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"The Evil of the Age": The Influence of The New York Times on Anti-Abortion Legislation in New York, 1865-1873

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ANTI-ABORTION LEGISLATION IN NEW YORK,
1865-1873

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INTRODUCTION

But could even a portion of the facts that have been detected in frightful profusion, by the agents of the TIMES, be revealed in print, in their hideous truth, the reader would shrink from the appalling picture.

– August St. Clair, Excerpt from “The Evil of the Age” in *The New York Times* (August 23, 1871)

When Augustus St. Clair elected to make a second visit to the Fifth Avenue private home of Dr. Jacob Rosenzweig in July of 1871, he could scarcely have expected his life to be in great danger. Much to his own astonishment, however, he soon found himself pointing a revolver at Dr. Rosenzweig before making a quick exit into the street. “I felt there was but one thing to do,” he later wrote, describing the circumstances which led Dr. Rosenzweig to grow suspicious of his guest and prevent St. Clair from leaving his home, “either to be conquered or to conquer, and leave the house I must or else suffer violence at his hands.” St. Clair was a newspaper reporter for *The New York Times* (NYT), and his assignment that summer compelled him to go undercover in order to investigate the lucrative underground world of abortion.¹ In 1871, as many as two hundred abortionists

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were thriving in a city that boasted fewer than one million residents.² Dr. Rosenzweig was one such figure, and St. Clair had seen his covert advertisements in local papers. In the process of making his hasty exit from the doctor's home, St. Clair happened to spot a young lady standing on the stairs. Only days later, he would see that same woman again at the morgue, dead from a botched abortion procedure. In a NYT article entitled, "Something More Concerning Ascher's Business," St. Clair wrote, "I positively identify the features of the dead woman as those of the blond beauty before described and will testify to the fact, if called upon to do so, before a legal tribunal."³ In making this firm association, St. Clair provided a highly public and damning indictment against Dr. Rosenzweig and against the widespread practice of abortion, one that also established the NYT as a public and widespread proponent of moral virtue and righteousness in the period to come. This story represented but one of many sensational examples of abortion-related press coverage from the end of the American Civil War onward, and these stories were emblematic of the changing attitudes toward abortion during this era.

CHANGING ATTITUDES, CHANGING LAWS

In the nineteenth century, the legal attitude toward abortion underwent a series of gradual changes at the state level. This rising intolerance to abortion was evidenced by the criminalization of abortion in all states by 1910.⁴ New York stood as a particularly compelling example of these mounting changes, for New York lawmakers quickly altered the state abortion law in three distinct sessions between 1869 and 1874.⁵ These adjustments are noteworthy, because they represent a surge of exceedingly strict anti-abortion legislation following a period of legislative inactivity on the matter. In fact, the only

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previous abortion law in the New York criminal code went into effect in 1830. This law deemed the termination of a late-term fetus to be second-degree manslaughter. It also imposed criminal liability upon the abortionist and not on the pregnant woman seeking the procedure.⁶

With this historical context in mind, the changes made from 1869 to 1874 are significant, because they altered the legal recognition of abortion. Prior to the passage of the 1869 law, New York—like other states—approached the issue of abortion with the quickening doctrine in mind. This doctrine stipulated that a pregnancy could only be verifiably recognized as a pregnancy after ‘quickening’—the moment in which a pregnant woman first perceives fetal movement, which usually occurs at the midpoint of gestation.⁷ In *Commonwealth v. Bangs* (1812), the Massachusetts Supreme Court established the widespread precedent of disregarding abortion cases in which quickening could not be established.⁸ The law in many states was unable to truly recognize the existence of a fetus in criminal cases before it had quickened in the womb.⁹ This doctrine provided a wide degree of legal tolerance for the practice of early pre-quickening abortion in most states. The 1869 New York law, however, abolished any consideration of the quickening doctrine and thereby made abortion a criminal offense irrespective of gestation period. Not only did this law remove the stipulation of quickening as a legitimate indicator of pregnancy, but it also removed the consideration of pregnancy altogether. The administration of abortifacients with the intent to induce miscarriage was deemed a criminal offense “whether [the woman] be or be not pregnant.”¹⁰ In other words, state law no longer regarded a woman’s pregnancy status as a crucial component of its anti-abortion statutes, thus mitigating the need to refer to a pregnant woman’s judgment in considering whether a pregnancy was sufficiently advanced to warrant prosecution in cases of abortion. This naturally lowered the burden of proof on prosecutors as well, making it much

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simpler to convict abortionists. The 1872 law, in continuation of the increasingly strict trend, made abortion a felony for any woman who attempted it, successfully or not, upon herself or who voluntarily sought an abortion from a practitioner, bucking the established practice that focused legal ire on abortionists rather than on pregnant women.¹¹ Finally, the 1874 law allowed the dying testimony of a woman to be used as admissible evidence in abortion trials, once again making it easier to convict abortionists.¹² That such momentous changes—the utter elimination of the quickening doctrine, the criminalization of abortion for pregnant women, and an overarching turn toward stricter legislation against abortion—would occur in such a short period of time, between 1869 and 1874, is naturally the source of much curiosity.

Historians have previously sought to explain the timing by linking the surge in anti-abortion legislation to the intense lobbying activities of the nascent American Medical Association (AMA). Historian James Mohr has demonstrated that the AMA, guided by Horatio Storer in the middle of the nineteenth century, systematically worked to influence popular opinion against abortion and also influence related legislation.¹³ Historian Janet Farrell Brodie has noted that the efforts of AMA physicians were largely predicated on their desire to “drive out irregulars and sectarians,” attract public respect for their profession, and present themselves as promoters of virtue and arbiters of morality.¹⁴ Dr. Hugh L. Hodge of the University of Pennsylvania, for instance, outlined the prototypical views of his profession in a lecture before an obstetrics course in 1869. “It seems hardly necessary to repeat,” he said, “that physicians, medical men, must be regarded as the guardians of the rights of infants. They alone can rectify public opinion; they alone can present the subject in such a manner that legislators can exercise their powers aright in the preparation of suitable laws.”¹⁵ Dr. Hodge clearly viewed himself and his medical colleagues as protectors of virtue and as

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important influences on legislative decisions.

