In 2011 a twenty-five-year-old white woman named Heather Capps gave birth to a healthy baby boy via cesarean section. Her newborn baby tested positive for opioids. Heather had opioid use disorder, which developed after she had been prescribed the drug to treat her chronic back pain. Heather lived in Alabama, in a small town in the northeast part of the state. She had heard about a local policy ordering the prosecution of women who used drugs during pregnancy on the basis that their drug use constituted a form of child abuse. She had also heard that the withdrawal symptoms from quitting oxycodone could be dangerous for her and for her pregnancy. She needed help. Heather was unemployed and relied on Medicaid and $200 a month in food stamps to support her family. She was referred to an inpatient drug treatment facility in Birmingham, nearly an hour-and-a-half drive away from her home. As a single mom with two young children, inpatient treatment was not an option—who would look after her little boys? Heather was trapped. Seeing no other solutions, she decided to gradually taper down her use of oxycodone and to take the lowest possible dose in an effort to protect her pregnancy.

Two days after Heather gave birth, and still recovering from her cesarean section, she was arrested at the hospital. She spent the next three
months in jail, separated from her newborn and her two other children, unable to post the $500,000 bond. Over a year after her arrest, Heather pled guilty to a charge of chemical endangerment of a minor, a class C felony. In Alabama crimes designated as class C felonies are punishable by one to ten years in prison. She was given a three-year suspended sentence—if she completed a rehab program, she wouldn’t have to serve three years in prison. Heather was ordered to stay in a halfway house while she was in court-ordered rehab. During that time she was permitted to see her children once a week. So for Heather to finally access the drug treatment she wanted, she was forced to self-manage her substance use disorder through her pregnancy, forcibly separated from her newborn and two other young children, and arrested and forced to spend her first three months postpartum in jail. She pled guilty to a charge of felony child abuse and then was assigned to a halfway house to complete drug treatment, with the stress of a possible three-year prison sentence weighing over her.

The pregnancy police do not exist in a discrete agency or department. They don’t carry pregnancy-police badges or wear special pregnancy-police uniforms, but the pregnancy police are all around us. Sometimes they wear scrubs or white coats. You can find them at the hospital or at the Child Protective Services office. Sometimes they are deputized to police pregnancy by law or policy. Other times they are acting only on the basis of their own beliefs. They are our neighbors, our partners, and our friends. They are nurses, doctors, and social workers. They are found in institutions of health care, of social services, and of civil and criminal law enforcement. Sometimes the pregnancy police may even exist in our own minds, when we see a pregnant person doing something we don’t approve of, like lifting weights or drinking coffee or wine. Policing pregnancy is a process informed by politics and historical inequalities, developed over time by law and ideology. The pregnancy police are those who are involved in surveilling, reporting, prosecuting, and incarcerating pregnant people for pregnancy-related offenses.

Throughout the United States, pregnant and postpartum people have, for decades, faced charges for committing crimes against the fertilized eggs, embryos, and fetuses that they carry. People who test positive for drugs during or immediately after pregnancy, people who survive suicide attempts but lose their pregnancies, and people injured in car accidents
who have stillbirths or miscarriages, for example, face the possibility of lengthy prison sentences. These arrests have occurred in the absence of any declarative criminal law and even in the presence of statutes that explicitly exclude pregnant people from prosecution. Three states, South Carolina, Alabama, and Tennessee, have explicitly criminalized pregnant people’s actions with regard to fertilized eggs, embryos, or fetuses, yet arrests of pregnant people for crimes against their own pregnancies have been made in almost every state. This includes blue states with more progressive abortion laws. For example, in 2007, an eighteen-year-old Dominican immigrant was arrested and charged in Massachusetts for having an illegal abortion after she took misoprostol, a medication that can cause uterine contractions. In 2011 a woman in New York City was arrested for self-managing an abortion. In 2019 a white woman in California was charged with homicide when she had a stillbirth. The widespread nature of these arrests and prosecutions suggests that webs of pregnancy police are already in place throughout the country.

The criminal prosecution of pregnant people for crimes against the fertilized eggs, embryos, and fetuses they carry relies on a legal understanding that pregnant people are legally distinct from and enjoy fewer rights than other similarly situated nonpregnant people. Pregnant people occupy a different, lower space in the United States’ system of law. I call this pregnancy exceptionalism—where pregnancy ipso facto reduces the legal status of pregnant persons relative to other similarly situated persons. Pregnancy exceptionalism is most useful in legal analysis, demonstrating the ways that people with the capacity for pregnancy have essentially already been defined as a separate and lesser legal class.

