
Abortion in Puerto Rico: The Limits of a Colonial Legality

YAMILA AZIZE-VARGAS, PhD*; LUIS A. AVILÉS, PhD†

ABSTRACT. This paper situates the current abortion practice and policy in Puerto Rico within the historical, political, and economic context of the colonial domination of the United States (US) over Puerto Rico. In particular, we pay attention to the hurdles that women face to obtain abortion services in Puerto Rico as a result of its colonial legality. Of particular significance is the overall low abortion ratio, and differential abortion ratio and access issues faced by women when grouped by an age-ethnicity category: unmarried teenagers, adult Puerto Rican women and, adult immigrant women from the Dominican Republic. The present hurdles to abortion access —

related to information, abortion providers, economic situation, and government policies—are discussed within the colonial legality of abortion based on the US Supreme Court decision *Roe v. Wade*. Puerto Rico's case is situated within its broader history of population policies developed by the State since the 1930's. Of particular relevance is the antagonism that State managers have had towards abortion in spite of its legality. In this sense, abortion in Puerto Rico continues to be an unfinished business, in spite of its legality. *Key words:* Abortion, Politics of Abortion, Access to Abortion, Family Planning, Colonialism, History, Puerto Rico.

Is the practice of abortion in Puerto Rico shaped by the country's colonial relation to the United States (US)? For most of the demographic and public health research done in Puerto Rico, this question has been an issue traditionally overlooked. Since the publication in 1983 of Annette Ramírez de Arellano and Conrad Seipp, *Colonialism, Catholicism and Contraception: A History of Birth Control Methods in Puerto Rico*(1), very little research has been done that incorporates the role of political, economic, and cultural factors that influence reproductive practices in Puerto Rico. In this essay, we contend that it is not possible to situate the current practice of abortion and the hurdles women face to obtain this service if we do not take into consideration the impact of the colonial subordination of Puerto Rico to the United

States. This is, to show how the practice of abortion and the hurdles that women face are influenced by the social, cultural, and political economic context.

In a country where a wide variety of foreign sponsored population experiments and policies were developed with the active participation of the government, it is unexpected that a belligerent opposition to abortion emerged, in spite of the legal status it gained in 1973 with the US Supreme Court decision of *Roe v. Wade*. In this research, we follow Susan Greenhalgh's(2) culture and political economy of reproduction approach by giving primary importance to the broader political economic context, focusing on the role of the institutions, using a narrative mode of explanation based on both quantitative and qualitative research methods, and by stressing women's agency in shaping their own reproductive outcomes, even within the constraints imposed by the political economy.

Historical Background

Geographically located in the Caribbean, culturally akin to Latin America, and politically dominated by the US, Puerto Rico's social reality is the result of the influences,

*Senior Researcher on Women and Gender at the Women's Studies Program, University of Puerto Rico, Cayey Campus.

†Assistant Professor at the Department of Social Sciences, University of Puerto Rico, Humacao Campus.

Address correspondence to: Yamila Azize Vargas, Box 10000 Suite 292, Cayey, Puerto Rico 00737, Tel/Fax: 787-738-7863, e-mail: azize@coqui.net

crossovers, and tensions that these identities generate. Puerto Rico, along with Cuba and the Philippines, became a colony of the US in 1898, when the United States defeated the languishing Spain in the Spanish-American War. Today, almost a hundred years after, only Puerto Rico remains a colony, having some autonomy for the administration of its internal affairs, but continues politically and economically dominated by the US. Decisions of the US Supreme Court, legislation passed by its Congress, and executive orders of its President, overrule any decision of the Supreme Court of Puerto Rico, its Legislature, and its Governor. Puerto Rico's colonial reality at the end of the 20th Century may not fit the crude exploitation that inspired Albert Memi's 1957 book *The Colonizer and the Colonized*(3) because while domination and exploitation still exist, the contemporary colonial apparatus operates in more subtle ways.

The case of Puerto Rico in population issues is an example of Lynn Morgan's(4) claim that, even under conditions of dependency, certain kinds of economic development can occur as a result of capitalist sponsored biomedical endeavors. For instance, sterilization campaigns and contraceptive pill experimentation, as injurious and abusive as they were, needed the creation of an infrastructure of health facilities, services, and trained human resources, which indirectly benefited issues related to reproductive health. For instance, the liberalization of abortion, as part of the implementation of the eugenic policies in 1937 to facilitate massive sterilization campaigns and the first world trial of the contraceptive pill, made feasible that US women travel to Puerto Rico to obtain safe abortions before its legalization in New York, United States.(5) These services, that came to be known as the "San Juan Weekend," also provided other unintended benefits. Therefore, when abortion was legalized in Puerto Rico years later, an infrastructure of trained physicians was already available to provide the service.

Other case that exemplifies an unintended consequence of the colonial situation was the legalization of abortion. Abortion became a legal right in Puerto Rico as a case of "jure ex colonia" (legalization through its situation as a colony), as a result of the 1973 US Supreme Court decision in the case *Roe v. Wade*. In spite of the blatant protest of political, religious, and cultural leaders, the court decision remained unchallenged basically because any serious attempt to exclude Puerto Rico from *Roe v. Wade* would also had other political implications that State managers did not seem to be willing to face. Eventually, two different legal cases reaffirmed *Roe v. Wade* in Puerto Rico. In 1974, the US Federal Court in Puerto Rico recognized the applicability of *Roe v. Wade* with the case [Acedo]

Montalvo v. [Hernández] Colón.(6) Years later, in 1980, the Puerto Rico Supreme Court created a case law rule *Pueblo v. Duarte [Mendoza]*(7) for the right of abortion in Puerto Rico, based on the Puerto Rico Penal Code. Ironically, the Puerto Rican decision was more liberal than *Roe v. Wade* because it was not based on the trimester concept and ruled that any woman in consultation with her physician could obtain an abortion at any time during her pregnancy.

