive Governance in Latin America.”

⁷ Crenshaw (1991), *Mapping The Margins*; Roberts (1997), *Killing the Black Body*; Ross and Solinger (2017), *Reproductive Justice*; Ross and Fried (2025), *Abortion and Reproductive Justice*.

⁸ Foucault (1976), *The History of Sexuality*; McWhorter (2004), “Sex, Race, and Biopower”;

⁹ Werbel (2018), *Lust on Trial*; Sohn (2021), *The Man Who Hated Women*; Reagan (2022), *When Abortion Was a Crime*; Syrett (2023), *The Trials of Madame Restell*; Wright (2023), *Madame Restell*.

together reveals how efforts to police sexuality and restrict abortion functioned as mutually reinforcing strategies for regulating women's bodies and behavior.

Each of these frameworks illuminates crucial dimensions of abortion criminalization. However, none fully explain the ideological continuity that links the initial nineteenth-century campaign to criminalize abortion and obscenity enforcement movements to contemporary, recurring abortion criminalization. In particular, existing scholarship has not sufficiently theorized how abortion criminalization is rooted in recurring expectations of female sexual purity and chastity that persist even as legal tools change. This gap provides the central intervention of this project. This intervention brings these strands into sustained conversation, demonstrating that abortion criminalization cannot be fully understood without situating it within broader campaigns to enforce sexual purity and control reproductive sexuality. Recognizing these historical linkages is crucial in the present moment, as contemporary efforts to restrict abortion continue to draw on a longstanding ideology that connects reproductive control with the policing of sexual morality.

The remainder of this literature review will highlight key theorists and texts within each camp exploring abortion criminalization. It will then introduce the missing link: the role of sexual purity in the contemporary criminalization of abortion, and discuss scholars who have begun to draw connections between sexual purity/morality and abortion, and did so before the return to abortion criminalization across the United States.¹⁰

Camp One: Feminist Theories of the State – Abortion Criminalization as Sexist State Power

A foundational body of scholarship understands abortion criminalization as an expression of male dominance embedded within legal institutions. One of the most world-renowned feminist

¹⁰ Kreitzer (2015), "Politics and Morality in State Abortion Policy"; Luker (1984), *Abortion and the Politics of Motherhood*; Werbel (2018), *Lust on Trial*; Rubin (1984), "Thinking Sex"; Valenti (2009), *The Purity Myth*.

theorists, Catharine MacKinnon, falls into this camp. In *Toward a Feminist Theory of the State* (1989), MacKinnon argues that the state is structurally male: law reflects and reproduces male norms, interests, and hierarchies. She writes, “The state is male in the feminist sense: the law sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender – through its legitimating norms, forms, relation to society, and substantive policies. The state’s formal norms recapitulate the male point of view on the level of design.”¹¹ Her point here articulates that the law is structured from a male perspective, thus reproducing male domination in legal doctrine.

In discussing abortion in her book *Feminism Unmodified: Discourses on Life and Law* (1987), she writes, “Reproduction is sexual, men control sexuality; and the state supports the interest of men as a group. *Roe* does not contradict this ... the interests of men as a social group converged with the definition of justice embodied in law in what I call the male point of view .. abortion’s availability frames, and is framed by, the conditions men work out among themselves to grant legitimacy to women to control the reproductive consequences of intercourse.”¹² For MacKinnon, abortion regulation exemplifies how the law has institutionalized women’s reproductive subordination, thus maintaining a gendered hierarchy and dominating women.

However, Catharine MacKinnon is a complex figure, often critiqued for her totalizingly negative views of sex and her role in the anti-pornography movement. Her views tend toward an anti-sex ideology, which was heavily critiqued by other feminists after she co-wrote the 1984 Antipornography Civil Rights Ordinance with Andrea Dworkin. Though complex, it can be read that MacKinnon’s aim of criminalizing pornography is another way of criminalizing sex. Essentially, MacKinnon was working to criminalize sex under the guise of protecting women.

¹¹ MacKinnon, “The Liberal State,” 161-162.

¹² MacKinnon, “Privacy v. Equality: Beyond *Roe v. Wade*.” 98.

However, her foundational work articulates that there is something fundamentally “male” about the law, which carries over into women’s treatment and engagement with abortion criminalization.

Carol Vance, a key critic of MacKinnon, provides a more nuanced understanding of sex, critiquing the anti-sex view that MacKinnon tended toward and others within the feminist movement that shied from discussions about sexual pleasure. In her article, “More Danger, More Pleasure: A Decade After the Barnard Sexuality Conference,” (1993) Vance revisits her argument that women’s sexuality lies contentiously between pleasure and danger. She writes,

“Within feminism, too, the agenda on sexuality had narrowed. The ferocious right-wing attack left many feminists anxious, frightened, and disheartened. A common unease about sexuality was exacerbated by conservative charges that women's sexual pleasure was selfish, anti-social, and dangerous; pointing to conservative pressures, some feminists were relieved to jettison sexual issues. Others thought it was just strategic for feminism to adopt a responsible and sober public face. In a climate in which women's right to abortion was being refrained as murder, these feminists thought that rhetoric about privacy and women's health was more respectable and less risky than the language of women's sexual freedom. But by adopting this strategy, feminists inadvertently strengthened the fundamentalist and conservative framework, for which sexuality was illegitimate and discrediting.”¹³

Throughout her career, Vance has continually underscored the importance of a dual approach in understanding sex: not just as dangerous (a MacKinnonite view), but also the importance of women’s sexual freedom and pleasure. This passage is reflective of conservative attitudes regarding sexuality, including feminist conservatism around sex under the guise of respectability. This devaluation of women’s sexual politics is dangerous in the long term in fighting for

¹³ Vance, “More Danger, More Pleasure,” 292.

women's legal and social freedom. Through casting sex and pleasure aside, feminists sacrificed a key aspect of women's liberation. While Vance only touches briefly on the issue of abortion, her theories and frameworks are foundational in understanding women's sexual pleasure in connection to the law.

Turning toward more contemporary discussions following the *Dobbs* decision, in the article, "Victimhood and 'Compassionate' Exceptions as Patriarchal Social Control in Anti-Abortion Legislation" (2024), Luna Slater, Brook de Heer, and Emily Schneider express that abortion criminalization is a result of patriarchal dominance present in law. They do so through a qualitative analysis of restrictive abortion bans following *Dobbs*, examining the rhetoric present in the text of these bans. They write,

"Through the use of language such as 'upon whom' or 'submitting,' these abortion bans characterize pregnant people as passive actors who are victimized by abortion providers, as well as the procedure itself. In particular, the word submitting gives important insights into the connotation of this phrasing ... the language that depicts women to be passive victims further reinforces the patriarchal ideology perpetuated by these bans, as female submission to dominant males is paramount to this structure (Goodwin, 2022; hooks, 2004). Thus, by describing pregnant people as individuals who are unable to exercise agency to make their own decisions, this language reifies the patriarchal assumption that women are vulnerable, irrational individuals."¹⁴

Through this textual analysis of legal bans, Slater et al. bring to light the concretely misogynistic language present in abortion criminalization. Through this, it is seen that there is something not only deeply gendered about abortion bans, but they also characterize pregnant people as

¹⁴ Slater et al., "Victimhood and 'Compassionate' Exceptions as Patriarchal Social Control in Anti-Abortion Legislation," 14.

submissive – insinuating that they are unable to make decisions, and will, thus, have restrictions imposed upon them.

Another way of examining state actions related to abortion from a feminist perspective comes from Lynn Morgan’s and Elizabeth Roberts’ concept of reproductive governance. In their article, “Reproductive Governance in Latin America” (2012), they write,

“The concept of reproductive governance refers to the mechanisms through which different historical configurations of actors – such as state, religious, and international financial institutions, NGOs, and social movements – use legislative controls, economic inducements, moral injunctions, direct coercion, and ethical incitements to produce, monitor, and control reproductive behaviours and population practices.”¹⁵

Systems that regulate reproduction exist across societies, but they are often overlooked and insufficiently theorized. In emphasizing the importance of recognizing these institutions, Morgan and Roberts add, “This kind of research allows for richer comprehension of how new laws, social movements, moral incitements and economic inducements are working to police, regulate, and coerce reproductive bodies and to produce self-controlled subjects who will embody contemporary forms of governance.”¹⁶ Essentially, they argue that examining these systems allows scholars to see the continual regulation and policing of reproductive bodies, informing how we must interpret abortion criminalization in a more capacious sense.

From a feminist perspective, this framework highlights how abortion bans function as a form of legal domination by policing of reproducing bodies. By criminalizing abortion, the law does not merely prohibit a medical procedure; it becomes a tool through which the state monitors, disciplines, and restricts reproductive choices. In this way, abortion bans exemplify

¹⁵ Morgan and Roberts, “Reproductive Governance in Latin America,” 241.

¹⁶ Morgan and Roberts, “Reproductive Governance in Latin America,” 251.

reproductive governance: they transform reproduction into a site of political and legal control, reinforcing the authority of the state over women's bodily autonomy. Ultimately, through abortion criminalization, citizens are enforced to regulate their sexual practices through governance, surveillance, and regulation.

Although Morgan and Roberts primarily focus on Latin America, their concept is still useful for analyzing the United States. Applying the framework of reproductive governance helps situate abortion criminalization within broader systems of reproductive regulation, showing how legal restrictions on abortion operate as part of a larger structure through which the state and other institutions assert power over reproduction.

This feminist theorization of the state powerfully demonstrates that abortion criminalization is not just a contentious political disagreement rooted in fetal viability, but a larger mechanism of ongoing structural inequality. However, this framework tends toward structural determinism. By conceptualizing the state as consistently and fundamentally male, it leaves limited room to explain why abortion governance intensifies, recedes, and resurfaces in historically distinct forms. The framework clarifies that the state is gendered but doesn't address why particular moral logics, rather than others, recur across time.

Ultimately, together, these theorists demonstrate that abortion criminalization reflects gender hierarchy and sexual regulation. However, they do not fully theorize how expectations of sexual purity function as a durable ideological thread linking different eras of reproductive governance and oppression.

Camp Two: Reproductive Justice – Abortion Criminalization as Structural, Racialized Oppression

A second body of scholarship, developed by Black feminists and activists, situates abortion criminalization within broader systems of racial and economic inequality. Reproductive justice scholars argue that focusing narrowly on the legal right to abortion obscures the structural conditions that determine who can meaningfully exercise reproductive autonomy.

In *Killing the Black Body* (1997), Dorothy Roberts demonstrates how reproductive regulation in the United States has disproportionately targeted Black women through sterilization abuse, welfare policy, and criminal punishment. Simultaneously, Roberts articulates the issue with the previous framework in understanding abortion policy. She writes, “The feminist focus on gender and identification of male domination as the source of reproductive oppression often overlooks the importance of racism in shaping our understanding of reproductive liberty and the degree of ‘choice’ that women really have.”¹⁷ Here, Roberts articulates that abortion criminalization is something larger than a fated legal response from the male state. Instead, reproductive regulation and abortion criminalization are intersectionally¹⁸ impactful – acknowledging differing levels of harm and impact along lines of race, especially, but also other factors like class, ability, sexuality, and more.

Loretta Ross, founder of SisterSong and a leading voice in the reproductive justice movement, defines the term in her book *Reproductive Justice: An Introduction* (2017). She writes,

“Reproductive justice ... has three primary values: (1) the right *not* to have a child; (2) the right to *have* a child; and (3) the right to *parent* children in safe and healthy environments. In addition, reproductive justice demands sexual autonomy

¹⁷ Roberts, “Introduction,” 7.

¹⁸ Crenshaw (1991), “Intersectionality, Identity Politics, and Violence Against Women of Color.”

and gender freedom for every human being. The problem is not defining reproductive justice but achieving it.”¹⁹

This framework emphasizes that legal rights alone are insufficient to guarantee reproductive freedom and highlights how intersecting forms of oppression shape who can access these rights. It expands the conversation beyond abortion access to include housing, healthcare, economic stability, and freedom from state violence. Reproductive justice scholarship powerfully demonstrates that abortion criminalization is racialized and impacted by class. In their newest book, *Abortion and Reproductive Justice* (2025), Ross and Fried explore how abortion fits into the framework of reproductive justice. They write,

“A reproductive justice lens de-individualizes abortion. The RJ lens focuses on the structural, racial, social, and economic conditions that individuals have to consider when facing an unanticipated pregnancy ... When the Supreme Court overturned *Roe v. Wade*, many people believed that for the first time since 1973, abortion access was over ... Many people simply do not understand that *Roe* was never enough, that *Roe* had never guaranteed adequate reproductive health care for millions of Americans.”²⁰

Understanding abortion in conjunction with reproductive justice shows that reproductive governance operates not only through abortion bans but through policing, medical neglect, incarceration, and other structural factors. Through acknowledging this complexity, abortion criminalization is situated in a larger system and history of reproductive harm.

¹⁹ Ross and Solinger, “Reproductive Justice in the Twenty-First Century,” 65.

²⁰ Ross and Fried, “Telling Different Abortion Stories,” 6.

Camp Three: Historical Accounts – Obscenity Regulation and Abortion Criminalization in the Nineteenth Century

To fully encapsulate the period in which abortion bans were arising around the United States, the history can be broken into two sections: a historical analysis of sexual purity through obscenity regulation in the nineteenth century, and subsequently, the abortion criminalization that occurred within that period. Abortion criminalization arose during a period in which American attitudes about sex were becoming highly morally contested. Looking into the history of obscenity regulation and expectations of sexual purity in the nineteenth century fully illustrates and contextualizes abortion criminalization and the moral circumstances in which it began.

History of Sexual Purity

In *The History of Sexuality – Volume 1: An Introduction* (1976), Michel Foucault famously argues that there is a certain “political energy” that surrounds sex, and that this is most poignantly seen in the moral and sex panics that infused the nineteenth century, which is then translated into regulation through governmental power.²¹ He writes,

“Sex was a means of access both to the life of the body and the life of the species. It was employed as a standard for the disciplines and as a basis for regulations. This is why in the nineteenth century sexuality was sought out in the smallest details of individual existences ... But one also sees it becoming the theme of political operations, economic interventions, ... and ideological campaigns for raising standards of morality and responsibility: it was put forward as the index of a society’s strength, revealing both its political energy and its biological vigor.”²²

As Foucault’s writings and philosophical theorizations on sex and society articulate, the nineteenth century saw a newfound shift in political obsession with regulating sexuality.

²¹ Foucault, “Right of Death and Power Over Life,” 146.

²² Foucault, “Right of Death and Power Over Life,” 146.

Importantly, under a Foucauldian lens, sexual and reproductive governance criminalization are considered productive, in the sense that through the presence of criminal law, there is an enforced expectation that citizens²³ self-regulate and surveil their sexual behaviors and thus conform to the normative, heterosexual, procreative sex to evade criminal consequences. For Foucault, the threat of this criminal discipline thus creates a sexually regulated society – expanding the stakes of abortion criminalization.

With emerging regulatory discourse regarding sex, the nineteenth century also experienced a shift in American social and cultural attitudes toward sex, embedding a moral expectation of sexual purity deeply into culture and law. In Ladelle McWhorter’s “Sex, Race, and Biopower: A Foucauldian Genealogy” (2004), she draws on Foucault’s scholarship to further contextualize the emerging obsession with sex that led to its – and abortion’s – criminalization from the nineteenth century to today. She writes, “We experience ourselves as sexual because arrangements of power through the nineteenth century produced sexuality as a way of seeing and being in the world. Our sexual identities, as well as the notion of ‘sex’ that seems to undergird them, are products of normalizing power and may not even exist in regions of the world.”²⁴ While McWhorter’s work examines sex and race in connection with philosophical Foucauldian history, hers and Foucault’s work lay a foundation for understanding the context in which abortion criminalization arose in the nineteenth century: in a newly sexually obsessed nation.

