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RECONCEIVING THE STATE: MORALS, MARKETS, AND STATE REGULATION OF
ASSISTED REPRODUCTIVE TECHNOLOGIES

By

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ABSTRACT OF THE DISSERTATION
Reconceiving the State:
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Assisted reproductive technologies (ARTs), defined as technologies that bring together human gametes for the purposes of reproduction and regenerative research, have enabled new life for those expanding their families, as well as those looking to treat degenerative diseases. As meanings of life have shifted in an era of evolving reproductive technology, the state has new opportunities to intervene, mediate, and prohibit the use of ARTs in the United States. In light of the moral and instrumental ways to understand ARTs and the social implications of ART practices, what is the role of the state in ART oversight? Moreover, how does issue framing of ARTs impact legislative outcomes? Using egg donation as a particular site of morals and markets, I investigate these question through the legislative activity on egg donation at the state level, as well as the public policy making processes about egg donation. Given the empirical and theoretical gaps in ART scholarship about state-level legislation in the US in the contemporary period, this dissertation aims is to answers these research questions through original data on various kinds of ART legislation between 1990 and 2010, at the state level. Employing hazard analysis of egg donation legislation between 1998 and 2008 in 49 states, this project advances the argument that state-level legislative activities on egg donation are vibrant, and increased by scientific stakeholders in ARTs, as well as the presence of women in politics and economic life. Looking closer at cases of egg donation legislation in case studies of California, New York, Arizona, and Louisiana, I find that legislators frame egg

donation as moral and instrumental social issues—with varying degrees of legislative success. I argue that state-level oversight has problematic implications for the concept of stratified reproduction and suggest applying the equal liberty principle to ART policymaking. Finally, I argue that the absence of political debate—particularly the absence of feminist voices—warrants new political solutions to increase democratic discourse on ART issues.

This dissertation project is dedicated to my loving parents, Susan and Stephen Forsythe.

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CHAPTER 1: GRAPPLING WITH GAMETES: EGG DONATION AND STATE REGULATION OF ASSISTED REPRODUCTIVE TECHNOLOGIES IN THE UNITED STATES

Technology is our context, political and personal.
Teresa de Lauretis (1980)

Assisted reproductive technologies (ARTs) have enabled a massive shift in cultural and scientific ideologies and meanings of reproduction in the United States. Egg donation is a particular site of shifting meanings of reproduction in a context of technology. In college newspapers, advertisements in the classified section still entice coeds to donate eggs for profit, much like they did nearly 30 years ago when the egg donation market was beginning to develop (Bonnicksen 1989). New media has made becoming an egg donor even easier: online advertisements suggest that young women can become more beautiful, experience deep feelings of altruistic feminism, and receive monetary rewards alongside massages, iPods, and flowers for donating eggs for third party reproduction (Daniels and Heidt-Forsythe 2012). At the same time, embryonic stem cell research—scientific research that uses human eggs as the basis for developing stem cell lines—holds the promise to treat degenerative diseases that afflict a particularly growing population of aging women and men. Reproductive technology holds the key to treating both young *and* old, using eggs as the raw material for creation and sustainment of life (Thompson 2005, Dickenson 2007, Waldby and Cooper 2010). This binary view is reflected in ART scholarship, which asserts that moral¹ arguments over bioethics come up against instrumental goals of research innovation in the biotechnology sector. Moral arguments about ARTs have confronted reproductive bioethics (e.g. Donchin 2009, Robertson 2008), the connection of ARTs to abortion and fetal personhood initiatives

¹ See Chapter 2 for an expanded discussion of morality issues in United States politics and policy.

(e.g. Goggin and Orth 2004, Thompson 2005). Instrumental arguments about ARTs are those arguments that see ARTs as an instrument to solve economic, social, and medical problems. For example, ARTs are a potentially lucrative state economy (States and Stem Cells 2006), as well as a source of material for regenerative research for state-funded stem cell research (Waldby and Cooper 2010).

While ARTs have been a topic of great interest to scholars in women's and gender studies, philosophy, sociology, anthropology, and law, there is less attention to the implications of ARTs for American politics and policy in the contemporary period. As I outline later in this chapter, the strong history of feminist theorizing has not produced contemporary empirical research on state legislative activity on ARTs. While there is much attention to ARTs in other disciplines, there is a lack of scholarship that examines how institutions—particularly states—are coping with sociological, economic, and political issues embedded in ARTs. In the 1980s, Andrea Bonnicksen's seminal work on in vitro fertilization (IVF) and politics was rooted in theories about how the evolving technologies *could* produce different legislative outcomes, as few states had begun to legislate on IVF and other ARTs (Bonnicksen 1989). More recently, Bonnicksen reviewed how state regulations in the mid-2000s were focused on clinical and laboratory standards, with little attention to the ethical issues at stake in ARTs. She asserts that state regulation of ARTs is scarce due to the strong self-regulation of ART practitioners, which is unlikely to change. Moreover, she argues that federal regulations of ARTs are even less likely, save control over ARTs through funding (Bonnicksen 2007). While Goggin and Orth (2004) engage the lack of scholarship on politics and policy around ARTs, they largely look at passed regulations (as of 2004) in their argument, asserting that the

volatile politics of abortion, the hands-off approach to science, and the lack of a coherent national discourse are the primary reasons for little ART policy at the national level.

Other scholars have begun to look at state-level politics around ARTs, but are focused on how state policies impact ART use by consumers, measured in numbers of fertility clinics (Kirkpatrick 2010), and the impact of passed statutes on egg donation marketing and commercialization (Ikemoto 2007, 2009). While feminist advocacy groups were historically active in ART policymaking in the United Kingdom and Canada, they are largely silent in the US at the federal level (Gougou 2007). Little is understood about how feminist advocacy groups influence policy at the state level (See Chapters 4 and 5).

Susan Markens's case studies on California and New York further detail how state legislators responded to the nascent issue of surrogate motherhood from the mid-1980s to mid-1990s by framing surrogacy as a binary: either baby selling or as an altruistic act for suffering intended parents (Markens 2007). She argues that the media reinforced these frames of surrogacy as a social issue, and impacted the policy outcomes in each state in the early to mid-1990s. While her studies of each state politics and policymaking are an important contribution, her analysis of surrogacy frames is restricted in application by time and region.

Markens's findings echo sociological research on egg and sperm donation, research that traces how donors perceive their role in the reproductive process, as well as their role as workers in a biotechnology economy. Renee Almeling finds that while egg donors in fact feel altruistic (echoing marketing of egg donation), sperm donors feel closer connections to the concept of fatherhood, as well as feel increasingly alienated from their reproductive labor (Almeling 2011). In her study of gamete donation banks, absent is

analysis of how these donor perceptions impact legislation and regulation. From the other direction, Charis Thompson presents a complex and nuanced study of how people become parents through ARTs (Thompson 2005). She asserts that ARTs are changing the relationships between science and political culture through the development of the biomedical mode of production. While she argues that there needs to be increased public discourse on the ethics of this new biomedical mode of production, she argues that the privatized market in ARTs may be the best way to align consumer demand and scientific research innovation (Thompson 2005).

While these studies do in fact examine the intersection of ARTs, political culture, and policymaking in the American case, this scholarship does not extensively examine all possible policies associated with ARTs (such as changing definitions of legal parentage, for example). The present scholarship is largely case-study oriented, without a longitudinal, temporal look at the politics and policy of ARTs. Crucial state-level analysis is also missing from this scholarship. Lastly, this scholarship does not examine the legislative process around ART bills, choosing to examine bills already passed. This project arises from the contention that such empirical and theoretical gaps need to be filled to better understand the relationship between ARTs and the political system in the United States.

As these meanings of life have shifted in an era of evolving reproductive technology, the state has new opportunities to intervene, mediate, and prohibit reproduction's new meanings and practices in the United States. In light of the moral and instrumental ways to understand ARTs and the social implications of ART practices, what is the role of the state in ART oversight? I understand this question through the

legislative activity on egg donation at the state level, as well as the public policy making processes about egg donation. Given the empirical and theoretical gaps in ART scholarship about state-level legislation in the US in the contemporary period, this dissertation aims to answer these questions through original data on ART legislation between 1990 and 2010 at the state level. This project advances evidence that state-level legislative activities on egg donation are vibrant and indicated by counterintuitive economic and scientific interests. However, I argue that state-level oversight has problematic implications for the concept of stratified reproduction²; moreover, the lack of democratic discourse in the US on ARTs suggests that new solutions are needed for government oversight of egg donation, and other ARTs.

Assisted Reproductive Technology and Egg Donation

ARTs are defined by the Center for Disease Control (CDC) as “all fertility treatments where eggs and sperm are handled” (CDC 2012). However ARTs may be better understood as a constellation of ART practices (such as in-vitro fertilization), raw materials (such as eggs) and ART actors (such as surrogates). This constellation is part of a broader “biomedical mode of reproduction,” using reproductive technology for fertility treatment (Thompson 2005). At the same time, this array of practices, materials, and

² “Stratified reproduction” is a sociological term for how reproduction—understood broadly in this project to mean both literal reproduction as well as reproductive labor implicit in ARTs—is a site of structural inequality through hierarchies of gender, sexuality, class, and politics. Shellee Colen coined this phrase to understand how “reproductive labor—physical, mental, and emotional—of bearing, raising, and socializing children and of creating and maintaining households...is differentially experienced, valued, and rewarded” in the context of West Indian nannies’ labor for female employers in New York City (Colen 1986; 1995, 78). I apply Colen’s particular attention to how reproductive practices (of literal reproduction, as well as the labor associated with reproduction) “reflect, reinforce, and intensify” structural inequalities present in US society (Colen 1995, 78). This term has been used by feminist researchers of reproduction to understand how diverse experiences of reproduction—from adoption to fertility tourism—reflect and may reinforce ideologies of gender, economic inequalities, racial oppression, and expectations of sexuality and family formation (Colen 1986, Ginsburg and Rapp 1995, Ragone and Twine 2000, Roberts 1998, 2009). In this spirit, I employ the term stratified reproduction in my analysis of reproductive technologies, specifically egg donation.

actors are part of the “reprogenetic” field of research where gametes and embryos are employed in genetic research for regenerative medicine (Parens and Knowles 2007). Empirical data gives some indication of the reach of both the fertility and research sectors in the United States. In the fertility treatment market in 2010, over 148,000 ART procedures were performed in 443 fertility clinics (CDC 2012).³ In 2010, over 62,000 infants were born using ART procedures, materials, or actors—1% of all infants born in a given year are the product of ART technologies (CDC 2012). As little information is publicly available about egg donation in fertility treatment and research—specifically how many women are donating eggs, and how many ovarian stimulation cycles contribute to donated eggs for treatment and research—legislative responses reflect the anxieties of a privatized economy of egg donation in fertility treatment and non-federally funded reprogenetic research.

Egg donation is an important practice within broader ART data. Eggs can be “donated” through third parties, where a woman (usually between the ages of 22 and 30, and recruited by an egg donation agency) undergoes hormonal stimulation to mature oocytes, which are retrieved under anesthesia in outpatient egg removal surgery. These individuals are often called egg donors, even though they are paid between \$5,000 and \$10,000 for their eggs (ASRM 2012). Eggs can also be “shared” by IVF patients, who undergo the same egg maturation and retrieval process. These eggs are not “shared” as gifts, as IVF patients give the eggs to their fertility treatment agency, usually for a reduction in fertility treatment fees. The development of new technologies in egg donation and cryopreservation have made it so that eggs can now be frozen for use later,

³ The 443 fertility clinics are those clinics that are report their yearly ART activities with the CDC; this yearly data is not required, and fertility clinics may legally operate without reporting to the CDC.

even though fresh eggs are still preferred for ART procedures.

In the research sector, reproductive tissues are an important building block for research into degenerative disease and regenerative medicine aimed at afflictions of the aging—cancer, Parkinson’s, and Alzheimer’s Diseases being some examples. Rather than relying on external treatment, regenerative medicine aims to employ tissue regeneration within a patient’s own body to fight disease. To create this tissue, stem cells are used as they can regenerate into cells with specific functions. Pluripotent stem cells can develop into nearly any tissue, and are harvested from embryonic tissue, among other sources (Waldby and Cooper 2010). While eggs are not used as pluripotent stem cells, eggs are an important component of research on somatic cell nuclear transfer, as well as research on fertility treatment such as intra-cytoplasmic sperm injection, where a single sperm is selected to be injected into a single egg for fertilization. The research sector in the United States has grown exponentially in the last 10 years, as states are engaged in a “research arms race” to build biotechnology into their state economies (States and Stem Cells 2006, Milkin Report 2009, Waldby and Cooper 2010).

Oversight of ARTs

While the structure of American federalism implies a strong role of states over the federal government in regulating moral and ethical policies, since the 1970s there has existed a deep tension between the federal government and state government in regulating reproduction (Petchesky 1996, McKeever 2008). Although the federal government has sought power over regulating reproductive policy, such as abortion and contraception, ARTs have largely been ignored by Washington. With the exception of the *Fertility Clinic Success Rate and Certification Act of 1992 (FCSRCA)*, there are no

federal-level regulations of ARTs.⁴ The FCSRCA provides guidelines for clinics to self-report rates of ART procedures as well as successful pregnancies that result in a live birth or births. Secondly, FCSRCA gives recommended guidelines for fertility clinics to be certified by the Center for Disease Control and the Food and Drug Administration.

While the absence of federal-level ART policy (outside of FCSRCA) seems to be an aberration from historical regulation of reproduction and sexuality, this lack of regulation falls into line with a hands-off approach to economic endeavors, especially those with a scientific aspect (Mintrom 2009, Cohen 1997). Historically, institutional structures of American federalism have allowed states to have important powers in regulating reproduction and sexuality—often reinforcing cultural values of gender, race, sexuality, and class (McKeever 2008, Roberts 1998, 2009). These state regulations have sought to control who can and cannot reproduce, from early American restrictions on African-American slave reproduction and family formation to 20th century sterilization practices, to state policies that place family caps on welfare recipients, often poor women and women of color (Siliman et al 2004, Mink 2002, Smith 2007). In contrast, states have largely observed a hands-off approach to regulating science in society, in light of the need for free scientific inquiry away from state politics and polarization—reflecting a *laissez faire*, neoliberal approach to economic activity (Thompson 2005, Parens and Knowles 2007, Mintrom 2009).

Oversight of ARTs has largely been understood in ART scholarship as being controlled in two realms: through self-regulation by advocacy groups, and regulated

⁴ In light of comparative cases of governmental regulation, the US is unique not only in how policy issues have been spread across different policy venues (national, state, and local), but also in the largely hands-off approach to regulating technologies such as gamete donation (see for example Baumgartner and Jones 1993; Banchoff 2005, Varone et al 2006).

through the judicial system at the state level (Parens and Knowles 2007, Bonnicksen 2007). The American Society for Reproductive Medicine (ASRM) and the Society for Assisted Reproductive Technology (SART) are the major advocacy groups for ARTs. Comprised of practitioners, researchers, ethicists, and lawyers, ASRM and SART play an important role in setting guidelines for ethics, practices, and membership in the two organizations. Some scholars argue that the extensive self-regulation by ASRM and SART members have created an oversight system that effectively limits ARTs without governmental oversight (Bonnicksen 2007, Thompson 2005). Others argue that self-regulation in an unrestricted free market in ARTs is the impetus for more governmental oversight (Parens and Knowles 2007, Daniels and Heidt-Forsythe 2012). In lieu of federal and state regulations, the justice system has stepped in to mediate economic and social problems that arise from ART use, such as disagreements over child support and custody (Smith 2009). Taken together, this non-legislative oversight has created a system of limited punishments for misbehavior by practitioners and users of ARTs in a free market, contextualized by an uneven patchwork of “safe” ART states that support ART families, and “unsafe” ART states that do not support ART families.⁵ While federal and state funding of ART research does create a system of accountability, this system is limited in light of private research using donated eggs and ARTs (Bonnicksen 2007).

Feminist Critiques of ARTs and Egg Donation

The explosive growth of ARTs has not been without feminist concern for the social, political, and economic implications of ART practices, materials, and actors.

⁵ For example, Smith (2009) has demonstrated that California became a “safe” state for same-sex couples and ART-conceived children, as the court system applied heterosexual families’ child custody and support standards to same sex families who were in child custody and support disagreements. This contrasts with Kansas, a state that recently enforced child support on William Morotta, a sperm donor who donated to a same sex couple outside of a medical clinic (NY Times 1/3/13).

Reproductive technology is what Charis Thompson (2005) describes as the “perfect feminist text”: how reproductive technologies have been analyzed by feminists overlaps with major phases of broader women’s and gender studies critique from material, structural foundational, radical, and liberal feminisms. In the pursuit of full citizenship, feminist scholars have identified reproduction—and the regulation of reproduction—as essential elements to the achievement of this goal. Due to the oppression of the “sexual contract” and the sexual division of labor in society, political rights hinge on women’s biology and their ability to reproduce (Pateman 1988). While women’s roles were those of wives and mothers in traditional political theory, such roles left women largely out of public, political life (Okin 1979). Freeing women from the prison of reproductive biology, through reproductive freedom and bodily integrity, is seen as a political foundation for the feminist movement (Beauvoir 1949, Rich 1976, Daly 1978, Alcoff 1988). Some scholars embrace motherhood and pregnancy as a difference that has positive impacts on political life (Rich 1976, Eisentstein 1988, Ruddick 1995). However, others envisioned ARTs to be the ultimate solution to solve the reproductive dilemma: by removing the biological component of reproduction in utero, women would be freed from their ultimate obligation to reproduction (Firestone 1970, O’Brien 1981). In the 1980s to 1990s, a more critical look at ARTs by feminist scholarship exposed the deeply ambivalent nature of ARTs. While Firestone (1970) and O’Brien (1981) claim that ARTs help women to avoid their biological “destiny” as mothers, other scholars viewed ARTs as constructing new barriers to women’s full citizenship. Instead of providing liberation, patriarchal institutions used ARTs as a tool to impose motherhood on women, without regard to their biology (Corea 1987, Purdy 1996, Spallone 1989, 1992).

While ARTs allowed diverse individuals to form families outside of biological requirements, political regulations, and social expectations, ARTs also exposed the social problems of free market-based reproduction (Strathern 1992, Franklin and Ragone 1998, Rapp 2000, Thompson 2005, Holland 2007, Almeling 2007). Increased attention has been paid to the neoliberal nature of ARTs in the US in a global context of markets in reproductive actors and materials. Concerns over the experiences of eggs and sperm donors in a free market (Almeling 2011) were contrasted against the “monopoly of desperation” amid ART consumers, which creates a free market of focused demand and supply (Thompson 2005, 240). These market practices reinforce structural inequalities of gender, race, and class (Ginsburg and Rapp 1995, Roberts 1998, 2009, Petchesky 1996, Fogg-Davis 2001, Daniels and Heidt-Forsythe 2012). Moreover, the biomedical market in reproductive practices and materials extend globally (Dickenson 2007). Reproductive tourism occurs as European ART consumers in restrictive nations seek egg donors in Spain and the Czech Republic and surrogates in India and other global South nations (Bergmann 2011, Waldby 2009). Intrastate reproductive tourism arises out of this patchwork of state-level regulations, but is understudied in comparison with national-level research on reproductive tourism. ART practices and materials can be understood in a framework of reproductive labor, by which egg donors are laboring to create a product for the market (Dickenson 2007, Waldby and Cooper 2010).⁶ Egg donation is

⁶ “Reproductive labor” in this project derives its meaning from feminist materialist critiques of Marx, particularly invisibility of reproduction in the concept of production (Thompson 2005). Historically, Marxist and Socialist feminist critique has been especially interested in highlighting the importance of feminized labor (particularly emotional and care labor) to economics (Hochschild 1983, Gilligan 1986). In this project, the term is defined as the feminized, often invisible labor associated with producing raw material for ARTs and regenerative research, particularly the labor of egg donation. While this project does not examine transnational markets in human eggs, there is significant research on reproductive labor in ARTs, from studies of transnational markets in gametes to support widespread use of ARTs such as in-vitro fertilization (Dickenson 2007, Nahman 2008, Waldby and Cooper 2010).

conceptualized in this framework as but one service in an increasingly service-oriented global economy—with implications for how women’s reproductive capacities are used in a neoliberal market for reproduction and research (Waldby and Cooper 2010).

The role of the state in reproduction is a tenuous relationship for feminists, who have identified the state as an active facilitator of “stratified reproduction,” the reinforcement of reproductive inequalities among groups of women by race, class, and sexuality (Ginsburg and Rapp 1995, Roberts 1998, 2009). The role of government has often been an oppressive one for women in the US, maintaining a “reproductive caste system” where reproductive inequality allows some women to spend thousands of dollars on fertility treatment, while others suffer from high infant mortality rates (Roberts 1998). Public policies such as reproductive restrictions for welfare recipients (Mink 1998), race-, class-, and age-based regulation of abortion access (Petchesky 1990, Silliman et al 2004, Solinger 2005, Rose 2007) reinforce stratified reproduction in the United States. Morality—articulated by ideologies of gender, race, class, and mental fitness, as well as fundamental religious values—drove many states to establish public policies that fortify reproduction. One example of this is *Buck v Bell* (1927), a case that supported Virginia’s state eugenics board, which had compulsorily sterilized the “feeble-minded” Carrie Buck (Buck v Bell 1927).

Filling the Gaps: Egg Donation Bills at the State Level

Although there is great interest academically and publicly about ARTs broadly, and egg donation more specifically, there are theoretical and empirical gaps about state-level oversight of reproductive technology. This project addresses both, by testing the assumptions of ART scholarship that states are largely not involved in ART oversight

due to instrumental stakeholders—such as the ASRM, biotechnology corporations, and individual demand—who keep the government away from ART oversight through self-regulation (Bonnicksen 2007). While this assumption is widespread in the literature (e.g. Thompson 2005, Robertson 2009), it has not been tested by state-level empirical data on ART legislation.

To examine these assumptions, I collected original data on ART policies between 1990 and 2010 at the state level (for a detailed account of methodologies in collecting ART legislative data, please see Appendix 1). This fills an important empirical gap in the literature on ARTs: there is no prior data on ART legislation that has been systematically collected over an extensive period of time to the contemporary period, over a set of four ART issues (egg donation, surrogacy, insurance coverage of fertility treatment, and parentage of ART-conceived children). There is no prior data in the literature on egg donation bill activity; instead, focus has been on passed egg donation policies (e.g. Bonnicksen 2007). This data is quite important in a quickly evolving field of reproductive science, with states increasingly attentive to the social implications of egg donation. Combined with extensive data on egg donation bill text and other historical legislative documents, this project advances a more holistic picture of government oversight processes around a multidimensional social issue. I challenge the assumption that states are inactive on ART issues in general, and egg donation more specifically. In the next five chapters, this analysis will examine the conflicts between moral and instrumental stakeholders in egg donation legislation at the state level to answer the research question: In light of the moral and instrumental lenses to understand ARTs, and the social implications of ART practices, what is the role of the state in ART oversight? I begin by

broadly surveying egg donation as a social policy, and then narrow the focus of analysis by looking first at the determinants of egg donation bills, then examining the discursive processes within egg donation policymaking in four cases (California, New York, Arizona, and Louisiana). I conclude by asserting a new vision of the role of state oversight in increasingly complex reproductive bioeconomies.

In Chapter 2, I examine the conceptualization of egg donation as a social issue. How a policy is defined has tremendous impact on how policy is formulated, who the policy targets, how the policy is debated, and if it gets voted into law. The construction of gender and sexuality in what can be typologized as “morality policy” and “economic policy” is especially important, as scholars have demonstrated that the construction of “target populations” (those who will be directly impacted by the proposed policy) has a powerful influence on public officials, and shapes both the policy agenda as well as the actual design of the policy (Schneider and Ingram 1992). Scholars of women and politics have pointed out that how a policy is framed has a lasting impact on morality issues such as abortion (see for example Petchesky 1984/1990’s discussion of antiabortion rhetoric) as well as economic issues that disproportionately impact women (see for example Theda Skocpol 1992’s discussion of motherhood as a central construct of welfare policy). Finally, morality policy and economic policy will result from different policy diffusion mechanisms: morality policy is more likely to be driven by one state imitating another (usually to symbolically express a state’s values), while interstate economic competition fuels the adoption of economic policy (Karch 2007).

