

USA: Reproductive Justice Needed

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Many wonder why the fight to maintain legal abortion is still so heated forty years after the U.S. Supreme Court ruling. Dianne Feeley points to attitudes about women that provide the political space for the right-wing's attacks.

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ON AUGUST 26, 1970, when U.S. women marched “out of the kitchens and into the streets” to commemorate the 50th anniversary of women’s suffrage, the three main demands were equal pay for equal work, free abortion on demand and 24-hour quality child care.

If none of these demands have been met, women have nonetheless continued to struggle for our rights. The passage of a number of laws and the 1973 U.S. Supreme Court decision legalizing abortion has altered the ground. This is not only true of the women’s movement, but of the civil rights movement too.

Reflecting on the legal status of abortion on the 40th anniversary of the Roe v. Wade decision, we see that legalization removes only one barrier women face in expanding our reproductive rights. And in fact most activists in 1973 understood two things:

- Roe v. Wade was a flawed decision from a woman’s point of view, because it did not sweep away all legislation restricting women’s access, but in fact provided a framework for constructing new restrictions.

The decision divided women’s pregnancies into three phases. In the early phase, “The attending physician, in consultation with his patient, is free to determine, without regulation by the State, that, in his medical judgment, the patient’s pregnancy should be terminated.” State interest grew as the pregnancy moved into its second and third phases. In the decision all physicians are men and it is they who are at the center of the decision-making process!

- The right wing would not roll over and play dead.

In the early years the activist right wing took down the license plates of cars in clinic parking lots, located the names and phone numbers of the registrant, and called to harass them.

They set up pickets at clinics and produced wanted posters identifying health care providers as “murderers,” and the fanatics stirred up among them did murder several physicians and health care workers.

They also set up phony clinics near the to clinics and advertised free pregnancy tests as a way of luring in unsuspecting women. Although they wanted to find a way to outlaw all abortions, they were

most successful at pressuring politicians at both the federal and state level to pass laws restricting access. Eventually they adopted a death-by-a-thousand-cuts strategy. Most importantly, they draped themselves in a “pro-life” mantle.

Barriers to Access

Abortion services have never been available in most counties. Today 88% of counties, where 35% of U.S. women live, lack clinics. Since the Food and Drug Administration approved the use of mifepristone and misoprostol for nonsurgical abortions in 2000, women in rural areas have had the potential for greater access to abortion in their early stages of pregnancy (within the first nine weeks).

Through a telemedicine procedure, a woman goes to a clinic where a nurse takes her medical history and gives her a physical exam. The doctor is sent the results over the computer. She and the nurse then meet with the doctor by videoconference. After a consultation, the doctor provides her with two medications. While the doctor and nurse watch, she takes the first dose of mifepristone, which blocks a hormone required to maintain the pregnancy. Two days later she takes misoprostol, which makes the uterus contract and expell the fetal tissue.

More than 1.4 million women have used this procedure. According to a study released by the American Journal of Public Health, it is as safe as surgical abortion.

However Arizona, Kansas, Michigan, Nebraska, North Dakota and Tennessee have banned its use and states such as Wisconsin impose severe restrictions that limit its use. Last year 48 representatives introduced into Congress a bill to ban it at the federal level.

With the exception of the West Coast and upper East Coast, almost every state has enacted laws curtailing abortions. Last year 19 states enacted 43 laws, with six states responsible for 24. None improved access to abortion or comprehensive sex education. Two years ago a total of 93 laws passed state legislatures. But for every bill passed, many more are introduced. For example, in Michigan over the last two years 41 anti-abortion measures were introduced, of which only three became law.

In addition to banning telemedicine for abortion, Michigan also passed a provision that no woman be “coerced” into having an abortion (but not into continuing a pregnancy, or setting the same standard for a man seeking a vasectomy). Additionally it demanded that clinics performing at least 120 abortions a year have the same architectural standards as an ambulatory surgical facility. When signing the bill, Governor Rick Snyder remarked that this would probably affect only 10-20 clinics (out of 32).

Over the decades state restrictions include parental consent (38 states), mandatory counseling (35 states) — with at least 18 providing misleading information, 27 demanding that the woman learn about fetal development and 10 requiring in-person counseling that mean two trips to the clinic (with waiting periods ranging from 24 to 72 hours) — restrictions on clinics and their personnel, mandatory ultrasounds even when not medically warranted, and banning abortion procedures beyond 20 weeks.

