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Joan C. Chrisler

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INTRODUCTION: A GLOBAL APPROACH TO
REPRODUCTIVE JUSTICE—PSYCHOSOCIAL AND
LEGAL ASPECTS AND IMPLICATIONS

JOAN C. CHRISLER, PH.D.*

INTRODUCTION

- I. TOPICS COVERED BY THE REPRODUCTIVE JUSTICE MOVEMENT
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INTRODUCTION

The term *reproductive justice* was introduced in the 1990s by a group of American Women of Color,¹ who had attended the 1994 International Conference on Population and Development (ICPD), which was sponsored by the United Nations and is known as “the Cairo conference.”² After listening to debates by representatives of the governments of UN nation states about how to slow population growth and encourage the use of contraceptives and the extent to which women’s reproductive rights could/should be guaranteed, the group realized, as Loretta Ross later wrote, that “[o]ur ability to control what happens to our bodies is constantly challenged by poverty, racism, environmental degradation, sexism, homophobia, and injustice”³ This is no less true in the United States than it is in less-developed countries. The term caught on first with women’s health activists, especially those working in US communities of Color,⁴ then among women’s studies faculty and students. It remains relatively unknown to the general public, who continue to use the term *reproductive rights*.

The Cairo conference was a milestone event in the international women’s movement because it marked the first formal acceptance of women’s reproductive rights as basic human rights.⁵ There,

* Professor of Psychology, Connecticut College, New London, CT 06320, jchr@conncoll.edu.

1. Jael Silliman et al., *Undivided Rights: Women of Color Organize for Reproductive Justice 1* (South End Press 2004).

2. *Repro Rights Are Human Rights*, CTR. FOR REPROD. RIGHTS, <http://reproductive-rights.org/en/feature/are-repro-rights-human-rights> (last visited Nov. 3, 2013).

3. Silliman et al., *supra* note 1, at 4.

4. See SisterSong, <http://www.sistersong.net>; *Reproductive Justice Briefing Book*, THE PRO-CHOICE PUB. EDUC. PROJECT, available at <http://www.protectchoice.org/downloads/Reproductive%20Justice%20Briefing%20Book.pdf>.

5. Joan C. Chrisler & Cynthia Garrett, *Women’s Reproductive Rights: An International Perspective*, in *FEMINISM & WOMEN’S RIGHTS WORLDWIDE* 129, 129 (Praeger 2010).

representatives of over 180 nations agreed on basic protections for women's ability to control their reproductive lives, and, since then, the UN and other international assemblies have urged governments to safeguard women's reproductive rights.⁶ The World Health Organization (WHO) defined reproductive rights as

the basic right of all couples and individuals to decide freely and responsibly the number, spacing and timing of their children and to have the information and means to do so, and the right to attain the highest standard of sexual and reproductive health. It also includes their right to make decisions concerning reproduction free of discrimination, coercion and violence, as expressed in human rights documents.⁷

The WHO definition is an ambitious one, more aspirational than achievable in many parts of the world, including the United States, which does not have universal health care and where state and federal funding of women's health clinics and sex education programs ebbs and flows with the political tides.⁸ It is important to keep in mind that, even in countries where reproductive rights are legal and the government has signed a compact to protect them, many women are unable to access the services they need to exercise their rights (e.g., there may be no clinics near where they live, they may lack the ability to read or understand information about their options, the services they need may be too expensive/not covered by health insurance or government health programs).⁹ "If women are not able to exercise their rights, it does them little good to know that the government guarantees their right to make their own 'choices.' Rights + resources + accessibility = justice."¹⁰

Reproductive justice activists have criticized the rhetoric of the reproductive rights movement as culture bound and noted that framing family planning as *choice* best fits the experience of relatively privileged women in Western industrialized countries with individualistic cultures.¹¹ According to one scholar, the rhetoric of choice

assumes that all women can, and do, decide for themselves whether and when to have children. It also assumes that all women have the resources to obtain and pay for any medical or

6. *Repro Rights are Human Rights*, *supra* note 2.

7. *Report of the International Conference on Population and Development*, U.N. Doc. A/CONF.171/13 ¶ 7.3 (Oct. 18, 1994), available at <http://www.un.org/popin/icpd/conference/offeng/poa.html>.

8. Joan Chrisler, *What is Reproductive Justice?*, in *REPRODUCTIVE JUSTICE: A GLOBAL CONCERN* 1, 2 (Joan Chrisler ed., 2012).

9. Chrisler & Garrett, *supra* note 5, at 130.

10. *Id.*

11. *SISTERSONG*, *supra* note 4; Chrisler, *supra* note 8, at 1.

counseling services they need in order to follow through with their family planning. Even more basic . . . is the assumption that a woman's body is *her own*—that she owns it, controls it, and makes her own decisions about her body, her health, and her relationships.¹²

Choice also suggests a “marketplace of options,”¹³ like an array of products displayed in a shop, where various options may be appealing, and some scholars have complained that the appropriation of the language of feminism by advertisers (e.g., “it’s your choice,” “consumer empowerment”) has cheapened the rhetoric and robbed it of its power.¹⁴ In fact, reproductive decision-making is often difficult and painful, and is not always experienced as a choice.¹⁵ For example, consider women who use contraception or abortion because of ill health, because they cannot afford to raise a child, or because of insecurity due to war, natural disaster, or a severe economic recession; women who want to be parents but cannot get pregnant, are prevented by law or custom from utilizing adoption or assistive reproductive technologies (ARTs), or lose their children to early death (infant mortality) or revocation of custody; and women who have been coerced or misled into sterilization, abortion, or contraceptive use (by partners, kin, courts, or medical authorities).

In collectivist cultures, especially countries where the average family has a very low income, women often have little self-efficacy and few opportunities to control their bodies or much else about their lives. In some cultural groups, such as the Ngwa-Igbo people of Nigeria, one does not own one's body; it belongs to the community.¹⁶ This means that individual women have limited control over their bodies, and implies that the body should be used to benefit the community, such as by accepting as many pregnancies as may occur. Likewise, offenses against one's body (e.g., rape) are not offenses against the woman herself, but against the whole community. The Ubang people, also of Nigeria, split the ownership rights to a woman's body when she marries. Her “underneath” (which symbolizes her ability to produce new life) becomes the property of her in-laws, whereas ownership

12. Chrisler, *supra* note 8, at 1.

13. SILLIMAN ET AL., *supra* note 1, at 5.

14. Joan C. Chrisler & Maureen C. McHugh, *Waves of Feminist Psychology in the United States: Politics and Perspectives*, in HANDBOOK OF INTERNATIONAL FEMINISMS: PERSPECTIVES ON PSYCHOLOGY, WOMEN, CULTURE, AND RIGHTS 37, 49 (Alexandra Rutherford et al. eds., 2011).

15. Chrisler, *supra* note 8, at 2–3.

16. Chimaraoke O. Izugbara & Chi-Chi Undie, *Who Owns the Body? Indigenous African Discourses of the Body and Contemporary Sexual Rights Rhetoric*, 16 REPROD. HEALTH MATTERS 159, 161 (2008).

of her “head” (which symbolizes her own life) is retained by her birth family.¹⁷

Use of the term *reproductive justice* situates action on behalf of women’s reproductive rights within the broader movement for social justice. Social justice activists are concerned with issues such as peace, poverty, human rights, prejudice and discrimination, labor practices and conditions, educational equity, and health and health care disparities;¹⁸ all of these issues are fundamental to the achievement of reproductive justice.¹⁹ Unlike *reproductive rights*, which can be seen as based on the principle of negative rights (i.e., the right to resist being told by authorities what one can and cannot do with one’s own body), *reproductive justice* is based on the principle of positive rights (i.e., the role of authorities is to support one’s pursuit of a good quality of life).²⁰ The reproductive justice movement has also been influenced by both the global²¹ and the transnational²² feminism movements. Global feminism emphasizes the need for the world’s women to work together to solve systemic problems that result from the effects of patriarchal structures and customs on women’s health and well-being and their social, economic, and political rights.²³ Transnational feminism emphasizes the fact that global media, multinational corporations, and constant migration across borders make it impossible, as well as undesirable, to divide people into ingroups and outgroups (i.e., *us* and *them*).²⁴ Transnational feminism also focuses on the intersectionality of oppression, that is, the ways in which aspects of social status and social identity (e.g., age, race/ethnicity, socioeconomic class, sexual orientation, gender identity, religion, ability) combine to impact women’s experiences.²⁵ Transnational feminists encourage women from developed nations to support indigenous movements of women, who are best able to develop solutions that fit their culture and situation, rather than to attempt to devise solutions for others.²⁶

I. TOPICS COVERED BY THE REPRODUCTIVE JUSTICE MOVEMENT

There is no agreed upon list of issues for reproductive justice activists to address. Reproductive rights activists typically focus on

17. *Id.* at 163.

