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***Freakonomics* and that very convenient abortion myth.**

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In 2005 economist Steven Levitt published the bestselling *Freakonomics* as a “rogue economist” exploring the “hidden side of everything”. One of the more controversial claims in the book (driven, supposedly only by a love of “data”), was that the reduction of crime experienced in the 1990s was a direct result of *Roe v Wade*, which confirmed the constitutional right to abortion in 1973. In short, it was argued that in the aftermath of *Roe*, abortion prevented the birth of unwanted children who would otherwise have grown up to be criminals in the 90s. Many of these abortions were to black mothers.

The racist connotations of the claim sparked controversy, but little has been said about the basic claim – that *Roe* affected abortion rates. This paper examines the common whitewashing of women’s history that supports theories like those in *Freakonomics*, that deny the widespread practice of abortion, by women and for women, prior to 1973. It argues that globally, legal status has little bearing on abortion rates (only on the safety of the procedure) and that the medical commandeering of abortion has allowed this fact to be increasingly marginalised in contemporary debates.

In the United States last year I was discussing the 2008 election with an American friend. At this stage, Rudi Giuliani was being considered as a potential Republican candidate. My friend Anna, a Democrat, was explaining to me Giuliani's broad appeal in New York that has been linked to the renowned reduction in crime in that city in the 1990s when he was Mayor. But Anna said she didn't buy it. She preferred the theory promoted in *Freakonomics*, that the legalisation of abortion that followed *Roe v Wade* was responsible for the drop in crime by preventing the birth of an entire cohort of potential criminals who would otherwise have come of age in the early 1990s. According to this popular theory, those most likely to have had abortions post-*Roe* were poor, teenaged and unmarried women whose unwanted children, if born, would have been at disproportionate risk of engaging in adolescent and adult criminal activity (Donohue & Levitt (hereafter D&L): 2001 381); legal abortion is credited with responsibility for almost half of the marked decline in crime in America between 1991 and 1997 (D&L 2001: 382).

Freakonomics, written by self proclaimed 'rogue economist' Steven Levitt, together with journalist Stephen Dubner, aims to 'explore the hidden side of everything', by analysing the economics of 'everyday' American life (O'Neill 2005) involved in areas such as parenting, teaching, real estate, drug dealing, and crime. The abortion theory got a lot of press when first floated by Levitt in 1999 and again when his book was released in 2005. Numerous people have cited it to me as authority. This should not be surprising – *Freakonomics* was on the *NY Times* best-seller list for more than two years, and has sold more than 3 million copies in more than 30 languages (*Freakonomics* website). Its authors are highly authoritative and credible,¹ and the abortion theory was debated in the *Wall Street Journal*, which called Stephen Levitt the 'Indiana Jones of economics' (O'Neill 2005), and declared *Freakonomics* so sweet and wonderful that criticising it would 'be like criticising a hot fudge sundae' (Landsburg 2005). Richard Posner, chief judge of the US Court of Appeals for the Seventh Circuit in Chicago, called the abortion theory 'striking, original, rigorous, and persuasive' (in Brandon 1999). But it was regularly reported as Levitt's 'most controversial thesis' (Palmer 2005) – a purportedly 'distasteful' idea that 'stuck in the throats' of many Americans (O'Neill 2005).

The theory suggests two 'causal' relationships between abortion and crime in the USA: first, that the legalisation of abortion led to more abortions undertaken than before, and second, that these abortions prevented the births of persons most likely to commit crimes by reducing the 'number of unwanted children who are at risk of engaging in criminal conduct when they grow up' (D&L 2004: 30). While much scrutiny has been paid the second relationship, the first has been overlooked. In this paper I examine the statement that legalisation increased the rate of abortion in America. While this idea is often depicted as simple 'common sense', I illustrate the medical and legal hegemony that informs this view, and the implications it has for understanding women's political history around questions of abortion and further. My aim is not to decisively prove that legalisation did not increase abortion rates. Rather it is to question why this 'common sense' appears as intuitive to authors such as Steven Levitt and his popular audiences, and to disrupt the orthodox portrayal of law as *granting* abortion to women.

¹ Levitt is Professor of Economics at the University of Chicago; he has been recognised as 'the most influential economist in America under the age of 40' and one of *Time* magazine's '100 People Who Shape Our World'. Dubner is an established author and has written for the *New York Times* and the *New Yorker*.

The abortion/crime theory

Levitt first published the abortion/crime theory in an article he co-authored with Stanford Law Professor John Donohue III for the May 2001 *Quarterly Journal of Economics* that was circulated pre-publication to journalists in 1999. Economists and social scientists in the USA and further a field responded by interrogating the data of the high-profile, controversial though ‘fascinating’ theory (Foote & Goetz 2005) that implicates *Roe* in an 11 percent decrease in violent crime, an 8 percent decrease in property crime, and a 12 percent decrease in murder across America (Joyce 2004: 29)². In the popular mind, however, the ‘controversy’ over the theory was not concerned with the integrity of the data, or the statistical model employed, but with the questions of race and the role of abortion in American society *per se* that the theory appeared to raise. The analysis found that post-*Roe* fertility rates were three times greater for black women than for white women, and that ‘given that homicide rates of black youths are roughly nine times higher than those of white youths, racial differences in the fertility effects of abortion are likely to translate into greater homicide reductions’ (D&L 2001: 390). This made a substantial impact in the American media. Carl T Rowan, America’s supposedly ‘most visible black journalist’ (Sciolino 2000) called the research (before it was published) ‘shallow and potentially malicious’ with ominous implications in a society that is ‘still deeply racist and class conscious’. In the *New York Post* Rowan wrote,

certainly those of us who were born black and deprived and grew up that way will recoil at this thesis (which one of the researchers generously calls ‘conjecture’) because it invites old notions of racial and class exterminations: If having a law-abiding society is the goal, why not limit the production of children to those groups and classes that we think are not ‘prone’ to commit crimes? (1999).³

