Reproductive Justice

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Abstract

The authors examine the development of reproductive rights, a law-focused movement, and reproductive justice, a social justice–aimed movement that emphasizes intersecting social identities (e.g., gender, race, and class) and community-developed solutions to structural inequalities. In examining the intertwining histories of the reproductive health, reproductive rights, and reproductive justice movements, we consider the relationship between law and social movements, including the limits of law to inform radical social movements. We highlight how the relationship between scholarship and activism on the right to not have children has expanded to include notions of the right to have children (e.g., for low-income people or with the aid of technology) and the right to parent with dignity (e.g., for incarcerated people or in nonmedicalized settings). We end the article with a discussion of best practices and future directions for research.

REPRODUCTIVE JUSTICE

Reproductive justice (RJ) highlights the dynamic yet often tenuous relationship between the law, social movements, and academic scholarship. Legal scholars straddling the boundaries of the academy and social movements have contributed key concepts that the emerging reproductive justice movement has drawn on in its challenge to improve upon reproductive rights. In a relatively short time, RJ has moved from the streets into academic and public discourse. Thus, we find this a perfect time to assess how RJ intersects with other areas of inquiry and its implications for scholarship.

In doing so, this review touches on many issues of interest to sociolegal scholars, such as the long-studied gap between law on the books and law in practice (Gould & Barclay 2012), the limit and consequences of litigation as a social movement strategy (McCann 1994, 2006; Rosenberg 1991), the nuances of social difference and the law [Crenshaw et al. 1995, Delgado & Stefancic 2012 (2001), Harris 1990, Minow 1991, Williams 1991], and the construction of and relationship between rights and justice (Constable 2007, Okin 1989, Scheingold 1974). We challenge the typical narrative of reproductive rights in the United States by turning attention to other significant events in reproductive politics, discussing the intervention of RJ in both movement practice and academic scholarship, and providing an overview of some of the analytic tensions created by RJ.[1]

RJ contains multiple modes: analytic framework, movement, praxis, and vision. The term reproductive justice itself is relatively new, conceived in 1994 by feminists of color to conceptualize reproductive rights struggles embedded in social justice organizing that simultaneously challenged racism and classism, among other oppressions (ACRJ 2005, Ross 2006). From its inception, the RJ movement called for recognition of the limitations of emphasizing choice, which had largely come to mean the choice to have an abortion (Luna 2009, Price 2010, Smith 2005). RJ encompassed the right to not have a child but also moved beyond that to include the right to have a child and the right to parent any children one has (Ross 2006).[2]

The legal framework of an individual's right to privacy, on which the right to abortion (and contraception) access was predicated, could not resolve the barriers to having children that many women of color and low-income women faced owing to their structural and political locations.[3] These roots notwithstanding, RJ's relevance goes beyond marginalized populations, because examining the reproductive disciplining some groups experience also highlights the reproductive privileging of others. RJ simultaneously demands a negative right of freedom from undue government interference and a positive right to government action in creating conditions of social justice and human flourishing for all.

An RJ analysis takes into consideration that the right to have a child and the right to parent are as important as the right to not have children. As such, issues of importance regarding the right to have children include population control, criminalization of reproduction, correlation of environmental degradation with infertility, cultural shunning of teen mothers, and access to assisted reproductive technology

[1] We recognize this review has many audiences from emerging and established scholars of health, law, reproduction, and social movements to grassroots activists. We encourage correspondence about and engagement with our article as we and our colleagues develop additional work that delves more deeply into the issues raised here.

[2] A commonly referenced definition of RJ comes from Asian Communities for Reproductive Justice (now Forward Together), a founding organization of the movement: "the complete physical, mental, spiritual, political, economic, and social well-being of women and girls [that] will be achieved when women and girls have the economic, social and political power and resources to make healthy decisions about our bodies, sexuality and reproduction for ourselves, our families and our communities in all areas of our lives" (ACRJ 2005, p. 1).

[3] The idea of a coconstitutive relationship between (marginalized) social identities is often referred to as intersectionality, a term coined by legal scholar Kimberlé Crenshaw (1989). For more comprehensive discussion of this theory, its antecedents, and limitations, see Choo & Ferree (2010), Collins (1990), Guidroz & Berger (2009), Luft & Ward (2009), McCall (2005), and Yuval-Davis (2006).

(ART). Issues of importance regarding the right to parent with dignity include incarcerated people's loss of reproductive rights, rapid termination of parental rights of people deemed unfit by the state, access to nonmedicalized birthing options, coerced obstetrics, and resistance to expanding definitions of family beyond a nuclear family unit.

In tracing the history of RJ, reviewing the relevant literature, and considering what the future of RJ may hold, we offer multiple arguments. First, the concept of RJ represents an intellectual breakthrough because its multilayered analysis reveals a side of law and social policy that, with few exceptions, reproductive rights and health scholarship and activism traditionally concealed. In revealing this hidden side, RJ centers unequal power relations, particularly as they are continually produced by the state. What marks RJ as a useful analysis is the insistence on analyzing a range of policy and practice as part of an interconnected system. In practice, this system regulates people's reproductive futures through assessments of worthiness originating in assumptions about race, class, and disability (among other dimensions).

Second, RJ's development highlights how legal ideas and strategies can influence movements even as those movements eschew reliance on law, a disjuncture that deserves attention from scholars interested in the concepts used, transformed, and generated by the movement. Rights seeking is a movement strategy that comes with its own set of risks. Rights are continually contested and negotiated within a movement and by those who oppose the movement (Tushnet 1989). Rights strategies require credentialed professionals to battle in legal arenas that are not accessible to most movement actors. To the degree that a challenge to injustice occurs through the courts, decades of research find that the more powerful parties continue to win over the less powerful (Albiston 2010, Galanter 1974, NeJaime 2010, Sandefur 2008). A legal rights strategy requires a high level of investment with high risks of failure and of alienation of a movement's more marginal constituents (Hull 2001), which is a concern for movement actors focusing on radical social change for those constituents.

Finally, RJ claims highlight more explicitly and proactively a foundational problem with which US abortion rights advocates have been unable or unwilling to grapple: Privacy assumes access to resources and a level of autonomy that many people do not have. A privacy approach cannot accommodate the fact that many people rely on government support for their daily activities, whether they be education (e.g. student loans), family formation (e.g., tax credits), or employment (Mettler 2011; cf. Reich 1964). The concurrent reproductive disciplining and reproductive privileging of different groups produce a linked set of experiences that point to devolution of the state in providing for the welfare of its members (Roberts 2005), the resolution of which requires more than protections of abortion rights.[4]

The article proceeds as follows: the motivation for assessing RJ now, the birth of reproductive rights, the rise of intersectionality as an analytic paradigm, and the intervention of RJ, including the role of legal scholars. We then discuss a selection of contemporary reproductive rights and justice scholarship and practice centered around the right to not have children, the right to have children (particularly regarding the criminalization of reproduction and reproductive technology), and the right to parent with dignity (e.g., in the case of incarcerated women). Analysis of related (legal) scholarship follows, including failures and exemplars. We

[4]Owing to space constraints, we focus on the domestic background of RJ, but international reproductive scholarship and activism are relevant. The RJ framework is often referred to as human rights based (Luna 2009, Price 2010, Ross 2006). The contestation over the meaning and goal of human rights occurs in movements worldwide with varying results (Merry 2006, Tsutsui et al. 2012). The RJ movement's engagement with international human rights discourse, particularly economic and social rights, however, makes it an outlier among US movements (Luna 2011) as a result of the US government's contentious history with the United Nations, containment of the meaning of human rights, and the early civil rights movement's unsuccessful attempts to engage with the United Nations (Anderson 2003, Somers & Roberts 2008, Soohoo et al. 2008).

offer a brief conclusion with some directions for future research.[5]

WHY REPRODUCTIVE JUSTICE NOW?

Reproductive justice, like reproductive rights before it, has rapidly attained widespread currency. Searching for the terms in LexisNexis reveals how recent both terms are and how quickly they have spread. Before 1980, there were only 8 citations for "reproductive rights" and none for "reproductive justice"; between 1981 and early 2012, however, there were more than 3,000 citations for "reproductive rights" and 800 for "reproductive justice." We find various examples of the adoption of RJ by scholars, legal and otherwise: altered titles of law school courses, new research centers at major universities, and the outlines of a coherent field of scholarship on the topic.[6] Additionally, numerous established "pro-choice" organizations have publicly claimed that their work supports the expanded idea of RJ.[7]

RJ's entry into the academy may appear natural to scholars interested in questions of legal rights. Yet, many RJ activists (as compared with reproductive rights advocates) have purposely limited their engagement with the law, having experienced its limited ability to protect multiply vulnerable groups on a range of issues. Still, RJ has the potential to revitalize reproductive rights scholarship, which has become an increasingly constrained area. Although RJ's analytic intervention can move scholarship forward, its effectiveness in doing so increases with scholarly understanding of the RJ movement's foundational principles, which produced the transformational analytic framework that has made the concept exciting to an increasing number of academics and activists.

Movement leaders conceptualized RJ as a strategy to challenge reproductive oppression, "the controlling and exploiting of women and girls through our bodies, sexuality and reproduction (both biological and social) by families, communities, institutions and society" (ACRJ 2005, p. 3). In this view, eliminating reproductive oppression requires analysis of reproductive issues through an intersectional lens that considers the simultaneous operations of a person's statuses such as race, class, gender, sexuality, and ability; community-based identification of problems and leadership in taking action to solve them; and recognition that individuals are embedded in communities (ACRJ 2005; Luna 2009, 2011; Price 2010). Consequently, the emphasis on multifaceted analysis and organizing differentiates RJ from reproductive health advocacy, which emphasizes the problem of unequal access to reproductive health services, and reproductive rights advocacy, which emphasizes reliance on legal channels. Although RJ proponents generally agree that abortion access is an important part of women securing reproductive autonomy, the achievement of RJ is not based solely or even primarily on the agenda of the reproductive rights movement, which has focused mainly on protecting the *Roe v. Wade* (1973) ruling.[8] Rather, by illuminating how some women's reproductive experiences have been overshadowed in the traditional narrative and activism around reproductive

[5] In addition to important cases, our review focuses on texts (*a*) on law and social movements; (*b*) often cited in sociology of reproduction; (*c*) referred to in the RJ movement; (*d*) from Law Students for Reproductive Justice's (LSRJ's) recommended list of scholarship for law students or lawyers new to reproductive lawyering; (*e*) included in Ehrenreich's (2008) *The Reproductive Rights Reader*; and (*f*) that attempt to engage with RJ whether through the title of the piece, authors' stated aim, or our personal knowledge of the author's interest in this engagement.

[6] Although they have different origins and aims, these research centers include the Program for the Study of Reproductive Justice (founded in 2011 by Yale Law's Information Society Project), the Program in Sexual Rights and Reproductive Justice (founded in 2011 through the University of Michigan's Department of Obstetrics and Gynecology), and the Center on Reproductive Rights and Justice at Berkeley Law (founded in 2012 by the authors and former LSRJ Executive Director Jill Adams).

[7] Examples include the National Organization for Women and NARAL Pro-Choice America.

[8] Some RJ organizations include pro-life perspectives in their work.

rights, RJ reveals the breadth of reproductive politics beyond abortion provision.