18. Chrisler, *supra* note 8, at 3.

19. *Id.*

20. Jennie Bristow, *Closing the Book on Choice?*, 33 CONSCIENCE 40, 40 (2012).

21. ROBIN MORGAN, *SISTERHOOD IS GLOBAL 3* (The Feminist Press 1996).

22. CHANDRA T. MOHANTY, *FEMINISM WITHOUT BORDERS: DECOLONIZING THEORY, PRACTICING SOLIDARITY* 144 (Duke Univ. Press 2003).

23. MORGAN, *supra* note 21, at 1.

24. MOHANTY, *supra* note 22, at 162.

25. *Id.* at 146.

26. *Id.* at 155.

women's ability to access contraception and abortion services, and they generally support access to adoption (including for lesbian and gay couples), sex education, and affordable and accessible reproductive health services (e.g., routine gynecological care, screening for sexually transmitted diseases [STIs], prenatal and antenatal care).²⁷ All of those are necessary for reproductive justice, of course, but this Article will argue for the broadest possible approach to issues that are interrelated with those foci.

A broad approach to reproductive justice addresses aspects of women's social status that promote or interfere with her power in relationships, bodily integrity, and ability to engage in family planning and reproductive decision-making.

A good place to begin is with "the [c]hoice before the [c]hoice"²⁸—women's ability to choose their own sexual partners. There are a number of practices around the world that interfere with this most basic decision.²⁹ Arranged marriages remain traditional in many countries in Asia, Africa, and the Middle East, but are rare in the West unless they involve immigrants from cultures where such practices are common.³⁰ Arranged marriages are viewed as contracts between families or communities, rather than between individuals, and thus are similar to the cultural question raised above regarding who "owns" a woman's body.³¹ There is considerable variation in how much (if any) input the woman has in the decision. In traditional forms of arranged marriage, the parents or community elders make the decision; in cooperative forms, the individuals and the parents make a joint decision; in contemporary forms, the individuals make their choice and then seek parental approval.³² Although Hindu tradition has historically given parents the sole authority to decide on their children's marital partners, in many places in India today young people are increasingly involved in choosing their partners, or at least are able to refuse options suggested to them.³³ However, forced arranged marriages remain common in some parts of the world (e.g., Afghanistan), and these marriages are often conducted when the girls (but not necessarily their husbands) are in early adolescence.³⁴ Marriages between young girls

27. See Chrisler & Garrett, *supra* note 5, at 129–30, 138.

28. Makiko Kasai & S. Craig Rooney, *The Choice Before the Choice: Partner Selection is Essential to Reproductive Justice*, in *REPRODUCTIVE JUSTICE: A GLOBAL CONCERN* 11, 11 (Joan Chrisler ed., 2012).

29. Dirgha Ghimire et al., *Social Change, Premarital Nonfamily Experience, and Spouse Choice in an Arranged Marriage Society*, 11 *AM. J. SOC.* 1181, 1182 (2006).

30. Kasai & Rooney, *supra* note 28, at 23.

31. *Id.* at 24.

32. *Id.*

33. Ghimire et al., *supra* note 29, at 1184.

34. Tracy Hampton, *Child Marriage Threatens Girls' Health*, 304 *J. AM. MED. ASS'N* 509, 509 (2010); Kasai & Rooney, *supra* note 28, at 24.

and older men further exaggerate the power imbalance between the couple, and can have serious consequences for women's physical and mental health and well-being.³⁵ For example, young brides are at higher risk for disease, pregnancy at a very young age, maternal mortality, and childbirth-related health risks (e.g., obstetric fistulas).³⁶ Honor killings occur in some cultures as a way to punish women for pre- or extra-marital sex, or even unauthorized romances that are deemed to embarrass the family or damage her marriage prospects.³⁷ Other traditional practices that violate women's right to choose their own partners include widow cleansing, in which a widow is forced to have sexual intercourse with a designated "cleanser" before she can remarry; levirate, in which a male relative "inherits" a widow and takes her on as his wife; and sati, the ritual burning of a widow on her husband's funeral pyre, a Hindu tradition that is now against the law in India.³⁸ Although these practices may be frowned upon (or outlawed) by local governments, they are still reported in parts of Africa and Asia.³⁹ Violence against women (including sexual assault and trafficking of women and girls for forced prostitution) also deprive women of the ability to choose or refuse sexual "partners," and women who find themselves pregnant as a result of these circumstances often end up giving birth to, and raising, their rapists' children. Girls and women have been forced by kin or courts to marry their rapists, and some countries in South America, Asia, Africa, and the Middle East have laws that allow rapists to escape punishment if they marry their victims.⁴⁰

Recent positive changes in attitudes toward lesbians and gay men in North America, liberalization of same-sex partner benefits and protections in the United States (e.g., the Supreme Court ruling against the Defense of Marriage Act [DOMA]),⁴¹ and the legalization of same-sex marriage in Canada and over a dozen U.S. jurisdictions may cause some of us to forget that many lesbians lack the ability to choose their own sexual partners and co-parents.⁴² In some countries (e.g., Cameroon, Saudi Arabia, Singapore, Belize) same-sex relationships

35. Kasai & Rooney, *supra* note 28, at 24.

36. Hampton, *supra* note 34, at 509.

37. Chrisler, *supra* note 8, at 4.

38. Padmini Murthy, *Violence Against Women and Girls: A Silent Global Pandemic*, in *WOMEN'S GLOBAL HEALTH AND HUMAN RIGHTS* 11, 15–16 (Padmini Murthy & Clyde Lanford Smith eds., 2010).

39. *Id.* at 15–17.

40. Morgan McDaniel, *From Morocco to Denmark: Rape Survivors Around the World Are Forced to Marry Attackers*, *WOMEN UNDER SIEGE* (May 2, 2013), <http://www.womenundersiegeproject.org/blog/entry/from-morocco-to-denmark-rape-survivors-around-the-world-are-forced-to-marry>.

41. *United States v. Windsor*, 133 S.Ct. 2675, 2675 (2013).

42. Kasai & Rooney, *supra* note 28, at 12–13.

are illegal.⁴³ Some religions and cultures hold such negative views of same-sex relationships (e.g., that they are “unnatural” or against “God’s law”) that it is impossible or nearly so, and certainly unsafe, to declare a partnership openly and act as a couple.⁴⁴ Even the suggestion of lesbian “inclinations” could result in honor killing or forced (heterosexual) marriage in some places.⁴⁵ Hate crimes against lesbians and gay men still occur with some frequency in the United States, even in places with generally liberal attitudes (e.g., New York City).⁴⁶ Many U.S. states have laws on their books against same-sex marriage and do not recognize legal marriages performed in other states.⁴⁷ Adoptions by same-sex couples are not allowed everywhere (e.g., Mississippi, Utah)⁴⁸ and some courts make it difficult for same-sex couples to adopt each other’s children.⁴⁹

The empowerment of women in relationships and in society is necessary to achieve reproductive justice. Social scientists typically define *power* as *influence* and often consider three types of power: *power over*—the ability to influence others to do what one wants, *power from*—the ability to resist unwanted influence by others, and *power to*—the ability to control one’s thoughts, emotions, and actions in order to achieve one’s own goals.⁵⁰ Empowerment obviously includes increases in all three types of power, although feminist activists tend to focus on the power to make change in the service of social justice. In that sense, empowerment includes greater self-confidence, a sense of self-efficacy, and considerable relationality (i.e., the ability to work with others to get things done).⁵¹ Power only exists in relation to

43. 76+ Countries Where Homosexuality is Illegal, 76CRIMES, <http://76crimes.com/76-countries-where-homosexuality-is-illegal/> (last visited Nov. 3, 2013).

