

FeAtuRes

Thirty-five Years of **Legal Abortion** in the U.S.:



The Unfinished Agenda

by Marlene Gerber Fried

Introduction

January 22, 2008 was the 35th anniversary of legal abortion in the United States during these years, millions of women have gotten the abortions they needed, without risk to their lives and health. Yet millions of other women have not. Roe v Wade, the Supreme Court decision legalising abortion, left a gap between legality and access which opponents turned into a chasm filled with legal restrictions, unnecessary and burdensome regulations, continued threats and violent attacks on clinics and service providers. Today, abortion is legal but restricted, stigmatised and continually under attack, with the women who are most vulnerable—poor women, women of color, young women—bearing the brunt and facing the greatest obstacles.



The Hyde Amendment

In response to the continuing attacks against the legalisation of abortion, Republican solon Henry Hyde proposed a prohibition of the use of federal funds for abortion services, even in cases of rape, incest, or danger to the mother's life. The US Congress approved the bill in 1976, leaving individual states to support women's access to abortion using their own budget. At present, only 17 states are funding abortion.

In this article, I discuss the erosion of abortion rights since legalisation, the political strategies of opponents and advocates, and the divisions among abortion rights supporters, in order to demonstrate the need for new vision, strategy, and leadership. I come to these issues with a long activist history. I entered the movement in 1977 when the backlash to *Roe v Wade* achieved its first big victory in the Hyde Amendment. This legislation prohibited the use of federal funds for abortion, thereby effectively denying the promise of *Roe v. Wade* to poor women. It also crystallised the race and class dynamics within the abortion rights movement. Ignoring the fact that access to abortion, not simply its legality, was the central concern for women of colour and for all poor women, the pro-choice movement failed to make the restoration of public funding for abortion a priority. Instead, it focused on defending *Roe v. Wade*.

Although I am critical of this political approach, as well as other aspects of the pro-choice movement, I am also unwaveringly committed to the importance of fighting for abortion rights as part of a broader struggle for women's ability to control their lives. Our battle in the US is ongoing. We have lost ground on abortion and face new challenges. For example, our opposition has shifted its approach, talking more about protecting women than defending fetuses. Claims that abortion is violence against women, and attempts to establish links between abortion, mental illness and breast cancer are all part of this strategy, which is designed to undercut the claim that the anti-abortion movement does not care about women. The anti-abortion movement continues to be a formidable

foe. There are no signs that this will change in the foreseeable future.

In the face of losses and ongoing threats, abortion rights advocates are taking a critical look at their own strategies and politics. I will argue that the reproductive justice approach, currently being promoted by women of colour organisations and their allies, offers the best possibility for restoring what has been lost, meeting new attacks, and gaining the full array of reproductive freedoms we have never had. It is the most dynamic and inclusive vision for moving us forward.

While this article focuses on the US, the policy implications and harm are experienced throughout the world. Anti-abortion politics in the US undermines the services and health of millions of people worldwide through actions that include re-imposing the global gag rule, diverting US\$34 million from the United Nations Population Fund to abstinence-only programs in the US, and pushing anti-abortion agenda at all international meetings on women's health and rights.

Abortion Access in the US

While *Roe v Wade* was a tremendous victory for women's health and lives, it was only the first step towards gaining abortion rights for all women. Access remained the unfinished agenda. The attacks began as soon as abortion became legal.

Roe v Wade galvanised the anti-abortion movement. In the year after *Roe v Wade* hundreds of bills were proposed to limit abortion. The movement received a major boost in the 1980s when the presidency of Ronald Reagan moved the Conservative Right, previously on the margins of US politics, to a position of

Roe v Wade

Roe v Wade is among the landmark cases handled by the United States Supreme Court. In 1970, a pregnant Texan Norma Leah McCorvey sought to have an abortion as her pregnancy was a result of rape. If not banned, abortion was usually restricted to cases

where the life of the mother is endangered. Lawyers Linda Coffee and Sarah Weddington filed a lawsuit, charging that the Texas law, represented by Dallas County District Attorney Henry Wade violated the constitutional right of Mc Corvey, who then assumed the pseudonym. The Texas court ruled in favor of *Roe v Wade* then appealed the case to the Supreme Court. By 1973, the Court affirmed that Texas law indeed violated Roe's right, particularly her "zone of privacy," which encompasses marriage, contraception, and child rearing. This zone of privacy also covers a woman's decision on having children, including the termination of her pregnancy.