Scholars have pointed out that the efforts of the AMA and its constituent physicians were largely motivated by a desire to establish themselves as professionals rather than as ‘quacks.’ Quackery was an especially damaging charge in the first half of the nineteenth century, when many doctors graduated from unregulated medical schools and formed a considerable population that challenged the so-called establishment physicians, who studied at respectable schools.¹⁶ Consequently, the efforts of the establishment doctors to restrict abortion may be interpreted as part of a larger movement to push irregular physicians—including abortionists, many of whom were midwives—out of the way in order to grant increased authority in medical matters to the regular physicians. Although these arguments regarding the physician’s crusade against abortion explain the motivations of a very prominent group of anti-abortionists, they do not adequately explore the motivations of another group: the legislators. This group is of crucial interest precisely because it consists of those individuals who made the decision to legally restrict abortion. These lawmakers were no doubt influenced by the various medical pamphlets that abounded in the Postbellum Period, many of which singled out abortion as a vicious and unconscionable crime.¹⁷ But legislators, like most other citizens, consumed a great variety of popular literature during this period, and newspapers may be counted as one of the most prominent literary features of the era. I argue that the newspaper coverage of the NYT—including such extraordinary pieces as Augustus St. Clair’s “The Evil of the Age” (“EoA”)—was highly influential in altering legal sentiment toward abortion in a process that culminated in the increasingly harsh criminalization of the practice. This new legal sentiment was the gradual consequence of journalistic practices that sought to raise the profile and the authority of the NYT, while simultaneously preying on popular fears about the safety of women and the supposed deterioration

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**Slaughter of the Innocents—Open Trade
in Crime—Where Vice is Nurtured—
The Moral and Physical Nature Both
Destroyed—Scenes Described by Eye-
Witnesses.**

The enormous amount of medical malpractice that exists and flourishes, almost unchecked, in the City of New-York, is a theme for most serious consideration. Thousands of human beings are thus murdered before they have seen the light of this world, and thousands upon thousands more of adults are irremediably ruined in constitution, health and happiness.

“The Evil of the Age,” penned by Augustus St. Clair, sensationalized the abortion issue and set off a new wave of stylistically dramatic news coverage

of the United State’s white, Protestant population.

GENERAL SENTIMENT AND LEGAL SENTIMENT

It is important to distinguish the the attitudes of the public at large from the attitude of the lawmakers. *General sentiment* refers to the opinions of the wider public. Accordingly, the general sentiment toward abortion should represent the prevailing attitudes of all Americans, given a particular period and time. The use of general sentiment, however, is flawed because it is far too broad. Women, for instance, will likely have a much different outlook on the abortion issue than men, and different subgroups of women—the unmarried, the poor, women of color, immigrant women, and so on—will also harbor different views. The recognition of these important demographic differences fails to remedy the scarcity of sources available to historians. Where evidence may be found, it skews in favor of the elite strata of society—those who are white, literate, and

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male—and thus prevents us from making accurate observations about other groups.

Legal sentiment, which is the attitude displayed by lawmakers, is infinitely easier to gauge because it can be analyzed through codified statutes; one can witness the evolution of legal sentiment and see a change in the approach and stance of lawmakers to pressing social issues. This evolution is clearly evident in the case of New York, where one sees a series of major changes to existing anti-abortion laws within a span of six years. An illustration of the importance of this distinction between general and legal sentiment arises when considering the quickening doctrine. Mohr asserts repeatedly that the United States public was exceedingly tolerant of abortion in the earlier decades of the nineteenth century, in the absence of later developments such as the lobbying efforts of the AMA.¹⁸ In Mohr's view, pregnant women who had not experienced quickening "believed themselves to be carrying inert non-beings...a potential for life rather than life itself."¹⁹ Other scholars have challenged this view. Author Marvin Olasky insists on the popular acceptance of the preformation doctrine, which held that humans were preformed and alive even prior to conception, existing in some inactive form either in the mother's egg or in the father's sperm.²⁰ In a similar vein, historian Anthony Joseph complicates the widespread assumption of tolerance by noting the various interpretations given by English legalists to the viability of the fetus.²¹ According to Joseph, recent scholarship shows that the early nineteenth century understanding of the permissibility of feticide relied not on actual cases, which were unknown until recent decades, but on the interpretations of legal scholars who offered their own rules for measuring the validity of life. None of these various interpretations resemble the quickening doctrine as Mohr understands it.²² Instead, they suggest that the idea of quickening was not as universal or as widespread among all nineteenth century Americans as scholars once believed. Mohr's

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assertion that quickening played a crucial role in a woman's own understanding of fetal vitality holds for only some cases. In light of Joseph's evidence, Mohr's assertion about *general* sentiment is problematic because it uses *legal* evidence—the absence of legislation as a marker of widespread tolerance—even though this absence really only tells one about legal sentiment.

As such, it seems that the quickening doctrine was simply a highly practical legal method of verifying the existence of a pregnancy, especially during a time when the absence of medical technology could not verify pregnancy in any other manner. This means that the early legal sentiment towards abortion was tolerant based on the legal evidence available, which provides no basis on which to make claims about the general opinions of the wider public. Legal sentiment is governed by a set of principles hinging on practicality and provability. Individual lawmakers, like other Americans, may have considered the beginning of life to occur well before quickening, even before the established physicians encouraged that sort of thinking. Nevertheless, lawmakers maintained the importance of the quickening doctrine for its practicality. In the absence of more sophisticated medical technology, the physical fact of a pregnancy could only be legally established through the practical testimony of a pregnant woman who had experienced quickening.

This practicality would soon outgrow its usefulness in New York. Since one can trace the legal sentiment of the state's legislature through the language of the law, one is able to link the three major legal changes made between 1869 and 1874 to the wider coverage of popular print media on the nature of abortion. My analysis of the NYT will span the decade immediately following the American Civil War, from 1865 to 1874, and will involve curated insights from the examination of over three hundred articles, some investigative, some opinionative, and all concerning abortion. This analysis will be chronological and separated into two sections, one covering the period between

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1865 and mid-1871, and the other covering the period from late 1871 to 1874. This chronological bifurcation serves to highlight several important differences between the earlier articles and those published after “EoA,” the famed mid-1871 article that sensationalized the abortion issue in New York.

SENSATIONALISM AND THE FIRST WAVE (1865-1871)

The first period of abortion-related press coverage in the NYT was sensational chiefly in subject, whereas the second period following the publication of “EoA” was sensational both in subject and in style. Sensational writing is engineered to provoke a “startling impression.”²³ Contrary to its connotation and to popular applications of the word, sensationalism is neither fundamentally harmful nor beneficial. In its most basic form, sensationalism merely draws a reader’s attention and supplies him or her with absorbing facts and details. The presence of sensationalism hinges on two features: subject and style. On one hand, there exist, in each particular time and place, various subjects that are naturally sensational, such as violent crime, supernatural phenomena, and political scandal. These stories do not require the assistance of highly imaginative or descriptive prose in order to excite excessive interest in readers; people are naturally attracted to such topics. Style, on the other hand, relates to the presentation of the material—the intensity of the diction and the presence of figurative language. A story about President Grover Cleveland’s alleged illegitimate child is a sensational subject, but only the writing of the story or the manner of its placement in the newspaper would make the story stylistically sensational. To put it succinctly, sensationalism consists of two constituent elements, subject and style, and news stories may feature one or both components.