History of Abortion Criminalization

Historical research on abortion criminalization often traces the origins of abortion criminalization to nineteenth-century moral reform movements, medical professionalization, and obscenity regulation. In *When Abortion Was a Crime: Women, Medicine, and the Law in the*

²³ Foucault, “The Incitement on Discourse,” 26.

²⁴ McWhorter, “Sex, Race, and Biopower,” 45.

United States, 1867-1973, (2022), Leslie Reagan documents the emerging anti-abortion campaign in the 19th century through the lens of medical professionalization. She writes,

“Through the antiabortion campaign, doctors claimed scientific authority to define life and death. In so doing, they claimed the authority of religious leaders ... The medical profession's claim to moral purity and the authority of the clergy was a stepping-stone to greater social authority. Regular physicians won an important victory when they persuaded the nation's states to criminalize abortion. Physicians entered a new partnership with the state and won the power to set reproductive policy. In the process, women's perceptions of pregnancy were delegitimated and women lost what had been a common-law right.”²⁵

Here, Reagan cites the initial campaign to criminalize abortion as a success of medical professionals, specifically the American Medical Association. This shifted abortion from a private, individualized matter to a punishable offense against society.

Historians studying the criminalization of abortion also tend to examine another shift that moved criminal enforcement from providers to the people seeking the procedure themselves. In *The Trials of Madame Restell* (2023), Nicholas Syrett writes,

“Legislators were admitting here that to stop abortion from taking place, it was no longer enough to criminalize the act of providing an abortion, they also needed to try to deter women from seeking out the service by making it a crime for the women themselves ... Newspapers had long portrayed abortionists as preying on pregnant women, sometimes in a league with the men who seduced them, criminalizing the act of *obtaining* an abortion was an acknowledgement that many women wanted to terminate their pregnancies ... The 1845 statute has both broadened the scope of what constituted the crime of abortion to include the women who obtained them and increased various forms of punishment.”²⁶

²⁵ Reagan, “Introduction,” 13-14.

²⁶ Syrett, *The Trials of Madame Restell*, 98.

This historical literature details how abortion regulation emerged within broader campaigns to discipline sexuality and regulate the nation. It demonstrates that abortion bans were historically intertwined with efforts to regulate obscenity, contraception, and women’s sexual knowledge, informed by male physicians and lawyers. However, while historians document earlier moral anxieties about sexuality, they rarely theorize how those same expectations of female chastity persist – transformed but recognizable – in modern legislative and prosecutorial strategies that seek to criminalize abortion today.

The Missing Link: Expectations of Sexual Purity and the Criminalization of Abortion

Taken together, these three camps explain that abortion criminalization is gendered (feminist state theory), intersectional (reproductive justice), and historically embedded (historical scholarship). However, no existing framework fully accounts for a recurring moral theme: the idea that abortion implies sex had for pleasure rather than procreation, that this perceived misuse of sexuality justifies criminalization. This logic links morality to sexual purity, framing pregnancy as the appropriate consequence of “acceptable” sexual behavior. In this view, abortion is condemned not only because it ends a pregnancy, but because it appears to allow individuals to avoid the moral consequences of non-procreative sex. Although these assumptions quietly shape attitudes about abortion criminalization, this dimension of the debate remains comparatively underexamined in academic literature.

A number of pieces of academic scholarship have addressed contemporary abortion criminalization in conjunction with sexual purity and morality, but typically focus on the morality pertaining to the life of the fetus. In the article “Politics and Morality in State Abortion Policy” (2015), Rebecca Kreitzer writes that “Abortion is often considered a quintessential ‘morality issue’ in political science, along with the death penalty.”²⁷ Abortion has indeed

²⁷ Kreitzer, “Politics and Morality in State Abortion Policy,” 43.

become framed as a moral battleground – but for more than one reason. The dominant narrative casts abortion as murder, a belief that has deeply shaped public discourse and fueled decades of ideological conflict.

In the book *Abortion and the Politics of Motherhood* (1984), Kristin Luker further examines the moral debate surrounding abortion. Similarly to Kreitzer, for Luker, the moral debate of abortion is less about sexual purity and more about the personhood of the fetus. She writes, “Those who oppose abortion usually begin by stipulating that since the embryo is an unborn child, abortion is morally equivalent to murder.”²⁸ Importantly, Luker acknowledges that the idea of abortion as murder is fairly new, emerging after the nineteenth century. She writes, “(The history) of abortion ... seems very much at odds with what many Americans – and not only those with pro-life sympathies – have believed: that until recently, abortion was always treated both popularly and legally as the moral equivalent of murder.”²⁹ In fact, she briefly mentions how early Christians conceptualized abortion through the lens of sexual purity, rather than murder. She writes, “The legal groundwork for Christian communities, outlined penalties only for those women who committed abortion after a sexual crime such as adultery or prostitution.”³⁰ While only a brief point in her history of abortion, it is clear that this analysis of sexual purity is present in Luker’s work.

Later in her book, while analyzing the pro-life and pro-choice debate, she writes, “Pro-life women believe that the purpose of sex is reproduction whereas pro-choice women believe that its purpose is to promote intimacy and mutual pleasure.”³¹ While Luker’s work, especially in her book on the politics of abortion, focuses mainly on pro-life and pro-choice

²⁸ Luker, “Introduction,” 2.

²⁹ Luker, “Medicine and Morality in the Nineteenth Century,” 14.

³⁰ Luker, “Medicine and Morality in the Nineteenth Century,” 12.

³¹ Luker, “Motherhood and Morality in America,” 208.

debates and the questions of fetal personhood and murder within them, her analysis illuminates that there is some connection between abortion, sex, pleasure, and purity.

The most well-known and pertinent historical case that links abortion criminalization to sexual purity is Anthony Comstock, who led a crusade against obscenity, which included the confiscation of abortifacients, surgical materials, and contraception in the nineteenth century. In *Lust on Trial* (2018), Amy Werbel describes Comstock's issue with abortion as a way to "cover up disgraceful extramarital sex."³² Later, she adds, "Comstock always believed that efforts to limit conception contradicted the 'laws of heaven' and created conditions that encouraged unsanctioned sexual activity."³³ The best way to examine abortion's linkage with sexual purity is through Comstock himself, and will be returned to as a case study in chapter three of this thesis.

In "Thinking Sex: Notes for a Radical Theory of the Politics of Sexuality" (1984), Gayle Rubin explores historical obscenity law and Comstock in connection with attitudes about sex in the late twentieth century. Through her historical and theoretical analysis, she argues that Western society upholds a moral hierarchy of sexual behaviors that pathologizes non-heterosexual, non-procreative sex. Rubin recounts attacks on abortion in connection to obscenity regulation as one of the many vices that were criminalized in the nineteenth century. She writes,

"During (the late nineteenth century), powerful social movements focused on 'vices' of all sorts ... Morality crusaders attacked obscene literature, nude paintings, music halls, abortion, birth control information, and public dancing ... The consolidation of Victorian morality and its apparatus of social, medical, and legal enforcement, was the outcome of a long period of struggle whose results have been bitterly contested ever since. The consequences of these great nineteenth-century moral paroxysms are still with us. They have left a deep

³² Werbel, "Onward Christian Soldiers," 68.

³³ Werbel, "Onward Christian Soldiers," 70.

imprint on attitudes about sex, medical practice, child-rearing, parental anxieties, police conduct, and sex law.”³⁴

Rubin brilliantly connects the continual moral undercurrent of sexual purity from the late nineteenth century to the 1980s. Her work on sexual purity is important to return to in a new era of sexual criminalization in the twenty-first century, especially considering the recriminalization of abortion under *Dobbs*.

More recently, contemporary scholars such as Jessica Valenti have written on sexual purity politics in the twenty-first century. In *The Purity Myth* (2009), Valenti writes,

“The push to legislate chastity is much broader than just denying women birth control – there are laws that provide only married women with access to reproductive technology, laws mandating that women take ‘marriage promotion’ classes ... and even laws that ban the sale of vibrators. While these issues may seem unrelated, they’re all part of a larger agenda to control women’s reproductive and sexual lives – reinforcing the idea that women must be chaste, even if that requires government intervention.”³⁵

Here, it is clear that these moral logics of purity and encouraging chastity are still present in law, yet undertheorized in relation to abortion. Valenti and Rubin’s focus on sexual purity and its resonance in law are essential for analyzing the criminalization of abortion. While they mention abortion as one of many acts that have been attacked, this thesis focuses on the connections of the criminalization of abortion, its connection with sexual purity, and what that says about how the United States treats women, their private, public, sexual, and entrepreneurial lives. Thus, this thesis aims to trace this rhetoric of sexual purity and morality and situate it within abortion

³⁴ Rubin, “Thinking Sex,” 143-144.

³⁵ Valenti, “Legislating Sexuality,” 123.

criminalization, to fully paint the picture of why the United States has returned to an outdated legal statute that restricts women, their autonomy, their pleasure, and their lives.

Rather than understanding abortion bans as isolated moral panics or purely reactive political strategies, this project argues that abortion criminalization is an adaptive strategy of gendered governance³⁶ grounded in the recurring enforcement of sexual purity. Using the literature, this thesis argues that the recriminalization of abortion has shifted in two key ways, but remain ideologically continuous. First, the tools of enforcement have shifted. In the nineteenth century, abortion criminalization relied on the physical search of the post to search for evidence. Today, the increased accessibility of abortion via pills prescribed through telehealth triggered recriminalization and changed enforcement such as digital surveillance using telehealth apps, menstrual trackers, and search histories. Anti-abortion activism has also shifted. Abortion criminalization historically emerged out of concerns about sex had for pleasure, and was categorically considered vice. Today, anti-abortion activists primarily frame abortion as an issue of fetal viability, claiming that abortion is murder. However, contemporary anti-abortion activists also tend to follow the Comstockian, anti-sex and anti-vice framework – simultaneously supporting the criminalization of birth control, contraception, and other forms of non-procreative sex. Both historically and today, anti-abortion activism and criminalization intersects with expectations of sexual purity and the underlying ideal that women’s sexuality must be disciplined, contained, and morally regulated.

³⁶ I use the term gendered governance to describe the weaponization of gendered issues in legislation and government. It addresses the persistent gender biases and inequalities embedded in government, reflecting the historical impenetrability of sexism in law and policy. The term does not originate from a single scholar, but draws on a rich tradition of feminist political theory and legal scholarship that highlights how gender is a site of political power. It goes beyond formal legal rules to include informal practices, cultural narratives, and institutional behaviors that maintain gender inequalities, recognizing that governance is not neutral, but deeply entwined with historical patterns of sexism.

By centering sexual purity as a durable ideological driver in abortion criminalization, this thesis bridges feminist theories of the state, reproductive justice, and historical scholarship. It explains not only why abortion criminalization distinctly harms marginalized communities and reflects male-dominated institutions, but also how it repeatedly resurfaces even after periods of legal liberalization and enforces norms of sexual purity and motherhood.

Chapter Overview

The remainder of this thesis traces the social, cultural, and legal threads that link nineteenth century abortion criminalization under obscenity regulation to the twenty-first century's recriminalization of abortion following the *Dobbs* decision. Each chapter builds upon the last to illustrate how law functions within gendered and reproductive oppression, adapting across time with new political, technological, and cultural conditions.

Chapter two outlines key aspects of the project. It articulates two key hypotheses that guide the research, with subsequent outlines of the project's research design and methodology. The chapter then turns to laying the groundwork for the upcoming case studies. This is done through clarifying and defining key concepts and terms that will be frequently used in the analysis of the cases – sexual autonomy, reproductive autonomy, and gendered governance. By laying these foundations in chapter two, the chapter precedes the upcoming case studies by grounding them both in a concrete research methodology.

Chapter three explores the historical case of Madame Restell, contextualizing her prosecution within the rise of professional abortion medicine, Anthony Comstock's morality crusade, and the criminalization of abortion in the nineteenth century. It explores how figures like Comstock positioned abortion as a threat to national morality and social order, leveraging legal and cultural tools to suppress women's autonomy. The chapter argues that this period

marked a foundational shift in reproductive governance, from informal community-based reproductive practices to legally sanctioned state control aligned with white male medical authority. It will demonstrate how reproductive criminalization emerged through the convergence of moral panic and legal governance.

Chapter four moves to the present day, analyzing how abortion pills have become the new frontier of legal conflict in two key ways. First, the chapter examines anti-abortion activism and criminalization from *Roe* to *Dobbs*, articulating the continual ideological threads that link abortion's initial criminalization in the nineteenth century to the post-*Dobbs* era, as well as the tangible impacts and inaccessibility that the anti-abortion movement created. Second, the chapter examines the recriminalization under *Dobbs* through the case of Dr. Margaret Carpenter, which represents a turning point in post-*Dobbs* prosecutions – merging contemporary issues of both abortion pills and telehealth. The chapter then reflects on the relevance of the contemporary period in connection to the historical scholarship, concluding with a theorization on the sexual subject abortion criminalization seeks to create.

Chapter five synthesizes both the historical and contemporary case studies, arguing that abortion criminalization is a sustained form of reproductive governance that dictates norms of sexual purity and morality. The chapter begins by revisiting the central research question and hypotheses before discussing the findings of the case studies. The chapter then articulates the continuities within contemporary abortion criminalization that emerge in examining the history of its initial legal attacks under nineteenth century obscenity governance, and the contemporary effects of restrictions under both *Roe* and *Dobbs*. Next, the chapter explores the implications of these findings, including the harmful effects of reproductive criminalization and the limits of the legal protection of abortion. Finally, the chapter concludes by looking to the future, and how

abortion will never be fully decriminalized until there is an upheaval of the structural policing of reproductive and sexual autonomy, and what this says about women's sex and pleasure more broadly.

Conclusion

Abortion criminalization is often framed as a singular moral dispute, reduced to questions of life, murder, and fetal viability. Yet, beneath this surface lies a deeper and less examined current: the persistent demand for sexual purity and the regulation of sex outside procreative marriage. The enduring message – if you are having sex, you must be prepared to bear a child – reveals a worldview in which sex is constructed as dangerous, women's sexuality is devalued, and purity or motherhood is the expectation. As scholars in reproductive justice have shown, abortion is never only about pregnancy; it is entangled with race, class, and power, and is deeply embedded within a patriarchal legal order that feminist theorists of the state identify as structurally invested in controlling women's bodies. The historical record reinforces this continuity.

Nineteenth-century obscenity campaigns led by figures such as Anthony Comstock and prosecutions of abortion providers like Madame Restell reveal that the original criminalization of abortion was rooted not simply in concern for life, but in anxieties about chastity, vice, and sexual disorder.

Today's debates may foreground fetal viability and constitutional doctrine, but they echo these older moral imperatives and a distrust of women. To understand abortion criminalization, then, is to see it as a part of a broader system of sex policing and gendered expectations. Only by confronting these structural foundations – rather than treating abortion as an isolated moral dilemma – can we begin to address its harms at their root and imagine a legal and cultural order that affirms genuine sexual and reproductive freedom.

Chapter Two

Reproductive Autonomy and Sexual Governance: Hypotheses, Research Methods, and Contextual Foundations

In recent years, the rollback of reproductive rights in the United States has reignited debates not only about the legality of abortion, but about the function of law in structuring gender, power, and control. The Supreme Court's decision in *Dobbs v. Jackson Women's Health Organization* overturned nearly fifty years of federal constitutional protection for abortion and returned authority to the states. In the years since the decision, a growing number of states have attempted to restrict not only surgical abortion but also medication abortion and the mailing of abortion pills, often enforced through criminalization.