However, McCorvey changed her position by the 1980s accusing her lawyers of using her to challenge the Texas law. With the launch of her book *I am Roe*, she revealed that she was a lesbian and had been maintaining a relationship with Connie Gonzales. On the same year, after a confrontation with a pro-life advocate, McCorvey converted to Christianity and became a pro-life advocate herself. In 2004, she filed a petition, asking that the Supreme Court to reopen her case and overturn its 1973 decision. Her petition was denied.



Photo by the Public Broadcasting Service



Photo by the Associated Press

Sources: Mc Bride, Alex. "Roe vs. Wade (1973)" in The Supreme Court History. Retrieved from PBS on 7 April 2008 <http://www.pbs.org/wnet/supremecourt/rights/landmark_roe.html>; "Roe v Wade: Key US abortion ruling" (December 10, 2004) Retrieved from British Broadcasting Corporation on 7 April 2008. <<http://news.bbc.co.uk/2/hi/americas/49315.stm>>; "Court rejects motion to overturn Roe v. Wade" (September 14, 2004) Retrieved from CNN on 7 April 2008 <<http://edition.cnn.com/2004/LAW/09/14/roe.v.wade/index.html>>

power. Opposition to abortion and gay rights became the focal points of the Right's anti-woman and anti-sexuality agenda. The anti-abortion movement began to chip away at the legal Right by attacking access. It was highly visible, well-funded, and had evangelical and Catholic churches as its base. Reagan had been elected with strong support from anti-abortion and other conservative organisations. In turn, his administration gave them unprecedented access to political power and resources. Federal monies were channeled to anti-abortion counseling centers and religious organisations to teach abstinence-only sexual education. Illegal action in the form of attacks on abortion and family planning clinics also intensified during this period.

Since that time, abortion opponents have followed a dual strategy. In the short-term, as we shall see, they work to erode access. To achieve their long-range goal of making abortion illegal, they support legislative efforts at the state and federal levels which weaken *Roe v Wade* and could eventually be used to overturn it. This is within their reach. Only one more vote on the Supreme Court is needed. Judicial appointments are one of the high stakes in presidential election.

The two strategies reinforce each other. Campaigns for bans and restrictions build support for further restrictions and for the idea that women should not be able to make their own decisions about terminating a pregnancy. Further, even failed battles case abortion in negative terms and reinforce the stigma.

During the 35 years since *Roe v Wade*, attacks on abortion access — legal, illegal, and sometimes violent — have been persistent. Since 1994, seven people involved in abortion care have

been murdered; there had been 17 attempted murders, 41 bombings, 175 arsons, and thousands of incidents of picketing and threats against clinics which offer reproductive health services¹. There has also been a steady barrage of restrictive legislation such as bans on government funding and abortion procedures, lawsuits, and governmental policies which have significantly decreased abortion access. “Sarah’s” situation reflects the multiple erosion.

*“Sarah” is a 31-year-old mother who works full time, earning US\$1,000 a month with no health insurance. When she was 15 weeks pregnant, she was unable to get an abortion in her home state of Alaska where there are only three abortion providers, and none who perform abortions after 14 weeks. She had to use her rent money to fly to another state, hundreds of miles away, to get one.*²

“Sarah” was one of the fortunate women who, with financial assistance from grassroots abortion funds and a friend who gave her a place to stay, was able to overcome the barriers. Each year in the US, there are thousands of “Sarah’s” women of all ages, religions, races and ethnicities, women in prison, in the military, women who are single and married, who must try to overcome

multiple barriers in order to obtain an abortion. Too many do not succeed.

The prohibitions on funding abortion³ stand as the major economic impediments. Thirty-three out of 50 states, following the lead of the federal government, refuse to pay for abortions. Even in the 17 states that have abortion funding, unrealistically strict eligibility criteria exclude many women who are, nonetheless, too poor to afford an abortion. Although overall abortion rates are dropping, they continue to rise for poor and low-income women⁴ who, like “Sarah,” must use the money they need for other necessities to pay for their abortions, or have babies they cannot afford.