The first wave of these abortion stories in the NYT began in October of 1865, just a few months after the end of

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the American Civil War. A measly four paragraphs—the last one no longer than a sentence—appeared at the bottom of a column under the headline, “THE WOLFER MURDER” in the October 21st issue of that year. The story about the alleged murder of Emma Wolfer by Dr. Charles Cobell via abortion almost appeared as an afterthought, relegated to the very bottom of the page and headlined with smaller print than the surrounding articles. Indeed, the paragraphs did not detail much in the way of a story at all. Rather, the author presented a very brief excerpt of a courtroom narrative, providing summaries of the courtly segments he witnessed—the testimony of Jacob Wolfer, brother to the deceased, and his cross-examination by the defense attorney—followed by an addendum noting that the case will be continued the following week. The summaries were not overly-embellished and featured the sort of brevity one would expect from hasty telegram announcements: “His sister was never married to his knowledge; went to the place because he was told she was there dying; she was vomiting when the medicine was sent for; would not have known of her condition if he had not been told.” The repeated omission of the subject from every other clause betrayed an underlying urge to paraphrase and to narrate rather than to elaborate and to embroider. The actors of the narrative were overshadowed by the events and the characters were displaced by the consequences. At no point did the author insert himself into the narrative in order to personalize the stakes, as one saw in the case of St. Clair. Nor did the author take pains to describe the witness on the stand. The only sensational aspect of the article was the subject matter, which itself was noted only by the premature mention of the word ‘murder’ in the headline and the mention of “death...by procurement of abortion” in the first sentence.²⁴ This snippet from the first sentence was emphatically sensational in subject, though in style it sounds awfully formal, emulating the legalese of courtroom attorneys. The trend continued in a later article in

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which the author summarized the testimony of another witness: “...witness went into the room, when the doctor said he had delivered deceased of a fetus.”²⁵ The terminology here, once again, is formal to the point of being practically clinical. The author made no effort to underline the tragedy of the woman’s death or the demise of her child; instead, he referred to the former as the “deceased” and the latter as a “fetus,” employing words that deprive the two of vitality and personhood.

The coverage of the Dr. Cobell abortion case illustrated a few defining trends in the first wave of sensational newspaper coverage. The first and most important trend was the nature of the sensationalism, which was epitomized principally through subject matter and not through any elaborate literary stratagem. In other words, the abortion articles were sensational because they were about abortion. This is manifested in another article from the summer of 1867 noting the arrest of a Massachusetts doctor accused of murdering a woman by means of abortion. The author of the piece provided the necessary details without adornment, mentioning that the “victim was unmarried, 18 years old, and [had] a father living in the city.”²⁶ Despite the deceased woman’s apparent youth and unmarried status at the time of death, the author offered no additional stylistic ornaments to sensationalize the story. Indeed, in many cases—including that of the Dr. Cobell case—the crime itself appeared to be of less interest than the proceedings of the court. This may be taken to an extreme, as evident in the Strong divorce case that dominated a great expanse of space in the pages of the NYT from late November of 1865 to early January of the following year. The headlines of the Strong case certainly signposted the scandalous nature of the court’s proceedings. The NYT showcased the most exceptional articles—particularly those that were part of a series, as was the case in many ongoing trials—with multi-tiered headlines. Thirteen of the fourteen Strong articles featured these terraced titles, with sensational subtitles such as, “Remarkable

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Charges of Murder, Bribery, Perjury and Corruption.”²⁷ The references to abortion in this chain of stories, however, were scarce, and the vast majority of the coverage consisted of summaries of the speeches and the testimonies given in court. Yet again, the editorial needs of the NYT at the time favored the use of summary rather than the presentation of an engaging story. This was perhaps a legacy of the American Civil War, during which the accurate and timely conveyance of highly desirable information was among the chief duties of the daily newspapers.²⁸ The Strong case nevertheless affirmed the existence of sensational subjects in the NYT during the early Postbellum Period and revealed the tendency of these authors to supply dry summary in lieu of imaginative storytelling.

The last two defining trends emblemized by the first wave articles were closely related. One was the total anonymity of the author, whose name was not supplied to readers in a byline, contrary to popular journalistic practice today. Ford Risley, a professor of communications at Pennsylvania State University, remarks that although the use of bylines was not unheard of even as far back as the 1830s, it most certainly was not widespread during the Postbellum Period, after which it gradually came into popular usage.²⁹ Consequently, the author was a veritable nonentity and the authorship of individual articles was instead relegated to the impersonal, faceless authority of the newspaper publication itself. The first wave articles exacerbated this trend even more, since their authors did not insert themselves into the narrative. The authors related the action without doing any of the acting—an effect that certainly seems credible and respectable from a modern perspective, but one that also necessarily diminishes the sensational elements of the stories by removing personal stakes from the narrative. In the Lattin case of 1868, for example, the NYT’s coverage consisted chiefly of a summary of the inquest presented as a sort of rapid-fire dialogue with questions asked to and answered by a doctor

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involved in an abortion case: “Q—Did she at any time ask you to treat her for an abortion? A—No, quite the reverse, because she desired to have the child in order to make Houghton marry her.”³⁰ This style of journalism, in addition to summarizing the disclosures of the inquest in question, narrowed the focus uncompromisingly on the subject for a long stretch of time without distracting the reader with the intrusion of ancillary characters. Without the author serving as a sort of protagonist in the story, as St. Clair did in his encounter with Dr. Rosenzweig, readers have no surrogate with whom they can empathize and thus the news stories appeared less like sensational works, with all the literary trappings of compelling fiction, and more like abridged, digestible chunks of information—more like reading a dialogue than watching a play.

Finally, the lack of a centrally featured, empathetic author also thwarted the publication’s ability to adopt a ‘crusading’ moral position on controversial issues covered in the articles. St. Clair’s decision to publicly denigrate Dr. Rosenzweig was all the more powerful because it boiled down highly contentious matters—abortion and abortion-induced homicide—into a conflict between strong and identifiable personalities. It is much easier to support or to condemn distinct figures than it is to fight with shadows, and St. Clair and Rosenzweig served as suitable proxies for their respective factions, the anti-abortion moralists and the abortionists. Bereft of this, the first wave articles more often featured objective description rather than subjective moralizing. Nevertheless, it would be improper to assert that the NYT was by any means toothless during the early Postbellum Period, even on the abortion issue. Newspapers are fundamentally *curated* publications; the final form of each publication relies on the consent and the concord of the publication’s overseers. Accordingly, even though the NYT did not publish stories of the crusading-type backed by its own moral authority, it may be said that the newspaper nevertheless expressed its views through

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literary ventriloquism by voicing its outlook in the selection of articles it chose to publish.

