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Abortion rights USA

Before & After Roe: Scary Times, Then & Now

- Features - Feminism -

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TWENTIETH-CENTURY PRE-ROE America was a scary world for women. Pregnancy and childbirth were destiny. When I was in college in the late 1950s a sociology professor remarked that a woman wasn't fully a woman until she became a mother.

Historically, what made U.S. reproductive health care different from England, for example, is the rise of doctor-centered care and the 1873 Comstock Law. That federal law forbade distribution of obscenity through the mail, interpreted to include information on preventing or ending pregnancies.

Terminating pregnancy before "quicken-ing" was common and legal until the latter part of 19th century America. The profession-alization of medicine altered that reality.

Medical groups campaigned against midwives, claiming they were the source of unsafe abortions and their patients unmarried. Combining sexual impropriety with abortion, the medical profession stamped out midwifery and drove abortion underground.

By the early years of the 20th century, Margaret Sanger, a visiting nurse, was haunted by her inadequate response to a working-class woman. Exhausted by pregnancies and having self-aborted, the woman asked what could be done to prevent another child. Sanger replied she should have her husband sleep on the roof.

After the woman's death, Sanger began to search for an answer. Other women, including socialists such as Dr. Antoinette Konikow, were advocating "voluntary motherhood." Above all this meant challenging the Comstock Law, which blocked information about human sexuality even from doctors. The growing movement demanded access to a range of safe reproductive services including birth control, abortion and childbirth.

Originally a radical, Sanger moved rightward, opposing abortion and embracing eugenics as a science. By the 1920s the feminist vision of "voluntary motherhood" was overwhelmed by eugenics, which linked birth control to state policy.

Motherhood was touted as the highest goal for respectable women. Meanwhile those deemed "unfit" were sterilized, often without their knowledge. Although the extent of forced sterilization is difficult to uncover, the state of California has admitted to sterilizing 20,000 people between 1909 and 1979.

In addition to state institutions, individual doctors made the decision to perform sterilizations on mostly poor women of color and those considered mentally deficient. While Fannie Lou Hamer was having surgery to remove a uterine tumor, a white doctor performed a hysterectomy on her without her consent. Other women of color could only find a doctor willing to deliver their child only if they agreed to have their tubes tied.

Meanwhile white and wealthier women who needed to control their fertility had to jump through hoops to be sterilized. Because these women often had a family doctor willing to help them, they were more often able to obtain an abortion or to be approved for sterilization. Women of differing classes and races were treated differently but none were to make their own decision.

This historically biased class, race and gendered system of reproductive health care functions to police women's bodies.

In the repressive atmosphere of the 1950s, a few doctors who performed abortions were arrested, convicted, jailed and barred from practice. It was a powerful warning and drove abortion further under-ground. Yet more women were working fulltime outside their homes and needed greater control over their pregnancies.

By the 1960s, it was estimated that 1.2 million women were having “illegal” abortions each year. Hospitals were forced to set up septic abortion wards for the thousands who suffered complications; it was estimated that annually at least 200 women died. Shockingly, New York City abortion data for 1951-62 revealed that the death rate actually doubled over the 11 years.

The risk of dying was closely related to poverty and racism, with Black women dying at four times the rate of white women. Yet when the procedure was performed in a hospital, the mortality rate was lower than for childbirth. (Reagan, 210-215)

From Reform to Repeal

By the end of the 1950s, both women and some physicians demanded state reform. Within 20 years model legislation allowing medical boards to approve “therapeutic” abortions on a case-by-case basis passed in 13 states. (Interestingly enough, several are states that today ban abortion.)

Based in San Francisco, a key activist, Patricia Maginnis, moved from supporting reform legislation to opposing all abortion laws. By 1965 her organization, the Society for Humane Abortion (SHA), concluded: “A decision to obtain an abortion should be treated just as any other surgical procedure, as a private matter between a patient and her physician.” (Reagan, 221)

As part of the reform movement, a number of Protestant and Jewish religious leaders set up referral services and raised money so women could obtain abortions outside the country. For its part, SHA not only enabled 12,000 women to obtain safe abortions, but regulated the abortionists. It asked those whom it helped to write to their representatives demanding repeal of the laws.

