

NOTES

“WOMBS FOR RENT” OR BODILY AUTONOMY? FEMINIST AMBIVALENCE TOWARDS ASSISTED REPRODUCTION IN THE 21ST CENTURY

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ABSTRACT

Assisted reproduction has become increasingly widespread in the United States, with 73,602 children born using assisted reproductive technologies (ART) in 2020 alone. Yet, as of late, ART has not fostered much mainstream feminist action or extensive contemporary discourse within feminist legal theory. This raises the questions that motivate this Note: What has led to feminist ambivalence toward assisted reproduction? Is assisted reproduction a feminist issue?

This Note argues that the past decade is marked by a feminist ambivalence toward assisted reproduction. First, this Note suggests that this ambivalence is apparent in the lack of specifically feminist legal theory on assisted reproduction. This Note provides an overview of writing by Dorothy Roberts, Douglas NeJaime, and Courtney Joslin, who it argues have written the most influential contemporary scholarship on assisted reproduction. Next, this Note theorizes that assisted reproduction has never become a mainstream feminist issue because it has (1) historically divided feminists; (2) pitted feminists against LGBTQ+ activists; and (3) because feminist attention has not proven to be necessary for, and in fact may attract controversy towards, the passage of permissive-ART legislation. Finally, bolstered by a synthesis of ideas from Roberts, NeJaime, and Joslin, this Note argues that ART is a feminist issue, and should be considered as such because assisted reproduction is (1) deeply intertwined with reproductive justice; (2) requires a feminist perspective to ensure ART legislation does not interfere with individuals' right to bodily autonomy; and (3) because ART has the feminist potential to reframe reproductive labor and family structures.

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INTRODUCTION

Soon after former President Trump appointed Amy Coney Barrett to the Supreme Court, news broke that her signature had appeared on an advertisement for St. Joseph County Right to Life, an anti-abortion organization in South Bend, Indiana.¹ Justice Barrett's outward support of this extreme anti-choice group dominated headlines, and feminists hit the streets armed with signs sporting Justice Ruth Bader Ginsburg's likeness to protest the nomination—and show support for *Roe v. Wade*. What caused less of a feminist outcry in the wake of Justice Barrett's nomination is that not only had she openly supported an organization that called *Roe v. Wade* “barbaric,” but that St. Joseph County Right to Life also believes many aspects of the in-vitro fertilization (IVF) process should be criminalized.² Justice Barrett's apparent condemnation of IVF—or at the very least outward support for an organization that condemns IVF—did not go entirely unnoticed in 2020; in fact, Senator Tammy Duckworth cited it as a reason not to vote for Justice Barrett's confirmation, but the issue did not garner significant

1. Stephanie Kirchaessner, *Amy Coney Barrett signed newspaper ad that called Roe v Wade 'barbaric,'* GUARDIAN (Oct. 1, 2020), <https://perma.cc/8JSL-THKZ>.

2. *Id.*

feminist attention.³ This Note does not argue that Justice Barrett’s potential views on IVF should have attracted feminist attention equaling that for Justice Barrett’s views on abortion; however, it suggests that this lack of attention to the issue is emblematic of feminist ambivalence towards assisted reproduction in the twenty-first century.

Assisted reproduction includes practices ranging from IVF to surrogacy⁴ and has become increasingly widespread in the United States (U.S.)—especially since the birth of the first child using IVF in 1981.⁵ The American Society for Reproductive Medicine (ASRM) reports that 73,602 children were born using assisted reproductive technologies (ART) in 2020,⁶ and the Centers for Disease Control and Prevention found that ART enables at least 2% of childbirths in the U.S.⁷ In 2018, Pew Research Center reported that 33% of adults report that they or someone they know used ART for family-building⁸—and the number rose to 56% among adults with graduate degrees.⁹ Clearly, ART impacts a significant number of families and individuals, and with increasing rates of use, it will likely impact an even higher percentage of Americans in the future.¹⁰ Yet, as of late, support for ART has not fostered much mainstream feminist action or extensive contemporary discourse within feminist legal theory. This raises the questions that motivate this Note: *What has led to feminist ambivalence toward assisted reproduction? Is assisted reproduction a feminist issue?*¹¹

This Note argues that the past decade is marked by a feminist ambivalence toward assisted reproduction. First, in Section I, this Note suggests that this ambivalence is apparent in the lack of specifically *feminist* legal theory on assisted reproduction. This Note provides an overview of writing by Dorothy Roberts, Douglas NeJaime, and Courtney Joslin, who it suggests have written the most influential contemporary scholarship on assisted reproduction. Next, in Section II,

3. Jacey Fortin, *Citing Fears About I.V.F., Tammy Duckworth Urges Senate Not to Confirm Judge Barrett*, N.Y. TIMES (Oct. 2, 2020), <https://perma.cc/XE3T-HJEU>.

4. *What to know about assisted reproductive technology*, MED. NEWS TODAY (Oct. 18, 2021), <https://perma.cc/8BQP-P3RF>.

5. SUSAN L. CROCKIN & HOWARD W. JONES, LEGAL CONCEPTIONS: THE EVOLVING LAW AND POLICY OF ASSISTED REPRODUCTIVE TECHNOLOGIES, 14 (2010).

6. *More Than 73 Thousand Babies Born from Assisted Reproductive Technology Cycles Done in 2020*, AM. SOC’Y FOR REPROD. MED. (Mar. 29, 2022), <https://perma.cc/9RG2-WHQH>.

7. *State-Specific Assisted Reproductive Technology Surveillance*, CTRS. FOR DISEASE CONTROL, & PREVENTION, <https://perma.cc/N2DH-PQ42> (last visited Dec. 14, 2022).

8. Gretchen Livingston, *A Third of U.S. Adults Say They Have Used Fertility Treatments or Know Someone Who Has*, PEW RSCH. CTR. (July 17, 2018), <https://perma.cc/H49U-GRJP>.

9. *Id.*

10. This Note uses ungendered language to discuss people giving birth, except when speaking of specific individuals. It is inaccurate, and should be understood as against the feminist project, to suggest that all who gestate are women. The academic Sophie Lewis explains this well stating, “[t]here can be no utopian thought on reproduction that does not involve recoupling gestation from the gender binary.” SOPHIE LEWIS, FULL SURROGACY NOW: FEMINISM AGAINST FAMILY 22 (2019).