An 1868 article, for example, in summarizing the proceedings of a State Medical Society meeting, quoted the group president speaking out against the crime of abortion and its status in the law. “If these words, ‘with a quick child,’ could be omitted, and the statute otherwise remain as it is, the period [during which the procurement of abortion would be deemed second-degree manslaughter] would be made to cover the whole period after conception.”³¹ This speech was typical of the view that many establishment physicians, as the self-avowed protectors of life, had regarding abortion. It is significant that this article received from the NYT a rare byline—“From Our Own Reporter”—thus emphasizing the NYT’s ownership over the collection of facts assembled in the report, and perhaps even its endorsement. Regardless of these speculations, this extraordinary article represented a remarkable intersection between newsmen, lawmakers, and physicians, since it featured the wide circulation of a prominent medical man’s idea for additional restrictions in the state abortion law. This dissemination of medical opinion likely influenced passage of the 1869 law that altogether dismissed the quickening doctrine, since the law was passed on May 6, 1869, a little more than a year after the publication of this article.³² Another article in 1868, headlined, “Responsibility of the Medical Professions” and penned by an anonymous author, proposed additional legislative restrictions as well. The writer observed that abortion was “practiced at this day to a very alarming extent and some means, both by enforcing the present laws and by providing still more stringent ones, should be adopted to lessen it.”³³ As a result, despite its unwillingness to declare a crusade against abortion at the time and despite the dearth of *stylistically* sensational stories, the NYT provided its tacit endorsement to anti-abortion advocates and influenced wider sentiment, possibly even legal sentiment, by publishing the

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viewpoints of these advocates.

THE STATE OF NEWSPAPERS AND JOURNALISM IN 1870

For American newspaper publishers in the nineteenth century, sensational subjects provided an inexhaustible source of consumer interest. In the Postbellum Period, newspapers were lucrative due to a rising urban working-class population that supplied an increasing number of readers.³⁴ By 1870, there were about 4,500 newspapers circulating in the United States, up from the 3,000 that proliferated in 1860 before the start of the American Civil War. Most newspapers at the time were small weeklies, but daily newspapers such as the NYT were growing steadily in number, with 574 dailies throughout the United States by 1870.³⁵ These newspapers benefited from a steady readership; in 1870, the total circulation of urban daily newspapers was 2.6 million.³⁶ The rising urban population— itself a product of European migration to New York and the general migration of rural Americans to cities in search of employment—and the abundance of daily newspapers in 1870 mingled with an additional characteristic of the era.³⁷ The United States boasted considerably high literacy rates in the latter half of the nineteenth century. In 1870, eighty percent of the total American population over the age of ten was literate.³⁸ Significantly, only about twenty percent of the black population was literate at that time, meaning that most newspaper readers in the immediate Postbellum Period were white.³⁹ By 1870, demand for information and entertainment via newspapers was high, and this desire was met continuously by newspapers that published engrossing and entertaining content for their readers.

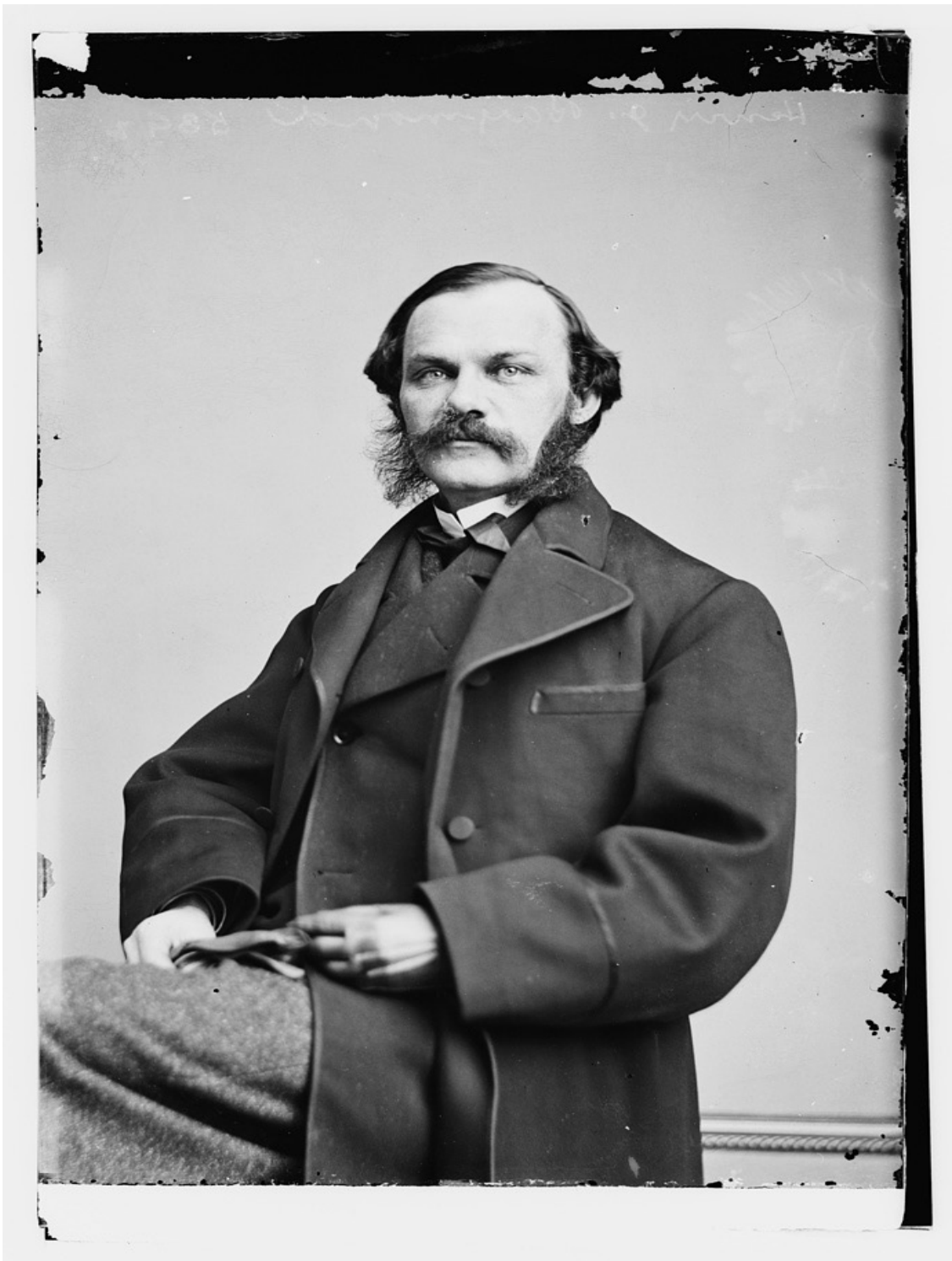
This rise in demand stemmed partly from influence of the American Civil War, which casted a long shadow over journalistic practices and public appetite in the Postbellum Period. In fact,

