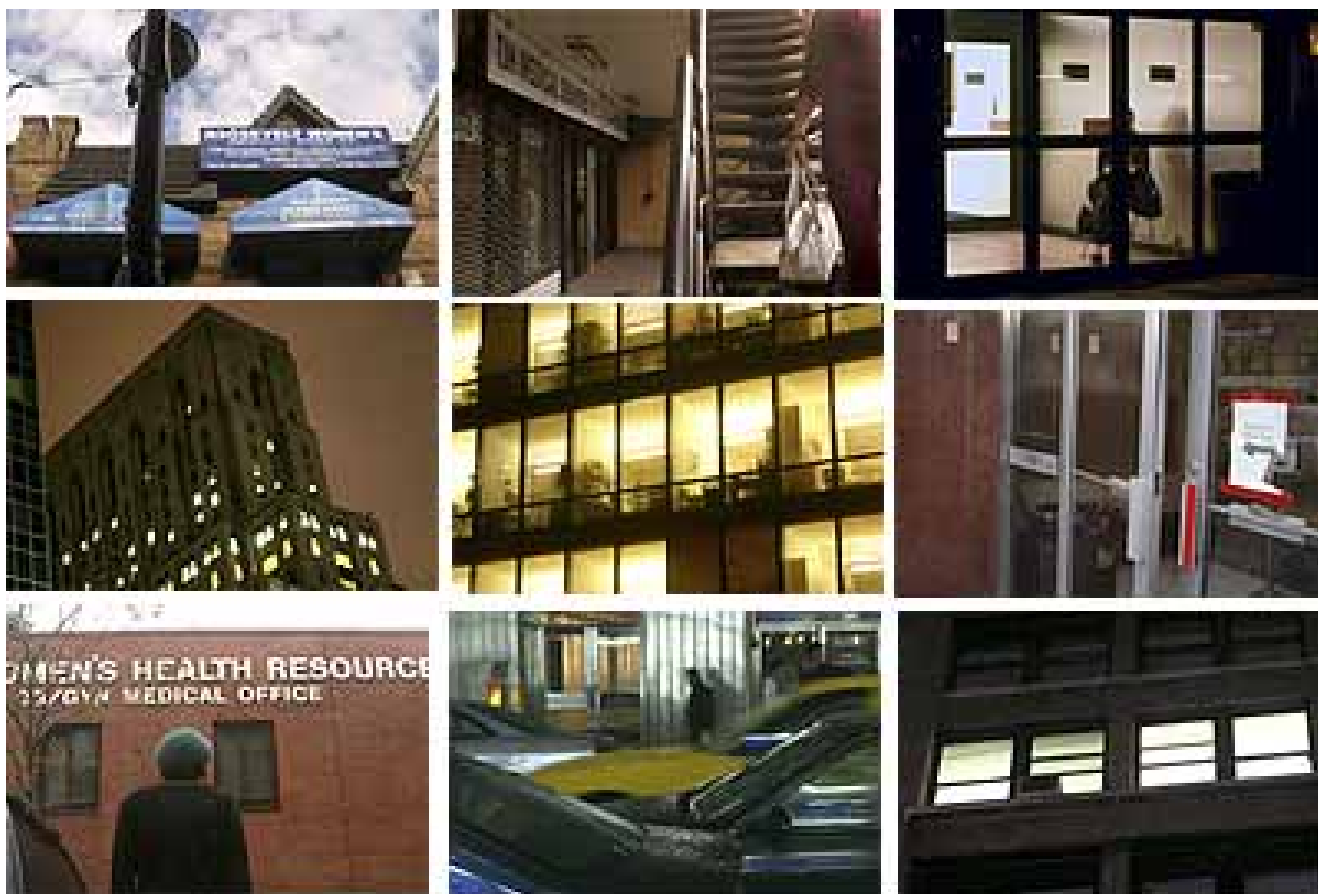


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The Abortion Capital of America

By *Ryan Lizza*



Abortion providers in Manhattan, Brooklyn, Queens and the Bronx. Photo: Edward Keating/Contact Press

In 1970, New York passed the most permissive abortion law in America, one that defined the state as the country's abortion refuge. Overnight, a new industry materialized in New York City, promoting itself to women across the country. The pitches were often blunt. A newspaper ad from the time inquired, "Want to be un-pregnant?"

