## Part 1: Shut Out

#### [ROJ & Northup] DEBATES ABOUT WOMEN’S RIGHTS DANCE AROUND THE REAL ISSUES – from Texas abortion laws to birth control regulation, we’re treated as political pawns, NOT people.

Northup: Northup, Nancy. [President & CEO, Center for Reproductive Rights] “Huffington Post: The Fight for Women’s Reproductive Rights Can’t Just Be About Winning or Losing the Abortion War” *Center For Reproductive Rights,* 2013. JP

With the 40th anniversary this month of the historic Supreme Court decision Roe v. Wade has come a steady stream of op-eds, features, and debates in the media—with many, like a recent cover story inTIME, taking the position that abortion rights supporters have been losing in terms of politics and public opinion. While I give these newspapers, magazines, and television shows credit for Roe the coverage it warrants, I take issue not only with the conclusion that we’re losers, but this whole way of framing the issue. The fact is that women’s fundamental human rights should never be treated as political spoils to be won or lost. And while pundits and politicians continue to do so, the real consequences of the steady erosion of legal protections since Roe are being felt sharply in the lives of millions of women nationwide. These consequences are being felt at the pharmacy counter, where women seeking emergency contraception get turned away if they can’t show proof of age. They’re being felt at the kitchen tables of women making tough decisions about how to pay for birth control when their employers refuse to cover it in their insurance plans. They’re being felt by the millions of women who live in the counties—87 percent of them nationwide—that do not have an abortion provider, leaving them to drive for hours to obtain a service that is not only legal, but constitutionally protected. And if the opponents of reproductive rights get their way and either overturn Roe or continue to choke off access to reproductive health care services, the consequences will be felt by countless women whose health and very lives will be endangered by their inability to obtain the safe, legal, and essential reproductive health care they need. The doomsayers in the media are correct at least on this point—that those hostile to women’s health and rights have been successful in chipping away at the protections that Roe once afforded. The result is a harsh reality in which women who live in states such as Mississippi, Texas, and others beset by rabid anti-choice lawmakers simply don’t have the same rights as women who live in New York and California. These politicians have set their sights on outlawing abortion at any cost, but when women’s doctors are bullied out of practice, women aren’t just robbed of access to safe and legal means of ending unintended pregnancies. They often lose their sole resource for a host of other basic health care services, including birth control, pregnancy care, annual exams, and cancer screenings. But that fact has been lost in the conversation we’re having right now. And if the debate continues to be confined to abortion and treated as a political game, we’ll never get to the heart of the matter. We need a national dialogue that moves beyond a continual tallying of who’s scoring what political points or who’s winning the political fight. We need to engage in careful, thoughtful, substantive discussions about the services necessary for women’s well-being throughout their lives: comprehensive sex education in our schools, domestic violence resources, affordable and reliable contraception, fertility treatments, affordable child care, safe pregnancy and maternal health care, and yes, abortion services.

**Thus, the Role of the Judge is to Promote the Reclaiming of Educational Spaces**, which means they must endorse our ability to use debate for critical discourse.

#### [ROB & Matsuda] As educational oppression is rooted in ignorance, the **Role of the Ballot is to Interrogate the Structural Manifestations of Patriarchal Violence**. This means we use the round to specifically talk about women, since traditional pedagogy like util actively tells us to sit down and shut up.

Matsuda: Matsuda, Mari. [Assistant Professor of Law, University of Hawaii] “Liberal Jurisprudence and the Abstracted Visions of Human Nature: A Feminist Critique of Rawls’s Theory of Justice.” *New Mexico Law Review*, Vol. 16, Fall 1986. KK

The body of emerging scholarship known as feminist theory, as rich and diverse as it is, is characterized by some basic tenets. First is the charge of androcentrism in mainstream scholarship--the charge that traditional scholarly discourse largely ignores the lives and voices of women. Second is the charge of dualism. Dualism is the oppositional understanding of intuition, experience, and emotion as the inferior antitheses of logic, reason, and science, coupled with a tendency to equate women with the former grouping and men with the latter.3 A related dualism places men in the public domain-politics, law, paid work-and women in the private-home, absence of law, unpaid work.32 From these critiques of mainstream scholarship, feminists have derived two insights. The first is that the personal is political.33 By this it is meant that what happens in the daily lives of real people has political content in the same way as does what we normally think of as politics – the structure of economic systems and governments. That is, who makes breakfast, who gets a paycheck, who gets whistled at in the street – all the experiences of daily life are a part of the distribution of wealth and power in society. The second insight is that consciousness raising – collective focus on the particularities of real-life experience – is essential to truth-seeking.

