

## INTRODUCTION: BANISHING WOMEN: THE LAW AND POLITICS OF ABORTION TRAVEL

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In her Introduction to the inaugural issue of the *Columbia Journal of and Law* (JGL), Ruth Bader Ginsburg traced the gendered history of Columbia Law School from 1928, when the first female student was admitted, to 1990, when women composed nearly half the student body. Reflecting on this change, she asked, “Does women’s participation affect the way law business is conducted, and the shape and direction of legal development?” In pursuing this “large question,” Justice Ginsburg contemplated a feminist movement that would offer “a spacious home” for “all who have the imagination and determination to work for the full realization of human potential.”<sup>1</sup>

On the twenty-fifth anniversary of JGL, we are delighted to introduce a set of essays that grapple with these enduring questions of feminism and citizenship in the context of reproductive rights and justice. These essays are based on talks delivered at a recent panel entitled, “Banishing Women: The Law and Politics of Abortion Travel,” cosponsored by Columbia Law School and the Center for Reproductive Rights. We would like to thank each speaker for their contribution to the panel, including David Brown, Staff Attorney at the Center for Reproductive Rights; Joanna Erdman, Assistant Professor of Law, and MacBain Chair in Health Law and Policy at Dalhousie University; Yasmine Ergas, Lecturer in the Discipline of International and Public Affairs at the Columbia School of International and Public Affairs; and Madeline Gomez, Reproductive Justice Fellow at the National Latina Institute for Reproductive Health. A special thank you to Carol Sanger, the Barbara Aronstein Black Professor of Law at Columbia Law School, for moderating the event and encouraging this work.

In convening this panel, we aimed to promote greater thinking and discussion about abortion travel among scholars and advocates. We use the term “abortion travel” rather than “abortion (or medical) tourism” to avoid the consumerist and individualist connotations of

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1 Ruth Bader Ginsburg, *Introduction*, 1 COLUM. J. GENDER & L. 1, 4 (1991).

the latter term. We are interested instead in the structural forces—both legal and social—that compel many women to leave their home jurisdictions to access abortion.<sup>2</sup> We describe this phenomenon as a form of “banishment” to signal the punitive and stigmatizing effects of laws that force women to travel to terminate a pregnancy safely. When anti-abortion advocates work to make a county, province, state, or nation “abortion-free,” they register abortion as a politically treacherous act. The women, partners, and families who must pack their bags and travel long distances to access abortion are reminded at each step of their journey that they are undeserving of medical care at home.

Abortion travel is a crucial area of inquiry because it is one of the key ways that women navigate, resist, and sometimes succumb to restrictive abortion laws and policies. In the pre-*Roe* era, women in the United States with resources travelled to Mexico, or as far as Japan or Sweden, to terminate their pregnancies safely.<sup>3</sup> Today, targeted regulations of abortion providers (“TRAP laws”) have incrementally reduced access, forcing many women to travel hundreds of miles, sometimes across state lines, to access constitutionally protected health services.<sup>4</sup> The Supreme Court recently addressed travel burdens in *Whole Woman’s Health v. Hellerstedt*, a decision striking down Texas House Bill 2 (“H.B. 2”), one of the most restrictive TRAP bills in recent memory. Research from the Texas Policy Evaluation Project had shown that many women faced increased travel burdens due to clinic closures since the introduction of H.B. 2. Twenty-five percent of women whose nearest clinic closed

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2 I. Glenn Cohen has discussed abortion travel from jurisdictions with criminal restrictions as a form of “circumvention tourism.” See I. Glenn Cohen, *Circumvention Tourism*, 97 CORNELL L. REV. 1309 (2012); see also I. GLENN COHEN, PATIENTS WITH PASSPORTS: MEDICAL TOURISM, LAW, AND ETHICS 315–70 (2014).

For a discussion of the ways that abortion travel contradicts ideas about individual agency, choice, and mobility underlying medical tourism, see Mary Gilmartin & Allen White, *Interrogating Medical Tourism: Ireland, Abortion, and Mobility Rights*, 36 SIGNS 275 (2011).

3 For a discussion of pre-*Roe* travel to Mexico and the role of feminist networks in travel and legal advocacy, see Leslie J. Reagan, *Crossing the Border for Abortions: California Activists, Mexican Clinics, and the Creation of a Feminist Health Agency in the 1960s*, 26 FEMINIST STUD. 331 (2000); see also “Rush” Procedure for Going to Japan, in BEFORE ROE V. WADE: VOICES THAT SHAPED THE ABORTION DEBATE BEFORE THE SUPREME COURT’S RULING 8–11 (Reva B. Siegel & Linda Greenhouse eds., 2010) (describing “Rush” procedure for traveling to Japan). On Canadian women’s travel to the United States for abortion services after *Roe*, see Beth Palmer, “Lonely, Tragic, but Legally Necessary Pilgrimages”: *Transnational Abortion Travel in the 1970s*, 92 CAN. HIST. REV. 637, 650 (2011); Christabelle Sethna & Marion Doull, *Accidental Tourists: Canadian Women, Abortion Tourism, and Travel*, 41 WOMEN’S STUD. 457 (2012).

