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A reproductive justice perspective on the Purvi Patel case

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In the spring of 2015, news media across the world displayed images of a young, South Asian American woman in handcuffs, her long, untied black hair flowing forward and shielding her face as a Caucasian male police officer led her into a US court room. In another image, mug shot frontal and profile views of her face as a criminal, dotted online press reports, blogs and the social media. Although criminalised people of colour occupy a permanent space in the US media, her image jars. What is a young woman from a so-called "model minority" doing in handcuffs?

Early reports focused on the technicalities of the case. In the summer of 2013, Purvi Patel visited a hospital in South Bend, Indiana, in need of care. The doctors, recognising the signs of a recently terminated pregnancy, somehow suspected Patel of wrongdoing, and called the police. What followed was a series of attempts to locate the foetus and interrogate Patel. Patel has maintained that she suffered a miscarriage. Prosecutors in Indiana charged her with two crimes – foeticide and child neglect. Convicted for both, she will serve 20 years in prison (1,2).

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The case was remarkable for two major reasons. First, Patel holds the unsavoury distinction of being the first woman in the US convicted of the crime of foeticide. Second, the Indiana state prosecutor managed to successfully convince the jury of two apparently contradictory felony charges against her – that she conducted an illegal abortion and that she neglected her live baby. While the jurors deliberated on whether the recovered dead foetus had once lived, media commentary in the aftermath of Patel's conviction tried to make sense of the stunning success and convergence of two separate anti-abortion strategies. Among these, a very small number focused on the relevance of Patel's national/ethnic identity.

Conceptualised by women of colour activists in the USA, *reproductive justice* takes as its central concern the consistently devalued reproduction of disadvantaged groups. Advocates focus on the right to have and raise children in supporting environments just as much as the right not to have them. Broad-based by definition, reproductive justice movements in the USA account for multiple and intersecting oppressions faced by communities of colour (3). To contrast reproductive *justice* from a service delivery model of reproductive *health*, and a legal and advocacy model of reproductive *rights* focused on the individual, Asian Communities for Reproductive Justice (ACRJ) elaborated as follows.

The Reproductive Justice framework is rooted in the recognition of the histories of reproductive oppression and abuse in all communities, and in the case of ACRJ, in the histories of Asian

communities and other communities of color. This framework uses a model grounded in organizing women and girls to change structural power inequalities. The central theme of the Reproductive Justice framework is a focus on the control and exploitation of women's bodies, sexuality and reproduction as an effective strategy of controlling women and communities, particularly those of color. Controlling a woman's body controls her life, her options and her potential. Historically and currently, a woman's lack of power and self-determination is mediated through the multiple oppressions of race, class, gender, sexuality, ability, age and immigration status. Thus, controlling individual women becomes a strategic pathway to regulating entire communities (4: p 2).

Perspectives like this one developed partly in reaction to the exclusionary practices of mainstream pro-choice movements. In order to protect abortion rights that were increasingly under threat during the 1980s conservative backlash under Reagan, pro-choice activists within mainstream organisations, such as the National Abortion and Reproductive Rights Action League and Planned Parenthood, made a strategic decision to attract potential libertarian supporters of a right to abortion by narrowing the frame of reproductive rights to issues of privacy, rather than access (3;pp30–32). This approach alienated women of colour, who in developing reproductive justice perspectives, explicitly critique mainstream pro-choice movements. Reproductive justice perspectives promote an egalitarian agenda focused on the ways in which anti-abortion strategies increasingly combine with broader political-economic policies to compromise not only access to safe and legal abortion, but also the well-being of minority communities (4).

Reproductive justice claims as made by women of colour in the USA foreground notions of justice based on the social and political recognition of subgroups within a population. The feminist philosopher, Nancy Fraser, defines misrecognition as an impediment to social justice through "status subordination" or "institutionalized patterns of cultural value [that] constitute some actors as inferior, excluded, wholly other or simply invisible, hence as less than full partners in social interaction" (5: p 24). Thus, a reproductive justice perspective on the Patel case should identify aspects related to Patel's "status subordination" as a member of a particular group, in this case, Patel's identity as an Indian-American woman, as not merely coincidental but highly significant to the outcome, meanings and bioethical implications of the case. Highly visible in public images, Patel's racialised and gendered body activated two narratives related to devalued reproducers as "unfit mothers" and "baby killers". Both these narratives are amplified by policies originating in different parts of the world, such as population policies in India and child abuse laws in the USA. In the Patel case, her misrecognition took a particular transnational form involving inferior statuses produced within distinct national contexts. I aim to show how this convergence enabled the merging of the two apparently contradictory strategies deployed by so-called "pro-life" or anti-choice constituencies in the USA. I argue that the unresolved claim to reproductive justice in terms of recognition for Asian-Americans, then prepared the ground for a new violation of reproductive rights. Further, I argue that for Indians living in the diaspora, bioethical principles such as treating like cases alike are challenged by the mutual implication of the separate national policy contexts of India and the USA under globalisation. I conclude that to avoid the creation of double moral and ethical standards for subgroups of South Asian Americans, we will have to pay greater attention to the ways that separate jurisdictional settings have an impact on one another.

