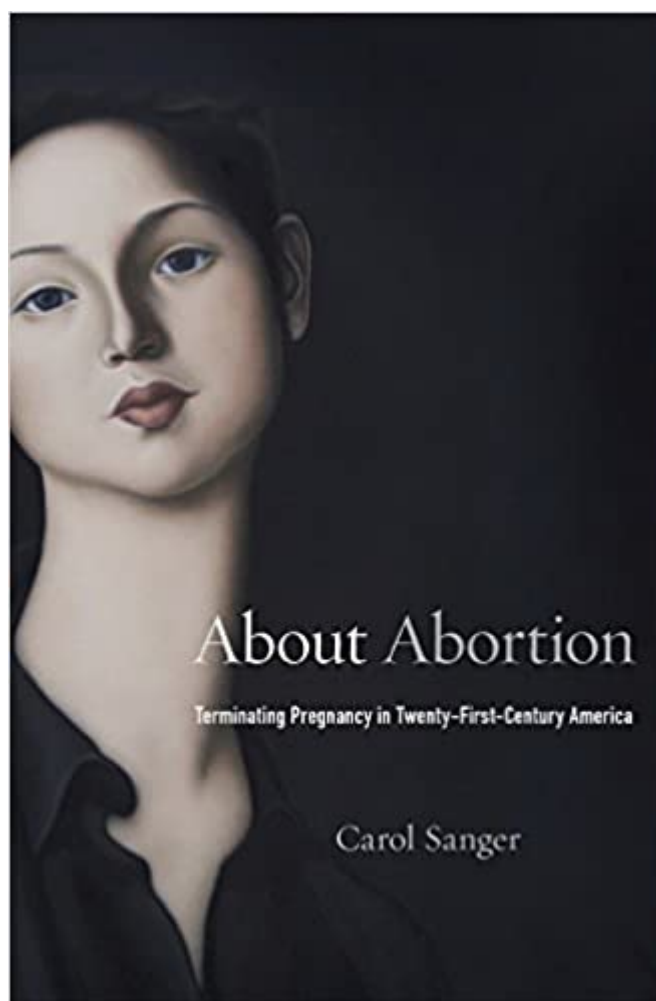


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# About Abortion: Terminating Pregnancy In Twenty-First-Century America



## Synopsis

One of the most private decisions a woman can make, abortion is also one of the most contentious topics in American civic life. Protested at rallies and politicized in party platforms, terminating pregnancy is often characterized as a selfish decision by women who put their own interests above those of the fetus. This background of stigma and hostility has stifled women's willingness to talk about abortion, which in turn distorts public and political discussion. To pry open the silence surrounding this public issue, Sanger distinguishes between abortion privacy, a form of nondisclosure based on a woman's desire to control personal information, and abortion secrecy, a woman's defense against the many harms of disclosure. Laws regulating abortion patients and providers treat abortion not as an acceptable medical decision but as something disreputable, immoral, and chosen by mistake. Exploiting the emotional power of fetal imagery, laws require women to undergo ultrasound, a practice welcomed in wanted pregnancies but commandeered for use against women with unwanted pregnancies. Sanger takes these prejudicial views of women's abortion decisions into the twenty-first century by uncovering new connections between abortion law and American culture and politics. New medical technologies, women's increasing willingness to talk online and off, and the prospect of tighter judicial reins on state legislatures are shaking up the practice of abortion. As talk becomes more transparent and acceptable, women's decisions about whether or not to become mothers will be treated more like those of other adults making significant personal choices.