This thesis argues that the contemporary criminalization of abortion pills is not just a reaction to new technologies that increase abortion access, but is a continuation of a longstanding legal tradition that enforces norms about women's sex, purity, and motherhood through criminalization. This chapter develops the theoretical and methodological framework used to analyze this pattern. First, the chapter outlines the hypotheses guiding the analysis and explains the research methods and sources used to construct the case studies in this project. Then, the chapter lays the groundwork for the upcoming case studies through clarifying and defining key concepts and terms – sexual autonomy, reproductive autonomy, and gendered governance – that will be frequently used in the analysis of the cases in chapters three and four of the thesis.

Hypotheses, Research Methods, and Case Studies

Two hypotheses guide this thesis: the first speaks to the role of sexual governance and purity norms within abortion criminalization, and the second focuses on the contemporary moment through addressing recriminalization and emerging technologies.

Hypothesis One: Moral Regulation through Sexual Governance

Efforts to criminalize abortion are more likely to intensify when political or social actors frame sexual autonomy – particularly sex outside of procreative marriage – as a threat to prevailing moral or gendered norms.

Historical examples illustrate how these dynamics operate. Nineteenth-century moral reform movements linked abortion to concerns about sexual immorality, prostitution, and the erosion of family values. By portraying reproductive practices as evidence of moral disorder, reformers helped justify expanding legal regulation of reproductive knowledge and services. This hypothesis is heavily informed by the works of scholars focusing on both the historical context and content of obscenity regulation and reproductive and sexual governance in connection to abortion criminalization, such as in Amy Werbel's *Lust on Trial*, Amy Sohn's *The Man Who Hated Women*, and Nicholas Syrett's *The Trials of Madame Restell*.

In this framework, abortion regulation does not arise automatically from shifts in reproductive behavior. Instead, it emerges when particular actors – such as legislators, religious leaders, moral reform movements, or professional organizations – mobilize political support around concerns about sexuality. These actors may frame abortion, contraception, or sexual freedom as symptoms of broader moral decline and advocate for legal intervention to restore perceived social norms. This hypothesis, therefore, focuses on the mechanisms through which

moral anxieties are translated into legal change: public campaigns, political mobilization, legislative action, and legal enforcement.

Hypothesis Two: Technological Change and the Adaptation of Enforcement

When new technologies expand access to abortion or reproductive information, governments develop new strategies to adapt older forms of sexual governance to new technological contexts.

Technological innovation has repeatedly transformed how individuals access reproductive care. In the nineteenth century, printed advertisements and mail-order services enabled abortion providers to reach a wider audience, and the mailing of such materials is what was initially criminalized under Comstock's obscenity crusade. In the twenty-first century, medication abortion, telehealth consultations, and digital communication networks have similarly expanded access to reproductive services.

This hypothesis is informed by authors writing on the contemporary criminalization of abortion as well as sex and reproduction more generally, such as Carrie N. Baker, Loretta Ross, Jessica Valenti, and Amy Littlefield's new, investigative non-fiction book *Killers of Roe*. Understanding the recriminalization of abortion under *Dobbs* within the contemporary state of abortion access and technology illuminates the reactionary element of abortion criminalization in connection to reproductive governance. With abortion becoming increasingly accessible with new technologies like telehealth and wider access to the abortion pills mifepristone and misoprostol, the recriminalization of abortion under *Dobbs* can be theorized as a reaction to expanding access and technologies.

As abortion becomes easier to access outside conventional clinical settings, state authorities may attempt to regulate new forms of access through alternative legal mechanisms,

such as postal regulations and digital surveillance. Rather than eliminating reproductive governance, technological change often reshapes it. Legal institutions adapt older regulations to new technologies, producing new forms of enforcement that reflect longstanding efforts to regulate sexuality and reproduction. Modern abortion criminalization updates enforcement methods, but does not abolish them. In many ways, these technologies expand the state's capacity to monitor, target, and criminalize behavior that was once beyond its reach.

Together, the two hypotheses suggest that abortion criminalization is best understood as a historically adaptive system of governance. While the specific legal tools and technologies involved may change over time, the broader trend of regulating sexuality and enforcing gender norms through abortion criminalization persists across historical periods.

Research Methods

This project uses a comparative historical case study design to investigate the conditions under which abortion criminalization resurges and adapts across different periods. The goal is not only to trace how reproductive control has been implemented through law across time, but primarily to reveal the underlying social, cultural, and moral mechanisms that enable and produce this control. This approach allows for in-depth tracing of the legal, political, and cultural mechanisms that shape abortion criminalization across different historical contexts – emphasizing how gendered governance is embedded not just in explicit legislation, but the revival, reinterpretation, and enforcement of norms through law over time.

Case Selection

The project focuses on two case studies. The first case, from the nineteenth century, examines the prosecution of abortion provider Ann Trow Lohman, famously known as Madame Restell. The case of Madame Restell is of paramount importance in this thesis. Restell was performing

abortions and providing contraceptive information during the period in which they were initially criminalized under Anthony Comstock's moral crusade, in which she was a key target. This case captures the nineteenth-century moral panic around sexuality, the rise of moral governance, and the criminalization of abortion through anti-obscenity laws.

The second case examines the contemporary recriminalization of abortion through two frames. First, the case examines the conditions of abortion restrictions and criminalization under both *Roe* and *Dobbs*, particularly through the work of anti-abortion activists. Counteracting the restrictions and anti-abortion activism, the chapter then proceeds to address the dichotomous increase in abortion access under *Dobbs* through developments like telehealth and increased access to abortion pills. Returning to the criminalization of such developments, the second part of the contemporary case study centers on Dr. Margaret Carpenter, an abortion provider who was criminally charged in January of 2025 for providing an abortion via medication and telehealth. Carpenter is the first provider to be charged under abortion pill criminalization following *Dobbs*. This case will reflect the post-*Dobbs* legal environment, the expansion of digital abortion access, and the resurgence of the criminalization of abortion through the overturning of *Roe*.

Case Validity

To ensure case validity, each case will be analyzed through social, cultural, political, and technological mechanisms that produce criminalization. This includes attention to institutional actors (legislation), cultural discourse (moral panics), and enforcement practices (surveillance and arrests). Rather than seeking statistical outcomes, the aim in this project is theoretical generalization, showing how the logic of sexual governance through abortion criminalization applies across contexts and cases. While the specific cases are historically situated, the underlying patterns (state responses to perceived threats, strategic use of legal tools, and

adaptation to technological change) may be relevant to other domains of gendered social control, such as the criminalization of queer and trans people, parenting and pregnancy, and sex work.

Case Sources

The research draws on both primary and secondary sources. For the nineteenth-century case, primary sources include archival newspaper coverage, legislative records, court records, and advertisements and printed materials produced by abortion providers. Archival sources include Restell's initial advertisements in the *New York Sun* and the *New York Herald* from the 1840s, circulars promoting Madame Restell's contraceptive services from 1870, and court records from the 1878 Comstock case, including stenographer records. The case of Madame Restell and Anthony Comstock is also examined through secondary sources and books from experts on their cases, such as *The Man Who Hated Women* by Amy Sohn, *Lust on Trial* by Amy Werbel, *The Trials of Madame Restell* by Nicholas Syrett, and *Madame Restell* by Jennifer Wright, all of which include primary source materials from Comstock's personal diaries and Restell's personal and professional correspondence.

For the contemporary case, research for anti-abortion activism draws on scholars studying anti-abortion activism, such as Amy Littlefield's *Killers of Roe* and Ziad W. Munson's *The Making of Pro-Life Activists*. Supplementing their research, the section also draws on contemporary anti-abortion activism from figures like Mark Lee Dickson, Charlie Kirk, and the Live Action organization. For examining abortion pills and the post-*Dobbs* era, the sources draw from studies and reports from organizations like the Center for Reproductive Rights, the Guttmacher Institute, and the Human Rights and Gender Justice Clinic. For Carpenter's case, sources consist of available court documents, press releases, and news article reports. By

combining these sources, the project reconstructs how political actors framed abortion and sexuality and how these narratives translated into legal regulation.

Concept Clarification

Several key terms require clarification in order to ground the analysis of the following case studies – specifically, the concepts sexual autonomy, reproductive autonomy, and gendered governance. While these concepts and terms are widely used, it is necessary to define them precisely as I employ them in my research, discussion, and findings.

I use the term *sexual autonomy* to refer to the ability of individuals to engage in consensual sexual activity free from legal regulation and restraints. The term stems not from a single scholar, but has emerged from a breadth of feminist and human rights work, first used by the free love movement in the nineteenth century, headed by esteemed woman leaders and activists like Emma Goldman and Victoria Woodhull. It encompasses a wide range of behaviors, including sexual acts outside procreative marriage and access to sexual knowledge and healthcare, and freeing them from legal regulation and criminalization.

I use the term *reproductive autonomy* to refer more specifically to individuals' capacity to make decisions about contraception, pregnancy, and abortion. Closely related to sexual autonomy, this term encapsulates the freedom from legal and political constraints that the state employs to regulate sexual and reproductive behavior. This concept stems heavily from Black reproductive justice scholars, who frequently equate reproductive justice with true bodily autonomy. The concepts of sexual autonomy, reproductive justice/autonomy, and bodily autonomy are deeply intertwined. Legal restrictions on contraception, abortion, and sex have frequently developed in tandem, reflecting broader efforts to regulate sexuality beyond the confines of procreative marriage.

Finally, I use the term *gendered governance* to encapsulate the use of legal institutions and state authority to regulate sexuality and reproduction in ways that reinforce gender norms and hierarchies. The term too does not come from a single scholar, but it aims to encapsulate the decades of work by feminist scholars highlighting a structural, gendered, sexist government that seeks to regulate women's lives, and in the case of abortion criminalization, sex and reproduction. It highlights the persistence of gender bias within government, emphasizing how historical patterns of sexism continue to shape contemporary law and policy. Importantly, I use this concept to go beyond formal legal rules, and to highlight the norms, cultural narratives, and behaviors that sustain gender inequality. This framework emphasizes that abortion law does not operate in isolation, but forms part of a broader system of social and sexual regulation.

Conclusion

This chapter has established the foundation for understanding the central claim of this thesis: that the contemporary criminalization of abortion pills is not merely a response to access-expanding technologies, but rather a continuation of a deeply rooted legal tradition that regulates women's sexuality, purity, and motherhood through criminal law. By outlining the guiding hypotheses, research methods, and sources, the chapter has clarified how the analysis is constructed. It has also defined key concepts – sexual autonomy, reproductive autonomy, and gendered governance – that will shape the interpretation of the case studies that follow.

Chapter Three

Obscenity and Morality: Abortion Criminalization in the Case of Madame Restell and Anthony Comstock

This chapter will introduce and contextualize the esteemed Madame Restell, also known as Ann Trow Lohman. A figure both vilified and esteemed, Madame Restell is perhaps one of the most notable abortion providers in nineteenth-century America, standing as a symbol of both women's entrepreneurial resilience and the gendered moral panic surrounding reproductive autonomy. She serves as a key example of a thriving woman ultimately ruined not by the act of abortion itself, but by its criminalization. For decades, she operated and provided abortions openly and with relative social acceptance prior to the procedure's formal criminalization and the ensuing moral crusade led by Anthony Comstock, a self-appointed guardian of public morality and women's sexuality.

The chapter will lead with a general history of abortion criminalization leading up to the times in which Restell was operating. The chapter will then move to a focused analysis of Madame Restell herself – her life, her practice, and her legal tribulations. Her story encapsulates the broader struggle over bodily autonomy, gendered respectability, and state control of women's reproductive choices. The beginning of the end for Madame Restell was her legal encounter with Anthony Comstock, which ultimately resulted in Restell's suicide. Anthony Comstock was an extremely powerful figure in obscenity regulation and sexual and reproductive governance in the nineteenth century. To understand the criminalization of abortion – its enforcement and consequences – the chapter will then turn to a sustained analysis of Anthony Comstock and his notions of sex as immoral that contributed to his attack on abortion. The section will outline

Comstock's early life, his fervent religious ideals, and his moralistic worldview that fueled his attacks on women's sexuality and reproductive freedom.

The chapter will then turn to the year 1878, when Anthony Comstock knocks on Madame Restell's door, presenting an analysis of the case that led her to death. Then, returning to the key tenet of this thesis, the chapter will reflect on the relevance of the case of Restell and Comstock in terms of gendered governance through attacks on sexual and reproductive autonomy, demonstrating a theorization of the deeper social and moral forces driving the criminalization of abortion. Ultimately, it will argue that this criminalization functions not only as a legal project but as a moral and gendered one, designed to police women's autonomy and assert patriarchal control. The immense harm caused by this process is rendered vividly in the tragic fate of Madame Restell.

Historical Emergence of Abortion Criminalization

To fully understand how these frameworks and dynamics emerged, it is necessary to situate them within a longer historical trajectory. Abortion, in some form, has existed for as long as human reproduction itself. However, its legal and political treatment has varied significantly.

Until 1821, abortion was not specifically banned or criminalized in the United States, and was instead governed through English common law – a series of judicial precedents made and set in past court cases – meaning, there was no written law defining expectations and restrictions on abortion.³⁷ More broadly, abortion was socially frowned upon only after the point of “quickenings” – the turning point of pregnancy where the pregnant person can feel the fetus kicking and moving, typically around 15 (or more) weeks of pregnancy. However, even if an

³⁷ “The Common Law and Civil Law Traditions,” (UC Berkeley Law).

abortion occurred after quickening, there was no formal punishment or criminalization.³⁸ Essentially, abortion was largely permissible, just rarely discussed.

In *When Abortion Was a Crime*, Leslie Reagan encapsulates American attitudes surrounding abortion. She writes,

“The common law's attitude toward pregnancy and abortion was based on an understanding of pregnancy and human development as a process rather than an absolute moment. Indeed, the term abortion referred only to the miscarriages of later pregnancies, after quickening. What we would now identify as an early induced abortion was not called an ‘abortion’ at all. If an early pregnancy ended, it had ‘slipp[ed] away,’ or the menses had been ‘restored.’ At conception and the earliest stage of pregnancy before quickening, no one believed that a human life existed; not even the Catholic Church took this view. Rather, the popular ethic regarding abortion and common law were grounded in the female experience of their own bodies.”³⁹

During this period, abortion remained largely within the realm of private decision-making, granting women the autonomy and trust to make their own reproductive decisions.

Abortion was largely stigmatized due to the societal taboo of discussing women’s sexuality. Reagan writes that seeking an abortion was known under the euphemism “taking the trade.” She writes, “Many ... knew of the possibility of inducing an abortion by purchasing and ingesting drugs. The need for a euphemism tells of the difficulty of speaking openly about sex and reproductive control and of the need for secrecy. Yet it reveals an awareness that women could and did regulate their own fertility through abortion.”⁴⁰ While social norms surrounding sexuality and pregnancy imposed stigma, the state had not yet developed the extensive legal apparatus that would later regulate reproductive practices.

³⁸ Ranana Dine, “Scarlet Letters: Getting the History of Abortion and Contraception Right.”

³⁹ Leslie Reagan, “Introduction” 8.

⁴⁰ Leslie Reagan, “Introduction,” 9-10.

