# LEGAL INSTITUTIONS AND ABORTION RATES IN MISSISSIPPI

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Since U.S. combat forces left Indochina in 1973, no political, moral, financial, or personal privacy issue has left its mark on the American conscience like the question of legalized abortion. Opinions are divided as on no other topic of public policy debate. The controversy is tendentious, contentious, and sometimes violent. Almost no one is indifferent to the issue of legalized abortion, and the vast majority of individuals who have already formed an opinion stopped listening to arguments from the other side long ago.

Most public opinion polls show the country sharply split on the question of abortion. Pro-abortion forces point to numbers indicating that a majority of Americans favor abortion rights when there is an imminent risk to the mother's health if the baby is carried to term, or in cases of rape or incest. Pro-lifers tout numbers showing a large majority of Americans opposed to "abortion on demand."

But few abortions are in fact performed to save the life of the mother; even fewer are performed to terminate pregnancies resulting from rape or incest. In modern society, the procedure of abortion is simply used to terminate unwanted pregnancies for many women. Bitter opposition to any proposal that would restrict in any way a woman's "right to choose" suggests that this is so. And if many abortion-minded women are in fact searching for an inexpensive way of disposing of an unwanted child—using abortion as a kind of foolproof birth control device—laws that make abortions less costly should

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reduce the number of abortions and, perhaps, the number of unwanted pregnancies as well. (Although the abortion debate focuses exclusively on a woman's decision to terminate an unwanted pregnancy, women can also choose whether or not to risk becoming pregnant in the first place.)

Evidence from the State of Mississippi suggests that legal obstacles to abortion have a dramatic impact on both abortion rates and birth rates. The effects are particularly stunning among white females 15 to 24 years of age. Since laws imposing a 24-hour waiting period before an abortion can be performed and requiring minors to secure the consent of both parents prior to having an abortion went into effect in the early 1990s, abortion rates among that group have dropped by 65 percent. To be sure, some of the decline in Mississippi's abortion rates is due to abortion-minded women traveling to neighboring states with less restrictive abortion laws. But exports cannot explain all of the observed reductions in in-state abortions. Our analysis suggests that abortion rates have fallen because fewer women are choosing to become pregnant and, among those who do, fewer are choosing to have abortions. Hence, if, in President Clinton's words, one wants abortions to be "safe, legal, and rare," laws making them *more* costly are a way of promoting that goal.

## Abortion on Demand?

If abortions are cheap, there will be more of them. In many cases, the child who would have been produced by the pregnancy would have burdened the mother unduly. She could be a single college student who finds herself pregnant during her sophomore year. She is no longer dating the father, and is in a very tough spot. The baby would force her to leave college, becoming a single mother without any hope of professional employment in sight. It is less costly to terminate the pregnancy and get on with her life.

She could be a mother of four who has a surprise pregnancy at age 38, and whose next youngest child is 12. She and her husband can finally see the light at the end of the tunnel, and this child would delay her "empty nest" date another 20 years and cause her husband to work until he is well past 65, since he is now 47. The couple may choose not to have the child.

A single mother with three children already. Each of her children has a different father, and she's not entirely sure who they are. She's only going to get another $100 a month in public assistance because of this baby, which will drop to only about $50 or $60 extra after a year or so, and the money never lasts past the 25th of the month as

it is. She is trying her best to raise her first three children better than she was raised, and this pregnancy may be the straw that breaks the camel's back.

What about the 26-year-old career woman? Let's say she's married without any children. She wants children one day, but this little bundle of joy is a little ahead of schedule. She's up for a promotion at the bank in three months and she knows being pregnant will sink her chances. She must choose between her job and her child.

Adoption is an alternative to abortion, of course, but not one that is much encouraged by current public policies. This option is particularly problematic for minority women owing to the chronic excess supply of adoptable infants in that segment of the market. Such women may choose abortion to avoid condemning their babies to an endless series of foster home placements.[1]

## Abortion in Mississippi

Mississippi has never been considered to be a big abortion state. The high water mark in abortions was reached in 1991, when a total of 8,184 abortions were performed there.[2] Some individual clinics in New York City performed more abortions during 1991 than were performed throughout the entire State of Mississippi that year.

