

## BOOK REVIEW

### HOW TO GET FREE IN A TIME OF RETRENCHMENT

QUEERING REPRODUCTIVE JUSTICE: AN INVITATION. By Candace Bond-Theriault. Stanford, C.A.: Stanford University Press. 2024. Pp. xiv, 260. \$110.00.

LIBERATING ABORTION: CLAIMING OUR HISTORY, SHARING OUR STORIES, AND BUILDING THE REPRODUCTIVE FUTURE WE DESERVE. By Renee Bracey Sherman & Regina Mahone. New York, N.Y.: HarperCollins Publishers. 2024. Pp. vi, 401. \$29.99.

*Reviewed by Kimberly Mutcherson\**

*Queering Reproductive Justice* and *Liberating Abortion* are not books of theory. I want to make this clear from the start because the work of “queering” a topic can sometimes be followed by paragraphs filled with words like deontological, epistemic, and discursive (not that there’s anything wrong with those words). The work that the author of *Queering Reproductive Justice*, Professor Candice Bond-Theriault, urges her readers to do begins with accepting and honoring certain realities, including how marriage equality has been a boon to many queer folks but has also rightly been critiqued as a capitulation to heteronormativity (a word that fits quite nicely into many a theoretical discussion but also does work in the real world).<sup>1</sup> She writes of the reality of queer people as abortion seekers and birth parents. And she writes of the reality of sex work as a legitimate form of labor and of sex workers as people who deserve to be protected like all workers. She is well aware that a country that broadly embraces all of these realities is far different from the one that we presently inhabit.

In a similar vein, *Liberating Abortion* by Renee Bracey Sherman and Regina Mahone challenges its readers to imagine a different world in

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\* Professor of Law and Co-Dean Emeritus, Rutgers Law School in Camden. Many thanks to the editors of the *Harvard Law Review* for a wonderful editing experience and so much flexibility in constructing this review, including allowing me to review two books! Thanks also to my research assistant, Zoé Bertrand, for making sure all of my citations were completed.

<sup>1</sup> The way in which queer theory has found its way into the mainstream zeitgeist is reflected in a *Billboard* review of the Chappell Roan song “Good Luck, Babe!,” described as “a mainstream moment for a concept mostly known to queer theorists and Tumblr addicts up to this point. Compulsory heterosexuality, coined in 1980 by Adrienne Rich, is a term describing the societal imposition of heterosexuality on women.” Hannah Jocelyn, *Not Just “Luck”: Why Queer Pop Star Chappell Roan Broke Through to the Hot 100, And Why It Matters*, BILLBOARD (Apr. 18, 2024), <https://www.billboard.com/music/chart-beat/chappell-roan-good-luck-babe-queer-pop-music-1235659813> [<https://perma.cc/9YV9-KY7M>] (citation omitted) (citing ADRIENNE RICH, *Compulsory Heterosexuality and Lesbian Existence* (1980), reprinted in ADRIENNE RICH, BLOOD, BREAD, AND POETRY: SELECTED PROSE 1979–1985, at 23, 26 (1986)).

which abortion is not just a medical procedure, but a form of healthcare that people require to be able to lead self-actualized lives. The authors envision a world without abortion stigma where people can freely choose when they wish to become parents and can find support, financially and otherwise, to pursue their life plans. It is a world in which abortion is understood and protected as a natural phenomenon with deep historical roots around the world, including in the United States, not an aberration. A world in which abortion is a normal part of the lives of people with the capacity for pregnancy. And a world in which money to support families is more important than money to wage war.

Both books are impactful in their own ways and have a particularly heightened resonance in a country where our politics are deeply divisive and seemingly irreconcilable, especially around the issues discussed in these books — abortion, contraception, marriage equality, racial equity, trans rights, prisoners' rights, and more. But the message of each book resonates no matter who sits in Congress, in the White House, or on the Supreme Court, because an America that lives the promises of its founding documents remains elusive for many of us. The question that these books ask and seek to answer is how we get to that America from here.

This review considers the intersections and diversions in these two books, one applying the reproductive justice (RJ) frame to LGBTQIA+ movements and the other applying the same frame to abortion movements. Each book raises issues about what it means to queer a topic, the role of law in liberation movements, the tug of assimilation versus liberation, and the power and necessity of storytelling — all of which will be considered in turn. More specifically, this review makes three primary arguments: First, *Queering Reproductive Justice* grounds itself in the advocacy and activism of mainstream movements while failing to rigorously confront some of the scathing critiques of the nonprofit industrial complex whose work and place in the LGBTQIA+ movement the author centers. This is a missed opportunity to highlight the lessons of RJ, a movement steeped in a bold critique of mainstream reproductive rights organizing and the ways in which that organizing has left so many behind. By contrast, while *Liberating Abortion* makes explicit the authors' frustration with mainstream advocacy organizations, it does not offer a blueprint for liberation that eschews any role for nonprofits. Second, the two books take substantially different approaches to narrative, in part because *Liberating Abortion* is less interested in mainstream activism and finds its foundation in grassroots activism. Consequently, the emotional punch, the groundedness, and the visceral nature of the calls to action in each book land quite differently, with *Liberating Abortion* seemingly more steeped in the roots of RJ. Finally, as the more law-focused book, *Queering Reproductive Justice* contains elements of analysis that miss the mark or that provide incomplete explanations for

legal phenomena that are even more crucial to understand and get right as we experience Trump 2.0 and Project 2025.

Despite their differences, these works are compelling bookends that inform, and, if the authors are lucky, move people to act on the principles of RJ in their work and lives.

## I. ON SUBJECTIVITY

RJ has become embedded in the academy over the three decades of its existence.<sup>2</sup> Even so, it remains, at its core, a framework for action and movement building. Its connection to academia, though, has been a rich one, and it shares DNA with theoretical frameworks from legal academia with which many are familiar, especially critical race theory (CRT). In both instances, there is a demand to mine the lessons of history and to understand the ways in which U.S. law and social structures have never been neutral.<sup>3</sup> Both RJ and CRT recognize the enduring legacy of white supremacy in U.S. law,<sup>4</sup> and “the ways that the history of white supremacy operating in a capitalist system penetrates and misshapes the present.”<sup>5</sup> Within RJ and CRT, there is also a call to “look to the bottom” as described by Professor Mari Matsuda in her seminal law review article, *Looking to the Bottom: Critical Legal Studies and Reparations*.<sup>6</sup> In that article, Matsuda criticizes the critical legal studies movement for its failure to embrace the voices of and lessons offered by those who have lived experiences of oppression in the United States.<sup>7</sup> She writes: “When notions of right and wrong, justice and injustice, are examined not from an abstract position but from the position of groups who have suffered through history, moral relativism recedes and identifiable normative priorities emerge.”<sup>8</sup> Matsuda encourages critical legal scholars in search of “a new epistemological source” to embrace “the actual experience, history, culture, and intellectual tradition of people of color in America. Looking to the bottom for ideas

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<sup>2</sup> See Loretta J. Ross & Rickie Solinger, *Reproductive Justice: An Introduction*, in REPRODUCTIVE JUSTICE: A NEW VISION FOR THE TWENTY-FIRST CENTURY 63, 68–71 (Rickie Solinger et al. eds., 2017).

<sup>3</sup> See *id.* at 11; RICHARD DELGADO & JEAN STEFANCIC, CRITICAL RACE THEORY: AN INTRODUCTION 8–11 (3rd ed. 2017).

<sup>4</sup> See DELGADO & STEFANCIC, *supra* note 3, at 3, 25.

<sup>5</sup> Ross & Solinger, *supra* note 2, at 11; see also DELGADO & STEFANCIC, *supra* note 3, at 21.

<sup>6</sup> Mari J. Matsuda, *Looking to the Bottom: Critical Legal Studies and Reparations*, 22 HARV. C.R.-C.L. L. REV. 323, 324, 344 (1987); see also, e.g., DELGADO & STEFANCIC, *supra* note 3, at 57 (listing Matsuda’s article as one of their “suggested readings”); Julie A. Mertus, *Beyond the Solitary Self: Voice, Community, and Reproductive Freedom*, 3 COLUM. J. GENDER & L. 247, 268 (1992) (referencing Matsuda’s work in a discussion of “focus[ing] on relationship with communities” as “amplify[ing] the voices of the disempowered”).

<sup>7</sup> Matsuda, *supra* note 6, at 323–24.

<sup>8</sup> *Id.* at 325.

about law will tap a valuable source previously overlooked by legal philosophers.”<sup>9</sup>

As a movement that extended the work of other Black feminists who sought liberation, RJ uplifts and centers the intersectional experiences of those who often fall between the cracks of movements. As articulated by the Black feminists of the Combahee River Collective: “It was our experience and disillusionment within these [Black] liberation movements, as well as experience on the periphery of the white male left, that led to the need to develop a politics that was antiracist, unlike those of white women, and antisexist, unlike those of Black and white men.”<sup>10</sup> The authors of *Liberating Abortion* fill their book with first-person stories and interviews that revive obscured history (like the Black women who were Janes, a collective of mostly white women who provided abortions in Chicago when it was illegal to do so<sup>11</sup>) (pp. 40–46), emphasize the diversity of experiences of people who have abortions (including the stories of non-binary and trans abortion seekers and women who have multiple abortions) (pp. 220–21), and tackle the persistent issue of coercive sterilization practices (pp. 188–91). They explain their choice to anchor their book in the real-life experiences of people who have had abortions and people who provide abortions “because that’s what connected us and that’s what we must pass on from generation to generation” (p. 9). As scholars and writers, we all write from a perspective and, for scholars who come from marginalized communities, that perspective gives us a lens into how institutionalized oppression works in and shapes our lives and the lives of the communities we seek to serve.

Recognizing that “positionality matters” (p. xi), Bond-Theriault writes in the preface of her book about the many privileges she has as a self-described Black queer woman. She notes that her privilege “[a]s a queer/bisexual woman married to a man,” her professional privilege as a lawyer with good healthcare, and her status as a homeowner living in a safe neighborhood (p. xii). She began writing her book in 2017, while working at the National LGBTQ Task Force leading the organization’s reproductive health, rights, and justice project (p. ix). By the time the book was published in 2024, she was a professor of sociology at Howard University and living in a world that had seen significant change since her time at a nonprofit (p. x).

The authors of *Liberating Abortion* also make clear very early on that they write from the perspective of their own embodied experiences. Bracey Sherman and Mahone are both Black women (p. 12), both

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<sup>9</sup> *Id.* at 325–26.

<sup>10</sup> The Combahee River Collective Statement (Apr. 1977), *reprinted in* HOW WE GET FREE: BLACK FEMINISM AND THE COMBAHEE RIVER COLLECTIVE 15, 17 (Keeanga-Yamahtta Taylor ed., 2017).

<sup>11</sup> LAURA KAPLAN, *THE STORY OF JANE: THE LEGENDARY UNDERGROUND FEMINIST ABORTION SERVICE*, at xvii (Univ. of Chi. Press 2019).

writers, and both women who have had abortions and who open the book with their own abortion stories (pp. 1–3). Bracey Sherman is the founder and executive director of We Testify, an abortion storytelling nonprofit, and Mahone is a writer, journalist, and senior editor at *The Nation* in addition to being a mother (dust jacket).

In the same spirit of subjectivity offered by the authors, I will also position myself as a reviewer of their two very different books. I am a queer Black woman. I am parenting two teenagers whom I conceived with the help of assisted reproduction. I am an RJ scholar who has been writing, teaching, and agitating about issues related to pregnancy and parenting for decades. My work requires that I offer a stark account of what needs to change and why, and how it must be rooted in history to understand how to shake loose the present. The life and work experiences that I have described give me a clear connection to *Queering Reproductive Justice* and *Liberating Abortion* and a deep appreciation for the personal and professional commitments the authors bring to their work.

## II. THE RJ FRAMEWORK AND ITS RELATIONSHIP TO QUEERNESS AND ABORTION

Readers cannot understand *Liberating Abortion* or *Queering Reproductive Justice* without understanding the RJ movement that is the foundation upon which both books are built. That movement, founded in 1994 by a group of pioneering Black women, flourishes, though still in the shadows in many ways, as a radical counter to the limited scope of the mainstream reproductive rights movement.<sup>12</sup> The RJ founding mothers were probably, like so many of their foremothers, “sick and tired of being sick and tired.”<sup>13</sup> Sick and tired of reproductive rights organizations led by privileged white women that centered abortion rights, but failed to understand or care about how race and class impacted the reproductive lives of Black women.<sup>14</sup> Sick and tired of a constitutional regime of negative rights over positive rights that “ensure that people can exercise their freedoms and enjoy the benefits of society.”<sup>15</sup> Sick and tired of systemic abuse of poor Black and brown communities

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<sup>12</sup> RADICAL REPRODUCTIVE JUSTICE 16–18 (Loretta Ross et al. eds., 2017) (“We created a radical shift from ‘choice’ to ‘justice’ to locate women’s autonomy and self-determination in international human rights standards and laws, rather than in the constitutionally limited concepts of individual rights and privacy.” *Id.* at 18.).

<sup>13</sup> Cf. Jerry Demuth, *Fannie Lou Hamer: Tired of Being Sick and Tired*, THE NATION (June 1, 1964), <https://www.thenation.com/article/archive/fannie-lou-hamer-tired-being-sick-and-tired> [<https://perma.cc/67NE-ZX4G>] (“‘All my life I’ve been sick and tired,’ she shakes her head. ‘Now I’m sick and tired of being sick and tired.’” (quoting Fannie Lou Hamer)).

<sup>14</sup> See Dorothy Roberts, *Reproductive Justice, Not Just Rights*, DISSENT, Fall 2015, at 79, 79.

<sup>15</sup> See Ross & Solinger, *supra* note 2, at 10.

justified by blaming those communities for their own oppression.<sup>16</sup> Sick and tired of being relegated to the margins in discussions of significant political changes, such as the push for healthcare reform under the Clinton Administration.<sup>17</sup> RJ demanded more, and the founders grounded the movement in three tenets focusing on the human “right[s] not to have a child,” “to have a child,” and “to parent children in safe and healthy environments.”<sup>18</sup> Even more radically, RJ insisted that “every human being” deserves “sexual autonomy” and the freedom to express their gender identity without violence or discrimination.<sup>19</sup>

RJ is explicitly and unapologetically intersectional, building on the work of Kimberlé Crenshaw,<sup>20</sup> whose scholarship, in turn, built on the Black feminists and other feminists of color who had long been naming the complicated layers of their own subjugation without a pithy word like intersectionality to capture their reality.<sup>21</sup> Thus, RJ is based on the understanding that:

[I]mpacts of race, class, gender, and sexual identity oppressions are not additive but integrative. For each individual and each community, the effects of these impacts will be different, but they share some of the basic characteristics of intersectionality: universality, simultaneity, and interdependence. Intersectionality powerfully addresses human rights violations and helps us move away from single-issue and top-down approaches. It provides an avenue for cross-issue alliances to achieve systemic, institutional changes because systems of oppression overlap and interact with each other.<sup>22</sup>

<sup>16</sup> See Mary Krane Derr, *Card-Carrying Marchers and Sister Travelers: Pro-Life Feminists and the Reproductive Justice Movement*, in *RADICAL REPRODUCTIVE JUSTICE*, *supra* note 12, at 86, 104–05; Ta-Nehisi Coates, *The Black Family in the Age of Mass Incarceration*, *THE ATLANTIC* (Oct. 2015), <https://www.theatlantic.com/magazine/archive/2015/10/the-black-family-in-the-age-of-mass-incarceration/403246> [<https://perma.cc/6RAX-CL3V>].

<sup>17</sup> See, e.g., Toni M. Bond Leonard, *Laying the Foundations for a Reproductive Justice Movement*, in *RADICAL REPRODUCTIVE JUSTICE*, *supra* note 12, at 39, 39–40.

<sup>18</sup> Ross & Solinger, *supra* note 2, at 9 (emphasis omitted).

<sup>19</sup> *Id.*

<sup>20</sup> Loretta J. Ross, *Reproductive Justice as Intersectional Feminist Activism*, 19 *SOULS* 286, 286, 288 (2017). See generally Kimberlé Crenshaw, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics*, 1989 U. CHI. LEGAL F. 139 (criticizing the “single-axis framework” that “treat[s] race and gender as mutually exclusive categories of experience and analysis,” *id.* at 139).

<sup>21</sup> Some of that foundational Black feminist work came from the Combahee River Collective Statement that was written and shared publicly in 1977 by a collective of Black feminists who described themselves as “actively committed to struggling against racial, sexual, heterosexual, and class oppression, and see[ing] as [their] particular task the development of integrated analysis and practice based upon the fact that the major systems of oppression are interlocking.” The Combahee River Collective Statement, *supra* note 10, at 15. They continued: “The synthesis of these oppressions creates the conditions of our lives. As Black women we see Black feminism as the logical political movement to combat the manifold and simultaneous oppressions that all women of color face.” *Id.*

<sup>22</sup> Ross & Solinger, *supra* note 2, at 74–75.

RJ is not just about abortion, though abortion rights are certainly part of RJ's mission.<sup>23</sup> It is about your right to have the state fund your abortion if you are low-income.<sup>24</sup> It is about free access to contraception and comprehensive sex education.<sup>25</sup> It is about a right to access assisted reproduction and state support to do so if needed.<sup>26</sup> It is about a social safety net that ensures parents can raise their children in housing that is not substandard.<sup>27</sup> It is about criminal justice reform and the end of the school-to-prison pipeline.<sup>28</sup> It is about radically restructuring or wholesale abolishing the family policing system.<sup>29</sup> It is about dignified working conditions and support for young mothers.<sup>30</sup> It is about access to clean water and the end of environmental racism.<sup>31</sup> It is about understanding and honoring that the path to parenthood for a single Black transwoman will be different from that of a cis white woman married to a cis white man.<sup>32</sup> It is about understanding why mainstream reproductive rights organizations advocate for abortion rights by highlighting stories of women with tragic pregnancies,<sup>33</sup> but demanding that the right to abortion not hinge on whether your pregnancy will lead to your death or permanent disability. And it is about ensuring that part of any narrative about tragic pregnancies centers the reality that Black women are three to four times more likely to die from pregnancy than non-Hispanic white women.<sup>34</sup> RJ is expansive in ways that mainstream

<sup>23</sup> Marian Jones, *Dorothy Roberts on Reproductive Justice: "Abortion Isn't the Only Focus,"* THE GUARDIAN (Aug. 28, 2022, 6:00 PM), <https://www.theguardian.com/us-news/2022/aug/28/reproductive-freedom-abortion-rights-dorothy-roberts-interview> [<https://perma.cc/22VZ-LJXX>].

<sup>24</sup> Madeline T. Morcelle, *Reforming Medicaid Coverage Toward Reproductive Justice*, 48 AM. J. L. & MED. 223, 240–41 (2022).

<sup>25</sup> Denicia Sam Cadena et al., *Contraceptive Care Using Reproductive Justice Principles: Beyond Access*, 112 AM. J. PUB. HEALTH S494, S496–98 (2022).

<sup>26</sup> See Zakiya Luna & Kristin Luker, *Reproductive Justice*, 9 ANN. REV. L. & SOC. SCI. 327, 328, 340 (2013).

<sup>27</sup> Dalyn Smith & Nisha Vyas, *The Interconnectedness of Our Struggles: Why the Fight for Reproductive Rights Is Inseparable from Housing Justice Work / La Interconexión de Nuestras Luchas: Por Qué la Lucha por los Derechos Reproductivos Es Inseparable del Trabajo de Justicia en la Vivienda*, SAJE (July 28, 2022), <https://www.saje.net/bloginterconnectedness> [<https://perma.cc/44JW-TZU8>].