The first significant statutory criminalization of abortion in the United States emerged in Connecticut in 1821. This statute was the result of a case in which a woman was administered poison to terminate her pregnancy, but it led to medical complications and the eventual stillborn birth of a child.⁴¹ Essentially, in response to this case, the law criminalized abortion under the guise of preventing the use of poisons. Under the state's Crimes and Punishment Act, there was a section titled "Administering Poison with an Intent to Murder, or Cause Miscarriage." The law stated the following:

"Every person who shall, wilfully [*sic*] and maliciously, administer to, or cause to be administered to, or taken by, any person or persons, any deadly poison, or other noxious and destructive substance, with an intention him, her or them, thereby to murder, or thereby to cause or procure the miscarriage of any woman, then being quick with child, and shall be thereof duly convicted, shall suffer imprisonment, in new-gate prison, during his natural life, or for such other term as the court having cognizance of the offence shall determine."⁴²

With the Connecticut legislature addressing abortion, other states followed suit. In 1827, New York passed the first statute in the United States that made abortions before quickening a misdemeanor and after quickening a felony.⁴³ Over the following decades, additional states adopted similar laws. These developments coincided with the rise of professional medical organizations and, importantly, moral reform movements that sought greater authority over reproductive practices through governing sexuality. By the late nineteenth century, these campaigns had produced widespread legal restrictions on abortion across the United States. This

⁴¹ The New York Historical, "Teaching Women's History: The Strange and Sordid Tale Behind the First U.S. Abortion Law." (2022).

⁴² The New York Historical, "Teaching Women's History."

⁴³ The New York Historical, "Ann Trow Lohman, a.k.a. Madame Restell."

was the legal and cultural environment in which abortion providers such as Madame Restell operated .

Madame Restell: “Unlawful Female Physician”

Madame Restell, born Ann Trow, was born in England on May 6, 1812. She later moved to New York after meeting her first husband, Henry Summers, at sixteen years old, and after giving birth to her daughter, Caroline, in 1830. In 1831, they moved to New York City, hoping for a fresh and prosperous start after growing up in financial struggle. Henry died just a few months after they arrived in the United States, leaving Ann a widow and a single mother. She worked tirelessly to support herself and her daughter, but her work as a seamstress was grueling, and the pay was inadequate.⁴⁴

In 1836, she met her second husband, Charles Lohman, a printer for the *New York Herald*. They married and moved into an apartment on Chatham Street, where Lohman met Dr. William Evans, who crafted pills and tonics from herbal remedies and sold them as cures to a multitude of ailments. Lohman was inspired by his financial success and followed suit, making and selling her own medicines. One day, one of her customers requested a medicine to end an unwanted pregnancy, and Lohman agreed to help.⁴⁵ When Lohman crafted her first abortifacient, word spread quickly about this access, and her abortion treatment became extremely popular. Eventually, she gave up her work as a seamstress to focus on her medicinal work full-time, with the help of her husband Charles. Together, they rented an office, and Lohman adopted the name “Madame Restell.”⁴⁶

In *The Trials of Madame Restell*, Professor Nicholas L. Syrett describes Madame Restell’s practice. He writes,

⁴⁴ Syrett, “Ann Trow Summers Lohman.” (2023)

⁴⁵ New York Historical Society, “Life Story.”

⁴⁶ Syrett, “A Letter to Married Women.”

“Madame Restell ... was in business in New York City from 1839 to 1878. She ran what was called a lying in hospital, a place where women could stay during their pregnancies and be delivered of their babies. She sold contraception to prevent pregnancy, as well as emmenagogues, herbal remedies to restore menstruation. She also terminated pregnancies, either by manually bringing on miscarriage or via an abortifacient, an herbal concoction designed to stimulate labor. It was the abortions that made her famous, though people objected to most of her services at one time or another.”⁴⁷

Essentially, Madame Restell ran a reproductive health clinic that provided essential healthcare to hundreds of women.

Madame Restell soon began advertising her services in newspapers. Her ads ran regularly.

“MADAME RESTELL, FEMALE PHYSICIAN, residence 148 Greenwich street, where she can be consulted with the strict confidence on complaints incident to the female frame.”⁴⁸

“Madame Restell’s experience and knowledge in the treatment of obstinate cases of female irregularity, stoppage, suppression, etc., is such as to require but few days to effect a perfect cure. Ladies desiring proper medical attendance during confinement or other indisposition, will be accommodated during such time, with private and respectable board.”⁴⁹

“In how many instances does the hard working father, and more especially the mother of a poor family, remain slaves throughout their lives, tugging at the oar of incessant labor, toiling but to live and living but to toil, when they might have enjoyed comfort and comparative affluence, and if care and toil have weighed down the spirit, and at last broken the health of the father, how often is the widow

⁴⁷ Syrett, “Introduction,” 6.

⁴⁸ *New York Herald*, April 20, 1840, p. 4

⁴⁹ *New York Sun*, September 27, 1840.

left unable, with the most virtuous intentions, to save her fatherless offspring from becoming degraded objects of charity or profligate votarities of vice?”⁵⁰

With her advertisements running, Madame Restell’s business quickly flourished. Her advertisements attracted hundreds of New York women, most seeking abortions, providing them with the opportunity to get them safely, judgment-free, and under the care of another woman. Her services were remarkably safe, and no patient ever died in her care – a rare accomplishment for medical care providers at the time. Although her procedures were technically illegal, abortion criminalization was relatively new, and, importantly, the laws were rarely enforced. At this stage in abortion criminalization, providing an abortion as Restell did was only considered a misdemeanor.⁵¹

However, with her growing popularity came increased public scrutiny. Many were appalled by her bold newspaper advertisements for abortion – something that had long been secretive and undiscussed. The men of New York soon began attacking her publicly. She was labeled a “child murderess” and a “professor of infanticide.” Eventually, “Restellism” became a term signifying the termination of a pregnancy.⁵² Many took issue with Restell under moral circumstances. Quoting an 1839 editorial for the *Herald*, titled “Morals of the Rising Generation,” Syrett quotes the author, writing, ““Will the guardians of our city’s honor permit this plague to sweep over the land? ... No newspaper (should) dare to publish such a filthy libel as the advertisement of Mrs. Restell.’ This commentator ... seemed to care little for whether Restell was breaking the law or not; the problem was her offense to morality. In providing

⁵⁰ *New York Sun*, September 27, 1840.

⁵¹ Syrett, “A Letter to Married Women.”

⁵² *National Police Gazette*, “Restell, the Female Abortionist.” (March 13, 1847).

abortion, Restell was also aiding those intent on illicit sex.”⁵³ This moral expectation, however, was now enforced by criminal consequences.

Madame Restell’s first arrest occurred on August 17, 1839 – only a few months after she began running advertisements. By 1855, she had been arrested several times, though only one case gained significant attention, leading to her imprisonment for a year on Blackwell’s Island, located on the East River in New York City. Her arrests were largely due to her selling abortifacients disguised as medicines to aid menstruation, which, in reality, induced miscarriages. The women purchasing the medicines knew what they were purchasing and what they were taking – a medicine to abort their pregnancies. However, in court, they argued otherwise to protect themselves from punishment, claiming their miscarriages were unintentional, and that they were unaware of Restell’s services.⁵⁴

The case that led to her year of imprisonment was in reference to an abortion Restell provided in May of 1839, when her business was just beginning. Ann Maria Purdy, a wife and mother of a 10-month-old child, sought to terminate her pregnancy and was referred to Restell by a friend. The abortion went smoothly, and both women went on with their lives. Years later, in March of 1841, Purdy was diagnosed with tuberculosis and was told her death was imminent. In light of this, Purdy decided to confess to her husband that she had procured an abortion two years earlier. Her husband, William Purdy, was enraged and immediately went to the police. Madame Restell was promptly arrested.⁵⁵

⁵³ Syrett, “A Letter to Married Women,” 39.

⁵⁴ Jennifer Wright, *Madame Restell: The Life, Death, and Resurrection of Old New York’s Most Fabulous, Fearless, and Infamous Abortioneer*, “Chapter 6.” (2023).

⁵⁵ Syrett, “In the Family Way.”

Due to the emotional weight of the case and Mr. Purdy's insistence that the abortion caused his wife's illness, the trial was unlike Restell's previous misdemeanors. Syrett recounts the charges and punishment Restell was subjected to. He writes,

“On April 22, the grand jury indicted Restell on four charges: the first two were for ‘unlawfully, wickedly, wilfully [*sic*] and maliciously’ administering a noxious medicine to Purdy; the other two were for using ‘certain instruments, to wit, one piece of wire, and one pair of pliers with the intent thereby then and there to procure the miscarriage of the said Ann Maria Purdy.’ Because Purdy was not pregnant with a quick child, the alleged crimes were all misdemeanors and any fines or punishment would be spent in the city jail on Blackwell’s Island, not in state prison.”⁵⁶

Restell was imprisoned for a year. Upon her release, she immediately resumed her practice, undeterred by her imprisonment, continuing to provide what she saw as essential medical care to women.

The Purdy case was particularly motivating for anti-abortion activists, who wrongly believed that Restell's abortion led to Purdy's diagnosis two years later. Upon Madame Restell's release and the unbothered resumption of her services, anti-abortion activists grew increasingly frustrated and turned to the legislature. They repeatedly advocated for legislative change, and their work eventually came to fruition in 1845, about three years after Madame Restell's release. On May 13, 1845, New York's governor signed a law revising the initial abortion statute New York was operating under. Syrett summarizes the legislative change and what it signified for both anti-abortion activists and Restell.

“An Act to Punish the Procurement of Abortion, and for Other Purposes departed from its predecessor in two important ways. The first section essentially reiterated the 1829 statute and declared it to be second-degree

⁵⁶ Syrett “In the Family Way,” 64.

manslaughter to administer an abortion, either surgical or medicinal, on a woman pregnant with a quick child. The second section, however, was aimed at Pharmacists and made the sale of abortifacients a crime punishable by between three months and one year in a county jail. Importantly, this section did not specify whether the pregnancy needed to be quick to qualify for conviction ... The third section was perhaps the most novel. It criminalized the act of receiving an abortion for the woman herself, whether by surgical means or by taking an abortifacient ... The 1845 statute had both brought into the scope of what constituted the crime of abortion to include the women who obtained them, and increased various forms of punishment.”⁵⁷

Following the statute, and decades later, Restell continued to run her business. In fact, she increased her advertising through writing circulars promoting her contraceptive powders. In an 1870 circular, she writes, “Who can estimate the beneficial effects that a *preventative* – one that is *simple, easy*, and CERTAIN, requiring no sacrifice of pleasure, is in the hands of the female.”⁵⁸

Restell faced multiple legal challenges, but consistently avoided conviction, aided by her wealth and skilled lawyers adept at navigating abortion laws. This infuriated anti-abortion activists, who wanted both abortions and, subsequently, Restell eliminated entirely. It was at this point that Anthony Comstock entered the picture.

Anthony Comstock: A Moral and Malicious Man

Anthony Comstock was born on March 7, 1844, in a small Connecticut town to a deeply religious family. From an early age, he developed a strong conviction linking sexuality, morality, religion, and evil, especially inspired by his mother’s death. In *The Man Who Hated Women: Sex,*

⁵⁷ Syrett “Madame Restell’s Competition,” 97-98.

⁵⁸ Madame Restell Court Records – “Circular Promoting Restell’s Contraceptive Powder, 1870s.”

Censorship, and Civil Liberties in the Gilded Age, Amy Sohn recounts how the death of his mother influenced Comstock's understanding of motherhood. She writes,

“When he was 10 years and 10 days old, he arrived from school to The Farmhouse and found ‘the loveliest mother that ever lived, dead.’ None of his speeches or writings, nor biographers, mentions the cause, but town records show that Polly (Comstock's mother) died of a hemorrhage, or ‘flooding,’ the day she gave birth to Comstock's baby sister Harriet. Though childbirth had killed his mother, Comstock would spend his life defending motherhood as women's highest purpose. Women like his mother, he would believe until his last day, committed a noble sacrifice, fulfilling the commandment to be fruitful and multiply.”⁵⁹

After losing his own mother, Comstock positioned the sanctity of motherhood as a key tenet of not only his life, but of a moral Christian society, with the concept of abortion antithetical to that ideal.

Comstock's distaste for debauchery only grew in his time serving in the Civil War from 1863 to 1865. He found himself horrified by the culture of drinking and “sinful” acts and language used by his peers.⁶⁰ Sohn writes,

“Due to his religiosity, he was deeply disliked. When he received his whiskey ration, he would dump it out so no other soldiers could drink it ... ‘seems to be a feeling of hatred by some of the boys,’ read one of his diary entries, ‘constantly falsifying, persecuting, and trying to do me harm. Can I sacrifice Principle and conscience for Praise of Man? *Never.*’ A year into his service, he returned to his quarters to find the windows closed tight, the room filled with smoke, and his bunk full of trash.”⁶¹

⁵⁹ Sohn, “Viceland,” 22.

⁶⁰ Syrett, “Nemesis,” 248.

⁶¹ Sohn, “Viceland,” 22.

Despite the discouragement from his peers, Comstock remained steadfast in his commitment to Christian principles and morality.

Journals show that Comstock remained primarily concerned with sexual purity following the death of his mother. Comstock took deep issue with any sexual pleasure other than for simple conception between a wedded husband and wife. His issues with sex apply broadly, including with his own experiences of masturbation. Sohn pulls from his journals, “He was not immune to fleshly delights – probably masturbation – himself: ‘O I deplore my sinful weak nature so much. If I could be but live without sin, I should be the happiest soul living.’ Another day: ‘Satan has sorely tried me; yet by God's grace did not yeild [*sic*]. This morning were severely tempted by Satan, and after some time in my own weakness, I failed.’”⁶² Comstock frequently laments about masturbation as opposed to the drinking of his peers because of his devotion to sexual purity as defining morality and Christianity.

Considering this, Comstock was horrified when he moved to New York City in 1867. At the time, sex played a huge role in the cultural hubs of New York. Sohn writes,

“Peddlers hawked ‘rubber goods’ (sex toys and contraceptives) ... dirty playing cards, watches, and brothel guides. Smut was not just ubiquitous; it was public. ‘Fancy Books,’ costing two dollars or more ... described orgies, masturbation, and group and public sex, with explicit illustrations. Erotic images benefited from recent advances in photography ... Notices for contraception and abortions also proliferated in daily newspapers such as the New York Herald and the New York Tribune.”⁶³

Anthony Comstock was horrified by the blatantness of these displays of sexuality. He joined the Young Men’s Christian Association (YMCA) and worked with them to provide “wholesome entertainment,” so as not to fall into the perceived sin and culture of the city. In 1872, Comstock

⁶² Sohn, “Viceland,” 24.

⁶³ Sohn, “Viceland,” 26.

worked under the YMCA's Committee for the Suppression of Obscene Literature. This committee worked to craft legislation to criminalize this behavior, and Comstock led the charge. On March 3, 1873, Congress passed An Act for the Suppression of Trade in, and Circulation of, Obscene Literature and Articles of Immoral Use, widely known as The Comstock Act. The law criminalizes "any obscene book, pamphlet, paper, writing, advertisement, circular, print, picture, drawing or other representation, figure, or image on or of paper or other material, or any asset, instrument, or other article of an immoral nature, or any drug or medicine, or any whatever, for the prevention of conception, or for causing unlawful abortion."⁶⁴ The law primarily criminalized the use of the mail to send any of the above materials, including abortifacients.

Comstock appointed himself to enforce this law, frustrated with the lack of enforcement of existing obscenity laws. Comstock was willing to regulate the mail and was soon officially appointed to be a special agent to the Post Office Department. His job was to sift through mail and check for anything punishable – he wanted to prosecute and punish offenders.⁶⁵

In 1873, Comstock and his colleagues at the YMCA founded the New York Society for the Suppression of Vice (NYSSV), which became an official organization in the state. Syrett writes, "As a postal inspector and the secretary of the newly formed NYSSV, Comstock was doubly empowered to seek out vice almost anywhere he might find it, and to arrest and prosecute those who traded it."⁶⁶ With Comstock in power, the legal landscape surrounding sex and contraception became more restrictive than ever, marking a significant turning point in the criminalization of abortion.