The context that influenced the circumstances leading to Patel's arrest includes factors both external and internal to the Indian-American communities in the USA. Externally, the passage of immigration and welfare reform in 1996 increased rhetoric deviling the pregnanciesof low-income and immigrant women as public burdens. These measures put into place a domestic version of structural adjustment within the USA. While mainly cutting government expenditures for social services that assist the poor, the policy bundle related to welfare reform also shifted limited public funding to abstinence-only sex education programmes. These require schools desperate for financial support to teach children that abstinence is the only viable means to avoid pregnancy and STIs (6). In line with this federal directive, the state of Indiana reinforced the tenets of the "abstinence only until marriage" doctrine, condemning sex outside of marriage (7). Add to this the impact of internal community restrictions on the sexuality of daughters enforced by immigrant parents as a means to preserve national/ethnic identity within a dominant cultural context (8,9,10). According to Nayomi Munaweera, Patel, like most women with Indian cultural roots, faced difficulties in speaking openly about sex in her home.

> *On the stand Patel's father testified that the family is strictly Hindu and opposed to premarital sex.…As a South Asian woman I know firsthand the intense cultural pressure in our communities to remain silent on all matters pertaining to female sexuality or desire. This is a culture in which for the most part, expressions of female sexuality are deeply shameful and must be hidden at any cost. Patel is 33 years old, but being unmarried, her family most probably assumed that she was a virgin. Her affair with a married man and its consequences could not be admitted, perhaps even to herself. It was a shame terrible enough to make her dispose of a fetus and defer getting herself medical help until she had lost copious amounts of blood* (11).

This compounding combination of home and external contexts repressing the sexuality of young Asian-American women endangers their reproductive and sexual health. It is easily conceivable under such conditions, that women do not know how to prevent or deal with undesired pregnancies, and that they may not recognise early signs of pregnancy which is crucial to seeking termination by legal means. According to testimony from her friend in court, Patel not

only tried to keep the pregnancy a secret, but also believed she was only two months along. Although expert testimony for the defence and prosecution had different opinions on the stage of her pregnancy at termination (arguing 23–24 weeks and 25–30 weeks, respectively), Patel had clearly underestimated it by far (1).

After *Roe v Wade*, the most influential Supreme Court decision to influence abortion in the USA is *Webster v Reproductive Health Services*, which, in 1989, gave individual states the right to place restrictions on abortion. It precipitated what is known as "chipping away" of Roe during the 1990s as diverse legal strategies advanced at the state level compromised access to abortion in multivariate ways (3: pp 28–29). In Indiana, these measures include the requirement of parental consent for minors, mandatory counselling to discourage abortions, and restrictions on state funding (12). As the availability of legal abortion becomes scarcer in the USA, the number of black markets for medical abortion drugs is rising. As Erica Hellerstein reports, a drug meant to treat ulcers – misoprostol – has begun to proliferate in Texas since recent anti-abortion measures under Texas House Bill 2 have resulted in the closing of some 32 of 40 facilities since 2013 (13,14). While the shutting down of clinics has an impact on all women in need of reproductive health services, immigrant women, especially those who are undocumented, face even greater barriers. Feminist perspectives seek to acknowledge the circumstances that could lead to clandestine, self-induced abortion even where abortion is legal, without eroding the main argument of Patel's defence, which rested on her consistent claim that she experienced a miscarriage. While it is known that she sought information about abortion drugs on the Internet, a toxicologist could not detect the presence of abortifacients in her body or in the foetus (2).