44. Jodi Hilton, *Honor Killings Target Turkey’s LGBT Citizens*, HUFFINGTON POST (Oct. 13, 2011), http://www.huffingtonpost.com/2011/10/12/turkey-honor-killings_n_1007335.html.

45. *Id.*; Sophia Jones, *Lesbian Newlyweds Flee Honor Killing Threats in India*, FOREIGN POLICY (July 29, 2011), http://blog.foreignpolicy.com/posts/2011/07/29/lesbian_newlyweds_flee_honor_killing_threats_in_india.

46. Mark Joseph Stern, *New York City Pride Marred by Alleged Anti-Gay Hate Crime*, SLATE (July 3, 2013), http://www.slate.com/blogs/the_slatest/2013/07/03/new_york_city_pride_marred_by_alleged_anti_gay_hate_crime.html.

47. Kasai & Rooney, *supra* note 28, at 13.

48. *Gay Adoption*, LOVE & PRIDE, <http://www.loveandpride.com/GayAdoption> (last visited Nov. 3, 2013).

49. *Adoption and Parenting*, LAMBDA LEGAL, <http://www.lambdalegal.org/issues/adoption-and-parenting> (last visited Nov. 3, 2013).

50. Janice D. Yoder & Arnold S. Kahn, *Toward a Feminist Understanding of Women and Power*, 16 PSYCHOL. OF WOMEN Q. 381, 383–84 (1992); *Leadership: Power and Negotiation*, MCGRAW-HILL, available at <http://www2.uhv.edu/singhb/MGMT4320/ppt/Chap013.pdf>.

51. Florence L. Denmark & Maria D. Klara, *Empowerment: A Prime Time for Women over 50*, in WOMEN OVER 50: PSYCHOLOGICAL PERSPECTIVES 182, 182 (Varda Muhlbauser & Joan C. Chrisler eds., 2007).

others; it is not a characteristic of individuals. People become empowered through personal, group, and institutional efforts, and they exercise their power in relation to other individuals, groups, intimates and kin, policy makers, politicians, and legislators.⁵² Power is a dynamic and contextual process; successful influence (or resistance to influence) may occur in one situation, but not another.

Given that individuals are routinely influenced by others (e.g., friends, kin, authority figures) and by internalized cultural messages (e.g., religious beliefs, cultural values and traditions, laws and regulations), it is impossible to think about reproductive decision-making as purely an individual matter or choice.⁵³ Family planning is usually negotiated between partners, but how much influence a woman has over the decision varies as a result of her cultural context and how traditional her relationship is.⁵⁴ The more egalitarian the relationship between the partners, the more likely the woman is to achieve her preferred plan. In very traditional societies, such as the Ubang people mentioned earlier, the woman's in-laws have more power than she does in terms of family planning.⁵⁵ Women whose religious authorities ban the use of certain forms of contraception, or abortion, or ARTs are less likely to use them, indeed they may be unavailable except to those who can afford to travel to places where they can be accessed. Wealthy women, for example, can hire surrogate mothers if they themselves are unable to conceive or carry a fetus to term. Some countries (e.g., India), with high poverty rates and loose regulations, are active in the international surrogacy business.⁵⁶ The low-income women who "volunteer" for this work may lose social status because of it, but they gain economic status from the payments, which are higher than they could otherwise earn.⁵⁷ Family planning strategies not only include decisions about pregnancy prevention (e.g., condom use, abortion, voluntary sterilization), but also about whether and when to engage in sexual intercourse. In many places in the world, wives do not have the

52. *Id.* at 184.

53. DOROTHY E. ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 294 (Pantheon 1997).

54. See *Socio-Cultural Barriers to Family Planning*, *GUARDIAN* (Apr. 21, 2011), <http://www.theguardian.com/journalismcompetition/2011-theme-family-planning>; see generally Rinko Kinoshita, *Women's Domestic Decision-Making Power and Contraceptive Use in Rural Malawi*, 14 *CAROLINA PAPERS FOR INT'L HEALTH* 1 (Spring 2003), available at http://cgi.unc.edu/uploads/media_items/women-s-domestic-decision-making-power-and-contraceptive-use-in-rural-malawi.original.pdf.

55. See Izugbara & Undie, *supra* note 16, at 163; Kinoshita, *supra* note 54, at 1, 8.

56. Mina Chang, *Womb for Rent: India's Commercial Surrogacy*, 31 *HARV. INT'L REV.* 11, 11 (2009).

57. Kathryn L. Norsworthy et al., *Women's Power in Relationships: A Matter of Social Justice*, in *REPRODUCTIVE JUSTICE: A GLOBAL CONCERN*, 57 (Joan Chrisler ed., 2012).

right to refuse sex when their husbands demand it. Sharia Law, for example, recognizes only a few reasons for refusal of sex as legitimate (e.g., advanced pregnancy, serious illness).⁵⁸ Nebraska was the first U.S. state to criminalize marital rape, which was a very controversial step in 1976.⁵⁹ Today all 50 states criminalize it, but many define spousal rape as a lesser offense than other forms of sexual assault, and cases do not often come to trial.⁶⁰

The importance of the power to resist others' unwanted influence is obvious in cases of sexual assault, forced marriage, female genital cutting, female infanticide and sex-selective abortions, and interference with contraceptive decision-making. STIs are a major cause of infertility,⁶¹ yet many women lack the power to insist on condom use. Women who have undergone genital cutting are more likely than those who have not had it to experience adverse obstetric outcomes, including an increased risk of maternal mortality, caesarian section, postpartum hemorrhage, and infant mortality.⁶² Technology, advertising, and both medical and popular discourse can constitute forms of powerful cultural messaging that is difficult for women, even in Western nations, to resist. For example, "modern" beliefs that infant formula is better for babies than breastfeeding have led to an increase in infant mortality, failure to thrive, and illness, and this is especially true in places where the water needed to mix the formula is not clean and storage at the proper temperature is impossible or not consistently available.⁶³ Technology once used only during at-risk births has become almost commonplace in some countries, including the United States, where caesarian section (many of them medically unnecessary) is among the most common surgeries performed each year.⁶⁴ Electronic fetal monitoring requires women to restrict their movements and bodily position during labor, interferes with tactile comforting from their partner, and attracts medical personnel's attention toward the

58. Chrisler & Garrett, *supra* note 5, at 133.

59. Jennifer McMahon-Howard et al., *Criminalizing Spousal Rape*, 52 SOC. PERSP. 4, 505, 507 (2009).

60. Caroline Johnston Polisi, *Spousal Rape Laws Continue to Evolve*, WOMEN'S NEWS (July 1, 2009), <http://womensenews.org/story/rape/090701/spousal-rape-laws-continue-evolve#.UmGUR3f8KKI>.

61. Dionne P. Stephens et al., *STI Prevention and Control for Women: A Reproductive Approach to Understanding Global Women's Experiences*, in REPRODUCTIVE JUSTICE: A GLOBAL CONCERN 117, 120 (Joan Chrisler ed., 2012).

62. WORLD HEALTH ORG., *Female Genital Mutilation and Obstetric Outcome: WHO Collaborative Prospective Study in Six African Countries*, 367 LANCET 1835, 1839 (2006).

63. Ingrid Johnston-Robledo & Allison Murray, *Reproductive Justice for Women and Infants: Restoring Women's Postpartum Health and Infant-Feeding Options*, in REPRODUCTIVE JUSTICE: A GLOBAL CONCERN 269, 278 (Joan Chrisler ed., 2012).

64. Nell Lake, *Labor, Interrupted*, HARV. MAG., 21–22 (Nov.–Dec. 2012), available at <http://harvardmagazine.com/2012/11/labor-interrupted>.

monitor and away from the woman.⁶⁵ Information about contractions is gathered from the monitor rather than by physical examination or by asking the woman about her experience.⁶⁶ Some feminist scholars worry that the increased popularity of continuous oral contraceptives to suppress menstruation and elective cosmetic genital surgery means that these could soon become cultural mandates with unpredictable effects on women's health.⁶⁷ One of the ironies of the reproductive justice movement is that activists are simultaneously concerned about the undertreatment of women in poor countries and the overtreatment of women in wealthy countries.⁶⁸ Another is that many Western women who deplore female genital cutting in other cultures are coming to share those cultures' view that female genitalia are unacceptable in their natural state and require reshaping (and shaving of the mons pubis) in order to render women attractive to potential partners.⁶⁹ Of course, Western women must sign consent forms for surgeries and other treatments, but are they freely choosing these "treatments" given the cultural discourses and the difficulty in resisting them?

