Why Baby Markets Aren't Free

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INTRODUCTION

"Unable to have a baby of her own, Amy Kehoe became her own general contractor to manufacture one."[1] This is how journalist Stephanie Saul began a front-page *New York Times* article about assisted reproduction titled *Building a Baby, With Few Ground Rules*. The story continues:

> Working mostly over the Internet, Ms. Kehoe handpicked the egg donor, a pre-med student at the University of Michigan. From the Web site of California Cryobank, she chose the anonymous sperm donor, an athletic man with a 4.0 high school grade-point average. On another Web site, surromomsonline.com, Ms. Kehoe found a gestational carrier who would deliver the baby. Finally, she hired the fertility clinic, IVF Michigan, which put together her creation last December.[2]

As this story illustrates, creating families in the twenty-first century increasingly happens in markets where the buying and selling of reproductive goods and services are facilitated by advanced technologies, the internet, contracts, and state laws and policies.[3] Thus, the title of this international congress—"Baby Markets"—aptly captures a key aspect of modern reproduction. As this story also shows, the ability of potential parents to engage in market transactions

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1. Stephanie Saul, *Building a Baby, with Few Ground Rules*, N.Y. TIMES, Dec. 13, 2009, at A1.
2. *Id.*
3. *See generally* BABY MARKETS: MONEY AND THE NEW POLITICS OF CREATING FAMILIES (Michele Bratcher Goodwin ed., 2010).

involving children enhances parents' autonomy over their family lives. The free market seems to liberate us from the constraints of biology and state control. As Ms. Kehoe told the *New York Times* while she showed off baby pictures: "We paid for the egg, sperm, the in vitro fertilization . . . . They wouldn't be here if it weren't for us."[4]

This Essay argues, however, that baby markets aren't free. Three aspects of the way reproductive goods and services are bought and sold contradict the claim that this market is inevitably liberating. First, baby markets aren't free because it costs money and resources to participate in them. This reality may be fine for people like Ms. Kehoe who can afford it, but it poses a potentially insurmountable obstacle for those who can't. Second, apart from the obvious economic costs of the goods and services involved, baby markets aren't free because they operate within a context of interlocking systems of race, gender, and disability oppression. Markets therefore impose tangible and intangible costs on parents and children who are devalued and marginalized by those systems and, in turn, by the markets themselves. Finally, baby markets aren't free because they are just as susceptible to coercive practices as liberating ones. I am not arguing that no one benefits from baby markets. There are people like Ms. Kehoe who are able to take advantage of baby markets to achieve their reproductive goals. But the only way we can assess honestly the justice of baby markets is by stripping them of their false veneer of freedom for everyone.

I. THE ABILITY TO PURCHASE GOODS AND SERVICES

My first point is very straightforward. Baby markets aren't free because the goods and services that go into producing or acquiring babies cost money. In fact, these good and services are expensive. The United States is not only a capitalist nation, but is also one of the stingiest in the industrialized world when it comes to health care and family supports.[5] Under the neoliberal regime of the last few decades, the welfare state has shrunk even more, with government slashing public funding of programs and services to support families and forcing them to rely increasingly on market-based approaches.[6] While the state diminishes its public support for families, it intensifies its punitive supervision of marginalized

4. Saul, *supra* note 1.

5. DONALD A. BARR, HEALTH DISPARITIES IN THE UNITED STATES: SOCIAL CLASS, RACE, ETHNICITY, AND HEALTH (2008); Robin Osborn et al., *In New Survey of Eleven Countries, US Adults Still Struggle with Access to and Affordability of Health Care*, 35 HEALTH AFFAIRS, no. 12, Dec. 2016, http://www.commonwealthfund.org/~/media/files/news/news-releases/2016/nov/osborn-wf-ff_embargoed_v2.pdf [https://perma.cc/CWG9-ASRZ]; Goran Ridic, Suzanne Gleason & Ognjen Ridic, *Comparisons of Health Care Systems in the United States, Germany and Canada*, 24 MATERIA SOCIO-MEDICA 112 (2012); Eddy van Doorslaer et al., *Inequalities in Access to Medical Care by Income in Developed Countries*, 174 CAN. MED. ASS'N J. 177 (2006).