But in spite of the health benefits that the legalization of abortion eventually brought—if compared to most of the Latin America and Caribbean region—the politics generated by the colonial situation of Puerto Rico took precedence over and obscured health issues and women's needs in the abortion debate. For instance, the Decolonization Committee of the Puerto Rico Bar Association referred to the US Supreme Court decision as a "... situation [that] dramatizes the tragedy of the Puerto Rican nation, subjugated to the rulings of a foreign court that are repugnant to its conscience and culture."(8)

In this sense, Puerto Rico's case presents a particular situation within the Latin America and Caribbean region. It shares with this region a common criticism to population control programs, under the flag of imperialist interventions(9) and it also shares the traditional forceful opposition to abortion from religious groups. Generally, the public debate over abortion in Latin America and the Caribbean has addressed issues such as the high human and social costs of clandestine abortion, lack of access to family planning methods, the perils of pregnancy, the risks of delivery, among others. In contrast, debate over abortion in Puerto Rico has had a different discourse focused predominantly on political, religious, and cultural issues, because of Puerto Rico's colonial status.

But, as long as abortion is legal, does it really matter that it is the result of "jure ex colonia," as is the case of Puerto Rico? It does, because as Jodi Jacobson asserts "changes in laws are necessary but not sufficient conditions for widespread access to safe abortion services."(10) The colonial inheritance of abortion rights created conditions that did not favor its acceptance and appropriation as a legal right. The legalization of abortion in the US occurred at a particular moment in history when social needs, feminist activism, and populational ideology came together.(11) The demands for the right of abortion from feminist groups in Puerto Rico did not result in the militant pro-abortion rights movement of the United States. (In fact, during the early 1970's, only two feminist groups voiced their support for the legalization of abortion. The first was the Feminine Front from the Puerto Rican Independence Party in a presentation made to the Civil Rights Commission, December 8, 1971. The second group

was *Mujer Intégrate Ahora*.) Actually, avoiding abortion was used as an argument in favor of the contraceptive pill experimentation and sterilization campaign, as documented by the research done by Ramírez and Seipp. It should become clear that the colonial situation of Puerto Rico both favored and deterred reproductive rights, and that a fine line separates them. But, as far as abortion is concerned, current hurdles to abortion services in Puerto Rico have been primarily shaped by the context of its colonial legality.

Methods

This research is based on a diversity of sources of evidence that includes: documentary information(12), such as reports, news clippings, and other mass media articles; data from the *Puerto Rico 1992 Abortion Data Set*; and semi-structured interviews with women who obtained abortions at two abortion clinics in the San Juan Metropolitan area. The *Puerto Rico 1992 Abortion Data Set* is a 1991-92 survey of 371 out of 418 women who obtained abortions for a two-week period in 10 out of the 13 private abortion clinics in Puerto Rico at that time. This is the first abortion study in Puerto Rico based on a nationwide representative sample survey of women that obtain abortions.(13)

The political economic approach used in this analysis requires to pay attention to the fact that the health of social groups differentially benefits from or is harmed as a result of their relative position in society.(14) Specially

meaningful for our research is the combination of an ethnic variable with age categories to produce an age-ethnicity grouping of women in Puerto Rico. The relevance of ethnicity in the statistical analysis is due to the recent migration wave from the Dominican Republic, most who occupy low-paid, dead-end jobs in the labor market.(15) Within the age grouping, the focus is on adult women (20-44 years old) and unmarried teenagers (15-19 years old). Consequently, the statistical analysis divides the female population in three groups: Puerto Rican adult women (n=295); Dominican Republic adult women (n=35); and Puerto Rican unmarried teenagers (n=28). Puerto Rican teenagers, either married or living with their partners, and women who were not born in Puerto Rico, the United States, or the Dominican Republic were excluded from the study (n=13). The statistical analysis was weighted in order to compensate for the clinics where interviews could not be conducted in a full two-week period.

Abortion in Puerto Rico within the International Context: Liberal Legislation and Low Abortion Incidence

Within the international context, Puerto Rico is among the countries with the most liberal legislation in the world. But nevertheless its liberal abortion law, the incidence of abortion in Puerto Rico remains remarkably low when compared with countries that either have a similar legislation or are from our same geographical region. (See Table 1.)

With the exception of Canada, the incidence of abortion in Puerto Rico is considerably lower than that of the other countries in America where abortion is legal on request. But, what is most remarkable is that the abortion ratio in Puerto Rico is even lower than some of the Latin American countries where the law imposes so severe restrictions on abortion that most women resort to clandestine procedures. It is also important to point out that the abortion rate of women in Puerto Rico is smaller than that of two minority groups—Hispanics and Afro-Americans—in the US.

