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Bulletin of the History of Medicine, Volume 97, Number 1, Spring 2023, pp. 1-10 (Article)

Published by Johns Hopkins University Press

DOI: https://doi.org/10.1353/bhm.2023.0000

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Revisiting the History of Abortion in the Wake of the *Dobbs* Decision

**Kelly O’Donnell and Naomi Rogers**

In September 1977, Rosaura Jimenez, a twenty-seven-year-old Mexican American single mother in McAllen, Texas, went to the home of Maria Pineda for a surgical abortion. Pineda, a midwife, was licensed to deliver babies but not to perform abortions. After the procedure Jimenez developed sepsis; several days later she died of organ failure in the McAllen General Hospital. Her death would have been common and unremarkable a decade earlier, but since the Supreme Court’s 1973 *Roe v. Wade* decision, abortion had become legal and widely available in hospitals, clinics, and doctors’ offices across the United States. Jimenez had initially wanted a legal abortion and returned to a physician who had given her one eight months earlier, paid for by Medicaid. But in August the Hyde Amendment had gone into effect after the Supreme Court had judged it constitutional. Passed by Congress in the previous session, the amendment banned the use of federal funds for abortions and led states to restrict their funding of Medicaid as well. In McAllen Jimenez had been rebuffed by the physician, who said he would not be reimbursed, although she could find and pay for an abortion herself. Jimenez had a financial aid check in her purse to pay for her college classes (she was studying to become a special education teacher), but she chose access to education over access to legal reproductive care. After first traveling to Mexico where she received a cheaper but ineffective “hormone injection” from a pharmacy there, she sought Pineda’s aid.¹

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Jimenez was quickly described as the first victim of the Hyde Amendment, a symbol that inspired rallies and candlelight vigils outside the state legislature in Texas and across the country. Eager to make this tragedy a potent lesson about the danger of antiabortion politics that could threaten the lives of every woman, feminist and *Village Voice* journalist Ellen Frankfort along with Frances Kissling, the director of the National Abortion Federation, came to McAllen in 1978. They believed that this death could become an issue that would unite feminists across class and race.2 Frankfort and Kissling, along with two of Jimenez’s friends, organized a sting operation to try to bring Pineda to justice. Setting up one woman with a wire and having Diana Rivera, another friend, pretend to need an abortion, the two white abortion activists waited in a station wagon with reporters from a Dallas television station. Pineda warned Rivera—as she had probably said to Jimenez—that if there were complications, she should say that her abortion was performed across the border in Mexico.3 The feminist visitors were then shocked to find that their race and status did not protect them from the arm of the law. Local police officers arrested not only Pineda but also Frankfurt, Kissling, and Rivera as potential “co-conspirators” in an illegal abortion.4 Texas’s weak medical practice law meant that although Pineda was found guilty of practicing medicine without a license, her misdemeanor offense resulted in three days in jail and a hundred-dollar fine. In 1979 Frankfort and Kissling published *Rosie: The Investigation of a Wrongful Death* and announced that 5 percent of the book’s royalties would be contributed to the new Rosie Jimenez Fund to provide financial assistance to poor women seeking abortions in Texas.5

2. They were also frustrated by the ways the media depicted Jimenez as having gone to Mexico for an illegal abortion because she was ashamed and sought to hide her pregnancy from her family and community; see Frankfort and Kissling, *Rosie* (n. 1), 2–6, and Bill Peterson, “Doubts Arise about Abortion ‘Martyr,’” *New York Times*, November 28, 1977. The National Abortion Federation had just been established to bring together the diverse stakeholders involved in abortion provision, including clinic owners, staff, providers, and researchers; Johanna Schoen, *Abortion After Roe* (Chapel Hill: University of North Carolina Press, 2015).


