Regulating Reproduction with Elena Ruíz and Nora Berenstain

[music: Blue Dot Sessions, Single Still]

Christiane Wisehart, host and producer: I'm Christiane, and this is Examining Ethics, brought to you by The Janet Prindle Institute for Ethics at DePauw University.

This episode is part of our Ethics in Focus series where we present full-length interviews with expert guests. This series features conversations about ethics for folks already familiar with the field of ethics. Today, I'm talking to the philosophers Elena Ruíz and Nora Berenstain about the criminalization of pregnancy in North America.

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[interview begins]

Christiane: I'm here today with philosophers Elena Ruíz…

Elena Ruíz: Gracias, thanks for having us.

Christiane: And Nora Berenstain…

Nora Berenstain: Hi, we're so happy to be here.

Christiane: We're in the midst of a period in which states all across the United States are banning abortion and other types of pregnancy healthcare. But the overturning of Roe v. Wade in the US is just the most recent instance of a state power criminalizing pregnancy in North America. Professors Ruíz and Berenstain co-wrote a piece in 2018 that I think can help us better understand our current political moment. It's called "Gender Based Administrative Violence as Colonial Strategy." And thanks to both of you for joining us to discuss this piece.

Nora Berenstain: Thanks so much for having us

Christiane: My first question is, were either of you surprised when Roe v. Wade was overturned this past June, June of 2022?

Elena Ruíz: No.

Nora Berenstain: No..

Elena Ruíz: No. Not in the least. We weren't surprised at all. A little bit like Trump's win in 2016, it was only a surprise if you ignore what was already happening historically. In Trump's instance, what was happening with the Tea Party and Newt Gingrich's contract with America, but also what was happening with the evangelical movement prior to that in the '90s, and if you remember the Christian Coalition. And the thing about it is that they told you exactly what they were going to do: to flip the House and the Senate and to roll back abortion access. And there's also a kind of collective amnesia that's happening, that's surrounding the fact that Trump explicitly said, "There has to be some form of punishment for abortion." Right? That's on record. It's only a surprise if you don't take people at their word, or if you don't recognize what's already happening with the Republican push to pack the courts with conservatives and far right extremists. Or, of course, if you underplay, for instance, the enduring role of colonial racism, rape culture, white supremacy, globally and domestically of course. This is really what we wanted to highlight in our article. Folks really like to quote Dr. King's "injustice anywhere is a threat to justice everywhere" a lot. But from our perspective, when we allow things like systemic sexual abuse, misogynoir, the astronomical assault rates on Native women, structured poverty or transphobia, or anti-immigrant carceral politics to just go rampant at the culture level. And then you express surprise when harms are extended to a broader population that's unaccustomed to impunity for systemic violence. We think you really have to ask who is surprised and why? Now, I want to be clear that the anger is justified, whether one expected it or not. I was outraged as well and angry, but the surprise really comes from being invested in a false narrative about where we are and where we come from.

Nora Berenstain: Absolutely. I think the importance of recognizing the role that where we are and where we've come from has played in leading us up until this moment is exactly why we framed our investigation through this lens of historical continuity. One thing that means for us is that not only do we reject the appropriateness of surprise, we also reject this common liberal narrative of the inevitability of “progress.” We know that, for instance, things don't necessarily get substantively better after constitutionally afforded protections or laws are passed. And, in fact, they often invite a backlash that can leave certain populations worse off than they were before. In this political moment surrounding abortion, in many ways, we are left worse off now than we were before Roe versus Wade. And not just before it was overturned, obviously, but before it was decided.

In this moment, there's a much greater willingness to let people die because of life-threatening issues with their pregnancies, including with pregnancies that are inherently non-viable, like ectopic pregnancies, right? There's no way that they could lead to an actual birth. All they can lead to is the death of the pregnant person. There's also a much greater appetite now to incarcerate people who do get abortions, as well as those who have miscarriages. Before Roe v. Wade, you just were not as likely as you are now to see someone prosecuted for homicide because of their pregnancy outcome.

And this was already becoming more routine, as we discussed in our paper, before Roe v. Wade was overturned and it's going to become even more common now, as the right has been

working so hard to entrench notions like fetal personhood and fetal assault in policies that pave the way for severely punishing people who lose their pregnancies. One thing our paper touches on is the pervasive gaslighting also that's aimed at those who, like us, have been sounding the alarm for a while now about these really kind of empirically measurable trends about what's been taking place that have clear implications for where things are going. Scholars like Shannon Speed, Sarah Deer, Angela Davis, Dorothy Roberts, Aida Hernandez Castillo, just to name a few, are some of the people who've been sounding the alarm in one way or another for quite some time.

Elena Ruíz: Absolutely. The work is being done and has been done. And to account for these empirical trends that we just spoke about, what we did is we told a structural story that frames institutions and their outcomes as part of intentionally designed administrative systems whose functions are built around the goals of settler colonialism.

Nora Berenstain: That's exactly right. I think something that really brought this to life for me, kind of this connection between settler colonialism and the intentional design of structural and administrative systems... What brought that to life for me was when I came across Leanne Simpson's description of her experience spending two years mapping storied places and places of importance in her people's land after she'd had conversations with elders in her community. Simpson is a Nishnaabeg scholar in what's now considered Toronto, and she talks about how, when she was engaging in this project, she drew up these large topographical maps where she recorded hundreds of place names that the elders remembered.