THE BIRTH OF REPRODUCTIVE RIGHTS AS A MOVEMENT AND AN IDEA

The US legal landscape has included regulations surrounding women's fertility since the days of the earliest colonies, but the legal historiography tends to focus on statutes or case law that sought to establish legitimate parentage of children and, more centrally, to avoid the birth of a child whose lack of a father would likely create a burden on the community (Godbeer 2002, Grossberg 1985).

Less typically included in the historiography is the legal structure that stratified reproduction by race and class, curtailing the rights of large segments of the population to marry, establish families recognized by law, or even claim as their own the children they bore. For example, both slaves and indentured servants were considered property and typically had no legal right to marry (Burnham 1987, Goring 2005). If an indentured woman servant became pregnant, the woman's term of servitude was extended to cover the time lost to pregnancy and birth.[9] Although there is debate about the economics and the frequency of forced breeding in American slavery, there is no doubt that it happened (Bridgewater 2001, n.2; Fogel & Engerman 1974; Gutman 2003; Jennings 1990). Likewise, historical records reference dower documents in which White women laid claim to the slaves brought to the marriage, and litigation over estates determined whether White women who had a life interest in specific slaves owned their children as well.

The nineteenth century changed the reproductive statuses and interests of both White and African-American women.[10] For Whites, the rise of industrial capitalism meant that the high fertility that had marked an agricultural way of life began to subside. At the same time, the United States became an industrializing nation and a nation of immigrants. Declining birth rates among non-immigrant Whites and changing structures of sex and reproduction led to an increase in attempts to outlaw contraception and abortion.[11] The story of how the United States moved from a nation with virtually no regulation of abortion and contraception to one in which both were highly regulated has been ably told [see Gordon 1990 (1976), Luker 1984, Mohr 1978, Reed 1978]. To summarize briefly, as native White births declined and immigrants with higher birth rates arrived, movements at both the federal and state levels led to restricting access to birth regulation, at least in part to encourage or coerce more White births.

At roughly the same time, at the state level, US physicians began campaigning to make abortion illegal unless performed by or on the advice of a physician. That this was a professionalization project, rather than an unambivalent nineteenth-century "right to life," is suggested by the fact that by 1900, only six states lacked a so-called therapeutic exception that would protect those physicians who claimed to undertake abortions to save either the life or the health of the pregnant woman (Luker 1984; Quay 1960, 1961).

Much of the same story—and even the same logic—covers the regulation of contraception. The Comstock Act was used to monitor the mail and entrap birth control advocates [Chesler 2007 (1992), Tone 2001]. It was under the aegis of New York's "little Comstock"

[9]See, for example, Act XII of the Laws of Virginia dated December 1662 [Hening (1809–1823), 2:170].

[10]Less historical research exists on the reproductive lives of other women of color, legal or otherwise. For such research about Mexican-origin women, see Gutiérrez (2008), and for such research about Native American women, see Smith (2005) and Gurr (2012).

[11]This is not to suggest either a linear or determined outcome. There is evidence, for example, that the Comstock Act, which outlawed contraception, was passed out of a concern for sexual "vice" rather than in order to increase fertility (Beisel 1998, Tone 2001). Yet once the Act passed, concerns about proper sexual behavior and concerns about birth rates reinforced one another. However, the connection between abortion and nineteenth-century concerns about "race suicide" was more direct (Beisel & Kay 2004).

law that Margaret Sanger was arrested in 1916. Sanger was a nurse, but the medical exemption only covered physicians. Although it affirmed Sanger's conviction in 1918, the New York Court of Appeals also affirmed that physicians held the right to prescribe contraception (*People v. Sanger* 1918).[12]

Thus, in much of the period between the passage of antiabortion and anticontraception laws and their overturning in the 1960s and 1970s, it was well established in both law (depending on the jurisdiction) and medical practice that both abortions and contraceptives could be made available to women who had access to private physicians, if those physicians certified that a pregnancy would be dangerous for the woman. Yet again, race and class determined who could obtain an abortion [Calderone 1958; Dudziak 2010; Solinger 2000 (1992), 2001].

Alongside nativist efforts to increase the fertility of native-born White women, the first half of the twentieth century also saw the proliferation of attempts to deter the fertility of people seen as unfit to reproduce. Between 1900 and the late 1970s, approximately 30 states passed laws permitting the sterilization of criminals and the "feeble-minded," "degenerate," and "hereditarily insane" (Lombardo 1985). In general, however, lower courts until 1927 had been unenthusiastic about both kinds of compulsory sterilization laws: criminal sterilization laws (those that proposed sterilization as punishment for crimes) and civil sterilization laws (those that proposed sterilization of the "unfit"). Before 1927, criminal sterilization statutes were overturned primarily on cruel and unusual punishment grounds and civil sterilization statues on due process grounds (Siegel 2005).

But in *Buck v. Bell* (1927), Supreme Court Justice Oliver Wendell Holmes issued his constitutional appraisal of forced sterilization:

> It is better for all the world, if instead of waiting to execute degenerate offspring for crime, or to let them starve for their imbecility, society can prevent those who are manifestly unfit from continuing their kind. The principle that sustains compulsory vaccination is broad enough to cover cutting the Fallopian tubes. Three generations of imbeciles are enough. (p. 208)

The "three generations of imbeciles" Holmes had in mind were the woman at the center of the case—Carrie Buck—as well as her mother and her out-of-wedlock daughter. Although subsequent scholarship raised doubts regarding the allegedly limited mental capacities of both Carrie Buck and her daughter (Gould 1985, Lombardo 1985), the Court majority decided that sterilization was a boon to the community and to the individual herself.

Buck v. Bell legitimated eugenic sterilization for civil reasons, and such laws persisted well into the 1970s; the law under which Carrie Buck was sterilized was not removed from the Virginia statues until 1984. Yet, in the 1942 ruling in *Skinner v. Oklahoma* (1942), the Supreme Court rejected those laws that were remnants of criminal sterilization statutes. In practice, however, the two categories were not clearly separated, as criminality was thought to be genetically transmitted from parent to child.[13]

Thus, two lines of law and policy intersected at the start of the 1960s. On one hand, remnants of the Comstock Act and state-level abortion laws, originally put in place to deter White native-born women from "shirking" their duties as mothers, had become de facto laws, which made it difficult for poor people to access these services. On the other hand, the sterilization and antimiscegenation laws attempting to prevent "unfit" people from reproducing were

[12] Sanger remains a controversial figure owing to her relationship with the eugenics movement (see Roberts 1997).

[13] Some question the eugenic leanings, and legality, of contemporary programs sponsored by private organizations that offer women who use drugs a one-time payment in exchange for their permanent sterilization (Derkas 2012, Hirschenbaum 2000, Smith 2005).

still being enforced (Kline 2005, Kluchin 2011, Stern 2005).

In a set of judicial debates outside the scope of this paper, the Court majority in *Griswold v. Connecticut* (1965) found (or created, depending on one's point of view) a "fundamental" right covering a married couple's decision whether or not to conceive. In the next decade, the assumption that the right to reproductive privacy inherent in the marriage relationship was loosened as the Court expanded the right of privacy to include unmarried couples (*Eisenstadt v. Baird* 1972), teenagers, and people who sought contraceptives sold over the counter rather than dispensed by a physician (*Carey v. Population Services International* 1977).

In the movement arena, women's health advocates demanded and created woman-centered health care, including abortion services such as the Jane collective, which developed a referral network to help women access a safe (albeit illegal and often costly) abortion from a sympathetic doctor or, in some situations, from collective members themselves (Kaplan 1997). Further, nationalist organizations such as the Black Panther Party reclaimed community health care by developing medical clinics that provided services such as sickle-cell testing. Women's health was not the emphasis of these activities, but some clinics offered pap smears and other reproductive health services (Nelson 2011). At issue in these settings was the desire for health care provided by the people most familiar with—and sympathetic to—the historical and political concerns of communities. This emphasis on community-developed solutions rather than formal policy or law for protection would be echoed in later movement activity.

In 1973, in *Roe v. Wade*, the Supreme Court further expanded the privacy right in *Griswold* to include the decision to seek an abortion. The decision was shaped by what sociologist Gene Burns (2005) calls the medical humanitarian frame, making clear that the right to privacy was created for physicians rather than women. Abortions could be, and were, regulated in ways that constrained women who did not have access to private physicians. Furious opposition arose in the wake of *Roe*, eventually making abortion a major political issue as well as a partisan one, which Republicans almost universally oppose and Democrats almost universally favor, and increasing divergence in how different sides even talked about the issue (Adams 1997, Ferree et al. 2002, O'Connor 1996). People who had sought increased access to contraception and abortion mobilized in the face of mounting political, legal, and legislative challenges to *Roe* and in so doing began to frame a legal and political claim to reproductive rights.

As affluent White activists pressed the cause for increased access to both birth control and abortion—that is, for reproductive rights that would enable women to not have children—many poor women, women with disabilities, and women of color struggled for the rights to have children and to parent the children they had, a concern little noticed by the mainstream reproductive rights advocates.[14] The War on Poverty's Office of Economic Opportunity offered federally subsidized contraceptive services, eventually including them under Title X of the Public Health Service Act (Pub. L. 91–572). Predictably, the consequent increase in interaction with medical authorities did not uniformly result in improved health outcomes.

In a practice that reflected eugenic assumptions, federal money was also used for coerced contraception and forced sterilizations. Perhaps the most infamous case in the 1970s—when eugenic thinking in general had been discredited by the horrific examples of the Nazi regime—was *Relf v. Weinberger* (1974, 1977), which was filed just months after the *Roe* ruling. With Title X federal funds, Katie, Minnie Lee, and Mary Alice Relf, three sisters in Mississippi who were both poor and Black, had others intervene in their reproductive lives without their knowledge. The oldest, Katie, who was 17 at the time of the complaint, had an intrauterine device

[14]Some authors have revisited this era to examine the coalitions that developed to win *Roe*, including those between abortion rights activists and population control organizations (Joffe et al. 2004, Ziegler 2009).

inserted at a local clinic, and family planning workers took Minnie Lee and Mary Alice to a local doctor's office and from there to a surgical ward where they were sterilized.

Here was an example of the difference in the meaning, scope, tactics, and strategies of what would later become reproductive rights and reproductive justice. The National Organization for Women, for example, which represented the causes of liberal feminists, advocated for looser restrictions on sterilization, as its primary constituents confronted paternalistic doctors. In their experience, doctors encouraged (or coerced) childbearing by using a guideline wherein a woman could not undergo sterilization unless her age multiplied by the number of her children equaled 120 or more.