Thus, high probability impacts come before improbable extinction scenarios – we need to *performatively invest* in issues impacting women by prioritizing discourse about violence that’s actually happening, not just imagined.

## Part 2: A Male World

#### [Mike 1] It’s bad and getting worse – millions of unsafe abortions take place because TRIPS denies access to contraceptives.

**Mike 1:** Mike, Jennifer H. [School of Law, American University of Nigeria, Yola, Nigeria, Nigeria] “Access to essential medicines to guarantee women's rights to health: The pharmaceutical patents connection” *Wiley Online Library,* 2020.

https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12161 JP

**Particularly, contraceptives are essential medicines as they are necessary to curtail early and unwanted childbearing, and prevent unplanned** pregnancies. This is especially where the pregnancy is damaging to the health, welfare and human development of the woman (WHO, 2017). **Significantly, access to appropriate drugs and contraceptives, including emergency contraception, could prevent and control unsafe sex and even reduce vertical HIV transmission (Nanda et al., 2017; Perehudoff, Pizzarossa, & Stekelenburg, 2018; WHO, 2004, p. 14).**13 Accessing contraceptives can also prevent the termination of unwanted pregnancies and the option of unsafe abortion (MSF, 2019). Data reveals that unsafe abortion kills about 68,000 women every year, representing 13% of all pregnancy-related deaths (Grimes et al., 2006; WHO, 2002; WHO, 2004, p. 14). **It is further estimated that 25 million unsafe abortions take place worldwide each year, majorly in developing countries (WHO, 2019).** Following unsafe abortions, women may be vulnerable to a range of harms that affect their quality of life and well-being; they may suffer reproductive and genital tract infection and experience other health complications (WHO, 2004, p. 14). Some of these infections are fatal and serious, leading to infertility, disability and worse, death (Perehudoff et al., 2018; WHO, 2004, p. 14). This is in addition to the social and financial costs to women, their families, the community at large and health care systems. **There is therefore a need to improve access to** contraceptives. A survey, however, estimated that many women who are at risk of unplanned or unintended pregnancy and would choose birth control using effective modern contraceptives are unable to do so (ICPD, 1995; Logez et al., 2011; WHO, 2004, 2017). Furthermore, reproductive and sexual health problems such as maternal, perinatal mortality and gynaecological health-related complications are said to be a significant disease burden for women of reproductive age (WHO, 2017, p. 11). Sexual and reproductive ill-health can lead to sexual dysfunction and other gynaecological conditions such as severe menstrual problems, urinary and faecal incontinence due to obstetric fistulae, uterine prolapse and pregnancy loss (Filippi et al., 2016, p. 6; Timilsina, 2018, pp. 18–19). This, in turn, leads to maternal and perinatal mortality. Women will, therefore, need access to medical interventions to prevent these avoidable health situations or treat theirrr conditions. For example, maternal health complications such as postpartum haemorrhage (PPH), pre-eclampsia and eclampsia, can be prevented or treated by the appropriate use of essential medicines such as oxytocin and ergometrine injections; magnesium sulfate (MgSO4) injection for the prevention and treatment of severe pre-eclampsia and eclampsia; ampicillin, gentamicin and metronidazole injections for the treatment of maternal sepsis; procaine benzylpenicillin, and ceftriaxone for neonatal sepsis (Tran & Bero, 2015). Access to the high quality, therapeutic medications in developing countries may not be adequate, resulting in a high number of preventable maternal deaths (Torloni et al., 2016, p. 645). Lack of access to Oxytocin in some sub-Saharan African countries and Tanzania has also been traced to institutional, socioeconomic, financial, cultural and political barriers (Torloni et al., 2016, p. 645). In 2019, a heat-stable carbetocin for the prevention of PPH was added to the WHO Essential Medicines List (EML; WHO, 2019a). This new formulation has similar effects to oxytocin, the current standard therapy, but offers a significant advantage for tropical countries as it does not require refrigeration for storage. Raltegravir is another medicine on the WHO's EML that is particularly important for pregnant women, as well as other contraceptives such as; levonorgestrel, an oral hormonal contraceptive, medroxyprogesterone acetate, an injectable hormonal contraceptive, progesterone vaginal ring, an intravaginal contraceptive and many others (WHO, 2019b). Injectable contraceptives are often preferred by women as they can be used discretely and conveniently to circumvent the factors aforementioned in Section 1.1.1. Studies, however, indicate that poor reproductive health and sexual health problems, including complications arising from early childbearing, HIV infection and STIs are significant disease burdens in developing countries and also, essential medicines and contraceptives for reproductive health are often not available to the majority of women who need them (Hall, 2005; The World Bank, 2001). In this respect, Hall (2005, pp. 32–34), made the observation that Mifepristone, a useful medicine for safe abortion, which can be self-administered to induce a discrete and noninvasive medical abortion up to 2 weeks of gestation is still prohibitive to most women wanting to access the drug. **Some of these essential contraceptives, their compositions or methods may be impacted by patent-right restrictions as data indicates that contraceptives such as raltegravir, levonorgestrel, medroxyprogesterone acetate, process of extracting ergometrine, progesterone and the composition of carbetocin are more widely patented (Drug Patent Watch; European Patent Office; Medicines Patent Pool, 2013, p. 11). This may be due in part to changes in national patent laws in many countries following the entry into force of the TRIPS Agreement, or the patenting practices of applicants (Medicines Patent Pool, 2013, p. 11). Invariably, the inability to access better and high quality therapeutic treatments may mean that the majority of women, particularly in developing countries, may be restricted to a limited choice of** contraceptives.