4 For discussion of distances women travel to access abortion in the United States, see Rachel K. Jones & Jenna Jerman, *Abortion Incidence and Service Availability in the United States*, 46 PERSP. ON SEX. & REPROD. HEALTH 3 (2014); Rachel K. Jones & Jenna Jerman, *How Far Did US Women Travel for Abortion Services in 2008?*, 22 J. WOMEN’S HEALTH 1 (2013).

lived more than 139 miles from a facility and ten percent lived more than 256 miles away.<sup>5</sup> The Court held that increased driving distances to access abortion were “one additional burden which, when taken together with others that the closings brought about, and when viewed in light of the virtual absence of any health benefit, lead us to conclude that the record adequately supports the District Court’s ‘undue burden’ conclusion.”<sup>6</sup>

Abortion travel is not unique to the United States. Mexican women have been travelling from neighboring states to Mexico City since 2007, when the federal district passed a law making abortion legal and free in public health centers through the first twelve weeks of pregnancy.<sup>7</sup> In Canada, women living in Prince Edward Island have long had to travel to the mainland to access care because the province refused to provide abortion services on the island.<sup>8</sup> Only very recently has the province announced in response to a constitutional challenge that it intends to change this policy and provide for local abortion services.<sup>9</sup> Across the Atlantic, Irish women have for decades been crossing the Irish Sea to access abortion services in the United Kingdom that they cannot lawfully secure at home.<sup>10</sup>

The following essays interrogate the law and politics of abortion travel. Together, they reveal how restrictive laws produce a hierarchy in access based on class, age, race, and

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5 Caitlin Gerds, et al., *Impact of Clinic Closures on Women Obtaining Abortion Services After Implementation of a Restrictive Law in Texas*, 106 AM. J. PUB. HEALTH 857, 860–61 (2016).

6 *Whole Woman’s Health v. Hellerstedt*, 579 U.S. \_\_ (2016).

7 Statistics for Mexico City Ministry of Health facilities indicate that over 26% of clients obtaining abortion services were nonresidents, with just over 23% coming from the neighboring state of Mexico, and just over 3% coming from other states in Mexico or other countries. See Davida Becker & Claudia Diaz Olavarrieta, *Decriminalization of Abortion in Mexico City: The Effects on Women’s Reproductive Rights*, 103 AM. J. PUB. HEALTH 590 (2013) (citing GRUPO DE INFORMACIÓN EN REPRODUCCIÓN ELEGIDA, PROFILE OF USERS WHO HAVE CARRIED OUT LEGAL ABORTIONS IN MEXICO CITY APRIL 2007–OCTOBER 2012 (2012)).

8 See, e.g., *More Than 100 Island Women Travel to Mainland for Abortion Services in 2015*, J. PIONEER (2016), <http://www.journalpioneer.com/News/Local/2016-02-01/article-4422400/More-than-100-Island-women-travel-to-mainland-for-abortion-services-in-2015/1> [https://perma.cc/TEX3-3R4J].

9 See Ingrid Peritz, *In PEI, the Right to Choose: No Longer ‘The Shame of Being Shipped Off the Island’*, GLOBE & MAIL (Apr. 1, 2016), <http://www.theglobeandmail.com/news/national/prince-edward-island-to-end-its-34-year-ban-on-abortions/article29504348/> [https://perma.cc/UE6J-8VC2].

10 ANN ROSSITER, IRELAND’S HIDDEN DIASPORA: THE ABORTION TRAIL AND THE MAKING OF A LONDON-IRISH UNDERGROUND, 1980–2000 (2009); Lisa O’Carroll, *Almost 25,000 Women Travelled from Ireland to Britain for Abortions in Last Five Years*, GUARDIAN (Dec. 15, 2015), <http://www.theguardian.com/world/2015/dec/15/almost-25000-women-travelled-from-ireland-abortions-last-five-years> [https://perma.cc/Q3JJ-KAFP].

immigration status. Long-distance travel poses insurmountable obstacles for women and girls who lack the necessary financial, legal, and material resources. As Madeline Gomez describes in her powerful essay on Latina women's experience seeking abortion services in Texas, roving border patrols and job precarity can force women to choose between deportation or job loss and safely terminating a pregnancy. Despite the fact that travel is prohibitive for many, courts have relied on its theoretical possibility to uphold restrictive abortion laws. This is a key theme in Yasmine Ergas' illuminating analysis of European abortion jurisprudence. In *A, B & C v. Ireland*, the European Court of Human Rights emphasized Irish women's "legal right" to travel to other jurisdictions to access abortion. The Court relied on permissive neighboring jurisdictions—and the *possibility* that women could travel to those jurisdictions—to uphold restrictive laws at home.

For those women and families who are able to travel and for the advocates who work to assist them, abortion travel can be simultaneously stigmatizing and liberating. Joanna Erdman's riveting account of restrictive policies in Prince Edward Island highlights this duality. In compelling women to leave their homes, restrictive abortion laws treat women who wish to terminate a pregnancy as outsiders, or in Erdman's words, "public enemies." And yet, as both Erdman and Ergas note, travel can also be emancipatory, not only for the individual women who are able to safely terminate unwanted pregnancies, but also for larger social movements. Support groups that assist women in locating providers and making their journeys are often connected to broader reform efforts.<sup>11</sup> Moreover, in traveling to terminate a pregnancy and then returning home, women give lie to the notion that they are political enemies.

We hope that the following essays will inspire further thinking and discussion of the law and politics of abortion travel. In particular, we encourage advocates and scholars to think more about the ways in which restrictive laws produce an economy of access: women with the resources, know-how, and legal status to travel can often continue to access abortion services; women and girls without these resources face limited alternatives. Even for those who can access care by traveling, restrictive laws create a moral economy of deservingness: exile is the price for accessing abortion care. At stake in these journeys, to borrow from Justice Ginsburg, is nothing less than a quest for "the full realization of human potential."

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11 See, e.g., Reagan, *supra* note 3.