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the demand for information during the war was so great that the NYT began publishing its additional Sunday issue in 1861.⁴⁰ The war made newspapers indispensable and provided great eminence and respectability to journalists, who were presented as liaisons between newspaper readers and the horrors of the battlefronts. As academic Karen Roggenkamp notes, newspapers in New York kept large staffs of war correspondents to feed the abundant public hunger for war coverage. Readers came to see these correspondents as “adventurous, reliable storytellers,” and journalists at large found themselves moving progressively inward from the periphery of public notice.⁴¹ This increased reliance on journalists stemmed partly from the invention of the telegram, which made it possible for war correspondents to report information very quickly—more quickly, in many cases, than military officials, who would then have to rely on newspaper reports for accurate information.⁴² Future Supreme Court Justice Oliver Wendell Holmes, Jr. best expressed the public dependence on the press in 1861 when he wrote, “Everything else we can give up...Only *bread and the newspaper* must we have, whatever else we do without. How this war is simplifying our mode of being!”⁴³ These American Civil War influences continued to affect the manner of journalism years after the war’s end. By 1870, newspapers were widespread and urban readers relied upon them and their writers for accurate and compelling information on various subjects.

Yet not even the war could compel the NYT to publish overtly lurid stories. Though the “EoA” article ignited a stream of subsequent sensational abortion articles, these contrasted sharply with the type of journalism found in the NYT years earlier. Prior to the advent of the 1870s, sensationalism existed in the NYT chiefly in the form of subject, not style. This curb on explicit sensationalism may be attributed to the management of the paper. The NYT was founded by Henry Raymond in 1851 as a deliberate effort to produce a more reserved and

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Henry Raymond deliberately co-founded *The New York Times* to publish non-scandalous news. His death in 1869 paved the way for the appearance of sensationalism in the newspaper.

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less scandalous publication than the two existing national daily New York newspapers, the *New York Herald* and the *New-York Tribune*.⁴⁴ Newspaper historian Aurora Wallace contends that these rival newspapers sought to lure readers “through expanding coverage of the city’s police, criminal courts, and political scandals,” whereas the NYT focused on news of the “factual, noncrusading” variety.⁴⁵ Raymond’s approach to the news was remarkably conservative, as typified by his own statement:

We do not mean to write as if we were in a passion, unless that shall really be the case, and we shall make it a point to get into a passion as rarely as possible. There are very few things in this world which it is worth while to get angry about, and they are just the things that anger will not improve.⁴⁶

Raymond’s editorial methodology was clearly not conducive to the sensationalism that would later creep into his publication. As noted by historian George H. Douglas, Raymond “wanted nothing to do with sensationalism, and he wanted nothing to do with crusading.”⁴⁷ It is significant to note, then, that the second wave of abortion articles, which were sensational both in subject and style, only appeared following Raymond’s death in 1869, after which the NYT ultimately fell into the complete supervisory authority of Raymond’s co-founder, George Jones.⁴⁸ The NYT would achieve notable success in the 1870s under the leadership of Jones, especially for its investigation of the Tweed Ring.⁴⁹ As such, the highly dramatic and more sensational tone adopted by the NYT journalists writing about abortion in the 1870s may partly be credited to the standards of a new authority figure.

As is evident from the above, the ubiquity of newspapers, the public demand for information, and the high literacy rates of the era made the influence of press coverage on all Americans

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a significant factor. But not all newspapers enjoyed the same gravitas. By 1871, the NYT had established its supremacy with an incredible exposé on corruption in the Tweed Ring.⁵⁰ This style of investigative journalism naturally elevated the status of the publication and gave it more authority in relation to its peers. As such, the publication of the Tweed investigative articles paved the way for further crusading endeavors carried out by the journalists of the NYT—endeavors that would not have been tolerated in earlier years under the management of the more restrained Raymond. The new wave of abortion stories was sensational both in subject and in style. This too may be seen as a natural consequence of the Tweed articles. Political and economic scandal was inherently sensational, but the NYT flavored its stories with higher stakes by dramatically publicizing the attempts of William “Boss” Tweed to form a company in order to buy out the NYT. Jones, as the new authority, boldly declared the following in a spring issue of the NYT:

No money that could be offered me should induce me to dispose of a single share of my property to the Tammany faction, or to any man associated with it, or party whatever until this struggle is fought out.⁵¹

This sort of engagement was the very essence of sensationalism. The author, Jones, thrust himself into an ongoing conflict and presented it as a capitalistic clash—a “struggle” that must be “fought out”—between rival personalities: the stalwart Jones and his “property” versus Tweed and his “faction.” The effect of such sensationalism was twofold. First, the author managed to raise his own respectability, made possible by his decision to position himself in an existing news narrative and amplified in his self-presentation as a man unable to be influenced by the lure of money. Second, the author managed to vilify an opposing individual in a highly public medium simultaneously. These

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effects obscured the objectivity of the narrative and transformed the news into a personal struggle featuring named actors. The result was a media-fueled crusade that disregarded any notion of journalistic neutrality and instead championed a distinct outcome, whether that be the exposure of a scandalous political machine or the prosecution of abortionists.

SENSATIONALISM AND THE SECOND WAVE

(1871-1874)

The anti-abortion crusade began in remarkable fashion with the publication of the “EoA” story in late August of 1871. St. Clair’s famous article set the precedent for future sensational articles regarding abortion. In brief, the article functioned as a call-to-arms and strove to raise public awareness and to encourage public outrage and action. St. Clair’s concluding words, which promote “the necessity of taking some decided and effectual action,” hinted at the investigative, rather than descriptive, nature of the article.⁵² St. Clair was not just writing in reaction to an event to chronicle it accurately for readers; rather, he hoped to expose an inadequately explored world of crime—a desire that shaped his article and supplied it with a prescriptive and not merely descriptive tone. In doing so, St. Clair essentially enumerated a list of active abortionists, many of whom he found through advertisements in other newspapers. His descriptions evoked the atmosphere of the various clinical spaces he visited and filled the reader with a sense of foreboding dread at the prospect of medicinal tablets, powders, and procedures. The most important distinguishing feature to notice was the presence of a sensational *style*. The use of style was especially important in “EoA,” because the sensational subject was left deliberately mysterious in the actual text of the article—the word abortion was not mentioned once, though later articles used it freely.