In 2011 legislatures in Indiana, Kansas, North Carolina, New Hampshire, Tennessee, Texas and Wisconsin cut off funding to any family planning clinic that is not operated by their health department, thus eliminating Planned Parenthood. Last year Arizona and North Carolina did as well.

Yet by the age of 45, half of all U.S. women have an unintended pregnancy and one out of three will have an abortion. Eighty-eight percent will obtain the procedure within the first 12 weeks; 7 in 10 would have preferred to have an even earlier procedure. Reasons for later abortions boil down to three: lack of money or access, unwillingness to face the fact of the pregnancy in the early weeks, or initially welcoming the pregnancy only to discover a serious problem that causes the woman to seek an abortion.

Given the lack of comprehensive sex education (over half the states mandate abstinence as sex “education”) and the reality that contraception is not freely available, women whose wages are below the poverty line are five times more likely to have an unintended pregnancy, five times more likely to have an abortion and a birth rate six times higher than a woman with a higher income.

Undercutting Abortion Rights

Clearly the barriers that have been built disproportionately affect poor women, particularly women of color. Just four years after Roe Congress passed the Hyde Amendment, restricting Medicaid-paid abortions except in cases of rape, incest or life-threatening conditions. An initial court decision held that the amendment was unconstitutional — but the government appealed and the decision was eventually reversed. The women’s movement was never able to overturn that restriction.

In 1992 the U.S. Supreme Court gave a green light to restrictive state legislation in *Planned Parenthood v. Casey*. That decision undercut *Roe v. Wade* by replacing the “fundamental” right to abortion with an “undue burden” standard, and dropped the trimester framework. Thus it upheld Pennsylvania’s right to demand parental notification, a 24-hour waiting period and a ban on abortion after 24 weeks (except in the case of a woman’s life-threatening condition). It did, however, void a spousal consent provision.

For its part, the federal government has since outlawed late-term abortions. Some Presidential administrations have placed additional restrictions on women in the military having access to abortion. This is particularly ironic given the high percentage of rape within the military.

The majority of Americans support the legalization of abortion, but only under certain conditions — in essence, a woman must be seen as a victim in order to obtain an abortion. Since the majority of pregnancies are not the result of rape, incest or life-threatening conditions, this allows the right wing room to play on that ambivalence. The arguments they use focus on asserting “the rights of the unborn” (fetus).

Pitting women against fetuses, they compare themselves to the abolitionists’ struggle to end slavery. Thus health care providers are as evil as the slaveholders, and any woman seeking an abortion is essentially immoral and selfish.

In a society that speaks of motherhood as sacred but actually provides little infrastructure to aid mothers, this right-wing offensive has made many women ashamed of their desire to terminate their pregnancy. They are told this is a mistake they will regret.

As we remember from reading Nathaniel Hawthorne’s *The Scarlet Letter*, judging women is an old American tradition. While women’s legal rights have been extended, this judging of females continues to affect the self-image of girls from a very young age.

Government policies that judge the circumstances of women’s lives, categorizing some as “deserving” of aid and others as “undeserving,” is reflected not only in welfare regulations but in all

the restrictions on sex education, contraception, abortion and access to quality day care. This assumption that politicians know best is a continuation of treating women as the property of men, kept, for their own good, from adulthood and decision making.

Women with money may be able to go around the barriers, which explains why they have fewer unintended pregnancies, lower abortion and maternal death rates. As Occupy Wall Street pointed out, the gap between the 1% and the 99% is widening. It will widen further as governments at all levels cut back services women particularly need, from health clinics to day care.

It will also widen with the restructuring of public schools as charters move in and as education for the majority will be driven by test scores. Cutting off access to comprehensive sex education, contraception and abortion is just one more way inequality will be reinforced.

This year and next will see challenges to the provision of full contraceptive coverage under the Affordable Care Act. The provision covers all contraceptive methods and sterilization procedures approved by the Food and Drug Administration, including “morning-after pills” and intrauterine devices that the right wing classify as abortifacents.

Forty lawsuits have demanded the voiding of this requirement; last year Alabama, South Carolina and Wisconsin banned contraceptive coverage in their state health exchanges.

Several state legislatures have also moved to eliminate abortion coverage in standardized group health insurance plans, stating that if a woman desires such coverage, she must arrange an additional rider and pay for it. Since most plans now cover the procedure, such a move would encourage the insurance industry to drop the provision from private-sector health plans.