What makes Puerto Rico so exceptional in its low incidence of abortion? Any comprehensive answer defies a single factor explanation. Since the abortion rate is defined in terms of women of reproductive age (15-44), it can be argued that the low rate of abortion is due to the extraordinary high proportion of sterilized women 15-49 years old in the country: 48.9 percent, one of the highest in the world.(19, 20) But the analysis of the abortion ratio demonstrates that the argument of high proportion of

Table 1. Comparison of Abortion Rates and Ratios: Puerto Rico, Selected Countries, and Selected US Minorities

	Abortion rate*	Abortion ratio†
Abortion legal on request		
Puerto Rico‡	22	20
Canada (16)	12	17
Cuba (16)	58	45
United States (16)	28	30
US minority populations		
US Black Non-Hispanic (17)	66	--
US Hispanic (17)	36	--
Abortion severely restricted by law		
México (18)	23	16
Colombia (18)	34	17
Dominican Republic (18)	44	28
Brazil (18)	37	31
Chile (18)	45	35

*The abortion rate is the number of legal abortions by 1,000 women in reproductive age (15-44 years).(16)

†The abortion ratio is the number of abortions per 100 known pregnancies.(16)

‡The numerator in the abortion ratio for Puerto Rico is the number projected in our study of all abortions performed in Puerto Rico among women 20-44 years old in 1991. The denominator is the number of live births in Puerto Rico, taken from the *Cinta de Nacimientos 1991* (Puerto Rico Department of Health), plus the projected number of abortions among women 20-44 years old.

sterilization does not fully explain the low incidence, since even among pregnant women the incidence of abortion remains low.

In this sense, along with the abortion hurdles that will be pointed out below, it is important to acknowledge a particular situation brought about by colonialism that may contribute to explain the low incidence of abortion in Puerto Rico. Different to the rest of the Latin American and Caribbean countries, US welfare has played a crucial role for the stabilization of colonial politics in Puerto Rico. In fact, while the proportion of US households receiving welfare food stamps benefits is 9.4 percent, in Puerto Rico is 56.2 percent.⁽²¹⁾ Thus, however clientelistic and subservient these welfare provisions are, there is no doubt that they help to cushion the economic impact of unwanted pregnancies and childbearing.

Hurdles to Abortion Services

Hurdles of information. Public debate on abortion has been dominated by the anti-choice rhetoric of political and religious leaders. Leaders of the three major political parties in Puerto Rico have traditionally voiced their firm opposition to abortion and none of the health professional organizations have ever had a pro-choice position. In addition, public information on abortion has been severely limited. Even when abortion is a legal medical procedure, the commercial section of the phone directory (the yellow pages) does not allow the word abortion to be used. Clinics are forced to use euphemisms such as “solutions to problematic pregnancies” or “pregnancy termination” to suggest that abortion services are provided. The word abortion is systematically excluded from advertisements; the only exception been that of an advertisement of a clinic which states—in English—that it is: “A member of the National Abortion Federation.” This limited information is tantamount to a veiled censorship of abortion services.

Notwithstanding more than twenty years after its legalization, there is still a wide perception that abortion is illegal in the country. This was one of the findings of the research conducted with a sample of predominantly Catholic and poor women by Yolanda Sáez Santiago *et al.* (El Aborto, la mujer y las enmiendas propuestas a los artículos 91, 92 y 93 contenidos en el Código Penal del 21 de mayo de 1992. Master Thesis, Graduate School of Social Work, University of Puerto Rico, Río Piedras Campus. 1993.) In-depths interviews conducted for our research also documented the perception of abortion as illegal and how women’s perception is also related to the lack of information and open advertising of abortion clinics. An excerpt of one of these interviews follows. (See Interview 1.)

Interview 1

- I: Interviewer
W: Woman who obtained an abortion
- I: Do you think that abortion is legal or illegal in Puerto Rico?
W: It is illegal. If it were legal, there would be more places like this. There are just a few, you know, as if they are hidden.
I: Go ahead.
W: As if it were keep quiet. If it were legal, it would be like hospitals, or lawyers and doctors offices, that there are a lot. And for this there are just a few. I only know about this one, I don’t know how many are there.

Another source that documents the lack of information on abortion is an informal survey among medical students in 1993, conducted by the Student Council of the University of Puerto Rico School of Medicine. (Survey conducted by the Medicine Student Council, School of Medicine, Medical Sciences Campus, University of Puerto Rico on February, 1993.) The results of the survey documented that misconceptions and ignorance on abortion prevail among this group. When students were asked about the state of the law regarding abortion, between 50 and 60 percent of the surveyed students, from the first to the fourth year of medical school, acknowledged not knowing the state of the law of abortion in Puerto Rico. In the case of medical students, the lack of knowledge on abortion may be also related to a medical curriculum that provides little information and scarce practice, if any, on abortion procedures. But, what is more important are the consequences that such a lack of knowledge or prevalent prejudices about abortion may have on the delivery of health services with respect to the bioethical principle of respect for individual autonomy. For instance, one of our interviews documented a case in which the physician’s personal view about abortion interfered with the provision of adequate health services. (See Interview 2.)

Interview 2

- I: Interviewer
W: Woman who obtained an abortion
- W: As an example, I go to a public hospital and ask a physician for counseling or information about abortion, where can you obtain a pregnancy termination and he says ‘no, that... no,’ they do not offer information.
I: Has it happened to you? Have you tried?

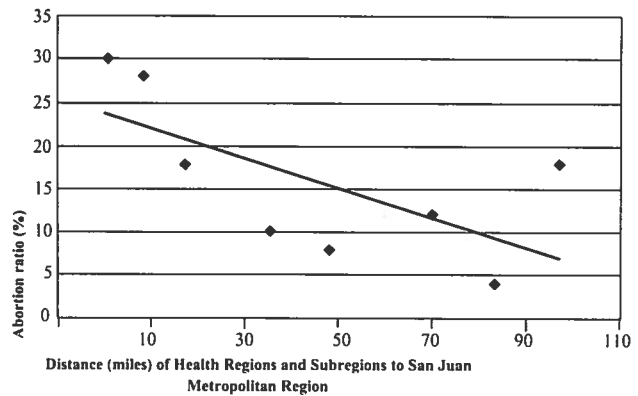
W: It happened to me the first time I went. I went to check if I could get something for the nausea, and he told me: 'No, that it could harm the baby. I said: 'I am not considering having the baby.' And he told me, 'That is illegal, you can not do that.' I said, 'Don't give me anything, I will look where to get it.'