By insisting that the person who needed the abortion, not the physician or some “expert,” was the central actor and spokesperson, Maginnis and SHA helped shape the rise of second-wave feminism.

By 1968, Chicago Women’s Liberation, an organization including radical and socialist feminists, began helping friends find a physician willing to perform abortions. This then led to their developing an abortion referral service.

Like SHA, they insisted that the doctor treat patients respectfully — as they would have wanted to be treated. They also asked women what they could afford and attempted to negotiate fees. But given how few doctors were willing to risk illegality, the activists — who have come to be known as the Jane Collective — eventually learned how to perform the procedure themselves.

This also gave them control over how patients could be counseled and more flexibility in financing the operation. Even after a police raid in May 1972, the collective continued to carry out 100 abortions a week.
Speakouts and Street Actions

In early 1969, New York State held a hearing to determine whether the abortion law should be reformed and invited

15 “experts” to testify. The list consisted of 14 men and one woman — a nun.

The National Organization for Women and radical collectives decided to picket, with seven individuals agreeing to challenge the biased testimony. After one witness suggested that abortions be permitted for women with four children, Redstockings activist Kathie Sarachild stood up and shouted, “Alright, now let’s hear from some real experts — the women.”

She urged the law’s repeal. Then Ellen Willis began testifying. Unable to re-establish its control, the committee quickly moved into executive session.

Inspired by their successful action, Redstockings decided to hold a speakout where women could talk about their abortions. Here was a case where the personal became political! This first speakout attracted an audience of 300; the speakout has become an important tool in the reproductive rights struggle. (Echols, 141-142)

Redstockings also worked with others to build marches in support of repealing the abortion law. In early 1970 the collective joined the coalition, People to Abolish Abortion Laws, which held a march in support of a class-action lawsuit to overturn the New York law. Five thousand demonstrated!

The two-pronged approach of a legal challenge backed by a militant march had the desired effect. While the year before, the state legislature had not been interested in changing the law, now they realized the law would be overturned. Legislators moved to decriminalize abortion through the 24th week of pregnancy. Unlike similar legislation passed that year in Alaska, Hawaii and Washington, New York had no residency requirement. The law went into effect July 1, 1970.

Less than two months later, in response to Betty Friedan’s call “to get out of the kitchens and into the streets,” there were marches all over the country in celebration of the 50th anniversary of woman’s suffrage.

The demands were for free, community-controlled 24-hour childcare centers, free abortion on demand, no forced sterilization, and equal opportunities in jobs and education. The largest action was in New York City, where an estimated 50,000 triumphantly marched down Fifth Avenue.

Immediate Impact

A New York City report at the end of the first year of the new law revealed that 168,000 abortions had been performed. The majority of the patients were less than 13 weeks pregnant; 60% were non-residents. Among residents, more than half were African American or Puerto Rican women.

More than half of the residents were already parents, compared to only a third of the non-residents. While complications were higher for later abortions, deaths for all pregnancies (whether abortion, childbirth or stillbirth) declined 37% over the previous year. ([“Legal Abortion 1970-1971 — The New York City Experience,”](#) by David Harris, Donna O’Hare, Jean Pakter and Frieda G. Nelson)

Although the New York legislature did not repeal the law that regulated abortion as the movement demanded, statistics established the safety of legal abortion. Its data prepared the way for the U.S. Supreme Court decision two years later.

In 1971 an organizing committee of what would become the Women’s National Abortion Action Coalition [1] held a conference and called for a national demonstration in Washington DC. It organized local chapters, reached out to

women internationally, sponsored meetings, held speakouts and supported class-action suits in various states.

WONAAC publicized the case of Shirley Wheeler, who was convicted of having an illegal abortion. For her two-years' probation, Wheeler was given the choice of either marrying her boyfriend (it was against Florida law until 2016 for an unmarried couple to live together) or living with relatives in another state. (Since she was legally married, she had to move.)