## Book Information

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## Customer Reviews

Carol Sanger understands that abortion is never an isolated event, but one that reflects the complicated realities around it. There is a great mind at work here, but one with a woman's body, an understanding heart, and a hope that every child will be born loved and wanted. (Gloria Steinem) This remarkable book goes beyond abortion law and abortion politics to illuminate abortion as a lived experience, and a common one at that. A perspective far too often missing from a debate with no end in sight. An essential and timely warning to all of what happens when a constitutional right is narrowed down to invisibility. (Linda Greenhouse, author of *Becoming Justice Blackmun: Harry Blackmun's Supreme Court Journey*) Sanger takes readers on an insightful, original, and eye-opening guided tour of the practices and culture of abortion. Even as pro-life legislators enact laws that nominally aim to provide women with information, she shows that women already know what abortion is. They know because, as Sanger persuasively argues, abortion implicates everything we deem important: life, death, sex, family, freedom, equality, and more. (Michael C. Dorf, coauthor of *Beating Hearts: Abortion and Animal Rights*) Clear and persuasive. (Margaret Talbot *New Yorker* 2017-04-03) The abortion book I didn't realize I was waiting for. Sanger (no relation to Margaret Sanger) digs into the roots of privacy around this personal decision and how it became more of a forced secrecy for so many. Sanger lays out the self-feeding loop of abortion silence: a fear of others finding out rather than a choice not to disclose. She examines post-Roe laws and court cases that have had direct or indirect implications for abortion restrictions to make her case that normalizing abortion could end this compulsory silence. The good news? It's in our very capable hands. [Sanger] provides new tools and frameworks for forging ahead while knowing we are already on the right path. (Katie Klabusich *Rewire* 2017-04-13) Sanger makes a compelling case for how a private matter: choosing to have an abortion has been so politicized and stigmatized that it has been transformed into something that women feel they must keep secret, lest they set themselves up for public shaming. (Jordan Smith *The Intercept* 2017-05-09) Excellent. [Sanger] supports abortion rights, but [she] also presents the opposition to abortion fairly. Her observations are nearly always insightful and often nicely trenchant. Sanger is at her best and most original in discussing the secrecy surrounding abortions, which she sees as the biggest obstacle to public acceptance. Her argument is that even though abortion is legal, women who have an abortion tend to behave as though it weren't.

They keep it a secret even from their friends in a way that goes beyond privacy, and suggests fear of recrimination. (Marcia Angell New York Review of Books 2017-06-22)[Sanger] deconstructs the contemporary way abortion is debated, offering direction and suggestions for a new way to discuss it in the 21st century by removing the stigma silence produces. Sanger covers topics that include fetal imaging, parental consent, men and abortion, and assumptions about women who seek abortions. This is perhaps the best book ever written on the multiple facets surrounding abortion politics, law, and regulation. (D. Schultz Choice 2017-08-01)

Carol Sanger is the Barbara Aronstein Black Professor of Law at Columbia Law School.

Excellent treatment of the local and moral issues surrounding abortion. Of particular interest is the way that Sanger focuses on the issue of secrecy and the implications of the secrecy that typically surround abortion. Illuminating.

Wonderfully and intelligently written. A bit repetitive at times, but otherwise, Sanger nails it.

This is a book about the law and meaning of abortion. Sanger points out that, even direct regulations of abortion aside, American law rewards childbirth over abortion, for example, when the Supreme Court upheld a law treating foreign-born children of citizen mothers differently than foreign-born children of citizen fathers, Sanger notes that it pointed out that “even before the child has been born, its mother had already engaged in deserving conduct by choosing childbirth over abortion, which the Court recognized as a real alternative even where locally illegal. Likewise, our immigration policy for a while favored victims of China’s one-child policy, both men and women; then it faced accusations of incentivizing illegal entry, especially by men who claimed derivative protection from coercion against their wives but might never in fact send for those wives. In the second Bush administration, the AG told the BIA that spouses couldn’t get the same protections as women who actually had been forced into abortion or sterilization. Sanger also tells the story of a woman who was kept in jail awaiting sentencing on an unrelated charge by the judge specifically so she couldn’t get out and have an abortion, as well as similar instances of judges using unrelated events to coerce women into giving birth. Graphic images have their own legal roles to play while policymakers insist that forced ultrasounds will make women reconsider abortion (they don’t), graphic photos of allegedly aborted fetuses have caused