The broader argument about abortion and crime was co-opted by both pro and anti-abortion advocates alike (Ponnuru 1999; Brandon 1999), but Levitt has always maintained that he was just describing *the way things are*; he does not *advocate* abortion, or racist ideology; his work is driven only by the purity of numbers. He wrote:

Our paper is a descriptive exercise attempting to explain why crime fell. While our paper highlights one benefit of allowing women to determine whether or not to

² Foote and Goetz, writing for the Federal Reserve Bank of Boston identified the regression analysis used by Donohue and Levitt as flawed and argued that on correction there is no statistical evidence from their data that the foetuses aborted post-*Roe* would have been any more likely to grow up to commit crimes had they not been aborted, than the people who developed from pregnancies carried to term in that era (2005).² Joyce (2004) disputed the abortion/crime connection on five counts, and stressed that the period analysed by Donohue and Levitt, 1985-1997, coincided with a fall in the US crack cocaine epidemic – a significant factor in urban crime that was not factored into their analysis. A similar study undertaken in the UK failed to produce a correlation to support the American theory (Kahane, Paton & Simmons 2006), but there is some support indicated from a Canadian regression analysis (Sen 2002) Levitt responded to Foote and Groesz in the second edition of *Freakonomics*, and to Joyce in Donohue and Levitt (2005). Levitt has been criticised for misrepresenting Cristian Pop-Eleches’s study of abortion in Romania (DiNardo 2006). Levitt and Dubner also claim that studies in Australia and Canada identify a similar link between legalised abortion and crime in those countries (2005 129). The Australian study to which they refer states only that ‘the potential certainly seems to exist’ that legal abortion impacted on homicide rates: there are no Australian national abortion statistics (until 1998 only South Australia kept stats) and no homicide statistics identified by age of perpetrator by which to test the theory (Leigh & Wolfers 2000).

³ In September 2005 Bill Bennet (former education secretary under Reagan) referred to *Freakonomics* on his morning radio program and claimed that aborting ‘every black baby in this country’ would reduce the crime rate (Levitt & Dubner 2005: 252-256).

bring pregnancies to term, we make no attempt to systematically analyse the many possible costs and benefits of legalised abortion. Consequently, we can make no judgement as to whether legalised abortion is good or bad. In no way does our paper endorse abortion as a form of birth control. In no way does our paper suggest that the government should restrict any woman's right to bear children. Although these are the most interesting issues for the media to discuss, our paper actually has very little to say on such topics. I think the crux of the misinterpretation of our study is that critics of our work fail to see the distinction between identifying a relationship between social phenomena and endorsing such a relationship (Levitt 1999).

Race and abortion are both fine fodder for ideological debates and Levitt's thesis, and the reaction to it, was subsumed into public debate over 'political correctness'. Right wing commentator Steven Sailer praised Donohue and Levitt's research as an 'open-minded search for the truth' - a 'courageous, hard-headed inquiry into the big topics that everybody else is afraid to touch' (1999).⁴ Levitt himself said 'I don't think it's our job as economists or scientists to withhold truth because some people are not going to like it' (in Brandon 1999), and described *Freakonomics* as 'very politically incorrect, but not purposefully or ideologically incorrect' (in O'Neill 2005). The book's political incorrectness apparently lies in its willingness to represent what statistics show 'regardless of whether our conclusions might cause offence' (Levitt cited in O'Neill 2005).

The charge of political correctness is a neo-conservative American construction that can be employed to discredit anyone apparently, with whom one might disagree. In a conservative Anglo-American climate where it is 'close to being received opinion' that a 'coalition of feminists, ethnic minorities, socialists and homosexuals have achieved hegemony in the public sphere' (Sparrow 2002: 119), it is a popular tactic to accuse one's ideological opponents of being 'politically correct'. The insinuation is that the nebulous 'left' tries to impose its political vision by silencing dissent (the politically incorrect): 'according to the right, there are some things that people are not allowed to say, or are perhaps too frightened to say', because of this hegemony. Critics of the hegemony and supposed political correctness portray the debate as a conflict between 'moralistic censors on the one side and staunch defenders of freedom of speech on the other' (Sparrow 2002: 125). Ironically though, the claim of political correctness is meant to silence opponents, by discrediting their arguments as *ideological*, rather than factual.