5. Frankfort and Kissling, *Rosie* (n. 1), 175; and see “Jimenez Fund,” *off our backs*, February 1979. Kissling also described the cancellation of a panel on Jimenez’s death at the National Abortion Federation’s annual meeting in September 1978, as some pro-choice activists wanted to protect the CDC and its Abortion Surveillance Branch, which had been involved in the investigation; Frankfort and Kissling, *Rosie* (n. 1), 158. For continuing efforts to make Jimenez’s death part of the fight for reproductive justice, see Mary Tuma, “‘Rosie’s Law’ Takes Bold Stand for Choice, Women’s Health,” *Austin Chronicle*, February
Jimenez remained a symbolic figure for American feminists seeking to protect access to abortion in the face of increasingly successful anti-abortion strategies that grew more creative and restrictive in the wake of the Hyde Amendment. As a poor Latina, Jimenez offered a way for white middle-class feminists to demonstrate cross-class, cross-racial support of reproductive health care in the face of the splintering of feminist organizations such as the Black Women’s Health Project and the National Latina Health Organization in the 1980s. A more holistic reframing of reproductive rights and reproductive justice was necessary to bring together disparate groups of feminists, especially around forced sterilization. Access to safe and legal abortion continued as a driving force in feminist activism, although feminists of color broadened the struggle to include rights to prenatal care, to bear healthy children, to be protected from sterilization abuse and experimental and unnecessary surgery, and to access sex education. Uneven and inequitable access to abortion remained a central issue even as the early twenty-first century saw medication abortion spur new questions about access to drugs and the appropriate level of clinical supervision. But Rosie Jimenez was more than a symbol or a tragic death: she was an individual with a life of her own, shaped by the intersecting forces of society and culture that too often had determined Americans’ future by their race, class, ability, or other identity.

The growing power of antiabortion advocates in Congress, state legislatures, and the Supreme Court culminated in June 2022 in the Dobbs decision, which overturned Roe v. Wade.

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\textit{v. Jackson Women’s Health Organization} decision that overturned \textit{Roe}. \textit{Dobbs} raises many vital questions that the history of medicine is uniquely positioned to answer. Indeed, they are the fundamental questions driving much of our scholarship in this journal and elsewhere. What counts as medical care? What is the role of the state in mediating the relationship between doctor and patient? Where and how are people receiving medical care, and what differences emerge when we center the patient perspective? How is structural racism imbricated in past and present health care practices and policies? How do we ensure the safety of—and equitable access to—drugs, medical devices, and procedures? What visions of health care justice and equity can be transformative?

In his \textit{Dobbs} opinion justice Samuel Alito drew a picture of America’s past where abortion had been criminalized for centuries, was frequently practiced by unqualified and dangerous practitioners, and, however prevalent, was largely rejected by physicians and the public. This allowed him to conclude that the long-established precedent set by \textit{Roe v. Wade} and reaffirmed in \textit{Casey v. Planned Parenthood} must be overturned, leaving Americans without a constitutionally protected right to seek abortion care.\footnote{Alito’s opinion also ignored the purpose of the Fourteenth Amendment’s guarantee of rights to bodily integrity: as a corrective to the long-standing history of slavery and a legal system that had pitted women’s reproductive capacities against the interest of slaveholding states, which had defined a fetus as a matter of law and property; David H. Gans, “No, Really, the Right to an Abortion Is Supported by the Text and History of the Constitution,” \textit{Atlantic}, November 5, 2021, https://www.theatlantic.com/ideas/archive/2021/11/roe-was-originalist-reading-constitution/620600/; Celeste Henry, “Why Black Women Can’t Breathe,” \textit{Black Perspectives}, February 21, 2019, https://www.aaihs.org/why-black-women-cant-breathe/.
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Historians across the board were appalled by this inaccurate and misleading depiction of the history of abortion in America.\footnote{The American Historical Association (AHA) and Organization of American Historians (OAH) issued a joint statement expressing dismay at the Supreme Court’s disregard for the true history of abortion in the United States, saying, “We expect that historians will continue to correct the court’s misinterpretation about the history of legalized abortion in the US in their own research, teaching, and public speaking, while also addressing the multifaceted dilemmas presented by this decision.” AHA and OAH, “History, the Supreme Court, and Dobbs v. Jackson: Joint Statement from the AHA and the OAH (July 2022),” https://www.historians.org/news-and-advocacy/aha-advocacy/history-the-supreme-court-and-dobbs-v-jackson-joint-statement-from-the-aha-and-the-oah-(july-2022).} As Leslie Reagan’s \textit{When Abortion Was a Crime} so clearly demonstrated, the widely accepted practice of drug-induced and surgical abortions was seen as criminal during the seventeenth and eighteenth centuries and most of the nineteenth only if the woman died from taking a poisoned commercial preparation or as the result of an incompetent abortionist, whether medically trained or not. In the decades after the Civil War laws further crimi-
nalizing abortion were instigated by conservative moral reformers and by doctors who saw abortion providers as undermining public respect for the medical profession. The American Medical Association (AMA), however, made sure to carve out a small number of “therapeutic” abortions available only when approved and performed by a respectable professional. The prevalence of abortion did not decline, but it became a more furtive and shameful act. With increasing police crackdowns on abortionists in the 1940s and 1950s, the appalling deaths of women with sepsis began to be visible to medical students, nurses, and physicians in hospital emergency rooms, leading a new coalition of medical professionals, clergy, and lawyers to work with women activists in reforming and liberalizing abortion laws. While the decriminalization of abortion in the early 1970s made the procedure legal and safe, *Roe*’s framing of abortion as a private decision rather than a right that the state had to guarantee meant that access remained in the hands of physicians who decided whether or not to offer abortion procedures and legislators who determined when and under what circumstances those procedures could be performed.