First Amendment disputes in advertising as well as in prisons, where one warden was allowed to bar the display of such images because they upset inmates. There are a lot of horrible stories of pressure and shaming in the book, such as the woman who applied for a job at the police department and was given a polygraph asking whether she had had an abortion and with whom she had gotten pregnant. “In civil, criminal, and family law custody cases, evidence of a prior abortion has been admitted in court to show that a woman litigant is undeserving, untrustworthy, or unmotherly and that she should not prevail; while sometimes these cases are reversed on appeal, the fact is that abortions are used against women. One divorce case allowed the husband’s attorney to attack the wife’s credibility because either she was “traumatized by the abortion or worse, she wasn’t traumatized by it.” Sanger argues that abortion is presently more about secrecy than about privacy because of this shame connection. “Privacy is valued for what it provides to those who choose it: a decision taken for privacy is credited as reflecting a person’s will; it is an exercise of autonomy. By contrast, the decision to keep a matter secret in the context of abortion is often a response to the threat or prospect of harm, whether harassment, stigmatization, or fear of violence. But silence about abortion is part of what keeps it shameful: because very few women talk about their abortions, “it seems as if it isn’t exactly happening, or at least it isn’t happening to anyone you know or care about, just as Justice Lewis Powell in 1986 thought he’d never met a gay person when he’d had gay clerks. Sanger also includes fascinating accounts of the history of fetal representation as tiny men (of course) moving to the famous Life photos, which were of dead fetuses that had been placed against a background that made the womb disappear. But women’s bodies had been erased centuries before ultrasound images obscured fetal connection to the woman. (She also tells stories of taking or painting pictures of dead babies/children as a mourning practice in earlier times the rise of photography allowed middle-class families to access the kind of remembrances already available to the wealthy; the lifelike pictures of dead children could cost up to ten times as much as a standard studio picture.) Also, I wasn’t really aware why early miscarriages weren’t recognized as such: “the embryo is typically enclosed by membranes which have to be peeled away to see the actual entity, and early on also looks reptilian so that the expulsion was often regarded not as a failed pregnancy but as a

monstrous birth. Now, however, with the spread of ultrasounds, at least for wanted pregnancies a child's social birth—the incorporation of a child into its family—often precedes biological birth. (Sanger doesn't spend much time on race and class.) Still, her story is one of continuity—images weren't necessary for fetal images to override women's choices and lives. The few discussions of non-US abortions are largely about how abortion doesn't have a fixed meaning: abortion is a crime in Thailand, but in 2010, over 2000 fetal corpses were found in a Buddhist temple in Bangkok, where the clinics had been sending the corpses for cremation. "[R]eports of hauntings by disrespected fetal spirits began to spread. Apologetic local citizens came to the temple with gifts of milk and bananas. After deciding that the spirits had been appeased, worshippers began to regard them as harbingers of good luck. And the trend in fluid meaning in the US is anti-choice; opposition to abortion on moral grounds has increased, especially among younger women, and Sanger connects this to the "increased moral status of the fetus along with their inability to remember the fallout from illegal abortions. Forced ultrasounds are used to coopt women into the social category "mother" because of the role of the ultrasound in wanted pregnancies. Lawyers for minors seeking judicial bypass of a parental consent or notification requirement routinely tell them to look at the ultrasound so that they'll seem mature enough to the judge. One of the most compelling chapters in the book, in fact, is about the meaning of bypass hearings. What happens? Either they're rubber stamps—pure humiliation rituals—or the judges impose their own morality on girls, reasoning that the act of becoming pregnant signals immaturity sufficient to deny the bypass request. Sanger emphasizes that even the success stories, including states in which nearly every application is granted, are about forcing young women to expose and demean themselves by recounting the circumstances of the pregnancy, explaining their life plans in ways teens often can't, no matter what their situation, especially not in the intimidating environment of a courtroom full of strangers—and even answering questions about what contraception they're using. The procedure "makes her appear an unreliable sort of girl from the start, given that by definition she's had sex and is trying to make an end run around her parents. The anonymity of the procedure, which is important for a young woman,