In contrast, more radical organizations such as the Committee to End Sterilization Abuse (CESA) aimed "to educate and publicize the issues raised by sterilization abuse, namely the purposes that population control programs serve, and to denounce the implementation of racism, sexism and the oppression of working people within the health care system" (CESA 1975; see also Nelson 2003). CESA emerged from New York advocates' desire for an organization to challenge the continued coercive sterilization practices in local hospitals; aided by the leadership of sterilization expert Dr. Helen Rodriguez-Trias, it successfully increased enforcement of the sterilization guidelines that local hospitals were documented to not be following. Suits were brought against hospitals in other areas for forced sterilization of Latina women (Gutiérrez 2008). In *Madrigal v. Quilligan* (1981), Latina plaintiffs sued Los Angeles County Medical Center for its role in their forced sterilizations. The judge did not rule in their favor despite evidence that the sterilizations were motivated by population-control logic, a ruling that illustrated the limits of law in achieving certain types of social change. However, the case did spur the hospital to provide bilingual consent forms and to put in place other measures to prevent future coerced sterilization (Gutiérrez 2008, Stern 2005). The Committee for Abortion Rights and Against Sterilization Abuse (CARASA), established in 1977, also urged broader reproductive activism. The coalition combined class and gender analysis of abortion advocacy with attention to the reproductive concerns long voiced by Black women and Latinas, with the intent of developing a "new multiracial, multiclass, gay positive feminist movement by rethinking the abortion and the feminist movements" (Nelson 2003, p. 138). Although CARASA did not fully meet that aim, it provided another voice insisting that if reproductive rights are to be meaningful and approach justice, a diversity of women's reproductive experiences must be central to the movement efforts.

The conflict over sterilization regulation highlighted the problems inherent in a definition of reproductive rights that was indelibly shaped by a line of legal doctrine developed over the 50 years since Margaret Sanger was arrested for distributing information about birth control. As noted above, the right of privacy that the Court had found in *Griswold* was extended broadly to virtually all sexually active heterosexuals, and, in *Roe*, it was deemed broad enough to encompass abortion as well. But this line of reasoning had built within it numerous contradictions that would in time give rise to the RJ movement.

First and most importantly, as historian Linda Gordon [1990 (1976)], anthropologist Khiara Bridges (2009; 2011a,b), and others have shown, low-income women who utilize state services such as welfare or Medicaid simply lack the privacy envisioned in this line of thought. More to the point, *Roe v. Wade* (1973) was largely a decision about physicians' rights, not women's rights. It protected physicians from the previous legal risks of performing abortions (Reagan 1998). More critically, and consistent with the overall tenor of American jurisprudence, these two cases and their progeny outlined a negative right (what the government must not do) rather than a positive one (what the government must do). In short, states could not stop women from exercising their constitutional right to have abortions, located within a right of privacy, but

neither did states have any affirmative obligation to help women exercise that same right.

In a trio of cases (*Maher v. Doe* 1977, *Beal v. Doe* 1977, *Harris v. McRae* 1980), the Court confirmed the constitutionality of the Hyde Amendment, which excludes abortion from the list of medical services provided to Medicaid recipients, except in the cases of pregnancies that result from rape or incest or threaten the life of the pregnant woman. In a five-to-four decision, the Court held in *Harris*, "We are thus not persuaded that the Hyde Amendment impinges on the constitutionally protected freedom of choice" because poverty, not state action, impeded a woman from having an abortion—even though states could and did fund childbirth. The seemingly contradictory ruling in *Harris* made perfect sense in a legal system that constrained, but did not enable, public programs.

Other cases followed suit in the wake of *Harris*, as an increasingly conservative Court found constitutional more and more state actions regulating abortions, even those in which public money was not involved. In *Planned Parenthood v. Casey* (1992), the Court agreed with Justice Sandra Day O'Connor's position in *Ohio v. Akron Center for Reproductive Health* (1990) that states are permitted to regulate abortions as long as they do not place an "undue burden" on women seeking abortions. In elaborating the standard, the plurality defined a burden as undue if it placed "a substantial obstacle in the path of a woman seeking an abortion" (*Casey* 1990, pp. 316–17). Yet, neither this nor subsequent cases examined what constituted an undue burden in a society with vast economic, racial, and geographic disparities in access to abortion services.

With the continued challenges to *Roe*, the symbol of the victory of the reproductive rights movement, many advocacy efforts centering on abortion and unwanted pregnancy continued to neglect the contributions of race and class inequality. In part, this was a consequence both of pro-choice organizations' strategic decisions that favored their more affluent members and of the growing antiabortion movement, which was effectively using litigation to advance its own cause (Saletan 2004, Tribe 1990) and maintain the public's and politicians' focus on abortion. This narrowing was also reflected in social science scholarship on reproductive issues. For example, two of the best-regarded accounts of abortion activism are sociologist Kristin Luker's (1984) *Abortion and the Politics of Motherhood* and anthropologist Faye Ginsburg's (1989) *Contested Lives*, both of which offered astute analysis of the role of gender in the history of abortion regulation, abortion obtainment, and activism for and against abortion rights.[15] Yet, neither text offered more than a passing mention of race or its role in reproductive politics. Part of the intervention of the RJ movement and its framework was to integrate analysis of race, class, and immigration status into analysis of reproductive politics, thereby better illuminating multiple power structures that prevented the realization of reproductive rights and the achievement of broader reproductive justice.

MOVING BEYOND CHOICE

Across the various sectors of the women's movement and at the intersection of ethnic studies and women's studies emerged a critique of (middle-class) able-bodied White women's presumption that their experience adequately represented all women's experiences. This critique was articulated in documents produced by activist Frances Beal [2008 (1970)] that theorized a "double jeopardy" of race and gender oppression, in the Combahee River Collective's [1981 (1977)] analysis of conflicting movement politics, and in the work of Hull et al. (1982) and Moraga & Anzaldua (1981). Later, sociologists articulated the concept that gender operates in conjunction with subordinate identities of race and class (and sexuality) as "multiple jeopardy" and a "matrix of domination" (Collins 1990, King 1988).[16] In

[15] Luker (1984) is the most-cited book on reproduction activism, reaching across many disciplines and popular press best seller lists (Freedman & Weitz 2012).

[16] Scholars such as Fine & Asch (1988) were theorizing on intersection of gender and disability, but these analyses were

1989, critical race theorist Kimberlé Crenshaw (1989) coined the term intersectionality, which proved popular in this academic turn to a more comprehensive of women's varied experiences (see Davis 2008). Crenshaw articulated how women of color—Black women in particular—faced multiple disadvantages both in legal settings such as courts and in social movement practice. Their structural location produced "an actual experience of domestic violence, rape, and remedial reform qualitatively different than that of White women" (Crenshaw 1994, p. 1245). Yet, political organizing around issues such as domestic violence proceeded as if gender oppression and racial oppression were experienced by two separate groups, when in practice, the solutions (legal or otherwise) needed to address the intersections.[17]

The RJ movement was influenced by law in that the limitations of the reproductive rights movement's vision and legal practice underscored the gaps into which many women (and men) fall. The movement for reproductive rights (in contrast to justice) was fundamentally shaped in the legal arena by the landmark cases reviewed above, and particularly by the reasoning that the courts brought to the issue.

Multiple scholars have shown that fights for rights are highly contested, and some argue that the courts offer a "hollow hope" for change making (Rosenberg 1991). Rather than being the impetus for change, the argument goes, courts respond to external forces by making decisions that follow trends already in progress (Rosenberg 1991). Further, wins in court consistently encourage countermobilization, guaranteeing that further time and resources are spent maintaining the rights that had previously seemed secure (Tushnet 1989). Finally, and of most concern to actors who propose structural transformation rather than legal reform, in fighting to secure and maintain these gains, formerly radical claims become molded into the appropriate legal rhetoric, resulting in less powerful—and less nuanced—wins than intended (Tushnet 1989). That said, critical race theorists have argued that rights retain symbolic importance for marginalized groups, particularly racial minorities (Williams 1992).

The insistence that traditional reproductive advocacy focused on legal rights was failing to benefit all the people the women's movement claimed to represent was stated not only by Black and Latina activists from outside (or sometimes inside) these movements but also by allied scholars pursuing a broader reproductive agenda. Political scientist Rosalind Petchesky's [1990 (1984)] *Abortion and Woman's Choice* paid some attention to class as it tackled the role of the state in women's experiences with abortion. When she updated her text six years after it was initially published, Petchesky, a former CARASA member, recognized the inadequacy of her own analysis, noting outright that race and class had to become central to reproductive rights advocacy:

> Until privacy or autonomy is redefined in reference to the social justice provisions that can give it substance for the poorest women, it will remain not only a class-biased and racist concept but an antifeminist one insofar as it is premised on a denial of social responsibility to improve the conditions of women as a whole. (p. xxvi)

She called for "an organized political movement based on a broader array of force than feminism has yet known," which she saw as emerging from the work of Black feminists (p. xxvi). These feminists were forging connections between movements as they organized in support of reproductive rights.

Likewise, philosopher Marlene Gerber Fried (1990) introduced her edited volume *From Abortion to Reproductive Freedom: Transforming a Movement* with a challenge to the mainstream reproductive rights movement, which in her view had made a foundational error because "the decision to fight for choice rather

not being engaged with by feminist theorists to the degree that concerns about race and gender were.

[17] Other legal scholars (Harris 1990, Matsuda 1990) also examined challenges of intersectional praxis.

than justice is itself a decision to appeal to those who already have choices" (Fried 1990, p. 6). After Colen (1986) coined the term stratified reproduction to describe the power inequalities between groups of women in which reproduction is differently encouraged (e.g., nannies and their employers), anthropologists Ginsburg & Rapp (1995) foregrounded the concept in an edited volume that built on a previous call to fellow anthropologists to center reproductive politics in place-based theories to better understand the increasing global dynamics of cultural reproduction. Sociologist Luker (1996) foregrounded the voices of often-maligned teen mothers while questioning the roots of the "epidemic" of teen pregnancy that captured media and policy attention. Multiple scholars [Hartmann 1995 (1987), Silliman & King 1999] critically assessed the persistence of population-control policies sometimes literally tested on women, particularly in other countries, and continued to raise questions about the benefits of reproductive advocacy that focused only on the right to have an abortion. Historian Rickie Solinger's [2000 (1992)] meticulous examination of how unwed Black and White women navigated their pregnancies in the pre-*Roe* era was complemented by numerous books that offered unflinching analysis of reproductive politics and questioning of the mainstream reproductive rights movement's increasing reliance of the market logic of choice (Solinger 2001, 2005).

THE INTERVENTION OF REPRODUCTIVE JUSTICE

In the legal academy, some scholars were engaging with difficult questions about the intersections of race and reproduction in law (Bridgewater 1999; Roberts 1991, 1996; Rutherford 1991). Dorothy Roberts's (1997) pivotal book, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*, developed a compelling argument for how Black women's historical reproductive inequality affected everyone's contemporary (lack of) reproductive liberty. In Roberts's view, both legal scholars and liberal feminists overlooked the power relationships that construct certain groups' reproduction as a social problem.

In outlining the complex relationship that early Black leaders had with birth control advocates such as Margaret Sanger, Roberts highlighted the continuing tension between birth control and population control. Roberts noted that arguments about numbers of forcible sterilizations, although important, should not be our sole concern. Rather, we should interrogate the lasting consequence of the racist (and classist and sexist) ideology that these programs have legitimated and perpetuated long after laws were struck down or programs formally dismantled. Roberts closed her book by calling for a "radical vision of reproductive justice" (Roberts 1997, p. 312). At the time of the book's publication, a new women of color reproductive health coalition, SisterSong Women of Color Reproductive Health Collective, was forming; this group drew on the lessons from "foremother" organizations such as National Black Women's Health Project and Asians and Pacific Islanders for Reproductive Health, as well as previous networks, to establish a coalition that would provide a foundation for the RJ movement.[18]

Besides Roberts's and Solinger's indispensable works, new texts, such as historian Nelson's (2003) *Women of Color and the Reproductive Rights Movement*, systematically examined the role that women of color had played in past reproductive health and rights work and focused on the unknown (or unacknowledged) histories of activism that had largely been left out of the traditional stories of the women's movement. Women of color activists and scholars (and allies) also began to produce their own histories of this movement, most notably in the 2004 text *Undivided Rights: Women of Color Organize for Reproductive Justice* (Silliman et al. 2004). Written by founders and early supporters of

[18]Various leaders in the emerging RJ movement published reflections on their growing movement (Diallo 2004, Ross 2001), but those works did not include the phrase.