11. While this Note will address assisted reproduction as a feminist issue for multiple reasons, as a baseline it considers gender equality and bodily autonomy to be central to feminist issues.

this Note argues that assisted reproduction has never become a mainstream feminist issue because it has (1) historically divided feminists; (2) pitted feminists against LGBTQ+ activists; and (3) because feminist attention has not proven to be necessary for, and in fact may attract controversy towards, the passage of permissive-ART legislation. Finally in Section III, bolstered by a synthesis of ideas from Roberts, NeJaime, and Joslin, this Note argues that ART *is* a feminist issue, and should be considered as such because assisted reproduction is (1) deeply intertwined with reproductive justice; (2) requires a feminist perspective to ensure ART legislation does not interfere with individuals' right to bodily autonomy; and 3) because ART has the feminist potential to reframe reproductive labor and family structures.

I. CONTEMPORARY LEGAL SCHOLARSHIP ON ASSISTED REPRODUCTION

There is a frustrating lack of new and innovative feminist legal theory scholarship on assisted reproduction. This was not always the case. The 1990s and early 2000s were marked with intense feminist debate surrounding the ethics of assisted reproduction, and in particular, surrogacy. However, this Note argues that the scholarship summarized below is representative of the most important contemporary scholarship on ART, and notes that not all of it is specifically feminist legal theory. Today, the most important discussions of ART seem to come from LGBTQ+ and family law scholars. This Section summarizes the work of three notable legal scholars: (1) Dorothy Roberts, a renowned scholar who is fully entrenched within the feminist legal theory canon; (2) Douglas NeJaime, perhaps the most prolific contemporary scholar of assisted reproduction and parentage; and (3) Courtney Joslin, an expert and scholar on LGBTQ+ family law.

A. DOROTHY ROBERTS

Professor Dorothy Roberts's paper, "Why Baby Markets Aren't Free," published in 2017, provides an overview of the ways in which race and racism intersect with ART. The title comes from Roberts's thesis that (1) "baby markets" are not free because they operate within systems of oppression; (2) "baby markets" are not free because they devalue and marginalize certain parents and children; and (3) "baby markets" are not free because they are susceptible to coercive practices (even though Roberts acknowledges that for certain predominately white and privileged individuals, ART can symbolize liberation from biological constraints).¹²

Roberts illustrates occurrences of racism within the ART industry with an overview of *Cramblett v. Midwest Sperm Bank*, a notorious case in which a white same-sex couple sued a sperm bank for wrongful birth.¹³ The parents brought the lawsuit because the sperm bank gave them sperm from a Black donor, instead of

12. See generally Dorothy E. Roberts, *Why Baby Markets Aren't Free*, 7 U.C. IRVINE L. REV. 611 (2017).

13. See generally *Cramblett v. Midwest Sperm Bank, LLC*, 230 F. Supp. 3d 865 (N.D. Ill. 2017).

the white donor they had requested, leading to the birth of their mixed-race daughter.¹⁴ The alleged harm was the apparent “pain and suffering” that the mother and child supposedly experienced due to the sperm bank’s failure to help the parents create the white child they desired.¹⁵ Roberts explains that the desire and premium paid for gametes from white donors within the “baby market” reinforces pre-existing racial hierarchies in the U.S.

Roberts argues that ART innovation underscores the different values placed on white procreation versus procreation by people of color in the U.S., writing that “[a]t a time when wealthy white women have access to technologies designed to produce genetically screened babies in the number and with the features they desire, a host of laws and policies discourage poor women of color from having babies at all.”¹⁶ Roberts’s arguments are an important reminder that ART does not occur in a vacuum, but rather is an industry that reflects racist dynamics within the U.S.

Writing before international surrogacy bans in countries such as India and Cambodia, Roberts provides a rather scathing view of international surrogacy and describes the practice as “reproductive tourism”—a means by which white Americans can have their children gestated by women of color in the Global South.¹⁷ While Roberts’s critique is unmatched in its thoroughness, she is not alone in critiquing ART in this way. Professor Patricia Williams’s “Babies, Bodies and Buyers” makes similar points about surrogacy and the racist exploitation of women of color that she sees as endemic to this form of assisted reproduction.¹⁸ In Section III.A, this Note will address the racial realities of surrogacy in the U.S. today.

B. DOUGLAS NEJAIME

While more of a family law scholar and theorist of gender and sexuality than feminism, Professor Douglas NeJaime is quite possibly the most prolific scholar of ART from the past decade. NeJaime focuses on the intersection of ART and parentage law.

Of all NeJaime’s arguments about ART, it is likely his discussion of ART’s impact on, and reframing of, motherhood that is most easily deemed feminist legal theory. In his 2017 publication, “The Nature of Parenthood,” NeJaime writes that “IVF challenged the relationship between the biological facts of maternity—gestation and genetics—and the social role of motherhood” and explains that courts and lawmakers responded with “commitments to gender and sexual-orientation

14. M. Annie Houghton-Larsen, *I Paid for a White Baby: How Assisted Reproductive Technologies Reproduce White Supremacy*, 11 GEO. J.L. & MOD. CRIT. RACE PERSP. 161–62 (2019).

15. *Id.*

16. Roberts, *supra* note 12, at 616.

17. *Id.* at 618.

18. See generally Patricia J. Williams, *Babies, Bodies, and Buyers*, 33 COLUM. J. GENDER & L. 16–19 (2016).

equality.”¹⁹ NeJaime shows that as the use of ART has become more widespread, “The legal status of motherhood followed not simply from the biological fact of maternity but from the social performance of parenthood.”²⁰ Essentially, ART has reshaped motherhood from a status tied to biology to one that can flow from action and intent.

Perhaps solidifying the importance of NeJaime’s writing within the feminist legal theory canon, in 2019 NeJaime authored the final chapter of *Reproductive Rights and Justice Stories*, an anthology edited by Professors Melissa Murray, Reva Siegel, and Katherine Shaw.²¹ NeJaime’s contribution focused on the case *Brooke S.B. v. Elizabeth A.C.C.*, the New York high court case that determined who could be considered a legal parent in the state—mostly as it relates to same-sex couples using ART.²² In this piece, NeJaime writes about the importance of functional and intended parentage for parents using ART—with intent-based parentage being parentage stemming from one’s intent to raise a child, and functional parentage stemming from one’s parenting actions after a child’s birth.²³

NeJaime’s contributions to scholarship on ART are crucial because he considers state-level policy and state court decisions with great detail, and outlines how they impact individuals using ART. Rather than focusing on the ethics of assisted reproduction, NeJaime is predominantly interested in the legal realities faced by parents using assisted reproduction.