protection, nonetheless contributes to the aura of furtiveness. There is irony amidst all this sneakiness, for these are not the girls who typically turn up in court for misconduct. Judges punish young women for sounding like teenagers, for example vowing not to have sex again and also saying that they plan to get on contraception. And judges never approve petitions from minors who appear a second time connected to the remorse a minor must show to be deemed mature enough to avoid parental notice/approval. In 1992, a judge said that he rarely grants bypass petitions, but he would if a white girl were raped by a black man; he was censured by the state supreme court, but Sanger points out that his racist example was an exception to his general policy of denying bypasses due to his personal beliefs about abortion, which went undiscussed and uncensored. Even when the bypass is granted, it's punishment for having sex and seeking an abortion; some parents know about the abortion but deny consent even knowing that their daughter will succeed at a hearing: "This is your responsibility, not mine." Sanger compares this to counseling regimes in European countries where no one else's consent is required, but notes that they probably wouldn't work as well in the US, where even county court clerks feel justified in denying marriage licenses to couples they don't approve of. Sanger connects bypass procedures to the history of seeking pardon in court women are less often petitioners for forgiveness in court proceedings because excuses like being drunk or becoming overcome with rage at an insult weren't considered as exculpatory for women, and "because subjection was an everyday feature of women's lives, symbolic submission such as pleading on one's knees was less impressive coming from them than from men. The absence of female pardon-seekers also resulted from substantive law capital crimes most associated with women were the unpardonable witchcraft and infanticide. Another interesting chapter asks, somewhat seriously, how would men think about abortion if they were the ones who got pregnant? This is a difficult counterfactual because if men got pregnant they'd be, socially, women. But focusing on women's bodies as the locus of abortion's meaning obscures the gender-based judgments that motivate abortion regulations, and make it harder to see the post-pregnancy consequences of motherhood as relevant. Having, and probably raising, a child is what makes many mothers' adult lives different from most fathers', which is why unwanted pregnancy is an equality issue. Sanger examines

how men in relationships react to abortions. Cohabiting men generally support whatever their partner wants to do, and most exes of women who aborted report that they were unready for fatherhood and wouldn't have wanted a kid with her anyway. But Sanger thinks that even more information is available from men's actual behavior regarding the disposition of cryogenically frozen embryos; abortion clauses in commercial surrogacy clauses; and cases where men have to decide whether to withdraw care from brain-dead or comatose pregnant women. Sanger concludes that men give basically the same reasons for choosing not to bring a fertilized egg or fetus to term that women do: the interference with their life plans and the interests of their current children; their unwillingness to extend a relationship with the other parent or create a relationship with the future child, including the creepiness or tragedy of knowing that there's someone genetically related to you out there even if you give the infant up for adoption; the difficulties of caring for a disabled child (the most common scenario for the commercial surrogacy cases, where the child is usually wanted, but only if it's conventionally healthy). These scenarios aren't exactly analogous, because the social meaning and obligations of fatherhood still differ from that of motherhood, but they're probative of how men would think about abortion if they were pregnant. Men who want embryos destroyed are allowed to speak more crassly about how they want to be able to have a lot more sex with different people in these cases than young women are in bypass cases, but they both want freedom to act without the constraint of a child. And men in the surrogacy and embryo cases are generally well-off (that's how they afforded these procedures in the first place), so they aren't generally worried about current finances, but they do worry about the effect on existing children's inheritances. They are also concerned with disability; men in surrogacy contracts were less concerned about adding children than about adding certain kinds of children. By contrast, women choosing abortion often find financial concerns to be central: three-quarters of women seeking abortions in one study said that they couldn't afford a baby at present, often because of the needs of existing children. Similarly, men didn't fear the disruption of their education and careers in these scenarios, because they were not as subject to those risks, but women regularly did. Women, like men, desire to have children they can provide for both materially and emotionally and when they think they can, they may prefer not to have those children. In sum, it turns out that most of men



reasons for terminating a pregnancy or destroying an embryo — wrong time, wrong partner, enough kids, too tired, already committed enough — are strikingly similar to the reasons given by women for ending an unwanted pregnancy. Differences seem to fall less along absolute gender lines than along such markers as situational stability, relationships, support networks, finances, and stamina. But in our public discourse, the impact of “sex, stigma, and [perceived] selfishness” lead women’s choices to be condemned. Men didn’t suffer for being revealed to have had sex; they were willing to assert the right to enforce abortion clauses in surrogacy contracts and be publicly identified as fathers who rejected disabled children. Women are expected to do more caring work, and so their abortion choices are deemed selfish when they are acts of profound self- and other-care. Sanger ends the book with meditations on abortion revelations as a means of diminishing the shame and stigma surrounding abortion. People who hear abortion secrets tend to have a more accurate understanding of how common abortion is and the reasons women have them. While Sanger doesn’t argue that women have an obligation to disclose, given the potential consequences, she does argue that more openness will lead to more understanding of the truth of abortion. Open secrets — such as the prevalence of abortion and the prior use of maternity homes — have social value in “let[ting] a disfavored practice go on without anyone having to acknowledge or condone it” but that “is not good enough. Among other things, these practices can lead to “preference falsification, where people wrongly think that their private beliefs aren’t widely shared. This is an issue in US politics, as well as in the sudden collapse of the Berlin Wall, where Communism’s support proved much weaker than many people thought.