Thirty-five years later, New York has the highest abortion rate in America. In 2000, the last year for which good data are available, 39 out of every 1,000 women in the state ended a pregnancy, for a total of 164,000 abortions that year. In America, one of every ten abortions

occurs in New York, and in New York, seven of every ten abortions are performed in New York City. In absolute terms, there are more abortions performed on minors, more repeat abortions, and more late abortions (over 21 weeks) in New York City than anywhere else in the country. In parts of the city, the ratio of abortions to births is one to one.

Over the past twenty years, while legislatures have circumscribed access to abortion in state after state, especially for the poor and the young, New York has remained an island of unrestricted abortion rights. Medicaid pays for abortions for low-income women. Teenagers don't need a parent's permission to have an abortion. There are no 24-hour waiting periods. Thirty-four major clinics in New York City each perform more than 400 abortions per year.

New York becomes more pro-choice every year. After years of electoral free fall, the New York Right to Life Party failed to win enough votes in 2002 to stay on the ballot. The party doesn't even have a Website anymore. The New York Right to Life Committee, which founded the national anti-abortion movement in 1967, hasn't had a legislative victory in years. No pro-life candidate can win statewide office in New York. Ambitious Republicans climbing toward the governor's mansion, like George Pataki, and now John Faso, hastily ditch their pro-life pasts. New York City's mayor is one of the most pro-choice politicians in the country.

In short, New York is the abortion capital of America.

The United States is slowly turning into two places when it comes to abortion. In one, easy access to the procedure is being eroded by regulations, while conservative legislators dream up new restrictions, waiting periods, and consent laws. In the other, abortion is accessible, inexpensive—often government-subsidized—and safeguarded by powerful interest groups. The Supreme Court set the country down this path in 1992. In *Planned Parenthood v. Casey*, the Court retreated from a core principle of *Roe v. Wade* and upheld several restrictions in a Pennsylvania law called the Abortion Control Act. States, the Court said, could force women to wait 24 hours before having an abortion, and they could require doctors to read “informed consent” scripts to women before an abortion. The Court only struck down a more onerous section of the act that required women to notify their husbands before seeking abortions. The test for any future state regulation, the Court decreed, was whether it constitutes an “undue burden,” defined as a law that places a “substantial obstacle” in the path of a woman seeking an abortion.

The *Casey* decision inspired a crusade by pro-life lawyers. True, the Court had not overturned *Roe*, but the right believed *Casey* was the go-ahead to gut it. One line in Chief Justice William

Rehnquist's dissent stood out as particularly inspiring: "Roe continues to exist, but only in the way a storefront on a western movie set exists: a mere façade to give the illusion of reality." The new strategy would be to systematically test the boundaries of what the Court meant by "undue burden" and "substantial obstacle." Pro-life lawyers hatched a series of increasingly clever legal restrictions that have defined the abortion wars for the past decade and a half.

Now we are at another turning point. The Supreme Court will soon decide a case that may allow states to go well beyond current abortion restrictions. Last week, the Court heard arguments in *Ayotte v. Planned Parenthood*, a challenge to New Hampshire's parental-consent law and perhaps the most important abortion case since *Casey*. The New Hampshire law prevents a doctor from performing an abortion on a minor until 48 hours after one of her parents has been notified. Most similar laws have an exception to the waiting period if the minor's health is at risk, but the only exception in the New Hampshire law is if the girl is about to die. At stake are two issues. One is whether New Hampshire's law is unconstitutional because it lacks a health exception, a feature of abortion restrictions that the Court has regularly required. The second issue is technical but of greater consequence. Until now, doctors and patients have been able to ask courts to strike down abortion restrictions if some potential harm can be proved. But the new standard requested by New Hampshire, and supported by the Bush administration, is to allow courts to leave potentially unconstitutional abortion laws intact unless it can be proved that application of the law is unconstitutional in every case.