<sup>28</sup> See Jones, *supra* note 23.

<sup>29</sup> See *id.*

<sup>30</sup> Ross & Solinger, *supra* note 2, at 9.

<sup>31</sup> MARCELA HOWELL ET AL., IN OUR OWN VOICE: NAT'L BLACK WOMEN'S REPROD. JUST. AGENDA, BLACK WOMEN, REPRODUCTIVE JUSTICE, AND ENVIRONMENTAL JUSTICE 1 (2020).

<sup>32</sup> See Ross, *supra* note 20, at 291.

<sup>33</sup> See, e.g., *State v. Zurawski*, 690 S.W.3d 644, 654 (Tex. 2024). In *Zurawski*, the Center for Reproductive Rights represented several women who were denied abortion care under Texas's medical exceptions despite documented risks to their life or health. *Id.* at 655–56.

<sup>34</sup> Rolanda L. Lister et al., *Black Maternal Mortality — The Elephant in the Room*, WORLD J. GYNECOLOGY & WOMEN'S HEALTH, Nov. 2019, at 1 (“[W]hen assessing the national black maternal mortality rate, it is quadruple that of non-Hispanic white women. Even in states such as California that appeared to buck the national trend (8.3/100,000), Black women still died at triple

reproductive rights advocacy is not now and has never been.<sup>35</sup> It is this expansiveness that makes RJ so radical — it does not simply ask for equality; it seeks to dismantle whole systems that have been rotten from their inception.

*Liberating Abortion* and *Queering Reproductive Justice* are written in the tradition of RJ, which means that the work the authors are doing is nuanced and complex. The work demands holding onto many ideas at once and excavating how any issue, whether access to abortion or access to marriage, impacts people with marginalized identities, especially multiple marginalized identities, in ways that substantively differ from people who move through the world with greater privilege. It is not enough to focus on women or queer people; we must also consider queer women with disabilities, transwomen who are incarcerated, and undocumented immigrants who have citizen children. It is only through doing this hard work and considering not just who is easiest to elevate because they are already close to the top, but whose elevation will lead to broader liberation, that we all become free.<sup>36</sup> Thus, in keeping with the ethos of RJ, *Queering Reproductive Justice* and *Liberating Abortion* invoke modern incantations of multiple movements, including Black Liberation, Women's Liberation, and Gay Liberation, all of which meet at the intersection of the RJ movement.

### III. REPRODUCTIVE JUSTICE IS ALREADY QUEER

In the 1990s, queer studies were in ascendance.<sup>37</sup> LGBTQ folks were furiously reclaiming the word queer and using it to harness the power of a collective community. Activists created Queer Nation and gleefully

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the rate (26.6/100,000) in that state.” (footnotes omitted)); Marian F. MacDorman et al., *Racial and Ethnic Disparities in Maternal Mortality in the United States Using Enhanced Vital Records, 2016–2017*, 111 AM. J. PUB. HEALTH 1673, 1673 (2021) (“The maternal mortality rate for non-Hispanic Black women was 3.55 times that for non-Hispanic White women. Leading causes of maternal death for non-Hispanic Black women were eclampsia and preeclampsia and postpartum cardiomyopathy with rates 5 times those for non-Hispanic White women. Non-Hispanic Black maternal mortality rates from obstetric embolism and obstetric hemorrhage were 2.3 to 2.6 times those for non-Hispanic White women. Together, these 4 causes accounted for 59% of the non-Hispanic Black–non-Hispanic White maternal mortality disparity.”).

<sup>35</sup> See Jones, *supra* note 23.

<sup>36</sup> Given the work of RJ and whom it centers, it can often be dismissed as a form of identity politics, as that term has been used to denigrate leftist causes and the mainstream political party that seems most aligned with them (Democrats). See German Lopez, *The Battle over Identity Politics, Explained*, VOX (Aug. 17, 2017, 2:00 PM), <https://www.vox.com/identities/2016/12/2/13718770/identity-politics> [<https://perma.cc/36UV-YKXG>]. Of course, the fact that the only identities that seem to garner sufficient disdain to be dismissed as identity politics are those of marginalized people, despite the use of identity as a galvanizing tool on the right (especially but not only the identity of the white working class), speaks to many of the issues that RJ tries to surface. *Id.*

<sup>37</sup> Eva M. Jones, *The Kids Are Queer: The Rise of Post-Millennial American Queer Identification*, in 1 LESBIAN, GAY, BISEXUAL, AND TRANSGENDER AMERICANS AT RISK: PROBLEMS AND SOLUTIONS 205, 207 (Chuck Stewart ed., 2018) (“[T]he political power of queer identity culminated in the 1990s, in academia, with queer theory.”).



chanted, “We’re here! We’re Queer! Get used to it!” at protests and Pride parades.<sup>38</sup> In 1991, Teresa De Lauretis, widely credited with first coining the term queer theory,<sup>39</sup> published an introductory essay in a special volume of the journal *Differences* featuring essays that grew out of a conference on gay and lesbian sexualities held in 1990.<sup>40</sup> She described the project of the conference as being “based on the speculative premise that homosexuality is no longer to be seen simply as marginal with regard to a dominant, stable form of sexuality (heterosexuality) against which it would be defined either by opposition or by homology [(similarity derived from shared ancestry)].”<sup>41</sup> The program urged that lesbian and gay identity “no longer . . . be seen either as merely transgressive or deviant vis-à-vis a proper, natural sexuality . . . according to the older, pathological model, or as just another, optional ‘life-style,’ according to the model of contemporary North American pluralism.”<sup>42</sup> De Lauretis saw the emergence of gay and lesbian identities as capable of being:

reconceptualized as social and cultural forms in their own right, albeit emergent ones and thus still fuzzily defined, undercoded, or discursively dependent on more established forms. Thus, rather than marking the limits of the social space by designating a place at the edge of culture, gay sexuality in its specific female and male cultural (or subcultural) forms acts as an agency of social process whose mode of functioning is both interactive and yet resistant, both participatory and yet distinct, claiming at once equality and difference, demanding political representation while insisting on its material and historical specificity.<sup>43</sup>

Thus, the rise of queer theory ushered in an era of theoretical imagining in which queerness was not simply positioned as deviance but was centered and worthy of study as its own standalone and rich area of inquiry.

The academy met this moment in a variety of ways, including ensuring space existed to grapple with how race functioned within queer spaces and queer scholarship. In 1995, the landmark Black Nations/Queer Nations conference took place at City University of New York, bringing together queer folks from across the African diaspora to explore

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<sup>38</sup> *Queer Nation NY History*, QUEER NATION NY, <https://queernationny.org/history> [<https://perma.cc/5FAC-TNHE>]; Caitlin Donohue, *When Queer Nation “Bashed Back” Against Homophobia with Street Patrols and Glitter*, KQED (June 3, 2019), <https://www.kqed.org/arts/13858167/queer-nation-lgbtq-activism-90s> [<https://perma.cc/D4GZ-JGNP>].

<sup>39</sup> See *Queer Theory*, OXFORD REFERENCE, <https://www.oxfordreference.com/display/10.1093/oi/authority.20110803100358573> [<https://perma.cc/DXMS-ZESK>]; *Queer Theory: Definition, History, and Impact*, MASTERCLASS (Oct. 24, 2022), <https://www.masterclass.com/articles/queer-theory> [<https://perma.cc/UG7K-DCNN>].

<sup>40</sup> Teresa de Lauretis, *Queer Theory: Lesbian and Gay Sexualities, An Introduction*, DIFFERENCES, Summer 1991, at iii, iii.

<sup>41</sup> *Id.*

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

how race mattered as much in the context of queerness as it did everywhere else.<sup>44</sup> Often when activists or scholars speak of queering a topic, it is necessary because queerness was not previously contemplated, at least not in a way that was centered and salient.<sup>45</sup> Queering a topic centers queerness in a place where it has been marginalized or nonexistent, and this is Bond-Therault's call to action in *Queering Reproductive Justice*. Her book "invite[s] new readers and seasoned advocates alike to learn, grapple with, and ultimately bolster the queering reproductive justice framework and its corresponding movement" (p. x).

For those who know the history of RJ, the idea of queering the framework may seem unnecessary when seen through the lens of the history of queer, feminist, and critical theory as practiced and promulgated especially, but not only, by queer women of color inside and outside of the academy. One thinks of works like *This Bridge Called My Back: Writings by Radical Women of Color*<sup>46</sup> or almost anything published by Audre Lorde,<sup>47</sup> Barbara Smith,<sup>48</sup> or Gloria Anzaldúa,<sup>49</sup> among others. To the extent that the founding mothers of RJ walked in the footsteps of Black and other women-of-color feminists who preceded the movement, RJ has been queer from its inception. As Bracey Sherman and Mahone write in *Liberating Abortion*, RJ's early "vision . . . was naturally inclusive of queer and trans people, including those who had abortions, because it centered those most unable in our society to access the sexual and reproductive care that they need, irrespective of their sexual orientation or gender identity and expression" (p. 220).

Thus, to the extent that the notion of queering reproductive justice reads as a corrective to a movement that has been queer since its start, that is a misread of what Bond-Therault does in her book. She is fundamentally and expressly challenging queer organizations and organizers to use the RJ frame to help them do their work more expansively

<sup>44</sup> *Black Nations/Queer Nations? Conference Video*, CUNY DIGIT. HIST. ARCHIVE (Mar. 1995), <https://cdha.cuny.edu/items/show/8342> [<https://perma.cc/2YL6-F83H>]; Cathy Cohen, *Black Nations/Queer Nations Conference*, CLAGSNEWS, Spring 1995, at 4.

<sup>45</sup> See, e.g., Kristin L. Gunckel, *Queering Science for All: Probing Queer Theory in Science Education*, J. CURRICULUM THEORIZING, Aug. 21, 2009, at 62, 69; Joshua M. Paiz, *Queering ESL Teaching: Pedagogical and Materials Creation Issues*, 9 TESOL J. 348, 361 (2018); Jen Jack Giesekeing, *Operating Anew: Queering GIS with Good Enough Software*, 62 CANADIAN GEOGRAPHER / LE GÉOGRAPHE CANADIEN 55, 64–65 (2018).

<sup>46</sup> THIS BRIDGE CALLED MY BACK: WRITINGS BY RADICAL WOMEN OF COLOR (Cherríe Moraga & Gloria Anzaldúa eds., 4th ed. 2015).

<sup>47</sup> See generally, e.g., AUDRE LORDE, SISTER OUTSIDER: ESSAYS AND SPEECHES (Crossing Press rev. ed. 2007).

<sup>48</sup> Barbara Smith is the co-founder of Kitchen Table Press, which focused on publishing work by women of color, and a member of the Combahee River Collective. Keeanga-Yamahatta Taylor, *Until Black Women Are Free, None of Us Will Be Free*, NEW YORKER (July 20, 2020), <https://www.newyorker.com/news/our-columnists/until-black-women-are-free-none-of-us-will-be-free> [<https://perma.cc/YM84-EJ9P>]. See also generally Combahee River Collective, *supra* note 10.

<sup>49</sup> See generally, e.g., GLORIA ANZALDÚA, BORDERLANDS / LA FRONTERA: THE NEW MESTIZA (4th ed. 2012).

and with an appropriate level of attention to how their advocacy and campaigns center the most powerful among those with the least power. That she mostly focuses on LGBTQIA+ organizations in her book and not RJ organizations seems to support this interpretation.

RJ activism has always acknowledged that freedom for all comes from fighting for freedom for the least powerful. RJ has long championed the rights of LGBT people.<sup>50</sup> It has always mistrusted government regulation of parenting and procreation, from forced and coerced sterilizations to the family policing system that punishes poverty.<sup>51</sup> It is steeped in human rights to reflect the paucity of radical thought contained in the U.S. constitutional order.<sup>52</sup> It has always worked to bring “the margins to the center.”<sup>53</sup> It is a movement begun by Black women who knew all too well how easily their intersectional experiences could be ignored, downplayed, or left to wait for another day.<sup>54</sup> The call to queer RJ that Bond-Theriault makes in her book, then, could be read as an admonition of the RJ movement because it is not or has not been queer enough, but this is not what she argues in the book.

The queering that Bond-Theriault advocates is not so much a queering of RJ, arguably queer from its inception, but a call for the mainstream LGBTQIA+ movement and mainstream reproductive rights movement to center RJ in their work. She wants principles of RJ to be more manifest in queer advocacy and queerness to be centered in RJ and mainstream reproductive rights advocacy spaces, but this does not suggest that the framework itself is the problem. Rather, it is only when advocates fail to heed RJ’s lessons about intersectionality, looking to the bottom, and more that the failure to create queer reproductive justice happens. For this reason, the interviews from advocates included in the book are crucial because they provide specific examples of organizational work. However, those interviews, especially in contrast to the voices from the field in *Liberating Abortion*, reflect one of the fundamental contrasts between the two books and the liberatory visions they both espouse, which this Review will cover later.

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<sup>50</sup> Ross & Solinger, *supra* note 2, at 57 (“[RJ activists] championed the cause that led to the landmark Supreme Court decision *Lawrence v. Texas* [539 U.S. 558] (2003), effectively ending criminalization of same-sex sexual activity in every U.S. state and territory. Reproductive justice organizations promoted state legislation and supported legal cases validating domestic partnerships for same-sex couples [and] antidiscrimination measures protecting LGBT persons . . .”).

<sup>51</sup> See Jill E. Adams & Melissa Mikesell, *And Damned If They Don't: Prototype Theories to End Punitive Policies Against Pregnant People Living in Poverty*, 18 GEO. J. GENDER & L. 283, 286–95, 294 n.62 (2017); DOROTHY ROBERTS, *TORN APART: HOW THE CHILD WELFARE SYSTEM DESTROYS BLACK FAMILIES — AND HOW ABOLITION CAN BUILD A SAFER WORLD* 66 (2022) (“[W]ide latitude accorded [Child Protective Services] agents by law is an invitation to decide cases based on a double standard that treats the conditions of poverty as if it were child neglect and Black parents as if they were natural child abusers.”).

<sup>52</sup> See Ross & Solinger, *supra* note 2, at 10–12.

<sup>53</sup> Bond Leonard, *supra* note 17, at 46.

<sup>54</sup> See *supra* notes 12–14 and accompanying text.

## IV. LAW BOOKS VERSUS BOOKS ABOUT LAW

Given her goals, Bond-Theriault largely organizes *Queering Reproductive Justice* around the tenets of RJ using a legal lens to understand how to incorporate RJ into LGBTQIA+ advocacy. She begins the book by mapping out the tenets of the framework and making clear that it is fundamentally a “movement-building framework” to reiterate that her work is not intended to sit on a shelf, but to spur action (p. 2). In another chapter, she writes about the right not to have children through the lens of culturally competent care, especially for trans individuals, about the Affordable Care Act’s good and bad impacts on the queer community, about sex education, and about reproductive healthcare for LGBTQIA+ people (pp. 42–77). The issue of religious exemptions is significant enough that Bond-Theriault includes a separate chapter on this issue and its impact on access to a range of different kinds of healthcare for queer people (pp. 78–94). She then shifts to the right to have partners and children, in a chapter in which she provides a needed critique of marriage equality and the movement that led to its enshrinement in U.S. law (for now), among other topics (pp. 95–139). In the final chapter of the book, she covers issues as varied as immigration, capitalism, state violence, prison, and mental health (pp. 140–80). There can be no denying the hard work required to compile such a myriad of issues into one book that has the potential to appeal to a variety of readers. The risk of going wide, of course, is the potential to keep a writer from delving too deeply into any particular topic. In this case, though, the choice that Bond-Theriault makes is justified. The task to which she sets her readers is to understand how an RJ frame can enhance their work and how ultimately, the specificity of how to use that frame will vary. Her decision to supplement her analysis in the book with several interviews with people doing the work that her book encourages and extols gives her readers models of what the work she encourages might or should look like. Readers can then use these models as they make RJ a central part of their own movement work.

*Liberating Abortion* is similarly wide-ranging but has the benefit of a narrower frame of reference, just abortion, which allows for deeper dives into the topics it covers. The breadth of work done by the authors to put together this highly readable and engaging collection is impressive. And perhaps part of what makes it so readable and engaging is the choice to center people and not law. The book is part memoir, part history, part medicine, part self-help, part primal scream, and part manifesto. Readers will learn from grassroots activists, past and present, who provided abortions and access to abortions inside and outside of legal channels (pp. 40–72, 210–41). They will learn about the ancient roots of abortion, which began long before men laid claim to control over pregnancy (pp. 77–86). They will learn about what to expect when getting an abortion and how to prepare for the experience, including

what to bring and what to wear when going to the clinic (pp. 337–68). They will learn about the link between prison abolition and RJ (pp. 102–37). They will learn about how the media has depicted abortion and the ways in which those depictions have often fed abortion stigma (pp. 296–336). Throughout, they will hear from a range of cis, trans, and nonbinary people who have had abortions and who support others who are seeking abortion care, and they will learn how access to abortion has shaped these people’s lives and the lives of the communities they choose to serve. And, perhaps most of all, readers will learn that if they have had an abortion, there are millions of people like them in the world, and they should not be shamed or feel ashamed for deciding to become a parent or not to become a parent on their own terms.

#### A. *On Lay Legal Epidemiology*

*Queering Reproductive Justice* and *Liberating Abortion* have much in common in terms of the commitments and goals of their authors and the frameworks that guide their work. They are both books about liberation, at least in part. They are both books that seek to educate and incite positive action among their readers. The authors are not legal academics (though Bond-Theriault is a lawyer (p. xii)), and they are not making a narrow pitch to a law-trained audience. Interestingly, neither is a typical “law book,” meaning that law is not the sole or even primary conduit through which the authors’ goals may be met. Rather, law is a tool that leads to transformative change only when accompanied by organizing and agitating. As such, law permeates both books because much of the societal transformation that the authors seek will come largely, though certainly not exclusively, through law. Abortion cannot be fully liberated unless it is financially accessible, legal everywhere at any time during pregnancy, and available to everyone who wants one. RJ, for queer people and everyone else, cannot exist in a world where law impedes access to family building for those who do not fit rigid parameters of societal acceptability, confines procreative and parental decisionmaking, and fails to make a safe and clean world where parents can raise their children.

In this way, because they are books concerned with law in action and not law on paper, they perform a loose sort of legal epidemiology. Legal epidemiology is an interdisciplinary field that engages in “the scientific study and deployment of law as a factor in the cause, distribution, and prevention of disease and injury in a population.”<sup>55</sup> The field can be broken down into component parts: “[l]egal prevention and control,”

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<sup>55</sup> Scott Burris et al., *A Transdisciplinary Approach to Public Health Law: The Emerging Practice of Legal Epidemiology*, 37 ANN. REV. PUB. HEALTH 135, 139 (2016).