SisterSong, the book focused on 12 women of color organizations leading this new movement. The book mingled examination of reproductive histories of different ethnic groups with analysis of the development of the respective organizations. Common themes across the chapters included intramovement conflicts, funding difficulties, and disheartening political climate. Ultimately, the emphasis was on how women of color, themselves, addressed reproductive issues through their own organizing and community-based research that relied on intersectional analysis to strengthen grassroots coalitions, not legal advocacy:

> Whereas liberal feminism basically addresses gender-based economic inequalities and seeks reform through legal changes, a more radical feminist politics challenges the entire system, linking all forms of oppression. The reproductive rights agenda that women of color propose cannot be disengaged from structural economic violence, inequality, and racism, and it is on this point that these two political philosophies—a radical versus a liberal feminist agenda—clash. (Silliman et al. 2004, p. 285)

Almost a decade later, this book remains one of the most referenced in the RJ movement and in scholarship that provides a critical perspective on reproduction.

At the same time, RJ organizations were expanding the reproductive organizing strategy in the United States. For example, they shifted the structure and impact of the first major national women's march of the twenty-first century by infusing it with an expanded RJ framing and organizing strategy (Luna 2010). A year later, Asian Communities for Reproductive Justice (ACRJ) released "A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights and Reproductive Justice" (ACRJ 2005), a document that outlined the different approaches to reproductive advocacy and, alongside *Undivided Rights*, served as a primer on RJ. Some legal scholars demonstrated their commitment to expanding the agenda of the reproductive rights movement in articles that combined legal analysis with discussion of concerns of populations such as Latina women who had not been engaged by traditional reproductive rights organizations (Hooton 2005, Lee 2000).

Notably, although law is present in these various accounts of organizing by women of color, it is periodically presented as a dangerous preoccupation of the mainstream reproductive rights movement dominated by White middle-class women who were unable—or unwilling—to recognize that protecting legal abortion, to the exclusion of other reproductive issues, could not be a winning strategy. Next, we move to a brief analysis of scholarship on the right to not have a child, the right to have children, and the right to parent.

RIGHT TO NOT HAVE A CHILD

The extensive legal scholarship focused on the right to not have a child often engages debates about what *Roe*, one of the most-cited cases, really says and what it should have said (Balkin 2005) and speculates about why and how it could or could not be overturned. For example, these abortion-focused analyses focus on the "what if" of *Roe*'s overturning by reviewing current state laws and pre-*Roe* statutes that would go into effect should the federal ruling be overturned (Appleton 2007, Fallon 2006), or they challenge fetal rights while reiterating individualist notions of rights and choice (Bruchs 2004, Harris 2001, Johnson 2008, Pacillo 1997). Others outline the various rights *Roe* encompasses (Siegel 2010). As discussed previously, contraception remains a focus of much scholarship (Pillard 2006).

The legal battles around *Roe* have influenced jurisprudence beyond reproductive issues proper and public perception about the role of courts (Greenhouse & Siegel 2010), so the attention on the right to not have children, and on abortion in particular, is understandable. Yet, the lens of RJ is an enlarging one. Using the insights and expanded frameworks of the RJ movement and its scholarly companions, we see how a range of issues not traditionally

considered under the rubric of reproductive rights become sites for activism and scholarship.

(WHO LACKS) THE RIGHT TO HAVE A CHILD

The breadth of this expansion is breathtaking, and we do not propose to examine it in its entirety. Rather, we present below some research that bears the imprint of the ideas of RJ. Emerging areas of scholarship deeply influenced by RJ as an analytic framework or movement have come to conceptualize the right to not have a child as intimately linked to the right to bear and raise that child with some measure of autonomy. One particular area in this literature is the investigation of the differential targeting of what legal scholar Nancy Ehrenreich (1993) calls outsider women, whose reproductive decisions, once they are pregnant, are not considered worthy of respect. Thus, we turn to two overlapping areas of scholarship that elucidate how RJ is intimately linked to the right to have a child. The first is criminalization of reproduction, which highlights how some reproduction is not only discouraged but explicitly feared and penalized. The second is reproductive technology and the obstacles to having children that some groups face.

Criminalization of Reproduction

A small group of scholars have provided sustained analysis of the criminalization of reproduction, with particular emphasis on the impact of the drug war in constructing drug use and addiction as matters of crime rather than health, thereby moving the solutions from the health care system to legal system (Fentiman 2008; Janssen 1999; Paltrow 1990, 2009; Roberts 1991, 1996, 2009; Stone-Manista 2008). For example, in the wake of the moral panic over "crack babies," various states and administrative agencies have attempted to detain, confine, or incarcerate women whose behavior is thought to be damaging to their fetuses (Cherry 2007, Oberman 1991, Paltrow 2002), Although the American Medical Association (AMA) has noted that drug addiction is a disease, not a crime, legal and medical actors, using novel legal theories, have extended existing laws to punish women who use drugs [see amici briefs filed by the AMA and other national and state professional associations in cases such as *Ankrom v. Alabama* (2011)]. Maternal drug use has thus been prosecuted as child abuse or as the delivery of drugs to a minor, resulting in lengthy sentences.

Sociolegal scholars will not be surprised to discover that early evidence suggested that Black women were more likely than other drug users to be charged with offenses related to fetal or child endangerment. Roberts (1997) has shown how some women of color and poor women, because they use publicly funded services, experience increased surveillance of behaviors that women with more class privilege could largely hide from their private doctors (whose positive perception of them resulted in more leniency if drug use was discovered). Public hospitals that serve lower-income women continue to perform random drug tests on new mothers significantly more often than private hospitals do (Yaniv 2012). When viewed through an expanded lens, these examples have consequences for basic civil liberties as well as for the protections of abortion that the reproductive rights movement continues to seek (Paltrow 1998).

How racialized assumptions of criminality threatened the reproductive freedom of some women, and of their communities, continued as a theme. Released shortly after the terrorist attacks of 2001, the Committee on Women, Population, and the Environment (CWPE)'s volume *Policing the National Body* (Silliman & Bhattacharjee 2002) provided an analysis of how the increased criminalization and surveillance of poor communities and communities of color threatened reproductive autonomy. The volume brought together critical analyses of the drug war, immigration reform, targeting of youth, and the antiviolence movement; its breadth exemplified the potential (and necessity) of cross-movement alliances.

Sociologist Jeanne Flavin's (2009) *Our Bodies, Our Crimes* drew on her training in criminology and her work with National Advocates for Pregnant Women to illustrate how women's non-normative reproductive behavior engendered myriad punitive responses from the criminal justice system. Analysis of the linkages between reproductive control and the criminal justice system also pointed to issues that go beyond traditional reproductive health or rights work. The term rights suggests placement within a legal system that recognizes a person's claim to protections or guarantees of freedom from certain interference of the state; in practice, however, many women cannot rely on these protections or guarantees.

Reproductive Technology

Debates about assisted reproductive technology (ART) reveal anxieties about who should reproduce and the relationship between law, science, and the private sector. Examining these practices also reminds us how gender and race stereotypes are perpetuated under the guise of neutral scientific progress (Almeling 2011, Roberts 2009, Thompson 2005). White, wealthy, heterosexual couples have used various forms of ART without facing many questions about what burden such usage places on society; yet, being poor is perceived as a reason to not reproduce, and if a poor woman already has children, reproducing may even be seen as punishable. Infertility treatment is advertised to White and affluent couples (Hawkins 2013), whereas poorer women, nonnative English speakers, and women of color often find many barriers to receiving an official diagnosis of infertility—let alone treatment (Bell 2009, Guendelman & Stachel 2011, Harris 2014, Nachtigall et al. 2009, Ranji & Salganicoff 2009, Staniec & Webb 2007).

When women who use government insurance do access ART, they are questioned about their right to do so and represented as bad mothers whose actions require legal sanction (Forman 2011). In 2009, the public learned that Nadya Suleman had become pregnant with octuplets through in vitro fertilization that she obtained while unemployed. Scholars and the public renewed calls for regulation of ART, others proposed federal insurance for ART (Davidson 2010), and still others challenged the idea that government should regulate ART based on patient characteristics (Cahn & Collins 2009). Some have urged policymakers to "ignore Octomom" when considering regulation of ART because hers represents a "sad and disturbing—but aberrant—case" (Krawiec 2009, p. 121), but this logic sidesteps some of the underlying reasons why so many people found the case disturbing. The outcry over Suleman's multiple births demonstrated that social anxieties about reproductive technology and "fitness" to reproduce remain even in seemingly progressive political circles. Limited regulation has also produced complex legal cases that push the boundaries of people's understanding of family. Populations that have had difficulty accessing ART include people with disabilities (Mutcherson 2009, Stafan 2008), prisoners (Roth 2004a), people with HIV (Keels 2010), single women (Lezin 2003), and same-sex couples (Anderson 2008, *Benitez v. North Coast Women's Care Medical Group* 2003). Reproductive technology is in practice still perceived as a luxury of which only a limited population should avail themselves (Jesudason 2009), which raises questions about whether and how social movements can meaningfully contribute to these debates.

RIGHT TO PARENT WITH DIGNITY

Concerns about the right to parent (healthfully and with dignity) range from the effects of the criminal justice system on families to the deleterious physical environments in which people raise children.

Birth Justice and Coerced Obstetrics

Within the concept of birth justice we find an emphasis on the actual conditions of birth, including access to culturally appropriate education about birthing

options, freedom from undue medical intervention, and support for breastfeeding (Diaz-Tello & Paltrow 2010; see also **http://blackwomenbirthingjustice.org/**). Scholars also argue that women of color experience a disproportionate amount of medical intervention in their births for non-medical reasons (Krauss 1991). Much like poor women and women of color who use drugs while pregnant, outsider women often find that their considered decisions during pregnancy and birth are deemed illegitimate and irrational (Ehrenreich 1993). For example, states have argued for the right to force a pregnant HIV-positive woman to take antiretrovirals against her will despite expert testimony suggesting that the risk of perinatal infection is small and largely unaffected by prenatal antiretroviral therapy (Halem 1997, *N.J. Division of Youth & Family Services v. L.V.* 2005). However, higher-income women also find resonance with the desire to have one's birthing decisions respected. Forced cesareans for women whose labor is not progressing "properly" pit women's considered choices against their physicians' preferences (Chalidze 2009, Kukura 2010). More affluent women have organized to remove various laws that restrict their birth preferences for midwives or home birth, at times using disruptive tactics assumedly reserved for groups with limited access to the dominant political institutions (Craven 2010).