Of the 8,184 abortions performed in Mississippi during 1991, 6,142 (or 75 percent of them) were performed on Mississippi residents. Another 1,432 Mississippians had abortions out of state in 1991, yielding a total of 7,574 Mississippi residents who received abortions that year. In addition, approximately 600 women residing out of state had abortions in Mississippi during 1991. This influx of non-Mississippi women is explained by the fact that Mississippi's more restrictive abortion laws (described more fully below) did not become effective until July 1991, while Louisiana's law at the time was more restrictive than Mississippi's, perhaps sending abortion-minded Louisiana women east across the Mississippi River. Jackson, Mississippi, abortion clinics are closer to Louisiana's northeastern parishes than is the nearest Louisiana abortion provider in Shreveport. Also, as just mentioned, for many years it was much easier to get an abortion in Mississippi than in Louisiana, as was reflected in the greater numbers of non-Mississippi residents receiving abortions in Mississippi. No other substantial area of any bordering state is closer to Mississippi's

[1]The role played by the decline of the traditional American orphanage (and the corresponding rise of foster care) on the placement of children in adoptive families is analyzed in Shughart and Chappell (1998).

[2]All of the data reported herein were taken from State of Mississippi (various years).

abortion clinics. Also, the other states bordering Mississippi (Arkansas, Tennessee, and Alabama) have similar or less restrictive abortion laws than Mississippi has had at any given time since abortion was legalized.

Even though Mississippi has a relatively low number of abortions, abortion rights have been as hotly debated in the state as they have been elsewhere. Mississippi passed an implied consent law during the 1980s, requiring a 24-hour waiting period before an abortion could be performed. The enforcement of this law was held up for approximately five years by a temporary restraining order (TRO) issued by a Reagan-appointed judge. The American Civil Liberties Union claimed this court order to have been the longest standing TRO in the abortion arena until it was finally lifted in 1991. The implied consent law required an abortion provider to offer information on alternatives to abortion to women seeking an abortion. The clinic then had to wait at least 24 hours before the abortion could be performed. The required information could be supplied in the form of a video or a brochure; the patient's questions could be answered by the clinic's receptionist. The patient was not required to watch the tape or to read the brochure.

Also in 1991, the state legislature passed a law requiring minors to receive permission from both parents before having an abortion. This law was not implemented immediately, but took effect on July 1, 1993. Prior to this date, parents were notified of the abortion only after it had been performed. In a family in which a minor pregnant female lives with both of her natural parents, the parental consent law requires both parents to approve of the abortion. If the parents are divorced, permission can be granted by the one having sole custody. If the minor's divorced parents have joint custody, then both parents must consent. If one parent is deceased, or cannot be found after a reasonable search, then the remaining parent can give consent for an abortion unilaterally. Adoptive parents have the same rights as the minor's natural parents. Stepparents have no say in the matter.

Another regulation that has been implemented by the State Health Department's office of licensure redefines what qualifies as an abortion clinic. In this manner, the state appeared to be opening a two-front offensive on abortions in Mississippi. The first two measures—the implied consent law requiring pre-abortion counseling and a 24-hour waiting period; the other requiring parental consent—were directed at women wishing to terminate a pregnancy. The action taken by the State Health Department appears to have a dual purpose. The regulation states that any medical facility that performs 10 or more abortions a year will be considered to be an abortion clinic. As such, any public or private hospital that performs 10 abortions annually will

no longer be considered a hospital by the state. It will be reclassified as an abortion clinic.

It could be argued that this regulation was enacted as a way of identifying the state's abortion providers in order that proper training of the staff, medical safety, and sanitation concerns could be monitored by the state, and patients' freedom from harassment could be ensured. Since Mississippi Highway Patrolmen are not posted outside those facilities considered to be abortion clinics yet, one could conclude that the state may have had other motives. Abortion proponents claim that this step was taken to threaten local hospitals and obstetrician-gynecologists who may have performed abortions just one or two times a month. Most small town hospitals and doctors would rather that their facilities not be deemed abortion clinics by the state.