“[l]egal etiology,” and “[p]olicy surveillance.”<sup>56</sup> At its most basic level, legal epidemiology systematically studies how law impacts public health across a range of domains.<sup>57</sup> Some of those domains are obvious — such as the impact of mandatory seatbelt laws on injuries and deaths from car accidents. Legal etiology, meaning “the study of law’s incidental or unintended effects on health,”<sup>58</sup> includes studying far-reaching domains:

[I]mmigration policy influences health and access to health care among undocumented immigrants, drug laws and law enforcement practices can exacerbate HIV risk behavior among drug users, unemployment compensation laws may attenuate the effects of unemployment on adult and child health, and zoning may determine whether consumers can conveniently buy fresh fruits and vegetables.<sup>59</sup>

And while much of legal epidemiology considers disease and disability, the concept of health need not be reduced to absence of disease. The World Health Organization (WHO) defines health as “a state of complete physical, mental and social well-being and not merely the absence of disease or infirmity.”<sup>60</sup> This holistic definition of health is in line with the goals of RJ, which recognize that to be free requires much more than being ensured that you have a right to something even if you have no way to exercise that right.<sup>61</sup> No doubt, most countries, including the United States, are far from achieving this kind of health for their citizens, but the WHO definition of health would resonate with Bond-Theriault, Bracey Sherman, and Mahone. Their vision of liberation does not end when people are not sick or when people have rights on paper. At best, lack of infirmity is simply a starting point. They want a world in which all sorts of people can thrive and in which the policies and laws that shape people’s lives do not force them into narrow boxes, but allow people to set their own course, especially when it comes to choices about procreation and parenting. Their view of law is not simply about doing no harm. It is about using law in active service of making people’s lives better across multiple axes.

While *Liberating Abortion* and *Queering Reproductive Justice* are not scientific studies and therefore do not qualify as true legal

<sup>56</sup> *Id.* Legal prevention and control focuses on how law can “prevent disease and injury,” legal etiology focuses on how law is itself a “cause[] of disease and injury,” and policy surveillance focuses on how to monitor and analyze health-related laws. *Id.*

<sup>57</sup> *Id.* at 139–40.

<sup>58</sup> *Id.* at 140.

<sup>59</sup> *Id.* (citations omitted).

<sup>60</sup> WORLD HEALTH ORG., *Constitution of the World Health Organization*, in BASIC DOCUMENTS 1, 1 (49th ed. 2020). Unsurprisingly, this broad definition of health has garnered much criticism for its expansiveness, but the definition also has its defenders. See generally Thomas Schramme, *Health as Complete Well-Being: The WHO Definition and Beyond*, 16 PUB. HEALTH ETHICS 210, 215 (2023) (discussing and defending against criticism of the WHO definition of health); Fabio Leonardi, *The Definition of Health: Towards New Perspectives*, 48 INT’L J. SOC. DETERMINANTS HEALTH & HEALTH SERVS. 735 (2018) (summarizing critiques and concluding that “[t]he time has come to abandon the WHO’s utopian vision,” *id.* at 736).

<sup>61</sup> See *supra* note 15 and accompanying text.

epidemiology, the books are excavations of law in their own ways and in ways much more likely to be seen, read, and absorbed by people who are not reading scientific or law journals. The authors consider legal prevention and control as they ponder how law can be used to prevent bad health outcomes like death or disability from lack of access to safe abortion care. They engage in legal etiology as they consider how law can actually cause bad health outcomes, such as by preventing a person from accessing the gender-affirming care that allows them to exist comfortably in their own skin or by preventing timely miscarriage management that can preserve a person's fertility. Finally, in both books, especially *Queering Reproductive Justice*, the authors engage in a form of surveillance by collecting, analyzing, and disseminating data about laws and policies that have deep relevance to the health of marginalized communities.

Of the many strengths of legal epidemiology, one of the greatest gifts it provides is data and analysis to prove or disprove claims about how law works to create or undermine public health. The work of these books is not to offer comprehensive data. Rather, the authors seek to educate their readers about how laws and policies related to RJ impact the lives of the most marginalized. Research shows that a person who does not get a desired abortion may become further mired in poverty or lose financial ground,<sup>62</sup> remain trapped in a violent relationship,<sup>63</sup> and experience higher levels of anxiety and stress<sup>64</sup> than a person who is able to have abortions. If messages about public health are not translated effectively to the public, it becomes harder to actually change public

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<sup>62</sup> See Diana Greene Foster et al., *Socioeconomic Outcomes of Women Who Receive and Women Who Are Denied Wanted Abortions in the United States*, 112 AM. J. PUB. HEALTH 1290, 1295–96 (2022) (“[C]arrying the unwanted pregnancy to term led to almost a 4-fold increase in the odds that the [person’s] household income was below the [federal poverty line].”); ADVANCING NEW STANDARDS IN REPROD. HEALTH, SOCIOECONOMIC OUTCOMES OF WOMEN WHO RECEIVE AND WOMEN WHO ARE DENIED WANTED ABORTIONS (2018), [https://www.ansirh.org/sites/default/files/publications/files/turnaway\\_socioeconomic\\_outcomes\\_issue\\_brief\\_8-20-2018.pdf](https://www.ansirh.org/sites/default/files/publications/files/turnaway_socioeconomic_outcomes_issue_brief_8-20-2018.pdf) [<https://perma.cc/THJ3-EPC8>].

<sup>63</sup> ADVANCING NEW STANDARDS IN REPROD. HEALTH, THE HARMS OF DENYING A WOMAN A WANTED ABORTION: FINDINGS FROM THE TURNAWAY STUDY (2020), [https://www.ansirh.org/sites/default/files/publications/files/the\\_harms\\_of\\_denying\\_a\\_woman\\_a\\_wanted\\_abortion\\_4-16-2020.pdf](https://www.ansirh.org/sites/default/files/publications/files/the_harms_of_denying_a_woman_a_wanted_abortion_4-16-2020.pdf) [<https://perma.cc/R2DH-XLH8>]; see, e.g., Sarah CM Roberts et al., *Risk of Violence from the Man Involved in the Pregnancy After Receiving or Being Denied an Abortion*, 12 BMC MED. 144, 148 (2014) (“Terminating an unwanted pregnancy may allow women to avoid physical violence from the [man involved in the pregnancy], while having a baby from an unwanted pregnancy appears to result in sustained physical violence over time.”).

<sup>64</sup> See, e.g., M. Antonia Biggs et al., *Women’s Mental Health and Well-Being 5 Years After Receiving or Being Denied an Abortion: A Prospective, Longitudinal Cohort Study*, 74 JAMA PSYCHIATRY 169, 177 (2017) (finding “similar or better” mental health outcomes over a five-year period for those able to access an abortion, compared to those unable to do so); see also ADVANCING NEW STANDARDS IN REPROD. HEALTH, THE MENTAL HEALTH IMPACT OF RECEIVING VS. BEING DENIED A WANTED ABORTION (2018), [https://www.ansirh.org/sites/default/files/publications/files/mental\\_health\\_issue\\_brief\\_7-24-2018.pdf](https://www.ansirh.org/sites/default/files/publications/files/mental_health_issue_brief_7-24-2018.pdf) [<https://perma.cc/9UAS-NW45>].

health outcomes. Thus, authors making law real and vibrant for a wide collection of readers is crucial for creating change.

### B. *Writing the Law for Non-Lawyers*

Of the two books, *Queering Reproductive Justice* is the most explicitly connected to law, which is not surprising given that the author is a lawyer. Bond-Theriault discusses many cases in her book, including *Dobbs v. Jackson Women's Health Organization*<sup>65</sup> (pp. 68–76), *303 Creative LLC v. Elenis*<sup>66</sup> (pp. 107–08), and *Burwell v. Hobby Lobby Stores, Inc.*<sup>67</sup> (pp. 92–94), as well as statutory provisions, like Title X<sup>68</sup> (pp. 61–65), at a level that allows lay readers to understand legal concepts that are not intuitively logical. Given that she does cover several seminal Supreme Court cases in her book, it's worthwhile to consider the difficulties of translating law for lay readers and the need for precision and care in doing that work.

Bond-Theriault does yeoman's work as she explores and educates about a stunningly diverse array of topics from sex education (pp. 45–51), to birth control (pp. 57–61), to assisted reproduction (pp. 120–25), to reparations (pp. 162–63). She delves into topics that some people may not immediately see as relevant to queer people, such as the need for access to contraception for those queer people who need it to avoid pregnancies and/or to provide relief from other health issues such as heavy or painful periods (pp. 56–61). She helps readers understand Title X's funding of sexual and reproductive health care and how the Trump Administration's ideologically driven domestic gag rule, which prevented Title X recipients from offering information about abortion, substantially crippled the vital program from 2019 to 2021 (pp. 61–65). She helps break down Medicaid, a program far too complicated for its own good (pp. 155–59). In all of these discussions she carefully describes what it means to place queer people at the center of the analysis.

Bond-Theriault helps her readers understand that, for queer people, “accessing health care” is often difficult “because of an oppressive health

<sup>65</sup> 142 S. Ct. 2228 (2022). In *Dobbs*, the Supreme Court overruled *Roe v. Wade*, 410 U.S. 113 (1973), and *Planned Parenthood of Southeastern Pennsylvania v. Casey*, 505 U.S. 833 (1992), held that the U.S. Constitution does not protect a right to an abortion, and sent the issue of regulating abortion back to the states. 142 S. Ct. at 2259, 2279.

<sup>66</sup> 143 S. Ct. 2298 (2023). In *303 Creative*, the Supreme Court held that Colorado's Antidiscrimination Act, COLO. REV. STAT. § 24-34-601 (2023), which prohibits businesses open to the public from engaging in many forms of discrimination including on the basis of sexual orientation, had to yield to the First Amendment in a case in which a web designer, who had not been asked to design a website for any same-sex couples, preemptively sought to invalidate the law's protections of LGBTQIA+ people. 143 S. Ct. at 2308–09, 2313.

<sup>67</sup> 573 U.S. 682 (2014). In *Hobby Lobby*, the Supreme Court held that the Religious Freedom Restoration Act, 42 U.S.C. §§ 2000bb to 2000bb-4, protected a for-profit company's ability to deny contraceptive coverage to its employees otherwise required by the Affordable Care Act. 573 U.S. at 688–90.

<sup>68</sup> 42 U.S.C. §§ 300–300a-8.



care complex that stigmatizes and discriminates against people because of their sexual orientations and gender identities” (p. 57). In her discussion of reproductive technology, she centers the experiences of the LGBTQIA+ community to discuss the need for culturally competent care for queer communities, including gender-affirming and reproductive healthcare for trans people (pp. 120–23, 126–37). In her discussion of immigration, she centers the needs of LGBTQIA+ immigrants whose ability to immigrate and bring their families with them can be stymied by narrow definitions of family and whose immigration status can prevent them from accessing necessary healthcare (pp. 150–53).

Bond-Theriault’s articulation of the many indignities that queer people may experience as they attempt to access needed care or provide financial stability for their families will be eye opening for some readers. She references the experiences that a trans man might have being misgendered by a receptionist or provider at their gynecologist’s office, or wrestling with insurance billing systems that are not set up to handle the nuances of identity (pp. 43–44). She considers the pervasive failures of sex education for young people, which far too often focuses on abstinence and does not reflect the many identities that young people may have (pp. 45–50). Undoubtedly, some of the issues she raises will be revelations to some readers.

In her book, Bond-Theriault devotes an entire chapter to the harms created by legally sanctioning the conscience-based refusal to provide certain types of healthcare, which is often used to reduce abortion access for religious reasons (pp. 78–94). As part of the illustration of this trend, she delves into *Hobby Lobby*, in which the Supreme Court allowed a for-profit entity to successfully claim an exemption from portions of the Affordable Care Act that required such companies to provide contraceptive coverage to their employees without cost-sharing (pp. 92–94).<sup>69</sup> Bond-Theriault correctly describes the clash between laws protecting the free exercise of religion and those protecting members of the queer community from discrimination and abuse. She notes that *Hobby Lobby* is crucial for three reasons: It marks the first time the Court extended faith-based protections to a for-profit company; it downplayed the impact of complicity-based healthcare coverage refusals on negatively impacted third parties (in this case the female employees at Hobby Lobby); and it “emboldened” conservatives to continue pursuing claims of this sort in the federal courts (p. 93).

Bond-Theriault is absolutely correct about all of this, but I would add at least one other impact that she mentions briefly but without full context. The plaintiffs in *Hobby Lobby* rooted their religious objections in their belief that life begins at conception and their opposition to abortion.<sup>70</sup> For the plaintiffs, if a form of contraception might have kept a

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<sup>69</sup> 573 U.S. at 688–90, 697.

<sup>70</sup> *Id.* at 701, 703.

fertilized egg from implanting in a uterus, it was essentially an abortion, even though no pregnancy had been established.<sup>71</sup> Thus, they claimed that contraceptive methods, like certain IUDs<sup>72</sup> and emergency contraception,<sup>73</sup> were the equivalent of abortifacients, which are substances used to cause an abortion of an established pregnancy.<sup>74</sup> They therefore wished to exclude certain IUDs and forms of emergency contraception from their insurance plans.<sup>75</sup> Within the scientific community, emergency contraception and IUDs are established forms of contraception, not abortifacients.<sup>76</sup> Thus, not only did the Supreme Court extend religious protections to for-profit companies, they allowed those companies to decide for themselves when pregnancy begins and what it means to have an abortion in ways that do not conform to the medical meanings of any of these terms. Thus, the precedent set by *Hobby Lobby* is even worse than Bond-Therault indicates, and implicates a wide range of cases in which religious beliefs clash with medical and scientific knowledge.

In her discussion of *303 Creative*, in which the Court protected the right of a future-wedding website designer to refuse to design future wedding websites for hypothetical same-sex couples,<sup>77</sup> Bond-Therault not only critiques the decision for its substance, but also for allowing the case to proceed based on a “hypothetical situation” and deciding a case that impacted LGBTQIA+ people even though no LGBTQIA+ people were parties to the case (pp. 107–08). The second critique is an odd one given that cases routinely impact people who are not parties in both good and bad ways. An example of this is some early gender

<sup>71</sup> *Id.*; see also Grace S. Chung et al., *Obstetrician-Gynecologists’ Beliefs About When Pregnancy Begins*, 206 AM. J. OBSTETRICS & GYNECOLOGY 132.e1, 132.e1–e7 (2012). No doubt, the definition of pregnancy varies based on factors like religious faith and one’s views about abortion.

<sup>72</sup> An intrauterine device, or IUD, is inserted into the uterus to prevent fertilization and therefore avoid pregnancy. *FAQs: Long-Acting Reversible Contraception (LARC): Intrauterine Device (IUD) and Implant*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (Apr. 2024), <https://www.acog.org/womens-health/faqs/long-acting-reversible-contraception-iud-and-implant> [<https://perma.cc/G2FT-JH8M>].

<sup>73</sup> Emergency contraception (EC) is used soon after having unprotected sex to avoid pregnancy by stopping or delaying ovulation. *FAQs: Emergency Contraception*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS (Nov. 2021), <https://www.acog.org/womens-health/faqs/emergency-contraception> [<https://perma.cc/4TEB-EDUF>].

<sup>74</sup> *Hobby Lobby*, 573 U.S. at 701–02. An abortifacient is “an agent (such as a drug) that induces abortion.” *Abortifacient*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/abortifacient> [<https://perma.cc/94YQ-CWAZ>].

<sup>75</sup> *Hobby Lobby*, 573 U.S. at 701–02.

<sup>76</sup> The American College of Obstetricians and Gynecologists (ACOG) explains: “Using EC does not cause an abortion. An abortion ends an existing pregnancy. EC prevents pregnancy from occurring. EC must be used soon after unprotected sexual intercourse to be effective. It does not work if pregnancy has already occurred.” *FAQs: Emergency Contraception*, *supra* note 73. IUDs act to prevent fertilization, which means that a pregnancy never begins. *Intrauterine Device (IUD)*, CLEVELAND CLINIC (Nov. 13, 2022), <https://my.clevelandclinic.org/health/treatments/24441-intrauterine-device-iud> [<https://perma.cc/FW6N-C96C>].

<sup>77</sup> 303 Creative LLC v. Elenis, 143 S. Ct. 2298, 2308, 2313 (2023).

discrimination cases with male plaintiffs that carved out space for more sex equality that would primarily accrue to women.<sup>78</sup> And, as is to be expected, there were plenty of amicus briefs in *303 Creative* that brought the discrimination issues and their impact on queer people to the fore for the Court.<sup>79</sup> But, certainly, the issue of standing is one worth discussing with some depth given some of the cases that have made their way to the Supreme Court as of late. For instance, *FDA v. Alliance for Hippocratic Medicine*,<sup>80</sup> a case challenging the process by which the abortifacient mifepristone made it to market and how the FDA regulated the drug, arrived at the Supreme Court despite very obvious issues of standing given the plaintiffs' attenuated connection to the substantive issues of the case.<sup>81</sup> Bond-Theriault understands that there is a playbook at work from the religious right that sometimes involves manufacturing plaintiffs for purposes of creating litigation.<sup>82</sup> As such, the issue of standing is worth explaining and exploring for lay people and for nonlawyers engaged in movement work in order to provide useful understanding of what is happening and will continue to happen in some of the cases that negatively impact the lives of queer people and others.

Bond-Theriault is absolutely correct that the impact of religious liberty claims on the rights of queer people is substantial, but the only way to fully protect queer people, and others, from the exemptions from civil rights laws that Bond-Theriault laments is to severely curtail the laws and policies that protect these actions. That can be done through challenges to the Religious Freedom Restoration Act<sup>83</sup> (RFRA), but that

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<sup>78</sup> See, e.g., *Weinberger v. Wiesenfeld*, 420 U.S. 636, 637–39 (1975) (widower successfully challenged Social Security Act provision that allowed widows and surviving children to receive benefits based on the earnings of a deceased husband and father but that did not provide the same benefits to a widower upon the death of his wife); *Califano v. Goldfarb*, 430 U.S. 199, 201–02 (1977) (plurality opinion) (widower successfully challenged gender-based differences in social security survivors' benefits for spouses). In both cases, though the plaintiffs were male, the Court recognized that the law discriminated against women because they received "less protection for their spouses solely because of their sex." *Califano*, 430 U.S. at 208; see *Weinberger*, 420 U.S. at 638–39.

<sup>79</sup> See, e.g., Brief for *Amici Curiae* American Civil Liberties Union and American Civil Liberties Union of Colorado in Support of Respondents at 1, *303 Creative*, 143 S. Ct. 2298 (No. 21-476). Amicus briefs in the case came from groups like the American Civil Liberties Union, Lawyers' Committee for Civil Rights Under Law, the American Bar Association, Public Accommodations Law Scholars, and the American Psychological Association, among many others who vigorously objected to the position of the plaintiff. *303 Creative LLC v. Elenis*, SCOTUSBLOG, <https://www.scotusblog.com/case-files/cases/303-creative-llc-v-elenis> [<https://perma.cc/4524-P7CY>].

<sup>80</sup> 144 S. Ct. 1540 (2024).

<sup>81</sup> See *id.* at 1552–54, 1562.

<sup>82</sup> See Prem Thakker, *The Supreme Court Just Used a Fake Case to Make It Easier to Discriminate Against Gay People*, NEW REPUBLIC, (June 30, 2023, 10:26 AM), <https://newrepublic.com/post/173675/supreme-court-just-used-fake-case-make-easier-discriminate-gay-people> [<https://perma.cc/LHZ7-Y7A9>].

<sup>83</sup> 42 U.S.C. §§ 2000bb to 2000bb-4. RFRA, passed in 1993, has been used in several cases to protect antigay acts that would otherwise be considered actionable discrimination. Kelsy Burke,

would still leave the First Amendment and a very conservative Supreme Court majority that has protected what some people describe as faith and what other people experience as bigotry.<sup>84</sup> That Bond-Theriault does not delve into how unlikely it is that the protection of faith-based claims, especially those rooted in Christianity, will be lessened no matter who sits in the White House or controls Congress, may give readers a false impression that these issues are more tractable than is actually the case. The present question seems to be how to work around these restrictions to ensure that people get the care that they need and the respect they deserve with no expectation that the federal government will be coming to the rescue at any point in the near future.

