Stop Colonizing My Uterus!

How the *Dobbs* Decision Is State-Sanctioned Extraction of Wealth and Resources of Communities by Removing Bodily Autonomy

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On June 24, 2022, the Supreme Court overturned fifty years of precedent, ending the constitutionally protected right to an abortion previously afforded to Americans by *Roe.*[1] This decision allows states to ban abortions outright, which is exactly what many states have done.[2] Anti-choicers'[3] fight to end abortion has never been about state's rights; instead, their aim is to ban abortions for *everyone* in the United States. Since the fall of *Roe,* there have been many new tactics, strategies, and lawsuits brought by anti-choicers, in order to make it more difficult for *everyone* to access abortion healthcare, even in states that protect abortion access.[4] This increases the number of people being forced to give birth, when they otherwise would have chosen not to.

[1] *Dobbs v. Jackson Women's Health,* 597_U.S. (2022).

[2] As of February 2022, Wisconsin, Idaho, South Dakota, Missouri, Kentucky, West Virginia, Tennessee, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, and Alabama have full bans on abortions, some without any exceptions for the life of the mother. Georgia has a ban beginning at six weeks. Iowa, Indiana, Ohio, Montana, Wyoming, Arizona, Utah, Florida, and North Dakota all have bans blocked by an injunction pending the outcome of litigation. For more see, *Tracking the States Where Abortion is Ban,* The New York Times (Last updated Feb. 10, 2023) https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html

[3] Throughout this paper, the author will refer to people against allowing each person to make their own healthcare decisions as anti-choicers and forced birthers. These groups are also often times referred to as "pro-lifers" but this author rejects that labeling. People that advocate for choice in healthcare are not anti-life. They are pro-choice, thus those opposing choice are anti-choice.

[4] For example, the current lawsuit filed in Amarillo, TX seeks to ban the FDA's approval of mifepristone for the entire nation. Sarah McCammon, *U.S. Appeals Court Preserves Partial Access to Abortion Pill, but with Tighter Restrictions,* NPR (Apr. 13, 2023) https://www.npr.org/2023/04/13/1169217172/abortion-pill-mifepristone-ruling-texas-judge Another group is looking to stop access to abortion medication for *everyone* through manipulating environmental regulations. Alice Miranda Ollstein, *The Next Abortion Fight Could Be Over Wastewater Regulation,* Politico (Nov. 23, 2022) https://www.politico.com/news/2022/11/23/abortion-pills-opponents-environmental-laws-00070603

The *Dobbs* decision allows States to further regulate and control people's uteruses[5], a practice that dates back to the founding of this country.[6] These States claim the ban on abortion access is to "protect the life of the unborn child," but banning abortion access and forcing birth upon millions of people is rooted in colonialism, and only furthers the exploitation of the most vulnerable. It is the state-sanctioned extraction of wealth and resources from communities through exploitation and the feminization of poverty.

This paper examines how the *Dobbs* decision is rooted in colonialism. Part I examines what colonialism is, and how the *Dobbs* decision perpetuates this oppression. Part II examines how this decision is rooted in patriarchy, another aspect of colonialism; people with uteruses, who are forced to give birth, are automatically put on the birth certificate as "mother." But when the "mother" is unmarried, the "father" can choose whether to be recognized as the father or not. Part II examines the devastating consequences of these paternity laws and how they help perpetuate colonialism. Part III examines how J. Alito's assumption in the *Dobbs* decision, that

[5] Not every person who gives birth is a mother. People with uteruses can give birth, and many people with uteruses do not identify with the female gender. Some are nonbinary and some are trans. However, maternity and paternity laws are not written to reflect this nuance in gender ideology. Instead, maternity laws assume anyone who gives birth is the "mother" and the other parent is the "father." Throughout this paper, the terms "mother" and "father" will be used when discussing these gendered parental laws, as well as when emphasizing patriarchal oppression.

[6] One of the founding principles of this country was slavery. Enslaved women did not have control over their bodies, let alone their uteruses. Masters would forcefully rape enslaved women to produce more children to enslave. For more see *Exploitation Through Sexual Violence,* Lowcountry Digital History Initiative, https://ldhi.library.cofc.edu/exhibits/show/hidden-voices/enslaved-women-and-slaveholder/sexual-violence The *Dobbs* decision also highlights the lack of bodily autonomy women have had throughout history. While the historical account is very inaccurate, it is one told from a perspective of patriarchal power, and correctly demonstrates how the laws—*after the Industrial Revolution*—changed so that women could no longer have abortions. This is because capitalists needed disposable labor, so making women have more babies would lead to a surplus of disposable workers. Thus, the laws quickly changed to ban abortions, during the mid 1800s. The Supreme Court looks to these laws, when women were considered *property* to justify their banning of abortion today. However, the Supreme Court conveniently leaves out the Industrial Revolution analysis—they just highlight how abortions were banned 150 years ago to justify the bans *today.*

adoption is the catch-all solution to banning abortions, is also rooted in colonialism. The *Dobbs* decision is yet another example of modern-day colonialism because this decision allows the States to extract wealth and resources from communities through exploitation.

I. Colonialism and The *Dobbs* Decision

A. What is Colonialism?

According to the Meriam-Webster dictionary, colonialism is "domination of a people or area by a foreign state or nation; the practice of extending and maintaining a nation's political and economic control over another people or area."[7] It is also defined as, "the practice by which a powerful country directly controls less powerful countries and uses their resources to increase its own power and wealth."[8] Generally, colonialism is state-sanctioned extraction of wealth and resources of a community, usually through exploitation or force, for the state's benefit.[9]

Colonialism has existed for most of human history, and has taken many shapes and forms, especially under capitalism.[10] The *Dobbs* decision is yet another example of colonialism, because *Dobbs* allows for the state-sanctioned extraction of wealth and resources from communities, through force and exploitation, for the capitalist gains of the wealthy and powerful. The *Dobbs* decision grants States power to force people with uteruses to give birth when they would otherwise choose not to. States that have banned abortion can use their police force to arrest people who help others obtain an abortion.[11] Abortion providers will face years of incarceration

[7] *Colonialism, Merriam-Webster,* web edition. https://www.merriam-webster.com/dictionary/colonialism
[8] *Colonialism, Collins Dictionary,* web edition, https://www.collinsdictionary.com/us/dictionary/english/colonialism
[9] Michael Fine, *On Medicine and Colonialism,* PM Press (2023).
[10] The history of colonialism is outside the scope of this paper.
[11] As of February 2022, Wisconsin, Idaho, South Dakota, Missouri, Kentucky, West Virginia, Tennessee, Oklahoma, Texas, Arkansas, Louisiana, Mississippi, and Alabama have full bans on abortions, some without any exceptions for the life of the mother. Georgia has a ban beginning at six weeks. Iowa, Indiana, Ohio, Montana, Wyoming, Arizona, Utah, Florida, and North Dakota all have bans blocked by an injunction pending the outcome of litigation. For more see, *Tracking the States Where Abortion is Ban,* The New York Times (Last updated Feb. 10, 2023)

if they help a patient obtain an abortion, either through medication or surgical procedures.[12] Some states are now criminalizing pregnant people for attempting to end their own pregnancy.[13]

https://www.nytimes.com/interactive/2022/us/abortion-laws-roe-v-wade.html; Idaho just passed a law that criminalizes helping someone under 18 obtain a legal abortion by leaving the state of Idaho. Julia Mueller, *Idaho Governor Signs Ban on "Abortion Trafficking."* The Hill (Apr. 5, 2023) https://thehill.com/homenews/state-watch/3936795-idaho-governor-signs-ban-on-abortion-trafficking/