#### [Allen 1] Worse, IPP lets those who ideologically oppose reproductive technologies prevent women from accessing them.

**Allen 1:** Allen, Scott A. [Indiana University Maurer School of Law] “Patents Fettering Reproductive Rights” *Indiana Law Journal,* 2012. <https://www.repository.law.indiana.edu/cgi/viewcontent.cgi?article=3004&context=ilj> JP.

**Because these patentable reproductive inventions have enabled reproductive choice and are often catalysts for reproductive rights,** opposition to reproductive autonomy **has translated into opposition to specific** technologies. In turn, opposition has slowly begun to find its way into the patent laws that provide limited monopolies on reproductive inventions. Unlike inventions of antiquity, the advanced technology that now constitutes patent-eligible subject matter has the potential to tread on deeply moral, religious, and political ideologies. One commentator has noted that “[a]s human existence becomes increasingly embedded in technology, the impact of traditionally patentable subject matter upon the exercise of individual liberties grows.”9 There is no area more fundamental to human existence than that of reproduction—an area that has recently experienced extraordinary technological advances. **For example, in the last several decades, patents have been issued on technologies ranging from abortive methods, pharmaceuticals, and instruments, to in vitro fertilization (IVF),13 cloning (e.g., Dolly),14 and in vitro pre-implantation genetic diagnostic (PGD)** procedures.15 Reproductive knowledge and capabilities have expanded in exponential ways, promising that the future holds even more technological advancements. Much of that practical knowledge is owned, or has the potential to be owned, as intellectual property. These “twenty-first century” technological developments, and the new perceived reproductive liberties that may accompany their growth,16 pose new challenges to a constitutionally empowered system of “promot[ing] the Progress of Science and useful Arts”17 with eighteenth-century origins. **Whether or not the Framers contemplated the vast universe of procreative and reproductive developments as within the scope of traditionally patentable subject matter,18 the fact remains that as section 101 of the Patent Act19 currently stands, inventions related to human reproduction will routinely fall within its broad scope.** It is likely, however, that the Framers did contemplate a patent system that would continue to provide broad and robust incentives to invent—a set of incentives that has helped establish the United States as a technological superpower and that many feel may be best left untouched. **As currently configured, the patent system is susceptible to use by those opposed to reproductive rights—those who desire to prohibit access to reproductive and procreative technologies that directly bear on reproductive rights. Taken to its extreme, those who want to limit individuals’ ability to exercise their currently constitutionally protected rights or future constitutional rights, or desire to deny access to technologies on other moral bases, could obtain patent** right**s (by application, assignment, or license) on reproductive technologies and then enforce those governmentally granted property rights against any infringer**. In other words, the same government that affords the rights to reproductive choices as found in the Constitution could be forced to grant limitations on the access to a private patentee’s reproductive technologies or inventions—regardless of societal value.