In a similar vein, there are moments when centering LGBTQIA+ people leads Bond-Theriault to leave unexamined relevant complexities. For instance, when she writes about queer family building, she calls for policies that:

support queer and trans pregnancy processes; make space for queer, transgender, and gender expansive birthing practices; and ensure that [assisted reproductive technologies] and surrogacy are economically accessible for all queer folks, especially queer and trans people of color, or QTPOC, who are more likely to face barriers to building families than their white LGBTQIA+ counterparts. (p. 110)

No doubt, she is correct that building families with children through the use of assisted reproduction can require queer people to face many barriers. For example, they may encounter providers who refuse to work with people who are unpartnered, or face the difficulty of getting a medical diagnosis of infertility that might open up access to insurance for treatments that can be prohibitively expensive.<sup>85</sup>

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*Protection from Discrimination, Or the Right to Discriminate: Changing Public Perceptions of LGBTQ Rights and Religious Freedom*, PRRI (Dec. 12, 2023), <https://www.prii.org/spotlight/protection-from-discrimination-or-the-right-to-discriminate-changing-public-perceptions-of-lgbtq-rights-and-religious-freedom> [<https://perma.cc/TZH7-QSDH>].

<sup>84</sup> Nina Totenberg, *The Supreme Court Is the Most Conservative in 90 Years*, NPR (July 5, 2022, 7:04 AM), <https://www.npr.org/2022/07/05/1109444617/the-supreme-court-conservative> [<https://perma.cc/GU9K-CGTZ>].

<sup>85</sup> Medical infertility refers to the inability to get pregnant after one year of having unprotected sex with an opposite sex partner. Wee Lo & Lisa Campo-Engelstein, *Expanding the Clinical Definition of Infertility to Include Socially Infertile Individuals and Couples*, in *REPRODUCTIVE ETHICS* II 71, 71 (Lisa Campo-Engelstein & Paul Burcher eds., 2018). Social infertility is a term used to describe people who may have no physical impairment to getting pregnant but who have a same-sex partner, no partner, or who may have a disability or a transmissible disease that they want to avoid passing on. *Id.* at 71–73. Disparities in access to assisted reproduction have long been documented. *See, e.g.*, The Ethics Comm. of the Am. Soc’y for Reproductive Med., *Disparities in Access to Effective Treatment for Infertility in the United States: An Ethics Committee Opinion*, 116 *FERTILITY & STERILITY* 54, 54 (2021). After many years of advocacy, there has been some movement in expanding the definition of infertility as one way to open up treatment access to more people. The American Society for Reproductive Medicine issued a committee opinion in 2023 that defined infertility to include: “[t]he need for medical intervention, including, but not limited to, the

But her call to ensure access to surrogacy warrants a bit more attention for its potential clash with other questions of protecting marginalized communities. Later in the book, Bond-Therault notes that RJ activists have rightly raised concerns about a fertility industry that commodifies bodies, including gametes and wombs, and that can “continue to strengthen as opposed to dismantle the harmful and deadly institutions of white supremacy, heteropatriarchy, classism, and ableism that people of color, women, queer and trans folks, people experiencing poverty and criminalization, and those with disabilities have been fighting against since the founding of the United States” (p. 121). She encourages advocates to be vigilant and prepared “to intervene when negative patterns start to (re)emerge,” but beyond offering this information she does not interrogate how calling for more access to assisted reproduction can lead to queer people being complicit in broken and exploitative systems (p. 121). The business of surrogacy is a powerful example of this potential clash.

A surrogacy arrangement in the United States can cost anywhere from \$125,000–\$175,000,<sup>86</sup> which has led many couples, including same-sex couples, to pursue their family-building dreams outside of the United States.<sup>87</sup> Typically, these couples will travel to lower-income countries where they hire women to gestate their children who are paid far less than their labor is worth in the United States, and who may be working in a structure that does not have the gestational carrier’s<sup>88</sup> best interest in mind.<sup>89</sup> As a book centered on a community cobbled together from

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use of donor gametes or donor embryos in order to achieve a successful pregnancy either as an individual or with a partner.” PRAC. COMM. OF THE AM. SOC’Y FOR REPROD. MED., DEFINITION OF INFERTILITY: A COMMITTEE OPINION (2023), [https://www.asrm.org/globalassets/\\_asrm/practice-guidance/practice-guidelines/pdf/definition-of-infertility.pdf](https://www.asrm.org/globalassets/_asrm/practice-guidance/practice-guidelines/pdf/definition-of-infertility.pdf) [https://perma.cc/YZ7B-YSRZ]. It also indicated that “[n]othing in this definition shall be used to deny or delay treatment to any individual, regardless of relationship status or sexual orientation.” *Id.*

<sup>86</sup> Amanda Mushro, *How Much Does Surrogacy Cost?*, TODAY (Jan. 8, 2024, 4:29 PM), <https://www.today.com/parents/parents/surrogacy-costs-rcna40050> [https://perma.cc/UP9V-3PKN].

<sup>87</sup> Katherine Voskoboynik, Note, *Clipping the Stork’s Wings: Commercial Surrogacy Regulation and Its Impact on Fertility Tourism*, 26 IND. INT’L & COMP. L. REV. 336, 339 (2016).

<sup>88</sup> As noted by Kate Swanson: “Word choice is extremely important when discussing [surrogacy].” Kate Swanson et al., *Understanding Gestational Surrogacy in the United States: A Primer for Obstetricians and Gynecologists*, 222 AM. J. OBSTETRICS & GYNECOLOGY 330, 330 (2020). When the woman gestating a child for others does not have a genetic connection to the child, she is known as the “gestational carrier.” *Id.* at 331 box 1. Though women who work as surrogates may sometimes still be referred to in some literature as surrogate mothers, “this term misunderstands the relationships between surrogates and the children they gestate” for whom they do not plan to be a legal mother or a person with any parental responsibilities or rights related to the child. *Id.* at 331.

<sup>89</sup> *Id.* at 336 (“[T]his unfavorable incentive structure may put women who are gestational carriers at increased risks . . . . This disparity also suggests that [the] physicians treat women who are gestational carriers differently from other patients . . . .”); Voskoboynik, *supra* note 87, at 339 (“The primary economic incentive is the reduced cost of surrogacy in foreign nations. In the United States, gestational surrogacy costs between \$110,000 and \$150,000. . . . [S]urrogacy costs are considerably lower in Eastern Europe and Southeast Asia. For example, gestational surrogacy in Ukraine costs

a wide range of people, many of whom wear a multiplicity of marginalized identities, *Queering Reproductive Justice* must contend with how putting forward one aspect of identity, queerness, can sometimes obscure the capacity for queer people to be perpetrators of subordination of others within and outside of our community. As Bond-Theriault makes clear in many parts of her text, framing issues without looking to the bottom can skew our results no matter who is doing the framing. Certainly, queer people do not have a special responsibility to abandon dreams of parenthood because of gender and class inequality in foreign nations, but some acknowledgement of how queer people may contribute to a business that can denigrate and abuse women at times is worth at least mentioning in this very specific context.<sup>90</sup>

Incomplete analysis also rears its head in Bond-Theriault's deep dive on *Dobbs*.<sup>91</sup> *Dobbs*, of course, jettisoned the federal right to abortion and sent the issue of abortion back to the states where,<sup>92</sup> inevitably, many people would find themselves living in states where abortion is severely restricted or even essentially banned in practice, if not on paper. In keeping with the theme of her book, Bond-Theriault considers how *Dobbs* specifically impacts queer people (pp. 69, 74–75). Given that not all of her readers will be legally trained, this is a moment when Bond-Theriault again has an opportunity to translate the law in a way that is accessible and accurate for an audience that cares, which she largely does quite well. Unfortunately, though, she makes some missteps here worth exploring.

There is no doubt that *Dobbs* is a travesty to and for anyone who cares about RJ. Justice Alito's majority opinion ignored the issues of equality and autonomy for pregnant women and focused almost exclusively on the state's interest in protecting potential life.<sup>93</sup> The analysis that overruled *Roe v. Wade*<sup>94</sup> relied in significant measure on the majority's decision that the right to an abortion is not rooted in U.S. history and traditions based on a historical review<sup>95</sup> that is out of

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approximately \$45,000, and the surrogate receives between \$10,000 and \$15,000. The average cost of gestational surrogacy declines further in India, where intended parents pay approximately \$25,000 and the surrogate earns \$2,000 to \$10,000." (footnotes omitted)).

<sup>90</sup> Kimberly Mutcherson, Essay, *Building Queer Families and the Ethics of Gestational Surrogacy*, 54 U. RICH. L. REV. 901, 902 (2020).

<sup>91</sup> 142 S. Ct. 2228 (2022).

<sup>92</sup> *Id.* at 2279.

<sup>93</sup> *See id.* at 2284.

<sup>94</sup> 410 U.S. 113 (1973).

<sup>95</sup> *Dobbs*, 142 S. Ct. at 2253–54 ("The inescapable conclusion is that a right to abortion is not deeply rooted in the Nation's history and traditions. On the contrary, an unbroken tradition of prohibiting abortion on pain of criminal punishment persisted from the earliest days of the common law until 1973.").

sync with the history written by trained historians.<sup>96</sup> Bond-Theriault critiques this analysis by decrying the majority's "creation of a novel 'Nation's history and tradition' legal test"<sup>97</sup> (p. 68), though this test is not novel in the sense of being constructed out of whole cloth by the Court. The Supreme Court has long used history and tradition in some capacity when determining the existence or lack thereof of unenumerated constitutional rights<sup>98</sup> or the scope of enumerated rights.<sup>99</sup> It is right that the rigidity with which the majority applies this test is unique, but that is different from implying that the test was not part of the canon of Supreme Court jurisprudence before *Dobbs* (pp. 69–70). There is enough for RJ proponents to abhor in Justice Alito's opinion that it is not necessary to add the creation of a new test to that long list.

She makes other questionable assertions such as claiming that abortion restrictions under *Roe* did not criminalize abortion seekers, only abortion doctors, because under *Roe*, most laws targeting abortion seekers would have been "immediately invalidated" (p. 73). This is a curious claim given that the question of who was punished for banned abortions was not at issue in *Roe*.<sup>100</sup> Certainly, Bond-Theriault is correct on many fronts in her analysis of *Dobbs*. It is a case that seems to focus on morality rather than legality (p. 70). It is a case that blithely ignores the many arguments made by numerous amici about the

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<sup>96</sup> See Brief for *Amici Curiae* American Historical Association and Organization of American Historians in Support of Respondents at 4, *Dobbs*, 142 S. Ct. 2228 (No. 19-1392) ("Newly accessible historical evidence further refutes any claim that, from the adoption of the Constitution through 1868, our nation had a settled view on the criminality of abortion. If it had been widely accepted that all abortions were criminal, there would have been no need for the physicians' campaign [seeking more stringent anti-abortion legislation in the late 1850s]. If the common law had been fully rejected, states would not have continued to differentiate between abortions at different stages of pregnancy. As we understand now better than ever before, American history and tradition regarding abortion under the common law undergirds *Roe v. Wade*'s holding that women have a constitutional right to decide for themselves whether to choose to terminate a pregnancy.").

<sup>97</sup> The author quotes *Dobbs*, 142 S. Ct. at 2253.

<sup>98</sup> *Washington v. Glucksberg*, 521 U.S. 702, 720–21 (1997) ("[W]e have regularly observed that the Due Process Clause specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition.'" (quoting *Moore v. City of East Cleveland*, 431 U.S. 494, 503 (1977) (plurality opinion)) (citing *Snyder v. Massachusetts*, 291 U.S. 97, 105 (1934))); *Obergefell v. Hodges*, 576 U.S. 644, 663–64 (2015) ("The identification and protection of fundamental rights is an enduring part of the judicial duty to interpret the Constitution. . . . History and tradition guide and discipline this inquiry but do not set its outer boundaries." *Id.* (citing *Lawrence v. Texas*, 539 U.S. 558, 572 (2003))); *Moore*, 431 U.S. at 503 (plurality opinion) (noting importance of "careful 'respect for the teachings of history'" (quoting *Griswold v. Connecticut*, 381 U.S. 479, 501 (1965) (Harlan, J., concurring in judgement))).

<sup>99</sup> See, e.g., *N.Y. State Rifle & Pistol Ass'n v. Bruen*, 142 S. Ct. 2111, 2131 (2022) ("The test that we set forth in [*District of Columbia v. Heller*, 554 U.S. 570 (2008)], and apply today requires courts to assess whether modern firearms regulations are consistent with the Second Amendment's text and historical understanding.").

<sup>100</sup> *Roe v. Wade*, 410 U.S. 133, 117–18 (1973). *Roe* focused on the legality of a Texas statute which banned abortion except in very limited circumstances and that punished doctors, not abortion seekers, if violated. *Id.*

communities that would be most harshly impacted by *Roe*'s reversal (pp. 69, 72). And sending the issue of abortion back to the states to be determined through democratic processes is rich coming from a Court that has been decimating the Voting Rights Act,<sup>101</sup> which Bond-Theriault also notes (p. 72). But correcting the record on these pieces of *Queering Reproductive Justice*'s account of abortion law matters in part because it reflects a potential distinction in how the law has treated abortion and the people seeking abortions versus how it has treated queer people, and what those differences say about the people and rights at issue.

Anti-abortion crusaders frequently shape their arguments around a belief that women have abortions because they are victims of bad partners or an evil abortion industry where doctors, often called abortionists,<sup>102</sup> prey upon women who do not really want to have abortions.<sup>103</sup> In these narratives, women lack agency and, therefore, need assistance, not punishment. This vision of women as being acted upon rather than as actors exists even in the language of *Roe*, where the majority opinion by Justice Blackmun focuses in strange ways on physicians who counsel women about abortions rather than on women who seek abortion care.<sup>104</sup> And Supreme Court jurisprudence has also bought into the anti-choice argument about abortion regret despite no

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<sup>101</sup> See, e.g., *Shelby County v. Holder*, 570 U.S. 529, 590 (2013) (Ginsburg, J., dissenting) (noting wryly that “[t]hrowing out preclearance [(a provision of the Voting Rights Act)] when it has worked and is continuing to work to stop discriminatory changes is like throwing away your umbrella in a rainstorm because you are not getting wet”); *Brnovich v. Democratic Nat’l Comm.*, 141 S. Ct. 2321, 2351 (2021) (Kagan, J., dissenting) (“The majority fears that the statute Congress wrote is too ‘radical’ — that it will invalidate too many state voting laws. So the majority writes its own set of rules, limiting Section 2 from multiple directions. Wherever it can, the majority gives a cramped reading to broad language. And then it uses that reading to uphold two election laws from Arizona that discriminate against minority voters.” (citations omitted)).

<sup>102</sup> On the use of the term abortionist, ACOG writes:

Clinicians who provide abortion care are highly trained medical experts who provide patients with a wide range of medical care, of which abortion is a part. Using this derogatory phrase perpetuates the myth that they are not medical experts and that abortion care is the extent of their expertise and does not reflect the full range of the patient-centered care that they provide.

*ACOG Guide to Language and Abortion*, AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, <https://www.acog.org/contact/media-center/abortion-language-guide> [<https://perma.cc/25MK-L6ZX>].

<sup>103</sup> See, e.g., Natalie Riel & Sara E. Nolan, *Why Women Are Not, And Should Not Be, Prosecuted for Abortion*, AMS. UNITED FOR LIFE (Feb. 15, 2023), <https://aul.org/2023/02/15/why-women-are-not-and-should-not-be-prosecuted-for-abortion> [<https://perma.cc/A5VT-4DJF>] (“Sometimes, the lack of informed consent influences [the woman’s] decision . . .”); LESLIE J. REAGAN, *WHEN ABORTION WAS A CRIME: WOMEN, MEDICINE, AND LAW IN THE UNITED STATES*, 1867–1973, at 10 (2d ed. 2022) (“It is crucial to recognize what these early-nineteenth-century laws did not cover: they did not punish women for inducing abortions . . .”).

<sup>104</sup> See 410 U.S. at 164 (“For the stage prior to approximately the end of the first trimester, the abortion decision and its effectuation must be left to the medical judgment of the pregnant woman’s attending physician.” (emphasis added)).



data to back up this concern.<sup>105</sup> This is not to say that all anti-abortion advocacy falls into this category, but even before *Roe*, most existing abortion laws in the country punished doctors for providing abortions, not women who had abortions.<sup>106</sup> This is also not to suggest an absence of negative rhetoric that paints women seeking abortions as loose women or even as race traitors in the case of Black women,<sup>107</sup> but even then the answer is not prison, rather the punishment is in being forced to remain pregnant.<sup>108</sup> And, of course, claiming that *Roe* protected against laws that criminalized abortion seekers ignores laws that criminalized self-managed abortion,<sup>109</sup> the decades-long history of women being prosecuted for their pregnancy behavior under statutes unrelated to abortion,<sup>110</sup> and *Roe* being used to justify forced obstetrical interventions, like compelled C-sections on women.<sup>111</sup>

By contrast, the anti-LGBTQIA+ agenda has often seen queer people as perpetrators. They do not want us to adopt because they believe that gay men, in particular, present a threat of sexual violence against children — a disgusting and persistent myth.<sup>112</sup> Past and

<sup>105</sup> See *Gonzales v. Carhart*, 550 U.S. 124, 159 (2007) (“While we find no reliable data to measure the phenomenon, it seems unexceptionable to conclude some women come to regret their choice to abort the infant life they once created and sustained.”).

<sup>106</sup> REAGAN, *supra* note 103, at 10. Even as police tactics against abortion providers shifted in the 1940s, law enforcement targeted women who had abortions as witnesses against the people providing those abortions, not as perpetrators of crime. *Id.* at 161; see also Selena Simmons-Duffin, *Doctors Who Want to Defy Abortion Laws Say It's Too Risky*, NPR (Nov. 23, 2022, 5:01 AM), <https://www.npr.org/sections/health-shots/2022/11/23/1137756183/doctors-who-want-to-defy-abortion-laws-say-its-too-risky> [https://perma.cc/YVE9-U35U].

<sup>107</sup> See, e.g., Courtney Bowie, *The Most Dangerous Place for Black Children . . .*, ACLU (Feb. 25, 2011), <https://www.aclu.org/news/smart-justice/most-dangerous-place-black-children> [https://perma.cc/TEH3-TYJG].

<sup>108</sup> See, e.g., Carolyn Sufrin, *When the Punishment Is Pregnancy: Carceral Restriction of Abortion in the United States*, 34 CULTURAL ANTHROPOLOGY 34, 36 (2019) (claiming that “continued pregnancy” of women in prisons may be “perceive[d]” as “serving a penological interest”).

<sup>109</sup> See generally, e.g., LAURA HUSS ET. AL., SELF-CARE, CRIMINALIZED: THE CRIMINALIZATION OF SELF-MANAGED ABORTION FROM 2000 TO 2020 (2023), <https://ifwhenhow.org/wp-content/uploads/2023/10/Self-Care-Criminalized-2023-Report.pdf> [https://perma.cc/H4AT-MRHX].