Theodore Lowi’s 1964 typology gives a discussion of morality and economic policies context, as he argues convincingly of the ability of scholars to group like policies

into distinct categories with relevant, clustered characteristics. Scholars such as Mooney and Schuldt (2008) have complicated Lowi's typology, arguing that morality policy is a distinct type of policy that can be defined as: (1) based on fundamental values/principles rather than economic interests; (2) the difficulty of compromise in public policy debate on the issue; (3) the high public salience of the issue and (4) the technical simplicity of the issue.⁷ They warn, however, that more study of morality policy is needed, as not all morality policies are "created equal": morality policies can vary in public salience and technical simplicity (Mooney and Schuldt 2008). These conclusions are encouraging, as ARTs fulfill some—but not all—of these typological requirements: they are based on fundamental values *and* economic interests; they are difficult to compromise in public policy discussions; there is high public salience of the issue with delayed motherhood and the increase in non-heterosexual/nuclear family formation; and the issue is technically complicated.

ARTs are not purely morality policy, however; the strong economic component of ARTs within the biotechnology field has already been recognized by states such as New Jersey, California, Illinois and Connecticut who want to diversify their economies, bring high-tech jobs to the state, and even obtain state shares in patent royalties (States and Stem Cells 2006). In this way, some states are engaged in interstate competition to attract (and keep) firms (Karch 2007). Berry and Berry's (1990) study on state lottery adoption provides one set of possible parameters of economic (albeit controversial) policy: they create revenue for the state, are usually fueled by the fiscal health of the state, especially in comparison with neighboring and "like" states, and whose adoption is impacted more

⁷ Alternatively, Tatalovich and Daynes (1988) define morality issues that those which seek to regulate social norms and evoke a strong moral response from citizens. Lowi (1988) recognizes morality issues as "more ideological, more moral...more polarized, and less prone to compromise."

by socioeconomic factors rather than innate or fundamental values (Mooney and Lee 1995). One interesting exception is gambling policy, which in theory is an economic policy but has often been grouped as having morality policy characteristics (Pierce and Miller 2004, Von Herrman 2002).

In Chapter 3, I test a morality politics and policy framework on egg donation bills in the period 1998 to 2008. To study ARTs in a morality policy framework, I test independent variables from the morality policy literatures on egg donation bill outcomes, taking into account Mohr 1969's theory of policy innovation being a function of "obstacles against innovation and the motivations to overcome such obstacles" (111). According to ART scholarship, morality policy variables (such as state religiosity) should increase governmental restrictions of egg donation, while instrumental variables (such as the number of biopharmaceutical employees in a state) should decrease governmental restrictions of egg donation. In this chapter, my dependent variables are egg donation bill "events," or the first introduction of an egg donation bill. I test the effect of independent morality and instrumental variables on egg donation bill events using Event History Analysis (EHA). This method helps a scholar answer a more "extensive set of questions than conventional analyses by using information on the number, timing, and sequence of changes in the dependent variable" (Box-Steffensmeier and Jones 1997). This method is especially effective in answering the question that lies at the heart of my hypotheses—what independent variables are significant in the probability that a state will adopt an ART policy in my given time period (Berry and Berry 1990). This method is recognized by political science scholars in the field as the most useful way to capture the effect of state characteristics on legislative events, as well as the impact of diffusion (Sabatier

1999). In this chapter, assumptions about the role of morality and instrumental variables are challenged, as I find that economic, scientific, and demand variables significantly impact egg donation bill events in a way that is not predicted by current literature on government oversight of ARTs.

Little is known about how legislators define and act upon egg donation as a social issue. In Chapters 4 and 5, I examine the issue framing processes of legislation on egg donation in four cases—contrasting California and New York (Chapter 4) against Arizona and Louisiana (Chapter 5). Specifically, I look in Chapter 4 at how California and New York employ instrumental frames to define egg donation, and Arizona and Louisiana used moral frames to define the issue. Employing content analysis of bill text as well as policy narrative analysis of sponsor demographic data, bill histories, committee hearing transcripts, and media interviews, I analyze how moral and instrumental narratives were constructed around egg donation bills in each of the cases (Price 2011). Lastly, I examine how different framing strategies of egg donation resulted in bill success (being signed into law) or failure.

Conclusion and Themes

In the concluding chapter, I examine how empirical and conceptual gaps in ART scholarship can be filled with the results from Chapters 3, 4, and 5, with attention to the challenges my research brings to beliefs about government oversight of egg donation as a reproductive technology. Considering the brisk activity of states on egg donation issues, and the diverse framing strategies to define egg donation as a social issue, the role of bioeconomies in reproduction emerges. As other scholars have noted, ARTs challenge previous notions of reproductive issues and resulting public policy—in lieu of strong

federal legislation, there are opportunities for states to regulate ARTs like reproduction has been historically regulated. However, the strong research and development aspect of ARTs have kept ARTs in a private, rather than public realm—as evidenced by the supposed lack of ART laws at the state level in the United States (Bonnicksen 2007, Young 2007). I argue that these conceptions of political activity about ARTs fail to include the significant state-level political activity on ARTs. I assert that ARTs bring into sharp relief the increasing importance of neoliberal “bioeconomies” in reproductive labor and materials, such as human eggs (Waldby and Cooper 2010). Practices of reproduction in the United States are inextricably linked to state markets in the life science research sector—and this research setting is a new site of government oversight of reproductive processes. Reproductive issues can no longer be conceptualized as completely distinct from the technologies and research associated with them—and democratic processes about reproduction are changing in response to bioeconomies. How reproduction is stratified is now being deeply imprinted by the emerging tiers of egg donation for fertility treatment, and egg donation for research (Waldby 2009, Waldby and Cooper 2010). Egg donation in research is a new site of stratified reproduction.

The findings in this project have important implications for democratic deliberation and oversight of technology and reproduction—a set of social issues that will only expand with evolving technological innovation and public use. The results from this project complicate Thompson’s assertion (shared by many in the ART scholarship) that “anything approaching an agora of ideas where the public can openly and equally discuss the pros and cons of reproductive technology” (Thompson 2005, 211; Goggin and Orth 2004, Parens and Knowles 2007, Young 2007). I argue that while moral framing of egg

donation and instrumental framing of egg donation have different goals—the former to limit egg donation practices, the latter to promote biotechnology research through regulation of egg donation practices—neither approach has allowed important voices to be present in a policymaking forum. Especially absent are feminist voices, which have a rich history of reflection on the role of the state in reproduction, as well as the moral and instrumental concerns embedded in reproductive technology. Instead, public discourse needs to be promoted at the national level—a difficult prospect, but one urgently necessary to ensure an equal reproductive liberty for all citizens, not just the most privileged (Rao 2008).

CHAPTER 2: ASSISTED REPRODUCTIVE TECHNOLOGIES AND MORALITY IN CONTEMPORARY US POLITICS

What to me "intermediate moral status" means is that embryos do not have the moral status of infants, but they are also not simply clumps of cells, and need to be treated with a certain degree of respect. And in our view, what that means, among other things, is that they cannot be disposed of or used, except for the most important and serious ends.

Francis Fukiyama, Council Member, President's Council on Bioethics (2004).

What is the moral status of cells that can create life through reproductive technology, or can be developed into other cells for regenerative research? This question underlies Francis Fukiyama concern about how the ethical status of sex cells—especially in the context of reproductive technology practices—is not clear. In this chapter, ARTs will be discussed in light of political approaches to the murky moral status of both the materials used in ARTs (such as gametes) as well as the ART practices themselves. Specifically, this chapter will analyze ARTs through the analytical framework of morality politics and policy.¹ Morality politics and policy is defined as policymaking and politics surrounding social issues that are controversial, may have important symbolic meaning for religious and ethical beliefs, and concern fundamental or intrinsic values. ARTs, in their use of human cells to create life for family formation and knowledge for medical research, fit squarely into this framework. Morality politics and policy are concepts developed from Lowi's (1964, 1972) organization of social issues into categories of public policy, and expanded to understand major controversial social and political conflicts of the 1980s and 1990s (e.g. Tatalovich and Daynes 1988, Meier 1994, Haider-Markel 1996, Lowi 1998). I argue that ARTs as a social issue challenge currently-held definitions of morality policy. Specifically, ARTs (as well as other contemporary morally

¹ In this discussion of morality policy, I define "politics" as the political actors, public opinions, and advocacy activity around the policy formulation process.

controversial issues) stretch the boundaries of current conceptualizations of morality policy, as ARTs have an important element of instrumental interests such as economic demand and scientific innovation. In making this argument about ARTs in a framework of morality policy, one can better understand how the democratic processes behind ART regulation may work, answering fundamental questions about how social issues are regulated in society: how do external cultural, political, and economic variables impact the regulation of controversial social issues like ARTs? How do legislators negotiate between moral and instrumental concerns embedded in ARTs as a social issue, and how does this negotiation impact the policy design process? Normatively, are these legislative approaches the best way to address moral and instrumental concerns of ARTs and ART practices? This chapter sets a morality politics and policy framework for analyzing ARTs, and answers these fundamental questions in the proceeding Chapters 3 through 5.

How governments deal with controversial social issues has been a subject of state-level scholarship since the 1980s, although concerns over the economic, cultural, and institutional stakes in social policy have been discussed since the 1960s. Despite a long history of studying social policy, there has been some neglect of how moral concerns and economic concerns interact in social policy, especially in reproductive politics and policy outside of abortion issues (e.g. Mooney and Lee 1995). Also lacking in the scholarship are comparative studies of how states approach morality politics and policy through quantitative *and* qualitative methods. In the next section, I will analyze the emergence of morality politics and policy scholarship, setting up how morality politics and policy is understood in the political science and public policy disciplines.

Morality Politics as Concept and Category

In policy studies and political science literatures, morality policy is marked by two parallel streams of scholarship: the pursuit of public policy classification according to policy content since the 1960s, and the study of “culture war” issues since the 1980s (Sharp 2005). This impetus to understand public policy through classification allows scholars to understand how state cultures, governmental structures, economic stakeholders, and intergovernmental relationships impact what social issues become targets of regulation, and how public policy about social issues is shaped by a variety of political actors. The basis of this work on social policy is Theodore Lowi’s seminal work on organizing policy into discrete categories (Lowi 1964, 1972). In organizing types of policy, Lowi sought to create a “proper, analyzable, relationship [between public policy]...and those dimensions of political science that are already well developed” (1972, 299). Lowi argued for four types of public policy in American politics: “constituent policies” that target governmental institutions and procedures; “distributive policies,” which determine how benefits are allocated across society; “regulatory policies,” which impose restrictions on individuals and resources; and “redistributive” policies, where material goods and services are reallocated among groups in society (Lowi 1964, 1972; Ripley and Franklin 1980). In this early formulation of the different types of public policy, there was little attention to social issues that did not fit neatly into Lowi’s four categories—especially issues of the early 1970s that were rising in salience, such as abortion access for women (Luker 1984).

A new kind of politics and policy, called morality policy, would need to be developed for the rising importance of controversial social issues. Among the many rising controversies in the 1970s and 1980s were the changing norms and practices around

gender, sexuality, and family formation. The family and reproduction was a particular site of social change that challenged Lowi's classification of public policy in the 1970s and 1980s: as a standard of abortion access was federally legalized in *Roe v Wade*, the movement of middle class women from domestic to paid work, concurrent patterns of increasing divorce rates, increased awareness of LGBTQ rights, recognition of the AIDs epidemic were situated in an increasingly controversial, adversarial political environment that relied on moral arguments rather than a Lowian analysis of institutions, benefits, resources, and material goods (Sharp 2005). Unlike the kinds of issues classified into public policy categories by Lowi, culture war discourse relied on gut-level reactions based on moral values, triggered debates that were simplified and often symbolic of greater "core" values of an individual or group, and maintained high levels of controversy in American politics. Hunter (1991) argues that "there has been a fundamental realignment within American public culture (and beyond) that cut across traditional religious divisions" after the cultural revolutions of the 1960s (Hunter 1996, 244). This political realignment can be understood through two opposing sides on social issues: the "orthodox" with stable standards of morals and ethics, and the "progressive" with the "rejection of universals and emphasis on contingent standards" (Hunter 1996, 7). Fundamental beliefs (often rooted in religious faith) about life, death, sexuality, and reproduction were thought to divide the country via public policy issues like abortion. This arc of culture war issues began with the *Griswold v Connecticut* (1964) and *Roe v Wade* (1972) decisions, extended into the Republican Party defining their platform as anti-abortion in 1980, and developed into the debates over stem cell research in "red" and "blue" states during George W. Bush's tenure as president (Rose 2007). Although the

political realities of a “culture war” are divisive and controversial, the rise in a new type of social issues requires a rethinking of public policy typologies.²

These social issues do not fit neatly into Lowi’s framework of constituent, distributive, regulatory, and redistributive policies, as none of these categories lend themselves to the unique qualities of morality policy. As such, scholars attempted to stretch and modify Lowi’s framework to accommodate social issues like abortion. Early in debates defining morality policy, scholars sought to simply enlarge Lowi’s framework (1964, 1972). Tatalovich and Daynes (1988) argue that Lowi’s definition of regulatory policy can be defined as not only the regulation of business, but also the regulation of moral behavior—making morality policy a distinct subtype of regulatory policy. While a subtype of regulatory policy, distinct politics impact morality policy, as actors such as single-issue advocacy groups are quite powerful in political debate around morality issues (Pierce and Miller 2004). In contrast, Meier’s (1994) study of drug and alcohol policy analyzes morality policy as an extension of Lowi’s “distributive policy” category. Although not all members of society may agree with a drug or alcohol policy, the “winners” in morality policy get to inflict their moral beliefs on the rest of society—redistributing moral values instead of material goods, as in Lowi’s typology (Meier 1994, Sharp 2005).

Despite this work to try to accommodate morality policy into Lowi’s four part policy framework, scholarship in the 1980s and 1990s emerged to define a new policy category: morality policy (Haider-Markel 1996, Lowi 1998). Supported by Lowi’s (1998) revision

² Fiorina et al (2004) argue in *Culture War? A Myth of a Polarized America* that a culture war between deeply divided Americans is in fact untrue in contemporary American politics. Using evidence of media exploitation of morality policies, misrepresentation of statistical data on public opinion and ideology, and the polarization of political elites, Fiorina et al argue that Americans are far more moderate and tolerant than Hunter hypothesizes.

to his public policy, he argues that political arguments over core, fundamental beliefs (rather than political arguments over material benefits and drawbacks) have created a new category of policy—morality policy. Instead of trying to fit morality policy into Lowi’s framework, morality politics and policy should be defined as public policy that engages “core issues” that have symbolic and “emotional” qualities (Pierce and Miller 2004; Lowi 1998; Edelman 1985). Despite this standard of social issues that are embedded in a discourse over fundamental values, there is still much discussion and development over what social issues qualify as morality politics and policy, and how a concept of morality policy and politics can change over time.

What Constitutes Morality Policy?

To many scholars, understanding morality policy has been “you know it when you see it” but nonetheless difficult to describe: while morality politics and policy issues share many of the same characteristics, the definition of morality policy and politics continues to evolve. In a seminal study of gay and lesbian rights, Haider-Markel and Meier define morality policy through political discourse (1996). In this definition, advocates on either side of the policy debate must present their arguments through fundamental values, morality, or a concept of “sin” (1996). In such a discourse, morality policies are highly salient and technically simple. When morals and values are used in morality policy arguments (rather than political, economic, or scientific knowledge), “everyone is an expert” (Haider-Markel 1996, Gormley 1986, Carmines and Stimson 1980). According to these characteristics of morality policy, citizens can be extensively involved in policy debates—there is no specialized knowledge required to participate in these debates, and one’s opinion is constructed outside of the formal policy arena.

Morality policy can be one-sided “sin” issues, where a clear majority of the public is on one side of an issue (such as the opposition to legalizing hard drugs), or two-sided “contentious” issues where the public is closely divided and competing arguments jockey for political power (such as the divided public over abortion restrictions) (Mooney and Lee 2000, Meier 1999).³ According to these definitions morality issues (including “sin” and “contentious” morality issues), abortion (Mooney and Lee 1995, Norrander and Wilcox 1999, 2001), the death penalty (Mooney and Lee 2000), gay rights (Haider-Markel and Meier 1996, Haider-Markel 1999, Mucciaroni 2011), drugs and alcohol (Meier 1994), gambling and lotteries (Pierce and Miller 2004, Berry and Berry 1990) and the sex work industry (Sharp 2005) are among the diverse social issues that are considered to be morality policy and politics.

Issue Definition and Framing of Morality Policy

At the core of the morality policy and politics concept is framing: morality policy and politics is defined as such by how a social issue is framed as a fundamental moral concern. If ARTs characterized by “at least one advocacy coalition involved in the debate *defines* the issue as threatening one of its core values....we have a morality policy,” means that the intrinsic content of a policy is less important than how political actors characterize the issue, using framing strategies (Mooney 2001, 3—4; emphasis my own). Issue framing is “to select some aspects of a perceived reality and make them more salient...in such a way as to promote a particular problem definition” (Entman 1993, 52, Meier 1999, Haider-Markel and Joslyn 2001). Political elites like state legislators utilize

³ In sin policies and contentious policies, there are diverging politics, as Lowi hypothesized: strong ideological groups create policies around “sin” issues, and majority public opinion impacts what “contentious” policy is created (Norander and Wilcox 1999, Mooney and Lee 2000, Smith and Tatalovich 2003). The politics of “sin” issues creates poorly designed policy due to a lack of compromise, the refusal of expertise, and the misperception of public opinion preferences (Meier 1999).

frames to describe and understand social problems (Schön and Rein 1994). This act of issue framing is a crucial part of the policy design process, determining many aspects of the content and outcome of legislative activity on a given issue.

How an issue is framed has tremendous impact on how policy is formulated, who the policy targets, how the policy is debated, and if it gets adopted.⁴ Controlling issue definition means that one can control the public policy process—by being the “winner” among competing interests in defining an issue, one has control over how the government regulates (or does not regulate) a given issue (Baumgartner et al 2009). If an issue is framed as a morality policy, this has important consequences for the policy process. Alternatively, an issue may have moral content but may escape being framed as a moral issue. The construction of gender and sexuality in morality policy is especially important, as scholars have demonstrated that the gendered construction of “target populations” (those who will be directly impacted by the proposed policy) has a powerful influence on public officials, and shapes both the policy agenda as well as the actual design of the policy (Schneider and Ingram 1993). Scholars of women and politics have pointed out that how a policy is framed has a lasting impact on gendered policy making around private behavior (see for example Petchesky’s (1984/1990) discussion of antiabortion advocacy) as well as economic issues that disproportionately impact women (see for example Theda Skocpol’s (1992) discussion of motherhood as a central construct of welfare policy). Elaine Sharp’s (2005) study of local morality politics, looking at abortion, gambling, the sex industry, drugs, and gay rights politics and policies in several American cities, is particularly instructive in expanding previously restrictive definitions

⁴ For this study of ARTs, I define issue framing by state legislators in state legislative debates and policy design.

of morality policy. Her study exposes the problematic nature of defining morality policy under a rubric of fundamental values, technical simplicity, high public salience, and lack of compromise. She argues that morality policy should be viewed as a continuum, rather than adhering to a strict set of definitional rules. This continuum is due to the fact that morality policy has an evolving character: how morality policies are viewed, defined, and discussed are prone to change as public opinion and elite positions shift over time (Sharp 2005). This scholarship informs the research questions at the heart of this project, as increasing oversight of ARTs brings them squarely into the scholarship of morality policy—similar to other issues that have emerged as important gender/sexuality/family policies in the last twenty years, such as same sex marriage (Mucciaroni 2011). However, ARTs do not perfectly fit into established morality policy definitions. Inspired by the work of Sharp and Mucciaroni, my research questions how ARTs are framed by political players at the state level. Framing processes of ARTs as morality issues are explored in Chapter 4 and 5.⁵

Current work on morality policy about sexuality and family formation reminds scholars that it is important to connect the power of legislative framing to the contingency of values and morals over time. What may inflame individuals over fundamental principles can shift to a reasoned conclusion measuring instrumental gains and losses. Because of this, many argue that the boundaries of morality policy are not as clear-cut as one would believe (Meier 1994, Mooney 2001, Pierce and Miller 2004). The role of social change over time is powerful in framing relevant morality issues—what issues are on a political agenda, and how those issues are linked to moral controversy. (Mucciaroni

⁵ While this study does not look at media framing, there is considerable evidence that issue framing of ARTs is crucial in how the public perceives morality policymaking (see for example Markens 2007, Haider-Markel and Joslyn 2001).

2011). For example, drinking alcohol was once a powerful morality issue, galvanizing millions of women and men in the temperance movement, creating the 18th Amendment. In 2012, few would argue that temperance is a morality issue that is relevant to American political life as gay rights, abortion, or gun control. Core values change over time in American politics, as historical debates about divorce, integrated education, and sodomy can attest to. If ARTs are framed as a moral issue—or avoid being framed as a moral issue—this framing has an important impact on policy adoption and regulation of ARTs at the state level.

Challenging Convention: ARTs as a Morality Policy and Politics

Even though a diverse set of social issues have been studied as morality policy and politics, morality policy as a category does not have a predetermined set of issues (Mooney 2001). Moreover, there is a call by scholars studying morality policy to examine the boundaries and definitions of morality policy and politics in light of shifting attitudes and political regulation of controversial social issues (Mucciaroni 2011). ARTs are positioned well to test the boundaries of the current scholarship on morality politics and policy. ARTs fit some, but not all, of the definitions of morality policy. ARTs have a fundamental moral component, which includes anxieties over life, personhood, coercion, and compensation in intimate relationships (Almeling 2011, Thompson 2005). In terms of public salience, ARTs scholars have noted that US culture is saturated in ARTs: they are increasing in use (doubling in use among Americans between 1990 and 2000), nearly 1% of all children each year are born using ARTs, and ARTs as a topic of discourse has infiltrated both academic and popular media (CDC 2012, Thompson 2005).

However, ARTs have important characteristics that do not fit so neatly into a definition of morality politics and policy, compared to other morality issues of public health, reproduction, and family formation. ARTs are publicly salient but technically complex in a way that is distinctive from other public health issues that may embody moral concerns, such as AIDs (Thompson 2005). While AIDs is a relatively complex public health issue, treatment alleviates the suffering of a fatal disease; ARTs used to treat infertility are not only complex in how the reproductive technologies work, but infertility is not a matter of life and death, and is viewed in a different light than AIDs in the United States (Thompson 2005, Throsby 2004). ARTs have a distinctive discourse surrounding practices and norms compared to reproductive morality issues. Abortion restrictions, clearly a morality issue, divide the public without a clear majority on abortion restrictions (Jelen and Wilcox 2003). Public debates around ARTs are conflicting and ambiguous, as stories of creation, innovation, and family building conflict with narratives of commercialization, coercion, and greed of individuals *and* corporations (Thompson 2005, Markens 2007, Alemling 2012). Another distinctive characteristic of ARTs is the lack of empirical political data. ARTs are in the public eye, and widely used, but there is little research on public opinion about ARTs (Thompson 2005). Unlike other morality issues where public opinion has been tracked, important insight into the attitudes of the public about ARTs is sorely needed.

There is an increasing push within the morality policy and politics literature to consider how social issues may evolve and change, which in turns shifts how morality policy and politics can be understood and defined. For example, gay and lesbian rights were once a clear cut example of morality policy; Gary Mucciaroni (2011) identifies how

same sex marriage—and extension of gay and lesbian rights—tests the boundaries of morality politics and policy as a concept. In his study of legislative testimony and debate discourse on gay marriage, even the most socially conservative and religious states frame their opposition to gay marriage through intergovernmental, rather than moral terms (Mucciaroni 2011). This goes against expectations of the use of fundamental, moral arguments in discourse over gay rights (Haider-Markel 1996). This important finding about gay marriage extends an argument about ARTs: that although a social issue may embody moral concerns, these concerns will not always dominate the discourse about the social issue. Moreover, there may be other important concerns at play in discourse and policymaking about a social issue—in particular institutional, economic, and intergovernmental concerns that are tied to a discussion of a moral issue (Sharp 2005). In light of ARTs's duality—the use of ARTs to create families and further regenerative research, while at the same time utilizing controversial science to help diverse people, regardless of gender and sexual identity form families—ARTs shed light on Mucciaroni's argument to expand a definition of morality politics and policy.