In “A Flood of Suits Fights Coverage of Birth Control,” Ethan Bronner writes that half a dozen appeals might be ready for inclusion in the U.S. Supreme Court’s docket for fall 2013. One fear is that the Obama administration might settle these cases by offering an attractive compromise. (*New York Times*, 1/27/13)

Resisting the Attacks

A range of organizations — from mainstream health care providers such as Planned Parenthood (which provides 90% of all abortions as well as other health services for women) to staff-driven organizations such as National Abortion Rights Action League and the membership-based National Organization for Women — have worked to maintain and expand women’s reproductive rights. Over the years these forces have testified against restrictive laws, developed educational materials, organized vigils and called massive national demonstrations.

Yet often they were willing to live with restrictions if they felt there was a way around them. I remember one staffer telling me we “could live” with parental consent legislation as long as it had a judicial bypass provision. Yet even when the system “worked,” it created a more chilling political environment.

For its part, the Coalition of Labor Union Women has played a positive role in educating union members about reproductive rights. But while many unions have decent positions on paper, there is little education of the membership. Often the leadership assumes the members are right wingers and remains quiet about the official position.

Meanwhile grassroots organizations, particularly those led by women of color, have developed

thoughtful campaigns around women's health needs and opposed restrictive legislation.

Particularly impressive is the work of Sistersong, who developed a response to the right-wing's billboard campaign to denounce Black women's abortions as genocide. They launched the "Trust Black Women" partnership with a statement that explains:

"There are those who believe they should control Black women's reproduction like during slavery. They believe in population control and use false compassion for children to disguise a racist and sexist agenda. Our opponents are manipulative, zealous, and immoral. They lie using religion as a cover. They try to use combination of guilt and force to undermine our human rights. They manipulate our history, our concerns about medical mistreatment, and our real collective pain about genocide and slavery to spin stories about Black women being the stupid pawns of doctors. They claim that Black women can't be trusted. They accuse us of practicing genocide on our people when we stand up for ourselves....

"We don't need fanatics to tell us what to do. Black women make decisions every day about whether to parent or not, not just whether to give birth. Those who think they should dictate our choices won't be there when the child is born, to help us fight for better education, increase child care, keep our kids out of jail, send our children to college, or get affordable health care. Black women fight for ourselves and we fight to uplift our people. Our opponents either stand in the way or fail to help....

"Trust Black Women seeks to increase respect, maintain dignity, and support Black women and girls with implementing reproductive health decisions that are personal, appropriate, accessible, and affordable. All women should be able to maintain their integrity when accessing reproductive health services. Black women should have self-determination to exercise basic human rights when implementing their decisions, and not be subjugated to the political winds, media campaigns and/or environment prevalent in government or society that hinders a woman's ability to control her body and destiny. Trust Black Women will challenge those who seek to undermine our autonomy, respect, integrity, and dignity as Black women...." [1]

From the beginning of the campaign to end restrictive abortion laws in the 1960s, the most powerful tool the women's movement developed has been the speakout. Women spoke about why they sought an abortion at a time when it was illegal, and the price they, their sisters and friends paid. After the Roe v. Wade decision, speakouts included health care providers outlining the attacks they faced.

The movement's strength has always been in showing the reality of women's lives and how we struggle to make the best decisions we can, given our circumstances. At the same time, speakouts show the distance we have to go to gain full equality.

With Planned Parenthood, a major women's health provider, on the right-wing's radar, it recently developed a "no one can walk in her shoes" campaign. Some have called this a step backward from its long-held pro-choice stance. I believe this criticism comes from those who see pro-choice as a principle that needs no specifics.

However I've found the variety of women's experiences effectively refutes judgmental attitudes and reactionary laws. In fact, when the women's movement of the pre-Roe era talked about a woman's right to choose, we meant the right to come out of the shadows and enlarge the possibilities around when, if and under what circumstances to have children. To do that requires systems of social support. We certainly didn't limit ourselves to abortion rights. Few of those needs have been addressed. Meanwhile, the State constructs barriers that restrict our legal rights.

Those who seek to attack us pretend to support women but treat us as perpetual minors, incapable

of decision making. Like small children, we must be led to the truth. Abortion providers are portrayed as evil doers that prey on us; in reality they provide services we need at personal risk.

Women certainly are capable of making the decisions that affect our lives. To do that we need reproductive justice in its fullest, most revolutionary meaning.

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See five charts from the Guttmacher Institute at www.guttmacher.org.

P.S.

* From Against the Current n° 163, March/April 2013. <http://www.solidarity-us.org/node/3814>

Footnotes

[1] See http://sistersong.net/index.php?option=com_content&view=article&id=41&Itemid=78