C. COURTNEY JOSLIN

Professor Courtney Joslin has been at the forefront of scholarship on ART for years, but in 2021 she authored “(Not) Just Surrogacy,” a paper that confronts head on the lack of innovative scholarship on assisted reproduction. She writes that scholarship that continually focuses on the question of whether or not to ban surrogacy “inhibits theoretical engagement” and fails to consider the critical importance of the different implications imbued in specific surrogacy laws.²⁴

Joslin explains that over the past decade “a number of states enacted permissive surrogacy schemes with little to no public opposition, minimal engagement by women’s rights and reproductive rights organizations, and, importantly, little engagement with the details of the proposals.”²⁵ Instead, Joslin explains, if any interest group became involved in writing or advocating for permissive surrogacy legislation, it tended to be a group advocating for LGBTQ+ rights.²⁶ Joslin finds this general lack of engagement alarming, and notes that it leads to many

19. Douglas NeJaime, *The Nature of Parenthood*, 126 YALE L.J. 2260, 2298–99 (2017).

20. *Id.* at 2299.

21. MELISSA MURRAY, KATHERINE SHAW, & REVA SIEGAL, *REPRODUCTIVE RIGHTS AND JUSTICE STORIES* 245 (2019).

22. *Id.*

23. *Id.*

24. Courtney G. Joslin, *(Not) Just Surrogacy*, 109 CAL. L. REV. 401, 401 (2021).

25. *Id.* at 426.

26. *Id.*

surrogacy laws that “implicate the scope and meaning of fundamental liberty interests.”²⁷ For example, Joslin explains that in some states the lack of engagement with lawmaking on surrogacy has led to laws that require “the person acting as a surrogate to submit to all recommended medical procedures.”²⁸

Joslin’s scholarship on ART has enhanced discourse on the topic over the past decade. However, “(Not) Just Surrogacy” feels more vital than ever due to its thesis that the lack of meaningful scholarship on surrogacy legislation allows state lawmakers to shape the law of assisted reproduction without input from feminists.

II. WHAT LED TO CONTEMPORARY FEMINIST AMBIVALENCE TOWARDS ART

Fighting for, and subsequently defending, the right to abortion has been central to the feminist movement since long before Justice Barrett’s nomination and subsequent role on the Court. Feminists have stood divided over issues from pornography to the legalization of sex work, but have remained united in support of reproductive rights, and more recently reproductive justice.²⁹ Infertility care and the right to access the technology necessary for some individuals to commence a pregnancy has not attracted so much unified feminist attention. In fact, feminist interest in ART is arguably negligible when debate over the topic is not at its most heated. Most of the feminist interest in assisted reproduction has focused on surrogacy, with little attention paid to other forms of ART, or access to fertility treatment. Attempting to find answers to *why* there is such widespread ambivalence towards assisted reproduction within mainstream feminism, this Section argues that assisted reproduction has never become a mainstream feminist issue because it has (1) historically divided feminists; (2) pitted feminists against LGBTQ+ activists; and (3) because feminist attention has not proven to be necessary for, and in fact may impede, the passage of permissive ART legislation.³⁰

A. ART AS DIVIDING FEMINISTS

Nearly all feminist writing and action on ART has focused on the debate over surrogacy. Within this debate there are seemingly two camps: the feminists who see surrogacy as commodifying women’s bodies³¹ and the feminists who see the

27. *Id.* at 404.

28. *Id.*

29. See generally LORETTA J. ROSS & RICKIE SOLINGER, *REPRODUCTIVE JUSTICE: AN INTRODUCTION* (2017).

30. This Note defines “mainstream feminism” as encompassing the most common feminist beliefs—rather than the most radical—and attracts the most discourse in the news and on social media. This Note recognizes that significantly less-popular feminisms do focus their efforts on addressing the issue of assisted reproduction, such as, the radical feminist movements behind the Stop Surrogacy Now or the Feminist International Network of Resistance to Reproductive and Genetic Engineering campaigns, but does not see these movements as exemplary of most feminist thought in the U.S. See LEWIS, *supra* note 10, at 36, 38.

31. See generally Alexandra Holstrom-Smith, *Free Market Feminism: Re-Reconsidering Surrogacy*, 24 PENN. J.L. & SOC. CHANGE 443 (2021).

right to act as a surrogate as an embodiment of the feminist mantra “my body, my choice.”³² This Note argues that this divide over surrogacy has greatly contributed to the lack of feminist discourse and action around ART. Without a unified message, it seems that most mainstream feminists have essentially abandoned the issue.

Undoubtedly, feminists were at no point more engaged in the debate over surrogacy than during the *Baby M* case. In the late 1980s, a New Jersey couple, William and Elizabeth Stern, hired Mary Beth Whitehead to act as their surrogate—Whitehead gave birth to a child created using her eggs and Mr. Stern’s sperm.³³ However, after giving birth Whitehead decided she wanted to raise the child herself, even though she had previously agreed that the Sterns would be the child’s parents.³⁴ The *Baby M* court battle ensued. After years of litigation, a New Jersey Supreme Court judge found surrogacy contracts to be invalid, thus restoring Whitehead’s legal parentage, but granted custody to the Sterns based on family law’s “best interests of the child” standard.³⁵

Feminist reactions to *Baby M* were divided, which this Note argues marked the conception of mainstream feminist ambivalence towards assisted reproduction. On one side there were feminists who saw Whitehead as a victim whose body was commodified by surrogacy, and on the other side were feminists who were concerned with the anti-surrogacy feminists’ suggestion that Whitehead should keep the child because “motherhood is sacred.”³⁶

Feminist and writer Katha Pollitt’s essay, “The Strange Case of Baby M,” written soon after the *Baby M* decision, encapsulates much of the most extreme (mainstream) feminist views against surrogacy. Pollitt sees surrogacy, which she refers to as “contract motherhood” and womb rental, as “the limited-use purchase of women’s bodies by men—reproductive prostitution.”³⁷ This was a common argument made by feminists against ART in general. Some feminists believed that practices such as surrogacy and IVF “stood only to grant additional procreative power to men and should be illegal.”³⁸ For example, in response to feminists who defended surrogacy, Pollitt had this to say: “[r]ather than empower infertile women through an act of sisterly generosity, maternity contracts make one woman a baby machine and the other irrelevant.”³⁹ This valorization of motherhood alarmed many feminists who were in the middle of campaigns to equalize parenting responsibilities between heterosexual spouses so that women could

32. Kelli Auerbach, *Opinion: Surrogacy Is About Bodily Autonomy. Feminists Should Embrace It.*, BUZZFEED NEWS (July 17, 2019), <https://perma.cc/6Q7C-YPUN>.