Places like beaches, islands, berry patches, fishing sites, places of birth, places of death, homes of animals, ceremonial sites, what she describes as places where life happened. She then also recorded sites of violence, sites where hydroelectric dams were built, mines, pipelines, clear cutting, places where campsites and parks were constructed for white Canadians on Nishnaabeg land. And what she describes when she is looking at the finished maps is experiencing this sense of clarity. What she says is that the overlays showed decade after decade of loss. They showed the why.

With the history of the land laid out before her, it became apparent to her, not just what was happening, but why. And so she says, this is a quote, "Colonialism or settler colonialism or dispossession or capitalism didn't seem complicated anymore. The mess I was wrapped in at birth didn't seem so inevitable. It seemed simple. Colonizers wanted the land. Everything else, whether it's a legal policy or economic or social, whether it was the Indian Act or residential schools or gender violence was part of the machinery that was designed to create a perfect crime, a crime where the victims are unable to see or name the crime as a crime."
And so I think this explains what's going on here really beautifully. The colonizers wanted the land. They created the administrative systems and the social realities necessary to take it and keep it.

Elena Ruíz: Voila.

Nora Berenstain: And that's where we are now. These systems didn't go away, of course, because the needs and goals of settler colonialism never went away. They're still very much structuring the systems and realities we find ourselves in. And not only that, but Simpson is also touching on this really important epistemic point that it's necessary to settler colonialism, not just to produce this violence, but to make it unnameable and unidentifiable within settler systems of knowledge. And this fits really well with some of the work that Dr. Ruíz has done on how settler conceptions of violence are specifically designed to exclude the vast majority of the kinds of violence that settler colonialism commits. And I think this is something that Simpson is converging with when she talks about settler machinery being designed to create the perfect crime.

Christiane: When we're talking about systemic violence, structural injustice, you open your article with a story of an individual woman, a woman from Mexico who served a three year prison sentence after experiencing a miscarriage. It sounds like to me, from what you've been saying, this is not really an unusual story in Latin America or maybe North America.

Elena Ruíz: Yes. Yes. You're connecting the dots, Christiane. That's exactly right. It's not unusual, and that's why we wrote about it. And not only just that, three years is actually on the lower end of criminal sanctions that pregnant people face. For instance, Mayra Figueroa spent 15 years of a 30 years sentence of aggravated homicide after she suffered a miscarriage. She was 19 years old. This was in 2003 and she was one of at least 17 or more women that were sentenced up to 40 years in prison, for instance, in El Salvador. This was between 1999 and 2011, and many of those women served way more than 10 years, at least.

I want to be clear that our investigation or study really did look at empirical data. There was, in fact, an alarming uptick in prosecutions of pregnancy outcomes. That was indeed happening. But what we wanted to avoid in looking at this uptick is we wanted to avoid doing research that was using these cases as sentinel events, right? Writing about them as they were sentinel warning signs, the canary in the coal mine for a coming wave in the US or Canada, because we strongly knew that this wave was already present. And it was already present in the cases that we detail in our article.

A point we really wanted to bring home in the article that I think is really salient to what's happening right now, what's happening "post Roe," is that a really common way of interpreting reproductive rights rollbacks, and you probably may have come across this in conversations you've had before this podcast is seeing them as a systems failure, that the system we thought was set up to assert or to guarantee women's rights has failed us, has failed women and pregnant people in need of reproductive healthcare in particular, but it's somehow generally failed us.

Now, our investigation then looked at a wide range of medical and legal practices that were surrounding pregnancy outcomes in the US, Canada, Latin America. And we concluded just the opposite, that here you have what we really were describing as a system success. In other words, the result of ordinary system operations, business as usual, right? That happened to involve the targeting of particular populations by design, through policy and practice. It's not a

failure in the system. This is something that we're adamant about. And we gave receipts to argue that obstetric violences and crackdowns in women's rights are instances of what we referred to as gender based administrative violence.

Christiane: Can you kind of flesh out that phrase for me? What is gender based administrative violence?

Nora Berenstain: The way we think about administrative violence is as coming from epistemic and institutional systems that structurally produce automated harm and death for certain populations, non-accidentally and by design. We're specifically looking at how administrative systems in settler societies provide the gear work for enforcing and maintaining forms of oppression, which are themselves oriented toward and structured by the goals of settler colonial white supremacy. Things like capitalism, ableism, cis hetero patriarchy, these are foundational organizing principles of settler administrative systems. They all perform central organizational functions to further the goals of settler colonialism. And because of their functions, the violence they produce is predictable and observable, though it also tends to be kind of intentionally excluded from what we in settler societies consider "real violence." And this is not an accident, as Leanne Simpson pointed out, right? These systems are designed to ensure that their crimes cannot be named as crimes.

Elena Ruíz: It is not an accident. It's intentionally designed systems that are organized to produce this form of structured violence around and through the production of gender. For instance, settler colonial forms of hetero patriarchy were introduced in the Americas. They're not timeless and universal. They haven't been here since the dawn of Greco Roman culture. It's not a given, right? They were introduced as a particular strategy for displacing indigenous peoples from lands so that white settlers could then acquire them and replace indigenous lifeways with settler lifeways.

And so the institution of heterosexual marriage, for instance, enforces–and other folks have said this–it enforces this kind of hetero patriarchal ideal of the nuclear family. Shahill Collins, for instance, has written about this as the only acceptable kinship unit and living situation.
But if you really delve more into it historically, whether scholarly or you just think about it and connect the dots, the purpose was to regulate kinship and reproduction in such a way that would disrupt the many, varied indigenous communal living practices and the relationship of those, of course, configurations to lands and curating responsibilities, reciprocal relationships to land-based ethics so that the system of land privatization. And I'm not going to go deep into Locke's treatise on government to kind of put this together, to show that the system of land privatization that governed the notion of "private property" could be enforced.