Levitt is adamant that his abortion/crime theory is derived from fact, not ideology (and that this in itself constitutes political incorrectness). In the battle over what can and 'cannot' be said, it is remarkable that for all the publicity and both academic and media scrutiny the theory received, much less attention was paid to the core assumption of the argument - that legalised abortion increased the rate of abortion in America. The 'open-minded search for the truth' on this claim was largely assumed to be a closed shop. As Levitt explained with an odd epistemological application of truth, the claim is true 'virtually by definition'. He wrote:

The theoretical justification for our argument rests on two simple assumptions: 1) *Legalised abortion* leads to fewer 'unwanted' babies being born, and 2) unwanted babies are more likely to suffer abuse and neglect and are therefore at an increased risk for criminal involvement later in life. The first assumption, that *abortion*

⁴ However he criticised the conclusions of the abortion/crime study as wrong.

reduces the number of unwanted children, is true virtually by definition. The second assumption, that unwanted children are at increased risk for criminal involvement, is supported by three decades of academic research. If one accepts these two assumptions, then a direct mechanism by which the legalisation of abortion can reduce crime has been established (Levitt 1999, emphasis added).

In the context of his argument, the leap taken by Levitt from ‘legalised abortion’ to simply ‘abortion’ reducing the number of unwanted babies might be read to suggest that prior to *Roe* there were no abortions in America. Ted Joyce notes that the assumption of a zero abortion ratio before 1973 in Donohue and Levitt’s analysis is ‘decisively contradicted’ by 1972 data from the Centre for Disease control (Joyce 2004: 4). But in general, Joyce is alone in his emphasis: the pre-*Roe* abortion rate has not typically been the focus for criticism of the *Freakonomics* theory. While academics across the globe (USA, UK, Canada, Australia) crunched numbers and regressions concerning legal abortions, crime, teen pregnancies and black parity to investigate the claim that the cohort of aborted fetuses post-*Roe* was a likely candidate for future criminal activity, no similar interrogation was undertaken of the argument that *Roe* increased the number of abortions.⁵ No fuss or connotations of ‘political incorrectness’ were associated with this claim, which the media and most of academia seem to have accepted as simply factual, not ideologically driven. Women’s history and reproductive rights apparently are not as ‘fascinating’ or ‘controversial’ as questions of race, *even* when debating abortion. But if an hegemony is to be revealed by this story, it is that of the myth of post-feminism that would obscure women’s political history and the need for its continued study, and which promotes without question the medical authority that concertedly claimed women’s reproductive praxis as its own throughout the 19th and 20th centuries.

Identifying the underlying motivation for the study

Without the core assumption that *Roe* increased the number of abortions, the *Freakonomics* theory does not stand. The assumption is vital to the argument, but it is subject to very little exploration or explanation by Levitt and his co-authors. The crux of their argument is that the *Roe* decision ‘potentially fits the criteria for explaining a large, abrupt, and continuing decrease in crime. The sheer magnitude of the number of abortions performed satisfies the first criterion that any shock underlying the recent drop in crime must be substantial’ (2001: 380). Donohue and Levitt have been preoccupied with the ‘sheer magnitude’ of pregnancy termination. Despite calling their study ‘purely positive, not a normative analysis’ (2001: 382), it would appear to have been motivated by a normative view of abortion. After interviewing both authors in 1999, the *Chicago Tribune* reported that both said they ‘began to consider the possible link between abortion and crime years ago, largely because they were *astounded* at the high rate of abortions’. Donohue explained to the newspaper that he was ‘just *stunned* at the magnitude of the abortions relative to births. It’s such a huge number that it has to have had some big impact somewhere’ (in Brandon 1999, emphasis added). They should not have been astounded. Nor stunned. The US abortion ratio, which measures abortion relative to live births, was 24 in 1999: approximately one abortion for every four live births, representing around 1.4 million abortions (Brandon 1999). At 2003 the US ratio was 31. As the following table shows, America’s abortion ratio is ‘high’ compared to some Northern European countries, and on par with the UK, Sweden, Australia and New Zealand.

⁵ In their similar study of the UK, Kahane, Paton & Simmons dismiss high estimates for illegal abortion in the UK as ‘usually proposed by organisations campaigning for abortion legalisation’, therefore inflated and inaccurate (2006).

Table 1. Measure of legal abortion in countries where reporting is relatively complete, by woman's country of residence, 2003.			
Country of residence	Ratio	Country of residence	Ratio
Netherlands	14	Slovakia	31
Israel	14	Canada	31
Switzerland	15	USA	31
Germany	18	Singapore	31
Finland	19	New Zealand	33
Scotland	23	Sweden	34
Denmark	24	Australia	34
Norway	25	Slovenia	40
Italy	25	Bulgaria	52
France	26	Hungary	57
Puerto Rico	28	Estonia	82
Czech Republic	29	Russian Federation	104
England & Wales	29	Cuba	109
(Source: Sedgh, Henshaw, Singh, Bankole & Drescher 2007). Ratio = abortions per 100 live births. ⁶			

With a highly sexualised popular culture, puritan leadership and minimal sex education, what was Donohue expecting of American abortion rates?