Reproductive justice includes the right to utilize medication and technology to avoid unwanted pregnancies, to enhance the potential for planned pregnancies, to survive the birthing process, and to produce healthy infants.⁷⁰ It also includes the right to refuse medication and technology (e.g., unnecessary caesarian sections and fetal monitoring, sterilization, virginity tests),⁷¹ to access prenatal and antenatal care, to breastfeed one's infant,⁷² to have workplace accommodations that promote healthy children (e.g., parental leave; clean, private places for breastfeeding or breast pumping),⁷³ and to be free from employment discrimination against pregnant women and against

65. *Id.*

66. Joan C. Chrisler & Ingrid Johnston-Robledo, *Motherhood and Reproductive Issues*, in ISSUES IN THE PSYCHOLOGY OF WOMEN 214 (Maryka Biaggio & Michel Hersen eds., 2000).

67. Ingrid Johnston-Robledo & Joan C. Chrisler, *The Menstrual Mark: Menstruation as Social Stigma*, 68 SEX ROLES 9, 11 (2013); Virginia Braun, *Female Genital Cutting around the Globe: A Matter of Reproductive Justice?*, in REPRODUCTIVE JUSTICE: A GLOBAL CONCERN 30, 34 (Joan Chrisler ed., 2012).

68. Braun, *supra* note 67, at 43.

69. *Id.* at 33–34, 43.

70. Kathryn Norsworthy et al., *Women's Power in Relationships: A Matter of Social Justice*, in REPRODUCTIVE JUSTICE: A GLOBAL CONCERN 30, 63–64, 70 (Joan Chrisler ed., 2012); Johnston-Robledo & Murray, *supra* note 63, at 270, 272–73, 275.

71. See Lake, *supra* note 64; Karen Hardee et al., *Family Planning and Women's Lives in Rural China*, 30 INT'L FAM. PLAN. PERSP. 68, 71 (2004).

72. Johnston-Robledo & Murray, *supra* note 63, at 282.

73. Joan C. Chrisler & Ingrid Johnston-Robledo, *Pregnancy Discrimination*, in PRAEGER HANDBOOK ON UNDERSTANDING AND PREVENTING WORKPLACE DISCRIMINATION (Michele A. Paludi et al. eds., 2011).

mothers (known as “the maternal wall”)⁷⁴ so that they will be able to support their families.

The United Nations Millennium Development Goals include improvement of maternal health and reduction of the maternal mortality rate.⁷⁵ The goals were intended to be achieved by 2015, and some progress has certainly been made. Approximately one half of childbirth-related deaths occur in sub-Saharan Africa, and almost all of them in developing nations.⁷⁶ However, readers may recall the recent death of a woman in Ireland, who was denied a life-saving abortion when she was miscarrying a planned pregnancy.⁷⁷ The maternal mortality rate doubled in Nicaragua after an absolute ban on abortion was enacted;⁷⁸ as a result of that law, women have sought unsafe abortions outside of clinics, and physicians fear arrest if they intervene in medical emergencies (e.g., ectopic pregnancies) unless they can prove the fetus is dead.⁷⁹ One of the most common causes of maternal mortality is severe postpartum hemorrhage (PPH), which, if not treated properly, can result in the woman’s death within hours of birthing her infant.⁸⁰ PPH is most often caused when the uterus does not properly contract, or assume its proper muscle tone, after the birth, and it occurs most often in women who underwent a prolonged labor and who have previously given birth to a number of children.⁸¹ In both developed and developing nations, reproductive justice includes safe birthing options with skilled and empathetic attendants, who give the laboring woman as much control over the process as is possible.⁸²

Infant mortality is an important component of reproductive justice. All pregnant women experience discomfort, and labor is painful, sometimes extremely so. Many women risk their lives and health to produce children. Thus, to say that stillbirth or infant mortality is

74. Joan Williams, *Beyond the Maternal Wall: Relief for Family Caregivers Who are Discriminated Against on the Job*, 26 HARV. WOMEN’S L.J. 77, 78 (2003).

75. See U.N., MILLENNIUM DEVELOPMENT GOALS REPORT 2013, at 28–33 (2013), available at <http://www.un.org/millenniumgoals/pdf/report-2013/mdg-report-2013-english.pdf>.

76. Johnston-Robledo & Murray, *supra* note 63, at 270.

77. Henry McDonald, *Abortion Refusal Death: Hindu Woman Told Ireland is a Catholic Country*, GUARDIAN (Apr. 8, 2013), <http://www.guardian.co.uk/world/2013/apr/08/abortion-refusal-death-ireland-hindu-woman>.

78. MICHELLE GOLDBERG, *THE MEANS OF REPRODUCTION: SEX, POWER, AND THE FUTURE OF THE WORLD* 35 (Penguin Press 2009).

79. *Id.* at 14.

80. Marian Knight et al., *Trends in Postpartum Hemorrhage in High Resource Countries: A Review and Recommendations from the International Hemorrhage Collaborative Group*, 9 BMC WOMEN’S HEALTH 55, 56 (2009).

81. *Id.* at 60.

82. Sayaka Machizawa & Kayoko Hayashi, *Birthing Across Cultures: Toward the Humanization of Childbirth*, in *REPRODUCTIVE JUSTICE: A GLOBAL CONCERN* 244, 246 (Joan Chrisler ed., 2012).

disappointing is an understatement. In developed countries, where the infant mortality rate is much lower than in developing countries, it is often said that there is nothing more heartbreaking than the loss of a child. The most common causes of infant mortality are malnutrition, diarrhea, and respiratory infections, and children who are not breastfed are six times more likely than those who are to die of these causes.⁸³ The World Health Organization has estimated that breastfeeding (with appropriate complementary feeding) could save the lives of 1.5 million children under age five each year, yet only about thirty-five percent of infants are breastfed exclusively for the recommended first six months of life.⁸⁴ Breastfeeding is also good for women's health. It helps those without access to other forms of contraception to space pregnancies by delaying the resumption of regular menstrual cycles.⁸⁵ In the United States, about seventy-five percent of women breastfeed their newborns, but only about fifty percent continue to do so for six months.⁸⁶ European and Australian women are much more likely than women in North America to persist with breastfeeding for the recommended duration (only fourteen percent of Mexican women do so).⁸⁷ The most common reason given by women in developed countries for not breastfeeding (or persisting with it) is employment-related barriers.⁸⁸ Prenatal and antenatal care for mother and fetus/infant, childbirth education, mother's health and nutrition, and appropriate medical intervention for high-risk pregnancies and births are all obviously crucial to healthy children. Although most pregnant women in the United States are healthy, certain conditions (e.g., diabetes, hypertension, lupus, substance abuse) can increase the risk of maternal and infant mortality, and the frequency of those conditions is associated with low income and high stress.⁸⁹ Thus, universal health care and

83. Johnston-Robledo & Murray, *supra* note 63, at 275.

84. *Breastfeeding Key to Saving Children's Lives*, WORLD HEALTH ORG. (July 30, 2010), http://www.who.int/mediacentre/news/notes/2010/breastfeeding_20100730/en/.

85. M. Lobbok, *Breastfeeding: A Woman's Reproductive Right*, 94 INT'L J. OF GYNECOLOGY AND OBSTETRICS 277, 278–79 (2006).

86. *Breastfeeding Report Card—United States, 2010*, CTR. FOR DISEASE CONTROL & PREVENTION, <http://www.cdc.gov/breastfeeding/data/reportcard/reportcard2010.htm> (last visited Nov. 3, 2013).

87. J. Callen & J. Pinelli, *Incidence and Duration of Breastfeeding for Term Infants in Canada, United States, Europe, and Australia: A Literature Review*, 31 BIRTH 285, 291 (2004); Adriana Licon, *Breastfeeding Rates in Mexico Drop, Experts Call It a "Public Health Crisis"*, HUFFINGTON POST (June 5, 2013, 7:00 PM), http://www.huffingtonpost.com/2013/06/05/breastfeeding-rates-in-mexico_n_3392863.html.