Gender's important to analyze this way because it was really necessary for settler administrative systems to impose a relationship of ownership to land, which, of course, encompasses these webs of reciprocal relationships that's far more varied. And of course we completely agree that it's far less violent than the ownership relation that characterizes private property. But so you could have a system of transfers, property transfer, and to be able to trace that through gender, right? Property rights, we all know that... Not all know, but the history of marriage as a

contractual kind of way for governments to be able to trace property and property rights through the male and women couldn't own their property first. And so, it was all inheritance and property as tracing. And that's essentially in our view using gender to reinforce the framework of legalized theft, but that's just one example. And to mystify that afterwards with beliefs in the sanctity of these things. But it's just one example of the many ways that gender can be used as a tool of administrative violence to accomplish broader settler colonial goals.

Christiane: What's interesting as I'm listening to you is when, I think back, I watch a lot of TikTok as my listeners will know. People are saying, "Well, this is the reason that Roe v. Wade was turned over, or this thing that happened a couple years ago." But the picture that you're painting for me is that this is hundreds of years in the making. So can you help us understand what is paving the way for this violence? And you've already mentioned this a little bit, but if you could flesh out why is this something that a state would be interested in enacting?

Elena Ruíz: In this context, the question of state interests is a bit reversed. In other words, what that means is that one of the ways to ask or reframe that question frequently, as it's frequently done, is how is this not related to state sponsored terrorism? There's always economic interest in subjugating populations. We know this and that interest is often tied to foreign economic interest as well. But this is especially vivid in Latin America. And it has been for quite some time, not just in philosophical analysis of this, but just economics, right?

There's a lot of economic history that frames world system analysis, or that frames these kinds of relationships of what's happening in Latin America this way. And so if you look at the south of Mexico, for instance, you have paramilitary and state sponsored militarization of indigenous zones where extractivist interests like private mining, mega projects, hydroelectric dams are being undertaken because if one isn't paying attention, Mexico has the raw materials, as well as other places needed to build things that are "a problem in the supply chain," things like semiconductors, and batteries," the components for batteries to solve the supply chain woes in the US.

So it's intimately linked to an economic system. But there's widespread impunity for state sponsored militarization of sexual violence. And there's just very few resources to address this or to address the varied structural conditions that are currently driving, just a huge spike in early and teen marriages, especially after COVID, this is really a problem. There's just a wide range of patterns that we're observing spikes in sexual and domestic abuse and more restrictive access more than ever to teen obstetric care in particular. So in the feminisms in Latin America, you see the framing of state and sexual terror in all its forms as inherently theorized as part of a reproductive justice platform in the region, right? The state and sexual terror are not seen as separate things to analyze together.

It's really a core part of the massive, the green wave of feminist movements that's happening, where you have women that have marched in the millions for reproductive justice and access to safe, legal abortions. And so, you're just now beginning to see these trademark green bandanas

in the US. I don't know if you've seen them. Folks wearing the green bandanas. Just millions and millions of women in Latin America are intimately aware of this fight and this struggle and have developed symbols and calls for action and strategic campaigns and organizations that were asking for access to pregnancy healthcare and obstetric healthcare and abortion rights, we're also calling, not as a separate thing, but it's an intimately related thing, neoliberal reform. And also, side note like anti-gaslighting measures, about state accountability, something that doesn't blame women for the violences done to us. There's even a song about this, "Un violador en tu camino," which literally means there's a rapist in your path. And it's a play on a police slogan. It's a Chilean police slogan, "There's a friend in your path." And just so many women and girls, very young girls, school girls know this song and it's really been performed in the millions.

Nora Berenstain: Yes. Tell them about the lyrics.

Elena Ruíz: Okay. So translating the chorus, there's a part of the chorus that speaks to this question and it goes something, "The rapist is you, it's the police, it's the judicial system, it's the state, it's the president, it's the oppressive state is a macho rapist." And I'm translating, of course now. In the US context, of course, Angela Davis really laid out perfectly the case as to why a state would be interested in enacting administrative violence targeted at women's reproduction decades ago. Davis did this a long time ago.

So there's of course economic interests and there's political interests as Dr. Davis points out. And the two are lo and behold intimately connected, right? And what we wanted to do is highlight the global structure and the structural nature of these interests. And of course, our cultural roots in colonialism. With respect to colonial violence, which is really the first part of your question. And we talked about this a little bit, but I think it's really important to note, as we do in our work, that it's really important not to interpret colonialism as a past historical event.

Something that is behind us. Something done and over with. That we can then analyze sort of "objectively" as historians and gain new lessons and say things like those who Santayana did, "Those who don't remember the past are condemned to repeat it," or something like that. We really don't take that view of history as a past. The colonialism is a past static historical event, and indigenous feminist theories have really been at the forefront of this idea and relating it back to gender based violence. For instance, I was really struck by, there's a wonderful book, by Shannon Speed, *Incarcerated Stories*. And it's wonderful for many reasons, but one of the reasons it's great is that it really lays out perfectly the socially organized character of violence against, for instance, incarcerated indigenous migrant women today, as part of this longer continuum of colonial violence. Not just the immediate and obvious economic interests of the local townships and for-profit policing and building the local prisons, which is one way, it's an important way to analyze, right, what's happening with carceral rates, just carceral politics and incarceration rates of people of color.