33. See generally *In re Baby M*, 537 A.2d 1227 (1988).

34. Joyce Peterson, *Baby M: American Feminists Respond to a Controversial Case*, 28 J. WOMEN’S HIST. 103, 105–06 (2016).

35. See generally *In re Baby M*, 537 A.2d.

36. Peterson, *supra* note 34, at 111, 114.

37. Katha Pollitt, *The Strange Case of Baby M*, NATION, Jan. 2, 1988.

38. Peterson, *supra* note 34, at 110.

39. Pollitt, *supra* note 37.

become valued members of the workforce.⁴⁰ Finally, many feminists were motivated by the age-old argument against surrogacy: that the practice would lead to the exploitation of economically disadvantaged women by wealthy couples.⁴¹ Well-known feminists including Gloria Steinem and Betty Friedan took the anti-surrogacy view during the *Baby M* trial and supported Whitehead, even signing onto amicus curiae briefs with conservative groups including the Catholic League for Religious and Civil Rights and Phyllis Schlafly’s Eagle Forum.⁴² Media reporting at the time suggested that this anti-surrogacy stance was the main feminist response to the issue, even though feminists stood divided.⁴³

It is important to illuminate the racialized tones to the feminist outrage over *Baby M*. Four years after the canonical case, Anna Johnson, a Black woman who had acted as a surrogate in California, wanted to keep the resulting child, just like Whitehead (Whitehead is white).⁴⁴ However, even anti-surrogacy feminists failed to rally around Johnson, and instead, she was labeled a “welfare queen,” and referred to as a “home” for the resulting child, as well as a “wet-nurse” by the judge who did not grant her custody.⁴⁵ While surrogacy sparked great feminist debate when a white woman’s rights were at issue, feminists were tellingly silent when a Black woman’s litigation brought up the same questions about assisted reproduction.

In opposition to the feminists who held the views outlined by Pollitt, were feminists such as Shulamith Firestone, who saw assisted reproduction as a way to further women’s equality to men and believed surrogacy could “free humanity from the tyranny of its biology.”⁴⁶ Much of the feminist support for surrogacy came from a belief that assisted reproduction was an extension of the reproductive freedom recently established in *Roe v. Wade*—these feminists feared that if women could be denied the right to act as surrogates, they could also be denied the right to abortion.⁴⁷ Many feminists were uncomfortable with their counterparts who took a stance against surrogacy; some ended up siding with religious groups that were fervently anti-abortion, and others did not agree with what they saw as the anti-surrogacy feminists’ essentialist valorization of motherhood.⁴⁸ Importantly, during this time the National Organization for Women (NOW), which held a lot of sway over feminist activism, chose not to side with either group on the *Baby M* case, perhaps helping to pave the way for mainstream feminism’s ambivalence towards surrogacy.⁴⁹

40. Peterson, *supra* note 34, at 114.

41. Iver Peterson, *Baby M Trial Splits Ranks of Feminists*, N.Y. TIMES (Feb. 24, 1987), <https://perma.cc/N43M-FQUR>.

42. Peterson, *supra* note 34, at 118.

43. *Id.* at 104.

44. LEWIS, *supra* note 10, at 30.

45. *Id.*

46. Peterson, *supra* note 34, at 107.

47. *Id.* at 114.

48. *Id.*

49. *Id.* at 113.

This Note argues that feminism has never recovered from the *Baby M* divide, and that the drastically different stances taken by feminists in the 1980s have kept feminists from unifying in support of assisted reproduction. This divide would again become apparent over thirty years later when New York first attempted to legalize surrogacy.⁵⁰

B. SURROGACY AS PITTING FEMINISTS AGAINST THE LGBTQ+ MOVEMENT

In recent years, mainstream feminism and the LGBTQ+ rights movement have stood united in their support of progressive causes. However, feminist opposition to the legalization of surrogacy in New York recently created an uncomfortable and public fissure between some prominent feminists and LGBTQ+ advocates.⁵¹ In the wake of the *Baby M* controversy in neighboring New Jersey, New York passed legislation making compensated surrogacy illegal.⁵² Compensated surrogacy remained illegal in New York, even after the majority of states legalized the practice.⁵³ However, in the mid 2010s, New York lawmakers began an effort to legalize compensated gestational surrogacy in the state, which eventually led to the disagreement between feminists and LGBTQ+ activists.⁵⁴ In 2019, progressives in the New York State Assembly broke out into heated debate over the legalization of surrogacy: one camp supported legalization as an LGBTQ+ rights issue, and the other opposed the legislation, arguing that surrogacy leads to the exploitation of women.⁵⁵ Thirty years after *Baby M*, the anti-surrogacy feminist reaction felt eerily unchanged and some of the main players even remained the same: Gloria Steinem led the anti-surrogacy charge with a public letter to then-Governor Andrew Cuomo.⁵⁶ NOW still wavered, but stated that while the organization supported altruistic surrogacy for LGBTQ+ couples,⁵⁷ it could not support legislation legalizing compensated surrogacy.⁵⁸

The recent outspoken anti-surrogacy advocacy by prominent feminists in New York, and the media coverage it garnered, further distanced feminism from

50. Vivian Wang, *Surrogate Pregnancy Battle Pits Progressives Against Feminists*, N.Y. TIMES (June 12, 2019), <https://perma.cc/78YK-NPKD>.

51. *Id.*

52. Joslin, *supra* note 24, at 412.

53. “Most of these permissive [surrogacy] laws—fourteen of the twenty-two—were enacted in the last ten years. And in 2019 alone, at least six more states considered bills to permit surrogacy.” Joslin, *supra* note 24, at 409.

54. Christina Coran, *Surrogacy is Complicated. Just Ask New York*, N.Y. TIMES (Apr. 18, 2020), <https://perma.cc/YE2M-SMYA>.

55. Wang, *supra* note 50.

56. *Id.*

57. In an altruistic surrogacy agreement, the person acting as a surrogate does not receive monetary compensation, but rather acts as a surrogate out of altruism. While many feminists argue this form of surrogacy is less problematic since it does not turn women into “wombs for rent,” others point out that these agreements are far riper for coercion since they are often between family members or close friends. Joslin, *supra* note 24, at 454.