[12] In Alabama, performing an abortion is criminalized and abortion providers would face up to 99 years in prison. Daniel Jackson, *Alabama Criminalizes Abortion as a Felony Punishable by 99 Years,* Courthouse News (May 15, 2019(https://www.courthousenews.com/alabama-criminalizes-abortion-as-a-felony-for-doctors/; In Arkansas, abortion providers would face up to 10 years in prison and a $10,000 fine. Worth Sparkman, *The End of Roe v. Wade in Arkansas,* Axios (Jun. 24, 2022) https://www.axios.com/local/nw-arkansas/2022/06/24/end-roe-v-wade-arkansas-abortion. However, Arkansas has a bill pending that would make abortion felony murder. Alex Kienlen, *Abortion would be Felony Murder in Arkansas if Proposed Legislation Passes,* KARK, an NBC Affiliate (Jan 19, 2023) https://www.kark.com/news/politics/abortion-would-be-felony-murder-in-arkansas-if-proposed-legislation-passes/ In Georgia, performing an abortion after 6 weeks is a felony punishable by at least one year in prison but nor more than ten years in prison. O.C.G.A. 16-12-140 (2010); in Kentucky, providing an abortion is a Class B felony and punishable between ten and twenty years in prison. Ken. Rev. Stat. §311.710. In Louisiana, providing an abortion is punishable up to 21 years in prison. *Under Louisiana's Abortion Ban, Who Faces Criminal Penalties and What Are They?* NOLA News (Jun. 27, 2022) https://www.nola.com/news/healthcare_hospitals/under-louisianas-abortion-ban-who-faces-criminal-penalties-and-what-are-they/article_9eca313c-f662-11ec-bede-6fc9ec273cf6.html#:~:text=Performing%20a%20late%2Dterm%20abortion,child%20during%20delivery%3A%20life%20sentence; in Idaho, where there is no exception for rape, incest, or life of the mother, providing an abortion is punishable by between two and five years in prison. Idaho Rev. Stat, §18-622; In Mississippi, performing an abortion is a felony and punishable between one and ten years in prison. MS Code §41-41-45 (2015); in Missouri, performing an abortion is a class B felony and punishable between five and fifteen years in prison. Missouri Rev. Stat. Title XII §188.017; in Oklahoma, performing an abortion is punishable by up to ten years in prison. Okla. Rev. Stat. 21 O.S. § 861, 63 O.S. § 1-731.4; in Texas, providers would face up to life in prison. Eleanor Klibanoff, *Texans Who Perform Abortion Now Face Up To Life in Prison, $100,000 Fine,* The Texas Tribute (Aug. 25, 2022) https://www.texastribune.org/2022/08/25/texas-trigger-law-abortion/ In Tennessee, where there is no exception for rape or incest, providing an abortion is punishable by up to fifteen years in prison. Claire Galofaro, *Lawyers Mission: Translate Tenn.'s Bewildering Abortion Ban,* AP News (Sept 5, 2022) https://apnews.com/article/abortion-health-knoxville-statutes-government-and-politics-1a92f84003556cdd071f6297cd5f43c0; in West Virginia, providing an abortion is punishable by up to 10 years in prison. W.V. Code §61-2-8; in South Dakota, providers would face up to two years in prison. S.D. Codified Laws §22-17

[13] Some states have been criminalizing pregnancy even before the *Dobbs* decision. For more, see Sandhya Dirks, *Criminalization of Pregnancy Has Already Been Happening to the Poor and Women of Color,* NPR News (Aug. 3, 2022) https://www.npr.org/2022/08/03/1114181472/criminalization-of-pregnancy-has-already-been-happening-to-the-poor-and-women-of An 18 year old is about to go on trial in Nebraska for self-inducing an abortion. Sara O'Brien and Clare Duffy, *Nebraska Teen and Mother Facing Charges in Abortion-Related Case That Involved Obtaining Their Facebook Messages,* CNN (Aug. 10, 2022) https://www.cnn.com/2022/08/10/tech/teen-charged-abortion-facebook-messages/index.html#:~:text=A%20Nebraska%20mother%20and%20her,plan%20to%20hide%20the%20remains. See also, *When Self-Abortion Is A Crime,* National Institute for Reproductive Health https://nirhealth.org/decriminalize/

Because of *Dobbs*, bodily autonomy is now criminalized; the State now decides what each person with a uterus does with their body.

B. Abortion Bans Disproportionately Harm the Impoverished and Most Vulnerable to Exploitation

Some states still allow abortions.[14] For people in those states, they will have access to life-saving healthcare, and not be as vulnerable to the colonial effects of the *Dobbs* decision. Plus, there are many people who live in states that have banned abortion who will still have access to safe and legal abortions, because they can afford to travel out of state for an abortion. For people who are wealthy enough, the *Dobbs* decision simply means that access to abortion requires traveling. This might be an inconvenience, but they will still be able to access abortion. But colonization never seeks to try to colonize and exploit the well-off and wealthy. Instead, it seeks to colonize and control the poor, who are vulnerable to exploitation due to their situations. So, it makes sense that the well-off and wealthy would still be able to access abortion care, since they are not vulnerable or susceptible to exploitation to begin with. If you are wealthy enough, then the *Dobbs* decision is a minor inconvenience.

But for the millions of people with uteruses living in poverty, in states where abortion is now illegal, *Dobbs* is a colonizing force. This decision leaves millions of people vulnerable to state-sanctioned extraction of wealth and resources through exploitation, because they do not have the time or resources to access abortion care anymore. Many cannot afford the thousands

[14] There are varying levels of protections for abortion access in states. Washington, California, Oregon, Minnesota, Illinois, New York, Vermont, New Jersey, Massachusetts, an Hawaii have all expanded access to abortion since the fall of *Roe.* For more, see *After Roe Fell: Abortion Laws by States,* Center for Reproductive Rights https://reproductiverights.org/maps/abortion-laws-by-state/

of dollars it costs to travel out-of-state to obtain an abortion.[15] Many cannot afford to take the time off work, since there is no guaranteed paid time off.[16] These are the people that are left without access to abortions—access to control their own bodies. These are also the people that the *Dobbs* decision acts as a colonizing force over, since a lack of financial stability leaves them without the same choices and the wealthy and financially well-off.[17]

C. Lack of Abortion Access is Deadly

Without access to safe abortion procedures, impoverished pregnant people are suddenly left to either carry an unwanted pregnancy to term and be forced to give birth, or try to self-induce an abortion in secret. Some will try to self-induce in ways that can jeopardize their health—either by obtaining abortion medication through alternative means, injecting an herbal concoction, using knitting needles, a coat hanger, or turning to a black-market provider.[18] Self-induced abortions can cause serious health issues, including hemorrhage, sepsis, and shock.[19] Many people facing serious injury will not seek treatment for fear of carceral consequences.[20] It

[15] There are many factors that contribute to how much an out-of-state abortion costs. This includes cost of plane ticket, or gas if the person can drive or has access to a car, whether a hotel is needed, whether childcare is needed, the cost of the abortion in that state, whether the state accepts the person's insurance, and food. Overall, it is estimated to cost about $2000 to travel out-of-state for an abortion. For more see, Allison McCann, *What it Costs to Get an Abortion Now,* The New York Times (Sept. 28, 2023) https://www.nytimes.com/interactive/2022/09/28/us/abortion-costs-funds.html

[16] Molly Weston Williamson, *The State of Paid Sick Time in the United States in 2023,* American Progress (Jan 5, 2023) https://www.americanprogress.org/article/the-state-of-paid-sick-time-in-the-u-s-in-2023/#:~:text=Currently%20in%20the%20United%20States,even%20entitled%20to%20unpaid%20time.

[17] There are abortion funds available for people who cannot afford to travel out-of-state to obtain an abortion. However, these abortion funds cannot cover the millions of people who are left without access to abortions. While its possible that some impoverished people may still be able to find help through abortion funds, this is not the case for the vast majority of people, simply because of how many people are without access.

[18] Sarah McMannon, *With Abortion Restrictions on the Rise, Some Women Induce Their Own,* NPR September 19, 2019 https://www.npr.org/2019/09/19/759761114/with-abortion-restrictions-on-the-rise-some-women-induce-their-own. *See also,* Daniel Grossman et. al., *Self-induction of Abortion Among Women of the United States,* Reproductive Health Matters (Nov. 24 2010) https://www.npr.org/2019/09/19/759761114/with-abortion-restrictions-on-the-rise-some-women-induce-their-own

[19] *Id.*

[20] *Id.*

is impossible to know how many people will go this route, as they are self-induced and not reported. But we know that people will die.[21]

For those that are unsuccessful, or do not want to risk self-induced abortions, the only alternative is forced birth. Many people will have to carry unwanted and dangerous pregnancies because of the *Dobbs* decision. Already, many people with uteruses have faced life-threatening conditions due to pregnancy and were still unable to obtain an abortion to save their life.[22] Some have been left with permanent damage from lack of abortion care.[23] Researchers estimate that maternal mortality will rise by 24% when there is no access to abortion care, and 39% for Black women.[24] More people will die.[25]

D. Abortion Bans Only Furthers The Feminization of Poverty Through Colonialism

> The majority of the 1.5 billion people living on 1 dollar a day or less are women. In addition, the gap between women and men caught in the cycle of poverty has continued to widen in the past decade, a phenomenon commonly referred to as "the feminization of poverty". Worldwide, women earn on average slightly more than 50 percent of what men earn. Women living in poverty are often denied access to critical resources such as credit, land and inheritance. Their labor goes unrewarded and unrecognized. Their health care and nutritional needs are not given priority, they lack sufficient access to education and support services, and their participation in decision-making at home and in the community are minimal. Caught in the cycle of poverty, women lack access to resources and services to change their situation.[26]

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[21] Elyssa Spitzer, Tracy Weitz, and Maggie Jo Buchanan, *Abortion Bans will Result in More Women Dying,* American Progress (Nov. 2 2022) https://www.americanprogress.org/article/abortion-bans-will-result-in-more-women-dying/

[22] Kate Zernike, *Five Women Sue Texas over The State's Abortion Ban,* The New York Times, (Mar. 6, 2023) https://www.nytimes.com/2023/03/06/us/texas-abortion-ban-suit.html

[23] *Id.*

[24] Spitzer, *supra.*

[25] *Id.*

[26] *The Feminization of Poverty,* United Nations Entity for Gender Equality and the Empowerment of Women (Jun. 2000) https://www.un.org/womenwatch/daw/followup/session/presskit/fs1.htm

Banning abortion only furthers the feminization of poverty, because it ensures that impoverished people will be forced to give birth to more children. The more children someone has, the more vulnerable they are to exploitation for the benefit of the rich, because of the added expenses for raising children combined with the deplorable support for families struggling. When the state forces someone to give birth to more children than they would otherwise choose to have, that is the state making people more vulnerable to exploitation for the rich to profit off.