If the Court settles these two issues in favor of New Hampshire, there will be an explosion of red-state abortion regulation far greater than the post-*Casey* boom. That, more than the imminent reversal of *Roe v. Wade*, is what's at stake in the judicial-confirmation battle consuming Washington. The replacement of Sandra Day O'Connor may spell the end of the Court's meddling with state abortion restrictions. As the famous *Casey* case made its way up the judicial ladder, there was one federal judge in Pennsylvania who believed that even the extreme spousal-consent provision was constitutional. His name was Samuel Alito.

If *Roe* were overturned, of course, New York would instantly become an abortion destination for thousands of women who find themselves living in states that voted to outlaw the procedure. This has happened before, and it has had dramatic social and political consequences that we could well see again.

This is now the third period in American history in which New York has become the nation's abortion capital. In many ways, the story of abortion in the United States is the story of

abortion in New York. There were no laws against the procedure until the 1820s. Before that, British common law allowed abortions before “quickening,” or the moment when the fetus first moved. It was in New York in 1828 that America’s first real abortion law was passed. The debate of the day wasn’t driven by religious concerns about when life begins. Instead, as James C. Mohr’s classic history of the subject, *Abortion in America*, explains, Albany responded to pressure from doctors who were aghast at quacks’ butchering women and scamming them with phony abortifacient potions. The law was really about medical regulation, and, according to Mohr, it went completely unenforced.

At that time, semi-clandestine abortion clinics dotted the city. Inside, women could have a pregnancy terminated or they could purchase “French lunar pills,” “Portuguese female pills,” or other exotic-sounding medicines that would purportedly trigger a miscarriage. The customers were mostly wealthy native-born Protestant women looking to put off their childbearing years or who had decided they’d had enough children.

New York’s nineteenth-century abortionists advertised openly in the leading newspapers of the day, including the *Times*. “Ladies who desire to avail themselves of Madame Despard’s valuable, certain and safe mode of removing obstructions, suppressions, &c., &c., without the use of medicine, can do so at one interview,” read an 1863 *Times* ad. Abortion advertising became a hefty source of newspaper revenue. New York’s most famous abortionist, the flamboyant Madame Restell, spent \$60,000 a year on such advertising. Over 40 years, she built an abortion empire, with traveling salesmen hawking her pills and franchise clinics in Boston and Philadelphia. Such was her prominence that abortion was referred to in New York as “Restellism.” The practice became very common. A study from 1868 found that one in five New York City pregnancies ended in abortion.

But Restellism produced a backlash. In the 1870s, the *Times* stopped accepting abortion ads and launched a crusade against the industry. “There is a systematic business in wholesale murder conducted by men and women in this City, that is seldom detected, rarely interfered with, and scarcely ever punished by law,” read a front-page report from 1871 headlined THE EVIL OF THE AGE. Laws against abortion advertising were passed, and abortionists were prosecuted. Madame Restell, who had already been through several trials, was arrested again in 1878 for selling her abortifacient concoctions. On the eve of a court appearance, she dressed herself in diamonds, slipped into her marble bathtub, and slit her throat. By 1881, New York had passed some of the most severe abortion bans, laws that were imitated throughout the nation.

New York's abortion laws remained unchanged and virtually unchallenged until the stirrings of the abortion-rights movement in the late sixties. New York was home to the earliest abortion-rights group in the country, the Association for the Study of Abortion, and the idea for basing the legalization of abortion on the right to privacy was first proposed, almost on a lark, in a paper by a law student at NYU.

In 1967, the Reverend Howard R. Moody, a Texas-born Baptist minister of Judson Memorial Church on Washington Square Park, began consulting friends about how to help women get safe abortions. He organized 21 ministers and rabbis and built an underground network of reliable doctors; in May 1967, a front-page piece in the *Times* announced the creation of Moody's Clergy Consultation Service on Abortion. Clergymen worked weeklong shifts taking calls from women across the country.

As the New York State Legislature moved haltingly toward repealing the state's laws, the city's abortion underground began making news. In 1969, police raided the 30th floor of the New York Hilton and arrested three people performing abortions. Another raid in a luxury high-rise in Riverdale broke up "an abortion ring" servicing wealthy women from around the country, many of whom were referred there by the clergymen.