58. Press Release, Nat’l Org. for Women, *Commercialized Surrogacy Exploits Women* (June 14, 2019), <https://perma.cc/77W6-JW43>.

support of assisted reproduction in the public’s eye.⁵⁹ The debate did not paint feminists in a very positive, or progressive, light. Of course, many feminists did support the new legislation, and many groups were especially appalled by Gloria Steinem’s letter, which was filled with inaccuracies about surrogacy.⁶⁰ However, the damage was done: some noteworthy feminists demonstrated a willingness to stand in opposition to the LGBTQ+ rights movement,⁶¹ which is an ugly and unpopular stance for progressives in the 21st century.

With feminists again failing to step up in favor of assisted reproduction, the LGBTQ+ movement championed surrogacy in New York in 2019.⁶² While the majority of Americans identify as feminists,⁶³ over 20% of Gen Z adults identify as LGBTQ+—an impressive increase from the roughly 10% of millennials and 4% of Gen X who identified as LGBTQ+.⁶⁴ A recent study from Family Equality reports that 40% of LGBTQ+ individuals have considered using ART for family expansion⁶⁵—considering how many young American adults are LGBTQ+, that is a significant portion of the American population considering ART. Since there are likely considerable numbers of LGBTQ+ individuals who identify as feminists, it seems contradictory for the feminist movement to *not* champion assisted reproduction.

Individuals and families primarily turn to assisted reproduction due to infertility. However, infertility can come in two forms: medical and social.⁶⁶ While medical infertility can occur for a variety of reasons, social infertility stems from an individual’s inability to reproduce without assistance due to life circumstances, such as being in a same-sex relationship.⁶⁷ There is a burgeoning movement of LGBTQ+ activists advocating for wider recognition of social infertility in hopes that it will force insurance companies to increase access for those seeking assisted reproduction for social, instead of medical, reasons.⁶⁸ Considering that many feminists identify as LGBTQ+, feminist opposition to assisted reproduction can be seen as alienating for LGBTQ+ feminists who may need to build

59. See Wang, *supra* note 50.

60. Letter from Resolve on Parent-Child Security Act, Resolve (June 13, 2019), <https://perma.cc/6KGS-CTKA>.

61. David Kaufman, *The Fight for Fertility Equality*, N.Y. TIMES (July 22, 2020), <https://perma.cc/L6TH-N753>.

62. This Note recognizes that not all members of the LGBTQ+ community support assisted reproduction, in fact, some make arguments against the practice seeing it as anti-queer in its focus on biological family connections. See generally Amanda Roth, (*Queer*) Family Values and “Reciprocal IVF”: What Difference Does Sexual Identity Make?, 27 KENNEDY INST. ETHICS J. 443, 461–62 (2017).

63. Amanda Barroso, 61% of U.S. Women Say ‘Feminist’ Describes Them Well; Many See Feminism as Empowering, Polarizing, PEW RSCH. CTR. (July 7, 2020), <https://perma.cc/5EWP-27BW>.

64. Erin Doherty, *The Number of LGBTQ-Identifying Adults is Soaring*, AXIOS (Feb. 19, 2022), <https://perma.cc/E7YY-L32Q>.

65. Julie Compton, *More LGBTQ Millennials Plan to Have Kids Regardless of Income, Survey Finds*, NBC NEWS (Dec. 27, 2019), <https://perma.cc/FNH4-GLK4>.

66. Kaufman, *supra* note 61.

67. *Id.*

68. *Id.*

their families using ART. Of course, before the LGBTQ+ community embraced ART, it existed to help individuals experiencing medical infertility—another group feminists alienate with their disavowal of assisted reproduction.

The willingness of some prominent feminists to take a stance against surrogacy, even as ART has become a mainstay cause of the LGBTQ+ movement, in no way means that all feminists are against ART. However, along with past feminist sentiment toward surrogacy, recent feminist actions have further tarnished feminists' reputation on ART. Progressives wishing to champion ART undoubtedly see the LGBTQ+ movement as a more welcoming community in which to do so. This has led to a lack of feminist perspective in much of the lawmaking around ART, which, as this Note will explain in the following section, has at times proven beneficial for permissive ART legislation—but has led to an ART legal scheme lacking in feminist values.

C. FEMINISTS AND ART LEGISLATION

It may come as a surprise, but this Note suggests that feminist ambivalence towards assisted reproduction may have *enabled* the widespread passage of permissive-ART legislation over the past decade. Considering that both feminist ambivalence and permissive ART legislation have to do with reproduction, it is not difficult to make a connection between assisted reproduction and abortion. Within the political Right, feminism is often conflated with pro-abortion advocacy; therefore, it's easy to imagine that if feminists come out in support of permissive ART legislation, they may draw the attention of the Right. While the Right is not unified in opposition to ART, either, certain conservatives see practices such as IVF as unethical because it can include the destruction of embryos.⁶⁹ Now that *Dobbs v. Jackson Women's Health* overturned *Roe v. Wade*, debates regarding abortion rights at the state level are perhaps more heated than ever.⁷⁰

Yet, just as the past decade saw a massive uptick in laws restricting abortion, it also saw fourteen states pass legislation permitting surrogacy, as well as laws permissive to other forms of assisted reproduction.⁷¹ Joslin notes that feminists were markedly absent from the political discourse that led to these new ART laws, writing,

[S]upporters of people who wanted to become parents through surrogacy grew in number at the same time that organized opposition and organizations with a particular focus on the rights and interests of people acting as surrogates withdrew. During this period, a number of states enacted permissive surrogacy schemes with little to no public opposition, little engagement by women's rights and reproductive

69. Peterson, *supra* note 34, at 114.

70. Josh Gerstein & Alexander Ward, *Supreme Court Has Voted to Overturn Abortion Rights, Draft Opinion Shows*, POLITICO (May 2, 2022), <https://perma.cc/Y8B3-FVGQ>; see generally *Dobbs v. Jackson Women's Health Org.*, 597 U.S. ____ (2022).

71. Joslin, *supra* note 24, at 409.

rights organizations, and, importantly, little engagement with the details of the proposals.⁷²

Therefore, this Note posits that the feminist silence on ART legislation may have enabled its passage. Had feminists brought attention to ART, the Right may have noticed and begun to view assisted reproduction as a feminist issue connected to abortion. Instead, while the Right worked diligently, and in many cases successfully, to pass legislation restricting reproductive rights,⁷³ permissive ART laws passed without much notice.⁷⁴ For once, feminist ambivalence towards assisted reproduction may have proven beneficial, if not crucial, to increasing access to ART in numerous states across the U.S.