88. Johnston-Robledo & Murray, *supra* note 63, at 276.

89. Lynda M. Sagrestano & Ruthbeth Finerman, *Pregnancy and Prenatal Care: A Reproductive Justice Perspective*, in *REPRODUCTIVE JUSTICE: A GLOBAL CONCERN* 203–04 (Joan Chrisler ed., 2012).

social support from friends and family are important for the health of mothers and their babies, even in developed countries.

Infertility has been estimated to affect 80 million of the world's population, as many as 1 in 10 couples.⁹⁰ Unlike family planning and maternal and infant mortality, infertility is not generally seen as a public health issue, despite the fact that it causes psychological distress in those who want to have children and reduces women's social standing and quality of life in societies where the roles of mother, mother-in-law, and grandmother are the sources of women's power and status. Failure to conceive in some cultures can result in divorce, abandonment, or the husband marrying an additional wife.⁹¹ Although one can argue that no one has the *right* to become pregnant, given that luck and medical conditions play roles in conception, the development of assisted reproductive technologies (ARTs) has provided hope for many infertile individuals and couples.⁹² Those technologies, however, are very expensive, not available everywhere, and not often covered by health insurance.⁹³ Some techniques require multiple attempts (success rates vary between twenty and fifty percent), which raise the cost considerably and move it beyond most people's financial means.⁹⁴ Furthermore, most clinics that offer ARTs are private, and the clinics' owners and medical personnel have been free to make their own decisions about whom to treat (i.e., they can refuse lesbians, single women, women they determine to be "too old," etc.).⁹⁵ This is not the place to cover all of the ethical issues associated with ARTs, but reproductive justice activists make several important points. If these technologies are available, why are they not accessible to all who want them? Why are they least accessible to the women who, one could argue, most need them (i.e., women whose life circumstances are most affected by infertility)? If family planning is covered by health insurance, why not ARTs? Finally, given the motherhood mandate⁹⁶ in most

90. EFFY VAYENA ET AL., WORLD HEALTH ORG., CURRENT PRACTICES AND CONTROVERSIES IN ASSISTED REPRODUCTION, (Sept. 2001), available at <http://www.who.int/reproductivehealth/publications/infertility/9241590300/en/>.

91. *Id.* at 67.

92. *Id.* at xii.

93. Lisa R. Rubin & Aliza Philips, *Infertility and Assisted Reproductive Technologies: Matters of Reproductive Justice*, in REPRODUCTIVE JUSTICE: A GLOBAL CONCERN 173, 179, 183–84 (Joan Chrisler ed., 2012).

94. *Id.* at 182; Sandrine Chamayou & Antonino Guglielmino, *Effectiveness of Assisted Reproduction Techniques as an Answer to Male Infertility*, MALE INFERTILITY 107, 121 (2012).

95. Rubin & Philips, *supra* note 93, at 184.

96. The motherhood mandate refers to the belief that women should have children and that all *normal* women want to become mothers. See Nancy Felipe Russo, *The Motherhood Mandate*, 32 J. SOC. ISSUES 143, 143, 148 (1976).

cultures, are women who can afford ARTs really able to make a decision *not* to use them? Some women have exhausted all of their savings in multiple attempts to become pregnant because they believe that if anything can be done, it should be done, regardless of the physical discomfort and financial and personal sacrifices required.⁹⁷

II. WHY REPRODUCTIVE JUSTICE IS DIFFICULT TO ACHIEVE

The psychosocial factors that form barriers to reproductive justice are broad and interwoven, but perhaps it is fair to say that the combination of politics, poverty, and culture is the most potent. In this section, this author will provide a few examples of how these factors can affect women's reproductive rights and their health care in various ways.

Historical events, such as civil wars, the Cold War, and other international conflicts "can severely restrict women's access to reproductive health care."⁹⁸ For example, during the Cold War, modern contraceptive methods that were manufactured in the West were unavailable to women in the Soviet Union, where abortion was the primary method of birth control until the late-1980s.⁹⁹ Rates of unsafe abortion and maternal mortality rise during armed conflict, and reproductive health care is not usually a priority in refugee camps.¹⁰⁰ Violence against women tends to increase during armed conflicts, and, in recent years, rape has been widespread and used deliberately as a way to terrify civilians and reduce ethnic solidarity (e.g., Bosnia, Darfur, Democratic Republic of the Congo).¹⁰¹ During the Second Intifada there were reports of women giving birth, and even dying during labor, at military checkpoints, and Palestinian women have been under intense pressure to bear as many children as possible as their contribution to the cause.¹⁰² Political events can also lead to increases in women's access to reproductive health care. For example, as a result of a policy that is also linked to the Israeli-Palestinian conflict, Israeli women have state-funded access to ARTs; marital status and sexual

97. Vayena et al., *supra* note 90, at 69.

98. Chrisler & Garrett, *supra* note 5, at 130.

99. Jennifer Barrett & Cynthia Buckley, *Constrained Contraceptive Choice: IUD Prevalence in Uzbekistan*, 33 INT'L FAM. PLAN. PERSP. 50, 50–51 (2007).

100. THERESE MCGINN ET AL., REPRODUCTIVE HEALTH FOR CONFLICT-AFFECTED PEOPLE: POLICIES, RESEARCH, AND PROGRAMMES 10–12 (Overseas Dev. Inst. 2004).

101. Thema Bryant-Davis et al., *Sexual Assault: A Matter of Reproductive Justice*, in REPRODUCTIVE JUSTICE: A GLOBAL CONCERN 79, 81 (Joan Chrisler ed., 2012).

102. Marleen Bosmans et al., *Palestinian Women's Sexual and Reproductive Health Rights in a Longstanding Humanitarian Crisis*, 16 REPROD. HEALTH MATTERS 103, 107–08 (2008).

orientation are no barrier to access.¹⁰³ Ironically, China's one-child policy (which has relaxed a bit, as some couples may be approved for a second child), widely viewed as a cruel restriction of reproductive rights, also led to greater access to a wider variety of contraceptive methods.¹⁰⁴

Political events in one country can impact reproductive justice in other countries. For example, in 1984 U.S. President Ronald Reagan's administration adopted a policy that became known as the "global gag rule."¹⁰⁵ The policy requires any developing country that accepts economic aid from the United States to fund health care not to provide abortion services in state-funded clinics, refer patients to services, or counsel patients about reproductive options.¹⁰⁶ President Bill Clinton repealed the rule, President George W. Bush reinstated it, and President Barack Obama repealed it again.¹⁰⁷ The global gag rule had serious implications for women in at least twenty countries;¹⁰⁸ it led to the disruption of contraception services, left many women to seek unsafe abortions, and resulted in an increase in maternal mortality.¹⁰⁹ Such erratic policy making not only interferes with the practice of medicine, counseling, and health education, but it makes it very difficult for public health officials to plan effective service delivery for their citizens.¹¹⁰

Cultural (especially religious) traditions affect women's ability to achieve reproductive justice. Sexism is embedded in most of the world's cultures, and gender stereotypes about the proper roles of women and men are at the heart of many attempts to control women's bodies and fertility, or prevent women themselves from doing so. For example, the motherhood mandate and maranismo¹¹¹ support the belief that motherhood is a woman's most important role. Contraception and abortion, which subvert that role, are often positioned as evil and

103. Daphna Birenbaum-Carmeli & Martha Dirnfeld, *In Vitro Fertilization Policy in Israel and Women's Perspectives: The More the Better?*, 16 REPROD. HEALTH MATTERS 182, 182 (2008).

104. See Karen Hardee et al., *Family Planning and Women's Lives in Rural China*, 30 FAM. PLANNING PERSP. 68, 75 (2003).

105. See Amy Sullivan, *Shhh. Obama Repeals the Abortion Gag Rule, Very Quietly*, TIME (Jan. 23, 2009), <http://content.time.com/time/nation/article/0,8599,1873794,00.html>.