Reflecting the antiabortion movement’s rhetoric, Alito also denied that abortion was health care, quoting the Mississippi law banning abortion after fifteen weeks which called it “a barbaric practice, dangerous for the maternal patient, and demeaning to the medical profession.” His use of the derogatory term “abortionist” instead of physician or obstetrician-gynecologist also resonated with the antiabortion movement’s skepticism of both women and physicians and its conviction that abortion bans should have no exceptions. Many states now recognize fetuses as potential crime victims: in 2022 thirty-eight states had antiabortion statutes that


criminalized killing a fetus, child abuse, concealment of a birth, abuse of a corpse, and improper disposal of human remains. Freestanding abortion clinics have also been targeted by restrictive health care regulations, including waiting periods, telemedicine restrictions, hospital admitting requirements for providers, and insurance constraints.¹³

Today, clinicians working in states where abortion is restricted struggle to counsel patients who want an abortion in a legal context that treats them both as potential criminals. Even before Dobbs, committees of lawyers and doctors had tried to compose a list of what qualified as “exceptions” to help clinicians determine when a woman’s life could be said to be at risk despite warnings by the American College of Obstetricians and Gynecologists that such efforts may be “impossible” and “dangerous.”¹⁴

The AMA expressed strong disapproval of the Dobbs decision, declaring that “state restrictions that intrude on the practice of medicine and interfere with the patient-physician relationship leave millions with little or no access to reproductive health services while criminalizing medical care.”¹⁵

Beyond pointing out the misuses of abortion’s past, this collection of short essays seeks to envision futures for the history and historiography of reproductive health. For this new Bulletin feature, we asked a range

¹³. The National Advocates for Pregnant Women has tracked more than 1,700 cases from 1973 to 2020 in which individuals were investigated, arrested, otherwise detained, or forced to undergo medical intervention by the state for actions that were interpreted as harmful to their own pregnancies; Laurie Udesky, “Policing Pregnancy: Supreme Court Abortion Ruling Ratchets Up Women’s Fears of Prosecution,” Ms. Mag., August 23, 2022, https://msmagazine.com/2022/08/23/women-pregnancy-jail-prison-arrested-supreme-court-abortion-miscarriage/. See also Jeanne Flavin, Our Bodies, Our Crimes: The Policing of Women’s Reproduction in America (New York: New York University Press, 2009); Michele Goodwin, Policing the Womb: Invisible Women and the Criminalization of Motherhood (New York: Cambridge University Press, 2020).


¹⁵. Jack Resneck Jr., “Dobbs Ruling Is an Assault on Reproductive Health, Safe Medical Practice” (American Medical Association, June 24, 2022), https://www.ama-assn.org/about/leadership/dobbs-ruling-assault-reproductive-health-safe-medical-practice. The statement also declared, “The American Medical Association is deeply disturbed by the U.S. Supreme Court’s decision to overturn nearly a half century of precedent protecting patients’ right to critical reproductive health care—representing an egregious allowance of government intrusion into the medical examination room, a direct attack on the practice of medicine and the patient-physician relationship, and a brazen violation of patients’ rights to evidence-based reproductive health services. States that end legal abortion will not end abortion—they will end safe abortion, risking devastating consequences, including patients’ lives.”
of scholars working in this area to reflect on abortion and its history in modern America. With these selections we reflect on the implications of contemporary policy, the shifting practices and goals of the medical profession, and the complexities of reproductive health. In particular, we center the experiences of individual abortion providers, marginalized abortion seekers, and pro-choice and pro-life activists as they navigate shifting policies, new technologies, and long-standing moral debates.