In light of the similarities and differences of ARTs with other reproductive and family-related morality issues, I argue that current definitions of morality policy set in the 1980s and 1990s do not fully capture the morality policy and politics of emerging issues such as ARTs. I concur with Mucciaroni (2011) that many of these definitions are too narrow for reproduction and family formation-related social issues; given this narrowness of morality politics and policy as a concept, I situate ARTs as a hybrid morality issue—one that encompasses many characteristics of morality policy, with some key deviations⁶.

⁶ As is stated earlier in this chapter, ARTs embody fundamental moral concerns, as well as concerns over the power of regenerative medicine research. ARTs produce the raw materials and related practices that

While classifying ARTs in this manner as a hybrid issue is novel, other scholars that analyze sexuality and family formation (such as Mucciaroni (2011) and Sharp (2005)) have also identified that contemporary social issues around these topics incite moral controversies accompanied with material concerns—such as concerns over economics and intergovernmental relations.

Framing ARTs: Conflict and Contingency

Studying the framing of ARTs in legislative settings is particularly important because of the ambiguous relationship between moral values and material interests (again, defined as economic and scientific concerns) in public debate about ARTs.⁷ While not typical of ART patients in the United States (and widely dismissed as an outlier by the largest interest group for reproductive technology practitioners, the American Society for Reproductive Medicine), the media coverage and public opinion of Nadya Suleman is particularly instructive in understanding issue framing around ARTs. Dubbed the “Octomom” in news media for carrying eight IVF-conceived children to term, she was criticized for not only her challenge to conceptions of proper motherhood as a single mother of 14, but largely reviled for her lack of economic independence from her family and the state, characterized by her reliance on public assistance. Her case spawned legislatures to symbolically challenge ARTs as exploitative practices, such as Hawaii’s House Resolution 107 (2009). HR 107 decried the “single, unemployed mother” for giving birth to octuplets, as well as the ethics of a fertility industry that

enable regenerative research—especially on diseases and conditions that threaten the ever-growing population of aging Americans. Additionally, ARTs are a documented source of revenue for states, who entice ART clinics and biotechnology companies with economic and political incentives (States and Stem Cells 2006).

⁷ I define public debate as public opinion and advocacy, which prior studies have argued are ambiguous about ARTs at best and silent at worst (see for example Goggin and Orth 2004, Bonnicksen 2007, Markens 2007, Thompson 2005).

would implant a woman with embryos that she “may not have the resources” to care for all of her 14 children (2009). In this legislation, moral values of motherhood, family formation outside of nuclear families, and exploitation clash with material and commercial interests of the fertility industry and private demand for infertility services. Framing of ARTs is a complex enterprise.

These competing concerns of morals, economics, and science are echoed in the coverage of “respectable” consumers of ARTs. While surrogacy has a long history of being in the public eye since the first use of ARTs in the 1980s (such as the bellwether *Baby M* case in New Jersey), public debates have been divided by competing issue frames of moral issues and material interests (Markens 2007). Gamete donation similarly evokes split issue frames. The moral debate about selling human tissues (in light of restrictions on selling organs and blood in the US) comes up against the seemingly insatiable material interests of infertile individuals and couples looking to form “biological” families, even if they violate supposed traditional norms and cultural practices in the US (Thompson 2005, Daniels and Heidi-Forsythe 2012). For example, egg donors are altruistic “angels” for suffering, infertile individuals and couples (Daniels and Heidi-Forsythe 2012, Almeling 2011). In these examples about ARTs, moral quandaries about life are in discourse with economic concerns.

Clearly, the moral issues that are embedded in late 20th and early 21st century debates around ARTs in the US, in both the public eye and in state-level policy making, are connected to and reliant on material interests of the fertility industry and the fertility industry consumer. Instead of categorizing ARTs as a morality issue, it is more useful to view how ARTs are framed by legislative actors. ARTs have been framed as exploitative

of young, vulnerable women, as then-Governor Mitt Romney (2005) claimed in a letter to the Massachusetts General Court, evoking strong moral values; ARTs have also been characterized as essential vehicles for research and scientific innovation as well as an exercise in state regulation of medicine, exemplified by Senate Bill 1260 in California (See Chapter 4).

Hybrid Issues and the Ambiguity of Material Interests

As ARTs have demonstrated, framing strategies by political elites can shift conversations between moral, fundamental issues and economic, material concerns. ARTs are not alone in this respect; other contemporary issues with strong moral components have strong economic and scientific elements, and are defined as hybrid issues (Sharp 2005, Mucciaroni 2011). Other contemporary issues with a moral component illustrate this hybridity, containing moral and scientific/economic elements, and being framed as such. In a 2010 Gallup Poll, doctor assisted suicide, gay relations, and out of wedlock births were some of the most divisive moral issues in American politics (Gallup 2010). These Gallup “moral” issues are wrapped in non-moral concerns of autonomy of health administration, power dynamics between the executive, legislative, and judicial branches in American politics, and the debate over single motherhood and welfare dependency, discourses that have been expressed in state and local politics about these issues (Sharp 2005). As scholars have noted, gay marriage, gambling and casinos, and sexually explicit businesses have strong moral components, but are often framed as means to an economic end for local and state communities (Sharp 2005, Mucciaroni 2011). Analyses of contemporary debates about contraception support this assertion of moral *and* economic/scientific interests. Rasmussen (2011) traces the competing frames

around contraception in debates around the Affordable Health Care Act, comparing moral frames of religious freedom and immorality with material frames of health and gender equality. In all of these studies, scholars find that invoking purely moral issue frames in legislative debate are less successful than using economic, scientific, and intergovernmental frames in legislative debate, measured by passage of legislation (Rasmussen 2011, Mucciaroni 2011). These findings reinforce and extend Meier's (1994) contention that non-moral interests are an important part of morality politics and policy. Scholars must develop their conceptions of morality policy; instead of being an outlier, ARTs are quite similar to other contemporary issues in the mix of moral and scientific/economic concerns in policy making. I argue that while purely moral arguments may have characterized morality policy in the 1980s and 1990s, contemporary morality policy requires a redefinition: that scholarly definitions of morality policy in US politics today is always paired with, and often privileges, concerns about economics, science, and other stakeholders—a hybrid policy, rather than a purely moral policy.

“Intermediate Status”: A Hybrid Framework for ART Policy and Politics

Returning to Francis Fukiyama's contention that the “intermediate status” of human cells in ARTs rendered the technologies and practices a moral *and* scientific issue, this chapter asserts that ARTs also occupy an interstitial and intermediate political space. As ARTs are between fundamental concerns over life and scientific and economic concerns of the state, they are particularly useful tool to interrogate concepts of morality policy and politics in pursuit of larger questions about the role and best practices of government in complex, evolving, and changing bioethical issues around reproduction and family formation. The given definitions of morality policy and politics around social

issues that involve fundamental moral arguments, have technical simplicity, and are politically salient to the public are challenged by ARTs. ARTs in political discourse involve competing interests and claims from individuals seeking fertility treatment, medical doctors seeking improved practices to treat patients, researchers employing ARTs to understand and treat degenerative disease, and biotechnology corporations seeking increased supply and demand of ARTs and ART practices. These competing stakeholders are contextualized by a federalist political system where the regulatory vacuum left by the national government has prompted states to consider ARTs as an important site of governmental regulation and mediation. How ARTs are defined as a social issue (through framing processes in state legislatures) will impact how reproductive options are experienced by individuals seeking fertility treatment, as well as the future of state-led regenerative research using ARTs.

To analyze these diverse and contingent forces, I will proceed to set up a hybrid framework in which to understand ART legislation and policy formulation at the state level. I conceptualize this framework as two sets of forces in ART policy and politics: morality interests and what I call in proceeding chapters instrumental interests. Morality interests reflect concerns over fundamental, moral values as defined in the morality politics and policy literature—religion, social conservatism, and moralist state political culture. I define instrumental interests as those interests that reflect economic, scientific, and medical stakeholders in the ART policy debate. Using this framework, I circle back to the three fundamental questions laid out in the introduction of this chapter, focusing on egg donation as a subtype of ARTs. Egg donation as a subtype of ARTs is a particularly effective way to investigate broader themes embedded in ARTs: egg donation straddles

concerns over morals (the use of egg cells, the personhood of mother and fetus), feminist concerns over the appropriation of reproductive labor in a free market, and instrumental concerns over egg cells as material for research.

How do external forces impact ART legislation? To investigate this question, I employ my hybrid framework to analyze the introduction of bills about egg donation in Chapter 3. I analyze how external moral and instrumental variables impact the occurrence of egg donation bills, in order to ascertain if the predictors of egg donation legislation are similar or different to predictors of morality policy established in studies of abortion, surrogacy, and fertility clinics (Mooney and Lee 1995, Markens 2007, Kirkpatrick 2010). In terms of my second fundamental question, how do legislators negotiate the moral and scientific/economic concerns in ARTs, I qualitatively analyze egg donation bill text in four cases through my hybrid framework in Chapters 4 and 5. In looking at frames deployed in egg donation regulation, the internal legislative process around ARTs is clarified. The larger significance of this work—beyond understanding morality politics and policy through contemporary reproductive and scientific issues—is understanding the evolving role of government and democratic processes in a distinctly gendered reproductive and scientific issue. In response to the last fundamental question—are these legislative approaches the best way to mediate the social and bioethical concerns embedded in ARTs—I use the original data and analysis in Chapters 3 through 5 to demonstrate that the conflicting and contingent moral and instrumental approaches are failing to mediate the most serious gendered social and bioethical consequences of ARTs.

CHAPTER 3: EGG DONATION BILLS AT THE STATE LEVEL, 1998—2008

Although the regulation of assisted reproductive technologies (ARTs) in US public policy has been understudied, early feminist thinkers considered normative questions about the role of government oversight in ARTs (Corea 1987, Purdy 1996, Spallone 1989, 1992). This groundbreaking feminist works contextualizes the focus on inquiry in this chapter. In a 1989 study of the in-vitro fertilization (IVF) legislation at the federal and state levels, Andrea Bonnicksen concludes that “indiscriminant consumption of policy (do something—pass any law—now) is no more acceptable than indiscriminant consumption of sophisticated [ART] techniques” in light of the parallel dangers of unchecked government intrusion into reproduction, and laissez faire free markets in human bodies and body parts (Bonnicksen 1989, 142). Bonnicksen’s great unknown in 1989—*what* would influence ART legislative activity, *what* policy responses might look like —can be answered with contemporary data on state-level policy around ARTs.

In this chapter, I use original data on egg donation legislation to answer what influences policy on ARTs at the state level in the US. I examine how variables linked to morality politics, variables reflecting economic and scientific stakeholders, and control variables impact egg donation bills between 1998 and 2008. I argue that given the analytical framework of hybrid policy set out in Chapter 2, egg donation legislation will be impacted by a different set of variables (detailed below) than may be predicted by pure morality policy, such as abortion (e.g. Mooney and Lee 1995). While egg donation legislation is not in fact predicted by variables associated with morality politics and policy, my findings challenge and extend the current scholarship on the role of economic and scientific stakeholders in ARTs (e.g. Thompson 2005). Additionally, I argue with the

support of empirical findings in this chapter that gender is an important social force that shapes economic and political stakeholders in egg donation bills, as well as ARTs more broadly.

To do this analysis, I examine the impact of three categories of independent variables on egg donation bills from 1998 to 2008 in 49 states¹. These three categories are: morality politics variables², instrumental variables³, and control variables⁴. The relationships between instrumental, morality, control variables and egg donation legislation will be tested to examine if these independent variables increase the risk of egg donation legislation between 1998 and 2008 in 49 states. To capture the distinct time-dependent qualities of this data, this chapter will be using hazard analysis⁵ to trace how variation in instrumental and morality variables increase the risk that states will introduce bills about egg donation. In identifying which variables, and to what magnitude, increase the risk of egg donation legislation, this analysis identifies how legislation of egg donation (and ARTs more broadly) is impacted by moral, instrumental, and other interests. I will first discuss the competing interests at stake in ARTs broadly, with attention to egg donation legislation. Then, I will contextualize this chapter's analysis using broad data and previous scholarship on ART legislation. Finally, I analyze

¹ Although Massachusetts has historically been a groundbreaking state for ART and stem cell research in the 2000s, it was excluded from analysis due to a lack of readily available legislative information online.

² Morality politics variables are independent variables that reflect stakeholders with ethical, fundamental, or moral concerns about ARTs, such as religious stakeholders and socially conservative stakeholders that seek to uphold traditional, Western, Christian modes of reproduction and family formation.

³ Instrumental variables are independent variables that reflect stakeholders with scientific, economic, and medical interests in ARTs, such as regenerative researchers, biotechnology companies, and individual consumers of egg donation.

⁴ Control variables are independent variables that reflect political ideology and diffusion effects of neighboring states—variables that may have an influence on ART bills, but have no relationship in the literature on ART legislation.

⁵ In this project, hazard analysis is a quantitative analysis of duration data of legislative events at the state level. The methods employed in this chapter are more fully defined in this Chapter.

the impact of morality politics variables, instrumental variables, and control variables on egg donation bills, and discuss how the results in this study reinforce the interests of economic, scientific, and medical stakeholders in egg donation and ARTs more broadly.

“Sex, Drugs, and Money”: Moral, Medical, and Monetary Concerns in ARTs

What then is the source of this ambivalence and incongruity among state legislation of ARTs? I argue that there is considerable evidence in egg donation legislation of two competing interests: moral stakeholders (who express feminist, bioethical, and religious concerns) and instrumental stakeholders (who demand increased medical care for infertility, scientific innovation, and economic growth in the biotechnology sector). This argument is supported by the assertion that “sex, drugs, and money” are three central interests in ARTs (Thompson 2005). Moral concerns over controversial science, such as stem-cell research, as well as abortion politics, control issue definition of ARTs in some political settings (Goggin and Orth 2004, Thompson 2005). Moral concerns over the meaning of life and personhood are embedded in the discourse about ARTs—specifically over the ethics of fetal and embryonic research and cloning (Goggin and Orth 2004). There are also considerable moral concerns from religious and socially conservative communities over the commodification of intimate relationships within the family, the use of reproductive materials on the marketplace, and alternative kinship formations that are enabled by ARTs, despite being a pro-natal practice (Heidt-Forsythe 2012). These concerns have been articulated in national politics as either protectionism of women and the protection of future children conceived through ARTs (Romney 2005). Such a view of egg donation as connected to a politics of stem cell research, cloning, and abortion would seem to *increase* the interventions made by government: like the prohibitions on

reproductive cloning, and the increasing restrictions on abortion governmental intervention in ARTs is meant to slow down, inhibit, and construct barriers to these practices.⁶

Outside of concerns over “sex,” concerns over drugs and money have decentralized regulation of ARTs in the US (Bonnicksen 2007). This approach favors self-regulation by the biotechnology industry in question, with pluralistic and shared regulation by the private and public sectors. This is exemplified by the sharing of federal oversight of infertility clinics mandated by the Fertility Clinic Success Rate and Certification Act (1992). The Act mandates that clinics self-report success rates to the Center for Disease Control (CDC), which publishes these results to the public (CDC 2012). Indirect pressure by the federal government, such as the restriction of federal funding, is another method of oversight of ARTs rather than blatant prohibitions.⁷ A distinctly neoliberal approach to markets—which favors *laissez faire* approaches over Canadian and European interventions in economic activity—also proves to guide American legislation of science (Markens 2007). When regulations do exist, especially in the realm of ARTs, these regulations may promote and/or support the commercial enterprises of ART development and research (Thompson 2005, States and Stem Cells 2006).

Another instrumental interest that seeks to avoid governmental control of ARTs is personal demand. This personal demand is what Charis Thompson characterizes as the

⁶ There are some important exceptions to this rule, as is explained in Chapters 4 and 5. For example, California’s Proposition 71, a voter-led initiative, granted millions of dollars to fund stem cell research in the state. However, after this initiative was passed, there was a flurry of bills introduced in the legislature to mediate regenerative medicine practices. For the purposes of this analysis, no bills that funded state-level support of ART research were included in the data set.

⁷ This indirect control of ARTs is exemplified by President Bush’s restriction of federal research funds for stem cell research in 2001—one executive action in a history of funding restrictions on embryo experimentation in the United States (Parens and Knowles 2007, Goggin and Orth 2004).

“monopoly of desperation” (Thompson 2005, 239). In this monopoly, not only are very few suppliers of pharmaceutical drugs and ART practices available, but the lack of governmental intervention has allowed the laissez faire market in fertility treatment to set astronomical prices for drugs and medical practices (Daniels and Heidt-Forsythe 2012). This monopoly is largely unchecked by public opinion, as infertility treatment has been largely privatized unlike other public health issues, such as AIDs (Thompson 2005). The individual, private consumer has created a demand that is extremely focused on fertility treatment—as embodied consumers, the “desperate, private compulsion for motherhood” makes the fertility treatment market unique in its “never enough quality” of consumption of ARTs and ART practices (Thompson 2005, 240). Given this important role of consumer demand, scholars have argued that personal demand, combined with the instrumental economic and scientific interests of the biotechnology sector have created a system that discourages state-level regulation of ARTs (Thompson 2005, Bonnicksen 2007).

Given these competing moral, scientific, and economic interests, it is helpful to examine how these interests impact ART oversight broadly. This broad view is largely lacking in current scholarship on ART policy.⁸ This landscape of ART bills is defined broadly, culled from archived bills that introduce oversight of reproductive cloning (SCNT), gamete donation practices, parentage of ART-conceived children, surrogacy, and insurance coverage of infertility treatment, gives insight into how states have begun to intervene in the wide scope of reproductive technologies, as well as gives some

⁸ This scholarship is reviewed in Chapter 1. For an analysis of IVF legislation and politics in the 1980s, see Bonnicksen 1989; for an analysis of surrogacy from the 1980s to early 1990s, see Markens 2007; for an analysis of passed legislation in the early to mid- 2000s, see Bonnicksen 2007.

indication as to the broad patterns of what variables increase and decrease the hazard of ART bills as a category.

Broad Patterns in ART Legislative Data

Previous research into ART laws gives important context to a study of egg donation legislation over time, giving some insight into how egg donation fits into a framework of analysis around ARTs as social issues—connecting egg donation, and ARTs more broadly to moral and/or instrumental concerns. Between 1998 and 2008, 30 states passed at least one law that regulated ARTs as a category—through reproductive cloning research, donation restrictions, parentage, surrogacy, or insurance coverage of ARTs to treat infertility. The median year for bill passage was 2003. 45 states in this period introduced at least one bill that sought to regulate this category of reproductive technology practices and related social issues. On average, states took 3 years to introduce at least one bill on ART issues. An analysis of this preliminary data suggests that states are indeed active on ART issues, disputing common wisdom that states largely have stayed out of regulating (or attempting to regulate) ARTs (Bonnicksen 2007). More importantly, preliminary tests show that median income is the most important predictor of decreased ART bill activity, both for introduction and passage of bills. Although scholarship on ARTs is seemingly incorrect on the activity level of states around ART issues, the perception that individual demand butts up against restriction or mediation of ARTs seems to have some grounding in the data collected on all ART bills and policies passed in the 1998 to 2008 period.

In a regression analysis of moral and instrumental variables on “restrictive”⁹ and

⁹ In this prior research, “restrictive” law was defined as those bills which regulated ARTs, ART practices,

“permissive”¹⁰ ART laws passed at the state level in 2008, urbanization and the presence of biotechnology firms were significant predictors of restrictive ART laws; no morality variables (such as the presence of conservative religious groups and level of restriction on abortion in a state) were significant in predicting the presence of restrictive ART laws (Heidt-Forsythe 2012). In an analysis of individual ART issues, there is evidence that the predictive significance of morality and instrumental variables vary (Heidt-Forsythe 2012, Kirkpatrick 2010). Those states that ban SCNT are predicted by a combination of moral and instrumental variables. States that have fewer RESOLVE interest groups and hold more restrictive attitudes towards abortion are more likely to ban SCNT. States that have a higher percentage of Evangelical Christians/Catholics/Latter-Day Saints are more likely to mandate insurance coverage of infertility treatments, including in-vitro fertilization. While this goes against formal church edicts and general church advice from the Roman Catholic Church, Evangelical Christian organizations, and the Church of Latter-Day Saints, this finding exposes the fact that the relationship between ARTs and conservative religious groups may be more complicated than predicted. While the level of conservative religious groups seems to encourage insurance coverage of reproductive choices, these reproductive choices are constrained to ostensibly pro-natal choices. The fewer Evangelical Christian/Catholic/Latter-Day Saints, the more likely states would ban or void surrogacy contracts. This is a very surprising finding, considering conservative

and ART consumers in a manner that limited their access and use of ARTs and ART practices. One example of a restrictive law is one that bans surrogacy contracts from being enforceable in a court of law (Heidt-Forsythe 2012).

¹⁰ In this prior research, "permissive" laws were defined as those bills that regulated ARTs, ART practices, and ART consumers in a way that aided or enlarged access to and use of ARTs as ART practices. One example of a permissive law is one that requires all insurance companies within the state to cover in vitro fertilization as part of infertility treatment (Heidt-Forsythe 2012).

religious groups' positions against surrogacy, which one would intuitively extend to all surrogacy contracts. The smaller percentage of women in state legislature, the more likely a state bans or voids surrogacy contracts. This relationship is in the expected direction, as we'd expect women in state legislature to promote laws that would make more reproductive choices from women, rather than fewer (Wolbrecht 2000). While both religion and the percentage of women in state legislature are significant in states that ban or void surrogacy contracts, the significance of religious groups to this dependent variable is especially interesting when paired with outcomes about insurance—suggesting that for at least two of these ART policies, religious groups do not influence legislative outcomes in predictable ways. In all of the individual ART laws studied in this prior research, urbanization and biotechnology were significant. These complex findings of restrictive and permissive ART laws, as well as individual ART laws, assert that morality variables are not as significant in predicting ART policy passage as one would expect, especially with ARTs' ties to controversial reproductive options as well as controversial science (Goggin and Orth 2004).

Egg Donation Regulation in the Data

In this analysis, I focus specifically on state-level bills that have been introduced to regulate egg donation practices. As of 2012, no states have prohibited the act of egg donation, although states have sought to control different aspects of the practice. For example, in some states egg donation cannot be compensated in research; in other states, egg donors must undergo rigorous informed consent procedures before they donate.¹¹ It

¹¹ Egg donation restrictions are a natural comparison to state-level abortion and contraception restrictions in the United States in the 1990s and 2000s, as the growth of barriers to egg donation practices mirrors the rise in state-mandated informed consent procedures for abortion (see Chapter 5's discussion of Arizona and Louisiana for an expanded analysis of anti-abortion politics in egg donation legislation).

is also important to note that different regulations exist for egg donation for third party reproduction versus egg donation in research settings, which is further explored in Chapters 4 and 5. In this analysis, I am most interested in what morality and instrumental variables increase the hazard of a government regulating egg donation practices. The egg donation bills in this analysis are uniform in the way that state governments *limit* egg donation through the following categories: regulating laboratory practices; limiting marketing techniques; restricting compensation; requiring state-mandated patient procedures.¹² The egg donation bills chosen for this analysis demonstrate the state limiting a free market exchange in egg donation for fertility treatment and research. Government intervention in egg donation practices has some blunting effects on free market exchanges on eggs as well as ART practices (Thompson 2005). This governmental intervention is common in Western Europe as comparative nations regulate the supply and practices of egg donation—see for example the United Kingdom’s Human Embryology Authority, which sets limits on egg donor compensation, the number of families that can be created through donor gametes, and standardized informed consent and written directive procedures for donors (Parens and Knowles 2007).