The Comstock Act paved the way for other laws that criminalized reproduction across the nation. Sohn writes, "In the twelve years following 1837, twenty-four state legislatures passed

⁶⁴ Act of Mar. 3, 1873, ch.258, 17 stat. 598

⁶⁵ Syrett, "Nemesis."

⁶⁶ Syrett, "Nemesis," 253.

‘little Comstock laws’ modeled on the federal or New York Statutes. Connecticut outlawed the act of attempting to control reproduction. Fourteen states prohibited the verbal transmission of contraceptive or abortion information. Eleven made it a criminal offense to possess instructions for the prevention of contraception.”⁶⁷ Abortion and contraception were key tenets of Comstockian legislation across the nation, and were key targets in Comstock’s crusade himself, within his new home in New York City.

In *Lust on Trial: Censorship, and the Rise of American Obscenity in the Age of Anthony Comstock*, Amy Werbel argues that Anthony Comstock saw abortion as a way to cover up “disgraceful marital sex.”⁶⁸ She writes, “Comstock always believed that efforts to limit conception contradicted the ‘laws of heaven’ and created conditions that encouraged unsanctioned sexual activity.”⁶⁹ With abortion on his agenda, Anthony Comstock sought to attack abortion providers in New York City, with Madame Restell, the most well-known provider, as his key target. Comstock’s demand for sexual purity for the sake of the morality and sanctity of the nation brought him to Restell’s doorstep on January 28, 1878.

The Two Meet: Madame Restell’s Final Arrest

Anthony Comstock left that day with an abortifacient in his pocket, given to him by Restell herself. Comstock was calculated in his approach to legally ensnaring Restell. Prior to Comstock, Restell had relatively effectively succeeded at evading the major legal consequences of providing abortions illegally. Her wealth and status protected her from the criminalization of abortion. In order to take down Restell, Comstock had to build a case and needed to collect his evidence. He disguised himself as a man asking for Restell’s help on behalf of a woman he had impregnated. He told her that he had “seen her advertisements and had called to see if she had any article for

⁶⁷ Sohn, “Mr. Comstock Goes to Washington,” 84.

⁶⁸ Werbel, “Onward Christian Soldiers,” 68.

⁶⁹ Werbel, “Onward Christian Soldiers,” 70.

the prevention of contraception.” She provided him with the medicine – an abortifacient – charged him \$10, and he left the office.⁷⁰

A week later, on February 7, Comstock returned. This time, he asked for birth control, a form of contraception that would enable the woman he was allegedly with to have sex without the risk of her becoming pregnant. Madame Restell provided him with a contraceptive douche and demonstrated its intended use for Comstock, as she did with all of her other clients. He paid her \$20 for the items and left again.⁷¹

On February 11, 1878, Comstock returned to her offices, but this time, with police officers. Syrett recounts the arrest according to court records and Comstock’s diaries. He writes,

“Madame Restell ushered them into her office, observing, ‘You have brought quite a party with you. This is a friend with you?’ At this point the man told her that he had a warrant for her arrest and a search warrant ‘to seize her articles for abortion and preventing conception.’ One of the other men, a police officer, told her that she was now in his custody and that he ‘would act in a civil manner toward her.’ At this point Madam Restell did what many in her situation might have done: she lied, claiming that no such articles were on the premises. The officer showed their identification and read the warrant aloud to Restell. The man who had visited before explained to her that she would ‘have to produce any medicine that she had for the purpose that she mentioned to him the day that he visited.’ At that point, Restell must have finally realized who this man was. ‘Is this Mr. Comstock?’ she asked. It was indeed. Until that point she clearly had not recognized him and yet she obviously knew who he was. At least in the realm of sexuality and obscenity, the only person more famous than Anthony Comstock was Restell herself.”⁷²

⁷⁰ Testimony of Anthony Comstock, *The People on the Complaint of Anthony Comstock v. Ann Lohman*. (1878).

⁷¹ Syrett, “A Reckoning.”

⁷² Syrett “A Reckoning,” 268.

Upon the raid of her home, Comstock and the officers found condoms, materials for procedural abortions, abortifacients, syringes, powders, and circulars for preventing conception. Madame Restell was arrested and taken to the police court of the Second District of New York.⁷³ The court records report that, on the complaint of Anthony Comstock, Restell was arrested for “offering to sell, and having in her possession for the purpose of sale, articles for the prevention of conception in a female.” Comstock signs, “I hereby demand a trial.”⁷⁴

The examination of witnesses began on February 28, with Comstock leading the way. On this date, he recounted his visits to Restell’s office and what she sold him. On March 12, the grand jury began to hear testimonies on the charges against Restell. The next day, they indicted her under a New York state Comstock law, which banned the possession, sale, and advertisement of contraceptives and abortifacients.⁷⁵ The stenographer record reports the accusation as Restell’s intent to “sell and offer to sell and have in her possession for the purpose of selling the article or thing designed and intended for the procuring of an unlawful abortion.”⁷⁶ Restell was ordered to appear for an arraignment on March 29. Her attorney informed her that the next step would be to dismiss the indictment, and that she should be prepared to argue the motion on April 1st.⁷⁷

When the morning of April 1st came, Madame Restell took her own life. *The New York Tribune* reported, “Madame Restell, otherwise known as Ann Lohman, cut her throat with a carving knife, and was found dead in her bathtub early yesterday morning. The act is supposed to have been the result of her brooding over her recent arrest and indictment, and her anxiety over her approaching trial. The estate which she has left is estimated to be worth half a million

⁷³ Syrett, “A Reckoning,” 268.

⁷⁴ Madame Restell Court Records – “Comstock Case, 1878.”

⁷⁵ Sohn, “The Wickedest Woman in New York,” 125 .

⁷⁶ Madame Restell Court Records – “Comstock Case, 1878.”

⁷⁷ Syrett, “A Reckoning,” 277-278.

dollars. An inquest was held yesterday, and a verdict of suicide was rendered.”⁷⁸ The public was baffled by her death, unlike Comstock, who claimed that she had sentenced herself appropriately.⁷⁹ In his journal, about Restell’s suicide, he wrote, “A Bloody ending to a bloody life.”⁸⁰

In *Madame Restell: The Life, Death, and Resurrection of Old New York’s Most Fabulous, Fearless, and Infamous Abortionist*, author Jennifer Wright articulates the incident and Comstock’s impact on abortion politics in the United States. She writes,

“Comstock had made abortion shameful for women, but he had done nothing to change the circumstances that caused women to have them. So, they kept having them, though they often attempted to inflict such procedures on themselves rather than seeking the help of physicians. Without readily available information on the topic, they often had scant idea of how to go about this. They only knew that they would do anything not to be pregnant.”⁸¹

Madame Restell’s death was a devastating casualty in Comstock’s crusade against sex and, essentially, the independence of women. Nevertheless, women have continued to have abortions and used the strength and legacy Madame Restell left for them to do so.

Reflections and Relevance: Enforcing Sexual Purity through Abortion Criminalization and Gendered Governance

The case of Madame Restell and Anthony Comstock provides a powerful lens through which to understand the forces driving abortion criminalization in the nineteenth century. Far from being primarily concerned about fetal life like anti-abortion activists are today, abortion criminalization initially emerged out of concerns regarding sexual morality. In *Lust on Trial*, Werbel writes that,

⁷⁸ *The New York Tribune* 1878.

⁷⁹ Wright, “Chapter Twenty Seven.” (196) (2023).

⁸⁰ Sohn, “The Wickedest Woman in New York.” (130) (2021)

⁸¹ Wright 2023, 284a .

for Comstock, abortion was not an issue of fetal viability, but an issue of people escaping the consequences of “disgraceful extramarital sex.”⁸² In this framework, abortion was not about murder; rather, it was about sexual purity – specifically, the regulation of women’s sexuality outside of procreation for motherhood.

To fully grasp the significance of this case, it is essential to return to the conceptual frameworks that guide this analysis. Sexual autonomy was directly threatened by the legal regime Comstock sought to build. His enforcement of obscenity laws targeted not only smut and pornography, but also contraception, abortion, and information about sexual health. In doing so, he sought to eliminate the very conditions that made non-procreative sex safe and accessible. Restell’s practice, which provided women with access to reproductive care, represented a direct challenge to the system by enabling women to exercise control over their sexual lives.

Closely linked is the concept of reproductive autonomy – the capacity to make decisions about contraception, pregnancy, and abortion free from state interference. Restell’s work exemplified this autonomy: she provided women with the direct means to prevent or terminate pregnancies in a context in which such choices were unavailable under laws, stigma, and limited medical access. The aggressive legal response that Restell faced – first culminating in her serving time on Blackwell’s Island, and then in her prosecution under obscenity statutes that led to her death – was a direct consequence of the state seeking to stop the autonomy Restell’s services provided for hundreds of women.

This case is best understood through the framework of gendered governance. The legal and cultural campaign against Restell was not neutral; it was deeply embedded in gendered assumptions about women being chaste, maternal, and morally pure. Through both formal law and informal social pressures, the state exercised control over women’s bodies in ways that

⁸² Werbel, “Onward Christian Soldiers,” 68.

reinforced these norms. Comstock's moral ideology, shaped by religious conviction and a reverence for motherhood as women's primary purpose, positioned any deviation from this ideal – in this case, contraception and abortion – as a threat to social order. His work with the New York Society for the Suppression of Vice institutionalized these beliefs, transforming personal morality into enforceable law.

Examining this case through broader scholarly frameworks further reinforces this interpretation. Feminist theories of the state illuminate how abortion criminalization functioned as an extension of male-dominated legal authority, with Comstock acting as a key agent in enforcing patriarchal norms through law. The reproductive justice framework expands this analysis by situating Restell's clients – many of whom sought her services due to situational hardship and social vulnerability – within intersecting systems of inequality that limited their reproductive choices. Finally, historical scholarship on sexual purity movements and obscenity regulation reveals that the campaign against abortion was part of a larger effort to police sexuality. The same forces that sought to suppress “obscene” materials also targeted reproductive knowledge and services, viewing both as enabling immoral sexual behavior.

Reading these strands together illuminates that the prosecution of Restell was not an isolated legal event, but part of a moral project. Efforts to criminalize abortion were deeply intertwined with attempts to restrict sexual knowledge, eliminate contraception, and enforce a rigid moral code grounded in sexual purity and the enforcement of motherhood. In this context, abortion became a focal point not because it was understood as murder, but because it symbolized a breakdown in the sexual order Comstockian laws, views, and enforcement sought to uphold.

The tragic outcome of this case underscores the profoundly human cost of this system of governance. Restell's death was not simply the result of her individual persecution, but the culmination of a broader regime that sought to discipline women's bodies and constrain their autonomy. At the same time, the continued demand for her services, even in the face of legal risk, highlights the limits of such regulation. Women continued to seek control over their reproductive lives, despite the legal structures designed to prevent them from doing so.

Ultimately, the case of Restell and Comstock reveals that abortion criminalization must be understood as both a legal and a moral project – one deeply rooted in efforts to enforce sexual purity and sustain gender hierarchies. Recognizing this history is critical for understanding the persistence of similar dynamics and rhetoric in contemporary debates. Abortion law, past and present, operates not in isolation, but as part of a broader system of gendered governance that continues to shape the boundaries of sexual and reproductive autonomy.

Conclusion and Next Steps

This chapter has traced the life, practice, and prosecution of Madame Restell in order to illuminate the broader transformation of abortion from a relatively accessible practice into a site of intense legal and moral regulation. By situating Madame Restell's case alongside the influence of Anthony Comstock, the chapter has shown how abortion became embedded within a broader campaign to police sexual autonomy and enforce ideals of purity, rather than being treated primarily as an issue of fetal life. In doing so, it has reinforced the central argument that abortion criminalization functioned as a form of gendered governance, designed to regulate women's sexuality and reproductive choices in accordance with patriarchal norms.

The next chapter turns to the contemporary moment, examining modern anti-abortion activism and the case of Margaret Carpenter in the post-*Dobbs* legal landscape. It explores how

the recriminalization of abortion has reemerged through new legal strategies, particularly surrounding the regulation of abortion pills, while also revealing the striking persistence of older logic and rhetoric in shaping present-day efforts to control reproductive autonomy.

Chapter Four

“Take Responsibility for Your Orgasms”: Contemporary Abortion Criminalization and Anti-Abortion Activism from *Roe* to *Dobbs*

In previous chapters, this thesis has traced the lineage of reproductive criminalization in the United States to the prosecution of nineteenth-century abortion provider, Madame Restell, under the moral crusades and obscenity governance of Anthony Comstock. Through this case, obscenity regulation established a legal and cultural framework that positioned abortion as both a moral transgression and a criminal offense, embedding reproductive control within the machinery of law and social order. This chapter brings this history into the present. It argues that the post-*Dobbs* criminalization of abortion pills represents the latest iteration of the same legal logic: using criminal law to reassert legal authority over reproduction.

By examining the anti-abortion movement, the transformation from *Roe* to *Dobbs*, abortion pills, and a post-*Dobbs* legal case, this chapter situates contemporary abortion pill bans within a broader continuum of gendered governance. Just as Comstock sought to regulate women’s reproductive autonomy through the control of the mail, twenty-first-century criminalization now deploys digital surveillance, telehealth restrictions, and cross-state prosecutions to achieve similar ends. The persistence of this punitive logic underscores the historical continuity of reproductive criminalization: when reproductive autonomy expands through new technologies, the state adapts punitive tools to contain it.

To ground this claim, this chapter proceeds in three parts. First, the chapter examines contemporary anti-abortion activism from *Roe* to *Dobbs*, articulating how these activists created massive restrictions to abortion access when it was constitutionally protected, and how they simultaneously worked to overturn said protection. Importantly, using the historical background

of obscenity governance and abortion criminalization under Comstock from the prior case, this chapter seeks to connect the ideological continuity of anti-abortion activism – examining the moral frames of fetal viability and sexual purity, both present in contemporary anti-abortion activism. Then, the chapter turns to another key aspect of contemporary abortion criminalization: abortion pills. This section introduces the rise of medication abortion through mifepristone and misoprostol, examining how their increased accessibility through telehealth and mail-order systems disrupted traditional medical and legal control, allowing for an increase in abortion rates despite criminalization under *Dobbs*. Third, to examine a contemporary abortion provider working within post-*Dobbs* criminalization, the chapter puts forth the case of Dr. Margaret Carpenter, a New York physician criminally charged for prescribing abortion pills to a patient in Louisiana. This case epitomizes how modern enforcement reproduces older patterns of reproductive control through state violence and the criminalization of autonomy. Finally, in discussing the reflections and relevance of the contemporary case, the chapter concludes with a theorization of the sexual subject abortion criminalization continually seeks to create. Ultimately, the chapter argues that *Dobbs* and its aftermath expose the historical continuity of the state’s reliance on criminal law to govern and sexuality reproduction.

Anti-Abortion Activism from Roe to Dobbs

Roe v. Wade

On January 22, 1973, the Supreme Court of the United States decided *Roe v. Wade*, recognizing a constitutional right to privacy that included the decision to terminate a pregnancy. The Court struck down Texas’s criminal ban on abortion, declaring that, prior to fetal viability (approximately 24 weeks), the decision whether to continue a pregnancy belonged to the

individual, not the state. *Roe* thus marked a temporary rupture in the state's criminal regulation of abortion.

However, as numerous feminist legal scholars have observed, *Roe's* promise was conditional and incomplete. *Roe* framed abortion as a matter of privacy for physicians and their patients rather than of gender equality in ensuring women's reproductive autonomy. Essentially, *Roe* never addressed the deeper structures of obscenity governance that abortion criminalization was built upon.