How, then, did St. Clair present his sensational style

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in “EoA”? One of the tools in his arsenal was the untethered hyperbole, by which he made grand and even outlandish claims without much substantiation. This hyperbole is manifested in the egregious statistics he mentioned as well as in the extreme register of his diction. In the case of the former, for instance, St. Clair made reference to the “thousands of human beings [who] are...murdered before they have seen the light of this world, and thousands upon thousands more of adults [who] are irretrievably ruined in constitution, health, and happiness.”⁵³ These numbers were not reliably sourced, nor were they meant to be taken seriously. They did, however, effectively project the impression of a massive throng of victims and collateral casualties, highlighting the extent of the crime. St. Clair’s diction, too, portrayed a stark and unforgiving reality. His references to “great evils,” “depravity,” and “a systematic business in wholesale murder” combined to establish a link between the act of abortion, utter moral laxity, and excessive greed.⁵⁴

Relatedly, the lack of substantiation behind St. Clair’s outlandish statistics was aggravated by the proliferation of anonymous sources in his article. One source, a “retired practitioner,” told St. Clair how he gave his patients placebo pills in lieu of actual abortifacients since the “retired practitioner” did not support abortion.⁵⁵ This article, therefore, also featured two remarkable developments: the unapologetic use of anonymous sources and the increased prominence of the author, who was mentioned explicitly in the article as the “writer.” In the case of the first development, one must recognize that St. Clair’s reporting thrived off of hearsay. After all, he noted that a book attributed to one of the physicians he condemned “is said to have been plagiarized from a French author,” with the use of the passive voice eliminating the possibility of assigning anyone responsibility for the origin of the rumor.⁵⁶ Though this might have made St. Clair’s comment seem unproven, paradoxically, it also made it difficult to disprove. Who can one question to

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determine the truth of the plagiarism? St. Clair's reliance on hearsay appealed to the ever popular neighborhood authority of gossip and poisoned the reader's impression of the so-called plagiarizer even without corroboration. W. Joseph Campbell, a scholar of yellow journalism, points out that the implementation of anonymous sources is one of the hallmarks of sensationalistic reporting, along with a tendency for self-promotion and for the promotion of the newspaper and its achievements.⁵⁷ The penchant for publication promotion was also evident in later stories. The author of an article detailing the investigation of an abortion-linked murder in which a young woman's body was found stuffed in a trunk was not hesitant to praise the role of his publication in the unfoldment of the whole affair. "The Press, therefore," the author wrote, "became a powerful auxiliary to the Police, and, in fact, brought the case to a successful culmination."⁵⁸ Though the author of that article did not know it at the time, the NYT would soon assist the affair in a more dramatically powerful fashion, since the deceased young woman was the very one St. Clair later claimed he saw in Dr. Rosenzweig's home. In the case of authorial prominence, which was the second development mentioned above, it is intriguing to notice that St. Clair later even eschewed the convention of avoiding bylines and signed his name at the end of the article in which he dramatically announced his recognition of "the blonde beauty" allegedly killed by Dr. Rosenzweig. St. Clair's journalistic practices in this period serve to highlight the role of the individual author as an active and engaging part of the story.

At the same time, St. Clair's representation of the abortionists and the victims presented a prototypical model that later sensational articles also followed. In "EoA," St. Clair enumerated countless abortionists whom he had discovered in scandalous advertisements. He even noted whether a given doctor was of foreign origin. For example, he stated that Dr. Rosenzweig was either a Russian or a German Jew, a Dr. Evans

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was from Scotland, and a Dr. Franklin was most certainly a German Jew.⁵⁹ These subtle national markers served to further the distance between the abortionists and everybody else by imposing a racial divide between them, thereby associating the act of abortion with foreign influence in a way that imperceptibly fed into nativist discontent with immigrants. But the abortionists were not the only individuals portrayed in the abortion articles. Without a doubt, the most important persons were the various unfortunate women who sought to procure an abortion. These women were all white and they were nearly always portrayed as victims. Take, for example, the NYT article about Emily Post, whose abortionist attempted to abandon her when she became ill. Post was referred to as an “unfortunate woman” and a “sick woman.”⁶⁰ Both adjectives highlighted her despair and did little to underscore the triumph of her story—her ability to write down her testimony prior to death. It was the propagation of such stories that likely encouraged the New York Legislature to pass the 1874 law which declared the deathbed testimony of abortion victims admissible in court. Notwithstanding Post’s testimony, later coverage continued to emphasize the tragic nature of her demise by saying that her married lover “accomplished her ruin” after promising to marry her though he was already married.⁶¹ Since sensational abortion coverage most often featured women who had died, the coverage of the NYT suggested to readers a near one hundred percent mortality rate. Even in death, the author of these articles often exaggerated the beauty of the deceased, once again highlighting the tragic loss of gorgeous femininity. The following is an excerpt from the first article to cover the abortion-related murder of the young lady recognized by St. Clair:

...the young girl, for she could not have been more than eighteen, had a face of singular loveliness. But her chief beauty was her great profusion of golden hair, that hung

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in heavy folds over her shoulders, partly shrouded the face, and lay in heavy masses upon her breast.⁶²

The language employed in the above description is highly evocative and even coquettish, lingering over the slender grace and loveliness of a five-foot young woman whose corpse, it must be noted, was crammed into a box that was two and a half feet long on the sides and eighteen inches deep.⁶³ In spite of this grotesque disparity between the macabre and the magnificent, the emphasis on the girl's noticeably white phenotypical characteristic—her blonde hair—once again provoked nativist anxieties, this time about the future of the white Protestant population. Scholar Sara Dubow illustrates just how pervasive this fear was in the late nineteenth century. In Dubow's reckoning, physicians were the ones who tied existing anxieties about elite white "health, fitness and vitality" to racial concerns. In the face of a dwindling European-American population, men such as the AMA's Storer "championed the idea that the upsurge of induced abortion threatened the nation's future."⁶⁴ Though the NYT never explicitly pronounced this view, the echoes of these white anxieties were noticeable in the descriptions of the female victims, who were predominantly white and dead by the time they were featured in articles. Faced with the frightening prospect of race suicide, which was spurred through the efforts of the AMA, New York lawmakers may have considered the demographics of victimized women in the newspapers to be representative of the actual demographics of dying white women.

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The interconnections between the legislative sphere and the mass media are highly complex and ever shifting. Finding a direct causal link between the actions of one group and the responses of another is difficult enough to accomplish in the

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contemporary world, much less in the world of nineteenth century America. Nevertheless, by observing trends in the manner of newspaper reporting in the Postbellum Period and linking these trends to the characteristics of the era, one can better understand the myriad of influences that coalesced to encourage legislative changes.