Hypotheses

Given the moral concerns and instrumental interests, contextualized by previous scholarship on ART legislation and governmental oversight, and the role of egg donation legislation as mediation of egg donation practices in the United States, I assert the following hypotheses:

¹² Some examples of each category of governmental restriction are exemplified by Arizona’s extensive legislative activity on egg donation: in 2010 alone, SB 1307’s limits on embryonic harm prohibited cryopreservation of gametes in laboratory settings; in its introduced version, SB 1306 prohibited all compensation for egg donation as well as mandated state-penned informed consent requirements.

H1: As moral concerns over controversial reproduction and science imply increased governmental involvement, morality variables will increase the hazard of state-level egg donation legislation.

H2: Due to the commercial interests and consumer demand for free market ARTs free of government intervention, instrumental variables will decrease the hazard of state-level egg donation legislation.

I assert that outside of instrumental and morality variables, political variables are important to understanding egg donation legislation. In this study, I have selected control variables that represent (1) diffusion and (2) ideological liberalism in political elites and citizens in a given state. In the first control variable, diffusion, there are substantial arguments that reproductive policies are not impacted to the same extent by diffusion as other types of policy (Karch 2007). I predict then that diffusion will decrease the hazard of egg donation legislation at the state level. Given the socially conservative and religious impetus to interrupt controversial reproductive and scientific practices, I expect that the presence of liberalism will decrease the hazard of governmental intervention in egg donation practices.

H3: As states look to “like” states rather than neighbors for cues about ART legislation, diffusion will decrease the hazard of egg donation legislation.

H4: Given the connection between liberalism and increased reproductive options, indicators of political liberalism will decrease the hazard of egg donation legislation.

Morality Variables

Morality determinants are defined as those variables that express a given state’s core moral values, in line with scholarship on morality politics variables (e.g. Mooney and Lee

1995, Sharp 2005). Moral concerns about fundamental issues like life, marriage, and the definition of family may also enter into a debate over egg donation. To capture these two different expressions of fundamental moral values, two variables have been selected: *moralist* and *percentage Christian*. I expect that both variables will increase the hazard of egg donation legislation.

The first determinant, *moralism*, is from Elazar's (1974, 1980) study of state cultures. I have coded each state for the presence of a *moralist* political culture—defined in Elazar's study (1974, 1980).¹³ Elazar's studies organized states into three categories: *moralistic*, *individualistic*, and *traditionalistic* cultures—reflecting political culture of the individual versus society, the perceived role of government, and the roles political leaders play in state politics. In *moralist* state cultures, the government is expected to protect public good and promote public welfare; compared to states with non-moralistic cultures, specifically traditional and individualist state cultures (for more information, see note 12). In comparison to the omitted categories of traditional and individualist states (collapsed into one category in this analysis) I would expect that states with *moralist* cultures would have increased hazards of egg donation legislation.

The second variable, *percentage Christian*, reflects the importance of fundamental moral values evoked through religious belief, specifically a Christian belief that values definitions of life, family, and intimate relations. Christian religiosity of the state population reveals how values, lifestyles, and beliefs shape legislation around controversial issues (Meier 1994). Christian religiosity is an important indicator in studies

¹³ Using Elazar's data, for each state that has a moralist political culture, I have coded the state 1; for each state that does not have a moralist political culture (defined as either individualist or traditional, collapsed into a "non-moralist" culture category) I have coded the state as 0.

of various morality policies connected to reproduction and family formation, such as abortion and gay rights (Mooney and Lee 1995, Rose 2006, Mucciaroni 2011). I expect that the *percentage Christian* in a state increases the hazard of egg donation legislation.

Rational/Instrumental Variables

I define rational/instrumental variables as those variables that reflect instrumental concerns in ARTs—economic, scientific, and medical interests that would like to see less regulation of ARTs to encourage free market exchanges, especially in egg donation (Thompson 2005, Almeling 2011). Science has historically had high levels of autonomy in American federalism and ARTs are no different. The government has a limited role in its regulatory capacity and is largely relegated to bureaucratic agencies to oversee laboratory safety and reporting of success rates by fertility clinics (Goggin and Orth 2004, Thompson 2005). There are two major economic and scientific interests in egg donation: (1) the privatized fertility industry, and (2) the demands by individuals for eggs to form families. The presence of personal demand and the fertility industry will make for decreased egg donation oversight by the government. It follows then that the presence of personal demand and the fertility industry will decrease the hazard of egg donation legislation.

To measure instrumental interests, I use four variables: the measure of individuals employed in the *biopharma* industry per state; the measure of median *income* in a given state; the percentage of *women in the workforce* among all employed in a state; and a measure of fertility *clinics* in a state (computed as the number of clinics reported to the Center for Disease Control divided by the population in a state per year). The rational-instrument determinants in this study were chosen as the best reflections of the economic

and scientific stakeholders in issues related to egg donation. *Biopharma* is measured as a proportion of the number of individuals employed by the biological research sciences and pharmaceutical industries, as measured by the Milken Institute (2009) to the population of the state by year. States have demonstrated that economic development and state revenue are byproducts of attracting the biopharmaceutical sector to their state (States and Stem Cells 2006). A state looking to expand this profitable sector has an important stake in making the state friendly to the biopharmaceutical industry through tax incentives. From this economic activity and state policymaking, biomedical “centers” have developed in American cities throughout the US, in pursuit of increased research and development of pharmaceutical drugs and devices for reproductive technology (Brookings 2002). I expect that *biopharma* will decrease the hazard of egg donation legislation.

A second measure of industry strength is the number of *clinics*, and is measured by the number of clinics per state per year per 100,000 residents as reported by the Center for Disease Control, an agency that has reported clinics since 1993. One would expect that like the variable *biopharma*, *clinics* will decrease the hazard of egg donation legislation.

Another important stakeholder in ARTs are individuals seeking fertility treatment (Thompson 2005). As gender and class are important social forces that impact reproductive technology access and use, I selected two variables that capture class and gender forces in egg donation—*median income* and *percentage of women in the workforce* (Markens 2007, Roberts 2009). While morality policy and politics literature found that *median income* implies demands for governmental services and expenditures,

in this study I argue that governmental services and expenditures gets in the way of individual demand for eggs (Hwang and Gray 1991). Income is important due to the high costs of ARTs in fertility treatment, which make the technologies often unreachable for those that are not insured (or, alternatively, their insurance companies do not pay for fertility services) and cannot pay thousands of dollars for ovum. I expect that as *median income* increases in a state, that the hazard of egg donation legislation will decrease.

It is important to capture a gendered demand for ARTs in the US. Extensive literature has traced the entrance of women into the workforce with the delay of family formation, and the need and increasing demand for ARTs among women whose most fertile years were spent in the workforce (e.g. Williams 2000; Mamo 2004, Markens 2007). To capture this measure, I have used the *percentage of women in the workforce*. This variable has also been significant for other reproductive policies such as abortion (Mooney and Lee 1995). As the delay of childbearing due to workforce participation is an important reason why women and men turn to assisted reproductive technologies to form families, I would expect that the increased *percentage of women in the workforce* would decrease the hazard of egg donation legislation.

Control Variables

Other factors besides morality and instrumental variables impact egg donation legislation at the state level, particularly political institutional variables. Previous studies have not clarified *which* institutional variables are significant to issues like ARTs (Sharp 2005). The control variables in my study of state egg donation legislation reflect policy literatures' emphasis on the importance of diffusion on legislative activity, political ideology, and the role of women political elites in state legislative activity in the U.S.

While it is unclear how these variables may increase or decrease the hazard of egg donation policymaking, there are a few clues to their importance to egg donation oversight. I expect that diffusion effects (measure by *emulate proposal*) decrease the hazard of egg donation bills, and more liberal political ideologies (measured by *NOMINATE* and *Citizen*), and increased percentages of *women in state legislatures* will decrease the hazard of ART legislation.

Policy scholars highlight the importance of intergovernmental influence, also known as diffusion—especially for legislation that can economically benefit a state (Berry and Berry 1990). Diffusion is defined as the influence of states on neighboring or like states in the proposal and passage of public policy (Walker 1969). More recent studies have shown that the learning and emulation effects of state neighbors is not such a strong influence on legislation about morality issues (Karch 2007). Other studies of morality policies about sex and reproduction reinforce that diffusion may not increase legislative activity (Sharp 2005). Instead, states may look to “like” states—those states that are similar in state culture, innovation, and ideology—rather than state neighbors. To measure the influence of diffusion, I employ *emulate proposal*, which is calculated as the percentage of neighboring states to a given state that proposed egg donation legislation in the previous year. Employing this emerging literature, it is likely that diffusion effects will decrease the hazard of ART legislation in a given state.

There is still much debate if liberalism of political elites or citizens at the state level impacts ARTs (for comparable studies of impacts of political ideology on controversial issues, see Smith and Tatalovich 2003 and Norander and Wilcox 1999). Liberalism does not neatly map onto ARTs (Sharp 2005, Markens 2007). However, other studies point to

the relationship between liberalism and increased reproductive options free from government intervention (Rose 2006).¹⁴ To measure state liberalism at the political elite and citizen levels, I use Berry et al's *NOMINATE* and *Citizen* state liberalism scores (2012). These scores are constructed from voting patterns in state legislatures, partisan control of state legislatures, and ideological positions of states legislators, and higher values indicate more liberal political elites and citizenry. I expect that the more liberal a state's *NOMINATE* and *citizen* scores, the hazard of egg donation legislation will decrease.

There is considerable evidence that the presence of women in legislatures at the national and state levels have considerable impacts on the type of legislation that is proposed and debated (Wolbrecht 2002). Female legislators are less likely to introduce and co-sponsor legislation that restricts reproductive choices (Dodson 1998, 2006, Wolbrecht 2002). Some scholars have pointed out that these findings vary at the state level, however (e.g. Reingold 2000, Swers 2002). I assume in this analysis that egg donation fits into a structure of reproductive options, so I use a gendered institutional control variable: the *percentage of female legislators* in each state legislature by year, as reported by the Center for American Women and Politics' annual reports (CAWP 2012). I expect that increased *percentages of female legislators* will decrease the hazard of egg donation legislation.

For extended descriptions and sources of morality, Instrumental, and control

¹⁴ Some also argue that reproductive options should be conceptualized as a negative right—that the government should not interfere with reproductive options. John Robertson (1994) argues that public policy should be derived from “procreative liberty,” whereby individuals have the liberty to procreate or not procreate without the intervention of the state. Taking this idea further, Radhika Rao conceptualizes reproductive equality, a concept of equalizing reproductive options to procreate or not procreate—expanded upon in Chapter 6 (2008).

variables, please see Table 1.

Table 3.1: Morality, Instrumental, and Control Variables

Morality Variables	Definition and Source
Moralistic	Static variables, coded 1/0. Traditional and individualist categories omitted and collapsed into one category, “non-moralistic” states (coded 0 in this analysis). <i>Data from Crowley, Jocelyn Elise, Radha Jagannathan, and Galo Falchettore. 2012. "The Effect of Child Support Enforcement on Abortion in the United States." Social Science Quarterly. 93(1): 152-172. Data from Elazar, Daniel. 1966. <u>American Federalism: A View from the States</u>. New York: Crowell and Elazar, Daniel. 1970. <u>Cities of the Prairie</u>. New York: Basic Books.</i>
Percentage Christian	Percentage Christian by the decade. <i>Data from Crowley, Jocelyn Elise, Radha Jagannathan, and Galo Falchettore. 2012. "The Effect of Child Support Enforcement on Abortion in the United States." Social Science Quarterly. 93(1): 152-172 Data are from the <u>United States Statistical Abstract</u>.</i>
Instrumental Variables	Definition and Source
Biopharma	Proportion of number of employees in the BioPharma industry (NAICS 3245 + NAIC 5417102) in thousands per number of state residents per year. <i>The Milken Institute, “Biopharmaceutical Study”</i>
Median Income	Median Income by state and year, 1998-2008. <i>Data from US Statistical Abstract.</i>
Percentage of Women in the Workforce	Percentage of women in the workforce (both part-time and full-time) by state and year. <i>Data from Bureau of Labor Statistics, Geographic Profile of Employment and Unemployment, 1990-2010. Compiled by Brian Hannon, BLS. 1997—2010 data found at http://www.bls.gov/opub/gp/laugp.htm</i>
Clinics	Proportion of the number of clinics in a state per year per 100,000 residents per year. <i>CDC.</i>
Control Variables	Definition and Source
Percentage of Female Legislators	Percentage of female legislators by state and year, 1998 to 2008. <i>Data from the Center for American Women and Politics, Fact Sheet Archive: Women in State Legislatures, 1975 to 2010.</i>
Emulate Proposal	Diffusion Variable; % of neighboring states that proposed any ART legislation in the previous year. <i>Data from Erin Heidt-Forsythe, calculated by same.</i>

NOMINATE	NOMINATE measure of state legislature ideology. <i>Data from Berry, William D., Evan J. Ringquist, Richard C. Fording and Russell L. Hanson. 1998. "Measuring Citizen and Government Ideology in the American States, 1960-93." American Journal of Political Science, 42:327-48. Revised 1960-2008 citizen ideology series (Berry et al 2010).</i>
Citizen	Measure of citizen ideology by state. <i>Data from Berry, William D., Evan J. Ringquist, Richard C. Fording and Russell L. Hanson. 1998. "Measuring Citizen and Government Ideology in the American States, 1960-93." American Journal of Political Science, 42:327-48. Revised 1960-2008 citizen ideology series (Berry et al 2010).</i>

For a description of models, covariates, and the covariates' hypothesized relationships to ART legislation, please see Table 2.

Table 3.2: Models, Covariates, and Hypothesized Relationships to Egg Donation Legislation

Model	Covariates	Hypothesized Relationship to Egg Donation Legislation
1: Morality Only	Moralist, percentage Christian	Positive: Increased hazard of egg donation legislation
2: Instrumental Only	Biopharma, income, percentage of women in the workforce, clinics	Negative: Decreased hazard of egg donation legislation
3: Combination	Morality, percentage Christian, biopharma, income, percentage of women in the workforce, clinics	Mixed: Increased hazard of egg donation legislation by morality variables, decreased hazard of egg donation legislation by Instrumental variables
4: Full	Morality, individualist, percentage Christian, biopharma, income, percentage of women in the workforce, clinics, emulate proposal, NOMINATE, citizen, percentage of women in legislature	Mixed: Morality increases hazard of egg donation legislation; Instrumental, Liberalism, and Diffusion decreases the hazard of egg donation legislation

Data Collection of ART Policy: Limitations at the State Level

In collecting the original dataset of egg donation policies and policy determinants

at the state level between 1990 and 2010, there were several hurdles in data collection. Data collection of the dependent variable, egg donation legislation, was difficult as it was largely based on online, official state legislatures' websites. There are no federal laws or standards regulating state legislative websites, which varied widely in the amount of legislative material available, over what time period, and how egg donation legislation is categorized in search functions. Without contemporary empirical studies of egg donation legislation and codified law at the state level, this study relies on the uneven information provided by state legislative websites. A majority of states (49) had bill text and bill histories available between 1998 and the present.

Independent variable data on instrumental and morality determinants were limited at the state level and in this observation period. An important measure of instrumental determinants, the fertility industry, is quite limited due to the privatized nature of the industry. For the rational/instrumental variables, there were many barriers to data collection: one of the most glaring issues is that the US Bureau of Labor Statistics does not record state-year information about the presence of biopharmaceutical industry if industry employment is below certain thresholds of overall employment in a state. More information on the biopharmaceutical sector in all states in all years would help sharpen this measure. Additionally, increased surveillance by the CDC—measured in all clinics registered as businesses, not just those that self-report to the agency—would improve any measure of the fertility industry. In the morality determinants category, *percentage Christian* is an imperfect measure of state religiosity. No data exists for state-years on church membership outside of decennial studies of religious congregations, so this study utilizes extrapolated data on percentage of the state population that identifies as Christian

per decade.

A large gap in this study is the absence of advocacy group activity determinants. The American Society of Reproductive Medicine, American College of Obstetricians and Gynecologists, and the American Medical Association are important political actors in ART policy at the federal level (Thompson 2005, Markens 2007). Not only have these advocacy groups encouraged the self-regulation of the ART industry, they have also spawned support groups that have a grassroots advocacy function at the state level, as is seen in RESOLVE's legislative work. Despite these important political players in shaping ART policy, there is no data on RESOLVE groups at the state level over my observation period. I rectify this gap with observation and analysis of state-level advocacy groups in Chapters 4 and 5.

Methods

For this analysis, survival analysis was chosen to analyze how different demographic, political, and economic independent variables impact the proposal and passage of ART legislation at the state level between 1998 and 2008. Survival analysis, also known as "event history analysis" or "hazard analysis," has been extensively used in political science to understand public policy events that occur over time (Berry and Berry 1990, 1992; Mooney and Lee 1995; Mintrom 1997; Box-Steffensmeier and Jones 1997). Survival analysis is defined as an analysis of *hazard rates* (the probabilities) of *failure or death* (a legislative event occurring) among a *risk set* (a set of individuals who are at risk) during a *risk period* (the period of observation in a study, also called a *spell*). From this information, this study can describe the probabilities of a case surviving over a period of time, also known as a *survivor function*. When comparing multiple survivor functions,

this types of analysis allows the researcher to see how many independent variables impact public policy event occurring over time. Among different types of survivor analysis, Cox proportional hazards regression models (a type of semi-parametric modeling) is a flexible method used in political science studies when the authors do not make an assumption about the relationship between time and the hazard rate. While the researcher can assume that risk is dependent on time, the researcher does not need to specify if the hazard rate increases, decreases, or does both. As previous literature on the proposal and passage of egg donation legislation at the state level has not clearly established the relationship between policy proposal and/or passage and time, the Cox proportional hazard model is most useful for the analysis. A hazard rate greater than 1 indicates an increased risk of a public policy event occurring, while a hazard rate less than 1 indicates a decreased risk of a public policy event occurring. The proportionality assumption is tested through Schoenfeld and Scaled Tests (Cleves et al 2004).

Survival analysis in general, and Cox models more specifically, allows researchers to understand all the observations in a data set over long periods of time—both occurrence and non-occurrence of policy events, a clear advantage over other quantitative methods of analysis. For this study, survival analysis enables the researcher to understand how policy determinants may increase or decrease the risk of egg donation legislation at the state level. Survival analysis has the capacity to analyze diverse types of variables over time, a clear advantage of the method over OLS regressions and logistic regressions: the method can handle both time-dependent and time-independent covariates as well as incomplete data. Cox model assume that each covariate has a proportional and constant effect on the risk of a public policy event occurring. This quality of survival analysis is

especially useful when looking at independent variables in this study that vary with time and may be significant in increasing the risk a state may propose egg donation legislation, such as the percentage of all state legislators that are women. Additionally, survival analysis can deal with data that is “censored,” meaning that incomplete information exists about the data due to the constrained observation period. This too is an advantage of this methodology, as data on egg donation bills (and independent variables) are limited by the data’s availability from state legislatures’ websites and public records.

Data Organization

In this study, the unit of analysis is state-year among 49 states, observed between 1998 and 2008, with a total of 539 state-year observations. The minimum number of state-year observations is 1, and the maximum number of state-year observations is 11. My dependent variables are legislative events—proposal and legislative activity on a bill before passage—that regulate egg donation. For a full description of the methodology of collecting ART legislative event information, please see Appendix 1.

The egg donation legislative events are dichotomously coded 1 if the state has the event, 0 if not. Legislative events are non-repeatable: once a state has had an egg donation legislative event, future observations are dropped from the analysis. If a state does not have an egg donation legislative event during the time period 1998 and 2008, then the data is *right censored* (there is non-occurrence of a legislative event during the entire time observed) and no further data is considered. The risk set of states in a given year are those states that have not proposed egg donation bill(s), and the risk period is based on the first year of proposal or adoption of egg donation legislation. To count time in the Cox models, there is a temporal variable *duration*, which measures the beginning

of all observations at year 1 (1998) and ends on year 11 (2008).

Models

To test the effect of my morality, instrumental, and control variables on egg donation legislation, I organize my variables into four models. These models test the effect of isolated morality variables on egg donation legislation, isolated instrumental variables on egg donation legislation, combined morality and instrumental variables on egg donation legislation, and a full model with morality, instrumental, and control variables.

Results: Models 1—3

The results of tests on Models 1 through 3 yield results that generally do not support the proposed hypotheses. In Model 1, *moralistic* state cultures did not significantly impact the hazard of egg donation legislation in comparison with non-moralistic (individual and traditional categories) state cultures. *Percentage Christian* variables also didn't significantly impact the hazard of egg donation legislation. This does not support the hypothesis that morality variables increase the hazard of egg donation legislation at the state level (Hypothesis 1). In Model 2, which tested instrumental variables only, my hypothesis was in general not supported by the relationships between instrumental variables and egg donation bill outcomes. As *Biopharma* increases in a state, there is a 1.5% increased hazard of egg donation legislation. As the number of *women in the workforce* rises by one unit, there is a 7.4% increased hazard of egg donation legislation. In this model, *Biopharma* and *women in the workforce* are significant at the .01 level. Similarly, as the number of *clinics* rises one unit per 100,000 people, there is a staggering 1616% increase in the hazard of egg donation legislation, significant at the .05 level. In Model 3, which combines morality and

instrumental variables tested for their effect on the hazard of egg donation bills, similar patterns are evident. An important change is that in Model 3, as the percentage Christian rises by one percent, there is a 2.7% decreased hazard of egg donation legislation. These findings are profoundly different than what previous literature would suggest—that morality variables promote governmental intervention, and instrumental variables impede governmental intervention in egg donation practices.

In the Full Model, I test morality variables, instrumental variables, and control variables on their effect on the hazard of egg donation legislation. In the Full Model, no morality variables are significant in impacting the risk of egg donation legislation. Like previous tests, instrumental variables generally increase the risk of egg donation legislation, going against expected relationships in my hypotheses. As the number of employees in *Biopharma* increases, there is a 1.8% increased risk of egg donation legislation. As the number of *women in the workforce* rises by one percent, there is a 7.4% increased risk of egg donation legislation. As the number of *clinics* per 100,000 people rises, there is a huge 652.2% increase in the risk of egg donation legislation. These findings do not support Hypothesis 1 and 2, which assert that morality variables increase the hazard of egg donation legislation, and instrumental variables decrease the hazard of egg donation legislation. The only variable that behaved in a predicted direction was *median income*, which decreased the risk of egg donation legislation by .1%. All significant independent variables in the Full Model are significant at the .01 level.

For the control variables, *emulate proposal* impacted egg donation legislation in a manner that supports Hypothesis 3, while *NOMINATE*, *citizen*, and *percentage of female legislators* do not impact egg donation in a manner that supports Hypothesis 4. As the

percentage of neighboring states that passed ART bills in the previous year rises, there is a decreased risk of egg donation bills. This supports the predicted relationship between forces of diffusion and egg donation legislation. *NOMINATE* and *citizen* variables were not significant in impacting the risk of egg donation legislation, but as the percentage of female legislators rose by one percentage, there was a 3.9% increased risk of egg donation legislation. This goes against the expected relationship between female legislators and egg donation bills asserted in Hypothesis 4. All of the significant variables in the Control category are significant at the .01 level. Results from Models 1 through 3, as well as the Full Model, can be found in Table 8.

