

## Openings and Retrospectives

### WHEN THE PUNISHMENT IS PREGNANCY: Carceral Restriction of Abortion in the United States

CAROLYN SUFRIN

Johns Hopkins University

 <https://orcid.org/0000-0003-2739-9296>

In the age of Donald Trump, women's reproductive bodies have become even more public and regulated canvases for moral narratives of women's worth as humans and for the state's claim to their bodies. We have witnessed increasing legal restrictions on abortion access, the undermining of insurance coverage for contraception, and a spectacular federal intrusion preventing a young woman held in immigration detention from having an abortion. But to fully grasp the scope and implications of the state's investment in women's reproductive bodies under the Trump administration, we must also tend to the quieter, more opaque spaces in which reproduction is meticulously regulated: in particular, carceral institutions. For there are pregnant women in prisons and jails in the United States, who gestate largely unnoticed but within the enmeshed webs of carceral violence and reproductive control. In this brief essay, I illustrate how the adjudication and restriction of abortion access for incarcerated people exemplifies the intimate violence imposed by the state on women's bodies, from the classic bodily control of regimented confinement to the structural and racialized violence of U.S. mass

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incarceration. Furthermore, abortion access among incarcerated people reveals the material consequences of rights-based language about abortion promoted by pro-choice activists, which then enables its carceral restriction. This carceral framing of abortion, behind the walls of the prison, tells us much about the broader politics of reproduction and the politics of indifference in the age of Trump.

### THE JUDICIALIZATION OF PRISON ABORTIONS

No data exist on the frequency of abortions among incarcerated women in the United States. In fact, the most recent estimates of pregnancy prevalence behind bars come from surveys conducted by the Bureau of Justice Statistics in 2002 and 2004 (Maruschak 2006, 2008). What we do know is that prisons and jails have inconsistent and variable policies: some carceral institutions explicitly prohibit abortion at any point, some allow it only in the first trimester, others permit it only when there is a threat to the woman's health, and some allow it under most circumstances (Roth 2004; Sufrin, Creinin, and Chang 2009). The variability in prison abortion policies, along with differences in how they play out on the ground, tells a deeper story about the way incarcerated women's reproductive bodies are put in the service of those in power—prison wardens and others—to exercise their moral claims on human reproduction.

Despite prohibitive policies and a statistical amnesia about prison abortions, the judicial record from dozens of lawsuits clearly indicates that incarcerated women retain their constitutional right to abortion (Kasdan 2009). In part, this stipulation derives from the judicial principle that a prison can only curtail a person's constitutional rights if doing so serves what is termed a "penological interest," such as deterring crime or rehabilitating prisoners. The courts have affirmed that restricting an incarcerated person's access to abortion does not serve any of these functions. But do prison workers intend to accomplish rehabilitation by preventing incarcerated people's abortions?

In my research with pregnant women in the San Francisco jail (see Sufrin 2017), some of them experienced their jail pregnancies as opportunities "for redemption for past failures, hopes for the future, and a chance to claim a socially acceptable and respectable identity" (Murphy and Rosenbaum 1999, 3). The carceral apparatus actively promotes this ideal through prison parenting classes, by providing special privileges for pregnant women like a bottom bunk and extra food, and through prison nursery programs, which exist in eight states.

Separate prison wings allow women who have given birth while in custody to take their babies back to prison with them. The idea is that having the time and

space to cultivate their maternal identity will help them refocus away from a life of crime and toward one of normativity. Research publications claim that women who participate in these programs have lower reincarceration rates (Goshin, Byrne, and Henninger 2014). So it seems there is at least indirect evidence that prisons perceive a continued pregnancy to have rehabilitative and crime-detering potential, thus serving a penological interest.

But we need only look to the ways that pregnant incarcerated women are mistreated to find a more sinister punitive logic at play. Testimonials and lawsuits abound from pregnant women who received little to no prenatal care, whose labor symptoms were ignored, who gave birth alone in their jail cells, who were separated from their newborns within hours after birth, who slept on cement floors, who were forced to detox from heroin, who were shackled in childbirth, and so on (Levi and Waldman 2011; Kraft-Stolar 2015).

Furthermore, my ethnographic research with jail guards shows how they often demonize incarcerated women as bad mothers for allegedly committing a crime or for using drugs while pregnant. If we needed more evidence of the devaluation of incarcerated women's reproduction, in California prisons between 2006 and 2010 more than one hundred women were unlawfully sterilized (Johnson 2013). More recently, in Tennessee, a sheriff, surely emboldened by Trump's punitive logic, incentivized incarcerated persons to undergo sterilization by shaving thirty days off of their jail sentences (Dwyer 2017). Given the conflicting ways that prisons both valorize motherhood in the abstract and actively degrade pregnant and parenting incarcerated women, it is hard to accept the notion that prison abortion restrictions exist to revalue normative motherhood.

### SERIOUS MEDICAL NEEDS

The second judicial principle applied to incarcerated women's ability to obtain abortions is that, owing to the Supreme Court case *Estelle v. Gamble* (429 U.S. 97 [1976]), institutions of incarceration are constitutionally required to provide health care to the people it incarcerates. "The deliberate indifference to the serious medical needs of prisoners," Justice Thurgood Marshall argued in the Court's decision, constitutes cruel and unusual punishment and therefore a violation of the Eighth Amendment.