Shortage of providers and uneven distribution of services. Shortage of abortion providers may be one of the most significant hurdles for abortion services in the near future in Puerto Rico. The fact that 93 percent of the 17,000 annual induced abortions performed in Puerto Rico are performed by a small group of a private-for-profit self-standing clinics, makes the service very much dependent upon a reduced group of providers. In private abortion clinics, 15 male physicians (there are no women) perform about 15,869 of these procedures. The average age of these physicians is over 50 years old, with just a couple of young physicians who have joined the practice in recent years. If this trend is not reversed, the foreseen shortage of abortion providers in the US can also become a reality in Puerto Rico. The shortage of providers is partially a result of the prevalent medical education programs in the United States(22, 23), where not all obstetrics and gynecology residency programs require experience of induced abortion as part of their residency training. Recent efforts made by the US Accreditation Council for Graduate Medical Education (ACGME), which also accredits Puerto Rican Medical Schools) to include abortion as part of the standard curriculum in medical education were constrained by the US Congress.(24)

In addition, the almost absolute private provision of abortion services has also created an uneven geographical

distribution that conditions the availability of the procedure, its timing (weeks of gestation), and its costs. In 1991-92, when our survey was conducted, 8 out of 13 abortion clinics in the country were located in the Metropolitan Health Region of San Juan and the neighboring Bayamón Region. Of the other 6 regions and sub-regions in which Puerto Rico is divided, only 3 regions had abortion providers who worked on a part-time basis and the other 3 regions did not have any

Graph 1. Incidence of Abortion* Decreases with Distance to San Juan Metropolitan Region



abortion provider. Therefore, this uneven distribution of services results in disparities in abortion incidence by health regions, which results in a trend of reduced abortion ratio the farther a health region is from the San Juan Metropolitan Area. (See Graph 1.)

It should also be underlined that the fact that 96 per cent of all abortions in Puerto Rico are first trimester abortions may be the result of the limited availability of second

Table 2. Abortion-Related Characteristics by Age-Ethnicity Group

Age-Ethnicity Groups	n	Abortion Ratio (%) (16)	Average distance traveled to clinic (miles)	Proportion of women who are economically independent (%)	Proportion of women who paid themselves for the procedure (%)	Proportion of women with second-trimester abortions (%)
Puerto Rican Unmarried Teens*	28	13	19.4	22	11	15
Adult-PR†	295	21	19.5	68	40	2
Adult-DR‡	35	51	4.5	88	61	3

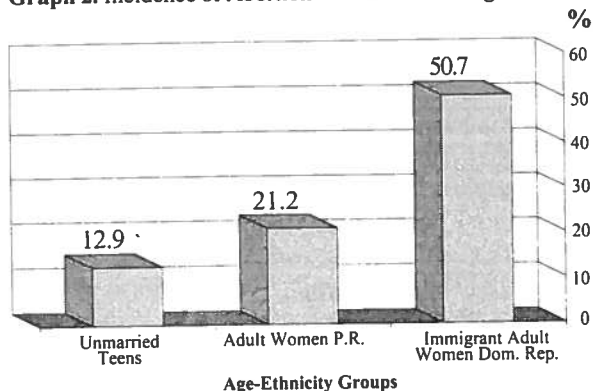
PR: Puerto Rico
DR: Dominican Republic
*The only Dominican teenager in the sample was included among the Puerto Rican teens, since she was not a recent immigrant.
†This group includes one 45-year-old woman.
‡The abortion ratio is defined, according to the Alan Guttmacher Institute, as the number of abortions per 100 known pregnancies.(16)
Known pregnancies are estimated by the number of legal abortions (which in our study comes from the *Puerto Rico 1992 Abortion Data Set*, plus the number of live births—as reported in: Puerto Rico Department of Health. *Informe Anual de Estadísticas Vitales, 1989*. San Juan, Puerto Rico, 1991). The estimated number of live births of women from the Dominican Republic comes from the following year's report (Puerto Rico Department of Health. *Informe Preliminar de Nacimientos, 1990*. San Juan Puerto Rico, 1992).

trimester abortion providers. In fact, there are only two clinics in the country (in the Metropolitan Area of San Juan and the neighboring Bayamón Region) where second trimester abortions are performed at costs of up to US\$700 or US\$800, while a first trimester abortion ranges between US\$200 to US\$300.

Another finding that suggests a relationship between access to abortion services and incidence of abortion is the comparison of miles traveled to abortion providers by women, according to age-ethnicity groups. According to our survey findings, immigrant women from the Dominican Republic traveled an average of 4.5 miles, while Puerto Rican women (adult and adolescents) traveled about 19.5 miles each. These figures suggest that this group of immigrant women have a better geographic accessibility to abortion services than Puerto Rican women. This trend is consistent with the geographical concentration of these immigrants in the San Juan Metropolitan area(25), which has easy access to abortion clinics. This geographic accessibility may play a role for the relatively high abortion ratio for women from the Dominican Republic (50.7 percent), which more than doubles the ratio of adult Puerto Rican women (21.2 percent). However, the relationship of higher abortion incidence and proximity to abortion providers should be tempered by data that suggests that women from minority groups have a higher abortion incidence than other groups of women (see Table 1). (See Table 2 and Graph 2.)