Table 3.3: Cox Model Results of Egg Donation Legislation

	(1) Morality Model			(2) Rational/Instrumental Model			(3) Combination Model			(4) Full Model		
Covariates	Coeff.	Hazard Ratio	% Change	Coeff.	Hazard Ratio	% Change	Coeff.	Hazard Ratio	% Change	Coeff.	Hazard Ratio	% Change
Morality												
Moralistic	.172 (.136)	1.188 (.162)	18.8%				.076 (.168)	1.079 (.181)	7.9%	-.047 (.186)	.954 (.178)	-4.6%
Percentage Christian	-.008 (.005)	.992 (.005)	-0.8%				-.028*** (.006)	.973*** (.007)	-2.7%	-.009 (.007)	.990 (.007)	-1.0%
Instrumental												
Biopharma				.015*** (.004)	1.015*** (.005)	1.5%	.017*** (.004)	1.017*** (.004)	1.7%	.018*** (.004)	1.018** * (.004)	1.8%
Median Income				-.000*** (.000)	.999*** (.000)	-1.1%	-.000*** (.000)	.999*** (.000)	-1.1%	-.000*** (.000)	.999*** (.000)	-0.1%
Women in Workforce				.709*** (.015)	1.074*** (.020)	7.4%	.099*** (.020)	1.105*** (.022)	10.5%	.130*** (.028)	1.074** * (.024)	7.4%
Clinics				2.843** (1.114)	17.161** (19.129)	16.16%	2.102* (1.092)	8.1837* (8.943)	7.18%	2.018* (1.039)	7.522* (7.811)	6.52%
Controls												
Emulate Propose										-.012*** (.002)	.988*** (.003)	-1.2%
NOMINATE										.008 (.006)	1.008 (.006)	1.1%
Citizen										-.007 (.005)	.993 (.005)	-0.7%
Percentage Female Legislators										.038*** (.011)	1.039** * (.011)	3.9%

Discussion

The results in this chapter are counterintuitive, and challenge how the present literature conceptualizes competing interests' impact on egg donation oversight. Going back to Bonnicksen's 1989 query—what influences legislation, and what are legislative outcomes from the competition of interests in ARTs—the tests in this chapter of independent morality politics, instrumental, and control variables challenge and extend the current literature on stakeholders, competing interests, and government oversight of egg donation practices. In Chapter 2, a framework was established to understand ARTs that highlights the intrinsic hybridity of ARTs, specifically egg donation practices in the US. According to this framework, ARTs broadly and egg donation more specifically reflects a combination of stakeholders' interests in ART policy, such as researchers, consumers, and those with religious objections to ART practices. Previous literature about government oversight in ARTs asserts that these varied interests are in competition, with researchers, consumers, and ART practitioners' supporting free market ARTs without government oversight (Bonnicksen 2007, Thompson 2005, Goggin and Orth 2004). These scholars claim that although there are important concerns about bioethics intrinsic in egg donation, the stakeholders of ART consumption and production have kept ARTs from being regulated by state governments (Bonnicksen 2007, Thompson 2005, Goggin and Orth 2004). Moreover, concerns about “sex” should promote increased surveillance of egg donation, while concerns over “money” should exclude the government from ART oversight (Thompson 2005). However, the findings in this chapter directly challenge this argument: morality variables are not significant in increasing government oversight of egg donation practices, and instrumental variables *increase*, rather than decrease, government oversight of egg donation practices. Moreover, gender is an important part of the variables that increase the risk of egg donation

legislation at the state level. These findings force scholars of ART oversight to reconsider the relationships between morality politics stakeholders, instrumental stakeholders, and the role of gender as a social process in ART oversight.

Expectations and Refutations: Egg Donation as a Hybrid Issue

Given that the hypotheses laid out in this chapter have largely not been supported by the tests of morality, instrumental, and control variables, it is important to compare the expectations of these variables on egg donation bills to empirical relationships in this data, as well as contrast what a better framework may be for understanding the relationships between morality, instrumental, and control variables on egg donation legislation. Given the literatures on morality politics and policy—especially those social issues around family, sexuality, and reproduction—there is strong evidence that morality variables that reflect religiosity, conservatism, and moralistic state culture¹⁵ should increase government restrictions as expressed in legislation (Rose 2006, Sharp 2005, Rao 1998, Markens 2007, Mucciaroni 2011). The measures of morality employed in this chapter are not exhaustive, but strongly signal a given state's moral point of view on topics that have a fundamental, core moral component. For example, the percentage of Christians in a state variable has a strong predictive effect on gay marriage, prostitution, and sexually-oriented business legislative discourse and bills (Mucciaroni 2011, Sharp 2005). In terms of instrumental concerns—those interests of scientific, economic, and medical stakeholders in ARTs—the current literature links these concerns to how research and fertility treatment markets are formed (Thompson 2005, Daniels and Heidt-Forsythe 2012, Almeling 2011, Waldby 2009) and the proper oversight role of the government in ARTs (Thompson 2005,

¹⁵ Specifically, moralistic state cultures in comparison with non-moralistic state cultures (traditional and individualistic). See Table 3.1 and footnote 12 for coding.

Markens 2007, Daniels and Heidt-Forsythe 2012, Goggin and Orth 2004). This scholarship expects that given the strong, self-regulatory interest of instrumental stakeholders, there will be little ART oversight. Again, the findings in this chapter refute this conclusion—in fact, instrumental variables increase the risk of government oversight. In the results of this chapter, egg donation emerges as a hybrid social issue. Restrictions and regulations of egg donation are impacted positively and definitively by economic, scientific, and medical stakeholders. How then do we move to a framework that better describes the competition of interests at play in egg donation legislation in the US, to extend the current literature to the legislative realities of government oversight of ARTs?

I argue that egg donation bills buck the pattern of reproductive morality politics and policy¹⁶—reinforcing the theoretical claim in Chapter 2 that contemporary social issues that have a moral component also have weighty economic, scientific, and medical stakeholders that compete for influence in legislative activities. These results also support the claim that egg donation bills in the US defy expectations about how ARTs are largely free from government oversight due to the demand of free market ARTs by consumers and corporations. The results in this chapter support a new vision of how stakeholders impact legislation: rather than working against one another, economic, scientific, and medical stakeholders are working with the government for oversight—and producing more legislative activity than is previously thought (e.g. Bonnicksen 2007). Rather than as a barrier to the free market, states may be working to enable markets in eggs, egg donors and consumers, and egg donation practices. This challenges the conventional wisdom that governmental oversight stifles the ART industry.

¹⁶ E.g., the pattern of morality policy variables (religiosity, conservatism) which increases the risk of abortion restriction legislation (Mooney and Lee 1995).

In the background of these relationships, there is an important force of gender at work: as my results assert, egg donation legislation is impacted positively by increasing percentages of women in the workforce and women in state legislature. This suggests an uneasy partnership of gender and neoliberal regulatory approaches to egg donation, and perhaps ARTs more broadly—and shifts how scholars understand the role of women in state politics. As Beth Reingold’s study of California and Arizona legislators demonstrated, female legislators are more likely to be “policy leaders,” as well as personally active, on legislation pertaining to women, children, and families (Reingold 2000). Moreover, the field of women and politics has examined the links between female members of Congress and legislative activity that reflects gendered social concerns—both women, children, and family legislation as well as feminist bills (Swers 2002, Wolbrecht 2002, Dodson 1998). While the impact of women in government on gendered policy varies by geographical region and level of government, the presence of women in legislatures—be they at the national or state level—do matter. In this way, ARTs may be perceived as a women’s and family issue, rather than a scientific or technological issue. The outcome of this framing of ARTs in state and national legislatures is yet unclear; while the cases in Chapters 4 and 5 make clear that gender in government impacts ART legislation, there are conflicting themes of equality and reproductive choice which reflect liberal feminist concerns. At the same time, the themes of protectionism and reproductive labor reflect conservative ideologies of gender, sex, and family that reject technological interventions in reproduction. As I discuss in Chapter 6, the role of gender in ART policy formulation and democratic discourse is crucially absent.

These empirical results and a reframing of the relationships between moral and instrumental influences on egg donation legislation gives a broad look at how social, economic, and political forces impact government oversight of ARTs. How are these interests expressed in democratic

processes of policymaking, and what sorts of policies are produced by these competing interests?

In Chapter 4 and 5, this analysis moves to four case studies of states regulating egg donation practices, and examines these processes up close—analyzing how competing concerns over bioethics, economic growth, scientific innovation, and medical safety overlie gendered and raced political processes of bill introduction and passage.

CHAPTER 4: FROM “EGG DONORS” TO “HUMAN SUBJECTS”: FRAMING OF EGG DONATION IN CALIFORNIA AND NEW YORK

From Tocqueville to the present, commentators on American culture have called attention to this country’s particular penchant for resolving political controversies and achieving social order through law. It is hardly surprising that in an age of anxiety about the products of science and technology the U.S., the public has increasingly turned to law to reassert control over the processes of scientific and technological change.

Sheila Jasanoff (1994)

Although instrumental variables are important predictors of egg donation bills at the state level, there is still a question as to how political elites—particularly state legislators—conceptualize egg donation as a social issue. This chapter, as well as Chapter 5, uses the concept of framing—a “way to describe the power of a communicating text”—in which to illuminate the social meanings of egg donation that are formed in state legislatures, and what impacts the issue definition of egg donation has for broader meanings of gender and reproduction in democratic political processes (Entman 1993, 51). While Chapters 2 and 3 focus on which morality and instrumental variables increase the hazards of egg donation legislation, this chapter and the next examines the institutional discursive practices around egg donation policy. Given the potential causes of this legislation, an examination of how framing strategies in egg donation bills shapes policy outcomes, with attention to the legislative success and failure of these policy outcomes is necessary to understand how ARTs are defined as a social issue. This chapter gives the methodological framework for analysis of framing strategies in California and New York (this chapter) and Arizona and Louisiana (Chapter 5), as well as analyzes instrumental framing strategies and policy narrative in egg donation legislation in California and New York. Finally, I forward that instrumental framing of egg donation may facilitate egg donation practices, but that the democratic deliberation in these cases

has been weakened by the strong role of bureaucratic oversight structures in California and New York. Moreover, this leaves states in a less powerful position to deliberate on important issues of reproductive labor embedded into an instrumental definition of egg donation.

Finding Frames: Methods and Data in Chapters 4 and 5

In this section, I first discuss how egg donation is one way to understand discursive framing of ARTs more broadly. I explain how looking specifically at egg donation brings forth important debates over instrumental and moral interests embedded in reproductive and technological practices which have implications for both regenerative medicine research as well as the treatment of infertility. Then, I discuss how issue definition through framing plays an important role in how social issues are understood and acted upon in political life. Issue framing identifies which social problems are important, defines how the content should be understood, and often determines policy outcomes (including who the policy is trying to target) (Schneider and Ingram 1993). As previous scholars have noted (see Chapter 2), morality policy is defined through processes of issue definition rather than intrinsic content—and this chapter will clarify how issue definition via a framing ascribes social and political meaning to egg donation practices. Framing is enhanced in this research by my use of policy narrative analysis, in which an observation of connected discourses and information gives further insight into how egg donation is conceptualized in this chapter, as well as Chapter 5.

These methods are applied to two cases that use instrumental framing (California and New York, see this Chapter) and two cases that employ morality framing (Arizona and Louisiana, see Chapter 5) in the regulation of egg donation. These two sets of case

studies are used to analyze how different methods of framing in bill text and policy discourse shape policy solutions to the perceived social problem of egg donation. Interestingly, not only do policy solutions among my cases diverge in this chapter as well as Chapter 5, the relative success and failure of framing approaches give insight into how competing interests of medical innovation, personal demand, and state economic growth bump up against moral qualms about egg donation practices. As “framing of public policy proposals is typically designed to evoke a broader political or ideological position,” there are political and ideological implications to how California, New York, Arizona, and Louisiana frame the social problem of egg donation in legislation (Baumgartner et al 2009, 166). An analysis of these cases asserts that different framing strategies at their core reflect fundamental differences about the potentiality of egg cells—creating policy solutions that are grounded in a politics of reproductive labor on one hand (California and New York) and a politics of personhood on the other (Arizona and Louisiana).

What’s at Stake in Egg Donation? Instrumental and Moral Concerns and Interests

To demonstrate how issue framing of ARTs occurs, this chapter focuses on egg donation as a particular subtype of ARTs¹. However, egg donation conceptually belongs to ARTs: egg donation practices embody the same questions about social and political actors, concerns about the role of markets in reproductive labor and materials, and egg donation has the same implications for medical research and practice. Egg donation is particularly fitting to study how instrumental and morality framing strategies shape

¹ ARTs are defined by the CDC as reproductive technologies that bring together sperm and eggs for purposes of reproduction. In this project, I have expanded this definition to include related technologies such as egg donation, which uses only eggs. Moreover, the CDC does not include in its definition the role of donated gametes in research settings.

public policy around ARTs more generally. In the cases analyzed in Chapters 4 and 5, states grapple with the diverse concerns of egg donation both within research settings as well as egg donation in the infertility treatment market. In the US, the fertility treatment market is only lightly regulated by the Fertility Clinic Success Rate and Certification Act of 1992, which provides for clinic surveillance and certain laboratory standards (see Chapter 1). The fertility treatment market is not regulated as to how they may compensate egg donors (either third parties or IVF patients²) so many clinics have followed ASRM guidelines around compensation—although there is no system of punishment, except for being barred from the organization, that enforces these guidelines. While some states have instituted ASRM guidelines around other issues (informed consent, ethics, insurance coverage), there are conflicting laws about egg donation in fertility treatment at the state level (Heidt-Forsythe 2012). This patchwork of state laws impacts framing of egg donation in diverse ways. Scholars have noted that the fertility treatment industry has largely been ignored by state regulators, a claim that is supported by original research on state-level egg donation policies (Knowles and Kaebnick 2007, Bonnicksen 2007).³ Some scholars have claimed that fertility treatment remains in a sphere of individual privacy and demand (Thompson 2005), while others have pointed to the individualized conceptions of motherhood (Roberts 2009), as well as individualized and privatized experiences of infertility and pregnancy loss (Throsby 2004, Layne 2003). As is supported by these cases (Arizona excepted) and broader patterns in ART legislative data, moral arguments about egg donation in the fertility industry have largely

² Egg donation can occur through third party egg retrieval or egg sharing by IVF patients, whose leftover ovum can be donated to other fertility treatment patients.

³ I note in Chapter 3 that this argument does not take into account the considerable evidence of ART legislative activity targeting ARTs in both the fertility treatment sector, as well as the research sector.

been relegated to academic debates (Heidt-Forsythe 2010, 2012). Public debates about ARTs more broadly are instructive in the discursive frames about egg donation: in some public discourse frames, women are selling their bodies and body parts for large sums of money in a coercive fashion (Markens 2007). Alternatively, the perceived altruism of egg donors makes egg donation a saintly gift from one woman to another (Almeling 2010). Marketing materials are particularly instructive in understanding discursive frames around egg donation, as moral altruism is blended with instrumental goals of gifts and money for the donation (Daniels and Heidt-Forsythe 2012). Compensation levels for eggs are high in the fertility market, where guidelines of \$10,000 per donation may be exceeded without legal recourse (Ikemoto 2007). Arguments against compensation for egg donation are numerous: this system of compensation commodifies genetic material via gendered, raced, and classed traits that may or may not be heritable—creating a practice of “gender eugenics,” whereby social value is measured by stereotypes of femininity (Daniels and Heidt-Forsythe 2012). This system of compensation and commodification occurs among egg donors, who as a group are younger as well as more economically fragile (Ikemoto 2009, Almeling 2011). Eggs are objectified and commodified to an extent that is unparalleled by the severely restricted compensation of body parts and body fluids (Goodwin 2006). Others assert that a system of compensation ensures procreative liberty and self-determination, as well as a better ART market for consumers (Robertson 1994, 2010; Thompson 2005).

Egg Donation in Research Settings

Egg donation within research venues contains both instrumental and moral concerns: while egg donation is necessary for genetic and reproductive research, the raw material

for this research comes from the reproductive material and labor of human donors. Moreover, the moral permissiveness of using reproductive materials for research purposes highly controversial (Steinbock 2011, Dickenson 2007, ESHRE Task Force 2007) . While such labor is highly commodified in the privatized fertility treatment market, egg donation for the purposes of research is often more highly regulated by institutional review boards, research protocols, and state legislation limiting reproductive research—and often not compensated at the same levels as private fertility treatment markets. Instrumental reasons for using donor eggs in research abound, as eggs provide the raw material for a range of experimentation and research on regenerative medicine (Waldby 2009). Donated eggs are needed to start stem cell lines, to experiment with SCNT, where legal, and to improve technologies surrounding infertility treatment. As egg donation is a long and medically involved process—including taking fertility enhancement drugs and undergoing an outpatient egg retrieval surgery that necessitates the patient be anesthetized— there is a scarcity of eggs for the research sector (Waldby 2009). In light of restrictions on payments for eggs retrieved for research in some research settings, the scarcity of eggs in research is an important concern for both public and private biotechnology companies (Waldby 2009).

For both the fertility treatment market and the research sector, there are important considerations at work in egg donation. While these two markets may be distinguished by the levels of compensation available in each (as well as how each act of egg donation is framed in and out of research settings), these two markets are similar in both scarcity and questions over the worth of reproductive labor. Given the intensive medical procedure of

egg donation, as well as the medical standards⁴ set forth for viable eggs donated, there are less eggs available for fertility treatment and research, compared to sperm (Almeling 2011, Daniels and Heidt-Forsythe 2012). This scarcity is contextualized by the lively scholarship on the worth of reproductive labor—the labor of egg donation which in rare instances may be dangerous to a woman’s health. The duality of moral and instrumental concerns over egg donation “allows for tremendous social, technical, and entrepreneurial innovations, even while reproducing many of the conservative tropes...of motherhood” (Thompson 2005, 242). Most academic research on ART policy in the American states give greater weight to instrumental concerns over ethical quandaries (Bonnicksen 2007). However, there is a large history of feminist, bioethical, and legal ethical critiques of egg donation in and out of research settings (e.g. Steinbock 2011, Thompson 2005). Given this conflict of concerns, there may be diverse and contradicting approaches to issue framing of egg donation in state settings.

Issue Definition Through Framing

Framing in communication theory is a process of selecting certain parts of a social issue and understanding these parts as a specific problem with a particular “treatment recommendation” (Entman 1993, 52). Scholars have examined how cognitive frameworks have been used by political elites to make sense of complex social problems, to create attitudes and issue positions towards the problems, and to attribute blame (e.g. Haider-Markel and Joslyn 2001, Iyengar 1990, Nelson and Oxley 1999). Political science scholarship since the 1970s has examined how issues move from public discourse to

⁴ To donate eggs in research settings as well as fertility treatment, the egg donor undergoes a battery of physical, psychological, and background tests for fitness of donation. While these tests vary considerably (especially for those seeking to donate for fertility treatment, rather than research), combined with the medical rigor of egg donation, eggs are scarcer than sperm in both fertility treatment and research sector markets (Daniels and Heidt-Forsythe 2012, Waldby 2009).

policy-making settings in the legislature, the routes they may take to become policy through interest group activity, the public sphere, and within political institutions, and the role of experts in shaping policy movement (Cobb and Elder 1972, Kingdon 1984, Baumgartner and Jones 1993). These processes are very important to understand why the government at the state level may intervene in a complex issue like egg donation.

For legislators, framing is a process of defining a social problem, identifying the causes of a social problem, connecting the social problem to moral concerns, and suggesting solutions for the given problem (Entman 1993). It is also a process of competing interests vying for control over defining the “same underlying phenomenon,” in this case egg donation (Baumgartner et al 2009, 166). If you “control the definition of terms in the debate, you control the direction of public policy”—for example, surrogacy portrayed as “baby selling” in state legislative debates have a different policy impact than surrogacy portrayed as an altruistic act for “needy couples” (Baumgartner et al 2009, 49; Stone 1998, 2002; Markens 2007). The rhetoric used in a bill to describe egg donation and to prescribe policy solutions is another method to understand the movement of a social issue into the legislative sphere. Along this line, analyzing bill frames give some insight into how certain practices and concepts of egg donation are highlighted in creating social meaning around a complex medical act with complex social consequences.

Analysis of Bill Text

While legislative intent can be hard to ascertain in light of the challenges of state legislative research⁵, to analyze frames in a bill, one can read changing bill texts in the

⁵ State legislative websites vary widely in the content available about legislative histories. Among the 49 states in my sample, a majority of states (see Chapter 3) had legislative histories on ART bills between

context of bill histories—specifically looking at introduced versions of a bill, amendments, and final versions of a bill, contextualized by committee hearings and agendas, interest group statements, press releases, and veto statements. In this chapter and chapter 6, bill text is used to ascertain framing of egg donation as a social issue. In the first part of analysis of egg donation bills in my four cases, there is an analysis of frames in bill text. After downloading every version of a given bill, each version was coded for instrumental or morality frames. To do this, each paragraph of a bill was examined, and coded as “instrumental,” “moral,” or “procedural.” “Instrumental” frames communicated intent about medical practices, scientific innovation, and economic growth.⁶ “Moral” frames communicated intent about feminist concerns, bioethics, and general ethics.⁷ “Procedural” frames communicated administrative procedure or definitions of terms, and were not used in the analysis of framing strategies around egg donation in this chapter, or in Chapter 6.⁸ These frames were predetermined before coding, given the role of instrumental variables and morality variables in Chapter 3; conceptual frameworks about morality policy in regards to gay marriage and surrogacy were especially helpful in creating broad frameworks for analysis of egg donation (Mucciaroni 2011, Markens 2007). A preliminary test of the coding scheme was used on California’s SB 1260 (see this chapter), which helped delineate the procedural frames that are omitted in my analysis of cases in this chapter, as well as Chapter 6. For each case, there is a log kept of total frames in a bill, the number of instrumental frames, the number of moral frames, and

1998 and 2008, although some states had data back to 1992 (e.g. California). Some websites offer legislative histories of great detail and quality of content, while others simply offer a legislative history of bill success or failure.

⁶ A more extensive definition of these terms may be found in Appendix 2.

⁷ A more extensive definition of these terms may be found in Appendix 2.

⁸ Full data on all frames, including procedural frames, is available with the author but is omitted in Chapters 5 and 6.

the number of procedural frames. There is also a record of how the instrumental frames are broken down by sub-type (economic, medical, and science). This procedure was also used to break down the moral frames in a bill by sub-type (feminist, bioethics, ethics).

Policy Narrative Analysis

Counting frames in text do not give a full narrative of the assumptions, ideologies, and beliefs embedded in the concept of egg donation. I have chosen to accompany an empirical study of framing in bill text with “policy narrative analysis,” a study of how bills “communicat[e] meaning, values, and beliefs...in try[ing] to make sense of new social problems” (Price 2011). In this method, an analyst looks to different voices in a policy debate to understand the discursive and sociopolitical context around a perceived social problem. In the case of studying egg donation, this policy narrative analysis looks to discourse outside of official bill text: the demographic information and party identification of sponsors, legislators’ press releases, media appearances, committee agendas and transcripts, interest group ratings, and gubernatorial veto letters where available for each case. The material used in the construction of a policy story about egg donation must have a clear narrative and make an argument about the cause and solution for egg donation, although there may be multiple arguments, causes, and solutions in each piece of narrative evidence used in the construction of a policy story—for example, Bob Stump’s CSPAN interview in Chapter 5 asserts that coercion *and* health risks warrant the prohibition of compensation for egg donation in Arizona. Logs of demographic and party identification of sponsors are kept for each case, as well as the interest group ratings of each sponsor when available. For each piece of narrative evidence, a log was made of the narrative or narratives of each document—specifically

how the social problem is described as one of instrumental or moral concern. These diverse materials allowed me to understand what Stone (2002) calls causal stories: legislators define social problem of egg donation from underlying ART phenomena, identify the problematic aspects and cause of egg donation, and suggest policy solutions for egg donation.

Selection of Cases

In this chapter, I have selected four cases, grouped in two categories: Instrumental approaches to framing in California and New York; Moral approaches to framing in Arizona and Louisiana. I use these cases to analyze how instrumental and morality frames shape public policy solutions (as well as the bills' success and failure) in restricting egg donation. California, New York, Arizona, and Louisiana were selected to maximize the variation in framing strategies⁹ and political contexts¹⁰, as well as to control for professionalization and presence of interest in ART policy in general. All four legislatures are classified as “full time legislatures” by the National Conference of State Legislatures, which means that in all of the states selected, a legislators' job is 66% to 100% a full time job—with moderate to large staffs and salaries large enough to support a legislator without additional work. These four states were chosen as they met a threshold of ART policy activity in general—in the 1990 to 2010 period, all of the states chosen as cases introduced at least 5 egg donation bills. This characteristic controls for state activity on ART policies in general, and avoids the pitfall of a single bill being indicative of state legislative activity on egg donation. Please see Table 1 for a

⁹ Framing strategies are those uses of moral and instrumental frames.