We have a very structural understanding of colonialism as relevant today, but also as intergenerational, as a series of self-transformational practices that automate inequality. And I know folks don't really want to hear this, because then you're like, "Oh, great, we can't blame a particular person, if we can't blame Trump for this," if it's automated, what are we going to do? But we think it automates inequality, irrespective of who is in power. And to understand it, it really requires a historically continuous view of colonial violence, right? So that's the thing to remember colonialism, not a past event, not done and over with historically continuous, still happening, deeply relevant to gender in particular.

I think it's important to clarify what we mean by the state, because it's very easy to just picture individual people. If Trump is in power, or if Obama is in power and then we're like, "Oh wait, does the theory work anymore?" So when we're talking about the state, we're not thinking about specific state entities or emissaries or individuals for instance. There's many dedicated people in civil service and even in elected public office. I've spoken to too many of them that frankly, right? I can tell you get this, know this history of systemic oppression. I don't have to tell them about colonialism and that it's related. This certainly is absolutely not the case everywhere, but there are folks that get this history and how it continues to impact their constituents who desperately need affordable healthcare, civil rights protections, and critical infrastructure goods that are in continuously systematically denied to them because they hear about it, right?

So what we're talking about when we talk about things at the state level is we're talking about system level properties of settler colonial white supremacy that make such a task, right? The delivering of adequate resources. So to appreciate just what an uphill climb that is and to reinvigorate the importance of working even harder in some ways to achieve what's been made exceedingly difficult to do by design.. Rights for us are always a rollback in the making. It points for us towards a politics that takes this adaptive design, if you want to call it that, of colonial violence into account through a strategy for policy, for action, and for continuous resistance. Because what the architecture of colonial violence seeks to do, and it's really important is to, it seeks to construct a world in which you think you have no options or reasons to keep resisting. Some frameworks of resistance, like white feminism, I'm just going to name names, frame women's rights in such a way that leave out these really critical components that we keep talking about. But then they express surprise like a piñata that you didn't know what was inside of it, right back where we started before or even worse, of course.

Christiane: That's something that stood out to me as a white lady. It was a really compelling point that most white feminists in the US have ignored this gender based violence for decades now, if not maybe centuries. So lay out for us the narratives that are being espoused by white feminists around gender based violence and what they're missing when they tell the story their way.

Nora Berenstain: I guess the first thing I'll say is that it's important to clarify what we mean by white feminist and white feminist, because these phrases are often misunderstood. So to say that someone's a white feminist is not just to say they're a feminist, who's also white, though

there absolutely is a lot of overlap between these two groups. White feminism, it really refers to a particular way of doing feminism and to specific methodological practices. So white feminism takes a single-axis approach to gender based depression, which means it ignores the intersections of sexism and sexist oppression with racism, with capitalism, ableism, cis-sexism, and transphobia, heterosexism, national context. White feminism also of course, ignores how interlocking structures of oppression are both situated within and dependent on persisting structures of neocolonialism and settler colonial violence. So white feminism is not universal feminism, but it pretends that it is.

As the writer, Cate Young points out, white feminism paints itself as one size fits all feminism. When in fact, it actually really fits very few. So it's a core feature of white feminism that it elides the structural foundations of, for instance, US patriarchy in settler colonialism and white supremacy. And what that means is that when it does look at systemic aspects of gender oppression, including those that are automated through institutions, social structures and policies, it disconnects them from the goals of indigenous land dispossession from ableism, from cis-supremacy, from white supremacy. So white feminist narratives center around the issues that really only a small subset of particularly situated women face, namely women who are white, non-disabled, class privileged, straight, cis citizens of Western "nations states." So when they do offer narratives about the type of violence that we are talking about, they often portray these forms of violence as accidental, as deviations from a fairer norm as how Dr. Ruíz mentioned earlier as a failure of the system, rather than how the system was designed to function.

They'll also portray these outcomes oftentimes as a result of individualized prejudice, or even maybe socially produced gender bias, but rarely as designed forms of structural violence and never as rooted in colonialism. When white feminists tell stories about gender-based violence in Latin America, they do it in ways that are meant to distance themselves from the violence in order to produce this exonerating narrative that upholds white innocence.

One thing colonialism loves to do is hierarchically rank societies along a linear scale of “civilization and progress.” So white feminist reporting on these stories tends to invoke these common racialized tropes of Latin American countries as backward or barbaric or regressive and unenlightened. And this allows white feminists and white liberals more generally who are situated in the Global North to feel and express the sense of moral outrage at what women are being subjected to in these "less developed countries," while ignoring the ways that settler colonial violence is not bound by settler colonial borders. And it of course allows them to continue this sort of veil of innocence that prevents them from avoiding any structural accountability for how these configurations of power actually benefit us.

So just one example, is the fact that I can afford to buy Driscoll's strawberries is dependent on an extraordinarily violent settler capitalist system that not only exploits migrant laborers, many of whom are indigenous, it also makes subjection to sexual violence a requirement of the job for women laborers, right? So I benefit from this very violent system in material ways, whether I

endorse this system or not, right? People like me have a responsibility to reject this system and work to dismantle it, right? Not just focus on the ways that I, as a white woman, am harmed when my reproductive rights are denied, right? So another thing that white feminists miss, and this is not by accident when they tell these stories is the very prominent roles that white women have played in not only benefiting from, but in actively enforcing and propping up these systems of colonial white supremacy.