Despite constitutional protection, abortion was highly restricted under *Roe*. This restriction created widespread inaccessibility – rooted in other complex issues of race, class, and location, as shown in reproductive justice scholarship⁸³ – further indicating the intense and multifaceted harms of abortion's current criminalization. In discussing the criminalization of abortion within the years of its constitutional protection under *Roe*, Amy Littlefield writes,

“Before the (2010) election, most state legislatures were Democratic. Then Republicans picked up twenty chambers nationwide, and the balance flipped. From 2011 to 2013, state legislatures passed a record 205 anti abortion laws. In 2011 alone, state legislators introduced a staggering 1,230 reproductive health provisions, most of which curtailed access to reproductive health care, and about half of which attacked abortion in particular. ‘It was very clear that the pro-choice movement wasn’t even bringing any weapons to a gunfight.’”⁸⁴

Anti-abortion activists were committed to working around *Roe*, creating enormous restrictions to access, harshly impacting low-income communities and people of color. In *Killers of Roe: My Investigation into the Mysterious Death of Abortion Rights*, Littlefield examines abortion criminalization through legal regulation within *Roe*, effectively tracing anti-abortion activism

⁸³ Ross and Fried, *Abortion and Reproductive Justice: An Essential Guide to Resistance*.

⁸⁴ Littlefield, “Deaths in the Name of Life.” (203) (2026)

from bureaucratic restrictions, into the overturning of the constitutional protection of *Roe*. In discussing the implementation of the Hyde Amendment in 1976, she writes,

“(The Hyde Amendment) banned federal funding of most abortions under Medicaid for fifty years. The ban has forced many of the poorest people in this country to pay out of pocket for an abortion or stay pregnant if they couldn't. According to one estimate, by 2010, the Hyde Amendment had caused more than a million people who couldn't afford an abortion to give birth instead. Plus, it shaped the abortion rights movement into a Mutual Aid operation, forcing many of its dedicated activists to spend their days raising money to plug the gaps left by federal funds.”⁸⁵

Essentially, due to the gaps that *Roe* left in access, and the success of the anti-abortion movement in creating restrictions like the Hyde Amendment, abortion rights activists did not have the resources to fight for stronger federal protections.

Importantly, the contemporary anti-abortion movement has primarily framed their issue as one of fetal viability. Meaning, they argue that abortion is objectively morally wrong, because it is the murder of an innocent life. In *The Making of Pro-Life Activists: How Social Movement Mobilization Works*, Ziad W. Munson examines how pro-life movements emerge, particularly through framing abortion within issues of morality, religion and science. He writes, “Pro-life activists categorically reject all abortion as morally wrong, including abortion in cases of rape, incest, or medical/genetic problems with the fetus.”⁸⁶ This dimension of morality inflames the debate, with anti-abortion activists cataloguing abortion as a universal moral wrong, especially with the evocation of murder. In discussing the core belief of abortion as murder, Munson writes, “At the core of the pro-life moral universe is the belief that the unborn fetus is a person, and therefore, abortion is morally wrong because it ends a person’s life. This is the central idea

⁸⁵ Littlefield, “The Believer,” 7-8.

⁸⁶ Munson, “Together but Not One,” 99.

around which all other beliefs in the movement revolve.”⁸⁷ Munson is entirely correct in the fact that the nexus of the contemporary anti-abortion movement is the belief that abortion is wrong because it ends a life. He is also correct that the anti-abortion movement revolves around multiple beliefs around understandings of sex and morality. Discussing early research on the pro-life movement, he writes,

“Pro-life activists held more ‘traditional’ views than the general population on premarital, extramarital, and homosexual sex education in the schools; and contraception. More than 90% of his pro-life respondents opposed the Equal Rights Amendment, an important political issue at the time. Granberg concluded that ‘a conservative approach to personal morality appears to explain opposition to abortion.’ (p. 158). In other words, a particular set of personal beliefs leads to pro-life activism.”⁸⁸

This report’s findings align with an interview documented in *Killers of Roe* with Paul Haring, an anti-abortion legislator and author of the Hyde Amendment. Littlefield reports that Haring’s anti-abortion activism was also heavily engaged with the Catholic church, arguing against contraception alongside abortion. In discussing Haring’s views on birth control, she reports that his views aligned with that of Catholic doctrine at the time, writing, “Pope Paul VI doubled down on his opposition to birth control and abortion, emphasizing that every time a married couple had sex, they needed to remain ‘open to the transmission of life.’”⁸⁹ This idea of sex as only permissible in the case of procreation is similar to the logic of Anthony Comstock, enforcing norms of sexual purity through religious and state law.

⁸⁷ Munson, “‘United We Stand’?,” 134.

⁸⁸ Munson, “Learning to Care,” 22.

⁸⁹ Littlefield, “The Believer,” 15.

Essentially, the reasons for *Roe*'s failure are twofold. First, the vagueness of the right to privacy between physician and patient allowed for anti-abortion activists to craft legislation and erect barriers to accessing abortion across the nation. Thus, abortion rights activism focused on providing funding for abortions and attempting to increase accessibility to account for the disparities in access that *Roe* allowed. This leads to the second aspect: the abortion rights movement lacked the resources to protect abortion access, allowing for anti-abortion activists to achieve their penultimate legislative goal: overturning *Roe* itself.

Dobbs v. Jackson

On June 24, 2022, the US Supreme Court issued its decision in *Dobbs v. Jackson Women's Health Organization*, overturning *Roe* and eliminating the constitutional right to abortion after nearly 50 years. The case originated when the Center for Reproductive Rights filed suit against Mississippi's 15-week abortion ban – a clear violation of *Roe*'s viability standard. After a series of lower-court rulings striking down the ban, Mississippi appealed, explicitly asking the Court to reconsider *Roe*. In May of 2021, the Supreme Court announced that it would hear this case, considering the question of whether pre-viability abortion bans are unconstitutional. On June 24, 2022, the Supreme Court overturned *Roe v. Wade* under *Dobbs*.⁹⁰ Essentially, this decision allows states to put various abortion bans into effect. In response to the ruling, the Center for Reproductive Rights writes,

“For 50 years, the Supreme Court has consistently and repeatedly affirmed that abortion is a right protected by the U.S. Constitution. Nothing has changed in these 50 years that justifies the sudden overturning of an established precedent that protects the right to abortion. Today's ruling... raises grave concerns for other constitutional rights interwoven in the Court's *Roe* decision – including the right

⁹⁰ Center for Reproductive Rights, “*Dobbs v. Jackson Women's Health Organization*,” (2025).

to make decisions about our intimate partners, how we raise our children, whom we marry, and whether to use contraception.”⁹¹

In the three years since *Dobbs*, as of November 2025, 41 states have abortion bans – some stricter than others. Abortion is entirely banned in 12 states. Furthermore, six states have bans on gestational limits between six and 12 weeks. Four states have gestational limits between 18 and 22 weeks. The other states with abortion bans have abortion banned after 24 weeks – the original viability standard under *Roe*.⁹²

In a report submitted to the UN Human Rights Committee, the Human Rights and Gender Justice Clinic at the CUNY School of Law, Pregnancy Justice, the Center for Reproductive Rights, and more, signed and submitted a report on the state of abortion criminalization in the United States. They report that,

“As of September 5, 2023, approximately 33 states have laws imposing criminal penalties for performing abortions in some instances. Of those, at least 16 states have made it a felony to perform an abortion at any stage of gestation. Additionally, 4 states have passed laws imposing criminal penalties for performing an abortion after 6 weeks, and others impose criminal penalties for performing an abortion later in gestation. Criminal penalties potentially include life imprisonment and fines up to \$100,000. Nevada law criminalizes people who self-manage. These criminal laws have endangered patients’ lives as doctors fearing arrest in Texas and other states have denied abortion care to patients facing severe and dangerous pregnancy complications. Threats of prosecution have turned people away from clinical abortion care and have prevented or chilled people’s access to information about safe abortion.”⁹³

⁹¹ Center for Reproductive Rights, “*Dobbs v. Jackson Women’s Health Organization*,” 2022.

⁹² The Guttmacher Institute, “State Bans on Abortion Throughout Pregnancy,” 2025.

⁹³ Human Rights and Gender Justice Clinic et al, 2023.

The effects of abortion criminalization are chilling. Banning and criminalizing abortion erects barriers to access while endangering patients and providers alike. The *Dobbs* decision reactivated the punitive logic that characterized the nineteenth century's obscenity governance – transforming what was once framed as a private medical decision into a criminal act. The return of this logic demonstrates the state's reliance on criminal law as a disciplinary tool that polices sexuality and reproduction. Just as Comstock and his allies justified policing women's reproductive practices in the name of morality, *Dobbs*'s aftermath has enabled states to reassert patriarchal control under the guise of legality, protection, and state sovereignty.

Returning to *Killers of Roe*, Littlefield examines a contemporary anti-abortion activist whose experiences and views render similarly to Anthony Comstock's core values – Mark Lee Dickson. Littlefield refers to Dickson as the “Johnny Appleseed of the antiabortion movement,” dedicating the past years of his life traveling and promoting the “poison fruits of antiabortion innovation.”⁹⁴ Like Comstock, Dickson recounts his guilt regarding sex, though instead of journaling, he writes on an online blog. “I must tell you the dangers of being a lustful minded sinner. With my very own mind I have committed adultery with almost every appealing actress that has been on television.” Later, he writes, “I myself have been a sex-crazed teenager desiring that which is not to be tasted until the joining between a man and woman in marriage. This is such a hideous sin to admit.”⁹⁵ Like Comstock, Dickson's anti-abortion activism extends beyond a concern for fetal viability – he seeks to control abortion also for the sake of enforcing sexual purity. Dickson continues to fight for legislation that further criminalizes abortion.

Mark Dickson's primary concern with abortion is the issue of fetal life and viability, but with complimentary, broader anti-woman and anti-sex views reflecting the larger conservative

⁹⁴ Littlefield, “Deaths by Abortion Ban,” 221.

⁹⁵ Littlefield, “Deaths by Abortion Ban,” 223.

movement. Conservative activist, Charlie Kirk, a key partner of President Trump, spent his career advocating against abortion, primarily under the guise of protecting fetal life. However, in multiple of his debates, Kirk argues that abortion is a way to evade the consequences of non-procreative sex, arguing that people must “take responsibility for your orgasms.”⁹⁶ Kirk follows this same, anti-sex Comstockian logic, further illustrating that the contemporary debate about abortion is not solely about fetal life, but about governing and restricting sexual and reproductive health care and promoting ideals of either sexual purity and/or motherhood.

This concern about sex is also present in anti-abortion organizations, such as Live Action. On their website, they list one of their key issues as, according to their data, nine out of ten abortions are given to “unmarried men and women.”⁹⁷ The relevancy of marital status in anti-abortion politics further underscores that abortion criminalization is not solely about fetal viability, but about controlling the sex people are having through governing reproduction and enforcing motherhood on those who become pregnant.

Abortion Pills: Increasing Access Under Dobbs

Since the overturning of *Dobbs*, interestingly enough, abortion rates have risen – angering abortion activists like Dickson. Littlefield writes,

“Many thousands more went online and ordered abortion drugs from online pharmacies or from Telehealth services like Aid Access – because, sadly for Dickon, people who needed abortions know how to use the internet. Even worse for him, the Biden Administration was allowing the shipment of abortion medication by mail, and Democratic-led states had passed laws to protect providers who sent these medications to states like Texas. Medication abortion was now the most common form of abortion nationwide, and logistically, it was easier to get than ever, even in states where abortion was banned – although,

⁹⁶ Charlie Kirk, “Charlie Kirk Nukes Abortion Argument: Take Responsibility for Your Orgasms,” 2024.

⁹⁷ Live Action, “The Problem,” 2026.

thanks to Dickson and his allies, accessing it could pose legal risks. In the year after fourteen states banned abortion outright, the number of abortions recorded nationwide *increased*.⁹⁸

The newfound accessibility has forever changed the field of abortion activism, with it enraging anti-abortion activists and providing abortion rights activists with key resources.

Mifepristone and misoprostol are the pills taken to induce a medical abortion, and were approved by the FDA for the purposes of medication abortion in 2000. Misoprostol was initially developed to treat stomach ulcers, but was eventually found to be useful for abortions.

Mifepristone was developed in response to this use in 1980 to be taken with misoprostol to ensure complete medication abortion. Mifepristone and misoprostol are immensely safe – they block progesterone needed for pregnancy, and eventually lead to a natural miscarriage through uterine contractions induced by misoprostol.⁹⁹

Before the pandemic, FDA regulations ensured that patients had to see a certified clinician in person at a clinic or hospital to get the pills. However, during the Biden administration, they temporarily removed the pills’ in-person dispensing requirement to ensure that people seeking abortions did not have to risk their health going to medical offices during the pandemic.¹⁰⁰ Subsequently, telemedicine abortions became widely available. In a study done by the University of California, San Francisco, they found that 43% of 1,600 people said that they would not have had access to a timely abortion if it weren’t for telehealth, making telehealth a popular, safe, and legal option for people seeking abortions.¹⁰¹ To procure the pills themselves,

⁹⁸ Littlefield, “Deaths by Abortion Ban,” 222.

⁹⁹ The FDA, “Questions and Answers on Mifepristone for Medical Termination of Pregnancy Through Ten Weeks Gestation,” 2025.

¹⁰⁰ The New York Times, “F.D.A. Will Permanently Allow Abortion Pills by Mail,” 2021.

¹⁰¹ Milwaukee Independent, “Research Shows Access to Telehealth Care Makes Critical Difference in Getting a Timely Abortion,” 2024.

the FDA permanently changed its regulations to account for the pandemic and Biden’s rule, making it legal for the medications to be sent in the mail.¹⁰²

Now, after *Dobbs*, the legality of abortion medication mailing and telehealth is unclear due to the variety of patchwork state-level bans. For example, for residents of Massachusetts and New York, telehealth medication abortions are widely accessible. On the other hand, states like Arizona, Louisiana, and Tennessee have specifically banned the use of telehealth services for abortions. Texas, for example, has also criminalized sending abortion medications in the mail.¹⁰³ However, shield laws have proven to be a helpful legal tactic in protecting abortion. These laws serve as legal protections for patients, providers, and people assisting in the provision of abortion from the reach of states with criminal abortion laws.¹⁰⁴

A post-*Dobbs* tactic in abortion criminalization – restrictions on mailing medication abortions – brings us back to the case of Anthony Comstock. In the book, *Abortion Pills: US History and Politics*, Carrie N. Baker recounts the use of the Comstock Act in attempting to curtail abortion access in a Texas lawsuit. She writes,

“The ADF lawsuit asked Kacsmaryk to declare the FDA’s 2021 decision to allow healthcare workers to meet with patients by telehealth and mail abortion pills to them a violation of the 1873 Comstock Act. Promoted by anti-vice crusader Anthony Comstock and described as a ‘chastity’ law, the Comstock Act banned sending obscene literature, contraceptives, abortifacients, or any sexual information the the US mail ... Congress removed the language concerning contraception in 1971, but left the part of the law criminalizing mailing abortifacients and information about abortion. Before *Roe v. Wade*, federal courts had ruled this part of the law applied only to ‘unlawful’ abortions. After the *Roe*

¹⁰² The New York Times, “F.D.A. Will Permanently Allow Abortion Pills by Mail,” 2021.

¹⁰³ KFF, “Abortion in the United States Dashboard,” 2025.