6. NOAM CHOMSKY, PROFIT OVER PEOPLE: NEOLIBERALISM AND GLOBAL ORDER 7 (1999); DAVID HARVEY, A BRIEF HISTORY OF NEOLIBERALISM 19 (2005).

communities with an expanding carceral system and enhances the conditions for capital accumulation by the very wealthy.[7]

Baby markets are global: reproductive goods are traded internationally and people travel across national borders to engage in market transactions—and the gaps in wealth between the United States, Europe, and most of the rest of the world are enormous.[8] Whatever benefits accrue to people who can afford to purchase reproductive goods and services are largely denied to those who don't have enough money to do so.[9]

This deprivation is not just the unfortunate result of being poor or low income; it is the result of state and corporate decisions to prefer private reproductive market approaches to more equitable policies. Apple and Facebook, for example, recently added egg freezing to the benefits plans of their female employees so they can work childfree for longer.[10] These firms rely on private solutions staving off radical changes in employer and government family leave plans that would enable a broader range of caregivers to pursue careers. The Adoption and Safe Families Act,[11] passed by Congress in 1997, attempts to solve the problem of an exploding foster care population by incentivizing private adoption instead of supporting families to avoid placement of children in foster care in the first place.[12] Baby markets not only favor the rich; they substitute for policies that would benefit those who aren't.

II. SYSTEMIC DEVALUATION

Baby markets are also not free because they operate within interlocking systems of gender, race, and disability oppression that devalue the decision-making, lives, and humanity of certain groups of people.[13] The problem isn't just the lack of access to goods and services because one can't afford them. The problem is that baby markets function to devalue certain people because of their status in society.

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7. Loic Waquant, *Crafting the Neoliberal State: Workfare, Prisonfare, and Social Insecurity*, 25 SOC. F. 197 (2010).

8. DAISY DEOMAMPO, TRANSNATIONAL REPRODUCTION: RACE, KINSHIP, AND COMMERCIAL SURROGACY IN INDIA 1 (2016).

9. AMY SPEIER, FERTILITY HOLIDAYS: IVF TOURISM AND THE REPRODUCTION OF WHITENESS (N.Y. Univ. Press 2016); JESSICA ARONS, CTR. FOR AM. PROGRESS, FUTURE CHOICES: ASSISTED REPRODUCTIVE TECHNOLOGIES AND THE LAW (2007); Angela Y. Davis, *Outcast Mothers and Surrogates: Racism and Reproductive Politics in the Nineties*, *in* AMERICAN FEMINIST THOUGHT AT CENTURY'S END 355 (Linda S. Kauffman ed., 1993); Emily S. Jungheim et al., In Vitro Fertilization Insurance Coverage and Chances of a Live Birth, 317 JAMA 1273 (2017); Mary Lyndon Shanley & Adrienne Asch, *Involuntary Childlessness, Reproductive Technology, and Social Justice: The Medical Mask on Social Illness*, 34 SIGNS 851 (2009).

10. Christina Farr, *Apple, Facebook Will Pay for Female Employees to Freeze Their Eggs*, REUTERS (Oct. 14, 2014, 1:50 PM), https://www.reuters.com/article/us-tech-fertility-idUSKCN0I32KQ20141014 [https://perma.cc/Q5WW-98KM].

11. Adoption and Safe Families Act of 1997, Pub. L. No. 105-89, 111 Stat. 2115 (1997).

12. DOROTHY ROBERTS, SHATTERED BONDS: THE COLOR OF CHILD WELFARE 105–13 (2002).

13. *See* PATRICIA HILL COLLINS, BLACK FEMINIST THOUGHT: KNOWLEDGE, CONSCIOUSNESS, AND THE POLITICS OF EMPOWERMENT 277 (2d ed. 2000).

Increasing access to an unjust market doesn't solve the problem of systemic devaluation.