Typically, because of medical privacy laws, including HIPAA, a positive drug test at a doctor’s office cannot be legally shared with law enforcement, but pregnant and postpartum people have been arrested after their healthcare providers reported a single positive drug test. Generally, people who survive a suicide attempt are not criminally prosecuted, but pregnant and postpartum people have been charged with felonies when they survive but lose their pregnancies. Legally competent adults are allowed to reject a course of medical treatment, but pregnant people may be cut open against their will for cesarean sections by court order and may be criminally charged if they resist. Pregnant people are being held criminally accountable for
actions and behaviors that would otherwise be legal or at least nonprosecut-
able, like drinking a beer, testing positive for marijuana, or taking their legal
prescription medication. Pregnant people have also been charged with
crimes more severe than what their actual illegal behavior would typically
warrant. For example, a pregnant person caught in possession of metham-
phetamine might be charged with unlawful neglect of a child or delivery of
drugs to a minor (through the umbilical cord) instead of just drug
possession.

These examples of differential treatment are not limited to the criminal
justice system. Pregnant people are treated differently and can face limi-
tations on their fundamental rights in a variety of areas, because of the
fact of their pregnancies. They can be forced to jump through state-regu-
latory hoops to access basic medical care, have medical treatment forcibly
imposed on them, and even lose their right to medical privacy. Pregnancy
is a women's issue but not exclusively so. Pregnancy is an issue of sex and
gender but not exclusively so. Pregnancy is also an issue of class, race,
religion, relationship status, ethnicity, and ability, among other intersec-
tions of identity and oppression. The reproductive justice framework
acknowledges that reproduction is shaped by these intersections.

REPRODUCTIVE JUSTICE

Much of the mainstream reproductive rights activism has centered on the
legal right to have an abortion, using the rhetoric of “choice.” The prochoice-
antichoice debate obscures the reality that the legality of abortion is not the
same thing as the accessibility of abortion, and it does not take into account
the complex social and economic factors that limit choices around preg-
nancy. What does it mean to “choose” abortion when you can’t afford to
have one? Or when you can’t afford to have a baby, for that matter? Or when
you are afraid that your child may one day be killed by a police officer? Or
when you are worried that you might die if you give birth? The prochoice-
antichoice debate also limits discussion about reproductive issues to abor-
tion. While certainly important, the regulation and control of pregnant peo-
ple is not limited to those who seek to end their pregnancies—it also touches
the lives of those who want to give birth and parent their children.
In the 1980s and 1990s, organizations dedicated to the reproductive health of women of color, and of Black women specifically, noted the shortcomings of the “pro-life” and “pro-choice” framing of the fight over reproduction, arguing that it “masked the ways that laws, policies, and public officials punish or reward the reproductive activity of different groups of women differently.” Boiling down the entire scope of reproductive life and the way that law and culture shape reproductive life to a matter of being pro- or antiabortion is inadequate. Reproduction is so much broader and more complex than prochoice and prolife. Indeed, this overly simplified notion of reproductive rights may have led us to where we are now—no constitutional right to abortion, very limited government supports for families and children, and high maternal mortality rates, especially for Black women and birthing people, on the rise. Black women–led organizations emphasize the importance of a more holistic and expansive view of reproductive health as more than the technical legality of abortion. This broad view includes issues of access but also aspects of life beyond abortion that disproportionately impact poor women and women of color, such as forced sterilizations, sexually transmitted infections, housing and wages, child care, maternal mortality, and state and intimate partner violence.

As historian Rickie Solinger and Loretta Ross, professor and cofounder of the reproductive justice movement, note, “Reproductive justice is a contemporary framework for activism and for thinking about the experience of reproduction. It is also a political movement that splices reproductive rights with social justice to achieve reproductive justice. The definition of reproductive justice goes beyond the pro-choice/pro-life debate and has three primary principles: (1) The right to not have a child; (2) the right to have a child; and (3) the right to parent children in safe and healthy environments.” In this book I adopt the reproductive justice framework to examine the criminalization of pregnancy. Beyond abortion people who intend to carry their pregnancies to term, give birth, and parent their children face obstacles in the course of laws and regulations that limit their reproductive autonomy and legal status. State regulation of abortion and of pregnancy and birth are two sides of the same coin.