When the National Association for the Repeal of Abortion Laws (NARAL) was founded in 1969, it made New York its first target. Several states had already passed reform laws, but for the most part they allowed abortions only if the health of the mother was at risk. The push for repeal in New York was built in stages, first by the referral system, then by pro-abortion activists converting Democratic clubs in New York City to the cause, precinct by precinct. The turning point in the debate came when several Long Island legislators signed on to the bill. The *Times* also joined the cause, printing a steady beat of pro-repeal editorials.

Regulating abortion is like playing whack-a-mole. Every time a state tightens its laws, abortions rise somewhere else.

The crucial roll call came in the New York Assembly on April 9, 1970. The bill appeared to be doomed by a single vote. As the vote neared completion, a trembling, bespectacled man in a black suit rose to his feet, tears welling in his eyes. "I realize, Mr. Speaker," Assemblyman George M. Michaels said, "that I am terminating my political career, but I cannot in good conscience sit here and allow my vote to be the one that defeats this bill. I ask that my vote be

changed from ‘no’ to ‘yes.’ ” Governor Nelson Rockefeller signed the bill into law, making New York the only state in the country with abortion on demand for all comers.

In the two and a half years between July 1970, when New York’s new abortion law took effect, and January 1973, when the Supreme Court’s *Roe* decision legalized the procedure everywhere, 350,000 women came to New York for an abortion, including 19,000 Floridians; 30,000 each from Michigan, Ohio, and Illinois; and thousands more from Canada. By the end of 1971, 61 percent of the abortions performed in New York were on out-of-state residents.

Commercialization crept back into the abortion business. The clergymen, who had never taken any money for their work, were pushed aside by heavily advertised commercial referral services, which targeted out-of-state women, charging them about \$100 to find a New York provider. New York’s abortion monopoly produced a booming new industry. One service even flew an airplane banner ad over Miami Beach.

The statistics from the time show that one of the benefits of legalization in New York was that New York women were having abortions earlier. The Alan Guttmacher Institute reported that no more than 10 percent of the city’s residents in 1972 had abortions after twelve weeks of pregnancy. For women traveling to New York City from non-border states, the rate of abortions after twelve weeks was 23 percent because of the time it took to find a provider and arrange travel and lodging in the city, especially difficult for young women who had barely ever left their own state.

The other obvious lesson from the seventies is that women with resources almost always have access to abortion. For those who couldn’t afford a trip to New York, coat hangers and knitting needles, the ghastly symbols of the early abortion-rights movement, remained a fact of life.

The abortion capital of New York is at the corner of Bleecker and Mott. That’s the home of Planned Parenthood’s Margaret Sanger Center, the largest abortion provider in New York. Doctors at this one clinic perform some 11,000 abortions per year. “I’m sure we provide a good chunk of the abortions in the U.S.,” says Dr. Maureen Paul, the chief medical officer of Planned Parenthood New York. In fact, the Margaret Sanger Center provides about one in every ten abortions in New York and about one in every thousand abortions in the United States.

The clinic tells a lot about how the abortion debate has changed. As the largest brand name in the reproductive-health- services business, Planned Parenthood has historically been a magnet for protesters. But the streets outside the Sanger Center are usually quiet. Across the

country, violence against providers has subsided after cresting in the nineties. “I was in Planned Parenthood in Massachusetts when we used to have huge blockades and people Kryptonite-locking themselves to operating tables,” says Dr. Paul. “We still see some of that, but there has been a shift. The antis don’t spend as much time in places that they are not welcome.”

Medical abortions, those produced by the abortifacient mifepristone, once known as RU-486, have been available in New York City since 1997, three years before formal FDA approval. But the drug is not widely prescribed here. It is catching on faster in places where abortion is more taboo; Texas, Missouri, and South Carolina all have higher rates of use than New York City. Utah, the most conservative state in America, has the highest percentage of medical abortions, 24.1. Down on Bleecker Street, Dr. Paul says she’s seeing a growing black market in misoprostol, the drug that is taken with mifepristone to induce abortion but which is cheaper and easier to obtain than its sibling. The drug is popular with some immigrants from Latin America, where it is often used in places where abortion is illegal. “When you just use misoprostol alone, the success rate is very low,” says Dr. Paul.