There has long been a reproductive caste system in the United States that values men more than women, straight and cisgender people more than queer people, white people more than people of color, with black people at the bottom of the racial hierarchy, and people who don't have disabilities more than people with disabilities.[14] In this caste system, women's health and bodily autonomy are routinely disregarded to promote reproductive policies that favor male interests.[15] One need only consider the escalating passage of misogynistic state abortion laws that deny women access to needed health care and threaten women's very lives,[16] the rash of prosecutions of women for fetal crimes,[17] and the lack of regulation or even data collection on the health risks faced by young women who donate eggs.[18]

In this caste system, white babies are favored over black and brown babies.[19] The United States has a long history of brutally policing the reproductive decisions of women of color.[20] Black, Latina, and Native American women have been coercively sterilized by the thousands under government programs.[21] The United States' population-control policies extend beyond our borders to manage the fertility of women of color around the world.[22]

The very roots of white male rule in America were shaped by the regulation of black women's sexuality and childbearing.[23] Under this system of chattel slavery,

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14. *See generally* DOROTHY ROBERTS, KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY (1997); Lisa C. Ikemoto, *The In/Fertile, the Too Fertile, and the Dysfertile*, 47 HASTINGS L.J. 1007 (1996); Erik Parens & Adrienne Asch, *The Disability Rights Critique of Prenatal Genetic Testing: Reflections and Recommendations*, 29 HASTINGS CTR. REP. S1 (2007).

15. *See generally* MICHELLE GOLDBERG, THE MEANS OF REPRODUCTION: SEX, POWER, AND THE FUTURE OF THE WORLD (2009); RICKIE SOLINGER, REPRODUCTIVE POLITICS: WHAT EVERYONE NEEDS TO KNOW (2013).

16. *See generally* KATHA POLLITT, PRO: RECLAIMING ABORTION RIGHTS (2014); *Last Five Years Account for More Than One-Quarter of All Abortion Restrictions Enacted Since Roe*, GUTTMACHER INST. (Jan. 13, 2016), https://www.guttmacher.org/article/2016/01/last-five-years-account-more-one-quarter-all-abortion-restrictions-enacted-roe [https://perma.cc/ZTS7-UHUF].

17. Michele Goodwin, *Fetal Protection Laws: Moral Panic and the New Constitutional Battlefront*, 102 CALIF. L. REV. 781, 781–83 (2014); Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973-2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POL. POL'Y & L. 299, 299–300 (2013).

18. *See* Judy Norsigian, *Egg Donation Dangers*, 18 GENE WATCH 6 (2005).

19. ROBERTS, *supra* note 14, at 269–72. *See generally* LAURA HARRISON, BROWN BODIES, WHITE BABIES: THE POLITICS OF CROSS-RACIAL SURROGACY (2016).

20. ROBERTS, *supra* note 14, at 22–55. *See generally* ANGELA Y. DAVIS, WOMEN, RACE & CLASS (Vintage Books 1983) (1981); BARBARA GURR, REPRODUCTIVE JUSTICE: THE POLITICS OF HEALTH CARE FOR NATIVE AMERICAN WOMEN (2014); ELENA R. GUTIÉRREZ, FERTILE MATTERS: THE POLITICS OF MEXICAN-ORIGIN WOMEN'S REPRODUCTION (2008); JAEL SILLIMAN ET AL., UNDIVIDED RIGHTS: WOMEN OF COLOR ORGANIZE FOR REPRODUCTIVE JUSTICE (Haymarket Books 2016) (2004); LISA SUN-HEE PARK, ENTITLED TO NOTHING: THE STRUGGLE FOR IMMIGRANT HEALTH CARE IN THE AGE OF WELFARE REFORM (2011).

21. *See, e.g.*, GURR, *supra* note 20; GUTIÉRREZ, *supra* note 20; ROBERTS, *supra* note 14, at 89–98.

22. *See generally* BETSY HARTMANN, REPRODUCTIVE RIGHTS AND WRONGS: THE GLOBAL POLITICS OF POPULATION CONTROL (Haymarket Books 2016) (1987).

