
UNIVERSITY CASEBOOK SERIES®

CASES ON REPRODUCTIVE RIGHTS AND JUSTICE

by

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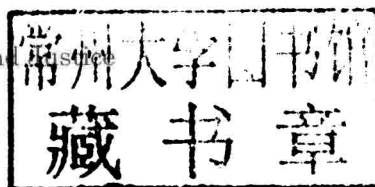
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INTRODUCTION

Confronted with the title of this casebook, a student might reasonably ask, “what is reproductive *justice*”¹ and how is it different from reproductive *rights*?”² Reproductive justice, as both a concept and a social movement, grew out of the experiences and vision of women of color involved in struggles for gender equity, reproductive health care, social justice, and civil and human rights.³ These pioneering activists situated reproductive rights within a social justice framework to capture the complex, interlocking forms of oppression that often keep their communities from fully enjoying reproductive autonomy, and to compel the elimination of these oppressions in a quest for comprehensive and inclusive justice.

The advocacy and movement-building organization Forward Together (formerly Asian Communities for Reproductive Justice) defines reproductive justice as a state of being. As they conceive it, “Reproductive Justice exists when all people have the social, political and economic power and resources to make healthy decisions about our gender, bodies, sexuality and families for our selves and our communities.”⁴

Central to the reproductive justice framework is an understanding that people’s reproductive choices and experiences are shaped by more than internal motivations that can be protected entirely by rights and privileges forbidding governmental involvement in decision-making. It acknowledges the external forces, such as social structures, economic systems, and government institutions that may influence or impede the realization of reproductive rights. On this account, reproductive justice is about fundamentally “transform[ing] power inequities and creat[ing] long-term systemic change.”⁵

Rather than focusing exclusively on individual rational actors operating in a free market, as the law is prone to do, “[t]he reproductive justice framework recognizes that all individuals are part of families

¹ A comprehensive description of reproductive justice theory and praxis lies beyond the scope of this book. For a collection of introductory and in-depth resources, visit the Reproductive Justice Virtual Library at <https://www.law.berkeley.edu/php-programs/centers/crrj/zotero/library.php>. See generally Jael Silliman et al., *The Political Context for Women of Color Organizing*, in UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZE FOR REPRODUCTIVE JUSTICE (2004); ASIAN COMMUNITIES FOR REPROD. JUSTICE, A NEW VISION FOR ADVANCING OUR MOVEMENT FOR REPRODUCTIVE HEALTH, REPRODUCTIVE RIGHTS, AND REPRODUCTIVE JUSTICE (2005); SISTERSONG WOMEN OF COLOR REPROD. HEALTH COLLECTIVE, REPRODUCTIVE JUSTICE BRIEFING BOOK (2007).

² Generally speaking, reproductive rights, captured by laws, policies, regulations, and other legal instruments, encompass a broad array of needs a person may have in his or her lifetime, including but not limited to sexuality education; prevention, testing, and treatment for sexually transmitted infections; maternity care; birthing options; parental rights; public assistance; assisted reproductive technologies; and access to volitional use of abortion, contraception, and sterilization.

³ *What Is R/J?*, SISTERSONG (2014), http://www.sistersong.net/index.php?option=com_content&view=article&id=141&Itemid=81.

⁴ ASIAN COMMUNITIES FOR REPROD. JUSTICE, WINNING REPRODUCTIVE JUSTICE: CONTRIBUTIONS TO POLICY CHANGE FROM THE REPRODUCTIVE JUSTICE MOVEMENT 1 (2008).

⁵ *What Is Reproductive Justice?*, ASIAN COMMUNITIES FOR REPROD. JUSTICE (2014), <http://strongfamiliesmovement.org/what-is-reproductive-justice>.

and communities and that our strategies must lift up entire communities in order to support individuals.”⁶

At the same time, reproductive justice activists and scholars insist that it is impossible to speak of entire groups (e.g., women, parents, or people, for that matter) as if they were all fungible. As they make clear, race, class, gender, and other social forces shape lives in ways large and small, making the experience of reproduction deeply personal and individualized. In short, no single story could represent the reproductive experiences of all people.

Relatedly, an important dimension of reproductive justice is its emphasis on what legal scholars Kimberlé Crenshaw⁷ and Angela Harris⁸ (among others) have termed “intersectionality.” Intersectionality posits that the traditional conceptualizations of oppression within society, such as racism, sexism, classism, homophobia, transphobia, and other forms of bigotry, do not act independently of one another. Instead, intersectionality maintains that these forms of oppression and discrimination are inextricably intertwined, creating a complex system of subordination that is informed by multiple types of discrimination. In the context of reproductive justice, an intersectional approach assumes that impositions on the individual’s or community’s reproductive autonomy reflect the interaction of gender with class, race, ability, sexual orientation, immigration status, age, gender identity, and other aspects of social stratification and control.

This intersectional approach to reproductive rights and justice issues informs this casebook. For example, mainstream rhetoric has emphasized women’s reproductive “choices” and framed them as empowering. Yet, as we demonstrate, it is difficult to think of reproductive choices without considering the ways in which social determinants may limit or coerce the deeply contingent options available to each individual, reflecting a “least worst” alternative, rather than a truly empowering decision.

This book is the product of collaboration between a legal scholar and a social scientist interested in sociolegal issues. This is not accidental. We feel very strongly that in the rapidly evolving world of reproductive rights and justice, interested law students will be disadvantaged if they do not understand the historical and political context in which legal doctrine and discourse have evolved. Particularly as the majority of the issues examined in the casebook are newly (or continually) controversial, a strong knowledge of background will enable the student to think rigorously about the law of the future.

We have taken the insights of reproductive rights and justice seriously and have sought to illuminate the way the law instantiates and reproduces gendered, raced, and classed stratification. Although abortion and privacy have served as the centerpiece for most education about reproductive rights, we have chosen to disrupt this orthodoxy by

⁶ *Id.*

⁷ Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex*, 1989 U. CHI. LEGAL F. 139 (1989).

⁸ Angela P. Harris, *Race and Essentialism in Feminist Legal Theory*, 42 STAN. L. REV. 581 (1989).

instead focusing on the way in which law controls bodies and relationships at all points of the human life cycle. In this vein, the casebook reflects our best effort to provide structure to an intellectual and legal inquiry about how the law regulates all realms of reproduction, and in so doing, shapes our daily lives.

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