<sup>110</sup> See, e.g., Carla-Michelle Adams, *Criminalization in Shades of Color: Prosecuting Pregnant Drug-Addicted Women*, 20 CARDOZO J.L. & GENDER 89, 103 (2013) (discussing prosecution of pregnant Black women for drug use); Vanessa Vecchiarello, Note, *The Criminalization of Pregnancy and Its Effects on Maternal Health: Understanding State Interventions*, 47 FORDHAM URB. L.J. 1051, 1054 (2020) (noting criminalization of miscarriage, stillbirth, and substance use during pregnancy). Dorothy Roberts’s seminal work on the issue of pregnancy criminalization continues to be relevant as crusades against women the state deems unfit for pregnancy continue. See DOROTHY ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* 159–209 (1997).

<sup>111</sup> See, e.g., *In re A.C.*, 573 A.2d 1235, 1254–55, 1264 (D.C. 1990); *In re Baby Boy Doe*, 632 N.E.2d 326, 330, 334 (Ill. App. Ct. 1994); *Jefferson v. Griffin Spalding Cnty. Hosp. Auth.*, 274 S.E.2d 457, 460 (Ga. 1981) (Hill, J., concurring).

<sup>112</sup> See *Fulton v. City of Philadelphia*, 141 S. Ct. 1868, 1882 (2021) (upholding, unanimously, a Catholic foster care agency’s ability to reject married same-sex parents from serving as foster

present campaigns against gay teachers center on the belief that gay people must recruit new members to our communities because we cannot reproduce “naturally.”<sup>113</sup> Courts have allowed gay panic defenses to protect killers who claimed that they were driven to commit their crimes because of advances from a predatory gay man.<sup>114</sup> Bathroom bills that require people to use the bathrooms that correspond to their sex assigned at birth are said to protect women from potential violence from transwomen, who are consistently misgendered in the rhetoric, in their bathrooms.<sup>115</sup> Advocates for the LGBTQIA+ community argue for bans on conversion or reparative therapy to counter the mistaken belief that queerness is an affliction that can be

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parents); EVELYN SCHLATTER & ROBERT STEINBACK, S. POVERTY L. CTR., 10 MYTHS ABOUT GAY MEN AND LESBIANS (2011), [https://www.splcenter.org/wp-content/uploads/files/d6\\_legacy\\_files/downloads/publication/IR140\\_10\\_Myths\\_whitepaper.pdf](https://www.splcenter.org/wp-content/uploads/files/d6_legacy_files/downloads/publication/IR140_10_Myths_whitepaper.pdf) [<https://perma.cc/ZG2P-CDTE>] (debunking prevalent myths that gay individuals harm or sexually abuse children at higher rates than straight individuals).

<sup>113</sup> Sally Lineback et al., “*They Think I Am A Pervert: A Qualitative Analysis of Lesbian and Gay Teachers’ Experiences with Stress at School*,” 52 EDUC. STUD. 592, 592 (2016) (“America’s public schools have been identified as particularly discriminatory environments for [lesbian and gay (LG)] individuals. Some research even suggests that education may be the most homophobic profession in the United States, due to unfounded stereotypes about LG individuals’ relationships with children, including stereotypes about increased sexual behavior, pedophilia, molestation, and recruitment into a gay lifestyle.” (citations omitted)).

<sup>114</sup> Omar T. Russo, *How to Get Away with Murder: The “Gay Panic” Defense*, 35 TOURO L. REV. 811, 812 (2019) (“Today, the gay panic defense is still used to influence jurors to mitigate a violent defendant’s conviction or sentence based on the premise that an individual of the same sex had a romantic interest in the defendant, which consequently, struck some panic within the defendant and caused the defendant to react violently.”).

<sup>115</sup> See, e.g., Securing Areas for Females Effectively and Responsibly Act (SAFER Act), MISS. CODE ANN. §§ 29-18-1 to -19 (2024); see also Deena Pritchep, *Transgender Bathroom Bills Are Back, Gaining Traction After Past Boycotts*, NPR (May 6, 2024, 5:30 PM), <https://www.npr.org/2024/05/06/1249406353/transgender-bathroombill-republican-states> [<https://perma.cc/9BZU-8P23>]. Representative Nancy Mace got significant press coverage by announcing a new bill called the Protecting Women’s Private Spaces Act after the election of Representative Sarah McBride as the first transgender member of Congress. See, e.g., Syedah Asghar & Rebecca Shabad, *Rep. Nancy Mace Says Her Anti-Trans Bathroom Bill “Absolutely” Targets Rep.-Elect Sarah McBride*, NBC NEWS (Nov. 19, 2024, 11:50 AM), <https://www.nbcnews.com/politics/congress/nancy-mace-defends-anti-trans-bathroom-bill-says-absolutely-targets-sa-rcna180805> [<https://perma.cc/V3KZ-4H49>]; Protecting Women’s Private Spaces, H.R. 10186, 118th Cong. (2024). That Act would require Representative McBride and all other trans people in the Capitol building to use the bathroom that corresponds to their sex assigned at birth. See *id.* § 2(a). In a press release, Representative Mace’s office wrote: “While the woke mob predictably manufactures outrage, the vast majority of Americans recognize the importance of protecting women’s rights and privacy.” Press Release, Off. of Congresswoman Nancy Mace, Congresswoman Nancy Mace Announces Protecting Women’s Private Spaces Act (Nov. 20, 2024), <https://mace.house.gov/media/press-releases/congresswoman-nancy-mace-announces-protecting-womens-private-spaces-act> [<https://perma.cc/2WQ3-2R4S>]. Representative Mace herself said: “Women and girls shouldn’t have to give up their safety or privacy just because the Left wants to win points with their activist base . . . . This isn’t controversial — it’s common sense. I’m going to continue defending women and girls from these harmful, out-of-touch, and straight up weird policies.” *Id.* (emphasis omitted).

prayed away or otherwise changed through therapeutic efforts.<sup>116</sup> Thus, the anti-LGBTQIA+ belief is that abortion seekers, always presumed to be cis women, should not be punished for their abortions because they are not acting with full agency,<sup>117</sup> but that gay people engage in immoral and sometimes illegal behavior for which punishment is appropriate. Relevant in this respect is the use of criminal antisodomy laws prior to *Lawrence v. Texas*<sup>118</sup> to deprive queer parents of custody of their children because they were engaging in criminal acts.<sup>119</sup> Thus, the discussion of abortion is not just a place to talk about the regulation of abortion care. It is an opportunity to consider how the categories at play — queerness, womanhood, capacity for pregnancy — can impact how the law treats those who exist in multiple identity categories.

*Queering Reproductive Justice*, as a policy-focused book, includes important discussions about how existing laws and policies actively harm queer people in a range of ways and helps readers think about how to shift those policies through the political process. That I wished for some deeper discussions in some places does not diminish the fact that Bond-Therriault has written a book with the possibility for tremendous impact. Her book will appeal to academics as it includes many ideas for future scholarship and invites that scholarship. Laypeople who want to know more about the RJ movement and its connection to queer people will learn a great deal from this book. Very specifically, the book will appeal to people who are working with legislators and agencies on a regular basis, seeking change and support for LGBTQIA+ people.

*Liberating Abortion* will appeal to some of these same readers, but it does not center the law in the same way as *Queering Reproductive Justice*, which opens *Liberating Abortion* up to an even broader set of readers. I hope that *Liberating Abortion* will permeate into places like schools and public libraries, where young people, especially young women and others with the capacity for pregnancy, will find themselves in its pages. Perhaps this book will reach those who are pregnant unexpectedly or those who are scared to share information about their pregnancy with parents or other family members, possibly because of the risk of violence. Perhaps it will reach those who are confronted with too many media images that make abortion frightening, or even those who are living in a part of the country where accessing an abortion is difficult, if not impossible. Or maybe a parent who reads the book will

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<sup>116</sup> *The Lies and Dangers of Efforts to Change Sexual Orientation or Gender Identity*, HUM. RTS. CAMPAIGN, <https://www.hrc.org/resources/the-lies-and-dangers-of-reparative-therapy> [<https://perma.cc/WFV5-CF8L>].

<sup>117</sup> See *supra* notes 102–08 and accompanying text.

<sup>118</sup> 539 U.S. 558 (2003).

<sup>119</sup> See, e.g., *Bottoms v. Bottoms*, 457 S.E.2d 102, 107–09 (Va. 1995) (granting custody of minor child to his grandmother against his mother due to multiple factors, including mother's sexual relationship with her female partner).

be better equipped to support their child who comes to them with news of an unexpected pregnancy. The advice offered to abortion seekers and people supporting abortion seekers within *Liberating Abortion* will give many readers the tools to support themselves, their children, other family members, and friends in a way that strengthens rather than shatters relationships. It is this potential that makes the book a much-needed addition to the existing canon of books about abortion.

## V. ON STORYTELLING

CRT stresses the power of storytelling. Professor Richard Delgado writes that “[s]tories, parables, chronicles, and narratives are powerful means for destroying mindset — the bundle of presuppositions, received wisdoms, and shared understandings against a background of which legal and political discourse takes place.”<sup>120</sup> Delgado urges his contemporaries to use their stories and narratives to build understanding, to dismantle the myths that sustained oppression, and, ultimately, to create space for systemic transformation.<sup>121</sup> In the spirit of Matsuda’s call to “look to the bottom,” described earlier in this Review,<sup>122</sup> part of that storytelling tradition also encourages those writing in the CRT space to use their own voices, tell their own stories, and stop pretending that objectivity is possible or expected in scholarship.<sup>123</sup>

Like CRT, RJ centers the power of storytelling:

[S]torytelling is an act of subversion and resistance. Stories help us understand how others think and make decisions. They help us understand how our human rights — and the human rights of others — are protected or violated. Storytelling is a core aspect of reproductive justice practice because attending to someone else’s story invites us to shift the lens — that is, to imagine the life of another person and to reexamine our own realities and reimagine our own possibilities.<sup>124</sup>

There are so many stories that deserve to be told and that must be told in a way that treats lived experience not as proof of biased subjectivity but as evidence of how law and policy shape, reshape, and impede the lives of real people. Told well and with integrity, stories can

<sup>120</sup> Richard Delgado, *Storytelling for Oppositionists and Others: A Plea for Narrative*, 87 MICH. L. REV. 2411, 2413 (1989).

<sup>121</sup> See *id.* Delgado and Professor Jean Stefancic explain: “Many Critical writers are post-moderns, who believe that form and substance are closely connected. Accordingly, they have been using biography and autobiography, stories and counterstories, to expose the false necessity and unintentional irony of much current civil rights law and scholarship.” CRITICAL RACE THEORY: THE CUTTING EDGE, at xvii (Richard Delgado & Jean Stefancic eds., 2d ed. 2000).

<sup>122</sup> See *supra* notes 6–9 and accompanying text.

<sup>123</sup> See Delgado, *supra* note 120, at 2440 (“Telling stories invests texts with feelings, gives voice to those who were taught to hide their emotions. Hearing stories invites hearers to participate, challenging their assumptions, jarring their complacency, lifting their spirits, lowering their defenses.”).

<sup>124</sup> Ross & Solinger, *supra* note 2, at 59.

make arguments more persuasive and can emphasize that law should not be about indiscriminately exercising power, but about using power to uplift.<sup>125</sup>

Bond-Theriault makes her pitch for queering RJ in conventional ways — pointing to laws, policies, court cases, and other mainstream institutions that can quickly take away rights that they had once recognized. But it is the embrace of the culture of storytelling that shines through so brightly in *Liberating Abortion* that shows how our stories define us and how those stories can help others to understand where we come from, what we need, and where we want to go.

The liberal use of storytelling in *Liberating Abortion* is a powerful device for grounding advocacy and activism in authentic lived experiences. Personal stories of people who have had abortions appear throughout the book with storytellers who range in age, relationship status, and profession. Many of those who share stories are women of color, including Indigenous and Asian American and Pacific Islander (AAPI) women whose stories are too frequently overlooked in mainstream accounts of abortion. Chapter Two of *Liberating Abortion* recounts the stories of Marie Learner and Sakinah Shannon Ahad, two Black women who volunteered with the underground Abortion Counseling Service (pp. 41–45, 50–54). This branch of the Chicago Women’s Liberation movement was known as “The Service” or “Jane” (p. 41). “The Janes,” as it is often called today (even though it was not called that at the time), was an underground network that helped women in Chicago access abortions when they were illegal in much of the United States (pp. 46–50).

The authors also recount the story of Rosie Jimenez, who died in 1977 from an infection caused by an abortion performed by an unlicensed provider (pp. 140–41). Jimenez, who was low income, could not afford an abortion, and the Hyde Amendment meant that Medicaid could not pay for her abortion, as it had for her two abortions that took place before the Hyde Amendment went into effect (p. 140). That Jimenez had had prior abortions is often excised from the story of her tragedy, the authors argue, for the sake of a story that would have more resonance with an audience that does not like the idea of women having multiple abortions (pp. 139–41, 143–44). The “never again” rallying cry

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<sup>125</sup> See Victoria Capatosto & Eileen Santos, *Social Justice: Introduction*, VERNON E. JORDAN L. LIBR., HOW. UNIV. SCH. OF L. (Oct. 19, 2023, 9:22 AM), <https://library.law.howard.edu/socialjustice> [https://perma.cc/RC2B-RY8F] (“A lawyer’s either a social engineer or . . . a parasite on society . . . [.] A social engineer [is] a highly skilled, perceptive, sensitive lawyer who [understands] the Constitution of the United States and [knows] how to explore its uses in the solving of problems of local communities and in bettering conditions of the underprivileged citizens.” (second and third alterations in original) (quoting Charles Hamilton Houston)).

of pro-choice advocates,<sup>126</sup> often accompanied by the redacted story of Jimenez's death, flattens out the complexity of her life in favor of a more convenient and sellable tale.<sup>127</sup> In our post-*Roe* world, the authors raise a concern about the media's desire for stories about dead women who had unsafe abortions, writing:

Those who died deserve not to have their death — their stories — exploited and mangled for political gain. They deserve to have their memories live on with those who loved them, not flattened to make a point about the barriers to abortion that we already know about. It's frustrating to witness reporters salivate over the potential story of a dead person, rather than elevate the stories of those who are living and indicting the injustice of the system with their voices. (p. 144)

This concern feels especially relevant given the preventable death of Amber Thurman, a Black woman and a mother of a young boy, who died after a rare and eminently treatable complication of a medication abortion.<sup>128</sup> Thurman's medical team did not immediately provide her with the dilation and curettage (D&C) that was medically indicated to remove the fetal remains that had not yet been expelled from her body after her medication abortion.<sup>129</sup> Fast action almost certainly would have saved her life, but her medical team waited twenty hours to provide care for reasons that have not been made clear, though Georgia's restrictive abortion law almost certainly played a critical part in their failure to act quickly.<sup>130</sup> Thurman's death, as the *Liberating Abortion* authors predicted, became a story ripe for exploitation by those on all sides of the abortion debate. When *ProPublica* released a story about Thurman's death, then-Vice President Kamala Harris spoke about Thurman's death at an Atlanta rally and released a campaign ad featuring Thurman's mother and footage from that rally decrying the

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<sup>126</sup> See, e.g., Roberta Brandes Gratz, *Never Again — Death, Politics, and Abortion*, MS. MAG., Apr. 1973, reprinted in MS. MAG., Spring 2002, at 19, 19; Debbie Rich, Photograph of Radcliffe College Students at Pro-Choice Rally Carrying Signs (1985) (on file with Schlesinger Library on the History of Women in America, Radcliffe Institute).

<sup>127</sup> See, e.g., Nicole Chavez, *Texas Woman Died After an Unsafe Abortion Years Ago. Her Daughter Fears the Same Thing May Happen Again*, CNN (Oct. 11, 2021, 9:56 AM), <https://www.cnn.com/2021/10/11/us/texas-abortion-rosie-jimenez/index.html> [<https://perma.cc/3UQ3-84CZ>] (omitting details about Jimenez's past abortions in recounting her story).

<sup>128</sup> Kavitha Surana, *Abortion Bans Have Delayed Emergency Medical Care. In Georgia, Experts Say This Mother's Death Was Preventable*, PROPUBLICA (Sept. 16, 2024, 5:00 AM), <https://www.propublica.org/article/georgia-abortion-ban-amber-thurman-death> [<https://perma.cc/KH6C-FJSR>]. Thurman is not the only woman who has suffered a preventable death due to delays in care or other barriers erected by restrictive abortion laws. See, e.g., Cassandra Jaramillo & Kavitha Surana, *A Woman Died After Being Told It Would Be a "Crime" to Intervene in Her Miscarriage at a Texas Hospital*, PROPUBLICA (Oct. 30, 2024, 5:00 AM), <https://www.propublica.org/article/josseli-barnica-death-miscarriage-texas-abortion-ban> [<https://perma.cc/W7MS-4W8W>].

<sup>129</sup> Surana, *supra* note 128.

<sup>130</sup> See *id.*

predicted outcomes of “Trump abortion bans” coming to fruition.<sup>131</sup> Mainstream reproductive rights organizations issued statements and press releases using Thurman’s death to illustrate the importance of their work.<sup>132</sup> Politicians on the right used the occasion to make false claims about medication abortion.<sup>133</sup> And while politicians scored points by telling the story of his mother’s death and fundraisers collected donations, Amber Thurman’s son is growing up without his mother.

Other abortion storytellers in the book are individuals who are non-binary or trans (pp. 242–46, 293–94), a person who was in state custody when they chose to seek an abortion as a teenager (p. 240), members of Congress (pp. 150–51, 236–39, 256–58), a current abortion provider who recounts her own abortion story as a young person (pp. 209–12), a person who did not get a wanted abortion after workers at a crisis pregnancy center<sup>134</sup> deceived her into believing that having an abortion would make her infertile (p. 181), and many others. The breadth and diversity of these stories are astounding, not because women and people with the capacity for pregnancy who have abortions do not obviously come from all backgrounds and life experiences, but because the stories that enter the mainstream conversation come from such a small slice of the reality of abortion in the United States. Most women who have abortions do so in the first trimester,<sup>135</sup> but the constant emphasis on “late-term abortion” or even “abortion after birth,” a false claim that anti-choice

<sup>131</sup> Adeola Adeosun, *Harris Calls Trump’s Response to Abortion Case “Cruel” at Georgia Rally*, NEWSWEEK (Oct. 19, 2024, 9:23 PM), <https://www.newsweek.com/kamala-harris-donald-trump-cruel-abortion-georgia-rally-1971772> [https://perma.cc/SV58-PFH9]; Erica L. Green, *Harris Ties Trump to the Fatal Fallout of Abortion Bans*, N.Y. TIMES (Oct. 28, 2024), <https://www.nytimes.com/2024/10/28/us/politics/harris-ad-amber-nicole-thurman.html> [https://perma.cc/2N5K-Q2TV].

<sup>132</sup> See, e.g., Press Release, Ctr. for Reprod. Rts., Comment on Death of Amber Thurman (Sept. 16, 2024), <https://reproductiverights.org/comment-death-amber-thurman> [https://perma.cc/4ELE-HRY8]; Press Release, Planned Parenthood, Planned Parenthood Southeast Statement on ProPublica Reports of Preventable Maternal Deaths of Georgia Women (Sept. 18, 2024), <https://www.plannedparenthood.org/planned-parenthood-southeast/newsroom/planned-parenthood-southeast-statement-on-propublica-reports-of-preventable-maternal-deaths-of-georgia-women> [https://perma.cc/5WZS-M869]; Press Release, Reprod. Freedom for All, Reproductive Freedom for All Responds to New Report Revealing Georgia’s Abortion Bans Caused “Preventable” Deaths (Sept. 16, 2024), <https://reproductivfreedomforall.org/news/reproductive-freedom-for-all-responds-to-new-report-revealing-georgias-abortion-bans-caused-preventable-deaths> [https://perma.cc/DCH3-G8SK].