1. States with Abortion Bans Also Have Lowest Support for Families

People in poverty often work the longest hours, at the most volatile jobs, but still make the least amount of pay.[27] Many single mothers[28] work multiple jobs, but often times still do not

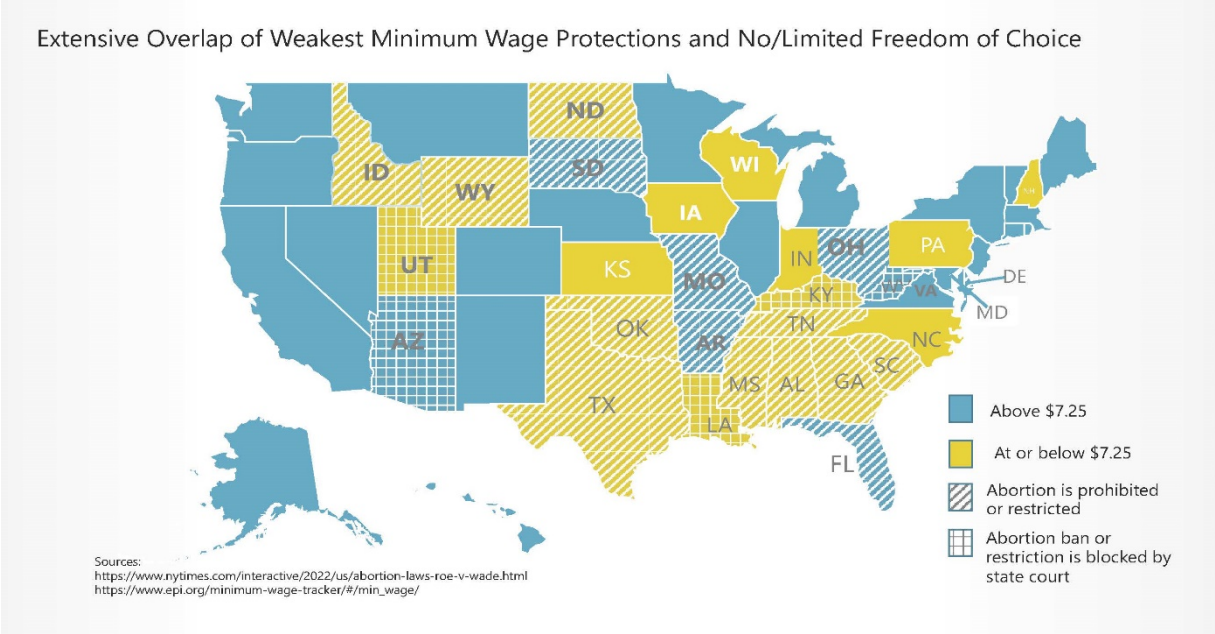


Figure 1: Minimum Wage and Abortion Access Compared

[27] Kristin F. Butcher and Diane Whitmore Schanzenbach, *Most Workers in Low-Wage Labor Market Work Substantial Hours, In Volatile Jobs,* Center on Budget and Policy Priorities (Jul, 24, 2018) https://www.cbpp.org/research/poverty-and-inequality/most-workers-in-low-wage-labor-market-work-substantial-hours-in

[28] Part Two below discusses how these abortion bans disproportionately affect nonmarried single mothers, because of the way paternity laws are written.

make ends meet.[29] The states that have the lowest minimum wage of $7.25 are also the states with the most restrictive abortion bans.[30] See Figure 1.[i] At $7.25 an hour, a person working a forty hour work-week would only receive $290 *before taxes and withholdings* per week. A person cannot survive on less than $300 per week, let alone a parent with children. But these are the states that have completely banned abortions.

If the family was already struggling to make ends meet, adding another child to the family can mean that bills will not get paid. Food scarcity will increase. The quality of childcare will decrease. A parent forced to work multiple jobs to pay the bills will not have time to spend raising their children. If mothers are working two or three jobs, they are not at home with their children.

Plus, the person forced to give birth will be forced to make terrible decisions: should they take time off from work to care for a newborn and heal from the trauma childbirth causes the body, but forgo the much-needed paycheck because there is no guaranteed parental leave in the United States? Or should they continue to work at the cost of their and their newborn's health?

States that have outright banned abortions are the same states that are least supportive of struggling mothers.[31] States with abortion bans have the highest rates of childhood poverty, uninsured women and children, low birth-rates, teen pregnancy, and rates of infant and maternal mortality.[32] They also have the lowest minimum wage and lowest paid family leave.[33] So, an

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[29] *4.3 Million Women Work Multiple Jobs to Make Ends Meet,* National Women's Law Center (Dec. 2, 2016) https://nwlc.org/4-3-million-women-work-multiple-jobs-to-make-ends-meet/

[30] *The Overlap of the $7.25 Minimum Wage and Abortion Restrictions,* Rutgers School of Management and Labor Relations https://smlr.rutgers.edu/wjl-ru/beyond-bill-abortion-min-wage-overlap

[31] Emily Badger, Margot Sanger-Katz, and Clair Cain Miller, *States with Abortion Bans Are Among the Least Supportive for Mothers and Children,* The New York Times (Jul. 28, 2022) https://www.nytimes.com/2022/07/28/upshot/abortion-bans-states-social-services.html

[32] *Id.*

[33] *Id.*

already struggling family will not be able to rely on any help from the state, yet, that state is mandating that they have another child. For more, see Figure 2.[ii]

	WHERE ABORTION IS ...	
OUTCOME	BANNED OR LIKELY TO BE (24 STATES)	UNLIKELY TO BE BANNED (20 STATES)
Children in poverty *Pct. below poverty line*	18.5%	14.8%
Uninsured women *Pct. of women of reproductive age without health insurance*	15.7%	9.0%
Uninsured children *Pct. of children without health insurance*	7.2%	3.6%
Low-birthweight babies *Pct. of babies born weighing less than 2.5 kg (5.5 lbs.)*	8.8%	7.7%
Teen births *Births per 1,000 females age 15 to 19*	21.2	12.1
Infant mortality *Deaths per 1,000 live births*	6.3	4.7
Maternal mortality *Deaths per 100,000 live births*	25.2	15.0

POLICY	BANNED OR LIKELY TO BE (24 STATES)	UNLIKELY TO BE BANNED (20 STATES)
Paid family leave *Offer paid family leave*	0 STATES	11 STATES
Expanded Medicaid *Expanded Medicaid under Obamacare to cover poor, childless adults*	15 STATES	20 STATES
Min. wage above $7.25 *Above the federal floor*	8 STATES	19 STATES
Universal pre-K *Committed to offering universal pre-K*	6 STATES	6 STATES

Figure 2: Comparing State Support of Families Between States with Abortion Access and Abortion Bans

Plus, it's expensive to give birth. For people with private insurance, the average out-of-pocket cost is around $2,000.[34] But private insurance has monthly premiums and is directly connected with people's employment.[35] Often times, the working poor do not receive employer-sponsored private health insurance, because their employer classifies them as "part-time" or "independent contractor" to avoid laws that require insurance coverage.[36] Some of the working poor will qualify for Medicaid, but many will not.[37] Plus, the states with the most restrictive abortion bans are the same with the most restrictive Medicaid programs.[38] If someone has Medicaid, then the cost of their pregnancy will be covered by the state. But there are over 25 million nonelderly uninsured people, and 70% of them work fulltime jobs.[39] 69% of those uninsured are uninsured because they cannot afford insurance coverage, and do not qualify for Medicaid.[40] For those millions of people, being forced to give birth can leave them with an average of $15,000 in hospital bills for a vaginal birth and $50,000 in hospital bills for a cesarean birth. Now, they have another bill they must pay, and if they do not, the hospital can sue and