23. ROBERTS, *supra* note 14, at 22–55.

black women were defined as property who not only worked for their masters but also gave birth to their masters' property. White men could maintain their domination and increase their wealth by devising a legal and political apparatus, written into the very first colonial laws that gave them control over black women's sexuality and childbearing, beginning with ensuring that black women's offspring were defined as black and had the status of slave.[24]

Slavery gave rise to stereotypes of dangerous black female sexuality, which reinforced a corollary belief that black women's procreation was also dangerous and in need of white management.[25] The subservient *Mammy* could serve as a surrogate mother to children who were not born of her own sexuality—as long as she remained under the moral supervision of her white mistress. The licentious *Jezebel*, by contrast, was painted as a bad mother because her sexuality was inherently depraved.[26] A century later, the myth of the *Welfare Queen*—the black woman who had babies just to collect a welfare check and then squandered the money on her own lavish lifestyle—had emerged.[27] This myth helped to fuel the campaign against welfare, ending in the 1996 abolition of welfare entitlement and the creation of a behavior modification system that pressures women receiving these benefits to marry, take low-wage work, and stop having babies.[28] The myth of the pregnant crack addict, whose maternal instinct was supposedly extinguished by crack cocaine and who gave birth to the equally mythical and monstrous crack baby, similarly fueled punitive policies that treated substance abuse as a fetal crime.[29]

Politicians, policy makers, sociologists, demographers, public-health experts, and the media, all cast black women's childbearing as an urgent social problem because black women have too many babies and transmit their innate depravity to their children—genetically, chemically, or culturally.[30] The icons representing black female sexual and reproductive irresponsibility are routinely circulated to support birth control, welfare reform, foster care, and law enforcement policies that brutalize black women's bodies in the most dehumanizing ways.

It is impossible for the baby markets to operate freely to promote the autonomy of women of color in a society that is so profoundly steeped in stereotypes, policies, and institutions that dehumanize them. Instead, baby markets do just the opposite:

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24. A. Leon Higginbotham, Jr. & Barbara K. Kopytoff, *Racial Purity and Interracial Sex in the Law of Colonial and Antebellum Virginia*, 77 GEO. L.J. 1967, 1971–73 (1989).

25. *See* ROBERTS, *supra* note 14, at 10–15. *See generally* COLLINS, *supra* note 13; MELISSA V. HARRIS-PERRY, SISTER CITIZEN: SHAME, STEREOTYPES, AND BLACK WOMEN IN AMERICA (2013).

26. *See* COLLINS, *supra* note 13, at 5, 81–82.

27. *See id.* at 80.

28. *See generally* KENNETH J. NEUBECK & NOEL A. CAZENAVE, WELFARE RACISM: PLAYING THE RACE CARD AGAINST AMERICA'S POOR (2001).

29. ROBERTS, *supra* note 14, at 154–59. *See generally* ASSATA ZERAI & RAE BANKS, DEHUMANIZING DISCOURSE, ANTI-DRUG LAW, AND POLICY IN AMERICA: A "CRACK MOTHER'S" NIGHTMARE (2002).

30. *See generally* HARRIS-PERRY, *supra* note 25; PARK, *supra* note 20; ROBERTS, *supra* note 14.

they reflect and promote a racist hierarchy that values white babies as the most cherished products of reproductive transactions.[31]

At a time when wealthy white women have access to technologies designed to produce genetically screened babies in the number and with the features they desire, a host of laws and policies discourage poor women of color from having babies at all.[32] The multibillion-dollar market devoted to technologically facilitating affluent people's procreative predilections stands in glaring contrast to the appalling numbers of infant and maternal deaths among blacks that have remained, respectively, twice and quadruple the rates for whites for decades.[33]