<sup>133</sup> See, e.g., Abigail Darnell, *Fact Check: Amber Thurman’s Death Was Not Due to Pro-Life State Laws*, GA. REPUBLICAN ASSEMBLY (Sept. 26, 2024), <https://georgiara.com/2024/09/26/fact-check-amber-thurmans-death-was-not-due-to-pro-life-state-laws> [https://perma.cc/W4SH-N4JV] (“[T]he real blame for Amber Thurman’s death should be put upon those who are touting these abortion murder pills as safe for the health of the mother.”).

<sup>134</sup> See AM. COLL. OF OBSTETRICIANS & GYNECOLOGISTS, ISSUE BRIEF: CRISIS PREGNANCY CENTERS 1 (2022), <https://www.acog.org/advocacy/abortion-is-essential/trending-issues/issue-brief-crisis-pregnancy-centers> [https://perma.cc/B9Z8-XLRS].

<sup>135</sup> *Fact Sheet: Abortion in the United States*, GUTTMACHER (June 2024), <https://www.guttmacher.org/fact-sheet/induced-abortion-united-states> [https://perma.cc/6VKB-E77H]. Over ninety percent of abortions in the United States take place in the first trimester. *Id.*

politicians seem unable to stop repeating,<sup>136</sup> leaves the impression that many more abortions take place in the second trimester or later.

Similarly, most women who have abortions do so for a range of socioeconomic reasons. They are low income; they already have children at home; or they have life plans that would be stopped or delayed by pregnancy.<sup>137</sup> In contrast to this reality, the advocacy stories told, even by pro-choice advocates, focus on tragedies, women whose pregnancies threatened their own lives or fertility, or women whose fetuses had catastrophic anomalies or conditions that were incompatible with life.<sup>138</sup> Seldom are we asked to rally around the story of someone who just got pregnant at the wrong time or with the wrong person. All of this, of course, is part of the abortion stigma that *Liberating Abortion* boldly challenges. The stories do not feel exploitative, and they are not shared as forms of trauma porn. They allow people to reclaim their power. There is incredible beauty in seeing these stories collected in one place and in seeing them used as a way to respect the subjectivity and centeredness of the storytellers who, ultimately, are the real heroes of the book.

A reader of *Queering Reproductive Justice* will not leave the book with poignant stories that call for further reflection because there are not many stories in the book at all, which makes sense given the book's organization and purpose to appeal to advocates. Instead, the narrative elements in Bond-Theriault's book come from interviews that she conducted with a range of advocates and service providers. These interviews are a welcome space for real-world application of Bond-Theriault's work. The interviewees come from a range of organizations, including representatives from the National LGBTQ Task Force (NGLTF) (pp. 28–30, 82, 165–67) (the author's former employer (p. ix)), National Women's Law Center (pp. 35–41), Sexuality Information Educational Council of the United States (pp. 46–51), National Center for Lesbian Rights (pp. 52–55), Whitman-Walker Health (pp. 126–37), National Asian Pacific American Women's Forum (pp. 150–53), National Health Law Program (pp. 155–59), and In Our Own Voice: National

<sup>136</sup> See, e.g., Sarah McCammon, *Trump Repeats the False Claim that Democrats Support Abortion "After Birth" in Debate*, NPR (Sept. 10, 2024, 10:02 PM), <https://www.npr.org/2024/09/10/nx-s1-5107942/abortion-roe-wade-ivf-donald-trump-kamala-harris-debate-2024> [https://perma.cc/BV33-99LT]; Michael Achterling, *2 Republican House Candidates Refer to "Post-Birth" Abortions During Debate*, N.D. MONITOR (June 7, 2024, 3:49 PM), <https://northdakotamonitor.com/2024/06/07/2-republican-house-candidates-refer-to-post-birth-abortions-during-debate> [https://perma.cc/J56A-CE9U].

<sup>137</sup> *Fact Sheet: Abortion in the United States*, *supra* note 135; Usha Ranji et al., *Key Facts on Abortion in the United States*, KFF (Feb. 27, 2025), <https://www.kff.org/womens-health-policy/issue-brief/key-facts-on-abortion-in-the-united-states> [https://perma.cc/J3PB-AMPZ].

<sup>138</sup> See *supra* notes 128–33 and accompanying text; Sarah Elaine Harrison, Opinion, *Both My Abortions Were Necessary. Only One Gets Sympathy.*, N.Y. TIMES (Sept. 25, 2024), <https://www.nytimes.com/2024/09/25/opinion/abortions-necessary-sympathy.html> [https://perma.cc/H6KP-YZLF].



Black Women's Reproductive Justice Agenda (pp. 174–78) (the only explicitly RJ-focused organization represented among the interviewees). The interviewees bring a wealth of expertise to the table across a wide set of topics, from providing gender-affirming care (pp. 132–35), to voting patterns among queer communities (pp. 173–78), sex education for young people (pp. 45–50), and access to reproductive technology (pp. 120–24). Using these interviews in conjunction with her own research, Bond-Theriault regales the reader with an enormous amount of information.

Although there is much to process in *Queering Reproductive Justice*, each interview adds a piece to the puzzle of what the queering reproductive justice framework aims to accomplish: a sweeping restructuring of pretty much every system that functions in the United States. It requires shifts in how we pay for healthcare through Medicaid and how healthcare providers understand and provide care to their patients (pp. 155–67, 137–38). It requires a shift in how we structure benefits around marriage so that marriage does not remain a singular source for rights that should belong to individuals regardless of marital status (pp. 95–109). The inclusion of these interviews is a wonderful mechanism for bringing readers into the work and creating a sense of what queering reproductive justice means in the context of the work lives of the interviewees and the missions of their organizations. No doubt, these interviews are also a form of storytelling, but as discussed later in this Review,<sup>139</sup> they also elevate people who are firmly ensconced in mainstream advocacy with all of the limitations that this connection to mainstream advocacy brings to their work.

## VI. ON LIBERATION & ASSIMILATION

Liberation is not assimilation and vice versa. The authors of the books reviewed here would agree with that sentence. The conflict between assimilation and liberation gets specific mention in *Queering Reproductive Justice*, where Bond-Theriault describes LGBTQIA+ assimilation theory as seeking to achieve the “same rights, advantages, and privileges that are afforded to cisgender and heterosexual folks” (p. 30). While there are benefits to assimilating, according to *Queering Reproductive Justice*, that theory of change has its flaws, especially because it “chooses safety and inclusion over radical transformation” (p. 32). Assimilation, however, can also be a tool for survival and a way “to dismantle a system from the inside” (p. 32). As Bond-Theriault explains: “Before completely writing off the practice of assimilationism, we must check our own privileges and recognize that assimilation may be the most radical act that some members of our families and communities can perform” (p. 32). Of course, assimilation presumes an ability to “fit

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<sup>139</sup> See *infra* Part VI, pp. 1801–16.

in” in some way, which is also a privilege that many queer folks do not possess.<sup>140</sup> Even so, Bond-Theriault is undoubtedly correct that assimilation has its place in the movement, especially to the extent that it can literally be a lifesaver for some LGBTQIA+ people.

In contrast to and perhaps in conflict with assimilation, liberation, according to Bond-Theriault, is not about making space for some people in existing discriminatory and oppressive structures but is about dismantling those structures and institutions (pp. 32–33). She also identifies social justice work as distinct from work seeking equality through gaining civil and political rights. “Social justice,” she explains, “is a more liberatory approach than civil rights because it recognizes that gaining rights within a harmful system will never equal liberation. Social justice demands that the system itself be changed” (p. 35). Bond-Theriault walks a delicate tightrope that tacitly and, at times, explicitly acknowledges that mainstream advocacy, like that done by her interviewees, is largely assimilationist. However, she is careful about recognizing that this work can and should happen alongside liberation, even if it is not liberatory itself (p. 96). Liberation, in this sense, is aspirational, while assimilation may be required for day-to-day survival.

*Liberating Abortion* shares its ambition through its title, and there is no question that assimilation is not the authors’ goal. They write: “Liberation is the act of freeing ourselves from repression. . . . [I]t’s a vision in which everyone is able to have their abortions, free from shame, stigma, oppression, and struggle” (p. 4).

They continue:

We believe liberation will never come so long as certain types of families and types of parenting are privileged over others. It is not possible for us to receive our liberation from the Supreme Court, an institution that exists to maintain order and power structures. We cannot continue to beg the powers that be for crumbs when it’s politically convenient for them; they’ve never gone above and beyond to act in our best interests, especially for people having abortions. (p. 5)

Bond-Theriault also cares about and seeks liberation. She writes: “LGBTQIA+ liberation requires that the needs of the LGBTQIA+ community be included at the beginning of all social justice and civil rights conversations — and not added at the end as an asterisk — so that queer and nonbinary communities will become free when all others are freed” (p. 5). She further explains that liberation requires that readers:

[R]emember that the LGBTQIA+ organizations and advocates must center reproductive justice and use the reproductive justice framework; and

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<sup>140</sup> See RM Barton, *Normal as a Political Weapon: On Queer Assimilation and Pride Season*, WUSSY MAG. (June 20, 2018), <https://www.wussymag.com/all/normal-as-a-political-weapon-on-queer-assimilation-and-pride-season> [https://perma.cc/GN3E-WUZF] (“[S]ome queer people — particularly gender-nonconforming and trans people of color — do not have an easy path towards assimilation. Their identities are often, in and of themselves, a blunt challenge to heteronormativity, white supremacy, and cissexism.”).

reproductive health, rights, and justice organizations and folks who care about this practice must center LGBTQIA+ people and the rights of the LGBTQIA+ community. Otherwise liberation will not become a lasting reality. (p. 13)

That being said, because Bond-Theriault focuses her book on the work of mainstream advocacy and direct service-providing organizations, while Bracey Sherman and Mahone root in more grassroots activism, the paths to liberation gleaned from the two books diverge quite starkly.

#### A. *Family-Building as Liberation and/or Assimilation*

Bond-Theriault's discussion of marriage equality and building families with children is one of the places where she, like many of us, struggles the most to reconcile assimilation with liberation. She admits that the movement for marriage equality did not center the needs of the most marginalized, including queer incarcerated people, whom she uses as an example of those left out of the fight (p. 105). She argues that achieving marriage equality "required that the LGBTQIA+ community lead with a more palatable narrative" (p. 105), but she also writes that "marriage is, and must still be, considered a part of the LGBTQIA+ liberationist narrative" (p. 96). She continues:

[T]he heteropatriarchal and capitalistic assimilationist messaging that many LGBTQIA+ organizations and advocates used during this campaign still continues to harm many transgender and gender expansive folks, all unmarried folks . . . , polyamorous folks, and all those who refuse to get married because they see the institution of marriage as the traditionally problematic institution that it very much is. (p. 96)

Beyond leaving many people out of the fight and its victories, the achievement of marriage equality was enough for some people in the movement to stop doing further equality work — let alone the work of liberation. Bond-Theriault notes that "too many major organizations dedicated to marriage equality immediately closed their doors, packed up their offices, and moved on to new issues. Similarly, major donors and foundations that supported the fight for marriage equality began to shift the majority of their funding to other queer issues" (p. 106). A perfect example of this phenomenon is that Freedom to Marry, a non-profit created by Evan Wolfson, a white gay man, to fight for marriage equality, closed its doors in the year after *Obergefell v. Hodges*<sup>141</sup> despite there being much work left to do to protect the most vulnerable members of the queer community for whom marriage was not an answer to all that ailed them.<sup>142</sup> Every nonprofit has its sphere of focus, and

<sup>141</sup> 576 U.S. 644 (2015).

<sup>142</sup> See Chris Johnson, *Freedom to Marry On Track to Close, Despite Marriage Holdouts*, WASH. BLADE (Sept. 11, 2015), <https://www.washingtonblade.com/2015/09/11/freedom-to-marry-on-track-to-close-despite-marriage-holdouts> [<https://perma.cc/82KZ-5BBG>]; Evan Wolfson, FREEDOM TO MARRY, <http://freedomtomarry.org/the-team/entry/Evan-Wolfson> [<https://perma.cc/LB46-8ZCE>].

Freedom to Marry did not pretend to be anything other than a vehicle for opening the many material, and for some, emotional, benefits of marriage to same-sex couples.<sup>143</sup> But the optics of declaring victory in the midst of an LGBTQIA+ movement that continues to be vital and life-saving for many of the most marginalized members of the queer community, and the choice to spend millions of dollars and years of time and attention on a singular, profoundly assimilationist goal, was read by some activists and theorists as an aggrandizement of those with the closest proximity to power, white gay men, and as an abandonment of so many others.<sup>144</sup>

At the same time, however, others have written about the impact of marriage equality on queer people of color for whom the issue of equality and status, especially within their families, has prominence.<sup>145</sup> And the financial and other benefits that have accrued to same-sex couples who have chosen marriage have been a significant positive for financially well-off members of the community, while low-income queer people have had to navigate how marriage could negatively impact their ability to receive the financial assistance that they need to survive.<sup>146</sup>

Bond-Theriault deftly threads the needle on this ongoing tension. She does not shy away from the limits of the marriage equality victory, noting that marriage should not be required in order for someone to be family and that many permutations of family deserve legal recognition (pp. 109–10). She also notes that access to marriage has, in fact, positively changed the life experiences of many queer people for whom marriage and the equality that it represents to them is crucial (p. 108). Similarly, she suggests that the victory itself holds lessons for people who continue to fight for families that are not yet recognized by law (pp. 108–09). But there can be no denying that the energy and money that poured

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<sup>143</sup> See *About Us*, FREEDOM TO MARRY, <https://www.freedomtomarry.org/pages/about-us> [<https://perma.cc/7TVX-ZNRJ>].

<sup>144</sup> See Russell K. Robinson, *Marriage Equality and Postracialism*, 61 UCLA L. REV. 1010, 1038 (2014) (“Wealthy white males dominate the gay rights agenda, which prioritizes rights that are most meaningful for people who are middle or upper class and neglects the discrimination faced by poorer LGBT people, such as in the contexts of immigration and mass incarceration.”). The Beyond Same-Sex Marriage statement, signed by around 250 academics, activists, and others and published in 2006, sought to shift the marriage equality movement to a broader movement that, among other goals, focused on the recognition of many forms of chosen relationships, detachment of governmental benefits and support from marital status, and generation of broader coalitions of others who would benefit from expansive notions of family. *Beyond Same-Sex Marriage: A New Strategic Vision for All Our Families & Relationships*, BEYOND MARRIAGE (July 1, 2006), reprinted in QUEER FAMILIES AND RELATIONSHIPS AFTER MARRIAGE EQUALITY 112, 112–19 (Michael W. Yarbrough et al. eds., 2019).

<sup>145</sup> Mignon Moore, *Reflections on Marriage Equality as a Vehicle for LGBTQ Political Transformation*, in QUEER FAMILIES AND RELATIONSHIPS AFTER MARRIAGE EQUALITY, *supra* note 144, at 73, 74–78.

<sup>146</sup> Liz Montegary, *For the Richer, Not the Poorer: Marriage Equality, Financial Security, and the Promise of Queer Economic Justice*, in QUEER FAMILIES AND RELATIONSHIPS AFTER MARRIAGE EQUALITY, *supra* note 144, at 31, 37–42.

into the marriage equality movement was not sustained post-*Obergefell* to continue to decenter marriage as the most-favored familial status in law (p. 106). Bond-Theriault stresses that this work must continue but offers no path forward that could create liberatory action on the magnitude of action that grew up around the assimilationist quest for marriage.

Bond-Theriault is certainly right that family-formation is a prime space for culture change. Forming families with children, even before marriage equality, presented and continues to present a place for discussions about assimilation versus liberation (pp. 113–14). In the 1990s, mainstream media published articles about the so-called “Gayby Boom” and described how the phenomenon of openly gay people having long-term partners and bringing children into their relationships was “reshaping the American family.”<sup>147</sup> This discussion came at a time when marriage equality seemed like a far-off and unlikely-to-be-realized pipe dream, a pipe dream that seemed most attainable for those whose proximity to power was much closer than was true for many others in the queer community.<sup>148</sup>

Though we live in a time when many people are no longer shocked by the idea of queer people having families with children (even if they do not necessarily approve of the phenomenon), it was not so long ago that an aspect of queerness that was resistant to change was a second-class citizenship status that was enforced by legal barriers to our ability to build our families of choice.<sup>149</sup> This second-class citizenship status manifested in state defense of marriage acts<sup>150</sup> and the federal Defense of Marriage Act<sup>151</sup> to ward off the incursion of same-sex marriages into the sanctified space of legal marriage, keeping a tight rein on the dozens of tangible and intangible benefits that status brings to

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<sup>147</sup> “Gayby Boom” Fueled by Same-Sex Parents, ABC NEWS (Aug. 2, 2009, 6:31 AM), <https://abcnews.go.com/Health/ReproductiveHealth/story?id=8232392> [<https://perma.cc/JW5B-XWNC>]; see also, e.g., “Gayby Boom,” S. FLA. SUN-SENTINEL (June. 12, 1998, 1:00 AM), reprinted in CHI. TRIB. (Aug. 11, 2021, 8:34 AM), [www.chicagotribune.com/1998/06/12/gayby-boom](http://www.chicagotribune.com/1998/06/12/gayby-boom) [<https://perma.cc/CA6S-TFM5>].

<sup>148</sup> See *supra* note 144 and accompanying text.

<sup>149</sup> See Dominick Vetri, *The Gay Codes: Federal & State Laws Excluding Gay & Lesbian Families*, 41 WILLAMETTE L. REV. 881, 890–91 (2005) (detailing the federalization of family law and the ways in which LGBTQIA+ individuals were denied access to federal benefits and protections).

<sup>150</sup> See, e.g., IND. CODE § 31-11-1-1 (West 2024) (“[s]ame sex marriages prohibited”), *invalidated* by *Baskin v. Bogan*, 766 F.3d 648 (7th Cir. 2014); TENN. CODE ANN. § 36-3-113(b) (2024) (“The legal union in matrimony of only one (1) man and one (1) woman shall be the only recognized marriage in this state.”), *invalidated* by *Obergefell v. Hodges*, 576 U.S. 644 (2015); OHIO REV. CODE ANN. § 3101.01(B)(1) (2024) (“Any marriage between persons of the same sex is against the strong public policy of this state. Any marriage between persons of the same sex shall have no legal force or effect in this state and, if attempted to be entered into in this state, is void ab initio and shall not be recognized by this state.”), *invalidated* by *Obergefell v. Hodges*, 576 U.S. 644 (2015).

<sup>151</sup> Pub. L. No. 104-199, 110 Stat. 2419 (1996).

people who access it.<sup>152</sup> That past landscape was full of explicit and implicit legal barriers like bars to adoption by single people or same-sex couples; rejection from religious communities and unwillingness to perform same-sex weddings; and custody disputes tinged with nasty homophobia when a parent came out and left a marriage for a same-sex relationship.<sup>153</sup>

But as our families have become more accepted, the demand to mimic nuclear families, rather than create new paradigms, has become significant. The mainstream rhetoric says that whether you are queer or not, if you're going to have children, you should get married. If you are married, you should be in a monogamous relationship with one other person. As a parent, you should be happy to avail yourself of tax credits for having children, but you should not expect monetary assistance from the government to help you care for your children if you're low income. And if you do get that assistance, you should have to work for it. Thus, a question Bond-Theriault's discussion raises is whether we have changed marriage and family or whether marriage and family have changed us.