[34] Tonya Russell, *What's It Like to Have a Baby on Medicaid, According to Parents Who've Been There,* Parents Magazine (Feb 21, 2023) https://www.parents.com/pregnancy/giving-birth/labor-and-delivery/this-is-what-its-like-to-have-a-baby-on-medicaid-according-to-women-who-have-been-there/
[35] Aaron E. Campbell, *The Real Reason the U.S. Has Employer-Sponsored Health Insurance,* The New York Times (Sept. 5, 2017) https://www.nytimes.com/2017/09/05/upshot/the-real-reason-the-us-has-employer-sponsored-health-insurance.html
[36] Jayne O'Donnell and Laura Ungar, *Most of Those Without Medicaid are the Working Poor,* USA Today (Dec. 28, 2015) https://www.usatoday.com/story/news/nation/2015/12/28/up-75-without-medicaid-working-poor-who-cant-job-related-insurance/75657202/
[37] *Id.*
[38] Badger, *supra.*
[39] Jennifer Tolbert, Patrick Drake, Anthony Damico, *Key Facts About The Uninsured Population,* Kaiser Family Foundation (Dec. 19, 2022) https://www.kff.org/uninsured/issue-brief/key-facts-about-the-uninsured-population/
[40] *Id.*

then garnish wages until the bill is paid.[41] Plus, if they do not have health insurance coverage, they are at greater risks for complications from their pregnancy, because of the lack of healthcare access and lack of prenatal care.[42] Their children are also less likely to have health insurance coverage too, which leaves everyone with worse health outcomes.[43] Finally, states with the most restrictive abortion bans also are states that deny any public funds for contraception.[44] This means that not only do states make it difficult for the working poor to prevent pregnancy, but also forces these same people to give birth when they become pregnant, so they are more vulnerable to exploitation.

2. Rich Capitalists Maximize Profits Off Minimum Labor Workers

People who work minimum wage jobs help rich companies become even more wealthy. Anyone who works knows that their value comes from their labor—they are paid money for their labor. For those most vulnerable to exploitation, they are paid less in value than the labor they work. For every person that does not receive the full amount of money from their labor, someone else receives wealth they did not work for. For example, Jeff Bezos is not a billionaire because he worked 137 million hours at minimum wage.[45] He is a billionaire because he profited off the tens of thousands of workers he employs, paying them as little as possible, so he can maximize profits for himself. Jeff Bezos does not care that many of his workers do not make a living wage,

[41] Andrea Wimmer, *Four Things To Know About Medical Bills and Wage Garnishment,* Upsolve (Nov. 10, 2021) https://upsolve.org/learn/can-hospitals-garnish-wages/
[42] *6 Health Related Outcomes for Children, Pregnant Women, and Newborns,* National Library of Medicine https://www.ncbi.nlm.nih.gov/books/NBK221019/#:~:text=Uninsured%20women%20are%20more%20likely,related%20to%20health%20insurance%20alone.
[43] *Id.*
[44] Christine Vestal, *New Research Shows State Restrictions Reduce Contraception Use,* Pew Research (Sept. 22, 2022) https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2022/09/22/new-research-shows-state-restrictions-reduce-contraception-use
[45] No one can work that many hours, because that would be equivalent to working 15,000 years worth of labor at minimum wage.

live paycheck-to-paycheck, and cannot make ends meet. Jeff Bezos cares about maximizing his profits, for his own hoarding of wealth.

But people work these minimum wage jobs because of capitalism. There must be a very large and poor working class to have a wealthy elite, because capitalism is a pyramid scheme.[46] There must be an expandable working population to exploit and extract resources and labor from in order for the ultra-rich to exist.[47] If we have communities of people with bodily autonomy, then they are harder to exploit. If people can choose to limit the number of children they have, then they will have less mouths to feed. They might refuse to work the minimum wage job, because they can go without or hold off for a better paying job. But people with children are not going to refuse that minimum wage job as easily, especially if they have a lot of children to feed. People will do anything to make sure their children do not go without. Therefore, their labor is more exploitable through minimum wage jobs, so the rich and powerful can profit off the working class's labor.

Poor and working-class parents work tirelessly, but they do not see the profits of their labor.[48] The profits are extracted from these communities and go straight to the rich and powerful corporations. Since the state is enforcing these abortion bans, this is state-sanctioned exploitation of poor communities for the rich to become even wealthier. That is colonialism. And

[46] Ryan Gosha, *Capitalism is a Pyramid Scheme,* Medium (Aug. 9, 2022) https://ryangosha.medium.com/capitalism-is-a-pyramid-scheme-769cc882f6#:~:text=The%20distribution%20of%20outcomes%20is%20precisely%20like%20that%20of%20a,many%20losers%20at%20the%20bottom.
[47] *Id. See also,* Karl Marx and Friedrich Engels, *The Communist Manifesto* (1848)
[48] *Id.*

since there are now more children in the most exploitable communities, there will be more adults in a decade or two to continue the exploitation.

The powerful must remove people's autonomy in order to more efficiently colonize them and extract their wealth. If people have bodily autonomy and control of their own lives, they are much harder to exploit. If the State allows people to choose when to start a family, and people wait until they finish their education—in hopes of a better paying job—then it is much harder to exploit them. It is much easier to extract wealth from a single mom to multiple children, because she must care for her children.[49] So, from a capitalistic and colonialist viewpoint, it makes sense that the states with the most restrictive abortion bans also have the worst safety nets for families;[50] if these states had safety nets, then the poor and working class would be harder to exploit. If states had caps on rent, guaranteed access to food, quality education, state-paid childcare, and universal healthcare, then the poor become less exploitable because their needs are being met. Therefore, the state ensures there is abysmal support for poor families, while also forcing birth upon them, to ensure they are exploitable by the rich and powerful. That is colonialism.

Then, the children grow up in poverty without equal access to quality education, healthcare, or financial stability. They grow up and become adults that are more prone to exploitation by the wealthy—repeating the cycle. Or worse, they end up incarcerated because

[49] It is well documented that the majority of people seeking an abortion are already a parent. For more see, Margot Sanger-Katz, Claire Cain Miller, and Quoctrung Bui, *Who Gets Abortions in America?* New York Times (Dec 14, 2021) https://www.nytimes.com/interactive/2021/12/14/upshot/who-gets-abortions-in-america.html
[50] See Figure Two.

this country criminalizes poverty.[51] People incarcerated are the most exploitable by the rich and powerful, because they are forced to work but for no pay.[52]

F. Criminalizing Pregnant People for Further Exploitation

States will criminalize anyone who dares to defy the ban on abortion, something easy to do during the age of mass incarceration. Every state that has bans on abortion makes abortion access a felony, as discussed above. Once incarcerated, people are the most vulnerable to exploitation, because of forced work for no pay. States claim that they will not incarcerate the pregnant person, only those who help a pregnant person obtain an abortion.[53] But the data proves this false, as states have been criminalizing pregnant people for a while.[54]

People have been jailed for struggling with addiction while being pregnant for decades, with Black women facing criminalization at rates ten times higher.[55] Hospitals have a history of reporting any drug usage in pregnant people to the police.[56] Police then use laws that were originally passed to protect pregnant people from domestic violence—feticide laws—against the pregnant person. Homicide is the leading cause of death for pregnant people, so feticide laws were passed and these laws criminalize an abusive spouse's attack on the pregnant person and fetus. However, these laws are being used to criminalize and incarcerate pregnant people who

[51] The number one predictor of who will end up incarcerated is poverty. Dan Kopf, *New Data Clearly Illustrates the Poverty-To-Prison Pipeline,* Quartz (Mar. 22, 2018) https://qz.com/1233966/new-data-clearly-illustrate-the-poverty-to-prison-pipeline

[52] U.S. Const. Amend. XIII

[53] Oriana Gonzalez, *How States Enforce Anti-Abortion Laws,* Axios (Jun 24, 2022) https://www.axios.com/2022/06/08/abortion-bans-penalty-fines-prison-us-states

[54] Sandhya Dirks, *Criminalizing of Pregnancy Has Already Been Happening to the Poor and Women of Color,* NPR (Aug. 3, 2022) https://www.npr.org/2022/08/03/1114181472/criminalization-of-pregnancy-has-already-been-happening-to-the-poor-and-women-of

[55] Id.