Other restrictive laws and policies also directly curtail access and have had a long-term effect on the availability of abortion services. The number of abortion providers has steadily declined. This has been attributed to many interrelated issues: the attacks on providers; the stigma associated with abortion; the high cost of liability insurance coupled with unnecessary and costly regulations on clinics; and the lack of training in medical schools. As a result, 87 per cent of counties in the US have no abortion provider. Thirty-five per cent of women live in those counties.⁵

Young women face the additional barrier of laws requiring parental consent or notification in order to have an abortion. When combined with other restrictions such as laws mandating that a woman wait a certain period of time between counseling and having her abortion, bans on so-called “partial birth” abortions, and decreasing hospital-based services⁶, a safe and legal abortion can become virtually impossible to obtain.

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Partial Birth Abortion Ban

On November 5, 2003, United States President George W. Bush signed the Partial Birth Abortion Ban of 2003, which prohibits the conduct of abortion procedures during the second trimester, imposing a penalty of two years imprisonment and fines for doctors offering abortion at this stage. The ban is said to be pertaining to the dilation and evacuation method which is used in more than 95 per cent of second trimester abortions. After conducting an ultrasound and administering antibiotic, this method safely opens the cervix and later clears the uterus through either procedures: vacuum aspiration or dilation and cutterage.

Women's groups, civil society organisations, and medical associations such as Planned Parenthood Federation of America, Center for Reproductive Rights, the National Abortion Federation, the American Civil Liberties Union, American College of Obstetricians and Gynecologists, and the American Nurses Association, among many others opposed the ban and even challenged it in the courts.

In their legal brief, PPFA reasoned: "The act will therefore chill physicians from performing any D&E, or will force them at times to alter their practices to avoid criminal prosecution — even if it means proceeding against their best medical judgment. In either event, women's liberty will be unconstitutionally infringed and their right to choose abortion unduly burdened."

Unfortunately, the US Supreme Court in a 5-4 ruling, upheld the ban in 2007.

Sources: "President Bush signs Partial Birth Abortion Ban of 2003" Retrieved from the United States White House on 7 April 2008 <http://www.whitehouse.gov/news/releases/2003/11/images/20031105-1_p35410-21-515h.html>; Planned Parenthood Federation of America. "Summary of Brief Filed by Planned Parenthood In the U.S. Supreme Court in *Gonzales v. Planned Parenthood Federation of America*, No. 05-1382." Retrieved from PPFA on 7 April 2008 <<http://www.plannedparenthood.org/issues-action/abortion/gonzales-brief-14390.htm>>; For medical terms and procedures, see WebMD, <http://webmd.com>

For the past eight years, anti-abortion policies have been in the forefront of President Bush's agenda. He filled high level cabinet and agency positions, federal judgeships and the Supreme Court with people who oppose abortion and contraception. Bush signed the Federal Abortion Ban, which President Bill Clinton had vetoed, and had already been declared unconstitutional by the Supreme Court. His persistence paid off. Despite strong legal precedent, the newly configured Court declared the ban constitutional in 2007.

The assault on abortion is part of a much broader effort to reverse the gains made by the women's, civil rights and welfare rights movements of the 1960s and 1970s. While the attacks have tended to escalate during the periods when Republicans have been in control of the presidency and Congress, they have been continuous throughout the time of legalisation. As a result, abortion and other reproductive rights have been seriously compromised, especially for the most vulnerable women in the US and throughout the world.

Resisting the Anti-Abortion Movement

Abortion rights forces were not prepared for the all out assault following legalisation. The movement that did re-emerge in the late 1970s was shaped in response to the multi-faceted attack on abortion rights. While the earlier organising to make abortion legal had placed it in the context of the broader struggle for women's liberation, post - *Roe v Wade* organisations narrowed their focus. Defending the legal right to abortion became the sole priority. The language and ideology of choice and privacy replaced women's rights and

even abortion rights. This approach was adopted in hopes that it would have wider appeal and expand the base of support for legal abortion, encompassing even those who were conservative on issues of social and economic welfare. Although temporarily successful insofar as it split the Right, it was also highly problematic.

