Introduction

I do know that it’s true that if you wanted to reduce crime, you could—if that were your sole purpose—you could abort every black baby in this country, and your crime rate would go down.
—William Bennett, former Secretary of Education, responding to a caller on his radio show, September 29, 2005

The blind conviction that we have to do something about other people’s reproductive behaviour, and that we may have to do it whether they like it or not, derives from the assumption that the world belongs to us, who have so expertly depleted its resources, rather than to them, who have not.
—Germaine Greer, Sex and Destiny, 1984

Like many people, I was slow to recognize reproductive rights as such. When I was about 8 years old, I sat down at the kitchen table in my working-class home in rural Kansas and wrote a letter to my state senator, Bob Dole, urging him to oppose abortion because it involved killing an unborn baby. I wrote with the moral certainty that a lot of children have at that age, supported by loving and devout Catholic parents and catechism teachers who reminded me at regular intervals that “Abortion is murder” and “Women who don’t take responsibility for their mistakes are just looking for an easy way out.”

A few years later, I discovered that a local teenager was pregnant—and defiant. She did not marry her baby’s father, and she insisted on attending high school in spite of objections from some of the locals. I could imagine that raising a baby as a single teenage mother wasn’t easy, but I wondered, even then, whether it needed to be so hard. After I left home, and went off to college, I had friends who faced tough decisions about whether or not to
have or rear a child. They were not self-centered or irresponsible. Typically, they were all too aware of others’ judgments and the financial and social consequences their decisions would have, not only for themselves but also for any child they might bring into the world.

My politics began to shift to the left in the 1980s as I met women who navigated life encumbered by limited resources and bleak prospects. As an intern at a county juvenile court, I encountered a 15-year-old girl who carted her two children in a red wagon nearly two miles to the courthouse where she was to answer charges of shoplifting chocolate chip cookies and a package of bologna. She felt bad for stealing the cookies, but she was not in the least remorseful for stealing the bologna to feed her kids. In graduate school in the early 1990s, I became aware of the women ensnared in the criminal justice system, including thousands of women with histories of substance abuse. I met a woman who was sentenced to 10 years for becoming pregnant while using cocaine even though she gave birth to a healthy son. Later, I came to know a woman who served a 20-year sentence during which she tried to sustain a relationship with her child. Her son, a toddler when she was arrested, was being raised a thousand miles away.

Over the years, I saw more clearly how restricted a woman’s “choices” can be, particularly when she is isolated economically, socially, or geographically. These women exposed me to the influence of public institutions like schools, clinics, and the courts on women’s personal and reproductive lives. They also highlighted the problem of reducing reproductive rights to just the single right of a safe and legal abortion. As law professor Dorothy Roberts pointed out in her celebrated work *Killing the Black Body*, for women who are poor and black, reproductive rights are as often about the right to conceive, to be pregnant, to access good-quality reproductive health care, and to rear one’s children without unwarranted or harmful official interference as they are about the right to end a pregnancy.

As I use the term here, “reproductive rights” include the basic rights of all women to have sex according to their own thoughts and feelings, free of discrimination, coercion, violence, fear, or shame. Reproductive rights include the right to enjoy freedom of movement (without being limited by the threat of violence) and to be free from illnesses or other conditions that might interfere with sex and reproduction. Women also have the right to decide whether or not to have children—and, if so, how many—and to determine the spacing and timing of children. Finally, in my view, reproductive rights encompass the right to mother and the right to provide for
healthy children by meeting not only their physical needs but also their educational, emotional, and social needs.

Being able to reproduce is so closely identified with being a woman (and vice versa) that, for many, it is almost impossible to think about what it means to be a woman without thinking in terms of the ability to bear and rear children. Respect for a woman’s reproductive rights, then, is also inextricably connected to respect for a woman’s rights as a human being, independent of whether or not she adheres to societal norms of how a woman should be. Not all women’s reproductive capacity, and thus not all women’s worth as women, is equally valued.

Simone de Beauvoir’s famous observation “One is not born, but rather becomes, a woman” reminds us that we are born biologically male or female but learn what it is to be a man or a woman. Our gender is not a fixed characteristic; it is a social process, something that is negotiated and accomplished through routine interactions with other people and social structures. Both men and women “do gender”—that is, handle situations in such a way that the outcomes are considered gender appropriate. For women, the culturally and socially dominant standards of femininity against which they are measured are strongly tied to sexuality. Evidence of this permeates daily life, for example, in the emphasis on women and girls managing their bodies through make-up, fashion, and weight. Hegemonic ideals about femininity not only dictate how women should look but also how they should behave. We expect women to marry, procreate, give birth, and parent, and we expect these experiences to happen in specific ways.