A new law, recently enacted by the legislature and signed into law by Governor Fordice, updates the implied consent statute. Under the old law, women seeking abortions needed only to view a video, which they could sleep through if they wished, or take a brochure, which they were not required to read. The new law, which went into effect on July 1, 1996, requires the abortion physician to consult personally with the woman during her first visit to the clinic. The doctor must outline all of the woman's options (carrying the baby to term and keeping the baby; adoption upon the birth of the baby, even going so far as to provide sample adoption contacts; as well as discussing the medical implications if the woman chooses to go through with the abortion). This requirement cannot be fulfilled by a receptionist or even by a registered nurse. The woman must still wait for 24 hours if she chooses to have the abortion. No data are available yet for the months since this new requirement went into effect. However, an employee of New Women's Medical Clinic, Mississippi's largest provider of abortions, stated that this new requirement of the consultation with the doctor has increased the number of women who do not return after the initial visit, compared with the number of women who failed to return after a consultation with the receptionist or being provided with printed material or an informational video.

## The Impact of Legal Obstacles on Abortion Rates and Pregnancy Rates

If abortions are made more costly, there will be fewer of them. Abortions, in other words, follow the law of demand. To be sure, the substitute for an abortion is a newborn baby in the maternity ward, and this is not the desired outcome in a large number of cases. But even though the demand for abortions may be less sensitive to price

than, say, the demand for shoes, we nevertheless expect the number of abortions to fall as their price goes up. Only the magnitude of the effect is in question.

As the data in Table 1 indicate, the number of abortions performed in Mississippi and on Mississippi women who traveled out of state continued to rise through 1991, and has been in decline since. The relative impact that changing mores and changing prices have had upon these numbers is hard to gauge. Surely some portion of both the increase through 1991, and the reduction since, can be attributed to the moral climate as it pertains to the level of acceptance of abortion within a family or community. It is nonetheless clear that, along with other socioeconomic factors that we have not been able to measure, since 1991 Mississippi's abortion regulations have resulted in a reduction of over 56 percent in the number of abortions performed in Mississippi. The numbers of Mississippians receiving abortions have also declined, although not as greatly. The decline in this case was approximately 18 percent.

Additional insights into the effectiveness of Mississippi's abortion laws can be gained by examining the rate of abortions as it relates to live births in various age and race groups. The key events are that, beginning July 1, 1991, all females must wait 24 hours after being counseled by the abortion clinic staff; beginning July 1, 1993, minors must also obtain prior approval from both parents. Table 2 shows changes over time in the abortion rates of white females and nonwhite

TABLE 1

MISSISSIPPI ABORTIONS

| Year | Abortions Performed in Mississippi | Abortions Performed on Out-of-State Residents | Mississippi Abortions Performed In-State | Mississippi Abortions Performed Out-of-State | Total Abortions Performed on Mississippians |
|---|---|---|---|---|---|
| 1988 | 5,170 | 787 | 4,383 | 1,711 | 6,094 |
| 1989 | 5,490 | 929 | 4,561 | 1,887 | 6,448 |
| 1990 | 6,842 | 1,551 | 5,291 | 1,551 | 6,842 |
| 1991 | 8,184 | 2,042 | 6,142 | 1,432 | 7,574 |
| 1992 | 7,555 | 1,760 | 5,795 | 1,583 | 7,378 |
| 1993 | 6,002 | 1,174 | 4,828 | 1,571 | 6,399 |
| 1994 | 3,979 | 165 | 3,814 | 2,255 | 6,069 |
| 1995 | 3,563 | 123 | 3,440 | 2,764 | 6,204 |

SOURCE: State of Mississippi (various years).

TABLE 2

ABORTIONS PER 1,000 LIVE BIRTHS, WHITES (W) AND NONWHITES (NW), BY AGE

| Year | Total (W/NW) | Less than 15 Years of Age (W/NW) | 15–19 Years of Age (W/NW) | 20–24 Years of Age (W/NW) | 25–29 Years of Age (W/NW) | 30–34 Years of Age (W/NW) |
|---|---|---|---|---|---|---|
| 1988 | 118/227 | 540/285 | 265/117 | 108/122 | 67/120 | 86/133 |
| 1989 | 121/133 | 531/228 | 250/120 | 120/126 | 72/124 | 81/143 |
| 1990 | 149/163 | 613/292 | 290/157 | 152/158 | 89/150 | 101/165 |
| 1991 | 178/199 | 690/287 | 317/177 | 189/198 | 105/197 | 124/190 |
| 1992 | 158/197 | 525/286 | 256/162 | 181/211 | 98/195 | 103/193 |
| 1993 | 114/170 | 489/243 | 203/137 | 123/186 | 74/162 | 82/175 |
| 1994 | 65/125 | 191/157 | 96/87 | 73/143 | 39/131 | 55/118 |
| 1995 | 59/115 | 346/156 | 96/80 | 60/130 | 43/134 | 39/111 |

SOURCE: State of Mississippi (various years).

females. (These data refer to abortions taking place in the State of Mississippi, including those performed on out-of-state residents.)