It is fair to conclude that Donohue and Levitt's assessment of the 'sheer magnitude' of abortion in the USA would suggest that neither is familiar with global or domestic abortion trends and practices over time. Their starting point – that abortion '*has to have had some big impact somewhere*' (Donohue in Brandon 1999) - would also suggest that their supposedly *numeric* analysis was searching for a certain conclusion. Abortion rates may only be judged 'high' if considered relative to a pre-conceived idea of what they *ought* to be, or what they *used* to be, and Donohue and Levitt have clearly assumed that abortion was markedly less common or non-existent before *Roe*. (Indeed they seem to suggest that from 1900 to 1973 the phenomenon of abortion was static, which it was not⁷). *Roe* could only be seen to *have to have had a big impact*, if one is committed to this argument at the outset of investigation, as Donohue suggests he was.

Constructing the story of abortion

In their article Donohue and Levitt describe the legal terrain of abortion in a way that suits their story of the 'big impact' of *Roe*. They note that the first law restricting abortion was adopted in New York in 1828, and 'over the next 60 years, more and more states followed the lead of New York, and by 1900 abortion was illegal throughout the country. The first modest efforts at abortion liberalisation began to emerge between 1967 and 1970 when a number of states began to allow

⁶ The US abortion *rate* (the number of abortion per 1000 women aged 15-44) declined from 21.4 in 1999 to 21 in 2003. In this paper I focus on the *ratio*, because it was the proportion of abortions relative to live births that 'astounded' Donohue and Levitt.

⁷ For example it is generally understood that particularly low fertility during the Great Depression was engineered via abortion (Luker 1984: 41).

abortion under limited circumstances' (2001: 384). This is not the case. It has long been established that the anti-abortion laws of the 1800s were driven in response to the widespread practice of abortion by the American Medical Association to establish 'regular' medical practitioners' professional standing and marginalise their competitors – mainly, midwives and homoeopaths (Reagan 1997: 19-11). The laws consolidated medical control of abortion by allowing physicians to terminate pregnancies that threatened the woman's life. Physicians 'won the criminalisation of abortion and retained to themselves alone the right to induce abortions when they determined it necessary' (Reagan 1997: 13). Surgical abortion performed by doctors was not 'illegal throughout the country'; it was subject to state criminal laws.⁸ In practice this meant that throughout the 20th century many physicians provided abortions (Reagan 1997: 4).⁹ There was no medical consensus on the circumstances that mandated a therapeutic abortion (Packer & Gampell 1959: 418), the (il)legality of which could only have been determined after the event or its attempt, by a judge or jury, in a criminal court. The reluctance of police and juries to pursue and condemn abortionists, except in the case of the death of the woman, suggests the widespread acceptance of the procedure,¹⁰ and from 1900 to 1960 physicians in hospitals used a 'wide range of criteria' to justify abortions, most of them psychiatric (Ziff 1969: 9). Prior to World War II doctors also regularly performed abortions in their private consulting rooms and women's homes (Luker 1984: 45).

The 'McCarthyite' crackdown on hospital abortions in the late 1940s and 1950s - a pro-natalist response to women's increased agency outside the home during the war - led to the establishment of hospital abortion administration boards, and the number of procedures performed in hospitals fell (Reagan 1997: 162-63). But surveys conducted by doctors in the 1950s indicate that physicians continued to employ their 'best medical judgement' to assess the need for terminations, and one poll conducted of Californian obstetricians and gynaecologists in the mid 1960s found that half the surveyed doctors had performed abortions that they believed had violated the criminal law (Ziff 1969: 9). Many more non-medical professionals continued to perform illegal abortions in this period; and perhaps even more women performed abortions on themselves, some of which would have also been illegal under the medicalised regime. By the 1950s and 1960s, abortion mills and rings were institutionalised in urban centres: highly organised (Bates 1954) and profitable, and engaged in acts of corruption with state authorities (Ziff 1969: 9). Donohue and Levitt, however, give very little consideration to the question of illegal abortions in this period, in paving the way for their *Roe* 'big impact' thesis. The abortion data they use to project potential criminal behaviour starts from 1973, post-*Roe*. They claim that there is 'little direct evidence on the number of illegal abortions performed in the 1960s', but that the 'available data suggest that the number of abortions increased dramatically following legalisation' (2001: 384), the 'most convincing evidence' of which comes from Robert Michael's 1999 study that found abortion rates to be 'roughly an order of magnitude higher after legalisation using self-reported data on pregnancy outcome histories' (2001:

⁸ Every state made abortion a crime, but all but Louisiana made exception by statute or case law (Ziff 1969: 4). While most states allowed for terminations only when the woman's life was deemed to be at risk, Alabama, Massachusetts and the District of Columbia recognised legal grounds of protecting the woman's health (Merz, Jackson & Klerman 1995).

⁹ In one study cited by Kaplan, 80 percent of abortions obtained pre-*Roe* were reported to have been performed by doctors (1988: 164), but practitioners often falsely presented themselves as doctors when they were not medically qualified (Ziff 1969: 9).

¹⁰ The rate of prosecution for abortion, the 'third biggest illegal endeavour in the US, surpassed only by gambling and narcotics' from the late 1800s to the 1960s was 'more than merely low', it was 'amazingly low'. Convicted abortionists (usually implicated in a woman's serious illness or death) were dealt with leniently, often with probation (Kaplan 1988: 165-167).

385). The study is based on data collected in the National Health and Social Life Survey (NHSLs) of 1992, funded in part by the Rockefeller Foundation, which surveyed 3447 individuals (men and women) about the sexual practices and sexual histories (ICPSR 1992).