Both Leslie Reagan and Johanna Schoen offer us a sense of their own intellectual trajectories through their major studies on the history of abortion: *When Abortion Was a Crime* (1997, new edition 2022) and *Abortion After Roe* (2015). Reagan traces her experiences as a committed and enthusiastic feminist graduate student at the University of Wisconsin in the early 1980s who entered the nascent field of women’s history surrounded by other feminist colleagues. Her research fascination with the history of abortion and sexuality was encouraged by her mentors, but at times they warned her about a wider world that would further marginalize her work and her allegiance to feminist objectives. Reagan found to her relief that most of her colleagues and a wider reading public welcomed her insights, honored her work with awards, and sought her counsel in political debate. Schoen turns to a historical investigation of the political moment of the 1970s as abortion providers established their first legal abortion clinics, including young feminists who sought to combine political commitment and compassionate health care. Political support of legal abortion in the 1970s and 1980s, she points out, was bipartisan, and many Republicans were pro-choice. Nonetheless, influential and articulate antiabortion advocates used and twisted the words of abortion providers into antiabortion propaganda. Schoen traces the ways that she slowly gained the trust of members of the National Abortion Federation amid this political and cultural conflict just as many were deciding to stop talking frankly and openly about the violence inherent in their work. She highlights the critical importance of recentering women as stakeholders in the legal status of abortion—a focus largely ignored in the *Dobbs* majority opinion—and the importance of attending to women’s own moral decisions around choosing or rejecting the procedure.

The essays by Lina-Maria Murillo and Brianna Theobald reorient the history of abortion with new geographic and theoretical viewpoints. In “A View from Northern Mexico: Abortions before *Roe v. Wade*,” Murillo takes us to the U.S.-Mexico borderlands, where—as she convincingly argues—this shift in geographical perspective forces us to rethink networks of abortion care at the grassroots level. For too long, she reminds us, our histories have remained too U.S.- and too *Roe*-centric. Through a careful
reading of both English- and Spanish-language media, Murillo reframes pre-
*Roe* history and mythology, grounding us in Mexican and borderland
understandings of the border crossings undertaken by Americans seeking
abortions in the 1960s in a careful analysis of the racialized and moralized
rhetoric regarding Mexico (and American visitors). In a moment when
many may now be considering crossing a state or national border again,
it is especially worth sitting with and thinking through the moralizing lan-
guage from this immediate pre-*Roe* case study. Theobald similarly moves us
to a too-often-marginalized location with her “View from Indian Country.”
As she demonstrates, the field of reproductive health history has con-
tinued to marginalize the experiences of Native people, a stance that must
not continue in our scholarship. Native reproductive health histories,
she shows, are wonderfully vital and disruptive and can provide essential
depth to our understanding of rights and citizenship, sovereignty and the
state, eugenics and race, and the settler-colonialist logics that undergird so
many attempts to control reproduction. In ongoing Native reproductive
agendas, she argues, we find a wide-ranging reproductive justice fram-
work with implications and inspiration for our contemporary moment.

Both Jessica Martucci and Kelly O’Donnell focus on provocative cultural
and ethical moments that seek to destabilize our familiar stories. Martucci
brings religion into the history of abortion and medicine more broadly.
Drawing on her new work on Catholic hospitals, she explores how one
particularly deadly maternal health condition—ectopic pregnancy—has
historically required complicated theological, moral, and ethical negotia-
tions in order to save lives and avoid disobeying the Church’s prohibition
against abortion. While historians of birth control have long discussed the
Catholic Church in relation to the rise of the oral contraceptive pill and
its attendant theological controversies, here Martucci shows the urgency
of this connection in a contentious reproductive health debate. How do
medical practitioners and religious adherents morally reconcile certain
interventions? Sifting through the depth of these debates allows us to bet-
ter understand the role of religion and morality in shaping reproductive
health care and offers a bit of hope in the process. With an eye on the new
battles over medication abortion in the post-*Dobbs* world, O’Donnell calls
our attention back to the role of pharmaceuticals and medical technol-
ogy in understanding this history. Discussing both federal regulators and
feminist activists, she argues that reckoning with technological and policy
changes suggests new questions about the patient’s perspective of fertili-
ity management. In a provocative what-if moment she asks us to imagine
historical actors like the Jane collective providing non-surgical abortions
with special teas and targeted massage. Her insights further illuminate the
cultural, political, and material complexities of abortion history.
At the time of writing, Americans across the country are beginning to get their bearings after months of uncertainty, questioning the implications of overturning Roe and learning to navigate a world without that guaranteed constitutional right at the federal level.