106. *Id.*

107. *Id.*

108. Michele Kort, *Are U.S. Policies Killing Women?*, MS. MAG. (Jan. 21, 2008), <http://alternet.org/story/74469>.

109. *Id.*

110. Chrisler & Garrett, *supra* note 5, at 132.

111. Marianismo is based on Catholicism's idealization of the Virgin Mary and encourages women to emulate Mary by displaying characteristics associated with her, such as virginity, virtue, self-sacrifice, and self-abnegation. GERTRUDE M. YEAGER, *CONFRONTING CHANGE, CHALLENGING TRADITION: WOMEN IN LATIN AMERICAN HISTORY* 3 (Scholarly Resources 1994).

unnatural, as are women who choose to be sexually active but not to have children.¹¹² Pronatal views often take the form of elevating the importance of children above that of the women who bear and rear them, and can result in draconian anti-abortion laws that do not provide exceptions even to save a woman's life;¹¹³ the frequently debated "personhood amendment," which grants rights to the fetus that trump those of the woman, is another illustration of this extreme pronatalism.¹¹⁴ In the United States, where the majority of citizens favor use of contraceptives and abortions (at least in the first trimester and/or in cases of rape, incest, and women's health), public figures have recently spoken against the use of contraception,¹¹⁵ pledged to defund Planned Parenthood,¹¹⁶ denied that abortion is ever necessary for the life or health of the mother,¹¹⁷ claimed that fetuses feel pain and can masturbate early in the second trimester,¹¹⁸ insisted that women cannot get pregnant from rape,¹¹⁹ and mocked as a "slut" a young woman who favored health insurance coverage for contraception.¹²⁰ Male dominance may be the most important barrier to reproductive justice; countries with lower gender equality also have the highest birth rates.¹²¹

112. Kate Harding, *Voluntary Childlessness "Unnatural" and "Evil,"* SALON (June 15, 2009), http://www.salon.com/2009/06/15/childless_by_choice/.

113. See Amy Randall, *The "Right" to Control Her Own Body?: Soviet Women, Abortion and the State,* J. OF WOMEN'S HIST., http://bingdev.binghamton.edu/jwh/?page_id=528 (last visited Nov. 3, 2013).

114. Michael Martinez & Ben Brumfield, *Irish Parliament Passes Exception to Abortion Ban,* CNN (July 12, 2013), <http://www.cnn.com/2013/07/11/world/europe/ireland-abortion>.

115. Irin Carmon, *Rick Santorum is Coming for Your Birth Control,* SALON (Jan. 4, 2012), http://www.salon.com/2012/01/04/rick_santorum_is_coming_for_your_birth_control/.

116. Melissa Jeltsen, *Mitt Romney on Planned Parenthood: We Will 'Get Rid' of It,* HUFFINGTON POST (Mar. 13, 2012), http://www.huffingtonpost.com/2012/03/13/mitt-romney-planned-parenthood_n_1343450.html.

117. Aviva Shen, *More Junk Science: GOP Congressman Says Abortion is Never Necessary to Save a Woman's Life,* THINK PROGRESS (Oct. 19, 2012), <http://thinkprogress.org/health/2012/10/19/1046391/more-junk-science-gop-congressman-says-abortion-is-never-necessary-to-save-a-womans-lifel?mobile=nc>.

118. Jennifer Bendery, *Michael Burgess: I Oppose Abortion Because Male Fetuses Masturbate,* HUFFINGTON POST (June 18, 2013), http://www.huffingtonpost.com/2013/06/13/michael-burgess-abortion_n_3459108.html.

119. *Rape Can't Cause Pregnancy: A Brief History of Todd Akin's Bogus Theory,* WEEK (Aug. 21, 2012), <http://theweek.com/article/index/232248/rape-cant-cause-pregnancy-a-brief-history-of-todd-akins-bogus-theory>.

120. Emily Bazelon, *Sluts Unite: By Standing up to Rush Limbaugh's Slur, Sandra Fluke Shows How Sex Positivity is Recharging Feminism,* SLATE (Mar. 5, 2012), http://www.slate.com/articles/double_x/doublex/2012/03/rush_limbaugh_calls_sandra_fluke_a_slut_how_sex_positivity_has_recharged_the_feminist_movement_.html.

121. Vijayan K. Pillai & Guang-zhen Wang, *Social Structural Model of Women's Reproductive Rights: A Cross-National Study of Developing Countries,* 24 CAN. J. SOC. 255, 261 (1999).

Female genital cutting is an example of a cultural tradition that is widespread in Africa, despite the fact that at least sixteen African countries have passed laws to ban it.¹²² It is practiced most often in predominantly Muslim countries, and its practitioners believe it to be an Islamic tradition, however, it is not mentioned in the Koran.¹²³ The United Nations Children's Fund (UNICEF) and the United Nations Population Fund (UNFPA) estimate that 125–140 million girls and women have been subjected to this practice, with its negative effects on women's health.¹²⁴ Some consider genital cutting necessary to preserve girls' chastity and prevent women's infidelity;¹²⁵ it is an attempt to restrict women's sexual and reproductive rights and, for those who resist, a violation of bodily integrity. Indigenous women's groups have been working to convince mothers not to subject their daughters to genital cutting, and a recent report from UNICEF has documented a "gradual but significant decline in many countries."¹²⁶ UNFPA suggested that the most effective strategy is to provide alternative rights of passage and create new cultural traditions.¹²⁷ This example is an important one because it reminds us that the fact that a belief or practice is a *tradition* does not mean that it cannot be changed. Although some cultural changes occur quickly (e.g., clothing and technology fads), others occur slowly and require patience, persistence, and creative thinking and planning.

Religious beliefs and traditions are important parts of any culture. Although members of most congregations report a variety of views on matters related to reproductive justice, theology and the opinions of religious leaders serve to support or inhibit reproductive justice. For example, the Roman Catholic Church advocates the use of natural family planning and opposes all artificial contraceptive methods.¹²⁸ In the United States, Catholic leaders and organizations have partnered with their peers in evangelical and fundamentalist Protestant

122. Wairagala Wakabi, *Africa Battles to Make Female Genital Mutilation History*, 369 LANCET 1069, 1069 (2007).

123. Jonathan Tuttle, *Thank Allah for Little Girls*, CATHOLIC RES. ON THE INTERNET http://www.cathud.com/RESOURCES_CATHOLIC/pages_GL/ISLAM/Islam-female-genital-mutilation.htm (last visited Nov. 3, 2013).

124. Celia W. Dugger, *Genital Cutting Found in Decline in Many Nations—Assessment by UNICEF: Generational Change is Seen in a Strongly Held Tradition*, N.Y. TIMES, July 23, 2013, at A1, A6; Wakabi, *supra* note 122, at 1069.

125. Chrisler & Garrett, *supra* note 5, at 133.

126. Dugger, *supra* note 124, at A1.

127. Wakabi, *supra* note 122, at 1069.

128. *People & Events: The Catholic Church and Birth Control*, THE PILL, http://www.pbs.org/wgbh/amex/pill/peopleevents/e_church.html; *The Catholic Church vs. 'ObamaCare,' WEEK* (Jan. 31, 2012), <http://theweek.com/article/index/223860/the-catholic-church-vs-obamacare>.

congregations to preach and lobby against abortion.¹²⁹ The Catholic Church (which runs schools, universities, hospitals, adoption agencies, and charitable services of other kinds) is a major employer, and it recently succeeded in obtaining a religious exemption to the Affordable Care Act requirement that employer health plans include contraception coverage.¹³⁰ Health care costs and economic decline, especially in cities, has led in recent years to considerable downsizing and combining of services; in some cases, Catholic and secular hospitals have merged.¹³¹ Catholic hospitals follow guidelines that prohibit certain medical procedures (e.g., abortion, vasectomy, tubal ligation, emergency contraception, ARTs) and counseling (e.g., about condom and other contraceptive use, about ARTs); continued use of these guidelines is usually a requirement for merger.¹³² As a result of these mergers, low-income women in inner cities (regardless of their own religious beliefs) have lost access to reproductive education and aspects of health care.¹³³ Although abortion is legal in most of the European Union, access is restricted in significant ways (e.g., available only very early in pregnancy, only for the life of the mother) in countries where Catholicism is the official religion (e.g., Ireland, Portugal, Italy).¹³⁴

Beliefs about reproductive rights and health care options vary by sect among Protestantism, Islam, and Judaism.¹³⁵ Mainline Protestant churches and Jewish congregations tend to have liberal attitudes toward contraception and abortion.¹³⁶ Family planning is allowed in most Muslim countries in the Middle East and North Africa, but abortion tends to be limited to very early in the pregnancy or in medical emergencies where the woman's life is endangered.¹³⁷ Mainline Protestant churches generally support all forms of ARTs, but some Evangelical churches do not support any forms.¹³⁸ Some rabbis do not

129. *The Catholic Church vs. 'ObamaCare,' supra* note 128.