Despite women's well known under-reporting of abortion, even legal abortion (Michael 1999: 9), Michael is confident of NHSLs data which he says 'reveal a dramatic increase in the [abortion] rate around 1973: only one or two percent of conceptions prior to that date ended in abortion, but after that date about 14 percent of all conceptions' were terminated by induced abortion (1999: 14).¹¹ This is an extremely low estimate of both the illegal and legal (post-*Roe*) abortion ratio. For 1992 the Centre for Disease Control gave a *conservative* estimate of 33.4 abortions for every 100 live births: a ratio of 33, or one abortion for every three live births (CDC 2006). The Alan Guttmacher Institute, the research arm of Planned Parenthood that obtains data directly from abortion providers, gave a ratio of 27.5. That is, 27.5 abortions per 100 live births, or one abortion for every 3.6 live births in 1992 (Finer & Henshaw 2006). Keeping in mind that between 15 and 25 percent of all pregnancies ends in spontaneous miscarriage,¹² Michael's figures, which measure abortion relative to conception (not live births) would suggest an abortion ratio up until 1992 of around one third the magnitude of both these institutions' observations. But Michael defends the NHSLs data, by arguing that because fewer NHSLs respondents reported an abortion than reported several other 'socially stigmatised or undesirable sexually-related behaviours' including sexual dysfunction, sexually transmitted infections, forced sex, and so on, this implies that respondents were not reluctant to report 'unpleasant or undesirable sexual events' to the survey. Hence their responses on abortion should be taken at face value, as accurate. The problem with this analysis is that admitting to sexual dysfunction, rape, or an STI, is unlikely to result in one being accused of murder, implicating oneself in having commissioned a criminal offence, having one's doctor shot at, or their surgery bombed, or being reminded of the indignity of criminal or even legal abortion in a country that goes to the federal election polls campaigning and electing governments on this 'life and death' moral issue.¹³ This is the reality of abortion in America, and the ignorance evident in the above analysis of women's difficult political and emotional position to implicate themselves in its *criminality* prior to *Roe* is what ought to be considered astounding.

Abortion like any other commodity

Like Donohue and Levitt, Michael also appears to start from a position of assuming that *Roe* must have increased abortion rates, and citing 'evidence' to support this idea. In this case, one focus is 'cost'. Michael claims that if a pregnancy occurred before *Roe*, the 'cost of having the abortion, in terms of access, risks, and violation of law in many circumstances was much higher [than after *Roe*]. So, of course, before 1973 the woman would have been far less likely to choose to have an abortion' (1999: 20). It is the 'of course' in this sentence that should provoke alarm. It too suggests profound ignorance of how women weigh up costs of bearing unwanted pregnancies. Many women repeatedly risk death and do die around the world, just as many have knowingly risked their lives in

¹¹ The oldest cohort in the NHSLs data set is 59 years of age in 1992, so presumably Michael is suggesting that from around 1948 to 1972, only about two percent of pregnancies were terminated by induced abortion.

¹² Estimates for spontaneous miscarriage vary from 15% of all pregnancies, to between 30% and 80% of all early pregnancies (McLaren & Shelley 2002; Rajan & Oakley 1993).

¹³ In 1993, one year after NHSLs data was collected, the Feminist Majority Foundation *Clinic Violence Survey* found that 50.2% of clinics responding to the survey witnessed 'severe anti-abortion violence' during the first 7 months of 1993 (Kahane 2000: 469), including death threats, stalking, attacks with chemicals, arson, bomb threats, invasions and blockades. In the 1980s 200 American abortion clinics were bombed (Gerber Fried 1998: 214).

the USA to end their pregnancies.¹⁴ Financially *of course*, the cost of an illegal abortion is nothing compared to raising a child.¹⁵ Yet financial cost is also used by Donohue and Levitt to support their argument that *Roe* had to have had an impact on abortion rates. They state that ‘costs of an abortion – financial and otherwise – dropped considerably after legalisation’ (2001) and cite John Kaplan’s 1988 article which states that an ‘illegal abortion’ before 1973 cost \$400, while in 1986 a legal abortion could be obtained in New York for \$80 (1988: 164). Interestingly, Kaplan goes on to state that the number of illegal abortions was ‘surprisingly high’, and endorses Whittemore’s estimate of one million criminal abortions performed per year in the mid 1960s, as ‘perhaps the best assessment’ of the situation (1988: 165). The figure of one million abortions performed per annum in the 1950s and 1960s, which is often quoted and popularly known,¹⁶ makes Donohue’s astonishment at the 1.4 million abortions performed legally in 1999 even more difficult to understand. Kaplan indicates that regardless of price, abortion has been very common in America.