### *B. The Nonprofit Industrial Complex*

A perennial issue in the debate between liberation and assimilation is the role that mainstream movements, typically embodied by nonprofit organizations, play in pursuing their agendas.

I do not envy Bond-Theriault. The tug-of-war between liberation and assimilation and the rift between larger nonprofits and grassroots activists are issues that have raged for far too long to expect one author to provide definitive answers in one book. But to the extent that it is clear that liberation cannot come simply or even primarily from work to open more doors to queer people (rather than refusing to capitulate to a system riddled with closed doors), the work of queering RJ may not go far enough.

While HIV does not play a prominent role in *Queering Reproductive Justice*, there are parallels between the movement to protect and provide services for people with HIV and the movement for broader LGBTQIA+ rights. There were, and are, very distinct populations of people living with HIV in the United States. In the 1980s and 1990s, many of those people living with HIV were poor; many were people of

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<sup>152</sup> Donald J. Cantor, *The Practical Benefits of Marriage*, in SAME-SEX MARRIAGE: THE LEGAL AND PSYCHOLOGICAL EVOLUTION IN AMERICA 135, 135–36 (2006).

<sup>153</sup> See Judith Stacey, *Gay and Lesbian Families Are Here; All Our Families Are Queer; Let's Get Used to It!*, in AMERICAN FAMILIES: A MULTICULTURAL READER 372, 375–80, 382 (Stephanie Coontz et al. eds., 1999).

color; and some women living with the disease were also mothers.<sup>154</sup> For these people, the experience of being HIV-positive did not mirror that of the gay, white men who started Gay Men's Health Crisis (GMHC), one of the country's oldest organizations built to provide services to and advocate on behalf of people with HIV/AIDS who were shamed, denied, and left to die without dignity.<sup>155</sup> Despite the diversity of people living with HIV, the dominance of some voices within that community while other voices were relegated to the margins is a theme that is reflected in Bond-Theriault's book, though it is not focused on HIV per se. She highlights the ways in which many trans people find themselves deprived of access to culturally competent and respectful healthcare (pp. 126–37). The author speaks with a representative from Whitman-Walker Health in Washington, D.C., who describes how that clinic has made itself a haven for trans folks who need holistic reproductive healthcare in D.C. and beyond (pp. 126–37). The organization started in 1973 as the Gay Men's VD Clinic, transitioned to the Whitman-Walker Clinic in 1978, and began offering medical and support services to trans people in 2005, over three decades after the clinic first began operating.<sup>156</sup> I point this history out not to critique the present-day work of Whitman-Walker, but to note that the umbrella of queer, for a very long time, was not wide enough to cover us all.

That the care being provided by Whitman-Walker Health today is a boon to trans folks and others who receive their care there and is an example for others to follow does not mean that the path to get to this point was without difficulty. There is a history of transformation related to Whitman-Walker Health that could be instructive. No doubt there were growing pains as the clinic shifted from primarily focusing on gay men, to providing a wider range of services to injection drug users and women as the AIDS pandemic ramped up in the 1980s, to eventually expanding to embrace and incorporate the needs of trans people as well.<sup>157</sup> Undoubtedly, as was true for other advocacy efforts focused on the needs of gay men (and often gay white men), race, gender, and

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<sup>154</sup> See Jennifer A. Pellowski et al., *A Pandemic of the Poor: Social Disadvantage and the U.S. HIV Epidemic*, 68 AM. PSYCH. 197, 200 (2013); Ctrs. for Disease Control & Prevention, *HIV and AIDS — United States, 1981–2000*, 50 MORBIDITY & MORTALITY WKLY. REP. 430, 430 (2001), <https://www.cdc.gov/mmwr/preview/mmwrhtml/mm5021a2.htm> [<https://perma.cc/AQ57-2FLP>]; Dan Royles, *Why Black AIDS History Matters*, AFR. AM. INTELL. HIST. SOC'Y: BLACK PERSPS. (Feb. 7, 2022), <https://www.aaihs.org/why-black-aids-history-matters> [<https://perma.cc/SY3C-GNFK>]; Mary Lou Lindegren et al., *Trends in Perinatal Transmission of HIV/AIDS in the United States*, 282 JAMA 531, 531 (1999); CAROLE A. CAMPBELL, WOMEN, FAMILIES, AND HIV/AIDS 140 (1999).

<sup>155</sup> Dan Pergel et al., In Transition: A Microhistory of Gay Men's Health Crisis (GMHC) 1986–1996 (2021) (academic poster) (on file with Binghamton University), [https://orb.binghamton.edu/cgi/viewcontent.cgi?article=1041&context=research\\_days\\_posters\\_2021](https://orb.binghamton.edu/cgi/viewcontent.cgi?article=1041&context=research_days_posters_2021) [<https://perma.cc/U65T-W38E>].

<sup>156</sup> *Our History*, WHITMAN-WALKER, <https://www.whitman-walker.org/about/our-history> [<https://perma.cc/XC39-76KN>].

<sup>157</sup> See *id.*

gender identity created and still create community tensions.<sup>158</sup> Political attacks on trans people were rampant during the first Trump administration;<sup>159</sup> for example, one commentator explained how tensions between the gay rights and trans rights movements made these attacks unsurprising:

An attack on marginalized people from the administration behind family separation policies and Muslim travel bans is hardly a surprise. But there's a reason the transgender community is in the government's cross-hairs. There was a target painted on our backs. And it was put there not just by the religious right and gender essentialist crusaders, but by the mainstream gay rights movement, which for the better part of the last century has repeatedly backed away from — and sometimes even fought on the wrong side of — the battles that most affect trans and gender nonconforming people.<sup>160</sup>

Telling a more fulsome story of the history of trans exclusion from the gay rights movement would make clear that trans rights, even within queer communities, remain precarious. Thus, organizations that serve the LGBTQIA+ community must be challenged when necessary to ensure that they continue to “look[] to the bottom”<sup>161</sup> and center the most marginalized members of the community as they shape their agenda. *Queering Reproductive Justice*'s call for advocates to incorporate the RJ frame into their work (p. 13) makes clear that growth is still necessary for some modern organizations. In this way, Bond-Theriault's book can

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<sup>158</sup> See, e.g., Jonetta Rose Barras, *Blacks, Gays Clash Over Funding*, WASH. TIMES, June 22, 1993, at B3 (“Black advocates complained of what they said was a great disparity in how District and federal AIDS funds are being disbursed. They said predominantly white groups, particularly the Whitman-Walker Clinic, receive a disproportionate share of funds.”); Huntly Collins, *Minority Coalition Targets “AIDS Ride,”* PHILA. INQUIRER, May 8, 1996, at B1 (“A coalition of some AIDS groups headed by minorities maintains that it has been cut out of the fundraiser by white-run AIDS groups . . . . Underlying the boycott is an argument made by minority-headed groups that they can more effectively fight the city’s AIDS epidemic, which is concentrated among African Americans and Latinos, than AIDS groups run by white people.”); Trudy Ring, *How Claims of Racism at HRC Have Rocked the LGBTQ+ Nonprofit*, THE ADVOCATE (Mar. 30, 2022, 8:13 AM), <https://www.advocate.com/exclusives/2022/3/30/how-claims-racism-hrc-have-rocked-lgbtq-nonprofit> [<https://perma.cc/YL6D-K8NB>] (“The Human Rights Campaign fired its first Black president, Alphonso David, after it emerged that he helped [Andrew] Cuomo, then New York’s governor, respond to sexual harassment allegations in 2020. . . . But in a federal lawsuit filed in February, David says racial discrimination, not his work for Cuomo, was behind his termination. Since David was let go last September, some other former HRC employees have also contended there is a culture of racism at the organization.”).

<sup>159</sup> See *During First Term in Office, Trump Administration Enacted More Anti-LGBTQIA+ Policies than Any Previous Administration with Devastating Consequences*, FENWAY HEALTH (Oct. 7, 2020), <https://fenwayhealth.org/during-first-term-in-office-trump-administration-enacted-more-anti-lgbtqia-policies-than-any-previous-administration-with-devastating-consequences> [<https://perma.cc/FQ99-GAVL>].

<sup>160</sup> Evan Greer, Opinion, *Powerful Gay Rights Groups Excluded Trans People for Decades — Leaving Them Vulnerable to Trump’s Attack*, WASH. POST (Oct. 29, 2018), <https://www.washingtonpost.com/outlook/2018/10/29/trumps-attack-trans-people-should-be-wake-up-call-mainstream-gay-rights-movement/> [<https://perma.cc/JN5H-UC4Q>].

<sup>161</sup> Matsuda, *supra* note 6, at 324.



be read as a form of calling in, rather than calling out.<sup>162</sup> She does not seek to publicly shame organizations who are not doing the work of RJ. Rather, she wants to bring them into the fold in a way that respects the work they are already doing and recognizes the growing pains of culture change within organizations. This is a tactic that has much to recommend it, especially during polarizing times when keeping allies close is as critical as ever.

Even so, if liberation is what we seek, it is not clear that the organizations that *Queering Reproductive Justice* highlights are necessarily doing liberatory work. This does not mean that they are not doing crucial work that positively impacts the day-to-day lives of thousands of people. Each of Bond-Therriault's interviews offers valuable information to the readers, especially those who are new to the world of RJ, and that information is worth disseminating. However, almost all of the interviewees come from mainstream policy, advocacy, or health organizations (p. 14) and their interviews reflect a certain orthodoxy in how they frame and discuss issues. In other words, there is a fair amount of policy speak.<sup>163</sup> There is no doubt that all of these interviewees know their stuff, but as members of the nonprofit industrial complex (NIC),<sup>164</sup> the way that they discuss their "stuff" has a certain sameness that reflects what is required to work in the boxes created by political and financial realities.

The NIC has been defined as a "set of symbiotic relationships that link together political and financial technologies of state and owning-class proctorship and surveillance over public political intercourse, including and especially emergent progressive and leftist social movements, since about the mid-1970s."<sup>165</sup> In other words, some argue, the radical work of leftist movements has been coopted by government and corporate forces that diminish and control this work by forcing conformity to acceptable norms of change and resistance that ultimately do not upend the status quo.<sup>166</sup> The critique also extends to nonprofit leadership, as Professor Dean Spade and organizer Rickke Mananzala write:

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<sup>162</sup> See Jessica Bennett, *What If Instead of Calling People Out, We Called Them In?*, N.Y. TIMES (Feb. 24, 2021), <https://www.nytimes.com/2020/11/19/style/loretta-ross-smith-college-cancel-culture.html> [<https://perma.cc/RXD9-ACUZ>] ("Calling in is like calling out, but done privately and with respect.").

<sup>163</sup> For example, Bond-Therriault's conversation with Gretchen Borchelt from the National Women's Law Center focuses on advocacy within the current framework of the law (pp. 36–42).

<sup>164</sup> Rickke Mananzala & Dean Spade, *The Nonprofit Industrial Complex and Trans Resistance*, SEXUALITY RSCH. & SOC. POL'Y, Mar. 2008, at 53, 56.

<sup>165</sup> *Id.* (quoting Dylan Rodríguez, *The Political Logic of the Non-Profit Industrial Complex*, in THE REVOLUTION WILL NOT BE FUNDED 21, 21–22 (INCITE! ed., 2007)).

<sup>166</sup> *Id.* Organizer Rickke Mananzala and Professor Dean Spade examine this cooptation:

Philanthropic control of resources for social justice organizations, [Professor Dylan Rodríguez] argued, makes growth impossible for emerging radical political work that refuses to participate in the shared values of U.S. society and instead sees the United States

[T]he governance structure of most nonprofits, characterized by boards consisting of donors and elite professionals (sometimes with tokenistic membership for the community members who are directly affected by the organization's mission), perpetuates dynamics of dominance. Nonprofits serving primarily low-income and disproportionately non-White populations are frequently governed almost entirely by White people with college and graduate degrees. Staffing follows this pattern as well, with most nonprofits requiring formal education as a prerequisite to working in administrative or management-level positions. Thus, the nature of the infrastructure in many social justice nonprofits often leads to concentrating decision making power in the hands of people with race, education, and class privilege rather than in the hands of those bearing the brunt of the oppression. Consequently, the priorities and implementation methods of such organizations frequently do not reflect the perspective or approach that would be taken by the people most directly affected by oppression. For people who hold self-determination as a goal of liberation struggles or who believe that people struggling under oppression possess unique understandings of the operations of that oppression that are not shared by others, this concern is especially significant.<sup>167</sup>

To the extent that some of those who enter into the nonprofit space do so to undermine the status quo, and no doubt that is not the motivation of everyone who chooses to do nonprofit work, there are serious questions about the relationship between providing services and effecting social change. There is no surprise in imagining that funders who have accumulated and continue to accumulate wealth in a capitalist society that requires inequality to maintain itself would be more eager to serve those in need rather than provide those same people with tools to organize to bring down the systems that oppress them.<sup>168</sup> As someone who worked at the NGLTF (p. ix), Bond-Theriault is likely acutely aware that scholars and activists have long bemoaned the focus on either direct-service provision or policy work (not both) to the detriment of the expansion of "base-building organizing[] in social justice movements."<sup>169</sup> This split is partially a response to what kind of work gets funded.

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itself as an entirely violent and racist project. In this context, unless a project seeks to reform its institutions in ways that preserve those institutions, it cannot be supported. [Rodríguez] suggested that philanthropic support is so limiting and controlling of the growth of social justice movements that more radical projects can never get funding from the progressive liberal foundations; furthermore, demands for what he calls radical freedom, as opposed to White bourgeois freedom, cannot occur in the context of the nonprofit industrial complex. Therefore, he argued, the nonprofit industrial complex ultimately maintains politics and institutions of oppression, keeping a lid on radical political work while pushing organizations to provide basic services that quell unrest.

*Id.* (citations omitted) (citing Rodríguez, *supra* note 165, at 27–30; Dylan Rodríguez, Presentation for Session Two: What Is the Non-Profit Industrial Complex? at The Revolution Will Not Be Funded: Beyond the Non-Profit Industrial Complex Conference (Apr. 30, 2004)).

<sup>167</sup> *Id.* at 57 (citing Paul Kivel, *Social Service or Social Change?*, in *THE REVOLUTION WILL NOT BE FUNDED*, *supra* note 165, at 129).

<sup>168</sup> See Rodríguez, *supra* note 165, at 22–30.

<sup>169</sup> Mananzala & Spade, *supra* note 164, at 57.

This tension between the work of nonprofits and more radical forms of activism is in no way a new development in the movement world. An example relevant to the queer community is the conflict in the early days of HIV/AIDS activism between more mainstream organizations, like GMHC, which relied in part on government funding,<sup>170</sup> and organizations like AIDS Coalition to Unleash Power (ACT UP), founded in 1987,<sup>171</sup> which was an organization with no interest in playing respectability politics.<sup>172</sup> ACT UP was a group of activists comprised mostly of gay men, but which also included lesbians and others, who refused to go quietly into the night as AIDS ravaged communities of gay men through the 1980s and early 1990s.<sup>173</sup> It held rowdy protests, including die-ins, in front of government agencies like the FDA to protest the slow drug approval process.<sup>174</sup> In 1992, it held political funerals at which members dumped the ashes of people who had died from AIDS on the White House lawn.<sup>175</sup> In one of its most famous actions, planned in conjunction with Women's Health and Action Mobilization (WHAM!), thousands of protestors appeared in the streets in front of St. Patrick's Cathedral in New York City "to protest the AIDSphobic, homophobic, misogynistic and anti-abortion policies of the Catholic Church and, in particular, John Cardinal O'Connor, Archbishop of New York."<sup>176</sup> Hundreds of those protestors eventually stormed the cathedral, interrupting mass and leading to their arrests.<sup>177</sup>

While the actions of ACT UP, especially the Cathedral protest, were "an act of desecration"<sup>178</sup> in the eyes of some people, the group's tactics, pressure, visibility, and vibrant outrage led to desperately needed changes that literally saved people's lives.<sup>179</sup> In a *New York Times* article written in the weeks following the protest at St. Patrick's, Dr.

<sup>170</sup> See Laraine Sommella, *This Is About People Dying: The Tactics of Early ACT UP and Lesbian Avengers in New York City*, in QUEERS IN SPACE 407, 409 (Gordon Brent Ingram et al. eds., 1997).

<sup>171</sup> ACT UP, <https://actupny.org/index.html> [https://perma.cc/9DQ7-89NA].

<sup>172</sup> See Sommella, *supra* note 170, at 409. ACT UP gets a very brief mention in *Queering Reproductive Justice* (p. 97), but the organization's insistence on in-your-face activism that took pride in making people uncomfortable, including even those with the same goals, is not explored.

<sup>173</sup> Sommella, *supra* note 170, at 411.

<sup>174</sup> David Montalvo, *How AIDS Activists Used "Die-Ins" to Demand Attention to the Growing Epidemic*, HISTORY (March 2, 2025), <https://www.history.com/news/aids-activism-protests-act-up-die-ins> [https://perma.cc/H647-NXJ8].

<sup>175</sup> *Id.*; Charles Babington, *AIDS Activists Throw Ashes at White House*, WASH. POST (Oct. 12, 1992), <https://www.washingtonpost.com/archive/local/1992/10/12/aids-activists-throw-ashes-at-white-house/7a9c53e0-413f-449f-8dd1-a2804d6695ec> [https://perma.cc/CRV2-EGLW].

<sup>176</sup> *Stop the Church*, ACT UP ORAL HIST. PROJECT, <https://www.actuporalhistory.org/actions/stop-the-church> [https://perma.cc/HXQ2-PDRK].

<sup>177</sup> *Id.*

<sup>178</sup> Jason DeParle, *Rude, Rash, Effective, Act-Up Shifts AIDS Policy*, N.Y. TIMES, Jan. 3, 1990, at B1, <https://www.nytimes.com/1990/01/03/nyregion/rude-rash-effective-act-up-shifts-aids-policy.html> [https://perma.cc/5N3R-88QJ].

<sup>179</sup> *Id.*; Nurith Aizenman, *How to Demand a Medical Breakthrough: Lessons from the AIDS Fight*, NPR (Feb. 9, 2019, 7:38 AM), <https://www.npr.org/sections/health-shots/2019/02/09/689924838/how-to-demand-a-medical-breakthrough-lessons-from-the-aids-fight> [https://perma.cc/4Y2W-7869].

Stephen C. Joseph, the former New York City Health Commissioner, told a reporter: “There’s no doubt that [ACT UP] had an enormous effect. . . . We’ve basically changed the way we make drugs available in the last year.”<sup>180</sup> Of course, while ACT UP members were marching in the streets and disrupting masses, other activists were donning suits to lobby members of Congress.<sup>181</sup> They were helping to build and change policy with the wind at their back that came from the very public rage and sorrow that ACT UP members and other activists put on full display.

It is certainly possible to combine, or at least attempt to combine, the work of future liberation with providing the services that people need in the present. I had the privilege of working at a nonprofit that sought to both serve and liberate clients during my early years as a public interest lawyer at the HIV Law Project (HLP) in New York City. The founder, an AIDS activist-turned-lawyer, knew well that many people living with HIV, especially women, people of color, low-income people, immigrants, and injection-drug users, desperately needed and deserved the same time, attention, and care that gay, white men had been receiving.<sup>182</sup> The founder, Theresa McGovern, strove to build a model nonprofit attuned to the day-to-day needs of clients by providing direct services and by remaining ever cognizant of and devoted to shifting the systems that made clients’ lives more difficult through impact litigation and policy work.<sup>183</sup> Respecting that the lived experiences of clients gave them specific expertise about how the law hurt and could help them, she also created a unique program, the Katrina Haslip Technical Assistance Program.<sup>184</sup> Its goal was to provide education around legal issues for women living with HIV, along with opportunities to learn how to advocate for themselves and their communities with policymakers, politicians, and others.<sup>185</sup> All of this was happening during a time in New York City when the frenetic activist energy of the 1980s had cooled to some extent,<sup>186</sup> but was still present, and the advent of protease inhibitors created a new lease on life for those who could afford them and physically tolerate their sometimes-devastating side effects.<sup>187</sup>

The work of HLP was rooted in intersectionality and was about understanding how the experiences of clients reflected the multiplicity of

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<sup>180</sup> DeParle, *supra* note 178.