One-third of the Margaret Sanger Center’s patients rely on Medicaid for their health care. In New York, Medicaid treats abortion no differently than any other health issue. But in 29 states, the program is barred from funding abortions in most cases except rape, incest, or to save a woman’s life. The prohibition is the most effective of all state laws in preventing abortions. “One-third of women who are covered by Medicaid and would have Medicaid abortions continue their pregnancies when Medicaid funding isn’t available,” says Stanley Henshaw of the Alan Guttmacher Institute. In 2003, Medicaid paid for 43 percent of abortions in New York City. Every year, pro-life legislators try to ban it, and every year they fail. “That’s one of the reasons we have one of the highest abortion rates in the country,” says Christina Fadden Fitch, the legislative director of the New York State Right to Life Committee. “It’s really sad. It’s like throwing abortion at the poor.”

Over the last year, Dr. Paul has noticed a singular trend: “We are providing more out-of-state abortions.” The number of women coming to Planned Parenthood’s New York City clinics has risen 21 percent.

The few existing studies on states that have passed abortion restrictions confirm the obvious: Women who want abortions leave the state to have them. Mandatory-delay laws, now on the books in 24 states, require a woman to wait usually 24 hours before getting an abortion. The versions that are the most effective in stopping abortions require women to make two trips to

the provider, an obstacle for some who have to travel long distances, take days off work, or arrange day care. The most comprehensive study of these two-trip laws, a 1997 *Journal of the American Medical Association* paper on Mississippi's experience, showed that three things happened in the state after the law went into effect. Total abortions went down by 12 percent. The percentage of late abortions (after twelve weeks) went up by 40 percent. And the percentage of Mississippians going out of state for abortions also went up by 40 percent. "For an economist, those are really strong behavioral responses to the law," says Ted Joyce, the paper's lead author.

The most common state restrictions have been the parental-consent or notification laws. Along with the delay laws, these cause women to travel out of state. Thirty-five states have a version of the law on the books. Nine other states have had their versions enjoined by a court, including New Hampshire, the state that is the subject of the *Ayotte* case. But as long as abortion is available somewhere, these laws have limited effect. "When Massachusetts imposed a consent statute, abortion rates fell a lot, 43 percent among minors," says Joyce. "Yet if you measured abortion rates by state of residence, there was no change. Kids just poured across the border."

Regulating abortion in the United States is like playing whack-a-mole. Every time a state tightens its laws, abortions rise somewhere else. If *Roe* is overturned, Cristina Page, author of the forthcoming *How the Pro-Choice Movement Saved America*, estimates that as many as 30 states would likely move toward criminalization, vastly increasing the traffic of abortion seekers into New York, just like in the early 1970s.

But then what? The lesson from the 1870s and the 1970s is that the more the city becomes a place of last resort for abortion, the more uncomfortable New Yorkers become with the procedure. Restellism produced bans nationwide. After the 1970 law was passed, several abortion-rights legislators in New York were drummed out of politics, including the tearful George M. Michaels. Later, the Assembly actually repealed the new abortion law, though it was vetoed by Rockefeller. When *Roe* was decided in 1973, it was like a giant release valve. The city was no longer inundated with planeloads of women dropping into town for the procedure. The end of New York's monopoly brought the end of the more unsavory operators and practices that marred the early seventies.

Despite their overwhelming support for abortion rights, New Yorkers, like Americans generally, start to get queasy when confronted with the best weapons in the pro-life arsenal.

confronted with how culturally distant they have become from many other Americans. It is by no means certain how they will react.

The New Underground Railroad

The migration has already begun for a procession of women hoping to get second-trimester abortions. When liberal-minded volunteers play host, female solidarity and class anxiety collide.

See also:

The New Underground Railroad: The Abortion Train

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By Parizaad Khan Sethi

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