While the recent uptick in permissive ART legislation is exciting for those in favor, it is concerning that so much legislation on assisted reproduction now lacks feminist input. Section III will suggest that this lack of feminist engagement could have led to surrogacy laws that, while permissive, also inhibit reproductive autonomy, providing further proof that by ignoring assisted reproduction, feminists fail to protect those involved.

III. CONTEMPORARY FEMINIST ADVOCACY, POLICY, AND POTENTIAL FOR ASSISTED REPRODUCTION

Feminist ambivalence towards assisted reproduction has contributed to a hodgepodge of ART legislation in the U.S., much of which does not reflect feminist interests. An analysis of reproductive justice, along with Roberts’s, Joslin’s, and NeJaime’s scholarship, exemplifies that assisted reproduction *is* a feminist issue that warrants feminist action. Section III will proceed with (1) a discussion of reproductive justice, followed by (2) suggestions for feminist surrogacy legislation, and finally (3) an analysis of ART’s potential to re-envision reproductive labor and reframe family structures.

A. REPRODUCTIVE JUSTICE AND ASSISTED REPRODUCTION

Reproductive justice is widely understood as the “human right to maintain personal bodily autonomy, have children, not have children, and parent the children we have in safe and sustainable communities.”⁷⁵ Over the past decade, feminist discourse transitioned to conceptualizing reproduction within a justice framework, rather than just in terms of rights.⁷⁶ It is not difficult to see how access to

72. *Id.* at 426.

73. Deepa Shivaram, *The Movement Against Abortion Rights is Nearing its Apex. But it Began Way Before Roe*, NPR (May 4, 2022, 5:00 AM), <https://perma.cc/6E7R-GALF>.

74. Joslin, *supra* note 24, at 409.

75. *What is Reproductive Justice?*, SISTER SONG, <https://perma.cc/J89R-H3MT> (last visited Dec. 14, 2022).

76. *See generally* ROSS & SOLINGER, *supra* note 29; *see also*, Keeanga-Yamahatta Taylor, *How Black Feminists Defined Abortion Rights*, NEW YORKER (Feb. 22, 2022), <https://perma.cc/8KZK-6RWL>.

ART fits within the reproductive justice framework. For many, ART is the only way to have a biological child, due to everything from social to medical infertility.⁷⁷ This reality has led to the birth of the fertility equality movement, which has an undoubtable overlap with the reproductive justice movement. While not yet widespread or cohesive, the *New York Times* refers to the movement for fertility equality as a burgeoning movement based on the idea that “one’s ability to build a family should not be determined by wealth, sexuality, gender or biology.”⁷⁸ This mission statement is not dissimilar to that of the reproductive justice movement. Further, unity between the two movements is necessary so that access to ART becomes a tenet of reproductive justice, and feminist involvement in assisted reproduction could facilitate this unification.

The reproductive justice movement was founded by Black women—with goals ranging from centering the ways in which race determines who has access to services, including abortion, to who gets to raise children without state intervention—and race is a key component of contemporary discussions of reproductive rights and justice.⁷⁹ Race is thus an obvious component of fertility equality. There is a considerable racial divide in who uses ART in the U.S. According to the American Society for Reproductive Medicine, from 1999 to 2000, white women made up 85.5% of ART cycles, whereas Black women only made up 4.6%.⁸⁰ Evidently, these statistics do not align with the racial make-up of the U.S.⁸¹ One explanation for this is the cost of ART, since people of color in the U.S. experience disproportionate financial precarity, and ART can be extremely expensive.⁸² In addition, Black women rely on Medicaid—instead of private health insurance—at double the rate of white women,⁸³ and fertility treatments are covered by few Medicaid programs throughout the States.⁸⁴ Women serving in the military have IVF coverage, and there is far less of a racial divide in rates of IVF use between white and Black servicemembers, which indicates that economic access does impact IVF use.⁸⁵ Ensuring that race does not determine who can access ART should be a feminist goal, and a tenet of reproductive justice.

77. Kaufman, *supra* note 61.

78. *Id.*

79. SISTER SONG, *supra* note 75.

80. Ada C. Dieke, Yujia Zhang, Dmitry M. Kissin, Wanda D. Barfield, & Sheree L. Boulet, *Disparities in Assisted Reproductive Technology Utilization by Race and Ethnicity, United States, 2014: A Commentary*, 26 J. WOMEN’S HEALTH (LARCHMT) 606, 606 (2017).

81. *Quick Facts*, U.S. CENSUS BUREAU (July 1, 2019), <https://perma.cc/S4YK-9R4Q>.

82. *Building LGBTQ+ Families: The Price of Parenthood*, FAM. EQUALITY COUNCIL (2019), <https://perma.cc/BV4M-C5H8>.

83. Dieke, Zhang, Kissin, Barfield, & Boulet, *supra* note 80, at 606.

84. Jenna Walls, Kathy Gifford, Usha Ranji, Alina Salganicoff, & Ivette Gomez, *Medicaid Coverage of Family Planning Benefits: Results from a State Survey*, KAISER FAM. FOUND. (2016), <https://perma.cc/U53P-S62E>.

85. Dieke, Zhang, Kissin, Barfield, & Boulet, *supra* note 80, at 606.

Another explanation for the racial divide in ART use is that the U.S. medical system has subjected women of color, and Black women in particular, to reproductive violence since the nation’s conception.⁸⁶ Centuries of reproductive violence have led to some women of color understandably distrusting the medical system, and ART can be a highly medicalized form of family expansion.⁸⁷ A feminist approach to assisted reproduction would need to advocate for access to ART for women of color in a culturally sensitive environment.

It would be negligent to ignore that many scholars, including Roberts, whose argument is outlined in Section I, have made reproductive justice arguments *against* assisted reproduction.⁸⁸ However, over the past decade, many of the fears that Roberts, and others, have outlined have not come to fruition. For example, in the U.S., over 90% of surrogates are white, over 80% are married, over a quarter have an annual household income of over \$100,000, the vast majority have private health insurance, and only 7% receive public assistance.⁸⁹ Therefore, as far as compensated surrogacy in the U.S. is concerned, the practice has not ended up exploiting vulnerable women of color for the benefit of wealthy white families as many were concerned it would. In fact, many now argue that altruistic (uncompensated) surrogacy leads to more exploitation than compensated surrogacy.⁹⁰

B. WHAT WOULD FEMINIST ART LEGISLATION LOOK LIKE?

Although surrogacy in the U.S. has not led to the exploitation that some feminists feared, this does not mean that protections for people acting as surrogates are not important. So, what actions should feminists take to ensure people acting as surrogates are protected? This Section outlines preexisting models including (1) Article Eight of the 2017 Uniform Parentage Act (UPA), and (2) the New York State Surrogates’ Bill of Rights, before arguing that (3) feminist intervention is needed to ensure that conservative lawmakers do not pass assisted reproduction legislation that impedes pregnant peoples’ bodily autonomy and confers fetal personhood.