¹⁰⁴ Pien Huang, Mara Gordon, “Telehealth Abortion Demand is Soaring. But Access May Come Down to Where You Live,” 2022.

decision, the Comstock law remained on the books but was not enforced. Since the Supreme Court reversed *Roe*, the ADF hoped to bring the law back into effect.”¹⁰⁵

The evocation of the Comstock Act to ban contemporary abortion demonstrates how historical logics of moral regulation have reemerged in the post-*Dobbs* era. The regulation itself is the same, but the methods are not: where Comstock once raided post offices and censored mail, contemporary enforcers use surveillance technologies, data tracing, and interstate indictments. Yet the goal remains identical – to control reproduction through the criminalization of knowledge, technology, and autonomy.

The Case of Dr. Margaret Carpenter: Abortion Recriminalization Under Dobbs

In February 2025, an arrest warrant was issued in Louisiana for New York physician Dr. Margaret Carpenter, marking an unprecedented moment in the post-*Dobbs* landscape. Carpenter, along with her telemedicine company, Nightingale Medical, and the mother of a pregnant minor, were indicted by a Louisiana grand jury for “criminal abortion by means of abortion-inducing drugs” – a felony under one of the nation’s most restrictive abortion regimes.¹⁰⁶ Since the overturning of *Roe v. Wade*, Louisiana has permitted abortion only to prevent the death of the pregnant person or in cases of medically futile pregnancies, positioning itself at the forefront of contemporary criminalization.¹⁰⁷ Carpenter is the first physician to face serious criminal charges for prescribing and mailing abortion medication across state lines in the post-*Dobbs* era.¹⁰⁸

The case stems from an online request submitted by the minor’s mother, who sought medication abortion through Nightingale Medical’s telehealth system. After taking the pills, the

¹⁰⁵ Baker “Post-*Dobbs* Attempts to Block Mifepristone,” 195.

¹⁰⁶ Sara Cline, Geoff Mulvihill, “New York Doctor Indicted Over Online Prescription of Abortion Pill in Louisiana,” 2025.

¹⁰⁷ Abortion Defense Network, “Know Your State’s Abortion Laws,” (2024).

¹⁰⁸ CNN, “New York Doctor Indicted in Louisiana Abortion Case Recognized as a Leader in Women’s Reproductive Health, 2025.

minor experienced a medical emergency and called 911. Once law enforcement became involved, investigators traced the medication back to Carpenter in New York. The incident prompted Louisiana officials to issue arrest warrants not only for Carpenter but also for the minor's mother, who subsequently turned herself in.¹⁰⁹

However, the Louisiana indictment did not arise out of this singular incident. Only months earlier, in December 2024, Carpenter faced a civil lawsuit initiated by the Texas Attorney General under similar allegations of mailing abortion medication into a jurisdiction with near-total bans.¹¹⁰ Although the Texas case lacked criminal charges, it reflected the same strategy: using expansive interpretations of state law to target out-of-state providers and to halt the operations of telemedicine networks that enable access to abortion.

The historical resonance of this case is unmistakable. The rapid escalation from civil litigation in Texas to criminal indictment in Louisiana echoes the coordinated shift from the nineteenth century in conceptualizing abortion beyond a misdemeanor, but a severe criminal case worthy of jail time. Nineteenth-century abortion providers such as Madame Restell – repeatedly targeted by obscenity crusaders like Anthony Comstock – found themselves similarly ensnared in overlapping systems of criminal law, public shaming, and moral surveillance. The Comstock Act served as a federal mechanism for policing reproductive knowledge and restricting bodily autonomy. Likewise, the contemporary use of digital surveillance, telehealth regulation, and interstate criminal charges has revived that same punitive logic to control abortions under modern technological conditions. As abortion providers interviewed in Rosemary Westwood's article, "After Historic Indictment, Doctors Will Keep Mailing Abortion Pills Over State Lines,"

¹⁰⁹ Rosemary Westwood, "After Historic Indictment, Doctors Will Keep Mailing Abortion Pills Over State Lines," 2025.

¹¹⁰ Alaa Elassar, "New York Doctor Indicted in Louisiana Abortion Case Recognized as a Leader in Women's Reproductive Health," 2025.

note, the climate of fear, risk, and uncertainty mirrors the professional precarity that providers like Restell faced over 150 years ago.

Ultimately, the indictment of Dr. Carpenter – arising at the intersection of telemedicine and state criminal jurisdiction – underscores the argument at the center of this thesis: criminalization of abortion pills today is a contemporary iteration of a deeply rooted legal tradition that uses the law and government to regulate reproductive autonomy. What appears new – digital monitoring via period tracking apps, for example – is merely the latest method in a historical continuum of reproductive control. Just as Comstock wielded federal law to suppress abortion providers under the guise of moral protection, states like Louisiana and Texas now deploy criminal statutes to reassert authority over reproductive decision-making. The Carpenter case, still unfolding, offers a vivid example of how post-*Dobbs* strategies echo nineteenth-century legal logics and tactics, revealing the continuity of sociocultural narratives that have long shaped the policing of sex and reproduction.

Case Reflections and Relevance: Key Concepts, Frameworks, and Foucauldian Theorization
Thesis Concepts and Frameworks

Reflecting on the concepts that structure this thesis — sexual autonomy, reproductive autonomy, and gendered governance – it becomes clear that contemporary abortion criminalization cannot be understood as solely a matter of legal doctrine. Instead, it is embedded in a broader system of governance that regulates bodies, sexuality, and social roles. Sexual autonomy, in this case, is not only defined through concrete legal prohibitions but also controlled through the effects of surveillance, stigma, and legal ambiguity following *Dobbs*. The increasing use of digital tracking, telehealth restrictions, and criminal penalties in the post-*Dobbs* landscape demonstrates

that the regulation of sexuality continues to extend beyond physical acts into the realm of information and access.

Importantly, this chapter's historical comparisons drawing from the previous case underscore the continued importance of sexual purity as a driving force within anti-abortion activism. While contemporary anti-abortion arguments are often framed primarily in the concern of fetal life, viability, and the moral status of the embryo, these claims coexist, and are frequently underpinned by, older concerns about regulating sexual behavior. Mark Lee Dickson's views align with the ideology of Anthony Comstock, whose campaigns against abortion, contraception, and obscenity were explicitly tied to enforcing sexual restraint and punishing what he viewed as immoral desire. In this sense, sexual purity operates as a covert but powerful framework: even when not explicitly stated, it shaped the underlying logic of criminalization. Understanding the continuity of this logic is critical, as the anti-abortion movement thus has broader, regulatory concerns beyond stopping abortion. The criminalization of abortion thus becomes a mechanism through which the state indirectly governs sex – deterring non-procreative sexuality by attaching severe legal and social consequences to its potential outcomes.

Reproductive autonomy, more specifically, remains deeply situational and uneven in the contemporary period. Although medication abortion has expanded the presumed ability of individuals to terminate pregnancies outside of formal clinical settings, this autonomy is unstable. The case of Dr. Margaret Carpenter illustrates how quickly access can be reframed as criminal behavior. Her indictment highlights a central tension in the post-*Dobbs* era: the same technologies that enable reproductive autonomy also expose patients and providers to new forms of legal risk. In this sense, autonomy is not simply granted or denied; it is actively negotiated within an evolving landscape of state legislation.

The concept of gendered governance is the most revealing in understanding ideological continuity across history. From the enforcement of the Comstock Act to contemporary attempts to restrict abortion pills through federal and state law, the state has repeatedly positioned itself as the judge of reproductive order. These state interventions are not without biases – they are shaped by enduring norms regarding gender, sexuality, and the role of reproduction in maintaining social hierarchies. The reemergence of Comstock-era legal reasoning in modern anti-abortion activism is particularly telling: it demonstrates that historical frameworks of sexual regulation have not disappeared, and remain available for reinterpretation under new conditions. Importantly, these frameworks have always linked reproduction to sexual discipline – treating the control of abortion as inseparable from the control of sex itself.

Engaging the three scholarly frameworks outlined earlier in the thesis further deepens this interpretation. Feminist theories of the state illuminate how abortion criminalization operates as an expression of institutionalized sexist power, reinforcing male-dominated legal authority even when framed in neutral or procedural terms. The reproductive justice framework expands this analysis by focusing on how these laws disproportionately affect marginalized communities, particularly along lines of race, class, and location. The uneven access to telehealth, financial burdens imposed by travel, and the heightened risks of criminalization all highlight that reproductive autonomy is not universally applicable and remains inaccessible for most. Finally, historical scholarship highlights that these dynamics aren't new, and are the continuation of a longstanding legal project to control sexuality and reproduction through criminalization.

Sexual Subjects Under Abortion Criminalization: A Theoretical Analysis

In concluding the case studies, the research has found that abortion criminalization is not simply about fetal viability – it is about sex – and connects to further issues of sexual and reproductive

regulation, calling for a broader theorization of the sexual citizen abortion criminalization seeks to regulate. Despite the primary frame of protecting fetal life, contemporary anti-abortion activists have continually been engaged in the enforcement of broader sexual and reproductive governance. Anti-abortion activism is continually anti-sex. Mark Lee Dickinson proudly calls himself a “40-year old virgin”¹¹¹ at all of his speaking events. Charlie Kirk advocated for people to practice abstinence if they were so concerned about abortion criminalization, telling them to “control your orgasms.”¹¹² Live Action uses unmarried sexual activity as a reason for encouraging laws criminalizing abortion.¹¹³ Under the frame of being the saviors of fetal life, contemporary anti-abortion activism also regulates and criminalizes non-procreative sex and reproduction.

Abortion criminalization, thus, seeks to produce a certain kind of sexual citizen. By criminalizing abortion, the state enforces expectations of the only legal and accepted form of sex as heterosexual and for the purpose of conception, not pleasure. It seeks to regulate sex outside of this norm through criminalization, following the longstanding legal trend since Anthony Comstock’s obscenity governance in the nineteenth century. In this Foucauldian sense, abortion criminalization is productive, and enforces a sexually pure and normative citizen through the looming threat of criminalization.

Conclusion

Ultimately, this chapter has demonstrated that the contemporary criminalization of abortion pills is not an isolated development, but part of a broader historical continuum. Beginning with *Roe*, it argued that the reasons for *Roe*’s failure were twofold: first, “the right to privacy” was too vague

¹¹¹ The Washington Post, “Mark Lee Dickson paved the way for the Texas abortion ban.” (2021).

¹¹² Charlie Kirk, “Charlie Kirk Nukes Abortion Argument: Take Responsibility for Your Orgasms,” 2024.

¹¹³ Live Action, “The Problem,” 2026.

of a protection that anti-abortion activists were able create legal restrictions, and second, abortion activism did not have the political energy to mobilize on the legislative front, as they were too busy trying to fill (and fund) the gaps *Roe* left. The chapter then followed the aftermath of overturning *Roe* under the *Dobbs* decision, examining contemporary anti-abortion activism. The chapter then presented a description of abortion pills and their importance in abortion politics today, as they increase accessible abortion, especially now with modern developments like telehealth. The chapter then turned to a case that depicts modern day abortion criminalization in a similar light to that of *Restell*, the case of abortion provider Dr. Margaret Carpenter – the first provider criminally charged for mailing abortion pills post-*Dobbs*. The chapter concludes through reflecting on the relevance of the contemporary case, and how the cases have shown that abortion criminalization is dangerously entwined with expectations of sexual purity and motherhood.

Crucially, this objective has always been intertwined with efforts to enforce sexual norms, even when articulated through ostensibly neutral language of protecting fetal life. Recognizing this continuity is essential. It reveals that contemporary legal conflicts are not merely reactive responses to new medical technologies, but are rooted in deeply embedded structures of gendered governance that link reproduction, sexuality, and state power.

The next and final chapter turns from these empirical case studies to a broader theoretical analysis of what this continuity tells us about sex, gender, reproduction, and the law. By synthesizing the historical, legal, and technological evidence presented through this project, the final analysis will articulate how and why the state continues to treat reproductive freedom as a site of disciplinary intervention – and what this reveals about the evolving relationship between

gender, law, and power in the United States – through returning to the initial research question, hypotheses, and argument and with the findings and implications of the case studies.

Chapter Five

The Politics of Purity and Defending Sex: Findings and Implications of Historical and Contemporary Abortion Criminalization

This chapter shifts from the preceding empirical, case study chapters into a broader theoretical analysis of reproductive governance in the United States. It synthesizes the historical, legal, and technological evidence explored throughout the project to examine how abortion criminalization functions within a larger system of gendered governance. The chapter begins by revisiting the central research question and hypotheses and reasserting the project's key argument: abortion criminalization reflects a persistent logic of state control over women's bodies and sexual autonomy. The chapter then synthesizes the key findings from the case studies, articulating the continuities within abortion criminalization that emerge in examining the history of obscenity regulation, and the contemporary effects of post-*Dobbs* criminalization. Next, the chapter explores the implications of these findings, including the harmful effects of reproductive criminalization and the limits of the legal protection of abortion. Finally, the chapter concludes by looking to the future, and how abortion will never be fully decriminalized until there is an upheaval of the structural policing of reproductive and sexual autonomy, and what this says about women's sex and pleasure more broadly.

Returning to the Research Question: Continuity in State Regulation of Sex and Reproduction

The central question of this thesis asks how contemporary abortion criminalization fits within the longer history of governmental regulation of sexuality and reproduction. The findings presented in earlier chapters strongly support the argument that current efforts to restrict abortion, particularly medication abortion, are not exceptional developments, but rather a continuation of a longstanding legal and cultural tradition that seeks to enforce sexual purity and motherhood onto

women. This criminalization has profoundly harmful consequences for reproductive and sexual autonomy.

Historical analysis of Comstockian laws demonstrates that early abortion criminalization emerged alongside broader campaigns to regulate sexuality, suppress contraceptive knowledge, and enforce moral standards rooted in sexual purity. These efforts were not primarily concerned with fetal life, but with controlling sexual behavior, particularly sex outside procreative marriage. This same logic persists in contemporary legal frameworks, despite significant doctrinal shifts marked by decisions in *Roe v. Wade* and *Dobbs v. Jackson*. While *Roe* articulated a constitutional right to abortion, it did not fundamentally disrupt the underlying impulse toward regulating reproduction. Under *Roe*, and now even more with varying state-level bans under *Dobbs*, restrictions to abortion access have created deeply harmful disparities in accessing reproductive and sexual autonomy, signaling how this criminalization speaks beyond abortion itself.

Technological developments further reinforce this historical continuity of reproductive governance. Just as nineteenth century abortion providers used print media and mail systems to expand access, modern providers rely on medication abortion, telehealth services, and digital communication to criminalize and police the flow of reproductive knowledge. Innovations like telehealth and the widespread availability of mifepristone and misoprostol have increased accessibility, but they have also prompted new forms of legal enforcement. Rather than evading legal restraints, technological change has led to the adaption of older regulatory logic into new contexts, including surveillance of online activity and restrictions on mailed medications. Taken together, these developments support the thesis's core claim: abortion criminalization reflects a persistent logic of state control over women's bodies and sexual autonomy, rather than a singular concern with fetal life.

The two hypotheses guiding this analysis are supported by the evidence presented in the case studies. The first hypothesis predicated that abortion criminalization intensifies when social actors mobilize around concerns about sexual morality and purity. This was most evidently seen in the case of Madame Restell and Anthony Comstock's morality crusade against sexual vice that initially criminalized abortion in the nineteenth century. Turning to the contemporary case, social actors, in this case, anti-abortion activists, have primarily argued that abortion must be criminalized because, in their view, it is the killing of a life. However, key anti-abortion actors, like Live Action, the Catholic Church, and activists Mark Lee Dickson and Charlie Kirk have broader concerns regarding sexual purity just as Comstock did, and some, like Dickson, have directly attempted to revive his dormant laws. Despite the primary imagery of fetal life, it is clear that this broader agenda of enforcing sexual purity and motherhood through criminalizing the consequences of non-procreative sex.