Advertising and media reports on high-tech reproduction tell the same story. The phrase "the perfect baby," associated with baby markets, typically conjures up an image of white babies, usually with blond hair and blue eyes, as if to highlight their racial purity. By contrast, black babies figure in media coverage of these technologies only in stories about their devaluation precisely because of their race.[34] The sperm bank racial mix-ups are a case in point. In 1990, a white woman brought a highly publicized lawsuit against a fertility clinic she claimed mistakenly inseminated her with a black man's sperm instead of her husband's, resulting in the birth of a mixed-race child.[35] The woman, who was the child's biological mother, demanded monetary damages for the injury caused by racial taunting her child suffered because the mother and daughter looked so different from each other.[36]

Similarly, in 2014, Jennifer Cramblett sued an Illinois sperm bank for wrongful birth and breach of warranty for accidentally using sperm from an African American donor instead of the white one she and her partner selected, producing a biracial daughter.[37] Cramblett alleged that she felt uncomfortable taking her daughter to a hairdresser in a black neighborhood and that her daughter felt like an outcast in their predominantly white neighborhood.[38] The harm claimed was not only due to the clinic's use of the wrong sperm; it was also due to the pain and suffering the

31. *See generally* HARRISON, *supra* note 19; ROBERTS, *supra* note 14.

32. *See generally* PARK, *supra* note 20; ROBERTS, *supra* note 14.

33. *See* AMNESTY INT'L, DEADLY DELIVERY: THE MATERNAL HEALTH CARE CRISIS IN THE USA 1, 4, 15, 19 (2010) (providing that a wide disparity exists between black and white women in infant mortality rates; that black women are nearly four times more likely to die of pregnancy-related complications than white women; that in some areas maternal mortality ratios are significantly higher; and that in certain circumstances, black women were 5.6 to 9.9 times more likely to die in pregnancy or childbirth than white women). *See generally* Marian F. MacDorman et al., *Recent Increases in the U.S. Maternal Mortality Rate: Disentangling Trends from Measurement Issues*, 128 OBSTETRICS & GYNECOLOGY, Sept. 2016, at 1, 1 (discussing the increasing maternal mortality rates from 2000 to 2014).

34. *See generally* ROBERTS, *supra* note 14; HARRISON, *supra* note 19.

35. *See* Barbara Kantrowitz et al., *Not the Right Father*, NEWSWEEK, Mar. 19, 1990, at 50.

36. *Id.*

37. *See* Lindsey Bever, *White Woman Sues Sperm Bank After She Mistakenly Gets Black Donor's Sperm*, WASH. POST (Oct. 2, 2014), http://www.washingtonpost.com/news/morning-mix/wp/2014/10/02/white-woman-sues-sperm-bank-after-she-mistakenly-gets-black-donors-sperm [https://perma.cc/H66V-B57A].

38. *See id.*

mother and child experienced as a result of the failure to deliver a white baby.[39] The genetic trait (or taint) of race is so strong that it seems to overwhelm the kinship bond that these mothers and their babies have in common. Yet, if anyone should be able to sue for the pain and suffering entailed by raising a black child in America, shouldn't they be black mothers?

As more people of color buy and sell goods and services on the baby market, race is being considered a more essential way of grouping reproductive commodities.[40] Countless online advertisements explicitly solicit egg donors by race. Some agencies specialize in donors with a particular racial background.[41] Sperm banks organize their online donor catalogs according to race and take extra care with the vials, one using a color-coding system, to avoid racial mix-ups.[42] The price of eggs is determined by a racial supply-and-demand system, which increases the price of black women's eggs because U.S. agencies have found it hard to recruit black donors for their relatively small black clientele.[43] But tall, blonde, college-educated white donors still fetch the highest premium.

Gene editing promises to allow parents more direct control over their children's traits, rather than relying on the features of egg and sperm donors. We saw a prelude in 2009 when Dr. Jeffrey Steinberg announced that he planned to offer "cosmetic" screening of embryos at his Los Angeles-based chain of fertility clinics.[44] The company's website boasted that its custom genetic service would allow parents to make "a pre-selected choice of gender, eye color, hair color and complexion."[45] Amid controversy, Steinberg discontinued his cosmetic service, but continued to offer gender selection, which he called a "commodity for purchase."[46]