[56] *Id.*

have a stillborn,[57] test positive for drugs while pregnant,[58] refuse to have a c-section,[59] or miscarry.[60] Recently, Etowah County in Alabama jailed a women for child endangerment because she was suspected of using drugs while pregnant.[61] The jail refused to give her a pregnancy test and held her on a $10,000 cash bond for "child endangerment"—the child being the suspected fetus.[62] Except she was not even pregnant.[63] Upon being released from the jail, with the charges eventually dropped, the woman reports being told to not get pregnant, or they will arrest her again.[64]

Another county held a pregnant lady in Alabama for three months because she was pregnant, and during a traffic stop marijuana was found in her car.[65] Local prosecutors argued that they needed to keep this pregnant woman jailed to protect the fetus. In order to be released from jail, she had to enter a rehab program; except, she did not qualify for a rehab program because she did not struggle with addiction.[66] So she remained incarcerated, where she

[57] Cary Aspinwall, Brianna Bailey, and Amy Yurkanin, *They Lost Their Pregnancies. Then, Prosecutors Sent Them to Prison.* The Marshall Project (Sept. 1, 2022) https://www.themarshallproject.org/2022/09/01/they-lost-their-pregnancies-then-prosecutors-sent-them-to-prison#:~:text=More%20than%2050%20women%20have,published%20in%20partnership%20with%20The

[58] Marissa Iati, *Pregnant Women Were Jailed Over Drug Use to Protect Fetuses, County Says,* The Washington Post (Sept. 8 2022) https://www.washingtonpost.com/nation/2022/09/08/pregnant-women-drugs-jail/

[59] Dirks, *supra.*

[60] The Editorial Board, *When Prosecutors Jail a Mother for Miscarriage,* The New York Times (Dec. 28, 2018) https://www.nytimes.com/interactive/2018/12/28/opinion/abortion-pregnancy-pro-life.htmltesting

[61] Amy Yurkanin, *Alabama Woman Jailed for Using Drugs During Pregnancy Wasn't Pregnant, Lawsuit Says,* Alabama Media Group (Nov. 20, 2022) https://www.al.com/news/2022/11/alabama-woman-jailed-for-using-drugs-during-pregnancy-wasnt-pregnant-lawsuit-says.html

[62] *Id.*

[63] *Id.*

[64] Id.

[65] Iati, *supra.*

[66] Amy Yurkanin, *Pregnant Woman Held for Months in One Alabama Jail to Protect Fetuses from Drugs,* Alabama Media Group (Sept. 8, 2022) https://www.al.com/news/2022/09/pregnant-women-held-for-months-in-one-alabama-jail-to-protect-fetuses-from-drugs.html

had to sleep on the floor due to overcrowding, while pregnant.[67] Because of complications with her pregnancy, she continuously bled and had to be hospitalized twice, due to the complication and lack of care at the jail.[68] After three months, she was finally released.

Not only are people being criminalized for being pregnant, but also once incarcerated, these people are further exploited. People incarcerated are forced to work jobs for pennies on the hour, if they are paid at all. "Jobs" can range from maintaining the jail to working for private companies that profit off said forced labor.[69] This is the most obvious example of colonialism—incarcerating people and extracting wealth from their forced, yet unpaid labor, for the benefit of the rich and wealthy. Criminalizing pregnancy just leads to further exploitation during the age of mass incarceration. Therefore, State power will colonize poor communities through forcing birth, and if anyone refuses, they will be criminalized and further exploited in jail. This has a devastating and oppressive effect on people with uteruses, because of how these same states' paternity laws are written.

II. How Current State Paternity Laws Allows Men To Skirt Responsibility of Children

A. Establishing Paternity

Most states that have banned abortions have similar laws for determining paternity.[70] Regardless of marriage status, the person who gives birth to the baby is automatically put down

[67] *Id.*
[68] *Id.*
[69] *Private Companies Producing with U.S. Prison Labor in 2020,* Corporate Accountability Lab (Aug. 5, 2020) https://corpaccountabilitylab.org/calblog/2020/8/5/private-companies-producing-with-us-prison-labor-in-2020-prison-labor-in-the-us-part-ii
[70] At the time of writing this, the following states all have banned abortions, regardless of gestational age of the fetus. Alabama, Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, West Virginia, and Wisconsin. Georgia banned abortions after six weeks. Florida recently banned abortions after 6 weeks, but this is blocked from enforcement pending Florida Supreme Court review. Indiana, Iowa, North Dakota, Montana, Ohio, and Wyoming all have laws banning abortions, but these laws are blocked from

on the birth certificate as the "mother."[71] For married couples, the spouse of the person who gave birth is automatically presumed to be the father.[72] There are ways for the spouse to rebut this presumption.[73] For unmarried couples, the partner to the person who gave birth can be put on the birth certificate, as the "father," but only if the partner consents.[74] If the partner refuses, does not consent, or objects to being listed as the "father,"[75] then "father" is left blank on the birth certificate.[76] The person who gave birth, the presumed mother, would need to file a lawsuit in court in order to have the other parent, the "father" recognized as the second parent and responsible for the child, including child support.[77]

1. When the Non-Birthing Party Does Not Consent to Be Recognized as Father

enforcement pending litigation and review by courts. For more see *Tracking The States Where Abortion Is Now Banned,* The New York Times (Updated Apr. 14, 2023) Tracking the States Where Abortion Is Now Banned in the U.S. - The New York Times (nytimes.com) For purposes of this paper, paternity laws in the following states were analyzed: Alabama, Arkansas, Idaho, Kentucky, Louisiana, Mississippi, Missouri, Oklahoma, South Dakota, Tennessee, Texas, and West Virginia. This is because these states have the harshest abortion bans. Wisconsin currently has a full abortion ban, but it stems from an 1848 law that is likely to be overturned in the next year.

[71] Again, this raises a lot of issues for LGBTQ+ couples. Specifically, people who give birth might not identify as "female" or "mother" and are still put down as such on the birth certificate. This can be a major issue for trans men and nonbinary people who give birth but want to be recognized as the "father" or just simply "parent." While a few states allow parent 1 and parent 2 designation, most states do not. Further discussion regarding this is outside the scope of this paper. Ala. Code §22-9A-7; Ark. Code §20-18-401; ID Code §39-255; Ken. Code §213.046; LA Code 40 §34(A); MO Code 10 §10-10.040; 63 OK Stat §63-1-311; S.D. Code §34-25; TX Code §160.201; W.V. Code §16-5-10(e)

[72] Ala. Code §26-17-204; ID Code §7-1119; Ken. Code §406.011; LA Civ Code Art. §185; MS Code §93-9-10; MO Code §12-210.822(1); 43 OK Stat §43-109.2; SD Code §25-8-57; TN Code §36-2-304; TX Code §160.204; W.V. Code §16-5-10(e)

[73] *Id.*

[74] Al Code §26-17-204; Ark. Code §9-10-108; Ida. Code §7-1006; Ken. Code §406.025; LA Civ Code Art. §392; MS Code §93-9-28; MO Code §12-210.822(3)(b); 10 OK Stat §10-7700-204; W.V. Code §16-5-10(2)(B)

[75] For reasons outside of the term "father." Some people object to the term "father" but otherwise want to be recognized as the parent of the child. This is an issue with the way parental laws are written—in that they are gendered—and is outside the scope of this paper.

[76] *Id.*

[77] Moving forward, mother will be used to refer to the person who gave birth. Father will be used for the second parent. This is *not* to assume or promote the idea that only a mother can give birth and only a father can be the non-birthing parent. These terms will be used to emphasize the gendered paternity laws. As discussed in footnotes above, people who do not identify as female or mother can give birth and be parents to children. People who do not identify as father can still be the non-birthing parent to children. LGBTQ issues intersect many of these issues discussed in this paper, but are outside the scope of this paper.

In every state, genetic testing is required to determine paternity when the non-birthing parent denies paternity or does not consent to be on the birth certificate.[78] In order to have said genetic testing conducted, there must be a court order. This means that the birthing parent must file a lawsuit in order to obtain a court order. It's this process that makes it incredibly complicated and expensive to hold the non-birthing parent responsible for the child they helped create, especially for poor people who do not have equal access to courts and attorneys due to lack of funds.

For many, attorneys are completely unaffordable, and there is no right to an attorney for civil cases to determine paternity. Yet, filing a lawsuit is the only way to eventually get paternity recognized. For so many people, they will either need to hire an attorney they cannot afford or navigate the legal system on their own—as pro se litigants. But they must do this while raising the baby they just gave birth to, without support from the paternal parent. Filing the court case means paying court fees and filing fees, or navigating the (often complicated) fee waiver, which has very narrow applicability. Then, the non-birthing parent must be served, which can cost more money.

Once the case has begun, the non-birthing parent can fight against court-mandated genetic testing. They can challenge jurisdiction, venue, improper service, or other procedural issues, all to prevent testing and paternity determination. Each one of these would require the mother to either continue to navigate the legal system as a pro se litigant, and figure out how to survive these various motions, or would cost more money in attorney fees. If the person

[78] Ark. Coe §9-10-108; Ala Code §26-17-636; ID Code §7-1116; OK Stat. §340:25-5-176; LA Civ. Code §392; MS Code §93-9-21; Ken. Code §406.091(7); MO Code §454-485(6); W.V. §48-24-103(c)

challenging paternity has disposable income, they can spend a lot of money on attorneys who can bog down the process for the mother, meaning significantly longer and more expensive proceedings. The mother must still navigate this complicated legal system while raising another child, but without paternal support.