Roe v. Wade and the Reaction

As WONAAC was organizing a tribunal to hold officials accountable for keeping abortion illegal, the Roe v. Wade decision was announced on January 22, 1973. It rolled out a tri-semester formula in which the Court attempted to balance a pregnant woman's right to privacy with the state's interest in potential life.

While ruling that the pregnant person had a right to determine whether to continue the pregnancy, Roe also opened the door to regulations, particularly as the pregnancy progressed.

From the moment of legalization, the number of women suffering complications from abortion surgery declined; hospitals were able to close their septic wards. But they didn't expand their facilities to accommodate those seeking abortion. Instead they left that to clinics, which have become targets for the right wing.

During the summer of 1973, the media broke the story of Minnie Lee and Mary Alice Relf (who were 12 and 14) from Montgomery, Alabama. African-American sisters taken from their home and sterilized in a federally funded family planning clinic.

Although activists knew that sterilization abuse existed, this story blew the issue out into the open. The Third World Women's Alliance, Committee Against Sterilization Abuse, Committee for Abortion Rights and Against Sterilization Abuse (CARASA) and the New York City NOW chapter worked to publicize the issue and demand passage of informed consent legislation.

Meanwhile, politicians of both parties busily passed laws to restrict abortion. The two earliest pieces of federal legislation were the Helms Amendment (1973) that blocked U.S. aid to international health agencies if they promoted abortions or performed them, and the Hyde Amendment (1977) that denied Medicaid funding to low-income women needing an abortion.

Throughout this period there was a flowering of women of color organizations. In the fall of 1973 the National Black Feminist Organization held a successful conference and went on to build 10 chapters. (The Boston chapter, finding NBFO too mainstream, resigned to become the Combahee River Collective.)

Traditionally, organizations collaborated on building larger demonstrations and meetings, as in the case of defending Boston-based Dr. Kenneth Edelin, an African American physician. In 1975, he was convicted of manslaughter for performing a legal abortion. (His conviction was overturned on appeal.)

Another example of coalition actions was one against Secretary of Health, Education and Welfare Joseph Califano, who defended passage of the Hyde Amendment, when he spoke at the NYU Law School. A march of several thousand stretched around the entire block where the law school stood.

Post-Roe Bans and Resistance

Despite the hundreds of state laws that limited access to abortion from the Roe v. Wade decision to Dobbs, the vast majority of pregnant people who needed abortion have been able to secure them. But these limits were increasingly burdensome and costly.

The [Turnaway Study](#) — which compared 1,000 women who had an abortion with 1,000 who brought unwanted pregnancies to term — found the latter had four times greater odds of living below the federal poverty line. They also had a greater risk of continuing to live with an abusive partner.

Since the Dobbs v. Jackson Women’s Health Organization decision, almost half the states have sharply limited access or outright banned abortion. This includes most of the South and much of the Midwest.

But given that every referendum on the ballot since the Dobbs decision has supported access to abortion, the right wing is somewhat divided about how to consolidate their victory. Yet their quarrel over whether to ban abortion “from the moment of conception” or to allow exceptions in cases of “rape, incest or the health of the patient” is much ado about nothing. (“Abortion Bans Have Exception; Few Are Granted,” by Amy Schoenfeld Walker, New York Times, 1/22/23)

Their debate reminds me of the “reform” ‘60s legislation. No supporter of reproductive rights should be taken in by this attempt to win public opinion and hide the reality.

What Has Changed

There are significant differences between the fight for bodily autonomy today and the one waged 50 years ago:

First, sex education is more widely available and contraception is not only for those with a marriage license.

(However, rightwing legislators have written unscientific “information” into the script doctors are supposed to read to patients before they sign the required consent form.) Even with greater access to contraception, there will continue to be a need for abortion. One out of four pregnant people have an abortion over the course of their reproductive lives.