Making abortion rights a matter of individual choice and privacy marginalised issues of access, where they remained until the 1990s when Clinton's election to the presidency provided a temporary respite from the threat of overturning *Roe v Wade*. During this period, new organisations were created which focused on different aspects of access: training more doctors, expanding the provider pool to include advanced practice clinicians, marshalling support for existing providers, directly funding abortions for low-income women and girls, advocating to re-instate public funding, and providing counseling and support for women who have had abortions. Other strategies were directed towards broadening the agenda and making alliances with new constituencies including communities of colour, the LBGTQ movement and youth.⁷

This organising has led to important gains. For example, the grassroots members of the National Network of Abortion Funds, where my activism has been located, raised \$2.6 million last year and provided direct financial assistance to 23,000 women. Medical Students for Choice has 10,000 members and chapters at 123 medical schools. It has successfully expanded training opportunities.

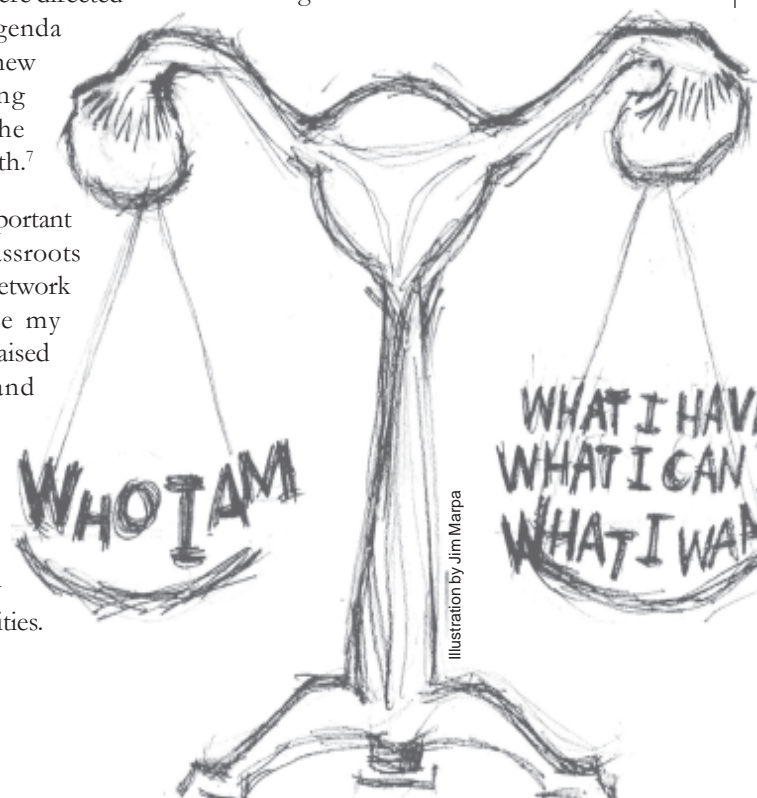
Through the ongoing efforts of other organisations, many family practice doctors now provide medical abortions. However, the overall trend has not been reversed: Access continues to decline; support for restrictions on abortion grows, especially among younger women; and abortion rights supporters are caught in the defensive mode, reduced to fighting in a piecemeal way to hold whatever ground we can.