¹⁰ Political contexts are the ideological and regional characteristics of each state.

description of cases.¹¹

Table 4.1: Case Studies

State	California	New York	Arizona	Louisiana
Framing Strategy	Instrumental	Instrumental	Moral	Moral
Political Context ¹²	48.44	42.86	48.43	73.70
Number of Egg Donation Bills, 1990—2010	17	13	8	5

In the dyads of comparison, California and New York have large populations, are politically diverse, have a predominance of ART clinics and biotechnology employment, have highly professional legislatures, and have a historical context of policy innovation in regards to kinship, reproduction, and genetic technologies (Markens 2007). Arizona and Louisiana as a dyad have smaller populations that are racially diverse, have fewer ART clinics and biotechnology employment, have highly professionalized legislatures, and have a similar historical context of conservatism towards social issues of kinship, reproduction, and genetic technologies (Heidt-Forsythe 2010, 2012). As the resulting dependent variables—egg donation bills and their success or failure—vary, these cases are able to be compared. See Table 2 for a description of framing strategies and bill outcomes within the cases in this chapter, as well as Chapter 5. Although egg donation legislation has not been comparatively studied in California and New York in the contemporary period, scholarship comparing the two states’ approaches to regulating ARTs is not new (e.g., Markens 2007, Ikemoto 2009, Smith 2009). What is novel about

¹¹ Cases were selected using the original data set collected for the hazard analysis in Chapter 3; see Appendix 2 for more information about methods in case selection and data collection.

¹² Measured by NOMINATE Score in 2006. Higher scores indicate a more conservative state legislature, on a scale of 0 to 100 (Berry et al 2012).

examining introduced bills about egg donation in research settings is how California and New York take much more similar approaches in framing egg donation in research as a social issue, compared to their divergent approaches to other ARTs, such as surrogacy (Markens 2007). In this analysis, two cases of egg donation regulation in research settings—California’s Senate Bill 1260 (SB 1260) and New York’s Senate Bill 0433B—will assert one set of state approaches to issue framing, namely egg donation as a instrumental concern.

Table 4.2: Cases, Framing Strategies and Bill Outcomes

State	California	New York	Arizona	Louisiana
Case	SB 1260	S 433	HB 2142	SB 452
Framing Strategy	Rational-Instrumental	Instrumental	Moral	Moral
Bill Outcome	Passed, signed into law by Governor	Failed, bureaucracy oversight	Passed, vetoed by Governor	Failed, died in committee

Instrumental Framing of Egg Donation in California and New York

California and New York are ripe cases for analysis of egg donation for three reasons: the role of the states’ identities as biotechnology centers; the connection of egg donation to regenerative research in the public and private sectors, and the important role of bureaucratic structures (specifically the California Institute for Regenerative Medicine, or CIRM, and NYSTEM) in regulation of egg donation practices. These factors contribute to California and New York framing egg donation as a instrumental issue in SB 1260 (2006) and S 433B (2006). Both states identified themselves as biotechnology hubs in each of the bill text—a reaction to federal (in)actions around issues of regenerative medicine and ARTs in research (Markens 2007). To fill the funding vacuum left by the *Dickey-Wicker Amendment*, which prohibits federal funding for embryonic and/or fetal

research, as well as George W. Bush's (2001) restrictions on federal funding attached to existing stem cell lines, both states had identified state-funded regenerative research as an important priority (Roxland 2010). Given the need for human cells and tissues for regenerative research, egg donation as a social issue is not just a practice associated with the fertility treatment market, but an important part of the research market: while demands for eggs are similar in two markets, the discourses used to attract donors, and the compensatory practices vary (Waldby 2009). While eggs donated for both markets have enormous value in light of scarcity of egg supply, the onus is on states to negotiate the ethical concerns over commodification and exploitation and the demands for regenerative research innovation. In California and New York, egg donation is solidly part of the states' bioeconomies. This implies a connection of egg donation in research to instrumental concerns over scientific innovation, economic growth, and safe medical practices (Waldby 2009). The states are also comparable in the unorthodox use of bureaucratic structures—to facilitate legislative activity around egg donation in research. As the case studies of California and New York demonstrate, this oversight of ARTs to promote regenerative medicine does not impede egg donation practices, but does in fact have some drawbacks: namely that democratic deliberation about ARTs is removed to bureaucratic structures, avoiding public discourse about the value and markets in the reproductive labor of egg donation.

Outside of ARTs, California and New York are considered to be “bellwether” states in how they respond to social policy (Markens 2007). Similar in their politics of family and reproduction, they nonetheless differ slightly in their policies around ARTs, specifically surrogacy—while California upholds surrogacy contracts, New York does

not (NCSL 2008). While this has resulted in different policy approaches to surrogacy, this does not hold true for regulation of egg donation. Both states are strikingly similar in the construction of an instrumental policy narrative of egg donation: that the state's regulation of egg donation in research is not meant to create a barrier between users and egg donation practices, but meant to facilitate and grow ART oversight within a state. While this is a signal of increased governmental involvement in ARTs—albeit in a new site, the research sector—the policy outcomes are distinct from cases where egg donation is framed as a moral issue.

In this chapter, California's SB 1260 sets the stage for egg donation regulation—as a matter of bipartisan work, egg donation in research is strongly connected to the CIRM in pursuit of increased biotechnology growth and innovation. While New York is not a neighboring state subject to policy diffusion, it is a similar state that has been particularly active in legislative oversight of egg donation (among other ARTs)¹³. Like California, New York employs bureaucratic structures to frame egg donation as an instrumental issue towards policy outcomes that facilitate research in the state. These states envision reproductive labor of egg donation as a concept situated in bioeconomies of research—one distinct from egg donation in fertility treatment, one that can achieve instrumental goals for the state, and a practice that should not be stopped but increasingly subject to formalized transactions.

California Senate Bill 1260 (2006)

Although Senate Bill 1260 went a step further than previous bills in regulating compensation of egg donation in research settings, it is but one bill in California's long

¹³ This supports findings in Chapter 3 that the diffusion variable does not increase the hazard of egg donation bills in a state.

history of policy innovation in assisted reproductive technologies. First, I will discuss how egg donation is but one issue within a web of social concerns about reproduction and the family (with connected anxieties about LGBTQ reproductive liberties and social rights, and genetic technology) in California. Then, I will explore how the bipartisan work of SB 1260's cosponsors—Deborah Ortiz [D] and George Runner [R]—was the foundation for the instrumental framing of the bill, which in turn laid groundwork for the bill's easy passage through both houses, as well as being successfully signed into law by then-Governor Arnold Schwarzenegger [R]. Finally, I will discuss the unique bureaucratic and advocacy politics present in California in 2006, and how these politics created a bill that framed egg donation regulation as an instrumental solution to perceived demand for regenerative research.

Public Policy and the Protection of Non-Traditional Families

California's long history of grappling with ethical and instrumental ideas of egg donation is embedded in a progressive history of laws around kinship and the family. In general, California is identified as being one of the first states to make separation, divorce, and alternative parenting arrangements easy to access in the 1960s and 1970s. This is evidenced by California's innovative regulation of marriage and child custody: establishing no-fault divorces, upholding a community property standard, and adopting a joint custody arrangements through the Uniform Custody Act (1973), the state has treated persons in heterosexual relationships, particularly marriage, in a more egalitarian manner than other American states that have historically limited divorce, property division, and custody of children.

Therapeutic Abortion and Reproductive Justice

An understanding of egg donation regulation is rooted in the state's defense of reproductive justice for women. California was one of the first states to enlarge reproductive access for women in the pre-*Roe* era. In the late 1950s and early 1960s, professional and political elites took up the issue of antiquated abortion laws in the state—enabling women to access abortion more easily in light of hospital panels and standards for justifications for therapeutic abortion varied widely (Luker 1984). Led by these political elites with grassroots feminist activists converging on the abortion issue by 1966, then-Governor Ronald Reagan signed the *Therapeutic Abortion Act* in 1967 (Luker 1984). This act was a model for other states that sought to liberalize and decriminalize their abortion laws (Rose 2006). After the *Roe v Wade* decision in 1973, California emerged as one of the most progressive states in abortion regulation: among the most liberal states concerning abortion access and protection, California funds all or most medically necessary abortions, allows the use of public funds for abortion, and gives state constitutional protection to the right to access abortion services (Rose 2006). The restrictions that California has placed on abortion are largely relegated to restricting physicians as the only practitioners of abortion (Rose 2006). Taken together, the family and reproduction has been regulated by state legislature, but in a direction that is largely liberal: California has mediated family and reproduction through means that protect diverse families, rather than enshrining traditional norms of parentage.

California: A “Safe” State for ARTs

Given this backdrop of innovation, aimed at making the formation (and re-formation) of families easier, the judicial system in California has protected and upheld alternative family formations. Unlike other states that have balked at the violations of traditional

determinants of motherhood and fatherhood—such as genetic or gestational maternity—California protected alternative family arrangements borne through surrogacy in cases such as *Johnson v Calvert* (1993), which established California as a legally safe state for recipient parents. Similarly, the group of cases that establish parental obligations equally to same sex partners—*Elisa B. vs Superior Court* (2005), *K.M. vs E.G.* (2005), and *Kristine H. vs Lisa R.* (2005)—demonstrates that the court system conceptualizes the family in non-traditional ways with sensitivity to ART-conceived families (Smith 2009). Similarly, the state protects women from donor paternity claims—preventing sperm donors from establishing legal rights to an ART-conceived child and making the state a haven for recipient parents who want legal protection to use ARTs in family formation (Markens 2007).

Grappling With Gametes in California

While California is one of the more liberal states regarding family policy, it has a mixed history of regulation of reproductive technology. California is one of fifteen states that has banned reproductive cloning (NCSL 2008). However, the punishment for violating this ban is less harsh than in other states, as California's law threatens medical license revocation and civil penalties if this prohibition is violated. This is in stark contrast to other states, which have established monetary penalties up to \$1 million (NCSL 2008). While banning reproductive cloning, California permits nonhuman cloning in research settings, although these practices are regulated by state law (NCSL 2008). The state has affirmed stem cell research, going so far as to publicly fund it through *Proposition 71* (2004), also known as *The Stem Cell Research and Cures Bond*. This was the first adopted state policy of its kind to not only endorse regenerative medicine

research, but to reinvision state government as having active regulatory and funding roles in stem cell research within the state.

Egg Donation Legislation, 1997—2004

In line with the state's innovative approaches to governmental intervention in family, reproduction, and science, egg donation was identified as an important social issue in the pre-*Proposition 71* period, between 1997 and 2004. In this period of five years, 6 bills were introduced that regulated the practices of egg donation in California. These bills targeted the issues of written consent, directives, and compensation, concepts that would resurface in the regulation of egg donation in SB 1260. AB 1251 (1997), would make it a felony to use sperm and eggs outside of written directives and consent by donors.

Although AB 1251 was unsuccessful in passage, three years later, Tom Hayden [D] introduced SB 1630 (2000), another attempt to regulate egg donation practices. SB 1630 required a certification of ART clinics and standardized summaries of egg donation procedures for patients and consumers. Like AB 1251, SB 1630 regulated research *and* private fertility for reproduction—a view of egg donation that would permanently change by 2002. After 2002, regulation of compensation was focused on egg donation in the research sector.

Deborah Ortiz [D]—who would go on to co-sponsor SB 1260 (2006)—introduced two pieces of ART legislation that targeted compensation practices in research: SB 1272 (2002) and SB 253 (2002). While SB 1272 prohibited the compensation of donor eggs for research, SB 253 barred compensation for fetal tissue donated for research purposes. In these bills, there is a clear attempt to confront the growing market in reproductive materials, but only through a framework of prohibiting compensation in research

settings—a clear break from Senator Hayden’s regulation of research *and* fertility treatment markets. This movement towards regulating research was cemented a year later, as Senator Ortiz sponsored SB 771 (2003) and SB 322 (2003). In these bills, Ortiz asserted that standard written directives of donated material (SB 771) and the establishment of a research review board (SB 322) were necessary to regulate the growing biotechnology sector. These bills were both successful in passing, however they were superseded by the passage of Proposition 71.

Setting the Context for SB 1260: Proposition 71

Proposition 71 (2004) is a unique historical event in state politics, as it represents the collision of California’s unique legislative environment with its increasingly strong identity as a hub for biotechnology economies. In 1999, the Department of Health and Human Services (DHHS) determined that stem cell research was exempt from the *Dickey-Wicker Amendment* (signed into law by President Clinton in 1995), which barred a federal research money from funding DHHS research that destroyed an embryo, regardless of the origin of the embryo. Free to use human cells and tissue, stem cell research was not without controversy; in his presidential campaign, George W. Bush promised to ban stem cell research, a promise that developed into a restriction on stem cell lines for research in August of 2001. Although Congress pushed for more relaxed rules on the use of eggs and tissue for stem cell research in 2005—primarily through the use of discarded embryos from in-vitro fertilization treatments—the federal legislature refused to fund national research using assisted reproductive technology between 2001 and 2005. This lack of federal funding was the impetus for California’s unique legislative opportunity to fund regenerative medicine research, through a non-legislative initiative,

Proposition 71.

Proposition 71 authorized the use of state bonds to fund stem cell research, a method of tax allocation usually reserved to finance infrastructure such as hospitals and schools. The use of these bonds for stem cell research was unique, as were the goals of Proposition 71: to change the state constitution, to allocate large amounts of state funds via bonds for stem cell research, and to establish state infrastructure to oversee stem cell research and related technologies in California. The state's stem cell oversight body, the California Institute for Regenerative Medicine (CIRM), used a citizen, lawyer, researcher, and academic-headed Independent Citizens Oversight Committee (ICOC) to determine how state funding would be allocated to stem cell research projects throughout the state.

California has an initiative system, by which citizens and advocacy groups can initiate state statutes, without the intervention of legislative bodies in the lawmaking process. Proposition 71 was rooted in this administrative process, and was backed by a wide coalition of politicians and elected officials (again, Senator Ortiz among them), celebrities, religious groups, biotechnology companies, and mainstream women's health advocacy groups such as Planned Parenthood of California. As if to predict the counterintuitive bipartisan politics around SB 1260, a strange group of advocates opposed Proposition 71: Republicans (most of which represented the ideologically conservative Orange County), the Conference of Catholic Bishops, pro-life groups, and bioethics groups¹⁴ that would later enter the debate about SB 1260. Highly funded and well publicized, the backers of Proposition 71 raised nearly \$25 million in support of the initiative, swaying Governor Arnold Schwarzenegger's support in October of 2004. In

¹⁴ The Center for Genetics and Society and the Pro-Choice Alliance.

November 2004, Proposition 71 passed by a margin of almost 3 million votes and more than a 10% margin in favor of the measure.

Proposition 71 was not just notable for how it symbolized a strong state response to federal reluctance about stem cell donation, but how it signaled California as a “friendly” state for stem cell research, egg donation in the research setting, and the biotechnology industry in general. As the first state to commit tax money to stem cell research and infrastructure, California was distinct. Although Massachusetts had passed a similar stem cell law, it did not have the same infrastructure and funding ramifications as Proposition 71. Soon after Proposition 71’s passage, the legislature—many of whose members supported the initiative—began to further regulate egg donation within the context of Proposition 71 and CIRM.

SB 18 (2004), sponsored by Senator Ortiz [D], took aim at Proposition 71 and CIRM. SB 18 increased regulations of egg donation compensation for state-funded research, despite the prohibition of amending the CIRM for 4 years (Steinmann et al., 2009). Additionally, Ortiz’s bill added a provision to the CIRM allowing it to be audited by a legislative group—addressing many of the concerns of the original opponents of Proposition 71. SB 18 passed in the Senate and Assembly, but was vetoed by Governor Schwarzenegger who claimed to support the egg donation compensation regulation, but resisted any amendment of the CIRM until 2008 (Schwarzenegger 2008).

The federal government was also becoming more active on bioethics issues associated with regenerative medicine and ARTs. In 2005, the National Academies of Science (NAS) published ethical guidelines for research in stem cells, specifically addressing issues of egg donor compensation and informed consent in the research sector.

These guidelines suggested limiting compensation for egg donors to direct expenses associated with donation. While the NAS recommendations on restricting (but not banning) egg donor compensation were an important federal statement on these issues, California state legislators sought more oversight of egg donation compensation. Although bogged down in legal challenges by former SB 1260 supporter California Family Council, Schwarzenegger authorized nearly \$3 Billion to jump start the grant-making activities of the CIRM shortly after the passage of SB 1260 in 2006.

SB 1260: Bipartisan Beginnings

In February 2006, Senators Deborah Ortiz [D] and George Runner [R] introduced SB 1260. SB 1260 built upon 2004's voter-approved Proposition 71, as well as NAS recommendations in 2005. However, SB 1260 was more restrictive than both bodies' ethical guidelines, as the bill proposed the prohibition of compensation for egg donors in research contexts (Angel 2007). In SB 1260, stricter regulations were proposed in regard to egg donation to research: (1) that written consent of the egg donor to donate eggs for research purposes was mandatory and (2) prohibited human eggs from being bought or sold for compensation (called "valuable consideration") for the purposes of research (SB 1260 Introduced Version). While not addressing the egg donation in fertility treatment, SB1260 signaled a strong oversight role for the state legislature to restrict compensation—and the negative social consequences of compensation—in research settings.

Deborah Ortiz and George Runner: Reproductive Policies and Bipartisan Connections

Deborah Ortiz had an extensive history of work on stem cell and reproductive rights issues when she introduced SB 1260. A Democrat representing Sacramento, she

prioritized reproductive health care during her terms as senator, such as the California Freedom of Access to Clinic and Church Entrances Act (2001), which protected individual access to reproductive health clinics from the intervention of protestors. Between 2002 and 2006, Ortiz sponsored or co-sponsored four bills that sought to regulate stem cell research and egg donation practices as they related to this research.¹⁵ Her co-sponsor, George Runner [R], was a less obvious supporter of SB 1260. As a Republican, Runner represented conservative-leaning, rural areas of Northern Los Angeles, San Bernardino, and Ventura counties. Unlike Ortiz, Runner's tenure in the Senate (2004—2010) demonstrates that he was not an ardent supporter of ART regulations in pursuit of reproductive access: instead, his work with Ortiz signals the bipartisan compromise of the Democrats and Republicans during 2006 to provide the legislature with increased oversight of CIRM. His co-sponsorship of SB 1260 is especially interesting due to the nature of his conservative stance on reproductive issues: as a social conservative, Runner had spoken out against reproductive rights, and would later challenge legislation on Gardasil as promoting sexual improprieties. In 2008, Planned Parenthood Affiliates of California—who supported SB 1260 in 2006—gave Senator Runner a 20% rating, which qualified him as “Anti-Choice.”¹⁶ This strange partnership that authored SB1260—Ortiz, the feminist advocate of reproductive rights and technology, and Runner, the staunch social conservative—was unique among other cases of state regulation of egg donation in research during this period.¹⁷

¹⁵ Ortiz co-sponsored SB 18 (2005) with George Runner, her co-sponsor of SB 1260 (2006). It was passed by the legislature, only to be vetoed by Governor Gray Davis.

¹⁶ <http://www.ppactionca.org/voter-resources/scorecards/2008-pro-choice-scorecard.pdf>

¹⁷ More research into this political pairing would yield greater insight as to why a social conservative like George Runner would support this bill, especially in light of the instrumental framing of egg donation in SB 1260.

SB1260: Introduced Text

In the introduced version of the bill, among 13 total frames, a majority (85%) of the frames were instrumental frames. Among all instrumental frames, most addressed medical practices of egg retrieval in stem cell research. For example, bill text reflected a standardization of medical practice: “prior to...donating oocytes for medical research or medical therapies, a physician and surgeon shall provide to his or her patient a standardized written summary...of assisted oocyte production” (SB 1260, Introduced Version).

In the introduced version of SB 1260, only two frames out of 13 total frames, or 15%, reflected morality concerns. These concerns explored the ethical impetus for a prohibition of egg donation compensation. Particularly, the bill sought to avoid coercion of egg donors in the research process: “no payment shall be made...to **encourage** [the egg donor] to produce human oocytes for the purposes of medical research” (SB 1260 Introduced Version, emphasis author’s own). Ethical language within morality frames reflected not only concern over coercion, but the problem of commodification and exploitation of egg donors. Importantly, these moral frames don’t reflect fundamental concerns over personhood and life.

In light of the majority of the bill that was framed in instrumental terms, the initial version of SB 1260 was strongly instrumental in its framing of an ethical issue, with more attention on egg retrieval practices rather than the ethical complications of state-endorsed egg donation in research. In the introduced version of SB 1260, there remains a fuzzy boundary between regulation of the research sector and regulation of the private fertility industry: women that supply eggs are labeled as “egg donors,” and there is no recognition

of the strongly commodified market of egg donation for fertility treatment (SB 1260 Introduced version). This liminal space was clarified through the committee activities and amendment process, which clearly delineated the research sector from fertility treatment markets—which resulted in a specific, instrumental oriented framing of egg donation.

Committee Activity and Amendments

Soon after the introduction of SB 1260, there was already a turf war over the regulatory power of the state legislature versus the CIRM. On March 17, 2006, Senators Ortiz and Runner announced SB 1260 via press conference; the same day, ICOC published a rebuttal via press release (ICOC Press Release 3/17/06). ICOC claimed that SB 1260 was unnecessary as CIRM restrictions on egg donation were already in place. While the ICOC was willing to work with Ortiz and Runner on developing ethical standards around the practice, the competition among stakeholders early on in this bill show the power struggle over egg donation as a social issue (ICOC Press Release 3/17/06). Immediately referred to the Health Committee (on which Ortiz sat), SB 1260 easily passed with a series of amendments slowly enlarging the scope of the bill, through increasing both moral and instrumental frames in the bill.

In the first set of amendments in the Senate Health Committee on April 6, 2006, the Health Committee added language that clarified how egg donation in research was distinct from egg donation for fertility treatment—by changing the rhetoric about subjects of egg donation practices (the “egg donors”) and the process itself (previously referred to as “donation” in the introduced bill). The health committee got rid of “donation” language, instead characterizing egg donation as “retrieval for research,” further reinforcing a instrumental frame centered on medical procedures as they relate to stem

cell research. Moreover, this change in rhetoric implies that egg donation for the research sector is a distinct practice from egg donation in fertility treatment—while donation practices are the same, there are different compensation discourses for fertility treatment and research, falling in line with feminist theorizing on the emerging markets in research for egg donation (Waldby 2009). While the framing of egg donors as patients was strengthened through this amended language, there was also increased morality rhetoric added to the bill during this period. The committee specifically points out that the “potential of exploitation of reproductive capabilities of women for commercial gain raises health and ethical concerns that justify the prohibition of payment for human oocytes” (Section 1).

Hearings and Conflict: SB 1260 and the CIRM

In the bill’s first hearing in the Senate Health Committee on April 19, 2006, the American Society for Reproductive Medicine (ASRM), the NAS, the CIRM, and the Assisted Human Reproduction Agency of Canada (AHRA) were all cited models for the regulatory structure of SB 1260 (Senate Analysis 4/17/06). Advocates in favor of SB 1260, such as the Center for Genetics and Society, claimed bioethical reasons for supporting the bill, arguing that SB 1260 “prevent[ed] a market that influences a woman to provide eggs” for research (Senate Analysis 4/17/06). The bill passed unanimously with amendments and was referred to the appropriations committee.

This focus on ethics within egg donation was struck in the second round of amendments in late April 2006, in favor of asserting that the “purposes of this act is to create protections for research subject and should not be construed to affect any other form of medical care” (SB 1260, 4/26/06). Additionally, language investigating the “state

of science of ARTs” and informed consent requirements were replaced by federal standards on the Protection of Human Subjects in Medical Experimentation Act, as well as guidelines from the Human Embryonic Stem Cell Research Report by the NAS (2005). Finally, egg extractions for research were required to undergo institutional review board (IRB) approval. This is a clear striking of moral frames, in favor of instrumental rhetoric that delineates private fertility treatment from donation regulation; additionally, there is increased deference to national guidelines. The bill passed unanimously in the Appropriations Committee April 26, 2006, with only a slight change to reporting requirements.