Whether a health condition counts as a serious medical need depends on the local administrator's assessment. Will not addressing that condition result in serious harm to the patient or—a common concern—a costly lawsuit for the prison? How much money and trouble will that medical care cost the prison? Does the person

deserve such care? The focus on “serious medical needs” as the standard by which to adjudicate abortion for incarcerated people makes for a neutralizing framework that is profoundly politicized and moralized.

Consider this recent example from a Midwestern prison, as related to me by a colleague who works to support pregnant women inside. Angela found out she was pregnant when she arrived in prison, but knew she did not want to have a baby. When she requested an abortion, she was told that not only would she have to cover the cost of the abortion but she would also have to pay for the officer’s time to escort her to the clinic and for wear and tear on the vehicle. Requirements for payment of this sort for transport costs are unheard of for any other medical procedure, be it an appendectomy or childbirth. But the prison administrators did not consider this procedure serious enough to warrant the prison’s resources. The prison warden termed the procedure “elective.” Angela could not afford the abortion, although there were community funds that could help pay for that. Yet since there was no money to pay for the wear and tear on the prison’s vans, Angela resigned herself to pregnancy and childbirth in prison. Advocates working with Angela contacted an attorney, eventually bringing the prison to agree that the woman did not need to pay for transportation and officer time.

When arranging for Angela’s guard escorts, the prison warden told guards the reason for the medical visit and gave them the option to decline the job. Four officers refused to transport her because they opposed abortion. Importantly, correctional officers cannot refuse to guard a person convicted of murder. They cannot refuse to escort a woman to the hospital for childbirth. But they can, apparently, refuse to transport her for an abortion. The warden’s description of abortion as elective and the choice that he gave guards signal a tension between efforts to make a bureaucratic, rules-based argument for denying incarcerated people abortion and a discomfort with the political and moral controversy that abortion engenders.

An elective procedure is one that can be deferred to a later time without significantly impacting a patient’s health or well-being. If an abortion is delayed or not done at all, then the woman will likely carry a pregnancy and give birth. That hardly describes the absence of an impact on her physical or social world. Yet prison authorities consistently claim that abortion is not a serious medical need and that, by preventing women from obtaining abortions, they are merely following the rules. It is a form of gendered violence to place pregnancy in such a bureaucratic rubric, failing to recognize the intimate and physical ways that it alters women’s lives and bodies.

The designation of abortion as elective has roots in the medicalization of abortion, which led in the early twentieth century to the formation of so-called therapeutic abortion committees that adjudicated whether a woman's reason for requesting an abortion was valid (Luker 1984). This idea created a hierarchy between a legitimate and an illegitimate abortion (Kimport, Weitz, and Freedman 2016). The hierarchy persists in medicine today: physicians (even prochoice, abortion-providing ones) speak of *indicated abortions*—those done in cases of a fetal abnormality or a mother's debilitating medical condition—and *elective abortions*.

Reproductive-rights social movements have also contributed to a hierarchy of abortion legitimacy by mobilizing the language of choice. These movements, along with classic feminist scholarship, have argued that motherhood is a choice, with contraception and abortion featuring as practical tools facilitating this choice. The language of the prochoice movement is unequivocally grounded in individual, rights-based assertions. If the subjectivity advanced by prochoice discourse is the ideal Western liberal subject—an autonomous human who crafts her individual self through unconstrained choices—then the framework of choice quickly dissipates in prison, an institution of control whose form of punishment involves the intentional restriction of everyday choices and bodily autonomy. Speaking in the language of “a woman's right to choose” proves incongruous in the prison's local world. Reproductive justice is a framework emerging from and centering the experiences of women of color that places reproduction in a broader context of structural inequalities (Ross and Solinger 2017); it provides a more apt lens through which to make sense of the ways incarcerated pregnant women's reproduction is either punitively promoted or suppressed.

The discursive claims about whether an abortion is elective or medically necessary that exist in prisons thus directly recapitulate the ways that medical institutions and prochoice movements have construed pregnancy and reproduction. The de facto result of imposing the narrow dichotomies of elective versus necessary onto incarcerated pregnant women is that some women will be forced to carry unwanted pregnancies as part of their prison sentence; they will be punished with pregnancy. They are forced to endure pregnancies in isolation, in uncertainty, often with unsafe medical care, and then separated from their children at birth. This case of punishing imprisoned women with pregnancy connects symbolically to the broader hyperregulation of abortion in U.S. society, as well as to questions over the states' role in actively facilitating or restricting an abortion, which we have seen amplified under Trump. Nonincarcerated women, too, can be punished through their reproduction. In both incarcerated and nonincarcerated instances, the moral

value of the fetus, of a mother, and the trenchant impulse to regulate them are re-fracted through medical, bureaucratic, and legal discourses. In the prison instance, however, no one is paying attention.

Abortion access for incarcerated women has not much changed under the Trump administration. But looking to carceral managed pregnancies and abortion in the age of Trump illuminates the public ways that this administration reinvigorates cultural narratives of criminalizing and controlling women's reproduction. It also highlights the complicity of prochoice rhetoric in creating opportunities for reproductive regulation in the carceral dimensions of abortion access. As abortion access remains under enhanced threat with the appointment of Brett Kavanaugh to the Supreme Court, we must turn our attention more closely to what happens behind the walls of carceral institutions, where no one else is looking, for it illuminates the political and racial control of reproduction more broadly.

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