Whether or not the expelled foetus had lived became a point of contention in court. Several news articles focused on the reliance by the prosecution on an antiquated and scientifically debunked method to prove that it had taken a breath (1,2,15). A foetus that died *in utero* might have supported the claim of miscarriage, but would not absolve Patel from the charge that she conducted an illegal abortion (ie, foeticide), for which Patel is serving six years in prison. A live foetus not only implicated her of foeticide but also secured the claim of child neglect, for which she will serve 20 years (16). Either way, the state ensured that Patel face a paradoxical situation, in which the only way out of the courtroom was through the doors to prison. The state's supposed interest in protecting life (of the foetus) exposes itself as a political strategy to induce what the feminist philosopher, Judith Butler, calls precarity – a "condition in which certain populations suffer from failing social and economic networks of support and become differentially exposed to injury, violence, and death" (17: p 25). From the moment Patel walked into the hospital to save her own life, she became an enemy of the state and her life became precarious, conditioned on the loss of liberty. Below I sketch two narratives of devalued reproduction that increasingly overlap as they surround the Patel case. Although they originate in the separate policy contexts of the USA and India, their effects breach those jurisdictional borders.

The figure of unfit and criminal mothers

The population control narrative has a long, established history of implicating Asian women as reproducing excessively, beyond their capacity to care for their children. According to Malthusian logic, an inability to control fertility became a means to question the mothering ability of women within high fertility contexts, and to condemn women's reproductive and childcare decision-making as irrational. Family planning operated to produce an ideal modern motherhood, just as much as to control fertility (18). The ideal of rational reproduction emerged within an international population control regime in the middle of the twentieth century and continues to have narrative force in relation to Asian women's bodies.

Add to this the more recent trend within the USA of the criminalisation of pregnancy among women of colour. The National Advocates for Pregnant Women meticulously document the sharp rise since the 1990s in cases in which women's pregnancies were a critical factor in legal claims that led to their arrest, detention, or having to face forced medical intervention (19). This occurred concurrent to a rapid rise in rates of incarceration. Predictably, low-income and minority women, predominantly African-American, have faced the brunt of the increased policing and criminalisation of pregnant women – most often for charges of illegal drug use while pregnant. While Asian-Americans have not figured prominently among these cases, the arrest of Patel portends the possibility of a changing discourse, in which they also figure as demonised, selfish and uncaring mothers who endanger their children. Indeed, observers of the trial emphasised that Patel's "demeanor and affect" were "put on the stand" (15). The fact that she did not cry during the proceedings seemed to implicate her even before her conviction. At sentencing, Judge Elizabeth Hurley's reprimand that Patel "treated the child literally as a piece of trash", oft repeated and circulated in the press in connection with Patel's image, almost too easily awakened a connection between brown women and neglectful, irresponsible mothers in the public's mind.

The figure of savage baby killers

The criminalisation of pregnant women in the USA also rests on a set of foeticide laws. Thirty-eight US states have foeticide laws, all of which arose in response to violence against pregnant women with the express purpose of protecting pregnant women. They impose additional penalties against violators by accounting for foetuses as separate and additional victims. In 2004, a federal version called the Unborn Victims of Violence Act was passed (19,20). Reproductive justice advocates feared that states could use foeticide laws to penalise pregnant women for their conduct during pregnancy or for seeking an abortion and, indeed, this has come to pass. Until now, states have invoked foeticide laws minimally .Yet, as Paltrow and Flavin argued prior to Patel's case, "Even when

women are not charged directly under feticide laws, such laws are used to support the argument that generally worded murder statutes, child endangerment laws, drug delivery laws, and other laws should be interpreted to permit the arrest and prosecution of pregnant women in relationship to the embryos or fetuses they carry"(19: p 323).These authors recognised that a very thin margin separated strategies of criminalising pregnant women from recriminalising abortion. In Patel's case, state prosecutors did cross that line. They explicitly invoked Indiana's foeticide law to prosecute her for an illegal abortion. According to the state of Indiana's code on criminal law and procedure, "A person who knowingly or intentionally terminates a human pregnancy with an intention other than to produce a live birth or to remove a dead foetus commits foeticide, a level 3 felony," which does not apply to legal abortions (21).