Incarcerated Women and Shackling

Racial disparities in sentencing, limited medical care, and overcrowding all become reproductive issues under the rubric of the right to parent with dignity as envisioned through this expansive lens of RJ. Some estimate that approximately one million women have a direct relationship with the criminal justice system; 20% of them are presently incarcerated (Sentencing Project 2012). Reproductive health services remain inadequate, whether in the context of prenatal care or abortion, which, as a result of the Hyde Amendment, prisoners use their own funds to obtain (Roth 2004b, 2010). Approximately 70,000 incarcerated women are mothers, 2,000 entered prison pregnant, and more than 1,000 will give birth while incarcerated. In various states, parental rights are terminated upon incarceration; in the remaining states, incarcerated parents face obstacles to maintaining relationships with their children during and after incarceration. These children, like others "at risk" or born of "bad" mothers, may become quickly incorporated into the convoluted child welfare system, which, some critics argue, meets the demand of wealthier people for adoptive children [Reich 2005, Roberts 2002, Solinger 2000 (1992)]. Thus, a larger concern of various RJ organizations is to understand how the criminal justice system facilitates the reproductive oppression of whole communities in terms of reproductive health and family structure.

One of the issues RJ organizations have made progress on is the shackling of pregnant women. Shackling involves the use of restraints on the wrists, ankles, and/or abdomens of inmates, including pregnant women before and during birth (Ocen 2012, Sussman 2008). Medical associations have stated that the practice is dangerous to both mother and fetus, as the restraints increase the risk of falling, impede the birth process, and result in injury (AMA 2011).

Predictably, federal and state policies and practice in this area vary widely. However, since 1999, 12 states, including Texas, New York, and Florida, have passed legislation to prohibit shackling during labor. These campaigns are supported by organizations such as the Rebecca Project for Human Rights, the NWLC (2010), and, more recently, Amnesty International; they have featured leadership by women of color working in RJ organizations such as SPARK Reproductive Justice NOW of Georgia and Mobile Midwife of Florida. The Florida organization's primary work, however, has been at the community level, for example, through programs for pregnant teens. In one, the teens learn about midwifery traditions and possible birth options, which moves away from common programmatic models that assume teen mothers are irresponsible people who cause social problems and cannot make healthful choices (Luker 1996, Rhode 1993).

In 2012, California became the first state to ban shackling of pregnant inmates at any point during pregnancy. After multiple bipartisan attempts to pass the bill, it was signed into law after corrections eventually supported the change, which illustrates how expanding notions of a reproductive issue also requires expanding campaign support. These victories are happening through organizing and coalition building aimed at drawing attention to laws that are already on the books (e.g., Supreme Court rulings on inhumane treatment of prisoners) but are not readily applied to vulnerable populations, such as incarcerated women, in the United States. The impetus for the campaign, however, was from community RJ organizations that worked in coalition with the American Civil Liberties Union of California and other organizations building long-term support on a range of issues (Shain 2012).

Using the RJ lens widens the arenas of scholarship to include a broader range of settings and practices in which inequalities of class, race, and gender are re-created in and on the bodies of women and their communities. The legal and social regulations of reproduction point to the overarching links among the reproductive experiences of seemingly disparate groups.

SCHOLARSHIP CLAIMING TO ADDRESS REPRODUCTIVE JUSTICE

Having covered some examples of the shift in understanding of reproductive politics beyond the right to not have children to include the right to have children and the right to parent, we move to a brief analysis of some scholarship that explicitly claims RJ.

A search of "reproductive justice" produces a handful of legal journal articles with the phrase in the title.[19] We use West's (2009) *From Choice to Reproductive Justice: De-Constitutionalizing Abortion Rights* to outline the tensions between reproductive rights analysis and RJ analysis. West starts with the stated goal of critiquing pro-choice scholars' commitment to the terms of *Roe* and using that analysis to "urge a broader political argument for RJ in women's lives that embraces, but does not center upon, rights-based claims" (pp. 1396–97). Nevertheless, the article's end point is troublesome; it highlights the limitations of analysis that remains isolated within the (legal) scholarship while claiming to focus on RJ.

Although its title promises the reader an understanding of the move from choice to RJ, the article focuses on the former without sustained attention to the latter. The limitations of West's analysis begin with how she conceptualizes who RJ actors are and how they approach issues of reproduction. Without having defined RJ or differentiating the movement's activity from reproductive health or reproductive rights work, West emphasizes debates about abortion's constitutionality without attention to intersectionality or how RJ scholarship and organizing often do not focus on narrow abortion rights. West appears to see RJ as derivative of reproductive rights, originating from feminist legal thought. She continually refers to a pro-choice community without challenging such an idea of community or delineating differences within that community. Nowhere does the reader learn about what these decisions mean to different racial groups in practice or to people who have multiple memberships or do not identify as pro-choice but work on reproductive issues.

West characterizes coalitions as "ordinary modes of political persuasion" (p. 1394), underestimating what many activists learned long ago: Coalition politics is not ordinary by any means (Reagon 1983). Achieving RJ would require strong coalitions that can move toward long-term change irrespective of the current political climate. When viewed through a lens of the activity of grassroots social movements or academic scholarship (Crenshaw 1994, Inuzaka 1991, Luna 2010, Matsuda 1991, Staggenborg 1986, Van Dyke & McCammon 2010), coalition work can be extraordinary. Finally, the article does not reference any RJ organizations,

[19]There are various articles from other disciplines that we cannot address.

key documents, or grassroots campaigns. Any such mention would contextualize West's proposals, if only to differentiate the piece from the RJ movement's efforts to move from law-based arguments about choice to a broader vision of RJ. Some of the limitations of West's piece can be found in scholarship in law (Ziegler 2012) and other disciplines (Cook & Dickens 2009). However, our point is to provide scholars an opportunity to understand differences among types of reproductive scholarship and in the methodology that produces that scholarship. As we noted at the beginning of this article, RJ has the potential to advance scholarship, but if scholars neglect the impetus of the movement's framework, that advancement will be limited. To take up the term RJ without such concomitant analysis is simply to do a reproductive rights (or other) analysis while claiming a new name. Such analyses have their purpose, but when misnamed, they also have the potential to reduce RJ's analytic leverage.

We do not think that scholarship must name RJ as its goal in order to provide an analysis that advances our understanding of the multidimensional power dynamics embedded within reproductive issues. For example, Paltrow (2011), in analyzing *McCorvey v. Hill* (2004), identifies how various movement actors could have been engaged by pro-choice advocates to challenge the misinformation and stigmatizing discussion about abortion that pro-life advocates presented during the case. Paltrow's examples suggest how RJ organizing challenges traditional advocacy. Although there are some similarly aligned movements mentioned, Paltrow suggests others that would seem less obvious for traditional reproductive rights advocacy such as antipoverty organizations. Further, Paltrow's (2011, p. 225) reference to "prochoice and RJ activists" indicates an understanding of how the two groups overlap but are not the same. Released weeks before the fortieth anniversary of the *Roe* ruling, Paltrow & Flavin's (2013) study analyzed more than 400 cases in which pregnancy factored into an arrest or ruling (see also Paltrow 2013). They documented sustained links between the criminal justice system and restrictions on women's reproductive autonomy. The law is ever present in these pieces, but their analysis draws on the lived experiences of women and the activities of grassroots movements. They highlight how seemingly unrelated reproductive experiences affect people across the spectrum, how social position affects the outcomes of cases, and how the legal system and reproductive activism are ever shifting, necessitating both a more nuanced analysis and organizing around the deeper points of connection.

DISCUSSION

Reproductive justice—as an analytic framework, movement, praxis, and vision—represents an advance in movement strategy and scholarship. RJ emphasizes how reproduction must be considered among an array of social justice concerns. Consequently, reproductive justice is equally about the right to not have children, the right to have children, the right to parent with dignity, and the means to achieve these rights. As we first outlined, the movement emerged for many reasons, including the gap between the *Roe v. Wade* (1973) decision and the ability of laws to protect less-affluent populations. Although rights are a part of justice, the nominal universalism of rights, especially the right to privacy, masks structural disparities based on race, sexuality, gender, class, and disability, among other axes. RJ's expansiveness emerges from the need to account for the economic, social, and political disparities, and it is borne out in the array of issues taken up by activists and scholars.

Future Directions

RJ provides many fruitful avenues for future research in terms of theory, substance, and methodology. Theoretically, RJ speaks to, but does not resolve, some questions with which sociolegal scholars continually grapple: What are the limits of law for achieving justice? What nonlegal strategies do people use to overcome those limits? Can justice exist outside of law? How does legal mobilization by one movement

have unintended consequences for linked or allied movements? What are the consequences of choices that cause lawyers make? What are the costs of legal strategies for groups supposedly represented by movements? How do countermovements affect movement strategy?

Substantively, there are many potential areas of research. One is the consequences of the Patient Protection and Affordable Care Act (ACA) of 2010. President Barack Obama's controversial inclusion of contraceptives implies a broader definition of health care. Many RJ activists would agree that by providing basic health care, the government is moving toward creating conditions that holistically support individual and community health, including having and parenting children. Yet, laws also must be enforced, and research on early implementation has already identified problems with vulnerable populations' access to the new resources offered through the ACA (Dennis et al. 2013, Sonfield & Pollack 2013). Applying a more radical RJ analysis could mean examining how the effects of the ACA are mediated by other phenomena such as environmental hazards or food insecurity. Further research could analyze what effect, if any, the ACA has on attitudes about who should and should not reproduce.

Other scholars may press forward examining the sociolegal implications of ART, including how globalization creates new dilemmas in the areas of ethics, commerce, and family formation (Lee 2009, Markens 2012, Twine 2011). With welfare reform and immigration reform on the horizon, the effects of family caps and health care waiting periods deserve renewed attention (Kelly 2010, Smith 2006). Sexuality education has been a contentious issue for decades (Luker 2006), but there is still little understanding of how the ways in which youth themselves approach reproductive issues challenge adults' assumptions about the limits of reproductive autonomy. Yet other researchers may consider more deeply the intersection of reproduction and incarceration through persistent cases of coerced sterilization (Volz 2006, Johnson 2013) and criminalization of reproduction (Paltrow & Flavin 2013).

Best Practices

As there are many avenues for research, we want to briefly discuss potential best practices for researching, writing about, and teaching RJ.[20] At a minimum, the basic scholarly practice of defining the concept when first referenced—which we found missing in various articles—is essential. Defining terms outright allows the reader to assess how closely the author's stated work seems to fit with the history of RJ and its aim as originally outlined by the movement. After that, there is a spectrum of possibilities. At one end is minimal engagement through information gathering—reading texts produced by founding RJ organizations or by newer ones that are central to the movement (e.g., Forward Together, the National Latina Institute for Reproductive Health, and SisterSong). On the other end is high engagement through fully participatory research, from design to execution to publication to evaluation.[21] We think all authors should be able to engage minimally so their basic information about the movement is correct. We suspect many researchers would face multiple barriers—disciplinary, institutional, temporal, and monetary—to executing a participatory project. Still, there are many possibilities between the two extremes, including attending an event, whether in-person or virtually, sponsored by a central RJ organization; participating in an "RJ 101" training; or sharing drafts of a paper with RJ activists for feedback. Any one of these could enhance the work by uncovering researchers' implicit assumptions and the hidden histories in their work.

A Challenging Opportunity

In all modes of RJ, a key principle is to bring people made most vulnerable by issues to the

[20] We thank our colleague Sujatha Jesudason for suggesting this topic.