Some women (i.e., those who are white, middle class, and heterosexual) are more likely to be seen as “real” women because their performance of gender is considered closer to the ideal than “other” women. The ability of women of color, poor women, and lesbians to reproduce becomes particularly problematic for the state, given their higher rates of female-headed households and children born “out of wedlock.” Correspondingly, society blames poor women of color for a huge range of social problems, including crime, drug use, poor schools, and poverty. As the blame has mounted, so has the regulation of their reproduction.

The potential of women to reproduce is distinct from the institution of motherhood. It is the latter, feminist writer Adrienne Rich charges, which “aims at ensuring that that potential—and all women—shall remain under male control.” The patriarchal regulation of motherhood, and women’s reproduction more broadly, are the focus of this book. In Our Bodies, Our Crimes, I consider how the criminal justice system disciplines women's
reproductive behavior and how it maintains the patriarchal notion that women's value derives mainly from their sexuality and reproductive capacity.9

Importantly, because women's gender is tied up in reproduction in a way that men's gender is not, the consequences of official attempts to restrict reproductive freedom have a much more profound effect on women than they do on men. Women's reproduction is more likely to be targeted than men's is, and with far more devastating consequences. My concern here is with how the criminal justice system responds when a woman's gender performance falls short as when, for example, a teenager abandons her newborn or a woman uses cocaine while she is pregnant.

As an official agent of social control, the criminal justice system responds not only to crime but also to transgressions against gender norms. By restricting some women's access to abortion and obstetric and gynecologic care, by telling some women not to procreate and pressuring them to be sterilized, by prosecuting some women who use drugs and become pregnant, and by failing to support the efforts of incarcerated women and battered women to rear their children, the law and the criminal justice system establish what a “good woman” or a “fit mother” should look like and how conception, pregnancy, birth, and child care and socialization are regulated.

This regulation of reproduction reinforces limited biological definitions of maleness and femaleness. It promotes a view of gender as a fixed, individual trait rather than a more fluid understanding, one rooted in historical and institutional contexts. And, as we see in the insufficiency of the criminal justice system's responses to marital rape, domestic violence, and child abduction, it helps sustain the family as a site of male dominance over women.

Sometimes the state's intervention into women's reproductive lives is obvious, as when judges order women not to procreate or correctional staff refer women who use illicit drugs to a program that pays the women to be sterilized. Other times, as with incarceration, it is less obvious. Prison not only incapacitates women and prevents them from committing crimes while they are locked up, it also prevents them from accessing their reproductive rights. By denying incarcerated women good-quality reproductive health care, by imprisoning many of them for the duration of their reproductive years, and by interfering with their ability to see (much less rear) their children, incarceration punishes women not just for their crimes but for their perceived shortcomings as women and mothers.
Women do possess and exercise agency, of course, and have the capac-
ity to resist or reject dominant definitions of femininity and womanhood. But many women’s capacity is constrained by their social conditions, in-
cluding poverty and limited employment and housing options, as well as restricted access to abortion and contraceptives, gynecologic care, and drug treatment. The judgments women face, for example, when they pro-
ceed with a pregnancy while addicted to drugs or remain with an abusive partner, also restricts their options. Workers in the criminal justice system, including judges, prosecutors and defense attorneys, and correctional staff and administrators, often ignore the context in which women’s actions take place in favor of assuming it is completely within a woman’s power to enter drug treatment or set up a new household.

Overview of the Book

I have not written an exhaustive account of how the criminal justice system responds to the threat that women’s sexuality and reproductive behaviors pose to the dominant order. There are simply too many examples to give each one its due here. Subjects such as violence among same-sex couples, sexual assault, and incest receive far less attention in this book than they deserve. I focus almost exclusively on women in this book, even though men are also subjected to some reproductive regulation. For example, men who owe child support have been issued “pay up or zip up” no-procreation orders. Young black men are locked up at rates that have undermined families and entire communities. By and large, however, I find that the ef-
forts to restrict and control reproduction have been focused on poor racial and ethnic minority women and therefore they receive the greatest consid-
eration in this book.

Arguments that we need to restrict and even criminalize some women’s behaviors to ensure the healthy reproduction of the United States have been around at least since the nineteenth century. In part I, chapter 1, I describe how the eugenic criminology movement that dominated at the turn of the century continues to structure our values and assumptions about who is “good” or “bad.” Today, the language is less overtly racist, but the underly-
ing sentiment remains: some women should be prevented from exercising their reproductive rights; other women’s reproduction should be supported and encouraged.