The argument that cheaper procedures increased the desirability and demand for abortion is speculative, and would appear to contradict established opinion that abortion is shown to be more likely to be sought in times of economic hardship.¹⁷ The complementary argument that the decrease in the social and/or health costs of abortion that accompanied legalisation increased this demand, is also unproven. Donohue and Levitt state that ‘from a theoretical perspective, there is no question that the dollar cost, the medical risk, and the taint associated with engaging in illegal conduct fell after legalisation, all of which would have led to higher rates of abortion’ (2004: 33). From a theoretical perspective, this argument misunderstands and misrepresents what drives women to have abortions. Donohue and Levitt’s analysis is premised on a neo-liberal economic characterisation of abortion as a ‘normal good’ (Kahane 2000) that is not ‘fundamentally different from other conventional goods and services’ (Medoff 1998: 354). But in order to access which other single-use commodity do women around the world consistently risk their lives, sell their bodies and hock their possessions? (e.g. see Kaplan 1995, Baehr 1990, Boonstra & Sonfield 2000). Post *Roe*, the various emotional and financial costs of abortion remain high in the USA, and yet still women travel interstate, endure mandated waiting periods, run the gauntlet of harassment at clinics, enter surgeries through back doors, walk through metal detectors, and fear being shot (Gerber Fried: 1998: 210) to end their pregnancies while suffering public and political denouncement of abortion as murder. The prohibitive cost of procedures might impact on the course of action and lead women to delay obtaining an abortion (Boonstra & Sonfield 2000), take greater risks with cheaper

¹⁴ In 2003 the World Health Organisation found that every year nearly 42 million women have an abortion, about 20 million of which are unsafe procedures - often self-induced or carried out by untrained persons under poor hygienic conditions. In 2003 it is estimated that 66500 women died from unsafe abortion (WHO 2007). For 2001-2002 the Centre for Disease Control noted one known death from illegal abortion in the USA (CDC 2006).

¹⁵ In the 1930s when demand was very high, an abortion costs less than fees for childbirth (Reagan 1997: 154).

¹⁶ The figure was generated from a number of sources and surveys, and gained most prominence after being endorsed by the 1955 Planned Parenthood Federation meeting. There is debate over whether the figure, based on samples, represented total induced abortions, or total illegal abortions (Grisez 1970:35-42). Based on interviews with five abortionists about their practices, Whittemore concluded that between 360,000 and 890,000 criminal abortions would be performed in the USA each year, but given that the incidence of self induced abortion was unknown, ‘the oft-quoted figure of one million criminal abortions in the US is a fairly reasonable estimate’ (1970: 217).

¹⁷ For example, during the Great Depression, abortion was observed to be ‘of considerable and growing importance in reducing the birth rate’ (Stix 1937: 673). One gynaecologist observed in 1933 that the depression had intensified the demand for abortion so greatly that physicians responded by specialising in terminations, ‘devoting themselves to that work to the exclusion of any other part of medical activity’ (Rongy in Reagan 1997: 147). See also Stix & Notestein 1934 & 1935.

practitioners, or to self abort (Baehr 1990), but this merely illustrates that women do not decide to terminate their pregnancies primarily in regard to dollar cost. Abortion is not a luxury or a lifestyle commodity that women purchase when the market is good and pregnancy terminations are going cheap. A woman who is determined to end her pregnancy generally will seek a way to do so, even if this means poisoning herself, or asking her boyfriend to kick her in the stomach and push her down the stairs, as one desperate 14 year-old girl did almost 25 years after *Roe* supposedly made abortion a free for all (Gerber Fried 1998: 208).¹⁸

Removing women from the equation

The focus on the commercial costs of procuring a criminal abortion prior to 1973 overlooks the importance and frequency of self-abortion, which women have practised routinely throughout history, and continue to practise when they cannot access or afford surgical or medical terminations (WHO 2007). David Steele, the parliamentary sponsor of the English Abortion Act 1967 noted that self-abortion constituted ‘far and away’ the greatest proportion of abortion undertaken in Britain at the time he introduced the legislation (Gleeson 2007). But the popular, and mainstream academic, image of self-abortion is not one of prevalent success and autonomy; the procedure is routinely portrayed as marginal and as having left a ‘horrible trail of morbidity and mortality’ prior to the widespread legalisation of surgical abortion throughout the West in the 1960s and 1970s (Solinger 1998: 4). Barbara Baird notes that the profile of the self-aborting woman has been drawn disproportionately from criminal and medical records. Consequently, it promotes an image of desperation that emphasises women’s ‘mishaps and failures’ and disallows the stories of ‘competence, confidence, defiance, pride or ease’ (1998: 331) that characterised many autonomous acts of reproductive control that were the product of technical knowledge ‘passed on from mother to daughter’ throughout history, including the 20th century (Baird 1998: 331).¹⁹ It also obscures the radical politics of women who fought repressive abortion policies in the USA when Women’s Liberation and the National Organisation for Women conducted menstrual extraction classes, and when even earlier, women like the Army of Three’s Patricia Maginnis, Lana Clarke Phelan and Rowena Gurner published *The Abortion Handbook for Responsible Women* (1969) and taught manual self-abortion techniques to groups of women as acts of resistance to both the law and medicine (Baehr 1990).