Because baby markets function within systems of oppression, they tend to benefit most people who have higher social status and exploit those who don't. The application of market logic to childbearing results in the hiring of poor and working-class women, especially women of color, for their reproductive labor. These women are paid to gestate fetuses or to produce eggs for genetic research although bearing

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39. *See, e.g.*, Swell, Comment to *White Woman Sues Sperm Bank After She Mistakenly Gets Black Donor's Sperm*, WASH. POST (Oct. 2, 2014, 5:03 AM), http://www.washingtonpost.com/news/morning-mix/wp/2014/10/02/white-woman-sues-sperm-bank-after-she-mistakenly-gets-black-donors-sperm [https://perma.cc/H66V-B57A].

40. *See* RENE ALMELING, SEX CELLS: THE MEDICAL MARKET FOR EGGS AND SPERM 57 (2011); HARRISON, *supra* note 19.

41. Shan Li, *Asian Women Command Premium Prices for Egg Donation in U.S.*, L.A. TIMES (May 4, 2012), http://articles.latimes.com/2012/may/04/business/la-fi-egg-donation-20120504 [https://perma.cc/R8KL-2L4D].

42. ALMELING, *supra* note 40, at 57.

43. *See id.*

44. *See* Gautam Naik, *A Baby, Please. Blond, Freckles—Hold the Colic*, WALL ST. J., Feb. 12, 2009, at A10.

45. *Id.*

46. Mara Hvistendahl, *The Abortion Trap: How America's Obsession with Abortion Hurts Families Everywhere*, FOREIGN POL'Y, July 27, 2011, http://foreignpolicy.com/2011/07/27/the-abortion-trap/ [https://perma.cc/6BJB-UVYM].

their own children is socially devalued.[47] Reproductive tourism is structured to give wealthy white Americans and Europeans access to gestational surrogates in India and developing countries. These gestational surrogates are strictly monitored by surrogacy clinics in ways that violate their human rights in order to deliver white babies free of defects for their clients.[48]

This pattern is mirrored in the adoption market both in the United States and globally where laws and policies facilitate white middle-class adopters' racial selections from an oversupply of babies coercively removed from poor parents—parents who are disproportionately black, Native American, Latinx, and Asian.[49]

For example, treating the U.S. adoption market as free leaves unexamined the role of institutionalized racism and racial bias in a public child welfare system that disproportionately places black children in foster care and makes them available for adoption.[50] Although they represent only thirteen percent of the nation's children, black children account for one-quarter of the foster care population.[51] For a visitor of dependency court who lacks preconceptions about the child welfare system, the system in many large cities may appear to be designed to monitor, regulate, and disrupt black families exclusively.

The constitutional and public debate about race-matching and transracial adoption that favors the preferences of white adopters must be placed in a broader context of the systemic inequities that produce the excessive supply of black children available for adoption.[52] Yet transracial-adoption advocates have supported policies that speed up the termination of black parents' rights to "free" black children (their words) for adoption by white people.[53]

III. OBLIGED TO CHOOSE

Finally, some advocates claim that baby markets are free because they enhance individuals' autonomy over reproductive decisions.[54] But baby markets are not necessarily free, because they can also operate in coercive ways.

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47. *See* DEOMAMPO, *supra* note 8, at 23–24 (discussing the racialized labor market and related hiring practices); AMRITA PANDE, WOMBS IN LABOR: TRANSNATIONAL COMMERCIAL SURROGACY IN INDIA 65 (2014) (discussing the recruitment and training on poor, rural, uneducated Indian women in the labor market). *See generally* HARRISON, *supra* note 19.

48. *See generally* DEOMAMPO, *supra* note 8; PANDE, *supra* note 47.

49. *See generally* LAURA BRIGGS, SOMEBODY'S CHILDREN: THE POLITICS OF TRANSRACIAL AND TRANSNATIONAL ADOPTION (2012); ROBERTS, *supra* note 14.

50. *See generally* BRIGGS, *supra* note 49; ROBERTS, *supra* note 14.

51. U.S. DEP'T OF HEALTH & HUMAN SERVS., THE AFCARS REPORT 23, at 2 (2015).

52. *See generally* OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION (Jane Jeong Trenka et al. eds., 2006).