2. Paying for Genetic Testing

Eventually, the mother could get a court to order genetic testing to determine paternity. But in all of the following states that banned abortion, the mother must pay for the cost of genetic testing: Alabama,[79] Arkansas,[80] Idaho,[81] Louisiana,[82] Kentucky,[83] West Virginia,[84] Tennessee,[85] and Texas.[86] [87] If and when paternity is determined, the court can order the father to reimburse the mother for costs of genetic testing, but in all of these states, the mother must pay for the genetic testing upfront. For the countless of people who live in poverty, they do not have the money to pay for genetic testing upfront. This fee makes genetic testing and paternity determination very difficult, if not unobtainable. Reimbursement of fees means nothing to people who do not have the funds to pay for the testing upfront.

Plus, once the test proves paternity, every state has a process where the father can refute the results. While the father is usually not successful in refuting such results, this process can prolong the proceedings for a significant amount of time, This means the mother remains raising

[79] Ala. Code §26-17-636
[80] Ark. Code §9-10-108(8)
[81] Id. Code §7-1116
[82] LA Civ Code Art. §392
[83] Ken. Code §406.091(7)
[84] W.V. Stat. §48-24-103(c)
[85] Tenn. Code §24-7-112(3)
[86] Tx. Code §160.506(a)(2)
[87] It is not clear under South Dakota statute who pays for the genetic testing and when those fees are due.

a child without paternal support and still has to navigate a confusing legal system or pay more in attorney fees.

There are notably three states that do not make the mother pay for the genetic testing upfront: Oklahoma,[88] Mississippi,[89] and Missouri.[90] Instead, each of these State's Department of Human Services covers the cost of genetic testing upfront, but only when there is a pending court case. Plus, the mother must reimburse the state if the person who was ordered to submit to a paternity test was determined to not be the father.

3. Genetic Testing Fees as Punitive

Whether the mother has to pay the genetic testing upfront, or reimburse the court if the test determined the person to *not* be the father, this acts as a financial punitive measure for people with uteruses who engage in sexual conduct with multiple partners. For every genetic test they need, in order to determine paternity, they must pay. If they had three sexual partners, then they might need three tests to determine who the father is. The mother would be financially responsible for at least two of these, or need to pay for all three upfront and would only be reimbursed for one. However, the father will only ever be responsible for one paternity test—only the test that determines him as father. Men only have to reimburse the court if the test determines that they are the father; men do not have to reimburse the court if the paternity test comes back negative, even if they were a sexual partner of the mother.[91]pay for numerous

[88] OK Stat. §340:25-5-176
[89] MS Code 93-9-21
[90] MO Code §454.485(6)
[91] See footnotes 69-80

genetic tests upfront, regardless of how many sexual partners they have. There is no punitive financial cost for men for genetic testing—only women.

B. Why These Paternity Laws Matter

While it takes two people to create a baby, they are not held to equal responsibility for the child. Women do not have a choice—they are automatically recognized as the mother. But unmarried fathers can skirt responsibility and dodge accountability for the child, especially if the mother is poor and cannot afford attorney fees. This leaves women drastically and disproportionately effected by these abortion restrictions, and the subsequent costs of raising children. If mothers do not go through the process described above, they will not be entitled to any child support from the father, meaning they will be left solely responsible to raise the child.

The majority of laws, including the abortion bans and the paternity laws, were written by majority men. They are crafted in ways where women's bodies are disproportionately colonized and subjected to the feminization of poverty. These laws uphold patriarchy, where men are able to excel at the sake of women; men get ahead on the back of women's labor and exploitation.

Men are not going to suddenly be burdened by more children because of these abortion bans. Men are not automatically liable for the child, and when the woman tries to make them responsible, the men can fight paternity for years. Men are not stigmatized or financially punished for having multiple partners, but women are if a child results from one of those relationships. This is exactly how a patriarchy stays in power—through the feminization of poverty. If women (but not men!) are busy raising children, and do not have control over when to have children, it

becomes difficult for women to finish their education, advance their careers, or achieve equality. If men are not responsible for the children they help create, but require women to be, then it allows them to get further ahead in the patriarchy. Women, especially single moms, will need to take very low-paying and minimum wage jobs to support their children, as discussed above, which makes them more susceptible to the colonizing powers. Men who are not held legally responsible for the children they help create are not equally susceptible to exploitation.

III. Adoption Is Only Further Exploitation and Colonization

A. Adoption is Not the One-Size-Fits-All Solution Alito Claims

In the *Dobbs* decision, Justice Alito says that "States have increasingly adopted 'safe haven' laws, which generally allow women to drop off babies anonymously, and that a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home."[92] The majority of the court's decision in *Dobbs* is that adoption is the answer for unwanted pregnancies. However, that is just not true, and perpetuates colonialism.

> Adoption doesn't do what an abortion does. It does not end a pregnancy, it does not relieve the burden of pregnancy, it does not avoid the health risks of pregnancy, it does not alleviate the psycho-social harm of relinquishing for adoption. It is not at all a substitute for abortion.[93]

1. Adoption Means That The Person With The Uterus Must Be Forced to Give Birth

Adoption is Justice's Alito's answer to the abortion bans, meaning that the majority is perfectly fine with forcing people to give birth. But without access to abortion, people are at

[92] *Dobbs v. Jackson Women's Health,* 597 U.S. ___, 34 (2022).
[93] Cecelia Lenzen, *Can Adoption Replace Abortion? Experts Say Its A Lot More Complicated Than It Sounds,* The Texas Tribune, (Aug. 12, 2022) https://www.texastribune.org/2022/08/12/texas-adoption-abortion-access/

much higher risks for complications with the pregnancy, including death. Being forced to carry a fetus and give birth can cause irreparable trauma to the person's body. It can cause psychological harm and mental illness for people being forced to carry a fetus they do not want, including developing PTSD.[94]

> We experience events as traumatic when we are not able to escape them or are not able to exercise choice about what happens to our bodies. . . There are the emotions that many people face around adoption. A person may feel guilt, fear of regretting their decision, or stress about what has become of their child. These feelings may arise soon after giving birth or later on in life, especially if they choose to have another child. While adoption is the right choice for many people carrying unwanted pregnancies, it is not the case for all.[95]

2. Banning Abortion Does Not Change Adoption Rates

Adoption should be available for those who choose that path. But for many, adoption is not an option. People who are now forced to give birth, but otherwise would not have chosen to have a child, will likely keep that child. A long-term study followed people who were previously denied abortions due to gestational age.[96] Only 9% of the people denied an abortion put the resulting newborn baby up for adoption. The other 91% chose to parent. Many of these people cited the psychological trauma surrounding this decision and reported feelings of guilt, denial, shame, hopelessness, and depression.[97]

Plus, giving birth is expensive! As discussed above, the average person can expect to be indebted thousands of dollars for giving birth. Even if the person gives the child up for adoption, they will be required to pay that medical debt; if the father does not acknowledge paternity, the

[94] Sarah Fielding, *Adoption is No Substitute for Abortion: Forced Pregnancy Impacts Mental Health,* Very Well Mind (Jan 14, 2022) https://www.verywellmind.com/mental-health-implications-of-forced-pregnancy-5212669
[95] *Id, supra.*
[96] *Lenzen, supra*
[97] *Lenzen, supra.*

birthing parent will be left with full responsibility for the medical costs of giving birth. If the person does not pay, the hospital can garnish wages until paid in full.[98]

Not only that, but adoption can also affect a child's psychological development.[99] Children who are adopted will have questions and need to process the fact that they were adopted.[100] This means that they will likely try to find out who their birth parents were at some point. Given the complete lack of anonymity in the age of technology, people who are forced to give birth must always expect a child they put up for adoption to later return with questions.

3. **The Lack of Anonymity**

There is no such thing as an anonymous adoption these days. Sure, families can still enter into a closed adoption procedure, but any adopted child can quickly determine who their birth parents were with a simple DNA test on any of the commercially available sites, like Ancestry.com or 23andMe.com. Even if the parent(s) of the child put up for adoption have not done a DNA test, the adopted child can still locate them. This is because these websites map *everyone's* DNA who has participated and can determine if someone would be your birth parent's sister, cousin, or distant relative. Basically, if *anyone* related to the birth parent(s) has used one of these sites, the adopted child will be able to find their birth parent through relatives.

Then, the child does a quick Google search of the relative's name and Google tells them contact information based on public records. Quickly, the adopted child will contact their birth

[98] Wimmer, *supra.*

[99] UNDERSTANDING ADOPTION: A DEVELOPMENTAL APPROACH. PAEDIATR CHILD HEALTH. 2001 MAY;6(5):281-91. DOI: 10.1093/PCH/6.5.281. PMID: 20084250; PMCID: PMC2804559.