## Thus, I affirm:

#### [Mike 2] Resolved: The member nations of the World Trade Organization ought to reduce intellectual property protections for women’s health.

**Mike 2**: Mike, Jennifer H. [School of Law, American University of Nigeria, Yola, Nigeria, Nigeria] “Access to essential medicines to guarantee women's rights to health: The pharmaceutical patents connection” *Wiley Online Library,* 2020. <https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12161> JP

The sum total of the arguments and analysis indicates that human rights relate to health and that access to medicines is germane to the enjoyment of the right to health as well as the right to life. **In this manner, human rights provide the basis to argue for the alleviation of problems inhibiting women's access to healthcare**. This rights approach to the issue of accessing medicine is relevant because it provides a guiding standard for national policies, laws and programmes to achieve the goal of fulfilling, protecting, respecting and generally securing their right to health. **To secure women's right to health and ensure that they can fully enjoy their human rights, it is submitted that there is a need to promote their access to affordable medicines. The article highlighted the concern that the patent protection of pharmaceuticals could result in high prices or stifle incremental innovation which could have the effect of impeding the availability of and women's access to affordable drugs for serious medical needs. In this event, one of the ways in which the state can meet its obligation, as to the right to health is to make sure that pharmaceutical patents do not constitute an obstruction to the enjoyment of the rights of women to adequate healthcare.** The foregoing discussion also argued that pharmaceutical companies and patent owners can have a human right to health responsibility within the sphere of their business operations. This responsibility would pertain to the pricing of their drugs, testing and clinical trials, R&D, provision of safe and good quality medicines and the duty to ensure that their practices do not constitute an obstacle, especially to women's enjoyment of human rights and their right to medicines. Notwithstanding the obligations of pharmaceutical companies to the right to access medicines, states are ultimately the duty bearers accountable for the guarantees, and prevention of the violations of the rights to access medicines. It is their duty to monitor and also ensure that pharmaceutical firms do not impede the enjoyment of the right to health. In closing, the argument based on human rights principles is a consideration of women's health needs in regulations and policies to fulfil their demands of healthcare. **Ultimately, if women's access to medicines is to be enhanced, the state must provide medicines and also guarantee the sustainable availability and accessibility of drugs through every avenue.**

## Part 3:

#### [Mike 3] By reducing IPP, women in developing countries will see an increased access to generic medicine, which occurred prior to the instatement of TRIPS.

**Mike 3**: Mike, Jennifer H. [School of Law, American University of Nigeria, Yola, Nigeria, Nigeria] “Access to essential medicines to guarantee women's rights to health: The pharmaceutical patents connection” *Wiley Online Library,* 2020. <https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12161> JP