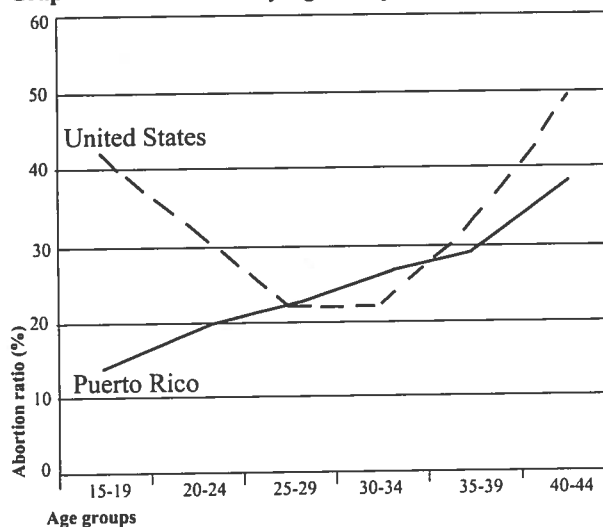
Economic hurdles. According to our survey data, Puerto Rican teenagers is the group which faces more economic hurdles to obtain abortion services. The fact that the immense majority of the teenagers in our survey (89 percent) depended on somebody else to pay for the abortion and that they have a much higher proportion of second trimester abortions (14.4 percent) than that of the other groups (less than 3 percent) documents how the lack of economic resources may be an influential factor to

Graph 2. Incidence of Abortion* Varies Across Age- Ethnicity



* Abortion Ratio

Graph 3. Abortion Ratio by Age Group: Puerto Rico and US

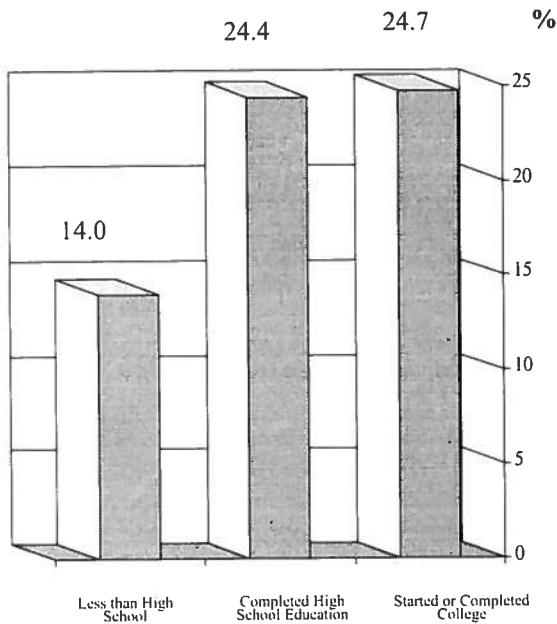


access abortion services. (See Table 2.) Given the fact that Puerto Rican laws do not impose any kind of restrictions to teenagers in obtaining abortion services, it is quite striking the very low abortion ratio among Puerto Rican teenagers when compared to other countries and the United States—where several states have enacted restrictions of parental information and consent. (See Graph 3.) In addition to this, hurdles to information and knowledge about the legality of abortion could also influence this pattern, since it has been documented that teenagers in Puerto Rico tend to have strong opinion against abortion. (Chévez NE. Conocimiento y Actitudes Hacia el Aborto por Demanda de un Grupo de Adolescentes Puertorriqueños. Master Thesis, Graduate School of Public Health, University of Puerto Rico, Medical Sciences Campus. 1987.)

Another group which may be facing economic hurdles to access abortion services is the group of less educated Puerto Rican women, which according to our survey obtained proportionally less abortions than their more educated counterparts. Among 20-44 years old, the abortion ratio of women who did not finished High School (14.0 percent) is substantially lower than those that completed High School (24.4 percent), or started or completed college (24.7 percent). This analysis is based on the adult women in the sample (20-44 years old); the number of live births used comes from calculations made by the authors with data from the 1991 Birth Cohort Tape provided by the Puerto Rico Department of Health. (See Graph 4.) These differences in educational levels and abortion ratios may also suggests differential abortion ratios among social classes.

Nevertheless, as was previously mentioned, access to US welfare benefits could also influence the decision for

Graph 4. Incidence of Abortion* Varies According to Educational Levels



* Abortion ratio

having an abortion for Puerto Rican poor women. In this sense, a comparison with the profile presented by the immigrant women from the Dominican Republic may be relevant. Women from the Dominican Republic in Puerto Rico tend not to get welfare assistance, according to available research. In our research, 88 percent of them asserted to be economically independent, 61.0 percent of them paid for their abortion, and have an abortion ratio of 50.7 percent, according to our survey. In contrast, around 56.2 percent of the households in Puerto Rico get welfare assistance, 68 percent of Puerto Rican adult women interviewed said to be economically independent, 40 percent paid for their own abortion, and they have an abortion ratio of 21.2 percent. (See Table 2.) Thus, economic independence, even among the poor, may be a key factor influencing reproductive choices.