130. *Id.*

131. Joyce Gelb & Colleen J. Shogan, *Community Activism in the USA: Catholic Hospital Mergers and Reproductive Access*, 4 SOC. MOVEMENT STUD. 209, 210 (2005).

132. *Id.* at 209, 211.

133. *About Hospital Mergers*, MERGER WATCH, <http://mergerwatch.org/about-hospital-mergers> (last visited Nov. 3, 2013).

134. Michael Martinez & Ben Brumfield, *Irish Parliament Passes Exception to Abortion Ban*, CNN (July 12, 2013), <http://www.cnn.com/2013/07/11/world/europe/ireland-abortion>; Victoria Burnett, *Spain Steps into Battle with Itself on Abortion*, N.Y. TIMES, Apr. 11, 2009, at A4, A7.

135. Joseph G. Schenker, *Assisted Reproductive Practice: Religious Perspectives*, 10 REPROD. BIOMEDICINE ONLINE 310, 310 (2005).

136. *Id.*

137. Leila Hessini, *Abortion and Islam: Policies and Practices in the Middle East and North Africa*, 15 REPROD. HEALTH MATTERS 75, 77 (2007).

138. Schenker, *supra* note 135, at 135.

support ARTs that involve donor sperm or ova.¹³⁹ Islam generally encourages fertility treatment as long as the members of the couple are the only people involved; use cannot be made of donor sperm, ova, or surrogacy.¹⁴⁰

Other important barriers to reproductive justice include socio-economic and social identity factors. For example, a study in Africa and South Asia showed that income level predicts the likelihood that a woman will have access to a skilled birth attendant.¹⁴¹ Poor women, incarcerated women, disabled women, and chronically ill women often have their reproductive health care and options curtailed, even in developed countries. For example, women with disabilities often do not receive counseling about family planning because authorities and medical personnel do not think of them as sexual beings.¹⁴² Thus, even when they are considered incapable of raising children, and even though disabled women are at a higher rate of sexual assault than able-bodied women, contraceptive education may not be provided.¹⁴³ Poor and disabled women have been victims of sterilization without consent in some countries (e.g., Peru, United States) as part of a eugenics campaign or by “well-meaning” authorities who thought the women would not be “good” mothers.¹⁴⁴ As noted earlier, single women, lesbians, older women, and disabled women may be denied ARTs, even when they have the ability to pay for services.

III. WHY REPRODUCTIVE JUSTICE IS IMPORTANT

Decisions about whether and when to become pregnant are important and have long-term consequences for women’s lives. Women cannot make those decisions unless they are able to control their own bodies and exercise their reproductive rights. Bodily integrity is a key aspect of human rights,¹⁴⁵ and women should not have to surrender

139. *Id.* at 134.

140. *Id.* at 135.

141. Thomas W. Merrick, *Population and Poverty: New Views on an Old Controversy*, 28 INT’L FAM. PLANNING PERSP. 41, 44 (2002).

142. Helen Henderson, *Sexuality and Disability as Social Policy*, TORONTO STAR, Apr. 14, 2007, at L3; Lori Ann Dotson et al., “People Tell Me I Can’t Have Sex”: Women with Disabilities Share Their Personal Perspectives on Health Care, Sexuality, and Reproductive Rights, 26 WOMEN & THERAPY 195, 196 (2003).

143. Dotson et al., *supra* note 142, at 198; Sandra L. Martin et al., *Physical and Sexual Assault and Women with Disabilities*, 12 VIOLENCE AGAINST WOMEN 823, 824 (2008).

144. Christina Ewig, *Hijacking Global Feminism: Feminists, the Catholic Church, and the Family Planning Debacle in Peru*, 32 FEMINIST STUD. 632, 646 (2006); PHILIP REILLY, *THE SURGICAL SOLUTION: A HISTORY OF INVOLUNTARY STERILIZATION IN THE UNITED STATES*, at xiii (Johns Hopkins Univ. Press 1991).

145. See, for example, Article 3 of the United Nations Declaration of Human Rights; Articles 4, 7, 12, 16, and 25 also relate to conditions necessary for reproductive justice. See

that right in one regard in order to exercise it in another. For example, recent anti-abortion legislation in some states requires women to undergo medically unnecessary procedures (e.g., ultrasound).¹⁴⁶ Feminists have noted that the infamous vaginal probe ultrasound requirement meets the legal definition of rape when women are coerced into accepting it.¹⁴⁷ Governments and courts must enforce laws and treaties that guarantee women's rights¹⁴⁸ or women will never achieve reproductive justice. International courts have been used to require countries to enforce their laws or compensate their victims,¹⁴⁹ and organizations, such as the Guttmacher Institute and Human Rights Watch, collect data about violations of women's reproductive rights, which can be used to embarrass governments and their leaders.¹⁵⁰

Reproductive justice is crucial for women's physical health. Contraception allows women to control the number of, and the spacing between, childbirths; spacing is important because it allows women's bodies to recover fully from a previous pregnancy and birth before becoming pregnant again.¹⁵¹ Large numbers of children, especially when they are born close together in time, are hard on women's bodies and can result in fatigue, chronic strain, and medical conditions.¹⁵² Millions of women die each year from pregnancy- and birth-related complications and unsafe abortions.¹⁵³ Female genital cutting has no health benefits and a number of health hazards, such as hemorrhaging, infections, urinary tract problems, dysmenorrhea, and childbirth complications.¹⁵⁴ Rape often results in physical injuries, and carries

U.N. GEN. ASSEMBLY, *Universal Declaration of Human Rights*, 217A(III) Arts. 3, 4, 7, 12, 16, 25 (Dec. 10, 1948), available at <http://www.un.org/en/documents/udhr>.

146. Kate Sheppard, *Mandatory Transvaginal Ultrasounds: Coming Soon to a State Near You*, MOTHER JONES (Mar. 5, 2012), <http://www.motherjones.com/mojournal/2012/03/transvaginal-ultrasounds-coming-soon-state-near-you>.

147. Dahlia Lithwick, *Virginia's Proposed Ultrasound Law is an Abomination*, SLATE (Feb. 16, 2012), http://www.slate.com/articles/double_x/doublex/2012/02/virginia_ultrasound_law_women_who_want_an_abortion_will_be_forcibly_penetrated_for_no_medical_reason.html.

148. The United Nations Declaration of Human Rights (UNDHR-1949), the UN Convention to Eliminate All Forms of Discrimination Against Women (CEDAW-1979), the International Conference on Population and Development Programme of Action (ICPD-1994), the African Union Protocol on Reproductive Rights (2003), and the United Nations Millennium Goals are all examples of treaties and conventions related to reproductive justice.

149. Chrisler & Garrett, *supra* note 5, at 141.

150. *Id.*

151. Chrisler, *supra* note 8, at 6.

152. Joellen Hawkins et al., *Fertility Control*, in *WOMEN'S HEALTH CARE: A COMPREHENSIVE HANDBOOK* 281 (Catherine Ingram Fogel & Nancy Fugate Woods eds., 1995).

153. U.N., *MILLENNIUM DEVELOPMENT GOALS REPORT 2008*, at 28–33 (2008), available at http://www.un.org/millenniumgoals/2008highlevel/pdf/newsroom/mdg%20reports/MDG_Report_2008_ENGLISH.pdf.