53. Dorothy Roberts, *Adoption Myths and Racial Realities in the United States*, *in* OUTSIDERS WITHIN: WRITING ON TRANSRACIAL ADOPTION 49, 52, 54 (Jane Jeong Trenka et al. eds., 2006).

54. FREEDOM AND RESPONSIBILITY IN REPRODUCTIVE CHOICE (J. R. Spencer & Antje du Bois-Pedain, eds., 2006); JONATHAN GLOVER, CHOOSING CHILDREN: GENES, DISABILITY, AND DESIGN (2007); JOHN A. ROBERTSON, CHILDREN OF CHOICE: FREEDOM AND THE NEW REPRODUCTIVE TECHNOLOGIES (1996); Janet Malek, *Use or Refuse Reproductive Genetic Technologies:*

Genetic science is empowering individuals not only to manage their own genetic risk, but also to eliminate genetic risk in their children.[55] For decades, prenatal testing has allowed women to avoid bearing children with genetic disabilities by having selective abortions.[56] Advances in reproduction-assisting technologies that create embryos in a laboratory have converged with advances in genetic testing to produce increasingly sophisticated methods to select for preferred genetic traits before pregnancy. Currently, scientists are developing methods for germ line gene editing for reproductive purposes that will enable parents to modify their children's heritable DNA.[57]

As genetic screening increasingly allows individuals to manage their children's health by reducing genetic risk, parents are likely to experience more governmental and societal pressures to use these technologies.[58] As I discuss in "Race, Gender, and Genetic Technologies: A New Reproductive Dystopia?," using "reprogenetics" or gene editing to select children's traits may become more of a duty than a privileged choice.[59] The practice of widespread prenatal testing already assumes that pregnant women have primary responsibility for making the "right" genetic decisions regarding their future children. It is increasingly becoming a routine practice for pregnant women to get prenatal diagnoses for certain genetic conditions such as Down syndrome and trisomy 18.[60] Many obstetricians provide these tests without much, if any, explanation or deliberation because they consider such

Which Would a 'Good Parent' Do?, 27 BIOETHICS 59 (2013); Michael Parker, *The Best Possible Child*, 33 J. MED. ETHICS 279 (2007).

55. *See* Erik Parens & Adrienne Asch, *The Disability Rights Critique of Prenatal Genetic Testing: Reflections and Recommendations*, *in* PRENATAL TESTING AND DISABILITY RIGHTS 3 (Erik Parens & Adrienne Asch eds., 2000); ROBERTS, *supra* note 14, at 4 (discussing prospective parents' ability to use prenatal test results to determine whether to have or abort a fetus that might carry mutations associate with disease or disability). *See generally* NIKOLAS ROSE, THE POLITICS OF LIFE ITSELF: BIOMEDICINE, POWER, AND SUBJECTIVITY IN THE TWENTY-FIRST CENTURY (2007).

56. *See* Parens & Asche, *supra* note 55, at 4 (discussing prospective parents' ability to use prenatal test results to determine whether to have or abort a fetus).

57. Xiangjin Kang et al., *Introducing Precise Genetic Modifications into Human 3PN Embryos by CRISPR/Cas-Mediated Genome Editing*, 33 J. ASSISTED REPROD. & GENETICS 581 (2016).

58. *See* Kristin Bumiller, *The Geneticization of Autism: From New Reproductive Technologies to the Conception of Genetic Normalcy*, 34 SIGNS 875, 867, 886, 888 (2009) (discussing government designation of autism as a genetic disability, and holding that genetic testing to decrease the likelihood of disabilities has become a necessary component of preventative health).

59. *See* Dorothy E. Roberts, *Race, Gender, and Genetic Technologies: A New Reproductive Dystopia?*, 34 SIGNS 783, 785 (2009) (providing that reprogenetics shifts responsibility from the government to the individual by making the individual responsible for ensuring the genetic fitness of their children).