[21] Though beyond the scope of this article, an extensive literature exists on how researchers can gain a fuller understanding of the social phenomenon under study through engaged research including community-based participatory research and feminist social-science approaches [Hesse-Biber & Leavy 2006, Minkler & Wallerstein 2011 (2003), Sprague 2005].

center. These are often poor people, people of color, people with disabilities, and people with non-normative gender expression and sexualities. However, we want to caution against going too far in the direction of the "other" because the reproductive penalizing of some groups occurs within a context of the reproductive privileging of other groups whose experiences must also be critically interrogated. That said, the pressure for both scholars and movement actors to exclusively focus on abortion politics recurs as challenges to *Roe* are renewed in legislatures and courts. Ultimately, our review demonstrates how historically, there have been—and will likely continue to be—a variety of interrelated reproductive issues that deserve fuller attention despite the pressure. We look forward to seeing how scholars, practitioners, and activists take up the challenge of reproductive justice.

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LITERATURE CITED

ACRJ (Asian Communities Reprod. Justice). 2005. *A New Vision for Advancing Our Movement for Reproductive Health, Reproductive Rights and Reproductive Justice*. Oakland, CA: ACRJ. **http://reproductivejustice.org/assets/docs/ACRJ-A-New-Vision.pdf**

Adams GD. 1997. Abortion: evidence of an issue evolution. *Am. J. Polit. Sci.* 41:718–37

Albiston CR. 2010. *Institutional Inequality and the Mobilization of the Family and Medical Leave Act: Rights on Leave*. New York: Cambridge Univ. Press

Almeling R. 2011. *Sex Cells: The Medical Market for Eggs and Sperm*. Berkeley/Los Angeles: Univ. Calif. Press

AMA (Am. Med. Assoc.). 2011. *Talking Points: Shackling of Pregnant Prisoners*. Chicago: AMA

Anderson BJ. 2008. Lesbians, gays, and people living with HIV: facing and fighting barriers to assisted reproduction. *Cardozo J. Law Gender* 15:451–75

Anderson C. 2003. *Eyes Off the Prize: African Americans, the United Nations, and the Struggle for Human Rights, 1944–1955*. Cambridge, UK: Cambridge Univ. Press

Ankrom v. Alabama, [Ms. CR-09-1148, Aug. 26, 2011] So.3d (Ala. Crim. App. 2011)

Appleton SF. 2007. Gender, abortion, and travel after *Roe*'s end. *St. Louis Univ. Law J.* 51:655–84

Balkin JM, ed. 2005. *What* Roe v. Wade *Should Have Said: The Nation's Top Legal Experts Rewrite America's Most Controversial Decision*. New York: NYU Press

Beal FM. 2008 (1970). Double jeopardy: to be black and female. *Meridians: Fem. Race Transnatl.* 8:166–76

Beal v. Doe, 432 U.S. 438 (1977)

Beisel N. 1998. *Imperiled Innocents: Anthony Comstock and Family Reproduction in Victorian America*. Princeton, NJ: Princeton Univ. Press

Beisel N, Kay T. 2004. Abortion, race, and gender in nineteenth-century America. *Am. Sociol. Rev.* 69:498–515

Bell AV. 2009. "It's way out of my league": low-income women's experiences of medicalized infertility. *Gender Soc.* 23:688–709

Benitez v. North Coast Women's Care Medical Group, 31 Cal. Rptr. 2d 364, 106 Cal. App. 4th 978 (Ct. App. 2003)

Berger MT, Guidroz K, eds. 2009. *The Intersectional Approach: Transforming the Academy Through Race, Class, and Gender*. Chapel Hill: Univ. N.C. Press

Bridges KM. 2009. Quasi-colonial bodies: an analysis of the reproductive lives of poor black and racially subjugated women. *Columbia J. Gender Law* 18:609–46

Bridges KM. 2011a. Privacy rights and public families. *Harvard J. Law Gender* 34:113–74

Bridges KM. 2011b. *Reproducing Race: An Ethnography of Pregnancy as a Site of Racialization*. Berkeley/Los Angeles: Univ. Calif. Press

Bridgewater PD. 1999. Reproductive freedom as civil freedom: the Thirteenth Amendment's role in the struggle for reproductive rights. *J. Gender Race Just.* 3:401–25

Bridgewater PD. 2001. Un/re/dis covering slave breeding in Thirteenth Amendment jurisprudence. *Wash. Lee Race Ethnic Ancestry Law J.* 7:11–43

Bruchs AK. 2004. Clash of competing interests: Can the Unborn Victims of Violence Act and over thirty years of settled abortion law co-exist peacefully? *Syracuse Law Rev.* 55:133–59

Buck v. Bell, 274 U.S. 200 (1927)

Burnham MA. 1987. An impossible marriage: slave law and family law. *Law Inequal.* 5:187–225

Burns G. 2005. *The Moral Veto: Framing Contraception, Abortion, and Cultural Pluralism in the United States*. New York: Cambridge Univ. Press

Cahn N, Collins J. 2009. Eight is enough. *Northwest. Univ. Law Rev.* 103:501–13

Calderone MS, ed. 1958. *Abortion in the United States: A Conference Sponsored by the Planned Parenthood Federation of America, Inc., at Arden House and the New York Academy of Medicine.* New York: Hoeber & Harper

Carey v. Population Services International, 431 U.S. 678 (1977)

CESA (Comm. End Steriliz. Abuse). 1975. *CESA Statement of Purpose.* Chicago: Chicago Women's Lib. Union. **http://www.uic.edu/orgs/cwluherstory/CWLUArchive/cesapurpose.html**

Chalidze LL. 2009. Misinformed consent: non-medical bases for American birth recommendations as a human rights issue. *N.Y. Law Sch. Law Rev.* 54:59–103

Cherry A. 2007. The detention, confinement, and incarceration of pregnant women for the benefit of fetal health. *Columbia J. Gender Law* 16:147–97

Chesler E. 2007 (1992). *Woman of Valor: Margaret Sanger and the Birth Control Movement in America*. New York: Simon & Schuster

Choo HY, Ferree MM. 2010. Practicing intersectionality in sociological research: a critical analysis of inclusions, interactions, and institutions in the study of inequalities. *Sociol. Theory* 28:129–49

Colen S. 1986. "With respect and feelings": voices of West Indian child care and domestic workers in New York City. In *All American Women: Lines that Divide, Ties that Bind*, ed. JB Cole, pp. 46–70. New York: Free Press

Collins PH. 1990. *Black Feminist Thought: Knowledge, Consciousness, and the Politics of Empowerment*. Boston: Unwin Hyman

Combahee River Collective. 1981 (1977). A Black feminist statement. In *This Bridge Called My Back: Writings by Radical Women of Color*, ed. C Moraga, G Anzaldua, pp. 201–18. Watertown, MA: Persephone

Constable M. 2007. *Just Silences: The Limits and Possibilities of Modern Law*. Princeton, NJ: Princeton Univ. Press

Cook RJ, Dickens BM. 2009. From reproductive choice to reproductive justice. *Int. J. Gynecol. Obstet.* 106:106–9

Craven C. 2010. *Pushing for Midwives: Homebirth Mothers and the Reproductive Rights Movement*. Philadelphia: Temple Univ. Press

Crenshaw K. 1989. Demarginalizing the intersection of race and sex: a black feminist critique of antidiscrimination doctrine, feminist theory and antiracist politics. *Univ. Chicago Legal Forum* 1989:139–67

Crenshaw K. 1994. Mapping the margins: intersectionality, identity politics, and violence against women of color. In *The Public Nature of Private Violence*, ed. MA Fineman, R Mykitiuk, pp. 93–118. New York: Routledge

Crenshaw K, Gotanda N, Peller G, Thomas K, eds. 1995. *Critical Race Theory: The Key Writings that Formed the Movement*. New York: New Press

Davidson C. 2010. Octomom and multi-fetal pregnancies: why federal legislation should require insurers to cover in vitro fertilization. *William Mary J. Women Law* 17:135–86
Davis K. 2008. Intersectionality as buzzword: a sociology of science perspective on what makes a feminist theory successful. *Fem. Theory* 9:67–85
Delgado R, Stefancic J. 2012 (2001). *Critical Race Theory: An Introduction*. New York: NYU Press
Dennis A, Blanchard K, Córdova D, Wahlin B, Clark J, et al. 2013. What happens to the women who fall through the cracks of health care reform? Lessons from Massachusetts. *J. Health Polit. Policy Law* 38:393–419
Derkas E. 2012. The organization formerly known as CRACK: Project Prevention and the privatized assault on reproductive wellbeing. *Race Gender Class* 19:179–95
Diallo DD. 2004. Reflections of a human rights educator. *Meridians: Fem. Race Transnatl.* 4:124–28
Diaz-Tello F, Paltrow LM. 2010. *Birth justice as reproductive justice*. Work. Pap., Natl. Advocates Pregnant Women, New York
Dudziak ML. 2010. *Just say no: birth control in the Connecticut Supreme Court before* Griswold v. Connecticut. Legal Stud. Work. Pap. Ser. 68, Univ. S. Calif. Law Sch. **http://law.bepress.com/usclwps-lss/art68/**
Ehrenreich N. 1993. The colonization of the womb. *Duke Law J.* 43:492–587
Ehrenreich N. 2008. *The Reproductive Rights Reader: Law, Medicine, and the Construction of Motherhood*. New York: NYU Press
Eisenstadt v. Baird, 405 U.S. 438 (1972)
Fallon RH Jr. 2006. If *Roe* were overruled: abortion and the constitution in a post-*Roe* world. *St. Louis Univ. Law J.* 51:611–54
Fentiman LC. 2008. Pursuing the perfect mother: why America's criminalization of maternal substance abuse is not the answer—a comparative legal analysis. *Mich. J. Gender Law* 15:389–465
Ferree MM, Gamson WA, Gerhards J, Rucht D. 2002. *Shaping Abortion Discourse: Democracy and the Public Sphere in Germany and the United States*. Cambridge, UK: Cambridge Univ. Press
Fine ME, Asch AE. 1988. *Women with Disabilities: Essays in Psychology, Culture, and Politics*. Philadelphia: Temple Univ. Press
Flavin J. 2009. *Our Bodies, Our Crimes. The Policing of Women's Reproduction in America*. New York: NYU Press
Fogel RW, Engerman SL. 1974. *Time on the Cross: The Economics of American Slavery*. New York: Norton
Forman DL. 2011. When "bad" mothers make worse law: a critique of legislative limits on embryo transfer. *Univ. Pa. J. Law Soc. Change* 14:273–312
Freedman L, Weitz TA. 2012. The politics of motherhood meets the politics of poverty. *Contemp. Sociol.* 41:36–42
Fried MG. 1990. *From Abortion to Reproductive Freedom: Transforming a Movement*. Boston: South End
Galanter M. 1974. Why the "haves" come out ahead: speculations on the limits of legal change. *Law Soc. Rev.* 9:95–160
Ginsburg FD Rapp R 1991. The politics of reproduction. *Annu. Rev. Anthropol.* 20:311–43
Ginsburg FD, Rapp R. 1995. *Conceiving the New World Order: The Global Politics of Reproduction*. Berkeley/Los Angeles: Univ. Calif. Press
Godbeer R. 2002. *Sexual Revolution in Early America*. Baltimore, MD: Johns Hopkins Univ. Press
Gordon L. 1990 (1976). *Woman's Body, Woman's Right: Birth Control in America*. New York: Penguin
Goring DC. 2005. The history of slave marriage in the United States. *J. Marshall Law Rev.* 39:299–347
Gould JB, Barclay S. 2012. Mind the gap: the place of gap studies in sociolegal scholarship. *Annu. Rev. Law Soc. Sci.* 8:323–35
Gould SJ. 1985. Carrie Buck's daughter. In *The Flamingo's Smile*, pp. 307–13. New York: W.W. Norton
Greenhouse L, Siegel RB. 2010. Before (and after) *Roe v. Wade*: new questions about backlash. *Yale Law J.* 120:2028–87
Griswold v. Connecticut, 381 U.S. 479 (1965)
Grossberg M. 1985. *Governing the Hearth: Law and the Family in Nineteenth-Century America*. Chapel Hill/London: Univ. N.C. Press
Guendelman S, Stachel L. 2011. Infertility status and infertility treatment: racial and ethnic disparities. In *Reducing Racial/Ethnic Disparities in Reproductive and Perinatal Outcomes*, ed. A Handler, J Kennelly, N Peacock, pp. 93–117. New York: Springer