Interests and Advocacy in “Lost Wages” Debates

The ICOC was troubled by the easy passage of amendments to SB 1260 in April 2006 (CIRM Transcript 5/16/06). In a public meeting of ICOC members and representatives from research firms and advocacy groups on May 16, 2006, there was much confusion over what guidelines for donation compensation would take precedence—SB 1260 or CIRM standards (CIRM Transcript 5/16/06). In this meeting, the ICOC argued that double standards for egg donation compensation would be detrimental for researchers and ART practitioners, whose grant money might be compromised while navigating a potential “double” set of guidelines put in place by SB 1260, such as waiting for IRB approval before extracting donor eggs. Shannon Smith-Cowley, a representative from the American College of Gynecologists (ACOG) as well as the American Society for Reproductive Medicine (ASRM), was especially concerned about the pattern of egg donor regulation bleeding into private fertility practice (CIRM Transcript 5/16/06). In this meeting, Smith-Cowley urged ICOC to play a more active role in SB 1260, as the bill

was being controlled by advocates from the “medical community and Center for Genetics and Society and such” (CIRM Transcript 5/16/06). Especially troubling to Smith-Cowley was the “inherently unfair” banning of compensation for egg donors’ lost wages in SB 1260 (CIRM Transcript 5/16/06). SB 1260 passed easily in the Senate soon after.

SB 1260 in the Assembly

With a unanimous passage in the Senate in late May, SB 1260 was sent to the Assembly, where it was assigned to the Assembly Health Committee on May 30, 2006. By June, the concerns of the ICOC—especially those of ACOG and ASRM—seemed to be met.¹⁸ The Assembly Health Committee went further than the Senate in striking down much of the language around morality, specifically the language around bioethics (Assembly Committee on Health 6/27/06). Advocates of the bill argued that SB 1260 demonstrated “respect and dignity of women,” and helped research donors avoid commercialization and coercion, especially donors that are “economically vulnerable women” (Assembly Committee on Health 6/27/06). At this hearing, ACOG and ASRM officially opposed SB 1260 and demanded that donors be compensated for their time and lost wages due to egg donation (Assembly Committee on Health 6/27/06).

The resulting amendments in the Assembly reflected the power of ACOG and the ASRM in the Assembly, and the fading strength of ethical framing in SB 1260. Instead of an IRB, a “stem cell research oversight committee” was established to oversee egg

¹⁸ After the failure of SB 18 in 2005, Deborah Ortiz broke up the language of SB 18 (2005) into SB 1260 (2006) and SB 401 (2006), and tried to pass each separately in 2006. In June 2006, Robert Klein (chairman of the CIRM), writing as the head of “Advocates of Stem Cell Therapies and Cures” interest group, reprimanded Ortiz for SB 1260 and SB 401. He stated that she is an “ongoing threat” to stem cell research in CA due to her vigilance around legislative oversight of egg donation. Moreover, he reported that Ortiz had broken with a group of legislators in talks with the CIRM over legislative oversight (Senator Bowen, and Sens. Don Perata, D-East Bay; Joseph Dunn, D-Garden Grove; and Jackie Speier, D-San Francisco) and went rogue in sponsoring SB 1260 and SB 401. Later, Senator Bowen is the single vote against SB 1260.

donation in research contexts—in doing so, the Assembly Health Committee was deferential to the oversight guidelines articulated by the NAS in 2005 (Assembly Committee on Health 6/27/06). Most significant among the changes in the 6/26/06 amendments, the committee struck “there shall be no reimbursement for lost wages” and allowed reimbursement for “expenses incurred as a result of the procedure”¹⁹ (Assembly Committee on Health 6/27/06). Passing unanimously, SB 1260 inched closer to passage as it was referred to the Assembly Appropriations Committee in August 2006.

The hearings in August furthered the direction of SB 1260 away from the few ethics frames in the bill and towards a instrumental approach to research. On August 7, the Health Committee kept SB 1260 for one more round of amendments. In deference to the ICOC, SB 1260 was amended by committee to read that the bill “would encourage the ICOC to take prescribed actions, including, but not limited to reviewing studies concerning the health risks...of ovarian stimulation drugs” and insisted that the goal of the bill was not to amend Proposition 71 (SB 1260 Hearing Transcript 8/7/06). Similarly, morality language about the “ethical and medical implications” of egg donation for research, as well as an entire section about “health risks and benefits” of ovarian stimulation drugs in oocyte donation was struck from the bill. As if to further reinforce this turning away from morality framing of egg donation in research settings, all mentions of “donors” were replaced with “subjects”—a re-categorization of individuals who would be directly impacted by this bill as individuals belonging to a field of research, rather than autonomous individuals that could be confused with egg donors for

¹⁹ While the exact definition of “expenses occurred” is not in SB 1260, compensation was only to reimburse egg donors for transportation and medical care. Compensation could not be “extra” in this bill—patients could not receive money above and beyond expenses directly associated with donating eggs (SB 1260 Hearing Transcript 8/7/06).

fertility treatment. Passing unanimously in the Assembly Appropriations, the measure passed in Conference with only 2 noes, from a Southern Californian Republican and Democrat, the latter of which was the founder to the LGBT Caucus in California. In the final vote, only Senator Bowen [D], who worked closely with the CIRM during the summer of 2006, voted against SB 1260.

SB 1260: Final Version

SB 1260 underwent major changes that shifted bill language, especially morality-oriented language. Out of 23 total frames in the final enrolled version of SB 1260, a majority (59%) of frames were instrumental frames. Out of these instrumental frames, most reflected medical practices. For example, language about “donation” was replaced with “oocyte retrieval for research” (SB 1260 Final Version). This medical/research ethics framing is especially important, as the legislative, bureaucratic, and advocacy contexts of SB 1260 demonstrate the strong role of organizations like the CIRM, ACOG, and ASRM. The number of science frames went up from the initial version of SB 1260 to the final version of SB 1260, from 2 frames to 3.5 frames. This also may reflect the strong role of advocacy organizations in reframing egg donation as a research issue, conceptually delineating egg donation in research from egg donation in fertility treatment.

Like the initial version of SB 1260, the final version of SB 1260 had more instrumental frames and fewer morality frames, in both absolute number and as a percentage of overall frames. In the final version, only 8.5 out of 23 total frames were morality frames, about 37% of total frames in SB 1260. While this is an increase from the initial version of SB 1260, morality frames are still significantly in the minority of total

frames. For example, morality frames are in place to reflect ethical concerns, such as in Section 1 D of the chaptered version of SB 1260: “the potential for exploitation of the reproductive capabilities of women for commercial gain raises health and ethical concerns that justify the prohibition of payment for human oocytes” although later in the bill compensation for lost wages and appropriate medical care is allowed.

Success: SB 1260 and Bipartisan Work on a Instrumental Issue

As SB 1260 demonstrates, successful passage of egg donation regulation can result from not only a state history of liberal and progressive politics of reproduction, family and kinship, and stem cell research, but can also arise out of bipartisan co-sponsorship among political elites that were previously divided on reproductive rights, as well as demographically different in gender and race. Although bureaucratic structures such as the CIRM was one barrier to bill passage—as there are structural limitations on regulating egg donation per Proposition 71—the bill moved easily through the Senate and Assembly in the spring and summer of 2006. While this narrative reflects work on a bipartisan bill with strong historical context and public support for assisted reproductive technologies, there is an important source of conflict embedded in this narrative.

Advocacy groups, specifically ACOG and ASRM, are central stakeholders in SB 1260’s amendments about compensation—a stark contrast to the advocacy groups interested in New York’s S 433B, and the anti-abortion, pro-personhood advocacy groups in Chapter 5. In tracing the amendments over spring and summer of 2006, instrumental framing of egg donation is only strengthened over time, especially in terms of rhetoric around coercion and compensation, as well as the description of donors as research subjects. This policy narrative illustrates one way for a government to intervene in egg donation

practices successfully: bipartisan work, plus framing egg donation as a instrumental social issue, in the context of biotechnology growth. This framing is in stark contrast to cases in Chapter 5, which frame egg donation as an act of coerced (dangerous) reproductive labor. The implications of this framing—and oversight—of reproductive labor through egg donation in research is discussed in light of the case study of New York in this chapter’s conclusion.

Who Needs the Legislature? Egg Donation Compensation and Regulation in New York’s S 433B and NYSTEM

New York has been identified by previous scholarship on surrogacy as a good comparative case to ART activity in CA (Markens 2007). This choice of New York—a “like” state to California in terms of diversity, population, metropolitan areas, and forward thinking on issues of family formation and reproduction—is even more apt when comparing the legislative approaches to regulate compensation of egg donation between 1990 and 2010. In this section, New York will be analyzed through two political streams: S 433B (2006), a bill introduced by Senator Liz Krueger to restrict compensation for egg donation in research in 2009, and NYSTEM, the New York bureaucratic counterpart to CIRM—a powerful body that later set compensation rules for egg donation in research, arguably skipping over the instrumental and moral concerns of state legislators. While New York is a comparable case of instrumental framing of egg donation, the case of S 433B and NYSTEM provides richer detail as to how research is a new site of governmental regulation of reproductive health, and how the relationships that support regenerative research—particularly those between egg donors and researchers—are becoming increasingly formalized and transactional, no matter the compensation level for oocytes.

Kinship and Family Relations in New York

Although New York has historically had an ideologically liberal state legislature and citizenry, it has been slower to adopt more progressive attitudes towards family formation, reproduction, and genetic technologies (Berry et al 2012, Markens 2007). In regards to divorce laws, property sharing, and child custody, New York has followed California in implementing progressive laws. For example, only since 2010 has New York allowed couples to divorce without a separation period. While California has a community property standard, New York does not have rules that all property and assets must be split equally between separating partners. New York passed the Uniform Custody Act four years after California. This suggests that California has a more flexible definition of marriage than New York—that marriage is more easily dissolvable and is based in a commercial contract, rather than New York’s more traditional attitude towards preserving marriage (Markens 2007). This more constrained view of marriage has changed in recent years with the legalization of gay marriage in the state of New York in 2011—while gay marriage is currently not recognized in California. Additionally, New York recognizes gay adoptions and which may signal a movement of New York away from traditional norms of marriage towards a more progressive vision of kinship and family relations.

Abortion Law and Reproductive Justice

While more restrictive than California in their abortion restrictions, New York is far more permissive than a majority of American states in the overall effect of abortion restrictions versus abortion protections in the state (Rose 2007). New York does not have a requirement that an abortion be performed in a hospital. Moreover, New York uses

public money to fund abortion services for medically needed abortions (Guttmacher 2012). While individual health providers are allowed a refusal to avoid performing an abortion, New York does not restrict abortion through waiting periods, counseling, or parental involvement in minor abortions (Guttmacher 2012).

Reprogenetics and Regulation in New York

New York takes a more conservative approach to ARTs and stem cell research. While both California and New York protect *married* recipient parents of artificial insemination by donor (AID) from paternity claims by the donor, unmarried women in New York are not protected from such claims (RESOLVE 2012). In regard to surrogacy, New York claimed in the 1990s (through state court cases like *McDonald v McDonald* [1994]) that surrogacy contracts were against the state's public interest. As such, in New York State, surrogacy contracts are void and unenforceable. While contracts are unenforceable, New York State has historically recognized the parental rights of recipient parents in a surrogacy arrangement. Legal protections for the arrangements, however, are not in place like they are in California (Markens 2007). Finally, New York (like California) requires insurance companies to cover infertility treatments—a willingness of the state to view infertility treatment as a necessary procedure to achieve family formation, rather than conceptualizing infertility treatment as a privilege.

These divergent responses in comparable states can be attributed to framing strategies of surrogacy in the media and in the state legislature during the late 1980s and early 1990s (Markens 2007). Like the shifting attitudes towards marriage in the state, there were increasing calls for stem cell research and biotechnology development in the early 2000s, in response to federal restrictions on fetal and embryonic research (Roxland

2010). Although scholarship around surrogacy has framed New York as more conservative than California in its approach towards family, reproduction, and assisted reproductive technologies, this characterization appears to be incorrect in light of shifting attitudes on family and ARTs, as well as the groundbreaking work of NYSTEM described later in this chapter. New York, it seems, is growing into a biotechnology center that rivals the development of California.

Early Movers: New York and Egg Donation Legislation, 1999—2004

In the period between 1999 and 2004, New York was a site of vigorous activity around issues of stem cell research and ARTs. New York is clearly distinct from California, with not only the volume of bills in this period that address egg donation in some way (nearly 40 bills), but with the scope of these bills. The bills during this period grappled with medial practices of egg freezing, health insurance coverage of donated eggs in fertility treatments, and reproductive cloning using donated eggs (1999—2000). This is nearly two years earlier than comparable egg donation bills in California. There is a clear pattern of egg donation bills that are proposed every session until successful passage—signaling that New York is an early site (compared to California, as well as cases in Chapter 5) of discourse around egg donation as a social issue. For example, in the 2001—2002 session, the “Cloning Prohibition and Research Protection Act” failed but was reintroduced in the next two regular sessions (2003-4, 2005-6) of the New York State Legislature. This act symbolizes the issues that the state legislature felt most necessary to regulate: egg donation for cloning research (A09292, S00670, S01689, S07638), parentage of donor egg-conceived children (A11650), the necessity of written directives from donors of eggs and embryos (S00671), and insurance coverage of egg

donation (S00936, S05627, A02003, S01265, S05627). Unlike California, a state that saw a spike in egg donation concerns after Proposition 71 and the establishment of CIRM, New York was grappling with a discourse of egg donation before the establishment of NYSTEM. Given the large number of bills during this period, it is counterintuitive that bureaucracy—rather than legislation— would eventually set the standard of egg donation restrictions. While the story of S 433B lends insight into the issue framing of egg donation within research, the greater narrative in New York is the political activity outside of legislative processes in which to regulate an issue deemed quite important early in this time period.

S 433B: A Instrumental Approach to Egg Donation Regulation

Senator Liz Krueger, a white female Democrat representing District 28 (the wealthy Upper East Side of Manhattan), introduced S 433B in 2006. While the bill included restrictions on SCNT, it also prohibited monetary compensation for the eggs used to establish a stem cell line (such as donated ovum), required written directives and informed consent for disposition of eggs and embryos developed for stem cell research, and prohibited the patenting of raw material for stem cell research, such as eggs. Unlike California's SB 1260, New York's S 433B proposed restrictions of compensation for egg donation that were embedded in a larger policy of developing regenerative research. This is a clear framing of egg donation restriction as an instrumental good for the purposes of stem cell research.

Senator Krueger and Reproductive Policy in New York

As a Democrat from Manhattan, Senator Krueger's ideological positions on abortion and family issues contextualize this bill. She clearly supports increased

reproductive access for abortion as well as increased support for reproductive technologies. Between 2002 and 2009, the anti-abortion *New York Right to Life* gave Senator Krueger an average rating of 19%, indicating that her Senate votes were in line with the organization's ideology only 19% of the time. In 2004, NARAL Pro-Choice New York gave Senator Krueger a "Pro-Choice" rating. In a 2010 Political Courage Test by *Project Vote Smart*, Senator Krueger professed support for state funding of state stem cell research as well as embryonic stem cell research²⁰, a support for increased choice in research and fertility treatment that she later argued during legislative deliberations around S 433B (Krueger Press Release 3/21/2006). Cosponsored by three male Democrats (Senators Paterson, Oppenheimer, and Schneiderman), S 433B was a Democratic bill rather than a bipartisan effort, as was seen in California's SB 1260.

S 433B: Introduced Text

S 433B is distinct in the kinds of instrumental and morality frames used in the language of the bill. In total, there are 9 total frames asserted in the introduced version of the bill. Among these 9 frames, 6 frames (67%) are instrumental frames and 3 frames (33%) are morality frames—a clear overall framing of egg donation compensation as a instrumental issue. Although instrumental frames dominated in this bill, bill memos published alongside the text of the bill identify the significant ethical concerns in making public policy around egg donation in stem cell research (S 433B Sponsors Memo 2006). This memo, written by Senator Krueger and the bill's cosponsors, argues that policymaking about egg donation should be rooted in a balancing of "ethical, societal, and medical concerns"—not prioritizing moral concerns, but letting them inform medical practices and scientific innovation (S 433B Sponsors Memo 2006). This language is

²⁰ http://votesmart.org/candidate/political-courage-test/55235/liz-krueger/#.UO2TmIVm_7A

strikingly similar to the framing of egg donation in California as a moral issue: ethical concerns are tied to science and medicine.

Among instrumental frames used in the introduced version of S 433B, two frames represented medical practice concerns. This is in line with medical practice frames in SB 1260. However, S 433B is distinct from California's SB 1260 in how economics and science are stressed over the regulation of medical practices: S 433B asserts that there are large economic benefits in bringing stem cell research—and related egg donation technologies—to New York. S 433B identifies that the “biotechnology is a potentially significant component to the New York economy” which could provide “substantial employment...[and] substantial wages and salaries” (S 433B, Section 2452-5). This is a clear recognition of biotechnology not only as a social good, but also as an economic engine—a conclusion that is much discussed at the state level, given states' powers to economically incentivize the biotechnology sector to come to their state (States and Stem Cells 2006). Specifically, the bill text asserts that “New York has historically been a haven for open scientific inquiry and technological innovation” and that with this bill the state had the promise of being in a “leadership role...in developing [ART] technology” (S 433B, Section 2452-4). This case is unique in how New York identifies itself in the text of the bill as a biotechnology hub.

Connected to the self-conceptualization of New York as a biotechnology hub, there is an interesting frame of governmental responsibility in S 433B that is not observed in California's SB 1260, nor cases in Chapter 6. This is a frame of governmental responsibility²¹—where the state legislature argues for governmental oversight to protect

²¹ It is strikingly similar to frames of governmental responsibility used in bills around gay marriage (Mucciaroni 2011).

society. The last paragraph in S 433B asserts “New York State shall regulate this emerging technology in order to protect society from known risks” (S 433B, Section 2452-8). This framing of governmental responsibility reflects how “risks” should be managed using instrumental solutions, rather than framing “risks” as moral, fundamental issues of life (again, as is observed in Chapter 6). In comparison to SB 1260, this New York regulation of egg donation compensation similarly uses instrumental frames, but deploys these frames in slightly different ways: New York, in S 433B, not only sees itself as a biotechnology hub, but also highlights the responsibility of government in regulation of bioethical issues related to reproductive technologies.

Among the three morality frames in S 433B, all reflect the importance of bioethics in policymaking around ARTs in stem cell research. New York resembles California in its reluctance to deploy gendered frames—while addressing oocytes as distinct from other gametes, S 433B does not assert how the bill may protect women’s health or well-being. Instead, moral concerns are framed as bioethics issues in of stem cell research, specifically about informed consent, restriction of monetary compensation for the raw material (i.e., oocytes) in research, and the prohibition of patenting this raw material (i.e., oocytes, sperm, and fertilized embryos) that will later become stem cell lines for research. While fewer in number and less important than the instrumental frames used in S 433B, ethics are a consideration for legislators, as attested by the sponsor memo and the introduced bill text (S433 2006).²²²³

²² Unlike California, New York’s legislature does not release committee transcripts to the public. To fill gaps in data, this analysis uses Sponsor Memos (written arguments by sponsors, submitted alongside bill text), committee agendas, press releases, and news items to supplement the policy narrative of S 433B.

²³ Other regulatory organizations have grappled with framing egg donation within fertility treatment and research. In the UK, the Warnock Committee (1984) members responded in three disparate ways to the use of “spare” embryos for research: a complete rejection of embryonic research due to the potentiality of life; that there should be universal rules of embryonic experimentation on spare embryos *and* embryos created

A Republican Blockade: Committee Activity and Amendments on S 433B

In January of 2006 S 433B was refiled and sent to the Health Committee. There, it stalled until March 2006, when the sponsor, Senator Krueger, filed a motion to bring the bill to the floor of the Senate for a vote. In a unanimous action, Senate Republicans blocked the motion to petition, and the bill was dead on March 21, 2006. In her March 2006 press release, Senator Krueger urged Republicans to allow the bill to come to the floor: "In spite of New York's reputation as a world-class epicenter for medical innovation, states such as California threaten to leave New York behind in the race toward new technologies involving stem cell research" (Krueger Press Release 3/22/06). In this clear comparison to California, Senator Krueger stresses the importance of economics—a biotechnology arms race among states like minded in promoting stem cell research.

This is reinforced by Senator Krueger's June 2006 Press Release, which was released long after the bill was dead in the legislature. This press release demonstrates how ethics are linked to instrumental goods in regulating egg donation in regenerative research:

One important way in which New York State can encourage stem cell research is by creating an ethical policy framework to guide the development of stem cell research programs. Senator Krueger's bill would address moral issues by banning reproductive human cloning, and protect stem cell research by creating a mechanism for the transfer of unused genetic material to scientific institutions, requiring the clear and informed consent of donors.

(Krueger Press Release 6/2006)

The language to describe eggs used for regenerative research—labeled broadly as “unused genetic material”—is a instrumental framing of the issue, even though it

for research; some also believed that there was in fact a moral distinction between embryos created for reproduction and those created for research (Steinbock 2011). Given these complex ethical distinctions, the UK created the Human Embryology and Fertilisation Authority in 1990 (Steinbock 2011).

connects egg donation to moral concerns, as well as a framing of eggs as potential life. The press release goes on to excoriate New York Republicans for making the social issue an ideological, rather than instrumental, concern—connecting their blockage of the bill to George W. Bush’s social conservatism towards stem cell research in 2001 (June 2006 Press Release).

The death of S 433B was typical of other egg donation bills in the 2005—2006 session. Besides S 433B, five other bills regarding egg donation were introduced in the Assembly and Senate during this period. Interestingly, Senator Krueger was the only Democratic sponsor of an egg donation bill: the majority of the remaining egg donation bills were introduced by Republican male members in a Republican-controlled legislature during this period. The Republican-sponsored bills during this session concerned parentage, prohibition of egg donation for cloning, and egg donation storage—bills that had been introduced in previous sessions and were to be introduced in future sessions, only to fail repeatedly in committee despite Republican control of the legislature during this period. While Senator Krueger was the only female Democratic member to introduce egg donation restriction bills, evidence from the 2005—2006, 2007—2008, and 2009—2010 sessions indicates that there was little success for egg donation restriction bills in general—for bills that were framed as instrumental issue *and* bills that were framed as moral issues.

After S 433B: Egg Donation, Compensation, and a New Role of the Bureaucracy

The story of New York’s regulation of egg donation in research settings is a story of alternative paths to government oversight—unlike the other cases in this chapter, New York is unique in how a bureaucratic agency took control of oversight and regulation of

egg donation in research, rather than the oversight emerging from the legislature. In March of 2007, Governor Eliot Spitzer, Lieutenant Governor Paterson, the Majority Leader, and the Assembly Speaker announced that they had come together to fund regenerative medicine research in the state. This allocation of funds created NYSTEM, a bureaucratic agency that was designed to give oversight for the state allocation of funds, much like the establishment of the CIRM in California three years previous. Unlike California's voter-led initiative, the regenerative medicine bill was embedded in the appropriations bill from the 2007 session. The bill allocated \$100 million for regenerative research in 2008, and \$50 million per year for ten years after this date—for an unprecedented allocation of \$600 million for stem cell research and related technologies, i.e. ARTs. While the state was taking action through appropriations, three egg donation restriction bills stalled in the 2007—2008 session: Senator Krueger's reintroduced bill, storage for donated eggs, and prohibitions of egg donation for research did not make it out of committee for a floor vote. While bills directly addressing ARTs within research settings repeatedly died each session, the leadership of the legislature and the executive branches in the state went over the Assembly and Senate's heads to establish a bureaucratic infrastructure to in fact make New York another leader in biotechnology research and development.