Patel's conviction in February 2015 occurred the very same month that Indiana's Senate passed a bill, known as SB 334, to ban sex- and disability-selective abortions. This proposed law falls within another spate of anti-abortion measures – laws that specifically outlaw sex-selective abortions. Twenty-one states and the federal government considered sex-selective abortion bans since 2009 and eight states have enacted such laws (22). The proponents of such bans cite studies that suggest the prevalence of this practice among Asian-American groups, and thus, nationality/ethnicity of Asian origin has become highly implicated in criminality associated with abortion in the USA. The law scholar, Sital Kalantry, describes a common narrative to these proposals: that the preference for sons in China and India has led to the widespread practice of sex-selective abortion, that Asian immigrants import these cultural practices when they come to the USA, and that bans are needed as a means to prevent sex discrimination and promote equality (23: pp 142–3). She raises the question whether the recent spate of sex-selective abortion bans is an anti-immigration strategy, given that a higher percentage of states that considered or adopted such a law experienced a greater than 70% rise in the Asian population in the first decade of this century (23: p 141). An even stronger connection exists between these bans and the anti-abortion movement, which Kalantry demonstrates through her analysis of sex-selective abortion bans alongside other anti-abortion measures. The anti-abortion movement in the USA has not tried to hide its strategy of banning sex selection. Steven Mosher, the president of the anti-abortion organisation, Population Research Institute, proposed banning sex-selective abortions as a goal of the "pro-life movement" in 2008, and Americans United for Life published a guide to assist legislators in developing such policy (23: p 146). In response, organisations such as the National Asian and Pacific American Women's Forum have redirected their advocacy on the issue of sex selection in the USA to oppose sex-selective abortion bans. In their view, sex-selective abortion bans are proposed and enacted under a false pretence of combating gender discrimination, yet they are based on "misinformation and harmful stereotypes about Asian Americans" (22: p 28).

While Patel's case did not involve the allegation of a sex-selective abortion, the simultaneity of Indiana's Senate support fora sex-selective abortion ban and the conviction of a South Asian-American woman there for foeticide appear not entirely coincidental. They suggest increased salience in US political culture of a visual and figurative discourse associating brown women with devalued reproduction and incompetent motherhood. Vestiges of a colonial narrative in which Indian society must be civilised for committing "social evils" such as infanticide linger in the western imagination. In her discussion of the Patel case, the women's studies scholar, Ashwini Tambe, recalls:

> *When I taught the topic of global reproductive justice several years ago at Georgetown University, a flagship Catholic institution, I frequently noticed that many of my students became especially animated when we turned our attention to China and India. …many students already knew about the problem of female foeticide and infanticide in these countries; it was clear to me that for those who had been raised within strong Catholic anti-reproductive rights environments, China and India were widely maligned. These countries were understood as places with a criminal predilection for sacrificing life. The very real and pernicious social problems of misogyny and son preference compounded by economic inequality in China and India, all of which local activists have struggled against, had been displaced by accounts that equated national identities with these national crimes* (24).

In a post-colonial era in which high rates of sex-selective abortions are associated with the global East, the "savage baby killer" narrative easily resurfaces.

As the *#freepurvipatel* campaign so stridently claims: "Stillbirth is not a crime." The Patel case raises a number of stakes for Asian-American communities and for reproductive justice, including barriers to needed healthcare, racial profiling of Asian American women seeking abortions, as well as undermining the liberty of pregnant women.Within the context of US anti-abortion and racial politics, Patel's national origin is hardly inconsequential. Patel's racialised and gendered body implicated her well before the conviction. Her body became the site not only of media spectacle but the locus of strategies to recriminalise abortion and expand the criminalisation of pregnant women to Asian Americans. What I have aimed to show is how the Patel case served as a node of convergence for separate anti-choice political strategies in the USA, driven by narratives from disparate policy contexts that devalue the reproduction of "status subordinated" groups, in this case Indian American women. As reproductive justice perspectives have generally shown, and the Patel case continues to exemplify, political strategies designed to uphold reproductive rights based on narrowly conceived individual liberty and autonomy concerns cannot be guaranteed for all women when they ignore the bioethical principle of justice. Not only do they overlook the broader sexual and reproductive health needs of "status subordinated groups", they increasingly

overlook how extra-national, bio-political dimensions influence the legal right to abortion in the USA. Narratives surrounding population control and foeticide travel and decontextualise, resurfacing in the USA with unexpected effects. This is why campaigns concerned with the gender discriminatory impact of sex-selective abortions in the USA have had to re-strategise to combat the racial discriminatory impacts in the context of sex-selective abortion bans proposed by "pro-life" organisations. USA-based reproductive justice advocates cannot assume that it was just a coincidence when the only other woman, BeiBei Shuai, charged with foeticide in Indiana in 2011 was also of Asian (Chinese) origin. The bioethical principle of justice that like cases be treated alike becomes increasingly complex within a globalised political economy of reproduction. Even when neat national jurisdictional divides may exist, multiscalar (local to global) social, political, economic and cultural processes are at work that increasingly breach those divides. Upholding the principle will require greater interpretative flexibility to ensure that justice is, indeed, served without resorting to double moral and ethical standards that perpetuate relativistic arguments of "cultural difference".

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