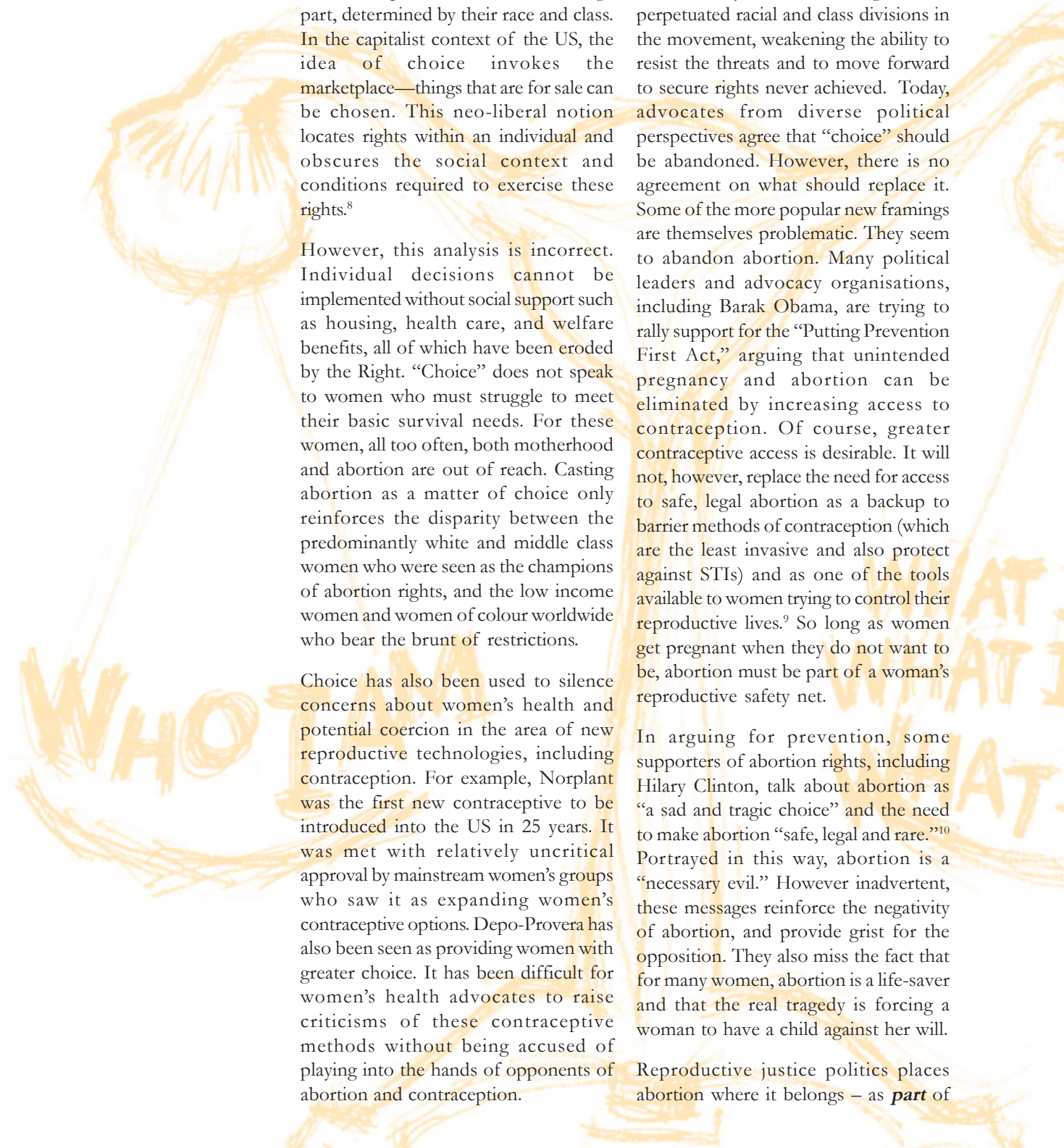
We need a more profound political shift both in terms of power, but also in terms of vision and strategies.

From Choice to Justice

For decades, there has been frustration over the choice framework and single-issue abortion politics. Women of colour have been in the forefront of the critique, arguing that the narrow choice agenda reflects neither the diversity of women's reproductive experiences nor the range of issues which comprise reproductive freedom.

Underlying their objections is the understanding that





women's reproductive lives are, in large part, determined by their race and class. In the capitalist context of the US, the idea of choice invokes the marketplace—things that are for sale can be chosen. This neo-liberal notion locates rights within an individual and obscures the social context and conditions required to exercise these rights.⁸

However, this analysis is incorrect. Individual decisions cannot be implemented without social support such as housing, health care, and welfare benefits, all of which have been eroded by the Right. “Choice” does not speak to women who must struggle to meet their basic survival needs. For these women, all too often, both motherhood and abortion are out of reach. Casting abortion as a matter of choice only reinforces the disparity between the predominantly white and middle class women who were seen as the champions of abortion rights, and the low income women and women of colour worldwide who bear the brunt of restrictions.

Choice has also been used to silence concerns about women's health and potential coercion in the area of new reproductive technologies, including contraception. For example, Norplant was the first new contraceptive to be introduced into the US in 25 years. It was met with relatively uncritical approval by mainstream women's groups who saw it as expanding women's contraceptive options. Depo-Provera has also been seen as providing women with greater choice. It has been difficult for women's health advocates to raise criticisms of these contraceptive methods without being accused of playing into the hands of opponents of abortion and contraception.