Women's Agency in Accessing Abortion

Notwithstanding the hurdles faced by women in Puerto Rico, it is also important to underline their agency and decision to by pass, for instance, the traditional and strong opposition to abortion and other contraceptive methods from Catholic and other religious groups. Consistent with other predominantly Catholic Latin American countries (26, 27), our research documented that Catholic women in Puerto Rico tend to ignore the Catholic hierarchy position and teachings concerning reproductive health

issues such as abortion. When women in abortion clinics who had an abortion were asked about religious preferences, 89 percent considered themselves believers (73 percent Catholic and 16 percent of other religions). This finding is also consistent with other family planning practices among Catholic women in Puerto Rico. In fact, in spite of the historically noisy opposition of the Catholic hierarchy to sterilization and the use of the contraceptive pill, research has documented that there are barely any differences in contraceptive use among Catholic and non-Catholic women in Puerto Rico.(28)

The particular case of the women from the Dominican Republic in Puerto Rico seeking abortion services also underlines the importance on woman's agency to make decisions, in spite of the social and economic difficulties they face as a minority group. The widespread stereotype that poor women do not have choices or must always face—in this case—an unsafe abortion, is obviously challenged by the findings of our survey. What may be more relevant in this case is to understand how women from minority groups—such as Hispanics in United States or women from Dominican Republic in Puerto Rico—show different reproductive patterns influenced by their vulnerable position in society. Nonetheless, given the precarious legality of abortion in Puerto Rico, it should be noted that the choices made by women under the said circumstances are limited by the socio-economic conditions in which abortion decisions are made. As Rosalind Petchesky asserts, “women make their own reproductive choices, but they do not make them just as they please; they do not make them under conditions they create but under conditions and constraints they, as mere individuals, are powerless to change.”(29) In the particular case of Puerto Rico, the big irony is that those conditions and constrains are being enforced by the very same establishment and State managers which are supposed to guarantee the legality of abortion.

Historical Lessons

Puerto Rico's history regarding abortion still shares contradictory realities that emerge from our colonial history. These contradictions are the product of almost six decades of erratic public health and population policies very much related to our political situation. State and privately funded population policies and programs developed since the 1930s can be censured for faulty ethical standards in the contents of their policies and a misguided process of formulation and implementation of their policies, which are the two criteria for the evaluation of a public health policy proposed by Ruth Dixon-Mueller.(30) Both, ethics and policies were shaped by

typical colonial and patriarchal practices of systematically excluding from decision making the most affected sectors. The political interests of the population establishment and the profit motifs of the medical industrial complex, took precedence over the interests of the targeted group for their policies: women. The fact that Puerto Rico has one of the world's highest percentages of Cesarean births(31), scant programs of family planning, and a high proportion of around 60 percent unwanted pregnancies(32), in spite of decades of experimentation with population programs and contraceptives, are definite signs of failure.

Our current abortion policy exemplifies its colonial legality. Our political situation made possible the legalization of abortion, which was an advantage from a public health perspective and constituted a striking difference from most of our Latin American and Caribbean neighboring countries. But State managers have differentiated their support to particular health policies, even at the expense of neglecting health related considerations. While they supported and made drastic and liberal changes in the Penal Code during the 1930s to facilitate contraception and liberalize abortion, in face of *Roe v. Wade* they adopted a non-confrontational position towards abortion and after *Webster v. Reproductive Health Services* made clear attempts to restrict abortion services.

The 1989 US Supreme Court decision on *Webster v. Reproductive Health Services*, according to Justice Blackmun's dissenting words, "has narrowed the choices of all women, but specially those too sick or too poor to travel."(33) In fact, three days after the *Webster* decision came down, several senators in Puerto Rico announced their intention to present legislation to restrict abortion rights. Among them, the former President of the Senate Health Commission said that abortion should not be allowed even in cases of rape.(34, 35) These intentions were materialized years later, when in 1992 the Puerto Rican Legislature made clear attempts to restrict access to abortion via legal and administrative hurdles to abortion clinics regulations, as part of proposed—but not approved—amendments to the Puerto Rico Penal Code. A legal analysis of the proposed clinic regulations concluded that they "overreach the limits set by *Roe v. Wade* and are therefore unconstitutional."(36)

The history of abortion in Puerto Rico and the findings of our research clearly demonstrate that Puerto Rico's abortion policy, in spite of its legality, remains an unfinished business within the sexual and reproductive health policy agenda. The elaboration of this agenda should depart from two historical lessons. First, that the so called "cultural and religious values/tradition" argument, used to try to explain the acceptability or

rejection of particular fertility control practice, has proven to be a poor argument. The State managers were willing to challenge tradition when they supported eugenic policies, massive sterilization, and clinical experimentation. Women, in spite of the blatant misinformation, were also willing to take the challenge because they were in dire need of contraceptive alternatives. It is clear that when State managers wanted to change some of the so-called "cultural and religious values/tradition," change did happen. This historical experience is quite relevant for our contemporary abortion debate, given the fact that all political and religious leaders have based their opposition to abortion in religious and cultural arguments.

Second, when colonial-inherited women's legislation in Puerto Rico (such as the right to vote (1919-29) and the right to abortion (1973-80) are compared, significant differences emerge in relation to the role played by women's groups and the feminist movement. The US 1919 suffrage law was definitively welcomed by almost all women's groups and, although not enacted in Puerto Rico until 1929, feminist groups developed all kinds of militant strategies for about a decade to accelerate the recognition of the law.(37) In contrast, when abortion was legalized in 1973 in the United States, few feminist leaders in Puerto Rico voiced their support and the issue was not followed by any kind of militant advocacy. In spite of the creation of the governmental Women's Issues Commission in 1973 and of the liberal reform of the family laws of the Civil Code carried out by the government of Puerto Rico in 1976, supported by feminist groups and leaders, abortion remained a secluded issue within the Puerto Rican feminist movement agenda, which feared that the discussion could open a Pandora's box.