Within this framework, the lawmakers reigned supreme. They were the individuals ultimately responsible for the drafting and passage of laws, so it was their concerns and anxieties that must be considered when analyzing legal sentiment. As noted above, in the case of American lawmakers, the primary concerns with respect to abortion were the provability of pregnancy, the safety of women, and the potential dwindling of the white population. So sensational and pervasive was the newspaper coverage in the Postbellum Period that the concern for provability was dismissed altogether in favor of stricter laws that would hopefully protect women and safeguard the white population. This was partly the result of newspaper reporting that consistently detailed horrific botched abortion procedures and abysmal mortality rates. Neither the NYT in particular nor all New York newspapers in general were primarily responsible for influencing anti-abortion legislation. Rather, sensationalized newspaper coverage was an important part of the puzzle—albeit one that has been largely overlooked—and, in tandem with other pieces, such as the lobbying of the AMA, it helped to shape public and legal opinion.

Although the lawmakers reigned supreme, the journalists and newsmen should not be discounted. The newsmen of the NYT were largely motivated by a desire to promote themselves as respectable journalists, as in the case of Augustus St. Clair, to increase the authority of the publication they worked for, and to promote sales by increasing readership. Sensational stories provided the ideal avenue for pursuing all three goals at once. As exemplified in St. Clair's "EoA," the journalists of the NYT

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were certainly not hesitant to make all sorts of callous digs at rival publications. In “EoA,” St. Clair consistently referred to the *New York Herald* as “a paper which contains strings of disgraceful advertisements,” employing an unflattering adjective that highlighted a self-imposed sense of dishonor and thus juxtaposed this characteristic of the *New York Herald* with the assumed moral superiority of the NYT.⁶⁵ In that same article, St. Clair repeatedly quoted multiple abortion advertisements, tracing each and every one to the *New York Herald*, thus establishing it as a publication filled with scandalous materials. Readers of the NYT in the post-Tweed Ring period would consequently place a great deal of faith in the newspaper’s expertise in matters of great social prominence, making them much more receptive to future investigations. Importantly, the crafty digs at opposing peer publications hinted at an underlying motive latent in the NYT newsmen. These journalists and editors were not only concerned with raising the profile and increasing the sales of their own publication, but also in denigrating the quality and moral standing of rival publications. Sensational articles thus served as a sort of subliminal battleground for journalistic supremacy in an age when more and more newspapers were being printed and read by the masses.

The question of age is an important one, for both the journalists and the lawmakers examined in this paper were the products of their time. For journalists, the American Civil War fueled an insatiable demand to record and to provide information to the public—a demand that would not perish with the conclusion of the war. For lawmakers—and, indeed, for all Americans—the American Civil War presented a traumatic and stark change from the usual *modus vivendi*. The war carried with it a staggeringly high casualty list. Such a palpable brush with death and a familiarity with its ensuing grief may have awakened in all a desire to protect the sanctity of life in all quarters, making lawmakers that much more susceptible to the influence of

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the physicians and that much more alarmed by the reports of abortion and death in the newspapers. The factors, as promised, were many and complex, but they all mingled together to help explain why lawmakers were amenable to enacting legislative changes that would criminalize abortion to a greater extent than ever before.

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¹ Epigraph: Augustus St. Clair, “The Evil of the Age,” *New York Times*, Aug. 23, 1871, 6. Augustus St. Clair, “Something More Concerning Ascher’s Business,” *New York Times*, Aug. 30 1871, 8.

² Brief of 281 American Historians as Amici Curiae, Supporting Appellees, in *Webster v. Reproductive Health Services*, No. 88-605, Supreme Court of the United States, October Term, 1988.

³ Augustus St. Clair, “Something More Concerning Ascher’s Business,” 8. “Ascher” was an alias for Dr. Rosenzweig.

⁴ U.S. Library of Congress, Congressional Research Service, “Abortion: Judicial and Legislative Control,” Issue Brief # 1B 74019, 1981. For a more detailed analysis of these changes across various states in the nineteenth century, see James Mohr, *Abortion in America* (New York: Oxford University Press, 1978). Mohr’s insights on the bookends of the century are particularly relevant. At the turn of the nineteenth century, no legislation concerning abortion existed in the United States. By the turn of the twentieth century, practically all jurisdictions had strict laws restricting abortion and labeling it a criminal offense.

⁵ James Mohr, *Abortion in America*, 217-219.

⁶ *Ibid.*, 26-27.

⁷ Leslie J. Reagan, *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867-1973* (Berkeley: University of California Press, 1997), 8.

⁸ Mohr, *Abortion in America*, 5.

⁹ This use of the word ‘quick’ to denote a sort of life-giving agency is still extant in phrases such as “the quick and the dead.”

¹⁰ *Laws of the State of New York*, Vol. II, (Albany: Banks & Brothers, 1869), 1502-3.

¹¹ Mohr, *Abortion in America*, 218.

¹² *Ibid.*, 219.

¹³ *Ibid.*, 170. Mohr notes that even prior to the AMA’s founding in 1847, many physicians worked to support the passage of anti-abortion statutes, though these efforts were decentralized and haphazard.

¹⁴ Janet F. Brodie, *Contraception and Abortion in Nineteenth-Century America* (Ithaca: Cornell University Press, 1994), 269-270.

¹⁵ Reprinted in *Abortion in the Nineteenth Century* (New York: Arno Press, 1974), 31-7.

¹⁶ Brodie, *Contraception and Abortion*, 270.

¹⁷ I use the word ‘Postbellum’ to distinguish the era immediately following the American Civil War, in contrast to ‘antebellum America.’ As will be shown later, the consequences of the end of the American Civil War on anti-abortion legislation and abortion-related press coverage cannot be discounted.

¹⁸ See, for instance, Mohr, *Abortion in America*, 148, in which Mohr mentions

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“underlying public tolerance of abortion that had remained so common in the United States through the 1850s”; or 16, “...this practice was neither morally nor legally wrong in the eyes of the vast majority of Americans, provided it was accomplished before quickening.”

¹⁹ *Ibid.*, 6.

²⁰ Marvin Olasky, *Abortion Rites: A Social History of Abortion in America* (Wheaton, Illinois: Crossway Books, 1992), 35.

²¹ Anthony M. Joseph, “The ‘Pennsylvania Model’: The Judicial Criminalization of Abortion in Pennsylvania, 1838-1850,” *American Journal of Legal History* 49, no. 3 (2007), 284-290.

²² *Ibid.*, 291. Joseph offers quite a few imaginative titles to these various rules, including the born-dead rule, the born-alive rule, the accessory to murder rule, and the maternal reprieve rule.

²³ *Oxford English Dictionary*, s.v. “sensational,” accessed January 4, 2016.