It is obvious when Mississippi's parental consent law went into effect. It was July 1, 1993, thereby raising new obstacles to abortion for half of that calendar year. Parental consent was law for all of 1994, as one can tell based on the lower ratio of abortions to live births for women of all ages. It appears that the abortion rate for white females under 15 years of age climbed back up in 1995. However, it should be noted that abortions were relatively constant for nonwhite females under 15 from 1994 to 1995. Live births dropped from 1994 to 1995, possibly due to the by-then common knowledge that abortions would not be so easy to get keeping the pregnancy rate down through a combination of birth control devices and abstinence from sex. It is also noteworthy that the abortion rate for those females aged 15 to 19 remained relatively constant from 1994 to 1995. Also keep in mind that this is a much bigger sample (about 12 times larger) than those females under 15 getting abortions.

The abortion rates for women 20 years of age and older also declined beginning in 1993, but not to the same extent as did those for females younger than 20. This may be due in part to the fact that women in this age group do not need parental consent to receive an abortion.

At least as far as Mississippi is concerned, young (under 20) white females have always had significantly higher ratios of abortions to live births than nonwhite females. A possible explanation for this difference

can be found in the explosive birth rates of nonwhite females below 20 years of age compared to their white counterparts. Data on live births per 1,000 females indicate that nonwhites under the age of 15 have fertility rates around seven times higher than whites of the same age, and twice as high for women in the 15 to 19 age group. The disparity in birth rates for those under 15 years of age may explain the high rate of abortions for white females. Only 57 white females under the age of 15 became pregnant in 1995, while well over 300 nonwhite females in this age group did. A small (five or so) shift in the number of abortions performed on white females under 15 would cause a tremendous change in the abortion rate because the sample size is so small. On the other hand, the higher abortion rate for white females could be explained by attitudes within their families that make abortion more acceptable as an alternative to carrying the child to term. It is also clear, though, that a large number of the parents of both white and nonwhite females under the age of 15 do not accept the proposition that unwanted pregnancies should be terminated automatically: An abortion rate of 59 per 1,000 live births translates into about three abortions among the 57 white females under the age of 15 who became pregnant in 1995; the corresponding figure for nonwhite females is about 34 abortions out of 300-plus pregnancies.

Abortion rates among white females were about twice as high as those of nonwhite females before parental consent became the law in Mississippi. After the law changed, white females in the 15 to 19 age group saw their ratio of abortions to live births cut by over 65 percent from its peak in 1991. Similarly, nonwhite females, whose abortion rates generally ran around 40 to 50 percent lower than those of whites, also saw a significant drop (of about 50 percent) in the abortion ratio from its 1991 high. This decline kept the abortion rates of nonwhites consistently lower than, albeit now closer to, those of white females.

The bulk of live births and abortions is seen between the ages of 20 and 34. The abortion rate in this age group is interesting, if only for the reason that it differs so much from the corresponding figures for teenagers. Although white females in the 20- to 24-year-old age group had about the same abortion rates as nonwhite females from 1988 through 1991, the ratio of abortions to live births for white females in this group dropped significantly beginning in 1992—so much so that only four years later, the ratio is about half that of nonwhite females, and seems to be holding steady. This dramatic change, which factors in a steep drop in nonwhite abortions in this age group, can be partially attributed to a rise in out-of-state abortions. The abortion clinic in DeSoto County, Mississippi, has closed, forcing

abortion-minded Northwest Mississippians to travel to nearby Memphis, Tennessee. But a shift to out-of-state abortion providers cannot be the only explanation for this large drop. It could be that these women are avoiding unwanted pregnancies to a greater extent or choosing not to have abortions.[3] Part of the decline can be attributed to Mississippi's right-to-life movement which is very aggressive in white churches.