[100] *Id.*

parents, even if the adoption was supposed to be closed. That child will inevitably have questions, and this can raise a lot of emotions and feelings. How will that child feel if the birth parent(s) went on to have other children? How will the parents feel? How will both families cope with this inevitable encounter?

Knowing all of this, it becomes clear that adoption is not the "easy solution" for abortion bans. Pregnant people will either be forced to raise a child in the immediate or wait and know that someday, that adopted child is going to come back and have a lot of questions. This doesn't mean that we shouldn't have adoption as an option—we should for those who want to go that route. But saying that adoption is the only answer to abortion bans is fundamentally wrong, and also furthers colonial exploitation.

B. **The Economics of the Baby Shortage**

For some, adoption is the right choice, but this is a deeply personal choice that people should make themselves, not a choice five people on the Supreme Court should make for the entire nation. In his decision, Justice Alito defends adoption as the catch-all solution by saying the following:

> States have increasingly adopted "safe haven" laws, which generally allow women to drop off babies anonymously, and that a woman who puts her newborn up for adoption today has little reason to fear that the baby will not find a suitable home.[101]

This is cited in the *Dobbs* decision as Footnote 46. Footnote 46 reads as follows:

> CDC, Adoption Experiences of Women and Men and Demand for Children To Adopt by Women 18–44 Years of Age in the United States 16 (Aug. 2008) ("[N]early 1 million women were seeking to adopt children in 2002 (i.e., they were in demand for a child), whereas the domestic supply of infants relinquished at birth or within the first month of life and available to be adopted had become virtually nonexistent"); CDC, National Center

[101] *Dobbs, supra.*

> for Health Statistics, Adoption and Nonbiological Parenting, https://www.cdc.gov/nchs/nsfg/key_statistics/a-keystat.htm# adoption (showing that approximately 3.1 million women between the ages of 18–49 had ever "[t]aken steps to adopt a child" based on data collected from 2015–2019).[102]

Justice Alito is trying to showcase through Footnote 46 that there are fewer babies available for adoption then people wanting to adopt, so people who place their baby up for adoption should have little fear. But what does all of this really reveal?

1. Which Babies Are in "Short Supply"

The reference for Footnote 46 is a link to the Center for Disease Control ("CDC") website, where there is data about how many babies were available for adoption between 2015-2019 and how many people took steps to adopt. 800,000 people in America adopted a child between 2015-2019.[103] However, 4.7 million people took a step towards adopting a child in America during the same time. Therefore, Justice Alito concludes that there is a "baby shortage." However, just because someone took a step towards adoption does not mean they conclusively wanted to adopt. Many could have found out more about the adoption process and changed their minds, decided adoption was not for them, or did not qualify to adopt.[104] None of this is taken into consideration by these few CDC statistics cited by J. Alito. We do not know how many people took a step towards adoption but later changed their mind, or were determined to be ineligible to adopt. We do not know how many people took steps towards adoption, passed all

[102] *Dobbs, supra.* at n.46

[103] CDC, National Center for Health Statistics, Adoption and Nonbiological Parenting, https://www.cdc.gov/nchs/nsfg/key_statistics/a-keystat.htm#

[104] There are many requirements for people to be able to adopt, including having financial stability, having stable housing, passing a criminal background check, passing a house inspection, and being interviewed. Some adoption agencies also require that people adopting be heterosexual couples (see Fulton v. Philadelphia). While exploring all of these issues are outside the scope of this paper, it is important to note that some people interested in adoption do not pass and cannot adopt.

the necessary requirements to be eligible to adopt, and then were not able to adopt because there was no child available to adopt. Nor do we know how many of those eligible people chose not to adopt because a child of the demographics they sought was not available. All we know is that 4.7 million people took a step to adopt, and 800,000 people adopted children.

Foster care and adoption agencies are a network of nonprofits and state agencies; there is no one central organization that manages all adoptions for the Untied States. This means that there is no central organization with all of the data—instead, it is piecemealed together. Data from wholly private adoptions are not available, as they are private. Instead, we only have data from adoptions that used public or state agencies at some point, as they are the only ones required to report data. However, it is estimated that between all of the States, there are about 400,000 children in foster care and 117,000 children available for adoption.[105] However, many of these children are older, children of color, siblings needing to stay together, have medical conditions, or have a disability.[106]

When J. Alito discussed the *lack* of "domestic supply of infants," he was talking about specific infants--white infants. Non-Black babies are seven times more likely to be adopted than Black babies.[107] While Black people make up about 13% of the United States population, 23% of

[105] *Adopt the Children,* Adopt US Kids https://www.adoptuskids.org/meet-the-children/children-in-foster-care/about-the-children#:~:text=How%20many%20children%20are%20awaiting,are%20waiting%20to%20be%20adopted.
[106] *Id.*
[107] Stacia L. Brown *The Problem with Saying 'Black Babies Cost Less to Adopt',* The Atlantic (Jul. 1, 2013) https://www.theatlantic.com/sexes/archive/2013/07/the-problem-with-saying-black-babies-cost-less-to-adopt/277452/

babies available for adoption are Black.[108] Yet, in 2021, Black babies made up only 16% of the babies adopted.[109] Yet, this has increased from the prior two decades, where Black babies accounted for about 9% of the babies adopted.[110]

We also know that Black babies and Black children spend an average of 1.5 years longer in foster care, waiting to be adopted.[111] White children spend an average of 23 months waiting to be adopted, while Black children spend an average of 39 months.[112] Of the children waiting to be adopted, 22% were Black, yet only 16% of adopted children were Black; 44% of children available to be adopted were white, but 49% of adopted children were white—meaning there was a shortage of available white children for adoption, but more Black children available for adoption then homes to be adopted into. Collectively, this all shows that there is not a lack of "domestic supply of infants" but a lack of white infants. See Figure Three[iii] and Figure Four.[iv]

[108] *Adoption USA. A Chartbook Based on the 2017 National Survey of Adoptive Parents*. Office of the Assistant Secretary for Planning and Evaluation. November 1, 2009. https://aspe.hhs.gov/report/adoption-usa-chartbook-based-2007-national-survey-adoptive-parents

[109] Erin Duff, *Number of Children Adopted with Public Agency Involvement in the United States in FY 2021, by Ethnicity,* Statista (June 2022) https://www.statista.com/statistics/633483/racial-distribution-of-adopted-children-us/

[110] This was measured based off adopted children entering kindergarten. In 2011, of all the children entering public kindergarten who were adopted, 39% were white and 9% were Black. See Nicholas Zill, *The Changing Face of Adoption in the United States,* Institute for Family Studies (Aug. 8, 2017) https://ifstudies.org/blog/the-changing-face-of-adoption-in-the-united-states

[111] Ronald Hall, *The US Adoption System Discriminates Against Darker-Skinned Children,* The World (Feb 21, 2019) https://theworld.org/stories/2019-02-21/us-adoption-system-discriminates-against-darker-skinned-children

[112] *Id.*

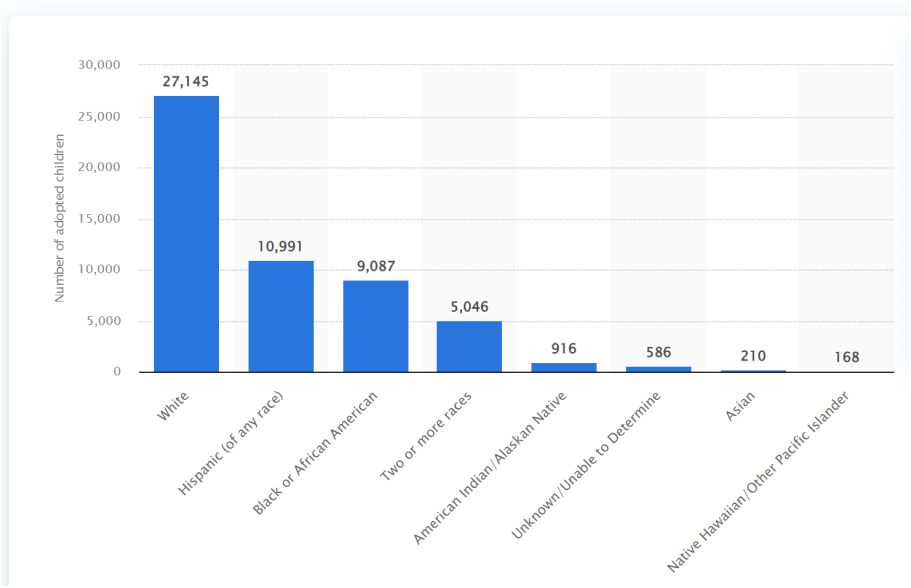


Figure 3 Number of Children Adopted with Public Agency Involvement in the United States in 2021, by Ethnicity