To understand this trajectory it is relevant what Joan Hoff has said about feminism in the United States: "...liberalism, in general, and liberal legalism, in particular, have ... [undermined] the ability of women activists to express and organize themselves effectively out of fear of 'offending' the power structure they are trying to reform."(38) Arguments used by the liberal legalist feminist sector for not discussing the issue, such as the permanent protection enjoyed by Puerto Rico with US abortion laws or the legal recognition of these laws by the courts in Puerto Rico, have proven wrong given the backlash to abortion rights in the United States and consequently in Puerto Rico.

Towards an Abortion Policy

It is significant that the only legal argument raised in Puerto Rico that went beyond the legalist liberal rhetoric

on abortion was not given adequate attention by any of the pro-choice advocates, including feminist lawyers. This argument was raised by the former Puerto Rico Supreme Court Chief Justice Trías Monge in 1980, in a separate partially concurrent and partially dissenting opinion in *Pueblo v. Duarte [Mendoza]*.⁽³⁹⁾ In 1980 he stated that:

“It serves no purpose to proclaim solemnly that abortion is to be allowed only after medical intervention if there are no doctors [physicians] available, no information as to how request it, or money with which to pay for it. Under said circumstances, the imposition of said requirements is in fact equivalent to proscribing abortion.”

As our study confirmed twelve years later, it is precisely the hurdles of information, the shortage of providers, and economic issues what constitute the main obstacles for the real appropriation of abortion rights. Thus, the prophetic nature of Trías Monge’s opinion is still relevant in order to achieve an equitable and women centered abortion policy. His remarks about information, providers, and funding for really guaranteeing the right to abortion go beyond the narrow right of privacy focus in which *Roe v. Wade* was rooted. His opinion introduces into the legal argument a concern for equality/equal protection issues, since it suggests the role of the State in making real the right to abortion for all women, an approach substantially different from the one that dominates in the United States.

Because the abortion debate in Puerto Rico was so disproportionately centered in political issues and the liberal legalist rhetoric, public health issues and the real empowerment of women were overlooked. Recently, the role of the State regarding abortion rights has been one of consistently raising hurdles to women’s access to this service. It seems that State managers and legislators are willing to support legislation that victimizes women, over laws that give women more choices and power to control their bodies and reproductive outcomes. Presently, Puerto Rican women face hurdles to access a health service and reproductive right, even one that is recognized by law. An adequate sexual and reproductive health policy in general, and an abortion policy in particular, have to be centered on the needs, views, and realities of women and men. But certainly, as past and recent history shows, these policies are not easily favored by the State.

Within the women’s and feminist movement it is fundamental an in-depth analysis of the strategies used concerning abortion matters, if it wants to be effective as a policy making agent on these issues. At times when a significant part of the women’s movement is focusing its claims into legal reformism, a re-evaluation of that strategy

should critically examine traditional approaches to defend gained rights, specially when a liberal legislation has proved to be a weak guarantee of the appropriation of abortion rights. While hurdles to abortion exist in Puerto Rico, as in any other country where medical interventions are based on ability to pay, the appropriation of this right based on a colonial legality has not favored the conditions for the its full recognition as a legal right and the empowerment of women as consumers of abortion services.

Resumen

Este ensayo sitúa la práctica y política del aborto en Puerto Rico en la actualidad dentro del contexto histórico, político y económico de la dominación colonial de Estados Unidos sobre Puerto Rico. En particular, prestamos atención a las dificultades que confrontan las mujeres para obtener servicios de aborto en Puerto Rico, como resultado de su *legalidad colonial*. De particular importancia es la razón de abortos y las diferencias en dicha proporción y en aspectos relacionados al acceso enfrentados por las mujeres al agruparlas por categorías étnicas y de edad: adolescentes solteras, puertorriqueñas adultas e inmigrantes dominicanas adultas. Se discuten las dificultades actuales al acceso a los servicios de aborto —relacionadas con información, proveedores de los servicios, situación económica y políticas gubernamentales—dentro del contexto de la legalidad colonial del aborto, a base de la decisión *Roe vs. Wade* del Tribunal Supremo de Estados Unidos. El caso de Puerto Rico se sitúa dentro de los límites de la historia de las políticas poblacionales desarrolladas por el Estado desde los años treinta. El antagonismo que los administradores gubernamentales han tenido hacia el aborto, a pesar de su legalidad, es de particular pertinencia. En este sentido, el aborto en Puerto Rico continúa siendo un asunto sin concluir, a pesar de su legalidad.

Acknowledgments

We acknowledge the excellent editorial assistance and collaboration of Evelyn Otero Figueroa. We also acknowledge the support of the Jessie Smith Noyes Foundation, The Ford Foundation, The John Merck Fund, and the Glenn Eagles Foundation in partially funding this research. We appreciate the technical advice provided by Stanley K. Henshaw, Cathy Albisa, José Becerra and Alberto Carreras, and the collaboration of Mary Rivera in the fieldwork. The final revision to this paper was done in Mt. Holyoke College at the Five College Women’s Research Center, while Yamila Azize-Vargas was a

visiting associate researcher conducting research on women and health in Latin America and the Caribbean.