3.1.1 **The TRIPS agreement**: Patent rights access to medicines The Agreement is considered a determining factor in the challenge of access to medicines because it introduced the same minimum standard of patent rules for all WTO members to adopt and implement (Fisher & Syed, 2010, p. 183; Pogge, Rimmer, & Rubenstein, 2010, pp. 5–6; 't Hoen, 2009, p. 5). Thus the Agreement has added impetus to the concern that the patent protection of processes and products can restrict generic competition and raise the transaction cost of accessing medicines which, in turn, limits the ability of users to purchase the product at a competitive price (Aginam & Harrington, 2013, p. 2; Pogge, 2010, p. 137; Scherer & Watal, 2002; p. 914). **The core concern is that patent rights in the TRIPS Agreement, to the extent that it has broadened and lengthened the scope of the protection thereby increasing the market power conferred by patents, is seen to contribute to the problem of accessibility (Sampath, 2004, p. 257). Before the establishment of TRIPS, some developing countries were able to avoid paying the high prices charged by pharmaceutical companies for purchasing branded medicines by acquiring the generic equivalents at a lower price from other countries whose patent laws did not cover pharmaceutical products, such as India ('t Hoen, 2009, pp. 5–6).** These generic medicines had the advantage of being less expensive when compared to patented equivalents because they did not have all the risks and costs associated with R&D for manufacturing new medicines (Fink, 1999, p. 2). **With the introduction of the TRIPS, however, generic reproduction or imitation of patented drugs amounts to infringement in all WTO member countries, unless produced under the safeguard and flexibilities in TRIPS or produced under licence from the patent holder (Sampath, 2004, p. 260).** These structural conditions and mandate imposed by global patent law have reconfigured the landscape of countries that were prominent generic drug producers. For example, generic producing industries in Brazil and India had to conform to the mandatory 20 year term for product patents which was previously not part of their patent law (The World Bank, 2010, p. 113).42 With this new development, many developing countries who hitherto relied on cheaper generics from these countries for several reasons, including the inadequate or insufficient manufacturing capacity and expertise, raised the concern that patents for pharmaceuticals will affect the supply, availability and accessibility of the less expensive generics (Dhar & Gopakumar, 2009, p. 130). **This is especially an issue where the patented versions are expensive and out of reach for poorer women.**

#### [Chaskalson] The time to act is now - Patent law reform would increase the supply of contraceptives and affordability of cancer treatments.

**Chaskalson:** Chaskalson, Julia. [Writer at Spotlight] “Opinion: WTO waiver is important, but so is fixing SA’s outdated patent laws” *Spotlight,* March 2021. JP

Fix the Patent Laws – a coalition of over 40 patient advocacy groups and health-based civil society organisations – has written twice to the Presidency and the Department of Trade and Industry and Competition (DTIC) since the start of the COVID-19 pandemic to highlight concerns with South Africa’s current IP system and the implications for COVID-19 vaccines and other medicines. The history of the battle for antiretrovirals to treat HIV has shown that patent regimes can either be crucial in realising the right to access healthcare and health products, or act as barriers to equitable, affordable access to medicines. As it stands, our patent system does not examine patent applications to determine whether they meet strong patentability criteria, and simply grant patents on application. This has resulted in many patents being unwarranted: some drugs under patent here are not patented anywhere else in the world. **Our patent system allows ‘patent evergreening’ – where the period of patent protection is extended and keeps the prices of medicines artificially high for extended periods of time, which has limited access to life-saving medicines**. Activists are adamant that government must reform our patent system. The coalition has urged the Presidency and DTIC to publish new legislation adhering to the recommendations of the Intellectual Property Policy Phase I which was adopted by Cabinet in 2018. This policy aligns with global public health policies and best practice, but the DTIC seems to drag its feet when with publishing new legislation. **It is critical that Bills be published for public comment and expedited into law not only to strengthen South Africa’s efforts to make sure that COVID-19 vaccines and treatments can reach all the people but importantly also to increase access to medicines generally at home.** The South African government has acknowledged, through its joint-proposal at the WTO, that special measures are needed to facilitate access to medicines, prevent deaths and relieve pressure on the health system. But COVID-19 is not the only health crisis to which these measures should apply. While the patent waiver at the WTO is a bold move from the South African government for our country and others in the Global South, the waiver would only exist for the duration of the pandemic, and only in relation to COVID-19 medicines. Real patent law reform domestically would save lives in South Africa now and for years to come. **Patent law reform could help to give cancer patients affordable and equitable access to medicines, people living with HIV greater access to second or third line antiretrovirals, increase the supply of contraceptives and push down the prices of drugs for drug-resistant tuberculosis. Not only is this possible, but it is a constitutional imperative. Over and above promoting the rights to equality, dignity and access to healthcare and medicines, new legislation would save lives, relieve pressure on healthcare workers and ease the strain on our public health system. And it cannot wait any longer.**

#### [Sadinsky et al] A fem foreign policy approach has broad implications – it’s key to solving structural disparities in policy.