60. *See* Cynthia M. Powell, *The Current State of Prenatal Genetic Testing in the United States*, *in* PRENATAL TESTING AND DISABILITY RIGHTS, *supra* note 55, at 44; ROBERTS, *supra* note 14, at 45–46 (providing that amniocentesis can detect chromosome abnormalities, that Down syndrome is due to an extra chromosome, and that the some academies and colleges recommend that all pregnant women of a certain age be offered amniocentesis), 147 (providing that prenatal diagnosis, or PND, is becoming routine, as part of prenatal care); Marsha Saxton, *Why Members of the Disability Community Oppose Prenatal Diagnosis and Selective Abortion*, *in* PRENATAL TESTING AND DISABILITY RIGHTS, *supra* note 55, at 147.

screenings to be a normal part of treating pregnant patients. Women are typically expected to opt for abortion to select against any disabling traits identified by genetic testing. Although the decision should be freely made, many genetic counselors and doctors show disapproval when patients decide against genetic testing and selective abortions.[61] Partly because of pressure like this, many pregnant women now view genetic testing to prevent the birth of children with disabilities as a requirement of responsible mothering.

Women experience additional pressure to use genetic selection technologies when they are penalized for making the "wrong" genetic decisions. Rhadhika Rao notes the potential for wrongful life lawsuits brought by children with disabilities against parents who failed to use genetic technologies.[62] Lynda Beck Fenwick asks readers of her book on reproductive ethics, "Are you willing to pay higher taxes to cover costs of government benefits for babies born with genetic defects, even when the parents knew of the high likelihood or certainty such defects would occur?"[63] Without a right to basic health care, more widespread use of genetic technologies could come at the expense of public health care and services for people with disabilities. Moreover, the expectation of genetic self-regulation may fall especially harshly on women of color, who are stereotypically defined as hyperfertile and lacking the capacity for self-control.[64]

Baby markets may support a regime in the near future that integrates prenatal genetic screening into social welfare systems so that everyone, including low-income women of color, is encouraged to filter out certain disfavored traits. Including genetic-selection technologies in public health programs does not contradict my first point—that baby markets aren't free because many people can't afford reproduction-assisting technologies. Baby markets can prevent cash-poor and low-income women from having access to expensive reproductive goods and services that increase autonomy while operating alongside public health programs that coerce these same women to use reproductive genetic-selection technologies. Unlike reproduction-assisting technologies like in vitro fertilization, the primary purpose of which is to increase fertility, genetic screening aims to avoid having a baby or starting a pregnancy that entails unwanted genes.[65] By relying on genetic selection and enhancement, baby markets shift the spotlight away from state

61. Brian Skotko, *Mothers of Children with Down Syndrome Reflect on Their Postnatal Support*, 115 PEDIATRICS 64, 70–71 (2005).

62. Radhika Rao, *Property, Privacy, and the Human Body*, 80 B.U. L. REV. 359, 361–62 (2000).

63. LYNDA BECK FENWICK, PRIVATE CHOICES, PUBLIC CONSEQUENCES: REPRODUCTIVE TECHNOLOGY AND THE NEW ETHICS OF CONCEPTION, PREGNANCY, AND FAMILY 113 (1998).

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65. Kang et al., *supra* note 57.

responsibility for ensuring healthy living conditions and ending discrimination against people with disabilities.

Although baby markets may give some people an increased ability to manage the production of life, this doesn't mean they give us greater freedom, justice, or equality. The expectation that we will rely on purchasing goods and services to regulate the genetic risks in children gives the state and big business added ability to regulate our reproductive decisions.

CONCLUSION

The market objective of managing children's traits at the individual and molecular level by purchasing reproductive goods and services is radically different from working in solidarity to eliminate unjust social structures. On the one hand, this new form of market-based citizenship has the potential to replace active, collective engagement to create a better society. On the other hand, we can see increased reliance on the market as an opportunity for people dedicated to social justice to intervene collectively in the politics of reproduction—not just to gain greater access to commodities traded on baby markets, but also to change the relationship between reproduction, biotechnology, and power, to create a more humane world.