As I write this book, the legal rights of people with the capacity for pregnancy are in an unprecedented amount of flux, in large part because of the overturning of Roe v. Wade (1973) and Planned Parenthood v. Casey.
(1992), two Supreme Court decisions that defined and outlined the rights of pregnant women (in these cases in the context of abortion) against the state’s interest in pregnancy and birth. In 2018 Mississippi passed a law banning abortion after fifteen weeks of pregnancy, directly contradicting the US Supreme Court’s precedents in *Roe v. Wade* and *Planned Parenthood v. Casey*. It was hardly the only state to do so. After 2010 a large number of antiabortion laws went into effect in the states, intentionally meant to challenge existing court precedents. Passing such blatantly unconstitutional laws is an invitation for those laws to be challenged in courts and potentially by the US Supreme Court. Legislators introducing these extreme measures hoped that, with the conservative shift in the Supreme Court, *Roe v. Wade* would be overturned, leaving each state to form and enforce its own abortion policy. This is how the challenge to Mississippi’s fifteen-week ban found itself before the Supreme Court in December 2021. Abortion rights advocates urged the court to use *stare decisis*—to maintain their own, nearly fifty-year-old legal precedent—and strike the Mississippi law down as unconstitutional. Antiabortion advocates urged the court to reject those precedents, saying past courts had erred and had gone beyond their legal authority when they made abortion a fundamental right.

On June 26, 2022, the US Supreme Court gave its opinion in *Dobbs v. Jackson Women’s Health Organization*. It made no dramatic departures from the draft that had been leaked months earlier, overturning *Roe v. Wade* and *Planned Parenthood v. Casey*. After the opinion was released, law and policy shifted almost immediately. Trigger bans, laws passed in the states that would become enforceable in the event that *Roe* was overturned, started to go into effect. Unenforceable state laws from the pre-*Roe* days could be enforced. Courts throughout the country tried to figure out if and how these state laws could be enforced. State legislatures began to introduce new legislation, to protect abortion rights or to restrict them. At the time of this writing, abortion is banned outright in fourteen states and is severely curtailed in four others. Abortion threatens to become mostly or completely illegal in a further eight states sometime in the near future, and legislators are introducing laws that attempt to restrict the movement of pregnant people; ban medication for abortions; define fertilized eggs, embryos, and fetuses as legal persons; and criminalize people thought to have endangered their own pregnancies.
Soon after the court gave its opinion, a flood of news coverage featured harrowing stories about the real-life impact of restrictive, or even punitive, abortion law and policy, such as doctors afraid to provide care to patients with lethal ectopic pregnancies for fear that they could lose their medical licenses or even be criminally prosecuted; children impregnated by rape forced to flee their home states to access abortion care; and patients being told to return to the hospital only once their pregnancies became dangerously septic, because only then could their miscarriages be treated legally.\textsuperscript{19}

However, even with the limited protections of \textit{Roe v. Wade}, pregnant people and people with the capacity for pregnancy have struggled to have their full humanity recognized during pregnancy, in violation of their internationally defined human rights to life, health, equality, privacy, and bodily integrity. People were forced to jump through state-imposed, medically unnecessary hoops, like state-mandated informed consent, waiting periods, and compulsory ultrasounds before they could access abortion. Federal bans on the use of public funds for abortion care meant that poor people died from illegal abortions.\textsuperscript{20} Pregnant people were denied medical care and had care imposed on them, on the basis of fetal protection. People struggled to access contraceptives, died from pregnancy or birth complications, and experienced violence when they gave birth or after they gave birth. \textit{Roe} had carved out one area of reproductive life and promised constitutional protection for it: people could make their own decisions on abortion, with a health-care provider, with limited or no state financial support, before fetal viability. Though \textit{Roe} also implied that the rights of pregnant people supersede the state’s interest in future persons, it maintained that this was true only for the first two trimesters of pregnancy, and other reproductive issues remained a state by state or even county by county free-for-all.

The reproductive justice approach is fundamentally grounded in “the human right to control our sexuality, our gender, our work, our reproduction.”\textsuperscript{21} Though \textit{Dobbs} had enabled new and dramatic state-level abortion restrictions, \textit{Roe v. Wade} never guaranteed the human rights of people with the capacity for pregnancy and never achieved reproductive justice. Violations of the rights of pregnant people had actually been happening in some hospitals for decades, especially at private religious hospitals, which
had legally permissible, ideologically driven antiabortion policies. Obstetric violence and the criminal prosecution of pregnant and postpartum people for crimes against their own pregnancies were also nothing new.

In some part due to the stigma surrounding pregnancy and drug use and in part due to tunnel vision or issue blindness, mainstream organizations who fought to preserve the legal right to abortion often kept their distance from criminal cases involving pregnant drug users. Law professor Michele Goodwin explains, “As the criminal prosecution of women perceived as ‘bad mothers’ did not explicitly relate to abortion, many of these poor women were on their own. And because abortion legality frequently dominated much of the feminist discourse and lobbying, prosecuting pregnant women strangely was not perceived as, nor was responded to as, a woman’s issue. Instead, the criminalization of poor, pregnant women of color was perceived as a race issue—something too remote for feminist discourse and activism.”