And this includes the project of white feminism itself, right? So much of white feminism, both historical and contemporary, has really been motivated by class-privileged white women's desires to share equally with white men in the spoils of white supremacy, right? And there are many spoils for white people. So whether it's the fact that middle class women in the US were able to join the workforce because they could exploit the domestic and care labor of women of color to clean their houses and take care of their children, or whether it's the fact that white women are the group that has benefited the most from affirmative action policies by co-opting employment opportunities meant for people of color in order to protect whiteness in the workplace. White feminism tends not just to ignore intersectionality in its analysis, it also tends to conveniently skip over the ways that white women benefit from and actively work to preserve systems of white supremacy that really, for the most part serve us quite well.

Christiane: So as we're talking about the rhetoric that's coming from white feminists, with the recent Supreme court decision to overturn Roe v. Wade, a lot of that rhetoric has centered around the fact that this is a ruling motivated by religious concerns and only religious concerns. So is this mistaken thinking?

Elena Ruíz: Yes and no. There's a lot of truth to it, but it needs to be expanded upon. You're absolutely right that the evangelical movement has, for instance, really deep roots in anti-abortion policy and efforts to overturn Roe v. Wade. So, that's right, but it also has very deep roots in partnering with, for instance, free market enterprise and the so-called Washington Consensus to make foreign economic economies really friendly to private investment and to extractivism of natural resources, labor, so forth. One of the things that they've done, I think really successfully is to blur these two lines in the last 20 years or so. It's been very difficult to tease them apart.

If you look at the work that Capitol Ministries, that's capitol with an O, has undertaken since 1996, and I highly encourage folks to just look this up. This is an instance where you're just like, "All right, Google it." Is that it's really in concert with a Republican push to pack the courts with the kinds of judges that will, in fact, that you can count on to ban or restrict abortion. But they target state legislatures. They do this all over the world, including the US, to do things like pursue economic interests in very specific policies, not just for individual companies, but for broader white wealth.

But one of the things that they do is that they use Bible studies groups for members of Congress to do this work. And they're very, very effective. It's a really good example of a infrastructure, not

a shadow governance, but it's available for anyone to recognize, it's right there. The names, no one's hiding it. There's, there's no hidden agenda. This is really what's critical to this infrastructure is that it's right there. The World Congress of Families is just another example of how these infrastructures work to support and how they link up to conservative PACs in fundraising like ALEC and so forth.

So, what you start to get is a pattern, a very consistent pattern that provides ample evidence of where things are headed, where things have been, where they're headed, just from the infrastructure that they're building alone and it's not good. So, it's really important to connect these dots when the evidence is readily available to one.

So, there's been a lot of attention, I think, recently, for instance, in reporting that highlights some of this and lays this out to some extent, like Katherine Stewart's *The Power Worshipers*, which is like a contextual history of what's happening in terms of politics and religion together to meet this moment. There's a lot of attention on stuff like this, because it lays things out in terms of Christian nationalism, which is important. It's important to see how Christian and the messianic turn can elicit these kinds of justified violence responses in the name of this larger thing. Of course, no one saw Black nationalism the same way, the violence is registered differently. But there's also the larger structural issue, I think, in our work, of white supremacy and sexist racism and dispossession, and of course, rape culture beyond the Christian nationalism framework of what's happening here, that's behind the religious motivations in the political arena. That's what we're really concerned with. Frankly, doesn't get the same air time.

Nora Berenstain: I think it's definitely a mistake to take at face value the main reasons that opponents of abortion offer for why they want to ban abortion. So, just one example for why this is, is like, if they were primarily concerned with the so-called loss of fetal life, they would be as, if not more, concerned about preventing miscarriages as they are about preventing abortions. This is because somewhere between 10% to 20% of pregnancies end in miscarriage. So, if you're concerned with "loss of fetal life," a really important part of reducing the high rate of that, that comes from miscarriages, would involve preventing unwanted pregnancy. The best way to do that is to make birth control free and accessible to everyone who wants it. But that's not something we see the anti-abortion movement working toward. In fact, we see, in many cases, just the opposite, many people in the anti-abortion movement are working to limit the accessibility and affordability of birth control. I'm not saying that no individuals care about "loss of fetal life," but just as a larger, like what's really driving the political organizing. I don't think it's that.

So, I think it's really prudent not just to remain skeptical about the sincerity of the professed values that abortion opponents offer for severely limiting the bodily autonomy of pregnancy capable people. I think we also need to push back against the terms of the debate that they set, because once we agree to their terms, we've already given up way too much. Now, just to bring it back to the larger question about the relationship between religious concerns and abortion opponents, this is definitely not to say that religious concerns don't play a role, but I think we

have to be specific about whose religious concerns we're talking about and what it is they're concerned with. So, the religious concerns that we should be talking about more here, I think, are the concerns of the white Christian right with maintaining and preserving the social order.

Anthea Butler's work has really made clear that historically white supremacy and hetero-patriarchy have been some of the core political commitments of white evangelicals, for instance, in the United States. This has involved things like using the Bible to justify slavery, to oppose desegregation, to preserve the freedom to racially discriminate, and to promote a gender ideology that upholds cultures of rape and abuse by demanding women's unquestioning servitude and devotion to their husbands construed not only as heads of household, but oftentimes as their spiritual leaders. So, certain strains of white evangelical Christianity have always been invested in upholding some really, frankly, very violent forms of social order and hierarchy. It's important to recognize the close relationship between Christianity and settler colonialism in this country.