**Sadinsky et al:** Sadinsky, Sophia. [Senior Policy Associate, Global Issues] “Here's Why Sexual and Reproductive Rights Must Be the Linchpin of Feminist Foreign Policy” *GuttMacher Institute,* 2021. JP

**As global leaders are taking decisive steps to begin rebuilding many of the systems devastated in the first year of the COVID-19 pandemic, they have an opportunity and a responsibility to optimize this moment of reconstruction and address structural, gender-based disparities.** **The combination of long-standing inequities and pandemic-exacerbated conditions has clarified that sexual and reproductive health and rights are foundational and necessary for gender equality, as well as to a full recovery from the damage caused by COVID-19**. What Is Feminist Foreign Policy? Traditionally, foreign policy has treated issues like gender equality as separate from and peripheral to core aims, such as promoting national security and trade. But a new and growing body of evidence illustrates how improving gender equality is in fact central to those aims, resulting in healthier and more prosperous societies. For example, equalizing women’s participation in the workforce with men could boost the global gross domestic product by $28 trillion annually and would benefit countries at all income levels. **There is also evidence that gender equality is associated with peace and stability; the larger the differences between men and women’s experiences and opportunities in a given country, the more likely that country is to be involved in violent conflic**t. The first official recognition of gender equality as a global priority was in 1995 at the United Nations Fourth World Conference on Women in Beijing, but it is only in the past decade that countries have begun to develop and adopt feminist foreign policies. **This approach has evolved from tackling gender equality as just one of the many disparate aims of foreign policy, and instead applies a gender lens to every foreign policy decision, from aid allocations to political representation. It also acknowledges how gender inequality overlaps with other forms of oppression, such as racism and classism, and takes an intersectional approach to feminism.**

#### [Mike 4] Further, the aff ensures that medicine is declared a *human right* and is accessible to *all*.

**Mike 4**: Mike, Jennifer H. [School of Law, American University of Nigeria, Yola, Nigeria, Nigeria] “Access to essential medicines to guarantee women's rights to health: The pharmaceutical patents connection” *Wiley Online Library,* 2020. <https://onlinelibrary.wiley.com/doi/full/10.1111/jwip.12161> JP

**In this paper, access to medicines is identified as a fundamental human right to health, given that the right to health cannot be achieved without access to essential medicines for effective treatment of ailments and diseases.** Health as a human right is enumerated in several human rights instruments. Article 25 of the United Nations Declaration of Human Rights identifies that: “[e]veryone has the right to a standard of living adequate for the health and wellbeing of himself and of his family, including food, clothing, housing and medical care and necessary social services.” The 1979 Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in Article 12(1) makes provisions for the consideration and protection of women's right to health. In addition, health, and the importance of accessing essential medicines for adequate healthcare, are identified as significant to an adequate standard of living and connected to other human rights such as the rights to life, human dignity, education, development and the participation in civil and political life of society. **Significantly, universal access to “quality essential health-care services and access to safe, effective, quality and affordable essential medicines and vaccines for all” is one of the Sustainable Development Goals (Goal 3) (WHOa; Perehudoff, Alexandrov, & Hogerzeil, 2019).** In this respect, it is argued that human right is significant to the issue of access to medicines not only because it seeks to guarantee the moral and legal freedoms and entitlements of every individual, human rights also protect and promote the realisation of certain rights, such as the right to health, life and medicines—usually in relation to the responsibilities of states to uphold, guarantee and implement. **In this vein, the article argues that the exercise and implementation of patent rights can raise human rights issues in the context of human health, life and access to essential and affordable life-saving pharmaceuticals.** Thus, the design, interpretation and enforcement of patent rights should respond to the right to access medicines, as a component of the right to health and life. **Essentially, human rights principles, norms and frameworks provide additional moral and humane support for the consideration of women's access to medicines, in view of the adverse effect of international and national patent law and the nature of the right conferred to inventors.**