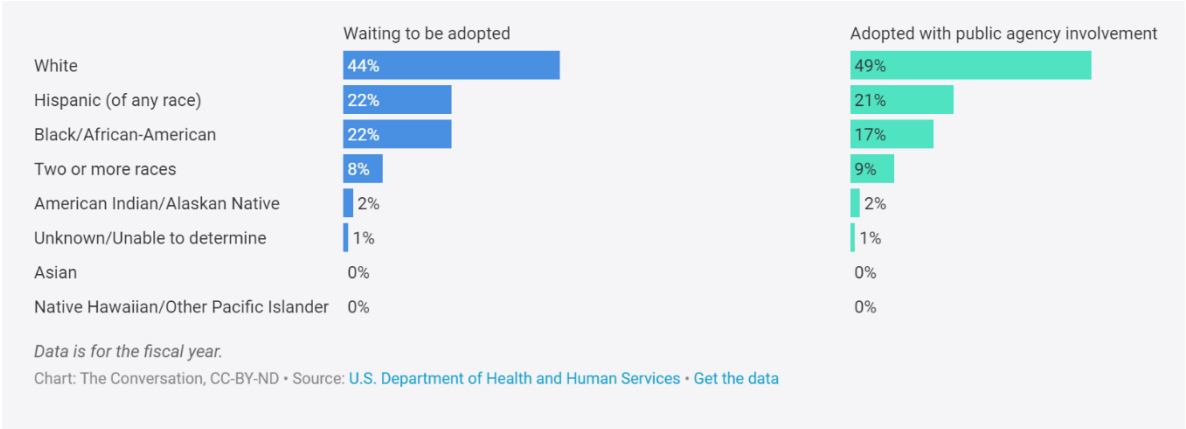


Figure 4 Children Available for Adoption, 2004

2. Using "Market Principles" for Infants and Children

It is also telling how J. Alito worded Footnote 46—he did not state there were more people wishing to adopt then babies available for adoption. Instead, he phrased it as a lack of "domestic supply of infants," invoking economic and marketplace imagery. But this is not the only time a judge has invoked the same "economic marketplace" for infants. Judge Richard

Posner advocated for a private market for infants in "The Economics of the Baby Market."[113] While J. Alito might be more subtle with his implications, J. Posner was not whatsoever; he was clear that we needed a private baby market where people could sell babies. The more valuable (meaning white) babies would have higher prices, and the less valuable (meaning Black or Brown) babies would have lower prices. In the end, the "marketplace" would sort out the prices people pay.[114] This way, there would be less of a shortage of babies (meaning white babies) since there would be an economic incentive to adopt nonwhite babies.[115] Make white babies more expensive and Black babies discounted, or as Patricia Williams says, "a two-for-one sale."[116] While we do not have a privatized marketplace for babies, in the current adoption system, a white baby girl costs about double a Black baby girl.[117] A white baby girl cost about $35,000; a biracial baby girl cost about $25,000; a Black baby girl cost about $18,000.[118]

3. How This "Baby Shortage" is Rooted in Colonialism

As discussed in Part I, Colonialism is the state-sanctioned extraction of wealth and resources from one community for the benefit of the rich and powerful. This includes the sold-called "baby shortage" J. Alito speaks about and discussed above. Colonialism means that the rich and powerful must have all the wealth and resources they care for, at the expense and exploitation of others. The powerful elite must have everything they want, even if it means

[113] Elisabeth M. Landes and Richard A. Posner, *The Economics of the Baby Market,* 7 J. LEGAL STUD. 323 (1978).
[114] *Id.*
[115] *Id.*
[116] Patricia Williams, *Spare Parts, Family Values, Old Children Cheap,* New England Law Review, Vol 28:913, 919.
[117] *Six Words: Black Babies Cost Less to Adopt,* NPR (Jun 27, 2013) https://www.npr.org/2013/06/27/195967886/six-words-black-babies-cost-less-to-adopt
[118] *Id.*

extracting it from the proletariat. This would include children, the same children J. Alito speaks of when he discusses the "baby shortage."

While there is no shortage of babies and children available to adopt, there are not enough white infants for rich people to adopt. Therefore, J. Alito's invocation of the marketplace for infants, along with his argument that adoption is the solution, fits within the colonial framework. If the rich and powerful white people want white babies, then those babies need to be available to them, no matter the cost. Since they are the rich and powerful, they can pay more for these white babies in the marketplace. They can extract these babies from their birth community and raise them in their own elite community, all while being praised for their "white saviorism." These rich families will not give any support to the community from where the baby came from, nor will the birth family benefit at all from this relationship. The rich will now have a baby to raise in a wealthy community, while the birth mother is still struggling with financial instability and cycles of poverty. It is the literal taking of white babies for the rich's pleasure, ignoring the community the baby came from, all wrapped up in this "baby shortage" that J. Alito uses to defend his colonialist *Dobbs* decision.

IV. Conclusion

The *Dobbs* decision is rooted in colonialism; the wealthy and powerful will now extract wealth and resources from communities and exploit people easier through the feminization of poverty and forcing people to have children. This will directly impact impoverished people more, because those with access to disposable income will be able to travel for an abortion. However, people that struggle financially and live paycheck-to-paycheck will be the ones most impacted by

Dobbs. These are the people that will be forced to give birth to children they would otherwise choose not to have.

These people will be forced to work low-paying jobs in order to make ends meet and care for their children. Some will have to work multiple low-wage positions just to feed their children, since the states with the most restrictive abortion bans are also the states with the least amount of support for families in need. But the wealthy and powerful make significantly more in profits when they pay workers minimum wages. These elite capitalists profit off the labor of poor working mothers, while they struggle to make ends meet.

Plus, with the way paternity laws are written, nonmarried men can skirt responsibility of the children they help create. While a majority of men are creating these anti-abortion laws, they are not also sharing equally in the responsibilities of child-raising, because of paternity laws. Because mothers need to prove paternity in a court, which costs significant amounts of money, men can hold up the court case through procedural challenges. Plus, mothers have a financial penalty when it comes to having multiple partners—but not men!—because of how the laws surrounding genetic testing are written. Men will only ever have to pay for one paternity test—the one that proves they are the father, despite how many partners they have. Women, on the other hand, must pay for each genetic test, and can only get reimbursed if it comes back proving paternity. This is a financial penalty for women having multiple partners.

Finally, J. Alito's solution to all of these issues is adoption; however, adoption is not the catch-all solution and only further perpetuates racism, classism, and colonialism. J. Alito rashly points to a distorted statistic to "prove" that there is a baby shortage, and then uses that to

further justify removing a constitutional right for half this country. However, this baby shortage is incredibly racist and at its core and further perpetuates colonialism. Because the rich and powerful will always be able to extract what they want in a racist colonialism, there needs to be more *white* babies available. Then, the rich can adopt these white babies, taking them from their community, and raising them as their own. But they do this without helping the community the baby came from, nor helping the person who gave birth. This is another form of state-sanctioned wealth extraction for the benefit of the rich and powerful. Overall, the *Dobbs* decision is rooted in colonialism since it allows for the state-sanctioned extraction of wealth and resources from impoverished communities for the benefit of the rich and powerful capitalists.

1. Footnote 46 Demonstrates the Stark Gendered Differences in Who Raises Babies

Finally, the citation in Footnote 46 of the *Dobbs* decision does one more thing—it shows that child raising falls significantly more on women than men.[119] While Alito used this study to demonstrate his inaccurate statement regarding the lack of babies available for adoption, the other part of this study shows that nearly 14% of women, but only 1.4% of men have ever cared for a nonbiological child.[120] While J. Alito overlooks this point of the citation, it reveals exactly what we all know happens within a patriarchy—that child raising is not equally performed by men and women.

[i] Figure One: *The Overlap of the $7.25 Minimum Wage and Abortion Restrictions,* Rutgers School of Management and Labor Relations https://smlr.rutgers.edu/wjl-ru/beyond-bill-abortion-min-wage-overlap
[ii] Figure Two: Emily Badger, Margot Sanger-Katz, and Clair Cain Miller, *States with Abortion Bans Are Among the Least Supportive for Mothers and Children,* The New York Times (Jul. 28, 2022)
[iii] Figure Three: Erin Duff, *Number of Children Adopted with Public Agency Involvement in the United States in FY 2021, by Ethnicity,* Statista (June 2022) https://www.statista.com/statistics/633483/racial-distribution-of-adopted-children-us/
[iv] Figure Four: Ronald Hall, *The US Adoption System Discriminates Against Darker-Skinned Children,* The World (Feb 21, 2019) https://theworld.org/stories/2019-02-21/us-adoption-system-discriminates-against-darker-skinned-children

[119] CDC, National Center for Health Statistics, Adoption and Nonbiological Parenting, https://www.cdc.gov/nchs/nsfg/key_statistics/a-keystat.htm#
[120] *Id.*