If you go back to the writings of Horatio Robinson Storer. He was a white Christian physician in the mid 19th century, who worked to mobilize a group of white male doctors to start pushing for the criminalization of abortion across the United States. When you look at literally just what he says, he expresses the settler colonial underpinnings of his motivations very plainly. In addition to stating that abortion jeopardizes women's abilities to carry out their essential duties as wives and mothers, he also just straight up says that it jeopardizes settler futurity. There's a part at the end of his book, and the book is called *Why Not? A Book for Every Woman*, he's talking about the newly depopulated Western frontiers. He asks, shall these areas “be filled by our own children or by those of aliens? This is a question that our own women must answer, upon their loins depends the future destiny of the nation."

Now, this idea that cisgender white women are responsible for maintaining the strength of white settler populations against some sort of perceived encroachment by immigrants and people of color, it's still very much in circulation today. Just this year, we have the head of CPAC, the Conservative Political Action Committee, saying that banning abortions would be an effective strategy to solve the problem of the "great replacement," which is this white supremacist fantasy and conspiracy that's motivated a lot of massacres. It's the fantasy that immigrants and particularly immigrants of color are being brought to the US in order to replace the white population and dilute white political power.

So, this guy, Matt Schlapp, head of CPAC says, " If you say there's a population problem in the country, but you're killing millions of your own people every year through legalized abortion, if that were to be reduced, some of that problem is solved." He then goes on to say, "Start with allowing our own people to live." Where, of course, our own people means white people.

Elena Ruíz: We need only think back to the rhetoric of anchor babies, and it seems like if you blink, that you weren't paying attention, you let that pass, you let that pass. We're at this moment where this moment has really been building up consistently, and for a long time, going

all the way back to Senator John Calhoun, that voted against annexing and taking Mexico into the US for fear of having Mexican and particularly indigenous babies born into the US and increasing that population. That was a reason to not create the border with Mexico.

So, he explicitly said in front of the president then that, he said, "We never dreamt of incorporating into our own but the Caucasian race, the free white race. Ours, sir, is a government of the white of a white race." There's long, long history about gender and eugenics coalescing together as inseparable, particularly in these discussions. So, the mistake, we think, is not necessarily thinking that banning abortion and criminalizing pregnancy are motivated by religious concerns. That's right, you just have to say, "What does that mean? What does that mean? What are the religious concerns? What is the history of these religious concerns? And how is that related to white supremacy?" So, the mistake is separating the category of religious concerns from these particular commitments to settler colonialists, and these continuing commitments to white supremacy and to hetero-patriarchy, because for an increasingly politically powerful population in the US, these are the core religious concerns. We see now in how that has shaped out in Roe v. Wade.

Christiane: So, another mistake that somebody could make when thinking through why this is happening is that it's just because of misogyny. It's just about the fact that most of the people who are able to have pregnancies are women. So, it's just about hating women. So, what's missing in the gender-based narratives?

Elena Ruíz: Well, eugenics, for one, eugenics is missing from this picture. Certainly colonialism and imperialism and the ways that they intersect with disability injustices and the calls for disability justice, the call for LGBTQIA justice and structural justice efforts globally, not just domestically again. There was a time before humanist rights frameworks came around, where colonial violence targeted human reproduction, but they also targeted kinship structures, and sexuality, in general, for the benefit of and gain of entire populations. So, there seems to be a built-in capacity for perpetual amnesia. Of course, we think it's by design, of course. These things have had an incredible impact in the lives of people of color and indigenous peoples and historically marginalized populations that have been impacted by colonialism and white imperialism for generations, not just now.

Nora Berenstain: Something that narratives, around reproductive rights centered on gender, miss is that eugenics is at the absolute center of determining whose rights are denied. Eugenics is a system that works based on race, class and disability, not just gender. Right now, for instance, there are laws in 31 states and Washington, DC that explicitly allow for the forced sterilization of disabled people. Women with intellectual disabilities are sterilized far more frequently than nondisabled women. They're sterilized at a younger age than nondisabled women. Disabled Black women are sterilized at significantly higher rates than disabled white women. Narratives about reproductive rates that focus solely on gender, not only miss these essential structural factors, but, in our view, they actually function to entrench and re-enforce them by hiding them from view.

Shelley Tremain's work has been enormously important in holding white feminism and white feminist philosophers, specifically, accountable for the ways that they not only ignore, but actually collude with the systems that enable these forms of racist ableist reproductive violence, and the extermination, frankly, of disabled peoples more generally.

So, eugenics is at the very center of the story of reproductive violence. In addition to gender oppression, it involves this nexus of ableism, racism, white supremacy, capitalism, xenophobia, and colonialism. One example of this is that between 1930 and 1970, over a third of Puerto Rican women were forcibly sterilized. This is because US colonialism dispossessed the vast majority of the Puerto Rican population, leaving people landless and in poverty by design. Then US eugenicists blamed the resulting poverty on overpopulation and seized the opportunity to enact reproductive violence as a matter of policy on Puerto Rican women. This included not just sterilization, but medical experimentation as well.

So, a major player in this was Clarence Gamble of Procter & Gamble. He was one of the main proponents of eugenics as a solution to poverty in Puerto Rico. He also argued that reducing the African American birth rate in the US was necessary to address poverty in the American South. So, it's very clear how racism, capitalist exploitation and colonialism are all essential to understanding the history and the present of coercive control over reproduction in the Americas. We still see so much of this today. We still see the constant rhetoric of overpopulation being the problem that leads to poverty. When in fact the problem is white supremacy and capitalism. Of course, it's only certain populations, populations of color that are viewed to be the ones who have problems with "overpopulation." So, this never went away.