The abortion self-induced successfully at home was the ‘most invisible’ to observers at the time and remains so to historians now (Reagan 1997: 42). Baird argues that this lack of visibility has allowed the image of the *working class* self-aborting woman in particular to be mobilised to ‘serve particular historical forces’ (1998: 331). Her relentless portrayal as a victim, and her erasure from

¹⁸ Donohue and Levitt’s own data would seem to acquit the impact of financial cost anyhow. They note that the official abortion rate more than doubled from 1973 to 1980 (DL 2004), which includes the period following the introduction of the Hyde Amendment, restricting government funds for abortion in 1977. Between 1973 and 1977 the federal government paid for approximately one third of abortions through Medicaid. In 1978 fewer than 2500 abortions were covered by federal funds (down 99 percent from 1977), and by 1992 Medicaid paid for only 267 abortions (Gerber Fried 1998). But Donohue and Levitt’s data shows the number of abortions continuing to increase from 1.4 million in 1978 to plateau at 1.6 million in 1981 (2001: 384). Based on this data, the withdrawal of federal funding would not appear to have decreased demand. Studies on the elasticity of abortion demand and Medicaid reach conflicting conclusions. Medoff (1988) found Medicaid funding to be statistically significant to abortion demand; Garbacz’s analysis (1990) found that it was not.

¹⁹ In the USA Reagan notes that in the first half of the 20th century ‘women shared with one another very specific knowledge about how to induce abortions.... “Older ladies” shared the traditional techniques known to them; younger women shared more modern and scientific information’ (1997: 26).

popular history such as in *Freakonomics* where it is contended that the expense of illegal abortion meant that ‘fewer poorer women had abortions’ (Levitt and Dubner 2005: 125) suits a middle class respectability that ‘abhors the practices she has performed on herself, and whose problem is solved by law reform and thus medicalisation’ (Baird 1998: 331). The myth of the necessary and conclusive medicalisation of abortion throughout the 19th and 20th centuries has been promoted extensively by the medical establishment (Reagan 1997, Sheldon 1997), and those who write history from its hegemonic standpoint. Speculative theories such as those promoted in *Freakonomics* that popularly disseminate this myth without interrogation, question, or even mention of its construct, do so at great risk of obliterating the nuances of women’s reproductive history.

One difficulty with comprehending Donohue and Levitt’s thesis involves identifying the historical period with which they are comparing the ‘sheer magnitude’ of post-*Roe* abortion rates (2001: 380). Robert Michael’s NHLS data to which they refer includes only the post WWII period, and gives no indication of when the various self-reported abortions were meant to have taken place. Ascertaining the magnitude of abortion pre-*Roe* is difficult, especially given the particular ‘invisibility’ of much self-abortion, but the following are examples of indications of prevalence over time, all of which suggest that abortion was a fact of women’s lives before 1973, placing this ‘magnitude’ in historical context:

- In 1904 Dr CS Bacon estimated in the journal of the American Medical Association that ‘six to ten thousand abortions are induced in Chicago every year’ (Reagan 1997: 23).
- Marie Kopp’s study of 10,000 female clients of the New York based Birth Control Research Bureau in the late 1920s found that 20 percent of all pregnancies had been intentionally aborted (Reagan 1997: 23).
- The Milbank Memorial Fund study that interviewed approximately 1000 female clients of the Birth Control Research Bureau in 1931 and 1932 found that 23 percent of all pregnancies were terminated: 22 percent by illegal abortions. The number of terminations increased with duration of marriage and number of children. Similar proportions of Jewish, Protestant and Catholic women had had an abortion (Stix 1935: 347-365)
- Based on existing surveys, in 1936 St Louis obstetrician Dr Frederick Taussig estimated there were 681,600 abortions performed annually in the United States, which had a population of 120,000,000 at the time (Grisez 1970: 35-36).
- In 1953 the third Kinsey Report – based on sample of around 6000 women – found that of 4248 reported conceptions, 1067 had ended in induced abortion: a ratio of 25 (Grisez 1970: 36).
- In 1939 Cook County Hospital in Illinois treated over 1000 women for abortion related complications; by 1959 the number had tripled; and by 1962 the hospital reported caring annually for nearly 5000 women with abortion complications, the majority of which were believed by physicians to be the result of criminal or self induced procedures (Reagan 1997: 209).
- Baptist Minister Harris Wilson, who ran an abortion referral service in Chicago, testified to the Illinois State Legislature in 1971 that he personally knew 13 doctors performing abortions in that state, and estimated that between 50,000 and 60,000 illegal abortions were being performed each year in Illinois (in Kaplan 1995: 205).

- From 1971 to 1973 the feminist underground collective *Jane* performed between 75 to 100 low cost abortions per week for poor women in Chicago, and regularly had 300 women per week calling to try to book an abortion. By 1973 the collective estimated it had performed more than 11,000 abortions (Kaplan 1995). Similar groups operated referring women to abortionists in other states, e.g. the Society for Humane Abortion in California.