<sup>181</sup> GMHC, GAY MEN’S HEALTH CRISIS ANNUAL REPORT 1988/89, at 13 (1989), [https://www.gmhc.org/wp-content/uploads/2020/10/annual-report\\_1989.pdf](https://www.gmhc.org/wp-content/uploads/2020/10/annual-report_1989.pdf) [<https://perma.cc/G9XJ-X7P7>].

<sup>182</sup> See *Interview: Terry McGovern*, N.Y.C. AIDS MEM’L, <https://www.nycaidsmemorial.org/interviews/terry-mcgovern> [<https://perma.cc/J496-3Q4T>].

<sup>183</sup> See *id.*; *Terry McGovern, JD*, COLUM. MAILMAN SCH. OF PUB. HEALTH, <https://www.publichealth.columbia.edu/profile/terry-mcgovern-jd> [<https://perma.cc/N6CC-DNFP>].

<sup>184</sup> See CELESTE WATKINS-HAYES, REMAKING A LIFE 95 (2019).

<sup>185</sup> See *id.*

<sup>186</sup> See *ACT UP New York Records*, N.Y. PUB. LIBR. ARCHIVES & MANUSCRIPTS, <https://archives.nypl.org/mss/10> [<https://perma.cc/WL7Q-PP4M>].

<sup>187</sup> See WATKINS-HAYES, *supra* note 184, at 179–80, 183.

their life stories. It was about how to turn a history of in-the-street and in-your-face activism into a nonprofit that relied upon private and public funding to do its work and how the need to fundraise had the potential to impact what that work looked like. It was about the potential conflict between providing direct services to help people survive within deeply flawed systems while also recognizing that the systems would never change on their own. And it was about empowering clients so that their voices could be heard rather than assuming the mantle of being their spokespersons. It is this last point, in particular, that marks a dividing line between *Queering Reproductive Justice* and *Liberating Abortion*. In the former, it is the service providers and professional advocates who speak. In the latter, it is those who wear multiple hats — abortion patients turned abortion storytellers, abortion patients turned abortion providers, abortion patients turned grassroots organizers — who talk about their work from the perspectives of their own triumphs and struggles. Some of these people also work within the NIC, but the personal nature of their work shines through.

This critique of the work of nonprofits is not new,<sup>188</sup> and one area in which this critique has been lodged loudly and consistently is in the inclusion of trans rights into the larger LGB rights movement.<sup>189</sup> Here, I use the word rights instead of liberation deliberately.<sup>190</sup> While Bond-Theriault is careful to center the needs of trans people in many parts of her book,<sup>191</sup> in the spirit of “looking to the bottom,”<sup>192</sup> she does not meaningfully engage with the ongoing critique of how trans rights have been folded into the larger equality movement. Further, because funders are typically wealthy people or corporations, “the strategies of this work have become more conservative to better fit those funders’ capitalism-maintenance and reformist goals rather than the base-building, visionary organizing goals that might emerge more directly from communities facing oppression.”<sup>193</sup> As far back as 2008, advocates for trans liberation were asking “key questions about how, in many ways, the most well-resourced organizations in the gay and lesbian rights arena have fallen into the worst traps of the nonprofit industrial complex and have used structures and tactics that have resulted in neoliberalism’s co-optation of lesbian and gay political aims.”<sup>194</sup> In 2025,

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<sup>188</sup> See, e.g., Esther Eriksson von Allmen, *The Price of Unpaid Activism*, THE NATION (Mar. 4, 2022), <https://www.thenation.com/article/activism/paid-unpaid-activism> [<https://perma.cc/WW6G-FLXB>].

<sup>189</sup> See, e.g., Mananzala & Spade, *supra* note 164, at 54.

<sup>190</sup> Just as rights, especially negative rights, are necessary, but not sufficient, to create RJ, they may not be sufficient to bring forth liberation.

<sup>191</sup> For instance, Bond-Theriault’s conversation with a representative from Whitman-Walker Health centered mostly on providing gender-affirming care for trans individuals (pp. 128–37).

<sup>192</sup> See Matsuda, *supra* note 6, at 324.

<sup>193</sup> Mananzala & Spade, *supra* note 164, at 57.

<sup>194</sup> *Id.* at 54.

the issue of meaningful trans inclusion in mainstream LGBTQIA+ advocacy remains ripe for concern and critique.<sup>195</sup>

To be clear, I do not mean either to make a categorical claim that people working in nonprofits providing services to queer people or abortion seekers are not deeply dedicated to the work they do, or to suggest that that work has no transformative potential, especially in the lives of the individual people who are able to receive care from them. But in seeking out this particular collection of interviewees, Bond-Theriault sets herself up to be able to offer a critique of the NIC that she chooses not to launch. This choice in a book that unabashedly offers up ideas that would be seen as off the charts on the “woke” scale by the people who would happily place *Queering Reproductive Justice* on a list of banned books feels odd and leaves a hole in the book. Obviously, other scholarly work can fill in the hole, but I do not doubt that Bond-Theriault could offer deep insights into this conundrum given her background. As a reader, I would have been excited to hear from her specifically on this topic.

*Liberating Abortion* offers a more explicit and scathing critique of the role nonprofits play in pursuing RJ in the context of abortion and beyond. The authors explain:

It is a precarious thing to build a reproductive justice world within the structures of nonprofit organizations. . . . All social justice nonprofits are inherently funded by the very systems that they are trying to dismantle. While some are trying to shift the systemic injustice in the world, others are limited in their approach because they benefit from the political power and clout of the status quo — and the funding they receive as a result. (pp. 228–29)

As RJ has become more integrated into the mainstream reproductive rights movement, there has been a concomitant “gentrification of reproductive justice,” in the words of the *Liberating Abortion* authors, as “white-led organizations” coopt the language of RJ to seek funding that could often be better used by grassroots RJ organizations that have been doing this work for decades (p. 227). So, again, is liberation even in the cards if the organizations getting the money seek assimilation first?

A notable exception to the policy speak of most of the interviewees in *Queering Reproductive Justice*, and an overall highlight of the book, is the interview that Bond-Theriault conducts with Kate D’Adamo, which comes toward the end of the book (p. 167). D’Adamo, a self-described “queer, mixed-race femme,” offers up gem after gem in her short interview (p. 168). D’Adamo is an advocate working with

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<sup>195</sup> See, e.g., Matt Laviertes, *Transgender Issues Were Largely Absent from the DNC Agenda*, NBC NEWS (Aug. 23, 2024, 4:26 PM), <https://www.nbcnews.com/nbc-out/out-politics-and-policy/dnc-2024-missed-trans-rights-implications-election-rcna167990> [<https://perma.cc/SKT2-NV8Q>] (“While LGBTQ rights broadly and same-sex marriage specifically were referenced several times, transgender people appeared to be mentioned by just two speakers across 20 hours of the convention’s ‘main programming’ slate . . .”).

Reframe Health and Justice, a “consulting collective” for queer and trans people of color focused on “harm reduction, healing justice, and anti-oppression work to upend social paradigms and power structures” (p. 168). Hers is the most radical of the interviews in the book, and she succinctly and powerfully encapsulates many of the themes that permeate the work of queering RJ. One of those themes is very much the difference between equality and liberation. Equality resonates deeply with many Americans and has formed the basis of so many movements for social justice.<sup>196</sup> Equality of opportunity.<sup>197</sup> Marriage equality.<sup>198</sup> Separate is not equal.<sup>199</sup> But equality has its limits, as described by D’Adamo, who distinguishes LGBTQIA+ equality from liberation, explaining:

[E]quality, and equity, implies something within the current structure. . . . It feels like we’re talking about queer folks simply gaining access to things within an existing space of the state backed-capitalism, and simply shifting things just enough to accept more folks. . . . [L]iberation means breaking out of those structures and entirely rewriting those narratives of what people want. (p. 168)

This is a beautiful way of conveying the issues with equality-focused movements, including marriage equality which Bond-Theriault discusses earlier in the book (pp. 105–09). D’Adamo also comments on sex work (pp. 169–73), an issue ripe for any discussion of LGBTQIA+ liberation, especially for the trans women for whom sex work provides a way to make a living when more conventional jobs are made inaccessible because of their identities.<sup>200</sup>

Recognizing the ways in which sex workers frequently get lumped into a category of people who are defined only by assumptions of exploitation, she asserts that sex work can be liberatory because “anything which promotes the survival, and resilience, and endurance of

<sup>196</sup> See THE DECLARATION OF INDEPENDENCE para. 2 (U.S. 1776). Indeed, equality is a pillar of our democracy.

<sup>197</sup> See *EEOC History: 1964–1969*, U.S. EQUAL EMP. OPPORTUNITY COMM’N, <https://www.eeoc.gov/history/eeoc-history-1964-1969> [<https://perma.cc/52LL-V6RL>].

<sup>198</sup> See *Obergefell v. Hodges*, 576 U.S. 644, 675 (2015).

<sup>199</sup> See *Brown v. Bd. of Educ.*, 347 U.S. 483, 495 (1954).

<sup>200</sup> Shanna K. Kattari & Stephanie Begun, *On the Margins of Marginalized: Transgender Homelessness and Survival Sex*, 32 *AFFILIA* 92, 99 (2017). Professors Shanna K. Kattari and Stephanie Begun examine the reality of “survival sex” for trans individuals:

Black/African American, Latino/Latina, and biracial/multiracial individuals also experienced higher levels of survival sex than their White peers, with black/African American transgender/[gender-nonconforming (GNC)] respondents reporting approximately [four] times the likelihood of engaging in survival sex than white transgender/GNC individuals. . . .

. . . [I]ndividuals who had experienced homelessness were twice as likely to have participated in survival sex than peers who had never been homeless, and those who had attempted to find shelter via couch surfing or other arrangements were twice as likely to have participated in survival sex than others who had never sought temporary sleeping arrangements.

*Id.*

marginalized folks is an act of liberation” (p. 169). On the question of consent in sex work, she retorts, “I don’t know if we can truly answer this question without coming from the foundation that capitalism, racism, structural inequity, and heteropatriarchy are all nonconsensual experiences within which we live” (p. 170). One could spend many hours unpacking and learning from the short interview with D’Adamo, of which I have provided just a small slice. It is this level of challenge to the status quo that sits just underneath the narrative of *Queering Reproductive Justice* but does not get substantial airing.

In her book, Bond-Therault quotes liberally from Audre Lorde (pp. 15, 116, 141, 143), yet one of Lorde’s more famous quotes does not appear in the book. In her collection of essays, *Sister Outsider*, Lorde wrote about an occasion when she was invited to comment on papers discussing “the role of difference within the lives of [A]merican women” for a panel at a humanities conference.<sup>201</sup> Lorde criticized any gathering meant to discuss the experience of women that did not include input from women of color or lesbians.<sup>202</sup> She asked: “What does it mean when the tools of a racist patriarchy are used to examine the fruits of that same patriarchy? It means that only the most narrow perimeters of change are possible and allowable.”<sup>203</sup> She continued:

As women, we have been taught either to ignore our differences, or to view them as causes for separation and suspicion rather than as forces for change. Without community there is no liberation, only the most vulnerable and temporary armistice between an individual and her oppression. But community must not mean a shedding of our differences, nor the pathetic pretense that these differences do not exist.

Those of us who stand outside the circle of this society’s definition of acceptable women; those of us who have been forged in the crucibles of difference — those of us who are poor, who are lesbians, who are Black, who are older — know that *survival is not an academic skill*. . . . It is learning how to take our differences and make them strengths. *For the master’s tools will never dismantle the master’s house*. They may allow us temporarily to beat him at his own game, but they will never enable us to bring about genuine change. And this fact is only threatening to those women who still define the master’s house as their only source of support.<sup>204</sup>

There are many ways that one could interpret the idea that “the master’s tools will never dismantle the master’s house,” but it seems to be a critique relevant to the question of assimilation versus liberation.<sup>205</sup> The perennial question of how one moves from assimilation to liberation is always worth exploration.

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<sup>201</sup> AUDRE LORDE, *The Master’s Tools Will Never Dismantle the Master’s House*, in *SISTER OUTSIDER: ESSAYS AND SPEECHES*, *supra* note 47, at 110.

<sup>202</sup> *Id.* at 111.

<sup>203</sup> *Id.* at 110–11.

<sup>204</sup> *Id.* at 112.

<sup>205</sup> *Id.* (emphasis omitted).



## CONCLUSION

*Queering Reproductive Justice* and *Liberating Abortion* are fascinating to read in conjunction with each other. Both books are brimming with information and are deeply researched. The authors know what they are talking about, and the link between the personal and the political is powerful, as it so often is. They draw their readers into complexity by cataloging the micro and macro issues attendant to the “queering reproductive justice framework,” a phrase used liberally throughout the text by Bond-Theriault (p. x), and liberating abortion through a commitment to RJ. These books are about movement making and coalition building, but they are also about the day-to-day lives of real people who need healthcare (including abortions), who want to become parents, and who want to be the best parents they can be for the children they already have.

The different choices that the authors make about how to frame their books and how to pursue RJ are a microcosm of decades of discussion about how best to achieve social justice. Do we sacrifice the needs of people today in order to build a better tomorrow? Is it possible to take down a system from the inside? Can a movement funded by people who thrive under capitalism ever be independent enough to undermine oppressive systems? Neither of these books provides definitive answers to these questions, nor could they be expected to do that. What they do achieve is teaching a variety of profound lessons, some rooted in the stories and activism of individuals and others rooted in the stories and activism of organizations. They lay out visions of the future that cannot be achieved by those who are faint of heart or weak-spirited, which is true of all movements that matter. And RJ is a movement that matters.

There are undoubtedly people in the modern LGBTQIA+ movement who well remember the bad old days, when being called queer was not a sign of affirmation but a prelude to violence.<sup>206</sup> They remember gay men being left to die while the Reagan administration sat in stony silence.<sup>207</sup> They remember the rush of attending Pride parades before they were corporate-sponsored parties.<sup>208</sup> Similarly, there are people in the modern RJ movement who remember the story of the Relf sisters,

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<sup>206</sup> See Juliette Rocheleau, Opinion, *A Former Slur Is Reclaimed, And Listeners Have Mixed Feelings*, NPR (Aug. 21, 2019, 10:33 AM), <https://www.npr.org/sections/publiceditor/2019/08/21/752330316/a-former-slur-is-reclaimed-and-listeners-have-mixed-feelings> [https://perma.cc/U6RP-2Y5Y].

<sup>207</sup> See Jacqueline A. Ortiz, *Silence from the Great Communicator: The Early Years of the AIDS Epidemic Under the Reagan Administration*, SWARTHMORE UNDERGRADUATE HIST. J., Spring/Summer 2023, at 76, 77; Joseph Bennington-Castro, *How AIDS Remained an Unspoken — but Deadly — Epidemic for Years*, HISTORY (Mar. 2, 2025), <https://www.history.com/news/aids-epidemic-ronald-reagan> [https://perma.cc/ZY7V-SVHJ].

<sup>208</sup> See Corey Kilgannon, “Clash of Values”: *Why a Boycott Is Brewing over Pride Celebrations*, N.Y. TIMES (June 20, 2019), <https://www.nytimes.com/2019/06/20/nyregion/nyc-pride-march.html> [https://perma.cc/X4V9-XAPG].

one developmentally disabled and both poor Black girls, who were subjected to involuntary sterilization at the ages of twelve and fourteen in 1973.<sup>209</sup> They know the history of boarding schools built to steal Indigenous children from their families to “civilize them.”<sup>210</sup> They know of the cruel experiments performed by the father of gynecology, Dr. J. Marion Sims, on Lucy, Betsey, and Anarcha, enslaved women who could not refuse consent to these painful and debasing procedures.<sup>211</sup>

There are people who will read these books, though, for whom this history is not known or not top of mind. For those readers especially, reading these books may help to equip them for the painful work that is required to engage across differences and truly recognize how to privilege the voices of those who are so often pushed to the margins. These books may help them see just how differently the law constructs our lives depending on our identity categories.

The power of the RJ frame is in its commitment to complexity and nuance. It creates opportunities for collaboration between potentially disparate communities, but in so doing, it also creates opportunities for mistrust, confusion, and perceived betrayals. It roots in an earned history of suspicion of state action,<sup>212</sup> but also it believes in the necessity of such action to support the reproductive and parenting goals of marginalized people. Thus, the task to which these authors set themselves is a gargantuan one, and their efforts to provide a capacious accounting of what it means to center the lives of marginalized people in the RJ framework is needed and valiant. Neither book is the definitive roadmap for how to move forward, but the project to which they set their readers is a collaborative one in which no single voice can guide forward progress.

This is, perhaps, one of the greatest gifts of both books. The authors do not claim ownership or omniscience. They acknowledge that the road ahead is difficult.<sup>213</sup> Bond-Therriault’s background at NGLTF, which required working within our flawed political morass to create positive change and then shifting to try to maintain those changes in the transition from the Obama to the Trump administrations, has given her deep personal knowledge of how quickly what is gained can be withdrawn. She knows well the need to stay resolute in the face of inevitable and sometimes soul-wrenching setbacks. Bracey Sherman and Mahone

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<sup>209</sup> Linda Villarosa, *The Long Shadow of Eugenics in America*, N.Y. TIMES MAG. (June 8, 2022), <https://www.nytimes.com/2022/06/08/magazine/eugenics-movement-america.html> [https://perma.cc/2P33-CDVR].

<sup>210</sup> See *Struggling With Cultural Repression*, NAT’L MUSEUM OF THE AM. INDIAN, <https://americanindian.si.edu/nk360/code-talkers/boarding-schools> [https://perma.cc/D354-2FA2].

<sup>211</sup> See Camila Domonoske, “Father of Gynecology,” *Who Experimented on Slaves, No Longer on Pedestal in NYC*, NPR: THE TWO-WAY (Apr. 18, 2018, 10:30 AM), <https://www.npr.org/sections/twotwo-way/2018/04/17/603163394/-father-of-gynecology-who-experimented-on-slaves-no-longer-on-pedestal-in-nyc> [https://perma.cc/5STR-L33C].

<sup>212</sup> See ROBERTS, *supra* note 110, at 308–10.

<sup>213</sup> The road ahead for RJ work, principally its challenges, is explicitly discussed in *Liberating Abortion* (p. 375).

know the difficulty of working within a space that is often treated as shameful. They know the risks of harassment and violence attendant to speaking loudly and with pride about abortion as individuals or as advocates. All of the authors write with the passion born of expertise and lived experience, and the openness they show to working in collaboration with and across movements is an example worth embracing. In this way, they model what is needed from everyone who wants to walk the RJ path — a belief in the power of individuals to drive change; an optimistic belief that setbacks can be overcome; and an understanding that we do this work not for the changes it will make in our lives, but for the changes that it will make in the lives of those who come after us and who deserve so much better than the limited vision of thriving that is the lot of so many marginalized people today. May their books ignite fires of righteous indignation that lead to positive change.