Gurr B. 2012. The failures and possibilities of a human rights approach to secure Native American women's reproductive justice. *Soc. Without Borders* 7:1–28

Gutiérrez ER. 2008. *Fertile Matters: The Politics of Mexican-Origin Women's Reproduction*. Austin: Univ. Tex. Press

Gutman HG. 2003. *Slavery and the Numbers Game: A Critique of Time On The Cross*. Champaign: Univ. Ill. Press

Halem SC. 1997. At what cost?: an argument against mandatory AZT treatment of HIV-positive pregnant women. *Harvard Civ. Rights-Civ. Lib. Law Rev.* 32:491–528

Harris AP. 1990. Race and essentialism in feminist legal theory. *Stanford Law Rev.* 42:581–616

Harris LH. 2014. *Challenging Conception: A Clinical and Cultural History of In Vitro Fertilization in the United States*. Baltimore, MD: Johns Hopkins Univ. Press

Harris P. 2001. Compelled medical treatment of pregnant women: the balancing of maternal and fetal rights. *Cleveland State Law Rev.* 49:133–61

Harris v. McRae, 448 U.S. 297 (1980)

Hartmann B. 1995 (1987). *Reproductive Rights and Wrongs: The Global Politics of Population Control*. Cambridge, MA: South End Press

Hawkins J. 2013. Selling ART: an empirical assessment of advertising on fertility clinics' websites. *Ind. Law J.* 88:1147–79

Hening WW. 1809–1823. *The Statutes at Large; Being a Collection of All the Laws of Virginia, from the First Session of the Legislature in the Year 1619*, 13 vols. Richmond/Philadelphia/New York: W.W. Hening

Hesse-Biber SN, Leavy PL. 2006. *Feminist Research Practice: A Primer*. Thousand Oaks, CA: Sage

Hirschenbaum D. 2000. When CRACK is the only choice: the effect of a negative right of privacy on drug-addicted women. *Berkeley Women's Law J.* 15:327–37

Hooton A. 2005. A broader vision of the reproductive rights movement: fusing mainstream and Latina feminism. *Am. Univ. J. Gender Soc. Policy Law* 13:59–86

Hull GT, Scott PB, Smith B, eds. 1982. *But Some of Us Are Brave: Black Women's Studies*. New York: Feminist Press

Hull KE. 2001. The political limits of the rights frame: the case of same sex marriage in Hawaii. *Sociol. Perspect.* 44:207–32

Inuzaka J. 1991. Women of color and public policy: a case study of the women's business ownership act. *Stanford Law Rev.* 43:1215–39

Janssen ND. 1999. Fetal rights and the prosecution of women for using drugs during pregnancy. *Drake Law Rev.* 48:741–768

Jennings T. 1990. "Us colored women had to go through a plenty": sexual exploitation of African-American slave women. *J. Women's Hist.* 1:45–74

Jesudason SA. 2009. In the hot tub: the praxis of building new alliances for reprogenetics. *Signs: J. Women Cult. Soc.* 34:901–24

Joffe C, Weitz T, Stacey CL. 2004. Uneasy allies: pro-choice physicians, feminist health activists and the struggle for abortion rights. *Sociol. Health Illn.* 26:775–96

Johnson CG. 2013. *Female inmates sterilized in California prisons without approval*. Rep., Cent. Investig. Report., Berkeley, CA, July 7. **http://cironline.org/reports/female-inmates-sterilized-california-prisons-without-approval-4917**

Johnson D. 2008. "TRAP"ing *Roe* in Indiana and a common-ground alternative. *Yale Law J.* 118:1356–93

Kaplan L. 1997. *The Story of Jane: The Legendary Underground Feminist Abortion Service*. Chicago: Univ. Chicago Press

Keels LM. 2010. "Substantially limited": the reproductive rights of women living with HIV/AIDS. *Univ. Baltimore Law Rev.* 39:389–422

Kelly M. 2010. Regulating the reproduction and mothering of poor women: the controlling image of the welfare mother in television news coverage of welfare reform. *J. Poverty* 14:76–96F

King DK. 1988. Multiple jeopardy, multiple consciousness: the context of a black feminist ideology. *Signs: J. Women Cult. Soc.* 14:42–72

Kline W. 2005. *Building a Better Race: Gender, Sexuality, and Eugenics from the Turn of the Century to the Baby Boom*. Berkeley/Los Angeles: Univ. Calif. Press

Kluchin RM. 2011. *Fit to Be Tied: Sterilization and Reproductive Rights in America, 1950–1980*. New Brunswick, NJ: Rutgers Univ. Press
Krauss DJ. 1991. Regulating women's bodies: The adverse effect of fetal rights theory on childbirth decisions and women of color. *Harvard Civ. Rights-Civ. Lib. Law Rev.* 26:523–48
Krawiec KD. 2009. Why we should ignore the "Octomom." *Northwest. Univ. Law Rev. Colloq.* 104:120–31
Kukura E. 2010. Choice in birth: preserving access to VBAC. *Pa. State Law Rev.* 114:959–1001
Lee MM. 2000. Defining the agenda: a new struggle for African-American women in the fight for reproductive self-determination. *Wash. Lee Race Ethnic Ancestry Law J.* 6:87–102
Lee RL. 2009. New trends in global outsourcing of commercial surrogacy: a call for regulation. *Hastings Women's Law J.* 20:275–300
Lezin J. 2003. (Mis)conceptions: unjust limitations on legally unmarried women's access to reproductive technology and their use of known donors. *Hastings Women's Law J.* 14:185–214
Lombardo PA. 1985. Three generations, no imbeciles: new light on *Buck v. Bell*. *NYU Law Rev.* 60:30–62
Luft RE, Ward J. 2009. Toward an intersectionality just out of reach: confronting challenges to intersectional practice. *Adv. Gender Res.* 13:9–37
Luker K. 1984. *Abortion and the Politics of Motherhood*. Berkeley: Univ. Calif. Press
Luker K. 1996. *Dubious Conceptions: The Politics of Teenage Pregnancy*. Cambridge, MA: Harvard Univ. Press
Luker K. 2006. *When Sex Goes to School: Warring Views on Sex—and Sex Education—Since the Sixties*. New York: W. W. Norton & Company
Luna ZT. 2009. From rights to justice: women of color changing the face of US reproductive rights organizing. *Soc. Without Borders* 4:343–64
Luna ZT. 2010. Marching toward reproductive justice: coalitional (re) framing of the march for women's lives. *Sociol. Inq.* 80:554–78
Luna ZT. 2011. "The phrase of the day": examining contexts and co-optation of reproductive justice activism in the women's movement. In *Research in Social Movements, Conflicts and Change*, Vol. 32, ed. AC Snyder, SP Stobbie, pp. 219–46. Bingley, UK: Emerald Kingdom
Madrigal v. Quilligan, 639 F.2d 789 (9th Cir. 1981)
Maher v. Doe, 432 U.S. 526 (1977)
Markens S. 2012. The global reproductive health market: U.S. media framings and public discourses about transnational surrogacy. *Soc. Sci. Med.* 74:1745–53
Matsuda MJ. 1990. Beside my sister, facing the enemy: legal theory out of coalition. *Stanford Law Rev.* 43:1183–92
McCall L. 2005. The complexity of intersectionality. *Signs: J. Women Cult. Soc.* 30:1771–800
McCann MW. 1994. *Rights at Work: Pay Equity Reform and the Politics of Legal Mobilization*. Chicago: Univ. Chicago Press
McCann MW. 2006. Law and social movements: contemporary perspectives. *Annu. Rev. Law Soc. Sci.* 2:17–38
McCorvey v. Hill, 385 F.3d 846 (5th Cir. 2004)
Merry SE. 2006. *Human Rights and Gender Violence: Translating International Law into Local Justice*. Chicago: Univ. Chicago Press
Mettler S. 2011. *The Submerged State: How Invisible Government Policies Undermine American Democracy*. Chicago: Univ. Chicago Press
Minkler M, Wallerstein N, eds. 2011 (2003). *Community-Based Participatory Research for Health: From Process to Outcomes*. San Francisco: Jossey-Bass
Minow M. 1991. *Making All the Difference: Inclusion, Exclusion, and American Law*. Ithaca, NY: Cornell Univ. Press
Mohr JC. 1978. *Abortion in America: The Origins and Evolution of National Policy*. New York: Oxford Univ. Press
Moraga C, Anzaldua G. 1981. *This Bridge Called My Back: Writings by Radical Women of Color*. Watertown, MA: Persephone
Mutcherson K. 2009. Disabling dreams of parenthood: the fertility industry, anti-discrimination and parents with disabilities. *Law Inequal.* 27:311–64
Nachtigall RD, Castrillo M, Shah N, Turner D, Harrington J, Jackson R. 2009. The challenge of providing infertility services to a low-income immigrant Latino population. *Fertil. Steril.* 92:116–23