As the control of women’s bodies and reproductive lives has become more intrusive and pervasive, I fear it has become invisible and taken for
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granted. Abortion may be the most hotly debated reproductive right, but it is hardly the only one. To highlight the scope of these rights, the remainder of this book is divided into three parts that correspond roughly to the timing or site of the reproductive control: Begetting, Bearing, and Mothering. In part II, I address policies aimed at limiting a woman’s say over her fertility and fecundity. This section begins, fittingly, with conception. In chapter 2, I describe how some women have been subjected to institutional segregation and sterilization orders. For example, in recent years, a number of women have been ordered not to procreate or have undergone sterilization as part of their punishment. In chapter 3, I focus on the renewed interest in criminalizing abortion by targeting abortion providers and imposing restrictions on women who seek abortions. Abortion has long been an option for those who can afford it while marginally available to those who cannot. Many women are trapped: disdained for being pregnant while they are poor, teenagers, incarcerated, or using illegal drugs yet similarly disparaged if they seek an abortion.

Even with the greater availability of contraceptives and the greater acceptance of children born outside of marriage, each year, untold numbers of women (many of them frightened teenagers) give birth to a child they are ill positioned to take care of. In chapter 4, I consider the extreme case of women and girls who abandon and, in some cases, kill their newborns. The highly variable criminal justice responses suggest a strange incertitude about whether the women who commit these acts deserve our scorn or our sympathy.

In part III, I move the discussion from conception and fecundity to pregnancy. In chapter 5, I examine the repercussions of recognizing claims of “fetal rights.” Homicide is one of the leading causes of death among pregnant women. Rather than offering enhanced penalties in cases where a person’s criminal act hurts a woman who is pregnant, many states have passed fetal homicide laws that treat the fetus as an independent “victim” with distinct (and sometimes competing) legal rights from the woman herself. Here I also examine cases in which drug-using women have been arrested and prosecuted for becoming pregnant and continuing their pregnancies to term. The very fact of these prosecutions suggests that pregnant women are punished twice: once for violating our drug laws and again for transgressing against dominant notions of how a pregnant woman should behave. Both fetal homicide laws and prosecutions for maternal substance use render a woman subordinate to the interests of the fetus that she carries.
In chapter 6, I examine the quality of reproductive health care in prisons and jails. Every year, about 2,000 women give birth while incarcerated. The quality of prenatal care available to incarcerated women is notoriously poor. Shoddy medical treatment also compromises the gynecologic health of women who are not pregnant and, in many cases, has effectively denied incarcerated women their right to sexual and reproductive health.

In part IV, I document the criminal justice system’s impact on women’s attempts to parent. In chapter 7, I continue the discussion of incarcerated women. Today, between 1.5 and 2 million children in the United States have at least one incarcerated parent. Incarcerated women face many parenting challenges, such as visiting and communication, as well as negotiating foster care and custody arrangements. These barriers interfere with incarcerated women’s ability to mother their children and place many women at risk for having their parental rights permanently severed. In chapter 8, I show how battering affects a woman’s ability to bear and raise her children in a safe environment. Since the 1970s, men’s violence against women has come to be regarded as a crime. It has yet, however, to be widely recognized as a reproductive rights concern.

In the conclusion to this volume, called “Being,” I consider what the criminal justice system’s attempts at controlling women’s reproduction say about how we define and value all women. Laissez-faire liberals argue that the state should not be involved in the reproductive arena. Social conservatives argue that the state must be involved in it, as a matter of protecting the state’s interest in a healthy pregnancy outcome. Concerned about how this involvement has played out to date, I support a third view, one that encourages us to ask “not whether the state should be involved in these decisions, but to what extent and how?” I conclude that we need policies that both respect women’s reproductive rights and ensure that women across the spectra of age, race, ethnicity, social class, and sexuality are situated such that they can exercise their rights.

*Our Bodies, Our Crimes* is mainly about state-imposed restrictions on women’s reproduction. As a single woman who has never wanted to conceive, bear, or raise a child of her own, I am acutely aware that reproductive justice demands the freedom not to reproduce. Women who choose not to procreate or to marry pose a serious threat to patriarchy and conventional social structures. At its heart, then, this book is about the freedom to be a healthy woman and a valued member of society independent of one’s reproductive contribution or perceived lack thereof.