1. Article Eight of the 2017 Uniform Parentage Act

The 2017 UPA is a piece of model legislation governing parentage that is intentionally inclusive of diverse family structures.⁹¹ So far, the legislation has

86. ROSS & SOLINGER, *supra* note 29, at 14, 54–57.

87. *Id.*

88. Roberts, *supra* note 12, at 616.

89. Kate Swanson, Nina K. Ayala, Randall B. Barnes, Nidhi Desai, Marcy Miller, & Lynn M. Yee, *Understanding Gestational Surrogacy in the United States: A Primer for Obstetricians and Gynecologists*, AM. J. OBSTETRICS & GYNECOLOGY (Apr. 1, 2020), <https://perma.cc/UZX4-4VBP>.

90. Joslin, *supra* note 24, at 454. International surrogacy is outside the breadth of this Note, but with further restrictions being placed on international surrogacy, the practice is becoming far less exploitative.

91. See generally UNIF. PARENTAGE ACT (UNIF. LAW COMM’N 2017).

passed in six states, with multiple others considering enactment this year.⁹² The 2017 UPA, for which Joslin served as the primary drafter, includes five protective requirements individuals must meet to become a surrogate:

To execute an agreement to act as a gestational or genetic surrogate, a woman must: (1) have attained 21 years of age; (2) previously have given birth to at least one child; (3) complete a medical evaluation related to the surrogacy arrangement by a licensed medical doctor; (4) complete a mental-health consultation by a licensed mental health professional; and (5) have independent legal representation of her choice throughout the surrogacy arrangement regarding the terms of the surrogacy agreement and the potential legal consequences of the agreement.⁹³

These requirements, especially the right to legal counsel, certainly align with feminist goals: they ensure that the person acting as a surrogate is aware of their rights and knowledgeable about the surrogacy process. However, legislation like New York's Surrogates' Bill of Rights, which is outlined below, further codifies positive rights for people acting as surrogates and should be considered to build upon the 2017 UPA. Of course, ART goes far beyond surrogacy, and feminists should support the 2017 UPA for its protections for intended parents, LGBTQ+ and straight, too.

2. The New York Model: Surrogates' Bill of Rights

Lawmakers in New York finally managed to legalize compensated surrogacy and assuage some feminists' concerns by including the Gestational Surrogates' Bill of Rights in the permissive legislation.⁹⁴ The bill includes numerous protections for people acting as surrogates, including a positive "right to make all health and welfare decisions regarding themselves and their pregnancy."⁹⁵ This stipulation means that the person acting as a surrogate gets to decide whether or not to have a cesarean delivery, whether or not they want to have multiple embryos transferred, and whether or not they want to continue or end the pregnancy.⁹⁶ These protections are undeniably connected to the age-old feminist goal of ensuring bodily autonomy. Instead of fighting against permissive surrogacy laws—as some feminists did in New York—feminism should advocate for legislation like New York's Gestational Surrogates' Bill of Rights to ensure that people acting as surrogates maintain their bodily autonomy throughout the surrogacy process.

92. *Legislative Bill Tracking*, UNIF. L. COMM'N, <https://perma.cc/H5T4-BCH4> (last visited Dec. 14, 2022).

93. UNIF. PARENTAGE ACT § 802 (UNIF. L. COMM'N 2017).

94. *Gestational Surrogates' Bill of Rights*, N.Y. STATE DEPT. OF HEALTH, <https://perma.cc/EKH8-763U> (last visited Dec. 14, 2022).

95. *Id.*

96. *Id.*

3. Bodily Autonomy and Fetal Personhood

An obvious reason why assisted reproduction warrants feminist backing is that ART legislation can be written in a way that curtails pregnant peoples' bodily autonomy and reproductive rights. Joslin's most recent writing on assisted reproduction stresses the importance of analyzing the substance of surrogacy legislation, instead of focusing on whether a state permits or bans the practice. In a recent fifty-state survey, Joslin found that in many jurisdictions, legislation regulating assisted reproduction “permit[s] wide-ranging control and surveillance of people acting as surrogates.”⁹⁷ This reproductive control can include forcing people acting as surrogates to undergo unwanted cesarean sections, a violation of bodily autonomy that would likely cause feminist outrage if it were more well-known. Of course, case law and legislation regulating abortion already impacts those partaking in assisted reproduction. In the *Dobbs* dissent, the three liberal justices raised concerns over the future of IVF in post-*Roe* America.⁹⁸ However, it is likely that gestational surrogates will feel the greatest burden from *Dobbs*. What if a gestational surrogate wants to end a pregnancy due to health reasons, or perhaps a deterioration of the relationship between the intended parents? If the surrogate resides in a state where abortion is illegal, she could be forced to carry the pregnancy to term against her own—and perhaps the intended parents'—wishes.⁹⁹

Legislation regulating assisted reproduction can also curtail reproductive rights through its “status and treatment of the fetus.”¹⁰⁰ Joslin explains that in some jurisdictions intended parents can obtain pre-birth orders declaring their legal parentage status before a child is even born.¹⁰¹ While it is undoubtedly reassuring for intended parents to know that the child will be legally theirs from birth, if written poorly, such laws can suggest that “the fetus is an entity to which rights attach.”¹⁰² Such an implication can have ramifications for abortion laws: if fetuses are imbued with personhood status, lawmakers can use this as a rationale to further curtail abortion rights.¹⁰³ Feminists must become involved in passing strategic ART legislation to ensure that rights to abortion are not curtailed under the guise of permitting assisted reproduction.

This Note previously established that assisted reproduction and abortion rights are often seen as interconnected, and ART legislation that (mistakenly or not) confers personhood status to a fetus makes this abundantly clear. However, it is not only the obvious fact that both abortion and ART are related to reproduction

97. Joslin, *supra* note 24, at 407.

98. *Dobbs v. Jackson Women's Health*, 597 U.S. ___ (2022).

99. See Susan Crockin, Katie Gottschalk, & Francesca Nardi, *The Supreme Court Overturns Right to Abortion, Raising Questions & Uncertainties for ART Patients and Providers*, AM. SOC'Y FOR REPROD. MED. (July 21, 2022), <https://perma.cc/877S-HPPL>.