NeJaime D. 2010. Winning through losing. *Iowa Law Rev.* 96:941–1012
Nelson A. 2011. *Body and Soul: The Black Panther Party and the Fight Against Medical Discrimination*. Minneapolis: Univ. Minn. Press
Nelson J. 2003. *Women of Color and the Reproductive Rights Movement*. New York: NYU Press
N.J. Division of Youth & Family Services v. L.V., 889 A.2d 1153 (N.J. Super. Ct. Ch. Div. 2005)
NWLC (Natl. Women's Law Cent.). 2010. *Mothers Behind Bars: A State-by-State Report Card and Analysis of Federal Policies on Conditions of Confinement for Pregnant and Parenting Women and the Effect on Their Children*. Washington, DC: NWLC. **http://www.nwlc.org/sites/default/files/pdfs/mothersbehindbars2010.pdf**
Oberman M. 1991. Sex, drugs, pregnancy, and the law: rethinking the problems of pregnant women who use drugs. *Hastings Law J.* 43:505–48
O'Connor K. 1996. *No Neutral Ground? Abortion Politics in an Age of Absolutes*. Boulder, CO: Westview
Ocen P. 2012. Punishing pregnancy: race, incarceration and the shackling of pregnant prisoners. *Calif. Law Rev.* 100:1–54
Ohio v. Akron Center for Reproductive Health, 497 U.S. 502 (1990)
Okin SM. 1989. *Justice, Gender, and the Family*. New York: Basic Books
Pacillo EL. 1997. Expanding the feminist imagination: an analysis of reproductive rights. *J. Gender Law* 6:113–38
Paltrow LM. 1990. When becoming pregnant is a crime. *Crim. Justice Ethics* 9:41–47
Paltrow LM. 1998. Pregnant drug users, fetal persons, and the threat to *Roe v. Wade*. *Albany Law Rev.* 62:999–1055
Paltrow LM. 2002. The war on drugs and the war on abortion: some initial thoughts on the connections, intersections and effects. *Reprod. Health Matters* 10:162–70
Paltrow LM. 2009. What to expect: legal developments and challenges in reproductive justice. *Cardozo J. Law Gend.* 15:502–17
Paltrow LM. 2011. Missed opportunities in *McCorvey v. Hill*: the limits of pro-choice lawyering. *NYU Rev. Law Soc. Change* 35:194–225
Paltrow LM. 2013. *Roe v. Wade* and the new Jane Crow: reproductive rights in the age of mass incarceration. *Am. J. Public Health* 103:17–21
Paltrow LM, Flavin J. 2013. Arrests of and forced interventions on pregnant women in the United States, 1973–2005: implications for women's legal status and public health. *J. Health Polit. Policy Law* 38:299–343
People v. Sanger, 118 N.E. 637 (N.Y. 1918)
Petchesky RP. 1990 (1984). *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*. Boston: Northeast. Univ. Press
Pillard CT. 2006. Our other reproductive choices: equality in sex education, contraceptive access, and work-family policy. *Emory Law J.* 56:941–92
Planned Parenthood v. Casey, 505 U.S. 833 (1992)
Price K. 2010. What is reproductive justice? How women of color activists are redefining the pro-choice paradigm. *Meridians: Fem. Race Transnatl.* 10:42–65
Quay E. 1960. Justifiable abortion: medical and legal foundations (part one). *Georgetown Law J.* 49:173–241
Quay E. 1961. Justifiable abortion: medical and legal foundations (part two). *Georgetown Law J.* 49:395–443
Ranji U, Salganicoff A. 2009. *State Medicaid coverage of family planning services: summary of State Survey findings*. George Washington Univ. Sch. Public Health Health Serv./Kaiser Found., Washington, DC. **http://kff.org/medicaid/report/state-medicaid-coverage-of-family-planning-services-summary-of-state-survey-findings/**
Reagan LJ. 1998. *When Abortion Was a Crime: Women, Medicine, and Law in the United States, 1867–1973*. Berkeley/Los Angeles: Univ. Calif. Press
Reagon BJ. 1983. Coalition politics: turning the century. In *Home Girls: A Black Feminist Anthology*, ed. B Smith, pp. 356–68. Latham, NY: Kitchen Table/Women Color Press
Reed J. 1978. *From Private Vice To Public Virtue: The Birth Control Movement and American Society Since 1830*. New York: Basic Books
Reich CA. 1964. The new property. *Yale Law J.* 73:733–87

Reich JA. 2005. *Fixing Families: Parents, Power and the Child Welfare System*. New York: Routledge
Relf v. Weinberger, 372 F.Supp. 1196 (D.C. Dist. Ct. 1974)
Relf v. Weinberger, 565 F.2d 722 (D.C. Cir. 1977)
Rhode DL. 1993. Adolescent pregnancy and public policy. *Polit. Sci. Q.* 108:635–69
Roberts DE. 1991. Punishing drug addicts who have babies: women of color, equality, and the right of privacy. *Harvard Law Rev.* 104:1419–82
Roberts DE. 1996. Unshackling Black motherhood. *Mich. Law Rev.* 95:938–64
Roberts DE. 1997. *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*. New York: Pantheon
Roberts DE. 2002. *Shattered Bonds: The Color of Child Welfare*. New York: Basic Books
Roberts DE. 2005. Privatization and punishment in the new age of reprogenetics. *Emory Law J.* 54:1343–60
Roberts DE. 2009. Race, gender, and genetic technologies: a new reproductive dystopia? *Signs: J. Women Cult. Soc.* 34:783–804
Roe v. Wade, 410 U.S. 113 (1973)
Rosenberg GN. 1991. *The Hollow Hope: Can Courts Bring About Social Change?* Chicago: Univ. Chicago Press
Ross LJ. 2006. *Understanding Reproductive Justice*. Atlanta, GA: SisterSong
Ross LJ, Brownlee SL, Diallo DD, Rodriquez L. 2001. The SisterSong Collective: women of color, reproductive health and human rights. *Am. J. Health Stud.* 17:79–88
Roth R. 2004a. "No new babies?" Gender inequality and reproductive control in the criminal justice and prison systems. *J. Gender Soc. Policy Law* 12:391–425
Roth R. 2004b. Searching for the state: Who governs prisoners' reproductive rights? *Soc. Polit.* 11:411–38
Roth R. 2010. Obstructing justice: prisons as barriers to medical care for pregnant women. *UCLA Women's Law J.* 18:79–106
Rutherford C. 1991. Reproductive freedoms and African American women. *Yale J. Law Fem.* 4:255–90
Saletan W. 2004. *Bearing Right: How Conservatives Won the Abortion War*. Berkeley/Los Angeles: Univ. Calif. Press
Sandefur RL. 2008. Access to civil justice and race, class, and gender inequality. *Annu. Rev. Sociol.* 34:339–58
Scheingold SA. 1974. *The Politics of Rights: Lawyers, Public Policy, and Political Change*. New Haven, CT: Yale Univ. Press
Sentencing Project. 2012. *Incarcerated women*. Factsheet, Sentencing Project, Washington, DC. **http://www.sentencingproject.org/doc/publications/cc_Incarcerated_Women_Factsheet_Sep24sp.pdf**
Shain K. 2012. No more shackles: AB 2530 is signed! *Strong Families Blog*, Sept. 28
Siegel RB. 2010. *Roe*'s roots: the women's rights claims that engendered *Roe*. *Boston Univ. Law Rev.* 90:1875–907
Siegel SA. 2005. Justice Holmes, *Buck v. Bell*, and the history of equal protection. *Minn. Law Rev.* 90:106–43
Silliman JM, Bhattacharjee A, eds. 2002. *Policing the National Body: Sex, Race, and Criminalization*. Cambridge, MA: South End
Silliman JM, Fried MG, Ross L, Gutiérrez ER. 2004. *Undivided Rights: Women of Color Organize for Reproductive Justice*. Cambridge, MA: South End
Silliman JM, King Y. 1999. *Dangerous Intersections: Feminist Perspectives on Population, Environment, and Development*. Cambridge, MA: South End
Skinner v. Oklahoma, 316 U.S. 535 (1942)
Smith A. 2005. Beyond pro-choice versus pro-life: women of color and reproductive justice. *NWSA J.* 17:119–40
Smith RJ. 2006. Family caps in welfare reform: their coercive effects and damaging consequences. *Harvard J. Law Gender* 29:151–200
Solinger R. 2000 (1992). *Wake Up Little Susie: Single Pregnancy Before* Roe v. Wade. New York: Routledge
Solinger R. 2001. *Beggars and Choosers: How the Politics of Choice Shapes Adoption, Abortion, and Welfare in the United States*. New York: Hill & Wang
Solinger R. 2005. *Pregnancy and Power: A Short History of Reproductive Politics in America*. New York: NYU Press
Somers MR, Roberts CNJ. 2008. Toward a new sociology of rights: a genealogy of "buried bodies" of citizenship and human rights. *Annu. Rev. Law Soc. Sci.* 4:385–425
Sonfield A, Pollack HA. 2013. The Affordable Care Act and reproductive health: potential gains and serious challenges. *J. Health Polit. Policy Law* 38:373–91

Soohoo C, Albisa C, Davis MF, eds. 2008. *Bringing Human Rights Home*. Westport, CT: Praeger
Sprague J. 2005. *Feminist Methodologies for Critical Researchers: Bridging Differences*. New York: AltaMira
Stafan S. 2008. Accommodating families: using the Americans with Disabilities Act to keep families together. *St. Louis Univ. J. Health Law Policy* 2:135–76
Staggenborg S. 1986. Coalition work in the pro-choice movement: organizational and environmental opportunities and obstacles. *Soc. Probl.* 33:374–90
Staniec JFO, Webb NJ. 2007. Utilization of infertility services: How much does money matter? *Health Serv. Res.* 42:971–89
Stern A. 2005. *Eugenic Nation: Faults and Frontiers of Better Breeding in Modern America*. Berkeley/Los Angeles: Univ. Calif. Press
Stone-Manista K. 2008. Protecting pregnant women: a guide to successfully challenging criminal child abuse prosecutions of pregnant drug addicts. *J. Crim. Law Criminol.* 99:823–56
Sussman D. 2008. Bound by injustice: challenging the use of shackles on incarcerated pregnant women. *Cardozo J. Law Gender* 15:477–502
Thompson C. 2005. *Making Parents: The Ontological Choreography of Reproductive Technologies*. Cambridge, MA: MIT Press
Tone A. 2001. *Devices and Desires: A History of Contraceptives in America*. New York: Hill & Wang
Tribe LH. 1990. *Abortion: The Clash of Absolutes*. New York: Norton
Tsutsui K, Whitlinger C, Lim A. 2012. International human rights law and social movements: states' resistance and civil society's insistence. *Annu. Rev. Law Soc. Sci.* 8:367–96
Tushnet M. 1989. Rights: an essay in informal political theory. *Polit. Soc.* 17:403–51
Twine FW. 2011. *Outsourcing the Womb: Race, Class and Gestational Surrogacy in a Global Market*. New York: Routledge
Van Dyke N, McCammon HJ. 2010. *Strategic Alliances: Coalition Building and Social Movements*. Minneapolis: Univ. Minn. Press
Volz V. 2006. A matter of choice: women with disabilities, sterilization, and reproductive autonomy in the twenty-first century. *Women's Rights Law Rep.* 27:203–16
West RL. 2009. From choice to reproductive justice: de-constitutionalizing abortion rights. *Yale Law J.* 118:1394–432
Williams PJ. 1991. *The Alchemy of Race and Rights*. Cambridge, MA: Harvard Univ. Press
Yaniv O. 2012. Weed out: More than a dozen city maternity wards regularly test new moms for marijuana and other drugs. *New York Daily News*, Dec. 25. **http://www.nydailynews.com/new-york/weed-dozen-city-maternity-wards-regularly-test-new-mothers-marijuana-drugs-article-1.1227292**
Yuval-Davis N. 2006. Intersectionality and feminist politics. *Eur. J. Women's Stud.* 13:193–209
Ziegler M. 2009. The framing of a right to choose: *Roe v. Wade* and the changing debate on abortion law. *Law Hist. Rev.* 27:281–330
Ziegler M. 2012. Roe*'s race: the Supreme Court, population control, and reproductive justice*. Leg. Stud. Res. Pap. No. 2012–26, St. Louis Univ., St. Louis, MO. **https://papers.ssrn.com/sol3/papers.cfm?abstract_id=2148055**

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