A similar progression can be observed among 25- to 29- and 30- to 34-year-olds. In both age groups, the abortion rates of white females were about half those of nonwhites. While nonwhite females experienced a drop of 30 to 40 percent in their abortion rates from 1991 to 1995, white females have seen a decline of 60 to 65 percent. Once again, many whites as well as nonwhites are now leaving Mississippi for abortions (compare the 56 percent drop in abortions performed in-state between 1991 and 1995 with the 18 percent decline in abortions performed on Mississippians over the same period). However, as with the 20- to 24-year-old age group, the abortion rates of white Mississippi females 25 years old and older have declined significantly since 1991.

The shift toward out-of-state abortions may continue as in-state abortions decline. Approximately 45 percent of the abortions performed on Mississippians out-of-state take place in Tennessee and Alabama. Both of these states maintain relatively liberal abortion laws in comparison with Mississippi and Louisiana. As evidence of this, over 1,300 Mississippi women had abortions in Alabama and Tennessee during 1995, while no Mississippi women had abortions in Louisiana in either 1994 or 1995. In 1991, 265 women from DeSoto County, Mississippi, had abortions in-state. Not one woman from DeSoto County had an abortion in Mississippi in either 1994 or 1995, though. In Lafayette County, Mississippi (the location of the University of Mississippi's main campus), the number of residents receiving abortions in-state dropped from 82 during 1991 to only six in 1994 and eight in 1995. This decline can be attributed in large part to the aforementioned closing of an abortion clinic in DeSoto County, Mississippi, which borders Shelby County (Memphis), Tennessee. In 1991, there were 250 abortions performed in Mississippi abortion clinics on residents of Forrest County, which is home to the University of Southern Mississippi. In 1995, barely 100 Forrest countians had abortions in Mississippi. Many abortion-minded Forrest County

[3]These conclusions are consistent with the recent findings of Brown and Jewell (1996), who report evidence from the State of Texas supporting an economic model of fertility choice. In particular, they find that the residents of counties with longer travel distances to the nearest abortion provider have lower abortion *and* pregnancy rates.

women may have traveled to Mobile, Alabama, in 1994 and 1995. At the same time, abortions in the state capital area (Jackson) have remained relatively stable. Perhaps this can be attributed to the state's policy of classifying as an abortion clinic any medical facility performing ten or more abortions per year, thereby reducing the number of facilities willing to provide them.

The state now has three abortion clinics, two in Jackson and one on the Gulf Coast. The cost of traveling to these locations may explain the steep drop in abortions in northern Mississippi counties other than DeSoto and Lafayette. Abortion rates in many Delta (west central Mississippi) counties have declined substantially, while the reductions have been smaller in counties in close proximity to Jackson or the Coast. Many eastern Mississippi counties have also witnessed large drops in in-state abortions. However, it is clear that many abortion-minded east Mississippi women are now traveling to Tuscaloosa or Birmingham, Alabama, to have the procedure performed.

## Mississippi's Abortion Future

The law requiring the abortion doctor to consult personally with the abortion patient 24 hours before an abortion can take place has just gone into effect. The initial report from the New Woman's Medical Clinic is consistent with the hypothesis that obstacles to abortion reduce the number of women who choose that option. However, if more and more women fail to return for their abortions after the initial consultation, the clinics may make adjustments to provide a calming atmosphere where a woman will feel comfortable with the doctor personally and with her decision to terminate her pregnancy. Obviously, some clinics will do better jobs of this than others. It remains to be seen whether the consultation requirement will cause the number of abortions performed in Mississippi to decline further.

The State of Mississippi has not outlawed abortion, but it has made it more costly to get one. These actions have clearly placed a burden on abortion-minded Mississippi women. But those women who are resolute in their desires to have abortions can wait a day, or travel out of state to terminate their unwanted pregnancies. If Tennessee or Alabama impose their own abortion restrictions, it will obviously make it even harder for some Mississippi women to get an abortion.

The important point, though, is that the placing of relatively minor obstacles in the path of abortion-minded women seems to have dramatic effects in reducing abortion rates. One interpretation of the evidence from Mississippi is that many abortions are in fact performed as matters of expedience. Given the chance to reconsider their deci-

sion, large numbers of women choose to carry their babies to term. What is perhaps more important is that the evidence also seems to suggest that restrictions on abortion reduce the number of women who become pregnant in the first place. Far from interfering with a woman's right to choose, obstacles to abortion help shift that choice back to the conceptual event that creates the life that low-cost access to abortion places at risk.

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