100. Joslin, *supra* note 24, at 408.

101. *Id.* at 440–41.

102. *Id.* at 408.

103. *Id.*

that informs their connection. Professor Jody Madeira explains that there is a similarity in the way that women partaking in abortion and ART are culturally perceived: “In fulfilling their desires to conceive or terminate pregnancy, women in both ART and abortion are supposedly seduced into services with overtones of excess, selfishness, profligacy, and even hedonism As services of excess, ART and abortion allegedly trivialize life and degrade personhood.”¹⁰⁴ Even though individuals of all genders partake in abortion and ART, Madeira is pointing out that many people perceive both practices as manifestations of feminine excess. Therefore, just as feminist involvement in the regulation of abortion is crucial, it is also important that feminists ensure that the laws regulating ART are not imbued with these gendered perceptions either. As was discussed above, both practices should be considered necessary medical care key to reproductive justice.¹⁰⁵

C. ASSISTED REPRODUCTION’S POTENTIAL TO TRANSFORM REPRODUCTIVE LABOR AND FAMILY STRUCTURES

Feminists have long attempted to reframe concepts of family and motherhood—at times to ensure that care workers, predominantly women acting as mothers, are not undervalued.¹⁰⁶ Assisted reproduction allows for a decoupling of gestation and motherhood by enabling individuals partaking in practices ranging from surrogacy to egg donation to be treated as paid laborers—and *not* as mothers. Theorist Sophie Lewis explains that “[d]reams of artificial wombs may have been largely abandoned in the 1960s, but ever since the perfection of IVF techniques enabled a body to gestate entirely foreign material, living humans have become the sexless ‘technology’ component of the euphemism Assisted Reproductive Technology.”¹⁰⁷ If individuals, some of whom are women, are valued as laborers, for their reproductive work, this could imbue all types of traditionally “feminine” care work with more value—a feminist goal for decades. However, according to NeJaime, enabling this increased valuation of reproductive labor, and care work in general, would require a legal structure that would “not only protect the intended mother’s social contributions, but also the surrogate’s decision to carry and give birth to a child she does not wish to parent.”¹⁰⁸ Essentially, it should be a feminist goal to advocate for legislation that recognizes reproductive labor as *labor*, and does not conflate it with motherhood. Without such recognition, NeJaime sees little possibility for change.¹⁰⁹

104. Jody Lyneé Madeira, *Conceiving of Products and the Products of Conception: Reflections on Commodification, Consumption, ART, and Abortion*, 43 J.L. MED. & ETHICS 293, 301 (2015).

105. See *infra* Section III.A.

106. See Robin L. West, *The Difference in Women’s Hedonic Lives: A Phenomenological Critique of Feminist Legal Theory*, 15 WIS. WOMEN’S L.J. 149, 150 (2000); see generally MARTHA FINEMAN, *THE NEUTERED MOTHER, THE SEXUAL FAMILY AND OTHER TWENTIETH CENTURY TRAGEDIES* (1995).

107. LEWIS, *supra* note 10, at 24.

108. NeJaime, *supra* note 19, at 2359.

109. *Id.*

Furthermore, assisted reproduction is a feminist issue that can help further feminist goals because it allows for the reframing of family structures. Lewis argues that assisted reproduction enables a move away from “dyadic modes of doing family” to “queerer, more comradely modes.”¹¹⁰ However, without legal recognition for the non-traditional family structures Lewis is referring to—for example, families in which “parents seek to have gamete donors or surrogates maintain a relationship to the child,” or where more than two individuals are in a relationship and intend to raise a child together—such families face legal precarity.¹¹¹ Therefore, feminist action is needed to bring about the law NeJaime envisions, which “adapt[s] to many kinds of families forming today, recognizing the continued attraction of biological parenthood while accommodating the growing number of nonbiological bonds that are possible.”¹¹² Assisted reproduction allows for a feminist reframing of family structures, but feminist action is needed to ensure legal recognition and protection for these new types of families.

CONCLUSION: TOWARDS A FEMINIST THEORY OF ASSISTED REPRODUCTION

This Note worked to expose a feminist ambivalence towards assisted reproduction in the U.S. However, it has also demonstrated that assisted reproduction *is* a feminist issue deserving of recognition, scholarship, and activism. Lewis eloquently writes about debates over surrogacy (writing that can easily be extended to include other forms of ART): “When everybody is announcing calamity and dystopia, it is very important to notice that, with surrogacy as with so much else, *plus ça change, plus c’est la même chose*.”¹¹³ But equally, and far more excitingly, there is this: the more things stay the same with surrogacy, the more people force them to change.¹¹⁴ Now is the time for feminists to abandon ambivalence and force that change. A feminist theory of assisted reproduction would center reproductive justice and fight for legal protections for *all* parties partaking in ART.

The current political landscape necessitates feminist concern and action for permissive ART legislation. Unfortunately for feminism, Justice Barrett is on the Court—presumably for multiple decades to come—and as expected, she joined the majority opinion to overturn *Roe v. Wade*.¹¹⁵ During the *Dobbs* oral arguments, Justice Barrett said that she considers vaccines “an infringement on bodily autonomy,” but stated that, “it doesn’t seem to me to follow that pregnancy and

110. LEWIS, *supra* note 10, at 22.

111. NeJaime, *supra* note 19, at 2361. Obviously, this alternative family structure is in conflict with the above suggestion that people acting as gamete donors and surrogates be treated as laborers. However, the ideas are not mutually exclusive and a reimagining of families using ART could include both conceptualizations.

112. *Id.* at 2361–62.

113. The more things change, the more they stay the same.

114. LEWIS, *supra* note 10, at 17.

115. See generally *Dobbs v. Jackson Women’s Health Org.*, 597 U.S. ___ (2022).

then parenthood are all part of the same burden [on bodily autonomy].”¹¹⁶ Justice Barrett’s—and all of the conservative Supreme Court justices’—refusal to understand the interconnection between bodily autonomy and reproduction illustrates the need for feminist action to ensure ART legislation imbues individuals with the freedom to partake in ART, while simultaneously protecting the bodily autonomy of the individuals involved. For decades feminists have agreed on the gravity of reproductive rights and justice. Now, it is time for feminists to abandon ambivalence and recognize the importance and potential of assisted reproduction, too.

116. Transcript of Oral Argument at 57, *Dobbs v. Jackson Women’s Health Org.*, 141 S.Ct. 2619 (2021) (No. 19-1392).