The narrowly framed choice agenda has perpetuated racial and class divisions in the movement, weakening the ability to resist the threats and to move forward to secure rights never achieved. Today, advocates from diverse political perspectives agree that “choice” should be abandoned. However, there is no agreement on what should replace it. Some of the more popular new framings are themselves problematic. They seem to abandon abortion. Many political leaders and advocacy organisations, including Barak Obama, are trying to rally support for the “Putting Prevention First Act,” arguing that unintended pregnancy and abortion can be eliminated by increasing access to contraception. Of course, greater contraceptive access is desirable. It will not, however, replace the need for access to safe, legal abortion as a backup to barrier methods of contraception (which are the least invasive and also protect against STIs) and as one of the tools available to women trying to control their reproductive lives.⁹ So long as women get pregnant when they do not want to be, abortion must be part of a woman's reproductive safety net.

In arguing for prevention, some supporters of abortion rights, including Hilary Clinton, talk about abortion as “a sad and tragic choice” and the need to make abortion “safe, legal and rare.”¹⁰ Portrayed in this way, abortion is a “necessary evil.” However inadvertent, these messages reinforce the negativity of abortion, and provide grist for the opposition. They also miss the fact that for many women, abortion is a life-saver and that the real tragedy is forcing a woman to have a child against her will.

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women's lives, human rights and social justice. Abortion is neither *the* center of reproductive freedom, nor out of the picture. Abortion rights are part of a holistic understanding of women's needs. By linking issues, reproductive justice has the potential to draw new constituencies to the reproductive freedom struggle.

Historically, women of colour have organised for reproductive and sexual rights outside of the choice framework. They created their own organisations and coalitions, and re-defined reproductive rights to emphasise the needs of their communities. Overarching socio-economic inequalities and racism shape these communities and the lives of women in them. They have disproportionate rates of poverty, lack of access to health care services and information, high incidences of violence, and poorer health outcomes in all areas.

Examples include the fact that a majority of new HIV cases in the US are among African American and Latin women; Native women experience very high rates of reproductive tract infections; Latinas have proportionately high rates of cervical cancer; Asian American women are the only group to experience a rise

in overall cancer mortality. Consequently, as women from these communities define reproductive rights and justice, they focus on achieving the broad set of conditions necessary for reproductive and sexual freedom. Reproductive Justice provides an expansive understanding of reproductive freedom, which integrates the race, class, gender, and cultural aspects of their lives.

Reproductive Justice politics overcomes another historic feminist divide: the failure to disassociate abortion rights from population control policies. By not providing the necessary support for mothering, and through policies which actively undermine the ability of low income women to take care of their children,¹¹ population control policies devalue the reproduction by women of colour. The lack of government-subsidised childcare and restrictive welfare policies such as those requiring women to work outside the home even if they have young children, makes it difficult for low income women of colour in the US to support their families. It also sends a clear message that they are not supposed to have children.

In a related but more directly punitive approach, state and local governments have increasingly used fetal rights to criminalise pregnant women. Over 200 women have been prosecuted for drug use during pregnancy and for other behaviors which allegedly threaten the health of the fetus. These prosecutions disproportionately affect low income women of colour who are more likely to receive health care in urban, public hospitals where they are subject to state scrutiny and interference. The majority of women charged with "prenatal crimes" are poor and African American.



Despite the strong showing of the Democrats in the polls, the gains of the Roe v Wade are expected to remain threatened after the elections. Contenders Hillary Clinton and Barack Obama have been soft and safe on abortion. Both have only been pushing for pregnancy prevention. Meanwhile, Republican nominee John Mc Cain is most likely to follow the Christian Right on the issue.

Photos from Wikimedia Commons

The threat of prosecution keeps women from seeking prenatal care, medical care during delivery, and follow-up care. This results in an increased number of unhealthy babies and women. Public health and women's advocates point out that if the goal were to insure the health of women and children, the approach would be very different. Drug treatment rather than jail time would be offered. As it stands, there are few treatment options available to pregnant women, and in many locales, none whatsoever.