Elena Ruíz: So, one of the things that we're saying is that a narrative that is focused solely on gender, is a white feminist narrative. It's a narrative that inherently occludes some of the most essential aspects of the story that we're telling from our understanding. It's not a coincidence that these narratives tend to use more limited language of reproductive rights, just generally, while feminists of color, Black feminists or activists, in particular. For instance, those of the activist collective SisterSong, a really good example, have transitioned to much more inclusive and much more applicable framework of reproductive justice, RJ.

So, a reproductive justice framework just to flesh it out a little bit is one that recognizes that the limited framework of rights is ill-suited to capture the issue of access. That's not to say, stop asking for, right. Because this is really important, right? Kimberlé Crenshaw has done a great work on pointing this out, if we stop asking for rights, it's inviting trouble, and we're going to be waiting an awful long time for the promised land. To just think of a broader framework, a more inclusive framework for approaching rights work than currently exists.

Because it's on the reproductive justice framework, it's framed as a very limited way to capture the issue of access and accessibility. This is something that anti-abortion groups have been chipping away at since the Supreme Court upheld the validity of abortion decisions in the 1992

Casey decision. So, it's a way of expanding the notion of the way in which a right is always a roll-back in the making, not to do away with rights, if this makes sense.

So, a right under this account to abortion doesn't mean much if you have to take days off to work and travel hundreds of miles to then have a mandatory waiting period forced upon you, before you can access an abortion, and then you have no post-abortion care. If so, it is limited and contingent upon all these things. So, you have a way in which you can get the right, but by way of limiting the access and continuing to restrict that, whether at the state level, at the national level, you're essentially getting the same functional outcome. That's what a structural perspective does. It allows you to hold these two things together that said, "Okay, well, you got the right, but guess what? Do you really?" How can we keep track of these things to get the things that we need for a fair, just democratic society?

Nora Berenstain: Another thing to mention is that an RJ framework also recognizes that abortion is just one piece of the overall reproductive justice puzzle. So, police violence is an issue for reproductive justice. Being able to raise your children without fear that they'll be killed in the streets is an issue of reproductive justice. Knowing that your children will have access to food, healthcare, childcare, and education. These are all issues of reproductive justice. So, there's a whole lot more to the story than the rhetoric around reproductive rights alone would suggest.

Elena Ruíz: That's what we prefer, a structural justice framing.

Christiane: If this is a structural issue, if this is a sort of an issue that's been happening for hundreds of years, what are some of the patterns that you've noticed when you're looking at the criminalization of pregnant people?

Nora Berenstain: There are a number of really significant patterns in the criminalization of pregnant people. We kind of suggest that taken together, they indicate that the outcomes of the practices of administrative surveillance and punishment aren't just these coincidental patterns that arise out of the data. They're really, as we say, kind of intended functions of a state sponsored tool of violence.

One pattern that we see is that the state concludes in many cases that some kind of drug use on the part of the pregnant person is responsible for causing her to lose a pregnancy. They use that as a justification to charge the person with some form of abuse, neglect, or homicide, and then incarcerate them. This happens especially in places like Tennessee, Alabama, South Carolina, where criminalization is the state's solution to problems like the opioid epidemic in the absence of any kind of substance use treatment programs. Another thing we see is that if there is care, the care will be coupled with surveillance by law enforcement. It will act as a feeder for pregnant people into the carceral system.

Christiane: What are some of the ways that pregnant people were criminalized for their actions during pregnancy in the United States even before this recent Supreme Court ruling?

Elena Ruíz: So I take it that at this point we can start out with the correct assumption that the entire reproductive cycle of, for instance, enslaved persons was governed by penal policies in the US for centuries and that the current legal technologies, let's call them that, of punishment are adaptations to the systems of obstetric, reproductive and sexual violence that have targeted populations of color and Indigenous people for centuries. It's just really broadening the scope and the demographic reach of these possible pathways to criminalization. There's for instance, just almost a thousand fold increase in the number of women who were jailed or on probation that there was before Roe v. Wade to the present day.

But to name names, you have instances like the 2004 case of State v Rowland. There you had 20 year old Melissa Rowland who was charged with first degree criminal homicide after she refused to have a cesarean section that the doctors wanted her to have. The result of that is that one of her twins was stillborn.

There's also, I think, the really interesting 2014 case of Jennifer Whalen in Pennsylvania, who was arrested and charged with performing medicine, I think it was performing an abortion without a license among other charges like child endangerment when she went online and she purchased two of the most widely used medical abortion medications from an oversea pharmacy for her then 16 year old daughter. This was after they were previously unable to access these medications through a local provider because the nearest facility was something like at least 75 miles away and they lacked transportation.

This is a recent case in which you're doing what a lot of folks are doing, going on to plan C and getting stuff online. Folks were being arrested and jailed prior to this already. It's important for us to say that these are new tools and that the level of sophistication and the reach of the tools is often beyond the existing responses that we have available to limit their harm. It's important to acknowledge this and to say that this is by design.

Nora Berenstain: I think it's also important to emphasize on this topic that before Roe v. Wade was overturned, pregnant people were being criminalized in ways that both reflected and obscured the broader structural inequalities and forms of gender based administrative violence that we've been talking about. One thing we see for instance, is that Black women, particularly those with limited access to healthcare and prenatal care, are being criminalized in ways that obscure structurally produced inequalities and the ways they're being criminalized rely on entrenched controlling images about Black women as unfit mothers that are rooted in misogynoir.