Carving out the criminal prosecution of pregnant people for substance use as separate from other reproductive rights or feminist issues is unfortunate for two reasons. First, the criminalization of pregnancy is a major issue all on its own, implicating many of the same issues as abortion legality, like bodily autonomy and medical privacy but also substance use and mass incarceration, and illuminating the roles that both the medical system and criminal system play together. Second, arrests of pregnant people for substance use were a bellwether for the further criminalization of pregnancy, including current efforts to criminalize abortion. By failing to address the unjust treatment of the most stigmatized and marginalized, many abortion rights advocates were blind to the decades of legal decision making that defined pregnant people as secondary to their own pregnancies.

Indeed, at the Dobbs oral arguments, Justice Clarence Thomas mentioned the Ferguson case, a Supreme Court case involving the criminal prosecution of pregnant people for substance use. He used the drug charges brought against a pregnant woman to challenge the legitimacy of the “liberty” argument for abortion, pointing to places where he thought a pregnant person’s liberty should be limited. Solicitor General Elizabeth Prelogar, who was arguing in opposition to the Mississippi abortion ban, didn’t know what case he was alluding to but seemed to agree with this limit:
Justice Thomas: You heard my question to counsel earlier, about the woman who was convicted of criminal child neglect. What would be your reaction to that as far as her liberty and whether or not the liberty interest that we’re talking about extends to her?

General Prelogar: Well, Justice Thomas, I have to confess that I haven’t read the specific case you’re referring to, but, if I understand the question you were posing, it sounds as though the state is seeking to regulate for a child that’s been born that was injured while it was inside the womb. And I think that we are not denying that a state has an interest there.24

My heart sank in that moment. Not only had Prelogar not read the case Thomas was referencing, but she also expressed agreement with Thomas’s assertion that the state has an interest in children that were “injured . . . inside the womb.” In reality the Supreme Court in Ferguson placed limits on the ability of health-care providers to gather criminal evidence from their patients and did not deal substantively with whether pregnant people could be charged with pregnancy-specific crimes. In this exchange Thomas actually departed from Ferguson, asserting that the state should be allowed to treat pregnant people with fewer rights than other similarly situated people, and General Prelogar, the attorney arguing in favor of abortion rights, agreed, essentially ceding ground on equality for pregnant people.

I include myself in my criticism of the mainstream reproductive rights movement’s blind spots. I have been passionate about the legality of abortion since middle school. In college, as a first-generation student, studying political science and gender studies and cobbling part-time minimum wage jobs together to pay rent, I was involved in a lot of organizing and activism. I offered support for incarcerated people and for victims of sexual violence. On Sundays I participated with Food Not Bombs, distributing hot meals and groceries to unhoused people. I was the president of my college environmentalism club, working with people from the heart of Appalachia’s coal country to stop the construction of a new, destructive coal-processing plant. I was a member of the college Students for a Democratic Society chapter and was involved in reproductive rights
organizing on my college campus, sometimes even donning a barely recognizably mascot costume of a condom for free condom-distribution days. I marched to demand protections for undocumented immigrants and for gay rights, and I led workshops where people learned about sexual and reproductive anatomy and self-advocacy in medical settings.

I graduated from college during the financial crisis of the late aughts and didn’t have the kind of social connections that can help land a job with benefits and a decent wage. So I figure modeled for art classes, went dumpster diving for groceries, split rent with a bunch of feminist housemates, and kept up with my activism, organizing, and education. While working as a bar line cook and a café baker, I learned about obstetric violence and trained and volunteered as a birth doula. I eventually got a job at an abortion clinic, where I did office work, patient counseling, and hand holding during abortion procedures. I studied for the GRE and eventually (at the urging of my undergraduate professors Dr. Deirdre Condit and Chris Saladino) applied to political science PhD programs. I was admitted into the program at Rutgers University and was awarded an Excellence Fellowship, which covered the cost of my education and provided me with a living stipend while I completed my work—the only way a PhD program was financially possible for me. Despite all this involvement and interest, I didn’t learn about the criminalization of pregnancy until I was completing my political science PhD coursework. Professor Cynthia Daniels and Professor Shatema Threadcraft were coteaching a gender and public policy class and assigned legal historian Dorothy Roberts’s groundbreaking book, *Killing the Black Body: Race, Reproduction, and the Meaning of Liberty*. Roberts’s book reshaped all of my thinking about reproduction and the law and showed me some of the many blind spots I have as a white person. I was eager to learn more. I have spent the last twelve years trying to do that. My dissertation, “The Criminalization of Pregnancy: Rights, Discretion, and the Law,” eventually grew into this book. Now, as a professor, I put my education to work inside and outside of the classroom.

*Killing the Black Body* has been hugely influential for my own work on the criminalization of pregnancy. In this foundational legal-historical text, Roberts skillfully locates the roots of reproductive oppression in the United States in the institution of chattel slavery and traces the continued reproductive oppression of Black people in general and Black women spe-