These issues, so central to the ways in which women of colour think about reproductive rights, have not traditionally been part of the mainstream

pro-choice agenda. Groups organised by women of colour including the National Black Women's Health Project, Women of All Red Nations, the National Asian Women's Health Organisation, and their allies¹² objected to the lack of attention for the issue of involuntary sterilisation and other forms of coercive contraception. They rejected the mainstream pro-choice movement's emphasis only the right not to have children, when for many women worldwide, the right to have children is under attack. These groups put that right and opposition to population control at the center of their reproductive freedom agendas.

Conclusion

The 2008 presidential elections presents an opportunity for significant positive change in the national leadership. While I have been critical of the Democratic front runners, it is important to point out that the Democratic Party Platform officially supports legal abortion.

In contrast, the Republican Party is overtly committed to overturning it and while John McCain, the likely Republican nominee for President in 2008 has sometimes positioned himself as a moderate, his record in Congress tells a different story. He has consistently voted against funding for family planning, for allowing abortion coverage in federal

employee health insurance plans, and against federal funding for abortion, **even** in cases of rape and incest. In addition to continuing existing restrictive policies, he will also have many opportunities for agency and judicial appointments, including the Supreme Court justices.

At the same time, as we have seen, the politics of abortion transcends party lines. Electing Democrats is not adequate to securing abortion rights, let alone, a full reproductive justice agenda.

I believe that building the reproductive justice movement¹³ is the best hope for

restoring what has been lost, meeting new attacks, and gaining the full array of reproductive freedoms we never had. It is the most dynamic and inclusive vision for moving us forward. Because it is connected to other health, human rights, and social justice movements, this broad and inclusive vision of reproductive freedom provides an opportunity to bring new allies to the abortion rights struggle. I, therefore, hope that reproductive justice will become the central frame for reproductive rights organising in the US, because it is the right thing and the only way to win. ■

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Endnotes

- 1 Vicki Saporta, "Observing Provider Appreciation Day," <http://www.rhrealitycheck.org/node/6749>.
- 2 National Network of Abortion Funds (2004) *Abortion Funding: A Matter of Justice*, p15.
- 3 Until 1994, the only exception was a threat to the life of the pregnant woman. In 1994 the law was changed to include exceptions for rape and incest.
- 4 Rachel Jones, Jacqueline Darroch and Stanley Henshaw (2002) "Patterns in the Socioeconomic Characteristics of Women Obtaining Abortions in 200-2001," *Perspectives in Sexual and Reproductive Health*, 34(5): 226-34; pp229, 231.
- 5 "Facts on Induced Abortion in the United States," Guttmacher Institute, January, 2008. Available at: <http://http://www.guttmacher.org>
- 6 Hospital-based services have also steadily declined, a trend exacerbated by the trend of public hospitals and insurance plans that being merged with those that are religiously affiliated. Birth control, sterilization, abortion, infertility services and counseling for HIV/AIDS and other STIs may be banned by hospitals following religiously-based health restrictions. For more information, www.mergerwatch.org
- 7 Fried and Clarke (2000) "Expanding Abortion Access: The U.S. Experience," in *Advocating for Abortion Access: Eleven Country Studies*. Edited by Klugman and Budlender. Witwatersrand University Press, Johannesburg.
- 8 Silliman, Jael and Anannya Bhattacharjee (2002) *Policing the National Body: Race, Gender and Criminalization*, South End Press, Boston, xi
- 9 See Betsy Hartmann, "Abortion and the Politics of Prevention," <http://www.zmag.org/sustainers/content/2006-11/07/hartmann.cfm>
- 10 Saletan, William (January 26, 2005) "Safe, Legal, and Never," <http://slate.msn.com/id/2112712>
- 11 Welfare Reform in the US, passed by the Clinton administration in 1995 is another form of eugenics since it prohibits increases in payments to poor families even if they have more children.
- 12 For more on this see, Silliman et al (2004) *Undivided Rights: Women of Color Organize for Reproductive Justice*, South End Press, Boston.
- 13 For more on Reproductive Justice, See: Loretta Ross (Spring/Summer 2007) "Understanding Reproductive Justice," In *Political Environments*, <http://www.sister.net>; Asian Communities for Reproductive Justice, "A New Vision for Reproductive Justice," <http://www.reproductivejustice.org>; and "Expanding the Movement for Reproductive Justice" <http://www.emerj.org>