References

1. Ramírez de Arellano A, Seipp C. Colonialism, Catholicism, and Contraception: A History of Birth Control Methods in Puerto Rico. Chapel Hill, University of North Carolina Press. 1983.
2. Greenhalgh S. Anthropology theorizes reproduction: Integrating practice, political economic and feminist perspectives. In: Greenhalgh S, ed. *Situating Fertility: Anthropology and Demographic Inquiry*. Cambridge, Cambridge University Press 1994.
3. Memi A. *The Colonizer and the Colonized*. Boston, Beacon Press. 1991.
4. Morgan LM. Dependency theory in the political economy of health: An anthropological critique. *Medical Anthropology Quarterly* (n.s.) 1987;1:131-151.
5. Lader L. *Abortion II: Making the Revolution*. Boston, Beacon Press. 1973;45-47.
6. US Federal Court of San Juan. [Acevedo] Montalvo v. [Hernández] Colón. 377 F. Supp. 1332. 1974.
7. Tribunal Supremo de Puerto Rico. Pueblo v. Duarte [Mendoza]. 109 D.P.R. 596, April 17, 1980.
8. El Mundo (newspaper). February 9, 1973, 3A.
9. Mass B. A historical sketch of population control programs in Latin America. In: Navarro V. ed. *Imperialism, Health and Medicine*. New Jersey, Baywood Publishing Co. 1981.
10. Jacobson JL. *The Global Politics of Abortion*. Worldwatch Paper #97. Washington DC, The Worldwatch Institute. 1990; 12.
11. Petchesky RP. *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*. Boston, Northeastern University Press. 1990;125-132.
12. Marchand R. *Clandestine legal: La práctica del aborto en Puerto Rico 1937-1970*. P R Health Sci J 1998;17:15-26.
13. Azize Y, Avilés LA, Otero E. *Abortion in Puerto Rico: Current Practice and Policy Recommendations*. Cayey, Puerto Rico, Women's Studies Project, University of Puerto Rico, Cayey Campus. 1993.
14. Krieger N, Zierler S. What explains the public's health? - A call for epidemiological theory. *Epidemiology* 1996;7:107-109.
15. Duany J. De la periferia a la semi-periferia: La emigración dominicana a Puerto Rico. In: Duany J. ed. *Los Dominicanos en Puerto Rico: Migración en la Semi-Periferia*. Puerto Rico, Ediciones Huracán 1990.
16. Henshaw SK, Morrow E. *Induced Abortion: A World Review 1990 Supplement*. New York, The Alan Guttmacher Institute. 1990;34-52.
17. U.S. Department of Health and Human Services, National Center for Health Statistics. *Monthly Vital Statistics Report* May 25, 1995; 43(11S):25.
18. The Alan Guttmacher Institute. *El Aborto Clandestino: Una Realidad Latinoamericana*. New York, The Alan Guttmacher Institute. 1994.
19. Vázquez Calzada JL. *La población de Puerto Rico y su trayectoria histórica, Puerto Rico, Raga Offset Printing*. 1988;165-172.
20. Dávila AL. *Esterilización y práctica anticonceptiva en Puerto Rico, 1982*. P R Health Sci J 1990;9:61-73.
21. U.S. Department of Commerce. *Statistical Abstract of the United States*. Washington DC. 1995; Table 590.
22. National Abortion Federation and American College of Obstetricians and Gynecologists, 1991. *Who Will Provide Abortions? Recommendations from a National Symposium*. Santa Barbara, California. October 25-26.
23. National Commission on America Without Roe. 1992. *Facing a Future Without Choice: A Report on Reproductive Liberty in America*. National Abortion Rights Action League. Washington DC
24. Accreditation Council for Graduate Medical Education. *Press Release*, February 15, 1995.
25. Duany J. *Introducción*. In: Duany J. ed. *Los Dominicanos en Puerto Rico: Migración en la Semi-Periferia*. Puerto Rico, Ediciones Huracán 1990.
26. Arregui M. *¿Una doctrina de papel? El incumplimiento por parte de las mujeres católicas de la doctrina sobre el control de nacimientos*. *Género y Sociedad* 1994;1:1-44.
27. *Catholics for a Free Choice*. *Catholics and Reproduction: A World View. An International Study of Catholic Opinion*. Washington DC, Catholics for Free Choice. 1993.
28. Herold JM, Warren CW, Smith JC et al. *Contraceptive use and the need for family planning in Puerto Rico*. *Fam Plann Perspect* 1986;16:185-192.
29. Petchesky RP. *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*. Boston., Northeastern University Press. 1990;11.
30. Dixon-Mueller R. *Population Policy and Women's Rights: Transforming a Reproductive Choice*. Connecticut, Praeger Publishers. 1993;193.
31. Vázquez Calzada JL. *El Enigma de los Partos por Cesáreas en Puerto Rico*. Puerto Rico: Centro de Investigaciones Demográficas, School of Public Health, University of Puerto Rico, Medical Sciences Campus. 1993;17:2.
32. Becerra J. *Loiza ARDE Study*, Office of Perinatal Epidemiology, SAMPSF.
33. Petchesky RP. *Abortion and Woman's Choice: The State, Sexuality, and Reproductive Freedom*. Boston, Northeastern University Press. 1990;138.
34. *The San Juan Star* (newspaper). July 7, 1989;3.
35. *El Mundo* (newspaper). July 7, 1989; no page number available.
36. Azize Y, Avilés LA, Otero E. *Abortion in Puerto Rico: Current Practice and Policy Recommendations*. Cayey, Puerto Rico, Women's Studies Project, University of Puerto Rico, Cayey Campus. 1993;21.
37. Azize Y. *At the crossroads: Colonialism and Feminism in Puerto Rico*. In: Nelson B, Chowdhury N, eds. *Women and Politics Worldwide*. New Haven and London, Yale University Press. 1994; 625-638.
38. Hoff J. *Law, Gender, and Injustice: A Legal History of U.S. Women*. New York & London, New York University Press. 1991;325.
39. Tribunal Supremo de Puerto Rico. Pueblo v. Duarte [Mendoza]. 109 D.P.R. 596, April 17, 1980;632.