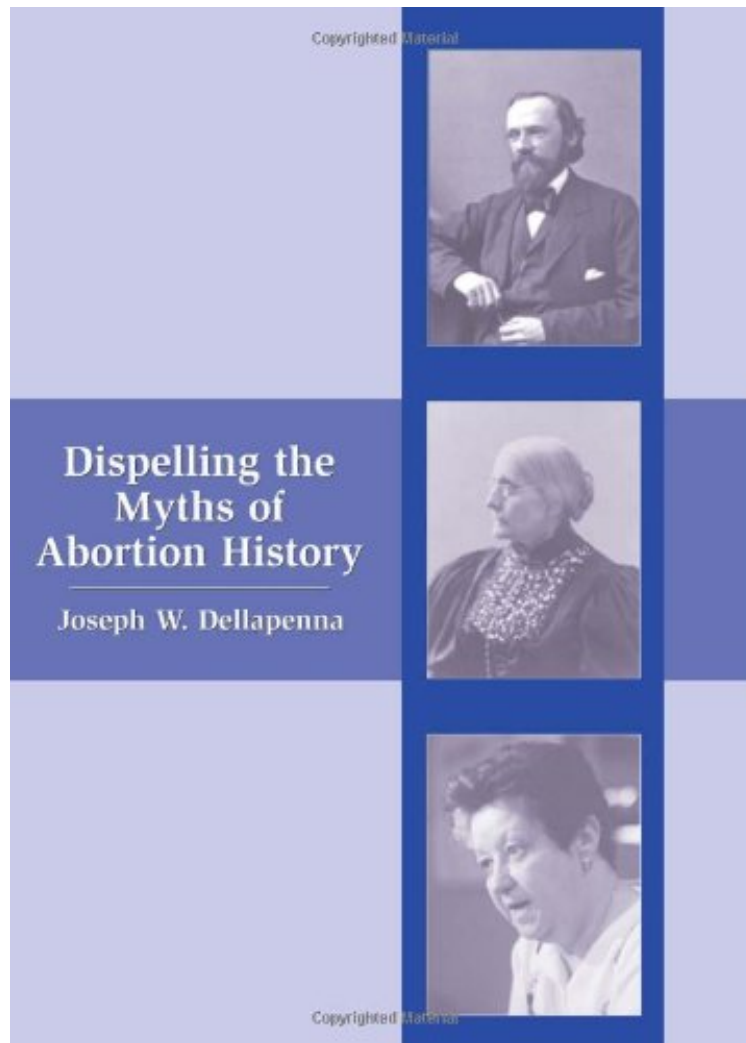


(Mobile book) Dispelling the Myths of Abortion History

Dispelling the Myths of Abortion History

Joseph W. Dellapenna

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In *Roe v. Wade*, Justice Harry Blackmun structured the argument of the majority around the history of abortion laws. That history built on the work of law professor Cyril Means, Jr., and historian James Mohr. Means and Mohr proclaim four theses as summarizing the "true" history of abortion in England and America: (1) Abortion was not a crime "at common law" (before the enactment of abortion statutes in the nineteenth century). (2) Abortion was common and relatively safe during this time. (3) Abortion statutes were enacted in the nineteenth century in order to protect the life of the mother rather than the life of the embryo or fetus. (4) The moving force behind the nineteenth-century statutes was the attempt of the male medical profession to suppress competition from competing practitioners of alternative forms of medicine. This book dispels these myths and sets forth the true history of abortion and abortion law in English and American society. Anglo-American law always treated abortion as a serious crime, generally including early in pregnancy. Prosecutions and even executions go back 800 years in England, establishing law that carried over to colonial America. The reasons offered for these prosecutions and penalties consistently focused on protecting the life of the unborn child. This unbroken tradition refutes the claims that unborn children have not been treated as persons in our law or as persons under the Constitution of the United States.

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About the Author Joseph W. Dellapenna is a professor of law at Villanova University School of Law. Excerpt. Reprinted by permission. All rights reserved.

In *Roe v. Wade*, Justice Harry Blackmun structured the argument of the majority as around the history of abortion laws. That history built on the work of law professor Cyril Means, jr., and historian James Mohr. Means and Mohr proclaim four theses as summarizing the "true" history of abortion in England and America: (1) Abortion was not a crime "at common law" (before the enactment of abortion statutes in the nineteenth century). (2) Abortion was common and relatively safe during this time. (3) Abortion statutes were enacted in the nineteenth century in order to protect the life of the mother rather than the life of the embryo or fetus. (4) The moving force behind the nineteenth century statutes was the efforts of the male medical profession to suppress competition from competing, largely female practitioners of alternative forms of medicine. Each of these theses is wrong, but together they form the new orthodoxy of abortion history an orthodoxy that is used to sustain a claim of a constitutional right to abort. Only by placing strictly legal materials in social, political, and technological contexts can one properly understand what happened in the past and how the law specific to abortion changed through time. This book dispels these myths and sets forth the true history of abortion and abortion law in English and American society. Anglo-American law always treated abortion as a serious crime, generally including early in pregnancy. Prosecutions and even executions go back 800 years ago in England establishing law that carried over to colonial America. The reasons offered for these prosecutions and penalties consistently focused on protecting the life of the unborn child. This unbroken tradition refutes the claims that unborn children have not been treated as persons in our law or as persons under the Constitution of the United States. The book opens with an extended discussion (in two chapters) of the social practices that framed abortion laws down through the centuries. This discussion explores how abortions were done, and how people otherwise undertook to prevent or dispose of unwanted pregnancies, before the nineteenth century. The book then turns to the evolution of abortion laws from the earliest days of the common law in twelfth century England to the opening of the twenty-first century in England and America. Changing medical technologies by the nineteenth century made the practice less dangerous for the mother and more difficult to detect. In the nineteenth century, nearly all persons in society led by feminists, physicians, and religious leaders dealt with the resulting moral challenge by enacting, in legislatures around the world, statutes to repress or prohibit abortion. In the twentieth century, the medical profession perfected the techniques for doing abortions and many men and women found that reducing or eliminating children in their lives best served their personal goals. Many societies then began to manage abortion as a medical problem rather than a legal problem, repealing or modifying the laws prohibiting or restricting access to abortion. The book closes with two chapters that explore certain deeper questions about how we do and understand history, and how the doing and the understanding of history the stories we tell ourselves about our past might be relevant to the current abortion controversy. As I explain in these last two chapters, I do not contend that anyone will ever recover the "complete truth" about any past event. But we can distinguish between the truth and the untruth of certain facts about the past

even while we quarrel about the significance of these truths. History is, or ought to be more than a process of projecting our wishes onto the past. It is time for all who are interested in the abortion controversy to reexamine the historical data with that in mind, and to take the history of abortion back from courts and historians who are more intent on supporting abortion rights than on getting close to the truth about that past. As for its relevance to our current situation, recall again that the main opinion in *Roe v. Wade* itself was structured as an argument about history. - Joseph W. Dellapenna