154. *Fact Sheet on Female Genital Mutilation*, WORLD HEALTH ORG. (Feb. 2013), <http://www.who.int/mediacentre/factsheets/fs241/en/>.

with it the possibility of pregnancy and/or the transmission of STIs, which can result in infertility, urinary tract infections, pelvic inflammatory disease, cervical cancer, or even death.¹⁵⁵

Reproductive justice is crucial for women's mental health. People's ability to exercise control over their bodies and their life circumstances has often been shown to be important to mental health and well-being.¹⁵⁶ Rape, forced marriage, trafficking, unwanted pregnancy, and unwanted genital cutting are extreme examples of loss of control, and they often result in trauma, shame, anxiety, and depression.¹⁵⁷ Shame is likely to be especially strong in cultures where women's bodies are considered to belong to the family or community. Rape victims also frequently report low self-esteem, body image issues, fear of intimacy, and inability to trust; rates of eating disorders, substance abuse, and suicide are also higher among rape victims than among the general population.¹⁵⁸ Unwanted pregnancy, miscarriage and stillbirth, and seeking abortion when family and friends do not support the woman's decision are also associated with depression.¹⁵⁹ Planned pregnancies can end in disappointment and depression when a woman's wishes about how to give birth are ignored or overruled by medical personnel due to complications.¹⁶⁰ The "baby blues," or its more serious form, postpartum depression, is not uncommon after a first birth or a difficult birth, or when a woman has previously suffered from depression or lacks social support and childcare assistance as she recovers from birthing her infant.¹⁶¹ Reactions to infertility range from disappointment in not being able to achieve a goal to more serious reactions, such as stress, anxiety, depression, shame, low self-esteem, body image concerns, and marital discord.¹⁶² In cultures that are especially

155. Stephens et al., *supra* note 61, at 118.

156. Joan C. Chrisler, *Fear of Losing Control: Power, Perfectionism, and the Psychology of Women*, 32 *PSYCHOL. OF WOMEN Q.* 1, 8 (2008).

157. Joan C. Chrisler & Sheila Ferguson, *Violence against Women as a Public Health Issue*, 1087 *ANNALS OF N.Y. ACAD. OF SCI.* 235, 238 (2006).

158. Janet L. Fanslow & Elizabeth Robinson, *Violence Against Women in New Zealand: Prevalence and Health Consequences*, 117 *J. OF N.Z. MED. J.* 1173, 1178, 1180 (2004); Carolyn M. West, *Battered Black and Blue: An Overview of Violence in the Lives of Black Women*, 25 *WOMEN & THERAPY* 5, 16–18 (2002).

159. Lisa Cosgrove, *The Aftermath of Pregnancy Loss: A Feminist Critique of the Literature and Implications for Treatment*, 27 *WOMEN & THERAPY* 107, 112 (2004); Lisa Rubin & Nancy Felipe Russo, *Abortion and Mental Health: What Therapists Need to Know*, 27 *WOMEN & THERAPY* 69, 70 (2004).

160. Ingrid Johnston-Robledo & Jessica Barnack, *Psychological Issues in Childbirth: Potential Roles for Psychotherapists*, 27 *WOMEN & THERAPY* 133, 140–41 (2004).

161. Joan C. Chrisler & Ingrid Johnston-Robledo, *Raging Hormones? Feminist Perspectives on Premenstrual Syndrome and Postpartum Depression*, in *RETHINKING MENTAL HEALTH AND DISORDER* 180 (Mary Ballou & Laura S. Brown eds., 2002).

162. Ann Rosen Spector, *Psychological Issues and Interventions with Infertile Patients*, 27 *WOMEN & THERAPY* 91, 93, 95, 97, 98 (2004).

strongly pronatal, infertility is particularly damaging to women's self-worth, mental health, and social standing.¹⁶³

Reproductive justice is crucial for children's health and development. Infant mortality is lower in smaller families, and children spaced farther apart are generally healthier.¹⁶⁴ Parents with fewer children can take better care of them and spend more time with each one. In low-income families, fewer children means more food, clothing, and room to play for each child; parents are also better able to pay for education, health care, and leisure activities for smaller families. Children of planned pregnancies are also more likely to feel loved and secure.¹⁶⁵

Reproductive justice is also necessary to secure equal rights for women, both at home and in society. As Michelle Goldberg wrote, "reproductive rights are intimately related to women's economic freedom. Having smaller families allows women to work. When they bring financial resources into the family, their power tends to increase and their daughters' welfare improves."¹⁶⁶ The ability to determine "whether and when" to have children enables women to make plans, achieve personal goals, attain higher education, and excel in a career or business.¹⁶⁷ Fewer children, higher education, and greater financial resources also empower women to negotiate with their partners and to exert control over their own, and their children's, future.

IV. WHAT WE CAN DO IN THE STRUGGLE FOR REPRODUCTIVE JUSTICE

It can be depressing to think about the barriers to reproductive justice, the backlash against the gains of the women's rights movements, the failure of governmental authorities to enforce laws that guarantee women's rights, and the entrenched traditions and political views that encourage politicians to deny funding for women's reproductive health and to enact laws designed to close clinics that provide necessary services. The Guttmacher Institute estimates that sixty percent of American women live in states with legislatures that are openly hostile toward women's reproductive rights,¹⁶⁸ and it sometimes seems that their hostility grows stronger every day.

163. Karen Springen, *What It Means To Be A Woman*, DAILY BEAST (Sept. 14, 2008), <http://www.thedailybeast.com/newsweek/2008/09/14/what-it-means-to-be-a-woman.html> (last visited Aug. 25, 2013).

164. Nancy Felipe Russo & Julia R. Steinberg, *Contraception and Abortion: Critical Tools for Achieving Reproductive Justice*, in REPRODUCTIVE JUSTICE: A GLOBAL CONCERN 145, 152–53 (Joan Chrisler ed., 2012).

165. Chrisler & Garrett, *supra* note 5, at 140.

166. GOLDBERG, *supra* note 78, at 11.

167. Chrisler & Garrett, *supra* note 5, at 140.

168. *New Wave of Laws Seeks to Shut Down Abortion Providers*, GUTTMACHER INST. (June 27, 2013), <http://www.guttmacher.org/media/nr/2013/06/27/index.html>.

It is important for each of us to remember that cultures and societies are dynamic; they can and do change. Politicians and political movements come and go. New religious groups arise, and old ones decline. Arts and technology can change the way that people think. Voters and protest movements cause change eventually. As the Civil Rights Movement slogan so aptly puts it, we must remember to keep our “eyes on the prize.” Yes, the barriers to reproductive justice are huge, but progress is being made in some places, even as it is walked back in others. “Sisterhood is global,”¹⁶⁹ and we must all do our part to maintain forward movement.

We should all be aware of our reproductive rights, and we should not be afraid to exercise them. Everyone should know about the laws in their country or state, and we should find out what resources are available in our communities for sex education, reproductive health care, and family planning. It is important to educate ourselves and each other.

We should support candidates for political office who support women’s rights. We can support them with our votes, our volunteer labor, and/or our donations. Politicians at all levels (including school boards) make public policy that affects the health and well-being of girls and women whether in local communities, across the country, or internationally. We can run for office ourselves, or take volunteer or paid positions in government where we have the opportunity to develop and implement policy that advances reproductive justice. We can organize voter registration drives and help voters get to the polls on election day to support candidates who will support them.

We can participate in lobbying efforts to educate politicians and policy makers about reproductive justice, including the need for universal health care, anti-poverty programs, anti-trafficking measures, and gender equity in all spheres. We can all write letters to politicians and to editors of newspapers, sign and start petitions, attend marches and demonstrations, and use social media to encourage others to join us. Those of us with expertise can testify in court and before legislative committees, blog about reproductive justice, and do volunteer or paid work in one of the many national or international non-profit organizations that works on these issues. We can donate to organizations that fight for reproductive justice and those who provide low-cost health care, educational, and counseling services to women in need.

Law students can join Law Students for Reproductive Justice to find out more about ways they can use their expertise in partnership

169. See MORGAN, *supra* note 21.

with medical personnel¹⁷⁰ and women's health and human rights activists. This author hopes that some of the readers of this Article will become the attorneys who fight against laws that restrict women's reproductive rights, judges who understand and empathize with women's circumstances, and legislators and policy makers who respect women and care about women's health and their rights. If we all do our part, reproductive justice will eventually be within the reach of most of the world's women. This Special Issue of the *William & Mary Journal of Women and the Law* is an excellent contribution to the cause.

170. Contact, for example, Medical Students for Choice. See MED. STUDENTS FOR CHOICE, <http://www.ms4c.org> (last visited Nov. 3, 2013).