²⁴ “The Wolfer Murder,” *New York Times*, Oct. 21, 1865, 3. ‘Murder’ is used prematurely since the case was ongoing at the time.

²⁵ “The Cobell Abortion Case,” *New York Times*, Oct. 24, 1865, 8.

²⁶ “A Springfield Physician Arrested for Malpractice—A Dishonest Detective,” *New York Times*, Aug. 14, 1867, 1.

²⁷ “The Strong Case,” *New York Times*, Nov. 25, 1865, 2. The other twelve articles are: “Strong Divorce Case,” Nov. 28, 1865, 1; “Strong Divorce Case,” Nov. 30, 1865, 2; “Strong Divorce Case,” Dec. 2, 1865, 2; “Strong Divorce Case,” Dec. 5, 1865, 3; “Strong Divorce Case,” Dec. 13, 1865, 2; “Strong Divorce Case,” Dec. 14, 1865, 2; “Strong Divorce Case,” Dec. 15, 1865, 8; “Strong Divorce Case,” Dec. 16, 1865, 2; “Strong Divorce Case,” Dec. 21, 1865, 2; “The Strong Case,” Dec. 26, 1865, 1; “The Strong-Stevens Case,” Dec. 28, 1865, 8; “The Strong-Stevens Case,” Dec. 29, 1865, 1.

²⁸ Karen Roggenkamp, *Narrating the News: New Journalism and Literary Genre in Late Nineteenth-Century American Newspapers and Fiction*, (Kent, OH: Kent State University Press, 2005), 49.

²⁹ Ford Ridley, “Birth of the Byline,” *New York Times*, April 22, 2013. Accessed January 4, 2016. http://opinionator.blogs.nytimes.com/2013/04/22/birth-of-the-byline/?_r=0.

³⁰ “Local Intelligence,” *New York Times*, Sept. 9, 1868, 2.

³¹ “State Medical Society,” *New York Times*, Feb. 7, 1868, 5.

³² *Laws of the State of New York*, 1502.

³³ “Responsibility of the Medical Professions,” *New York Times*, Aug. 5, 1868, 4.

³⁴ David Bulla and David Sachsman, “Introduction,” In *Sensationalism: Murder, Mayhem, Mudslinging, Scandals, and Disasters in 19th-Century Reporting*, (New Brunswick: Transaction Publishers, 2013), xxiii-xxiv.

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- ³⁵ Roggenkamp, *Narrating the News*, xiv.
- ³⁶ David Bulla and David Sachsman, "Introduction," xix. The Postbellum Period saw a remarkable surge in the number of newspapers. As noted by Bulla and Sachsman, the number reaches about 12,000 in 1890.
- ³⁷ Jennifer Moore, "'Ours Has Been No Pleasing Task': Sensationalism in Frank Leslie's Campaign against Swill Milk," In *Sensationalism: Murder, Mayhem, Mudslinging, Scandals, and Disasters in 19th-Century Reporting*, (New Brunswick: Transaction Publishers, 2013), 130.
- ³⁸ U.S. Department of Commerce, Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970*, Series H 664-668.
- ³⁹ Ibid. This category is denoted "Negro and other," thus incorporating other nonwhite groups. Whites are separated into native and foreign-born categories, but distinct data for the two subgroups is not available for 1870.
- ⁴⁰ Aurora Wallace, *Newspapers and the Making of Modern America: A History* (Westport, Connecticut: Greenwood Press, 2005), 157.
- ⁴¹ Roggenkamp, *Narrating the News*, 49.
- ⁴² George H. Douglas, *The Golden Age of the Newspaper* (Westport, Connecticut: Greenwood Press, 1999), 55-6.
- ⁴³ Oliver Wendell Holmes, *Pages from an Old Volume of Life: A Collection of Essays, 1857-1881*, (Cambridge: Riverside Press, 1895), 1. Holmes referred to the phrase 'bread and newspapers' as the successor to the satirical poet Juvenal's summation of Roman desire: *panem et circenses*—bread and circuses.
- ⁴⁴ Douglas, *The Golden Age of the Newspaper*, 57.
- ⁴⁵ Wallace, *Newspapers and the Making of Modern America*, 156.
- ⁴⁶ Quoted in Richard Kluger, *The Paper: The Life and Death of the New York Herald Tribune*, (New York: Knopf, 1986), 80.
- ⁴⁷ Douglas, *The Golden Age of Newspapers*, 57.
- ⁴⁸ Elmer Davis, *History of the New York Times, 1851-1921*, (New York: Little and Ives, 1921), 81-6. After Raymond's death, the post of editor passed from John Bigelow to George Shepard and then to Louis Jennings.
- ⁴⁹ Douglas, *The Golden Age of Newspapers*, 120-121.
- ⁵⁰ Marvin Olasky, "Opposing Abortion Clinics: A *New York Times* 1871 Crusade," *Journalism Quarterly* 63, no. 2 (1986), 305. Olasky brings up the Tweed Ring to demonstrate how most students of journalism know about the NYT's coverage of it, while exceedingly few know about the so-called abortion crusade. The assertion about increased authority as a result of the Tweed Ring exposé is my own.
- ⁵¹ Quoted in Sidney Kobre, *The Yellow Press and Gilded Age Journalism*, (Tallahassee: Florida State University, 1960), 92.
- ⁵² St. Clair, "The Evil of the Age."
- ⁵³ Ibid.

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⁵⁴ Ibid.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ W. Joseph Campbell, *Yellow Journalism: Puncturing the Myths, Defining the Legacies* (Westport, CT: Praeger Publishers, 2003), 7-8.

⁵⁸ "The Trunk Mystery," *New York Times*, Aug. 30, 1871, 8.

⁵⁹ St. Clair, "Evil of the Age."

⁶⁰ "Another Victim of the Abortionists," *New York Times*, Aug. 30, 1871, 8.

⁶¹ "The Brooklyn Abortion," *New York Times*, Aug. 31, 1871, 8.

⁶² "A Terrible Mystery," *New York Times*, Aug. 27, 1871, 1.

⁶³ Ibid., 1.

⁶⁴ Sara Dubow, *Ourselves Unborn: A History of the Fetus in Modern America*, (New York: Oxford University Press, 2011), 20-1.

⁶⁵ St. Clair, "Evil of the Age," *New York Times*, Aug. 23, 1871, 8.

Images:

Page 151: Fragment of "The Evil of the Age," Augustus St. Clair, *The New York Times*, August 23, 1871, Page 6.

Page 162: "Hon. Henry Jarvis Raymond of N.Y.," photograph, circa 1855-1865, via Library of Congress Prints and Photographs Division in Washington D.C.: Brady-Handy Photograph Collection, www.loc.gov/pictures/resource/cwpbh.03070/ (accessed May 4, 2016).