Conclusions – the relationship between Roe and abortion

Freakonomics is presented as a radical treatise ‘devoted to upending conventional wisdoms rather than reinforcing them’, and ‘stripping a layer or two from the surface of modern life and seeing what is happening underneath’ (Levitt and Dubner 2005: 235 & 10). But its presentation of the ‘facts’ of abortion could hardly be more mainstream, conventional or above ground. In this view, *Roe v Wade* and the doctors it empowered gave women abortions; abortion is like any other commodity with demand driven by market forces, and it proved irresistible once sanctioned by law. Donohue and Levitt interpret the steady increase in abortion recorded in the USA from 1973 until rates plateaued in 1980 as further indication of the ‘big impact’ of *Roe* in encouraging women’s decisions to terminate their pregnancies. They state, ‘if illegal abortions were already being performed in equivalent numbers, one would not expect a seven-year lag in reaching a steady state’ (2001:385). It is not unreasonable to expect some period of lag during which women and doctors became nationally aware of their rights, and doctors overcame the stigma (of criminality and within the medical profession in general) to choose to pursue abortion as a legitimate speciality post 1973. ‘Significant numbers’ of illegal abortions continued after legalisation in the UK (Kahane, Paton & Simmons 2006). Levitt and Dubner also use the example of five states that liberalised the law prior to *Roe* where they claim ‘a woman had been able to obtain a legal abortion for at least two years before *Roe v Wade*. And indeed, those early legalising states saw crime begin to fall earlier’ than the rest (2005: 128), thus suggesting the liberalisation increased abortion rates, which eventually impacted on crime. But women had always been able to obtain abortions (legally and illegally) in these and all states, and the ‘liberalising laws’ hardly made abortion an open slather. In California for example, which liberalised in 1967, women had to have two expensive psychiatric consultations to obtain an abortion on the indication of ‘mental illness’ to the extent that she was dangerous to herself or in ‘need of supervision or restraint’ (Overstreet 1970: 138). In 1969 Colorado Governor Richard Lamm who introduced liberalising legislation lamented that he had ‘replaced one cruel outmoded law with another’ (In Kaplan 1995: 23-24).

This characterisation of legalisation as flicking the switch on abortion in the USA portrays law as the ‘sovereign power’ that grants or withholds rights (Smart 1989: 12) and as something ‘outside the social body’ that ‘transcends and acts on’ (Smart 1989: 12), rather than operating within a reflexive relationship with this body. This portrayal privileges law as dictating behaviours (and morality) to the detriment of analysis of the multitude of factors that combined in the 1970s concerning women’s position in society and their expectations for life that, it could be argued, law came to reflect rather than *permit*, especially in the case of abortion. If there was a steady increase in the number of abortions procured throughout the 1970s, the social, economic and political position of women might be a place to look for answers, along with the law.

The 20th century medicalisation of women's reproduction (Sheldon 1997) consolidated a process that was commenced in the 19th century. Central to that process was a medical authority that decreed and recast abortion a medical speciality (Gleeson 2007) that might be allowed in times of *emergency* (maternal risk, rape, foetal abnormality). Now neo-liberal economic theory would appear to be attempting to cast abortion in terms of preferences and choice assessed *visavis* the market. Each approach misrepresents abortion as it is experienced by women, and the role of law and the market in women's abortion choices. Both the laws restricting abortion in the 1800s and the laws liberalising access to abortion in the 1960s and 1970s were a response to its *prevalence* (Reagan 1997; Baehr 1990): a ubiquity that defied traditional notions of 'cost' disincentives in terms of its high social and physical risk. But medical and legal hegemony is so pervasive that its promotion by the 'rogues' who search for the simple truth goes largely without comment, and sparks no debate over ideologically driven research, political correctness or concealing the 'truth that people might not like'.²⁰ This truth concerns the prevalence of abortion throughout history as a means of birth control and family spacing, which would appear to indicate its widespread acceptance in private moralities as a fact of life. (But Steven Levitt appears to shudder at the very idea of abortion as birth control when he portrays this longstanding contraceptive strategy as a modern commodity, both the by-product of *Roe* and a 'crude and drastic sort of insurance policy' (Levitt & Dunbar 2005: 127)). This truth directly concerns women's determination to control their destiny in defiance of legal and medical authority, and the *responsive* role both medicine and the law played to women's reproductive praxis.

The radical history of US abortion politics is at risk of being lost to orthodox tales of liberal and medical benevolence that culminated in the 'gift' of *Roe*. *Roe* did not 'just happen' to women. It was the product of a concerted effort to *repeal* abortion laws in the New York state legislature from 1965. The repeal movement was radical and feminist, and reflected women's day-to-day practice of making autonomous decisions about their reproduction. As the liberal juggernaut of legal reform gained ground in general in the 1970s the radical agenda was subsumed into a *reform* movement that found its zenith in the Supreme Court decision of 1973 (Baehr 1990). *Roe* did not 'make' abortion an option for women. Women's widespread practices of birth control made *Roe* an option for the liberal court. The persistence and urgency of women to control their reproduction means that abortion is not like any other commodity available in the market. The market analysis based on costs and benefits simply cannot accommodate the recent acts of Tammy Skinner and Kawana Ashely both who shot themselves in the stomach rather than continue their pregnancies (Forster 2006; Lewin 1997) and the 20 million women who risk unsafe abortion every year worldwide (WHO 2007), each of whom contributes to and lives the reality that the legal status of abortion has no bearing on its frequency, only on the safety and dignity of the procedure (Sedgh, Henshaw, Singh, Bankole & Drescher 2007). Commencing research about abortion from the ideological position that abortion is a regular commercial commodity and that legalisation 'had to have had' a big impact, does a profound disservice to the multitude of women who have knowingly risked their lives to procure abortions, and the many men and women who have risked persecution, imprisonment and physical danger to provide them.

²⁰ In Australia abortion statistics from the 1930s were the focus of a 'political correctness' furore that resulted in federally funded abortion research being disendorsed. See Ripper & Ryan 1998.

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