Some have been shocked to recognize that political assurances of special exceptions in many restrictive state abortion laws have in practice remained unavailable. Political commentators rightly pointed to the impact of Dobbs as a factor in the prevention of a “red wave” Republican midterm victory in November 2022, with some even employing reproductive metaphors and calling it a “red spotting” or an unexpectedly light period. Dobbs seemed to weigh heavily on many voters’ minds, leading to Democratic victories in contentious Senate and governor races. Several states passed ballot initiatives to enshrine abortion rights in their constitutions, with voters heeding the Supreme Court’s call to return the matter to the people and their legislatures. Many questions remain. Will states individually continue to enshrine the right to reproductive autonomy into their constitutions? Will Congressional Democrats ever pass a national law to “codify Roe,” as promised? Meanwhile, we can look to the past for guidance and inspiration. It is a past that is far more complicated than the vision set out in the Dobbs decision—one in which abortion was, and always will be, deeply rooted and widely practiced in this country.

Perhaps we should also recognize that we have for many years been living in a post-Roe world. As historians and feminist scholars have pointed out, in many ways and for many people the promise of safe, legal abortion remained unfulfilled. The death of Rosie Jimenez in 1977 should have been an even louder wake-up call for abortion rights activists. To invest in her economic future, Jimenez recognized, meant “choosing” an illegal abortion that she hoped would be safe. Only recently in the 46 years since Jimenez’s death have defenders of abortion rights shifted away from discussions of “choice,” a term uncomfortably resonant with

16. In a viral tweet, @MuellerSheWrote quipped, “The ‘red wave’ is more like light spotting.” https://twitter.com/MuellerSheWrote/status/1590191869111472128. Many similar tweets extended this metaphor by comparing the midterm election season to the midpoint of a menstrual cycle, including one that observed, “Looks like the red wave was actually just some mid-cycle spotting.” https://twitter.com/MissesDread/status/1590178091967852545.


white privileged women and assumptions of a stable, predictable relationship with medical professionals whose services they can afford. Dobbs has overturned Roe, but Roe’s promise of equitable, accessible legal abortion was arguably never entirely realistic. The Hyde Amendment made clear that access to health care is dependent on financial and social resources and in the case of abortion, it has remained so. Dobbs now entrenches a system that is antithetical to the tenets of reproductive justice, leaving us still in a world in which the goals of bodily autonomy along with equitable, accessible prenatal care, child care, healthy food, and safe environments feel further away than ever.\textsuperscript{19} We hope that lessons from the past will help us work toward justice in our future.

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\textbf{Naomi Rogers} is a professor of the History of Medicine in the Section of the History of Medicine and the Program in the History of Science and Medicine at Yale University. She studies twentieth- and twenty-first-century history of medicine, health inequities, and social justice, has published in medical and history journals, and has been a keynote speaker in the United States and internationally. She is the author of three books: \textit{Dirt and Disease: Polio Before FDR} (1992), \textit{An Alternative Path: The Making and Remaking of Hahnemann Medical College and Hospital of Philadelphia} (1998), and \textit{Polio Wars: Sister Kenny and the Golden Age of American Medicine} (2014). Her current research—including her monograph in progress, \textit{Health Radicalism and the Humanization of American Medicine}—examines critics of medicine since 1945, particularly civil rights, consumer, and feminist activists.

\textsuperscript{19} For a primer on the concept of reproductive justice, see Loretta J. Ross and Rickie Solinger, \textit{Reproductive Justice: An Introduction} (Berkeley: University of California Press, 2017).