There are these two cases for instance. The case of Regina McKnight, a 21 year old Black woman in South Carolina, and the case of Rennie Gibbs, who was actually 16 when in 2006, both these women experienced a stillbirth. Both were basically charged by the State with

homicide because the medical examiner presumed that the stillbirth was caused by cocaine use. In Regina McKnight's case, her stillbirth was later shown to be caused by an infection. In Rennie Gibbs' case, there was no real evidence of it, except for traces of a cocaine byproduct in her blood testing, but there was no evidence that that's what caused the baby's death. In fact, the baby was born with the umbilical cord wrapped around its neck, which is the more likely cause.

Both of these women, one is a woman, one was a girl when this happened, were imprisoned, charged with homicide. Here, what we see is this use of the controlling image of a drug addicted baby born to an abusive or uncaring Black mother who prioritizes her pleasure and addiction over her child. This is a classic white supremacist trope and it's being used here to justify the incarceration of two young Black women who experienced the trauma of stillbirth in places where there's not very good prenatal care offered to these women and where maternal mortality and infant mortality rates are fairly high.

Christiane: As we're leaving the interview, as we're leaving the episode, what can we do if we're concerned about this issue?

Elena Ruíz: These are of course not prescriptions, but things to be taken in context. First, have a plan of action that anticipates that rights are always potentially rollbacks in the makings. Thoughts and prayers are not an appropriate response to state violence. Strategic action is, right? You can start out small, very small, like voting with the full anticipation of being disenfranchised. Of course, depending on who and where you are, there may be very little that's within the design of social power for you to do if it does happen, but anticipate it at least so that you're not gaslighted about it and about what's happening to you and why, which is often a segue into eliciting a different chain of possible reactions and actions that you may see as clear possibilities for you to do next so that it's a productive chain of action.

Nora Berenstain: But also more generally, make sure that you're not limiting your organizing and resource transfers. If you have resources available to transfer to organizations, make sure you're not limiting those transfers solely to organizations and policy agendas concerned with securing abortion access as a single issue. Right? Obviously that's super important, but if you've taken anything away from listening today, hopefully it's that issues of reproductive justice and bodily autonomy are deeply intertwined with issues of disability justice, of racial justice, of returning Indigenous land. Look into branching out beyond your usual organizations to financially support those that are working to create a world in which the intersecting oppressions that make these types of violence possible no longer exist and be a resource to them.

Elena Ruíz: Be a resource, not a savior, because if you're asking the question, "What can I do?" the likelihood is you're not already in the struggle, right? But you're facing a new moral emotion or an affect of anger or surprise that you want to know what to do with, or to be told what to do with to assuage it or through a nice and easy discrete action that has no afterlife, especially for the people that most need it to have an afterlife. Colonialism doesn't work that way. It

reproduces itself continuously. That is exactly one of the most dangerous ways to address it for the populations that are asymmetrically impacted by the structures of violence. By all means, please don't stop at voting and call it a day, right? Stay alert, connect the dots and lend material and organizational support to movements that are focused on transformative work and to systems that will change, right? Don't wait until you feel imminent harm in your backyard as one has done for 500 years, to identify and respond to these calls for action and support.

Don't make that a requirement of transferring of support, to have a sense that until you see someone be a supplicant to you, you feel compelled to take action, or when you feel like, "Okay, well now it's my body or my children, or..." Because this will just keep self-replicating.
A good example of folks that are doing this is the anti-carceral movements are thinking of ways that they're anticipating that policing is going to continue to develop ever expansive ways to achieve some of the same harmful ends that have been identified in the way that policing functions today. Electronic borders and technological monitoring and expansive judicial uses of technological monitoring in probation and parole. Predictive policing and algorithmic biases in predictive policing. These are all examples.

Whether you're going to donate your time, your organizational skills or your funding, critical brick-and-mortar grassroots efforts to deliver care, think with the idea of structural counter moves that are in place to mitigate your every move. That doesn't mean you stop resisting. It means freedom really is a constant struggle.

Angela Davis was right on point on this case. That doesn't mean that this is the future of Black and Brown lives. We certainly have important imaginaries and world building imaginaries beyond that, but it's just really important to emphasize this because our work is so often co-opted by determinists, just a term in philosophy for non philosophers we're hearing, that... These folks like to say, "Well, there's nothing you can do because every move, according to your own account, has a programmed counter move."

"We should know," is what they don't want to say. "We designed it. You're stuck. Stop resisting," or something like that. That's just like the dream of colonialism or white imperialism. But that's not what's going to happen. You can make your move a structural prelude to theirs to reflect systems level of change and of course our work details some of these responses at length, but you definitely don't need to be a philosopher or to read any philosophy to respond effectively.

There's a helpful kind of simple two track response that we're alluding to that takes what we've said and it applies it to really small, but actionable, things. Yes, think strategically and organize accordingly by recognizing that there's necessary steps beyond stop the bleeding. Right? Absolutely critical to think structurally. But also know that, look, you can die from blood loss, right? That's by design. We have a list of organizations that are doing this critical brick-and-mortar work of saving folks from imminent blood loss. These are really important to the structural story. You can go online and access these and we'll forward them for you to publish.

Nora Berenstain: Our takeaway really is advocate for policy change that reflects system level change, and really recognize the severity of the situation without being fatalistic about it.

Elena Ruíz: Always resist.

[music: Blue Dot Sessions, Cran Ras]

Drs. Berenstain and Ruíz shared an abundance of resources with me so that I could pass them along to you! Find them all at prindleinstitute.org/examining-ethics. You can also find more about our guest's other work or download a transcript of today's episode. Again, that's all available at prindleinstitute.org/examining-ethics.

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