Second, with the development of medical (pharmaceutical) abortion, these represent the majority of all U.S.

abortions. Trained personnel (not necessarily a physician) can meet with the patient in person or over the internet and provide instructions.

The use of telemedicine, or ordering mifepristone and misoprostol and self-administering the pills by following written instructions, makes abortion 14 times safer than childbirth. While rightwing legislatures or courts will try to ban this procedure, interfering in the U.S. mail is a federal crime.

Third, abortion procedures are legal and available in half the country. While it is outrageous that someone would have to leave their state to secure an abortion, if necessary it can be done. The National Abortion Fund exists to help with expenses. A few states have allocated some abortion funding for non-residents and written shield laws to protect personnel from being sued in another state.

Fourth, reproductive rights cannot be reduced to one procedure or one issue. It is a fight for bodily autonomy.

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Second wave feminism never struggled around a single demand, although it might seem so in retrospect. Usually access to abortion was combined with a demand against forced sterilization and quality child care available to all.

Activists then and now are driven to ask: Why do we have higher maternal death rates and higher infant mortality rates than other industrialized countries? Why are people from communities of color disproportionately effected?

Today Black women are three times more likely to die from a pregnancy-related cause than white women; the rate of infant mortality for Black infants is more than twice as high as for white infants.

The answer is rooted in a double whammy: lack of a quality, publicly funded U.S. health care system and institutionalized racism. Social programs other countries have, including paid parental leaves and low-cost or free day care, are non-existent here.

The campaign to add the Equal Rights Amendment to the Constitution was another overarching issue. Facing rightwing opposition, feminists challenged society's gendered assumptions.

Many of the issues discussed and debated then remain burning issues today, including domestic violence, date rape and sexual harassment at the workplace.

Fifth, second wave feminism had some understanding of the discrimination that Black, brown and Native American women faced. It is important to acknowledge that Black and Latina women were part of the movement then, both in organizations such as NOW, in collectives and in coalitions.

One of the most important writings from that period is Francis M. Beale's 1969 pamphlet "Double Jeopardy: To Be Black and Female." This outlined the particular ideological forces Black women faced. Treated as "the slave of the slave," Black women were medical guinea pigs, often sterilized, suffering high death rates. At the same time, both conservative and nationalist men expected women to play "supportive" roles.

That is, women of color not only faced double discrimination socially but were also double burdened by having to dispel assumptions from their own communities.

Black feminist theory has continued to grow through vibrant women of color health networks and Third World women's organizations. The result, is both more awareness of institutional racism and greater theoretical clarity about how race, class and gender interact on each other.

Sixth, as reproductive justice is about the fundamental right to bodily autonomy, we need to defend transgender rights from the fierce attack the right wing has launched.

While 25% of the younger generation identifies as gender fluid, rightwing politicians seek to police the lives and bodies of those who identify as transgender. Bodily autonomy is a fundamental right.

Seventh, a principle of the movement for reproductive justice is that those who need reproductive rights must be central actors in the struggle.

The struggle for bodily autonomy opens up a discussion about how people live our lives. For socialists who demand a world where human beings can live without exploiting others and in harmony with our environment, this is a

struggle with revolutionary implications.

A Short List of Readings:

Alice Echols, *Daring to be Bad, Radical Feminism in America 1967-1975*, University of Minnesota Press, 1989.

Paula Giddings, *When and Where I Enter The Impact of Black Women on Race and Sex in America*, Bantam Books, 1984.

Leslie J. Reagan, *When Abortion Was a Crime, Women, Medicine, and Law in the United States, 1867-1973*, University of California Press, 1997.

Jael Silliman, Marlene Gerber Fried, Loretta Ross & Elena R. Gutiérrez, *Undivided Rights Women of Color Organize for Reproductive Justice*, South End Press, 2004.

Source: [March-April 2023, ATC 223](#).

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[1] The Socialist Workers Party was a driving force in building WONAAC. Although I was an SWP member during this period, I was active in the NYC NOW chapter but helped out on some WONAAC projects.