The second hypothesis estimated that expansions in access – particularly through new technologies – are met with corresponding innovations in enforcement. In the nineteenth century case, Comstock was horrified by the rapid spread of sexual and reproductive knowledge in New York City, leading him to take legislative action in preventing the spread of this knowledge, and thus, access and autonomy. Looking to *Dobbs*, abortion recriminalization emerged at a time when abortion access was rapidly expanding through telehealth and the ability to mail abortion pills in facilitating easier, more accessible abortions. Between the case studies, it is seen that the criminalization of abortion has continued to occur at times when increased access has stoked fear in anti-abortion activists. Repeatedly, reproductive autonomy has been positioned as a threat for the government to criminalize.

Key Findings

Abortion Criminalization as Gendered Governance

This analysis reveals that abortion regulation operates within a broader system of gendered governance – the use of legal institutions and state authority to regulate sexuality and reproduction in ways that reinforce gender norms and hierarchies. Within this framework, reproductive autonomy becomes a key site of regulation, and abortion criminalization serves as a tool for enforcing expectations about women’s role as mothers.

Across historical and contemporary contexts, abortion restrictions are closely tied to efforts to regulate sexual behavior. The moral reform movements associated with the Comstock era linked abortions to concerns about immorality, prostitution, and the erosion of the nuclear family. Contemporary anti-abortion activism similarly connects abortion to broader anxieties about sexuality, including opposition to contraception. These continuities suggest that abortion law cannot be understood in isolation; it is embedded within a wider project of governing sex and reproduction.

Moreover, the enforcement of abortion restrictions reflects deeply gendered assumptions. By treating pregnancy as an expected consequence of sexual activity and motherhood as an obligatory outcome, the state effectively disciplines women’s sexual autonomy. In *Reproductive Wrongs: A Short History of Bad Ideas About Women*, Sarah Ruden examines the gendered assumptions that restrict women under abortion criminalization. In articulating her examinations of anti-abortion activism, she writes,

“American conservatives cherished natural law arguments and have often applied them in the anti-abortion crusade. Catholic and Evangelical scholarly pundits are fond of asserting what the human *natura* (essence) and *telos* (proper purpose) are: heterosexual, nuclear-family domestic or else celibate, wholesomely erotic only in

connection to reproduction, unquestioningly subservient to a clerical hierarchy's representation of the divine will."¹¹⁴

These arguments reduce women's roles to motherhood and reinforce classically misogynistic gender norms. The consequences of such arguments are not only legal but social and cultural, affecting how women's sexuality, responsibility, and morality are understood. Recognizing the centrality of gender and motherhood to reproductive regulation and abortion criminalization is therefore critical. Ultimately, gendered governance operates by defining acceptable forms of sex, privileging procreative heterosexual relationships, and marginalizing or punishing deviations from these norms – all present within the criminalization of abortion.

Differential Harm and Unequal Enforcement

While abortion laws are often framed as neutral, their enforcement reveals significant disparities. A reproductive justice framework highlights how reproductive criminalization disproportionately harms marginalized populations, particularly Black women, and in the case of abortion criminalization specifically, low-income individuals. These disparities are not incidental; they reflect broader patterns of inequality in access to healthcare, legal resources, and social protection.

These disparities also further support the claim that abortion criminalization is more than a debate of fetal viability, and it is part of a broader project in regulating sexuality and reproduction. This disproportionate impact on reproductive criminalization is historically consistent. Dorothy Roberts, in 1997, writes in *Killing the Black Body*,

“States have recently turned their attention to reproduction as a focus for criminal punishment. The cases of Cornelia Whitner and Darlene Johnson represent two controversial ways in which the criminal justice system is penalizing pregnancy –

¹¹⁴ Ruden, “Dawn of the Dicks,” 19.

the prosecution of women for exposing their babies to drugs in the womb and the imposition of birth control as a condition of probation. These criminal cases, which have multiplied over the past decade, have two things in common: both punish women, in effect, for having babies and both unduly involve poor Black women.”¹¹⁵

Through the reproductive justice lens, abortion criminalization is part of a broader mechanism that seeks to control populations and reproduction. Acknowledging histories of sterilization, eugenics, and forced birth control, reproductive justice expands the conversation beyond abortion to encapsulate the ability to make reproductive decisions freely and with open access.

Even under the protections of *Roe*, access to abortion remained uneven, with structural barriers limiting meaningful reproductive autonomy for many. The erosion of these protections has only intensified existing inequalities. Marginalized individuals are more likely to encounter surveillance, policing, and legal consequences, particularly in a context where reproductive behavior becomes entangled with carceral systems. In *Abortion, Our Bodies, Their Lies, and the Truths We Use to Win*, Jessica Valenti recounts the disproportionate impacts of abortion criminalization. She writes,

“In 2015 in Indiana, Purvi Patel was sentenced to twenty years in prison for feticide – despite the fact that Puri said she miscarried, and there was no trace of any abortifacient in her system ... Rennie Gibbs was just sixteen years old when she was indicted in Mississippi on charges of ‘depraved-heart murder’ after delivering a stillborn baby; prosecutors claimed she used drugs. Prosecutors have even targeted women who lost their pregnancies after being injured ... In 2019, Alabama charged Marshae Jones with manslaughter after she was shot in the stomach and miscarried. Lawyers for the state claimed that she had put herself in a dangerous situation. Over and again – women of color, especially – have been

¹¹⁵ Roberts, “Making Reproduction a Crime,” 152.

punished for their pregnancies. What’s more, all of this happened under the protection of *Roe v. Wade*. Imagine what criminalization will look like now.”¹¹⁶

These examples of abortion criminalization, even under *Roe*, are deeply telling about the direct legal consequences of abortion criminalization, and also who it targets.

The consequences of the criminalization of abortion following *Dobbs* are deadly, with disproportionate impacts for women of color. In *Abortion and Reproductive Justice*, Loretta Ross and Marlene Gerber Fried write,

“We have documentation of devastating consequences since *Dobbs*. Four women have died – Josseli Barnica, Nevaeh Crane, Amber Nicole Thurman, and Candi Miller – three of them women of color. They were denied timely and necessary lifesaving care by hospitals and doctors who felt constrained by their state's laws. All four deaths were preventable, and in many other situations, pregnancy care was delayed until the fetus died in utero or after birth. In its 2023 report, Human Rights Watch wrote, “Women and girls in need of reproductive healthcare are being met with systemic refusals, onerous financial burdens, stigma, fear of violence, and criminalization. Thousands are being forced to remain pregnant against their will.”¹¹⁷

The criminalization of abortion has immensely curtailed access to essential and lifesaving reproductive care, and the brunt of this harm is imposed upon women of color, whose reproduction and lives are already subjected to compounding systemic harm.

Criminalization in all cases most profoundly and primarily impacts communities of color. Furthermore, the complexity of the differential impacts of abortion criminalization in terms of race further underscores how abortion criminalization operates within a wider system of

¹¹⁶ Valenti, “The Punishment is the Point” 87.

¹¹⁷ Roberts and Fried, “Preface,” xi.

reproductive governance in which the state seeks to control sexuality and reproduction, rather than a debate about fetal viability.

The Role of Sexual Purity in Reproductive Regulation

A central finding of this analysis is that ideals of sexual purity continue to shape abortion criminalization across time. Sexual purity functions as both a cultural norm and a legal logic, structuring how sexuality is understood and regulated. Within this framework, sex is deemed acceptable primarily when it occurs within heterosexual marriage and is oriented toward reproduction. This ideology has profound implications for abortion policy. By positioning procreative sex as the only legitimate form of sexual expression, abortion restrictions reinforce a system in which women's sexuality is constrained through criminalization. Pregnancy becomes not only a biological outcome, but a moral expectation, and motherhood is imposed as a social obligation rather than a choice. Ruden addresses this imposition and enforcement in

Reproductive Wrongs. She writes,

“Every fetus everywhere on earth was supposed to be deeply loved and fervently wanted ... Again and again, I heard people insist that women must rearrange their lives around this formula ... When I explored what antiabortion activists (were) saying to each other ... found a conviction that only a ban on abortion could force a corrupt and decadent society to return to strict morality based on the godly nuclear family.”¹¹⁸

In this sense, abortion criminalization does more than restrict a medical procedure – it enforces a normative framework in which women's sexuality is subordinated to reproductive function.

In *The Man Who Hated Women*, Sohn writes about the broader implications of abortion criminalization in how it speaks more broadly toward our understanding of women's sexuality and pleasure. She writes,

¹¹⁸ Ruden, “Preface,” xi.

“With no talk of (pleasure), we cannot examine the very real problems of twenty-first-century sex. Why do women orgasm less frequently than men? Why do so many heterosexual couples still define only intercourse as sex when sex can, and should, and encompass much more? And why is there so much sexual panic? Why is it still so difficult for men and women to communicate openly about what sex is, or could be? Only when we can answer these questions with candor can we have a feminist movement for the century and beyond.”¹¹⁹

Without addressing this underlying disrespect toward women’s sexual agency and pleasure, efforts to expand reproductive rights remain vulnerable to new forms of restriction that reproduce the same patterns of control that enforce motherhood and discourage sexual pleasure for women.

Implications

The Material and Social Harms of Criminalization

The findings of this project make clear that abortion criminalization is not solely a legal debate – it produces immediate, material harm in people’s lives. These harms unfold across physical health and fatality, social experiences, and legal vulnerability, revealing the far-reaching consequences of governing reproduction through punishment rather than through care.

Restricted abortion access creates serious physical and health risk. When legal abortion becomes inaccessible, individuals are forced to delay care, travel long distances, or seek alternatives outside formal healthcare systems. These delays in care are medically significant: the later an abortion occurs, the greater the need for procedural and surgical intervention, possibly leading to negative health consequences. With abortion criminalized, fears of prosecution can prevent individuals from seeking medical care for complications, making what should be manageable situations fatal.

¹¹⁹ Sohn, “Breach in the Enemy’s Line,” 303.

Beyond physical harm, abortion criminalization produces profound social consequences. Abortion stigma, reinforced by legal prohibition, informs how individuals make reproductive pregnancy related decisions. Individuals seeking abortion care under criminalization face not only legal and logistical challenges, but also fears of moral judgment and harassment, with continual legal reinforcement that the idea that abortion is deviant and immoral, and deserving of punishment.

Legal risks further intensify these harms. As demonstrated in earlier chapters, individuals have been investigated, prosecuted, and imprisoned for both providing and having abortions (and in some cases, unintended miscarriages), with chilling carceral consequences. These legal stakes do not only pertain to abortion, but also speak to a broader possibility of the legal regulation of contraception, pregnancy, and sex, further illustrating the fact that abortion criminalization operates within a broader system of reproductive governance. The harms of abortion criminalization extend beyond the denial of the procedure – they undermine autonomy, dignity, and the basic conditions necessary for individuals to make informed and respected decisions about their own bodies and reproduction.

Reproductive and Sexual Autonomy: Limits of Legal Protection

These findings also expose the fragility of reproductive autonomy within a rights-based legal framework. Reproductive autonomy – the ability to make free and informed decisions about one’s body, sexuality, and reproductive life – has been legally grounded in constitutional principles of privacy and liberty, most notably in *Roe v. Wade*. However, as *Roe’s* overturning demonstrates, these protections are neither permanent nor sufficient. The erosion of federal protections reveals the limitations of rights-based frameworks: they are contingent on political and judicial interpretation. Rights can be narrowed, reinterpreted, or removed entirely. This

instability leaves reproductive autonomy vulnerable, particularly for those already marginalized within legal and medical institutions. Even under *Roe*, formal legality did not guarantee meaningful access to abortion, as structural barriers limited who could actually exercise their right to reproductive autonomy.

Moreover, the findings of this thesis suggest that legal recognition alone cannot dismantle the deeper logics of gendered governance. Abortion criminalization is rooted not only in law, but in cultural beliefs about sexuality, morality, and gender roles. As long as women's sexuality is viewed with suspicion and motherhood is treated as an obligation, legal protections will remain insecure. The persistence of these norms reflects a broader distrust of women's bodies and decision-making, reinforcing the idea that women's reproductive and sexual autonomy must be regulated rather than respected.

Reproductive autonomy, then, must be understood as more than a legal status. It requires structural conditions – accessible healthcare, economic stability, and freedom from surveillance – as well as cultural change in how society understands sex and reproduction, particularly for women. Without addressing these broader dynamics, legal victories risk being temporary, and reproductive rights remain vulnerable to the same cycles of restriction and control identified throughout this project.

Looking Forward: Protecting Sexual Freedom and Reproductive Rights

Looking ahead, the resurgence of abortion criminalization raises urgent questions about the future of reproductive and sexual freedom. Current trends – including the expansion of digital surveillance and the criminalization of medication abortion – suggest that reproductive governance is becoming more difficult to resist. These developments threaten not only access to abortion, but the broader right to privacy and bodily autonomy.

Protecting reproductive rights, therefore, requires a broader framework – one that explicitly includes sexual freedom. The findings of this thesis demonstrate that abortion criminalization is inseparable from efforts to regulate sexuality more generally, rather than being rooted in a debate about fetal life. As long as sex is stigmatized for women, reproductive autonomy will remain constrained. Recognizing the legitimacy of sex for pleasure, independent of reproduction, is a crucial step in dismantling the logic of sexual purity that underpins abortion restrictions.

At the same time, any effort to protect reproductive autonomy must center the principles of reproductive justice. This includes not only the right to avoid pregnancy, but also the right to have children and to parent them in safe and supportive environments. Given the long history of controlling Black women’s reproduction – from slavery to sterilization abuse to contemporary criminalization – any meaningful reform must address these intersecting inequalities.

Ultimately, the future of safeguarding reproductive autonomy requires more than restoring the legal, constitutional protection to abortion; it demands a transformation of the systems that sustain gendered governance. This includes legal reforms, cultural shifts in how sexuality is understood, and political commitments to equity and care. The question moving forward is not only how to protect abortion rights and access, but how to dismantle the broader structures that make such rights and access vulnerable in the first place.

Conclusion

This thesis has argued that abortion criminalization must not be understood as an isolated legal issue, but part of a broader system of gendered governance rooted in the regulation of women’s sexuality. By tracing historical continuities from the Comstock era to the present and analyzing contemporary developments, it has demonstrated that the state’s interest in reproductive control

extends far beyond fetal life. Instead, abortion criminalization reflects enduring efforts to discipline women's bodies, constrain their autonomy, and define the terms under which sex is considered acceptable.

At its core, this project reveals that the struggle over abortion is fundamentally a struggle over who gets to define women's lives. The regulation of reproduction has consistently been tied to a denial of women's full sexual agency – particularly the idea that women can engage in sex for pleasure without being forced into motherhood or face criminal punishment. The persistence of sexual purity as a guiding logic shows that abortion bans are not only about preventing certain outcomes, but about controlling pleasure itself: when it is permissible, under what conditions, and for whom.

Under the criminal law of abortion, sex for women is surveilled, stigmatized, and enforced by the fate of motherhood and sexual purity. To meaningfully protect reproductive rights, the conversation must expand beyond access to abortion alone. This requires rejecting the longstanding belief that sex must be justified by reproduction and instead affirm that women's bodies are not instruments of reproduction, but agents of self-determination, agency, and pleasure. Ultimately, the fight for abortion access is inseparable from the fight for a world in which women are trusted to make decisions about their own bodies – not only in seeking reproductive healthcare, but in the everyday expressions of their sexuality and humanity. We must unapologetically defend women's sexual autonomy, including the right to pleasure, without fear, shame, or punishment.

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