It may seem there is nothing new to add to the abortion debate, but Carol Sanger’s extraordinary book offers a fresh vantage point on the topic. It explores the imagery surrounding pregnancy and abortion, the way we talk (or don’t talk) about abortion, and the cultural forces that shape the regulation of pregnancy and abortion in the United States. It draws from popular culture, literature, visual arts, and an astonishing range of other sources. Sanger is the rare legal scholar who writes with sophistication and nuance, but entirely without jargon. This is an important book, and an absorbing read from beginning to end.

First, a couple of details on my background: I am actually a male schoolteacher based in the UK.

Over here, abortion is taught as an aspect of public examination courses in Religious Studies, and most students would encounter this topic between the ages of 15 to 18 while studying medical ethics. Classroom discussions tend to be sober rather than passionate, perhaps because the issue of abortion isn't foregrounded all that much in public life or set against a historical backdrop of highly acrimonious debate, as it is in the US. Most of my pupils - whether religious or not - typically end up adopting the gently held view that while abortion is not a good thing and they would not want the law to grant abortions for frivolous and trivial reasons, that it should be legal and grounded in a woman's right to choose. Some would like to see the upper limit for an abortion reduced from 24 to 18 weeks here. Ironically, this shift occurs after they are introduced to Peter Singer's point that the nervous system of the fetus is sufficiently developed for pain messages to reach the brain at that point in gestation. So I came to Carol Sanger's book (initially attracted by the strikingly beautiful cover - well done the three women who took time to locate a suitable image!) looking for content that would refresh and invigorate my classroom teaching. In this respect, I was not disappointed: the revelations about coerced ultrasound scans, the appalling treatment of minors seeking 'bypass' abortions, Sanger's exposure of double standards when it comes to rare situations when men are left to decide the outcome of a pregnancy or the fate of spare embryos, and her discussion of the significance of artistic renderings of the fetus by Hirst, Nicolas and others, have provided me with a wealth of material to draw on. I also have some new resources to track down (the movie 'Citizen Ruth', Bernard Williams essay 'The Logic of Abortion'). Meanwhile, my younger students will certainly be amused by the Pro-Life interpretation of the satellite image of Hurricane Katrina. I am also persuaded by Sanger's more general argument that the climate of fear and shame that exists around this topic in the US needs to be overcome. Women do need to be encouraged to speak more readily about their experiences of abortion without having to worry about receiving poison pen letters or being publicly shamed and hounded for their decision. This could, I think, create a more level playing field and the eventual passing of laws that are not - as seems to be the case - often informed by an aggressively pursued Pro-Life agenda (though that prospect might have just receded with the election of Trump). There is also one other reason why I have written this review. Although Sanger's style is restrained throughout, I was left feeling very angry by the end of this book. To reiterate, I am moderately Pro-Choice. If this life is the only one we are going to get (as I believe), then a decision about denying that opportunity to an unborn 'being' has to be made sensitively. But the manner in which some judges have dealt with abortion petitioners has left me incredulous. And if they profess to be Christians, then I would suggest that they go and take a hard look at themselves in the mirror. There's very little evidence of agapeistically inclined motivation on

display in some of their judicial musings as far as I can tell. Fortunately, over here in the UK, Baroness Warnock has been influential in shaping public policy in the sphere of medical ethics. Her book 'Dishonest to God: On Keeping Religion Out Of Politics' is one I would therefore recommend to those who want to explore further aspects and implications of the controversy surrounding beginning and end-of-life issues, as well as the ethics of embryology.

This is an amazing book. It is listed here as a "law book," and the early sections on the law are brilliant and very readable. But, the book is so much more! I found something new in every chapter. Professor Sanger illuminates the practice of abortion and attitudes toward it in ways I never would have imagined. I was particularly struck by her optimistic views about the possibility that we (as a culture) will overcome the "secrecy" that has shrouded the practice for so many years.

A brilliant examination of abortion and the political, legal, ethical, scientific, historical, and personal issues it implicates. Carol Sanger is not only an original thinker and scholar, she is a first rate writer. A stunning achievement.

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