What is so notable about NYSTEM—besides how New York viewed the success of California and emulated the CIRM with a similar bureaucratic oversight body—was the unique position NYSTEM took in 2009. Unlike the CIRM, which largely gathered political power over egg donation from Proposition 71 and legislative activities that endowed the CIRM with more power and oversight, NYSTEM took a deeply individual

position in 2009: The Empire State Stem Cell Board—composed of the funding and ethics committees of NYSTEM—released a statement that egg donation (specifically egg donation) for NYSTEM-funded research could be paid (NYSTEM website). This was the first time that a state in the United States that regulates egg donation within research settings allowed the payment of egg donation, up to \$10,000 (Nelson 2009). While researchers could pay for human eggs, NYSTEM also mandated rigorous psychological testing as well as informed consent procedures for egg donors—couched in instrumental frames of public health and patient safety (NYSTEM 2012). Instead of following the NAS recommendation on egg donor compensation—as California did—New York’s guidelines came from the private fertility industry. These guidelines for payment were culled from the ASRM’s recommendations for fertility treatment—aligning the two forms of egg donation (Nelson 2009). Most clearly, this shift in recommendations exposes the blurring of the research and private fertility industry, especially in the context of egg donation.

The New York case is an interesting counterpoint to the groundbreaking activity in California. While the partisan politics behind S 433B were somewhat similar to California—regulation of egg donation within research settings was spearheaded by a female Democrat—²⁴in other ways, the politics of New York’s S 433B were deeply different. In New York, there was little bipartisan support of the issue; while a high volume of bills were introduced, there was little action and forward movement in getting bills on egg donation passed; there was little attention to the bill as a gender issue by

²⁴ While both female and Democrat, it is important to point out an intersectional understanding of difference between Ortiz and Krueger in this analysis. As Senator Ortiz is a Latina representing a low-income part of Sacramento, California, her representation of health issues related to egg donation may be distinct from Senator Krueger, a white woman representing the affluent Upper East Side neighborhood of Manhattan.

interest groups in the state.

What is most distinct, however, is the new site of regulation for egg donation: instead of being dealt with at the state legislative level, in New York a bureaucratic organization (appointed by the Governor) set guidelines for compensation of egg donation within research settings. This has huge implications for how new sites of regulation of gendered technologies like egg donation are being situated not only in new topics—such as SCNT or stem cell research—but also in different venues outside of state legislatures, such as state bureaucratic organizations. As the worlds of research and private infertility guidelines bled together in NYSTEM’s 2009 recommendation, it paints a complex picture where egg donation, when articulated in instrumental ways, gets removed from democratic venues to more bureaucratic ones, arguably where discussions of ethics are even further removed from the public and replaced by instrumental goals of government for solutions to perceived social problems. In many ways, this separation of the public from NYSTEM activities mimics the privatization of the fertility treatment and research markets.

Egg Donation and Instrumental Framing: Transactions, Reproductive Labor, and Markets in Human Eggs

The predominance of instrumental frames in California’s SB 1260 and New York’s S 433B demonstrates one approach to issue definition and policy formulation about egg donation: to consider egg donation as an integral part of facilitating regenerative medical research. This is expressed in both cases through California and New York’s evolving identities as biotechnology hubs, the connection of egg donation as a social issue to the promotion of stem cell research, and the important role of bureaucratic structures in both states—the CIRM and NYSTEM—in prompting and establishing regulations for

compensation of egg donation in research. Through an examination of framing strategies by California and New York in 2006, relationships between egg donors and the research sector is increasingly becoming transactional, if not always compensated: roles, practices, and outcomes are defined in SB 1260 as well as S 433B and NYSTEM. While the lack of compensation for egg donors in research settings puts states like California in line with other nations dealing with bioethics questions over donation and compensation, rules for compensation established by NYSTEM puts New York more in line with the compensated private fertility market. This conflicting result reflects not only these two states, but the “push and pull” intrinsic in ARTs within the US, a tension between the unregulated fertility market and comparative bioethics regulations in other nations (Waldby and Cooper 2010).

The identities of California and New York being increasingly tied to the biotechnology sector is a powerful force in the politics and policy outcomes of these states. Life sciences are an increasingly important part of OECD economies abroad; large states, like California and New York, can act independently under structures of American federalism to develop life science sector (Waldby and Cooper 2010). States have important economic incentives for developing these lucrative biotechnology sectors of their economies (States and Stem Cells 2006). Given the uneven pattern of economic growth in the biotechnology sector—and the lackluster legislative responses to developing ART resources—reproductive tourism within the United States mimics patterns of travel for residents of Germany, for example, who travel to Spain to purchase phenotypically appropriate eggs for fertility treatment (Heidt-Forsythe 2010, Waldby 2009).

It is intuitive that states mimicking California and New York approaches will clearly delineate the fertility industry from the research industry—reinforcing the fact that two very distinct markets in eggs have developed for those looking to form families (thus demanding certain raced, classed, and gendered traits from donors) and those eggs that are needed as material for research (Waldby and Cooper 2010, Daniels and Heidt-Forsythe 2012). In California and New York, the dearth of fertility treatment regulations and the increase in egg donation within research settings restrictions have indicated that governmental regulation of egg donation is focused primarily on the site of research—even if bioethical questions and social implications of egg donation are similar in both markets. This shift in how eggs are viewed—as possible babies in the fertility market to possible regenerative tissues and disease cures in the research market—mimics the shift in framing from moral, fundamental concerns over life (as is observed in Chapter 5) to a framing of instrumentality. Politically, instrumental framing of egg donation as seen in California and New York removes the reproduction/life/child connections to egg donation and replaces them, interestingly enough, with a redistribution of health, wellness for the elderly and sick (Thompson 2005, Waldby 2009, Waldby and Cooper 2010). This reframing of egg donation as a political issue has important implications for practices of egg donation in the US.

As women are the primary producers of genetic material for regenerative research, there is increasing scholarly attention to the gendered labor practices of egg production (Almeling 2011). Understood as a form of reproductive labor—by which egg donors must go through complex, extensive, and sometimes painful medical processes to donate eggs—compensation becomes an important area of inquiry for egg donation, especially in

light of the increasing scope of the biotechnology sector and the willingness of states to regulate it. Contextualized by a historical devaluation of women's labor in the domestic sphere, there are significant debates over the role of compensation in reproductive labor like egg donation (Dickenson 2007). If egg donation is unpaid, reproductive alienation may develop and women's important labor role in regenerative research could be ignored (Waldby and Cooper 2010, Dickenson 2007). On the other hand, uncontrolled compensation is coercive for economically fragile populations (Satz 1992, Daniels and Heidt-Forsythe 2012). Moreover, the treatment of reproductive labor in the research sector as distinct (i.e. not deserving of compensation) as from the fertility treatment market in the US is strong evidence of a development of two tiers of donors—that certain populations of women will be expected to contribute good genes while other groups of women will provide good research material (Waldby 2009). California and New York—in their similar confrontation of compensation of egg donation in research but ultimately different outcomes—embody the tensions of reproductive labor value in a larger context of reproductive politics in the US. Missing from legislative debates in both sets of cases, however, was a feminist lens on reproductive labor in research versus fertility treatment.

These tensions are being played out in California and New York through legislative and bureaucratic institutions. The instrumental framing of egg donation, and the displacement of oversight to the CIRM and NYSTEM has important implications for how egg donation is understood and confronted by the political system. While the American public is “saturated with reproductive technologies,” there is a lack of discourse about these technologies (Thompson 2005, 211). In shifting responsibility of egg donation oversight to bureaucratic structures for instrumental reasons, states are removing

important democratic checks and balances from democratic control over egg donation.

While California and New York extricate egg donation in research from a reproductive politics centered on life and personhood, as well as the tumult of abortion politics in the US, it is important to view a instrumental framing of egg donation with caution. While facilitating instrumental goods around medical innovation, scientific development, and economic growth, California and New York are mediating egg donation rather than prohibiting it. The implications for this framing, however, are not instructive for questions of the role of biotechnology in the economy, the role of reproductive labor in egg donation for research, and the role of democratic processes in ART regulation.

CHAPTER 5: “STATE CRAFT IS ALWAYS SOUL CRAFT”: EGG DONATION REGULATION IN ARIZONA AND LOUISIANA

In this chapter, cases from Arizona and Louisiana demonstrate a second kind of approach to egg donation¹: framing egg donation as a morality issue. In framing egg donation as a morality issue, Arizona and Louisiana define egg donation as a matter of fundamental and intrinsic values, over gender, personhood, and bioethics. Unlike the cases of California and New York in Chapter 4, Arizona and Louisiana use moral language to justify legislative oversight of egg donation markets. Instead of defining egg donation practices as transactional and formalized, the legislative intent of egg donation regulation in Arizona and Louisiana cases reflects legislators situating egg donation in research in a politics of personhood—thus disrupting egg donation practices in general (Daniels 1993, Rose and Hatfield 2007).²

Arizona and Louisiana are apt comparative cases due to their similarity of legislative contexts, their prior activity on ART issues, and the role of social conservatism in ART policymaking. They have similar levels of professionalization of legislature, while Louisiana’s legislature is more conservative than Arizona’s legislature according to 2006 NOMINATE scores, their ideological positions on family formation, reproduction, and genetic technologies are similar in their conservatism and favoring of restrictions on practices of abortion, contraception, and other reproductive options (NCSL 2012, Guttmacher 2012). Examining the time period of 1990 to 2010, Arizona and Louisiana were largely inactive on reproductive technology issues until the early 2000s. This

¹ In this chapter, egg donation is regulated both in and out of research settings.

² In both states, legislation since the cases discussed in this chapter give evidence for the assertion that in framing egg donation as a moral issue, Arizona and Louisiana are attempting to disrupt egg donation practices across all markets. Examples include Arizona’s ban on egg donation compensation across all markets (which was later vetoed), as well as restricting advertising for egg donation services in 2010 (Heidt-Forsythe 2012).

changed as both Arizona and Louisiana began to consider egg donation as a social issue in reaction to ART legislation in other states, namely California. While Arizona and Louisiana both approached the social issue of egg donation from a politics of personhood—and framed egg donation as a moral issue—the states had divergent policy solutions to egg donation, and the bills examined in this chapter had different degrees of success and failure in passage.

Arizona's HB 2141 (2006) and Louisiana's SB 452 (2006) demonstrate that morality framing of egg donation is situated in politics of reproduction (particularly those debates over personhood), which deploy gender as a central trope. However, unlike feminist arguments around egg donation³, the moral framing of egg donation in Arizona and Louisiana reflects less concern about women as subjects and more concern about the coercion and commodification in women's reproductive labor and the potentiality of egg cells, even in research settings. In the conclusion to this chapter, this morality approach to regulating egg donation is contrasted to an instrumental framing of egg donation observed in Chapter 5—and asserts that these cases show a deep need for a public, balanced approach towards legislative regulation of egg donation in the U.S.

Contextualizing Egg Donation: Kinship and Family Formation in Arizona

While Arizona was an early adopter of no-fault divorce, community property standards, or joint custody, the state is similar to its Western neighbor, California, in terms of family law. Arizonans can claim irretrievable breakdown of marriage, essentially claiming no party at fault in divorce proceedings. Arizona has special

³ Feminist critiques of egg donation also use women and gender as a central lens of analysis, but situate egg donation as an embodied practice by a subject. Feminist critiques of egg donation reflect concerns about free markets in eggs (Daniels and Heidt-Forsythe 2012), cultural assumptions and embodied experiences of donors and the donation process (Almeling 2011), and the market of eggs in a service-oriented global reproductive economy (Waldby 2009, Waldby and Cooper 2010).

restrictions on divorce for covenant marriages, those religious marriages that have contractually included premarital counseling and increased barriers to divorce in the state, such as separation periods and not having the option of no-fault divorce. Divorcing couples are privileged to community property regulations, by which individuals equally divide property and assets. This standard dovetails into the state's joint custody laws, which permit joint custody arrangements that prioritize the best option for children.

Despite these relatively equitable family laws, there is no protection for LGBTQ individuals, whose same-sex partnerships are not recognized at the state level. Thus, same-sex headed families are ineligible for community property laws and joint custody. While same-sex partnerships are not recognized, adoption is legal for LGBTQ couples; while primary consideration of adoption goes first to married women and men, there is no legal prohibition for same-sex couples to adopt. Unlike California and New York, Arizona's court system has upheld standards for spousal support and child custody cases that hinge on parental heterosexuality, again leaving out same-sex couples and families from these protections.

Reproductive Liberties in Arizona

As a western state, Arizona state politics reflects an interesting mix of social and economic ideologies, reflected in the diverse Republicans and Democrats that made up the state legislative and executive branches in 2006: while verging on libertarian in regards to some morality issues such as gay marriage and gay adoption, the state was socially conservative on issues related to reproductive justice —particularly around abortion. The context of abortion legislation in the state is particularly instructive for an analysis of egg donation regulation in Arizona as stakeholders in the abortion debate are

also present in HB 2142 (2006). Currently, the state is one of the most conservative in restricting abortion, as there are parental consent laws, 24 hour waiting periods, state-directed abortion counseling, restrictions on abortion providers, and prohibitions on abortions after 20 weeks (Guttmacher Institute 2012).

ARTs and the Law

This context of abortion restriction informs the work of the Arizona state legislature and legal system on ARTs. While Arizona—like California and New York—has legal precedence on cases involving wrongful birth and conception Wrongful conception claims are those claims made by individuals who may “wrongfully” conceive after a medical procedure.⁴ Arizona lacks the legal history of protecting recipient couples of ARTs and “intended parents” (Crocker 2007). In 2005, HB 2221 banned reproductive and “therapeutic” cloning through a restriction of public money to fund research—a stark reaction in light of the concurrent development of research in California (NCSL 2008). In 2007, Arizona prohibited any surrogacy contract from being upheld, for traditional and gestational surrogacy pregnancies. Under Arizona statutes, gestational surrogates are the legal mothers of the children they carry, even if the surrogate is in a contract with the intended parents. If the surrogate is married to a man, he becomes the child’s legal father under these anti-surrogacy statutes. This punitive set of laws combined with recent legislative pushes to eradicate wrongful birth and conception suits in the state—indicates that Arizona connects ARTs to more traditional definitions of personhood, family, and reproduction (Heidt-Forsythe 2010). Such a framing would indicate the categorization of ARTs as morality issues, rather than instrumental issues in the state.

⁴ For example, a couple who conceived after a vasectomy in *University of Arizona Health Center vs Superior Court* won damages for this conception.

Silence Around Sex Cells: Legislative Activity, 2000—2006

In the 6 year period before HB 2142, there is little ART legislation, and no specific legislation that directly regulates egg donation in Arizona. There were, however, stirrings of interest in the stem cell and cloning debates sparked by the cloning of Dolly the Sheep in 1996 and extended by Republican debates around ARTs with the election of George W. Bush in 2000. In 2005, SB 1295 was passed, commissioning a group of legislators (some of whom would go on to sponsor HB 2142 (2006)) to create the Stem Cell Research Advisory Study Committee. This Committee was designated to study the impacts of stem cell research on Arizona, and was largely composed of pro-life Republicans. While this indicates some interest in entering into the stem cell sector like other states,⁵ compared to other states Arizona was largely dormant on the subject of egg donation amid other attention to surrogacy during this period.

HB 2142: Stem Cells, Family Values, and a Focus on Egg Donation

This changed quickly in 2006, as neighboring California had passed Proposition 71 and began to fund stem cell research via CIRM (CIRM 2013). In a state that had previously been silent on the issue of egg donation, the Arizona legislature proposed three egg donation bills in 2006: HB 2142, HB 2681, and SB 1097. On January 11, only a week after the Stem Cell Research Committee Met in early January 2006, committee member Bob Stump introduced HB 2142. The bill was spearheaded by Stump, but had a broad base of Republican support: Stump, Senator Steven Yarbrough [R], and Representative Robert Blendu [R] were the primary sponsors of the bill, with five Republican cosponsors. Out of the primary sponsors, all were white, Republican men that

⁵ By 2005, California, Massachusetts, New Jersey, and Pennsylvania had passed stem cell funding bills (Crockin 2007).

represented metropolitan Phoenix. Similarly, all of the cosponsors of HB 2142 were Republicans, white, and all men except for Pamela Gorman [R]. Unlike the bipartisan work on SB 1260 in California, Republicans in the House worked unilaterally to introduce the bill to the House and Senate—a pattern that would be extended to the divisive debate about HB 2142.

Bob Stump was the figurehead of HB 2142: on his website, Representative Stump's primary foci are issues of health policy, biotechnology, and bioethics (Stump Legislative Website 2012). Unlike legislators in Chapter 4 that introduced legislation as progressive advocates of regenerative medicine research, Representative Stump is staunchly socially and politically conservative. This is evidenced by Stump receiving the Arizona Family Project's⁶ "Friend of the Family" award for a "strong commitment to strengthening Arizona's families and promoting pro-family values and ideals" throughout the 2000s (Stump Legislative Website 2012). The other primary sponsors of HB 2142 were ideologically similar in their social conservatism around "family" issues, as both Representative Yarbrough and Representative Blendu received 100% scores from Arizona Right to Life and the Center for Arizona Policy,⁷ and a 0% rating from Planned Parenthood of Arizona (2005) (Project Vote Smart 2012). These scores reflect Yarbrough and Blendu voting as pro-life advocates 100% of the time. Like Representative Stump, Representative Yarbrough and Representative Blendu received "Friend of the Family"

⁶ The Arizona Family Project is a conservative pro-life group started by Republican political consultant Constantin Querard in 2003. The primary function of the Arizona Family Project are the "Friend of the Family" awards (always given to Arizona pro-life Republicans), which are awarded yearly.

⁷ The Center for Arizona Policy is a "nonprofit research and education organization committed to promoting and defending the foundational values of life, marriage and family, and religious freedom." at <http://www.azpolicy.org/about-us>
 "Center for Arizona Policy is dedicated to the protection of human life from the time of conception to the end of natural life. We promote public policy to protect the unborn child and their mothers. In further support of life, we oppose euthanasia, physician-assisted suicide, human cloning, and embryonic stem cell research."

awards in 2005, for their “strong commitment to strengthening Arizona’s families [and] promoting pro-family values and ideals” (Arizona Family Project 2012).

HB 2142: Introduced Bill Text

As an addition to the Criminal Code: Family Offenses, HB 2142 prohibits any individual from selling or offering to sell, and purchasing or offering to purchase, a human oocyte for money or other valuable consideration. Selling or purchasing eggs for valuable consideration would be a felony according to HB 2142. While the bill is extremely brief—only one paragraph in all—the language in the bill contrasts sharply against instrumental framing of egg donation in Chapter 4. In the introduced text of HB 2142, there is only one frame used, a morality frame—which reflects moral concerns over compensation for human eggs.

In HB 2142, the authors clearly prohibit any money, alongside other benefits, in a transaction of eggs. These transactions could be for the sale of eggs in research *or* eggs in the private fertility treatment market. This is distinct from other approaches in regulating egg donation in California and New York that allowed what they determined to be non-coercive compensation for egg donors in research settings while delineating regulation in the research and fertility treatment markets. While the introduced version of the bill does not explicitly link egg donation to values over personhood, HB 2142 is distinct from other bills observed in the use of “*human oocytes*” in bill text rather than “oocytes,” “ovarian stimulation,” and “oocyte retrieval” (SB 1260, S 433B).

As there is only one frame in HB 2142, it is important to consider the context of related egg donation regulation bills introduced by Representative Stump and his co-sponsors. Only two weeks after the introduction of HB 2421, another bill restricting egg

donation—HB 2681 (2006)—was introduced in part of Representatives Stump and Yarbrough, again with a phalanx of 11 other Republican cosponsors. HB 2681 mandated and defined “voluntary and informed consent” of egg donors in the donation process. In this bill, out of the three paragraphs of the bill, one was framed as a morality issue (and ethical framing of *voluntary* and informed consent) and one was framed as a instrumental issue (of the public health risks of egg donation and the drugs associated with the procedure). Yet another bill—SB 1097 (2006)— was introduced by two of the co-sponsors of HB 2421 (Senators Quelland [R] and Pierce [R]) in early January. Although it was a domestic violence bill at the time of introduction, SB 1097 would transform into an egg donation bill on February 9, 2006. In this meeting, a strike everything amendment passed in the Senate Committee on Family Services, transforming SB 1097 into an informed consent requirement for egg donation bill. These actions—grounded in bioethics questions—are convincing parallels of using informed consent requirements in abortion legislation to put up a barrier to abortion access (Burkstrand-Reid 2010).

Committee Work and Amendments

Proposed by anti-abortion, pro-personhood Republicans, it is unsurprising that HB 2142 was articulated in morality frames around personhood, gender, and reproduction rather than instrumental solutions for stem cell research (see Chapter 5). Democratic opposition to HB 2142 situated their arguments in a politics of abortion—specifically questioning Republican goals to regulate women’s reproductive capacities to an extent that men’s reproductive capacities as sperm donors. On February 16, 2006, HB 2142 was heard in the House Judiciary committee. In this hearing, Representative Steve Gallardo [D] presented a 9 line amendment that would include sperm donation under the

regulations HB 2142, as he “believes this is an equality issue, and what is good for one gender is good for another” (2/16/06 Hearing Minutes). While still using morality rhetoric, Representative Gallardo attempted to use sperm donation as leverage to challenge HB 2142 as a matter of gendered reproductive restriction. In response, Representative Stump testified that HB 2142 was about human cloning, which required human eggs—specifically citing the “recent cloning scandal in South Korea”⁸ and the problem of “commercial trafficking in human oocytes” (2/16/06 Hearing Minutes). He further claimed that women would still have the ability to donate eggs, but simply prevent the commercialization of human eggs (2/16/06 Hearing Minutes). Framing his bill as “pro-life [and] pro-woman” in the hearing, he stated that the intention of the bill was to prevent the spread of “unethical human cloning research” and opposed Gallardo’s amendment as “superfluous” (2/16/06 Hearing Minutes). Despite strong support for the Gallardo amendment by Ben R. Miranda [D] and Ted Downing [D] on the Judiciary Committee, the motion failed; however, the bill was voted to pass out of committee along party lines, with Republicans in favor and Democrats opposed. It is notable that representatives from the Arizona Catholic Conference, Arizona Right to Life, and The Center for Arizona Policy were present at the hearing (although they were not allowed to speak in favor of HB 2142). No interest groups representing professional or feminist concerns were at the hearing (2/16/06 Hearing Minutes).

Only five days later, the bill was heard in the House Rules Committee, which was

⁸ In 2005—2006, Dr. Hwang Woo Suk was indicted for falsifying stem cell research data, misuse of research funds, and accepting donated eggs from researchers in his laboratory—where he had supposedly cloned human cells, as well as created a dog from reproductive cloning (Sang-Hun 2005, AP 2006). The media frenzy around this discovery—with President Bush’s restrictions on stem cell research—give important political context to the reactions of Arizona and Louisiana to developments in stem cell funding and research in California and New York.

vice-chaired by the primary sponsor of HB 2142, Bob Stump. Again, a Democrat—Representative Linda Lopez, then Assistant Minority Leader—attempted to undermine the bill by presenting her main objection as one of gendered reproductive inequality: that the bill “prohibits women from selling their eggs, [but] does not address men selling their sperm” (2/21/06 House Rules Committee Hearing). Lopez, like her Democratic counterparts in the Judiciary committee, framed the issue of compensation restriction as a reproductive liberties issue—one centered around the unfair treatment of law to women and men. In response, the Rules Attorney Robert Drake framed the issue as one of preservation of life—yet again situating egg donation in a politics of personhood. Voting along party lines, the bill successfully passed out of the House Rules Committee. Shortly after, the House Republicans released a statement on both HB 2142 and HB 2681. In this statement, both bills were a “firm step forward in defending life” and that they “make sure that women know about all aspects of the egg donation procedure...while also increasing the penalty for criminals who traffic in human reproductive cells” (Stump, Press Release 2/27/06). Couching egg donation regulation in moral terms, Stump’s words reflect an issue framing of egg donation as an issue of life. In this case, proponents of HB 2142 fully embrace the issue of egg donation not as a scientific or public health issue, but as a battle over moral values and practices at the individual level—specifically those of women’s reproductive choices. On March 1, HB 2142 passed on the floor of the House in a 33 to 22 vote. Nearly all of the Democrats rejected the HB 2142, and three Republican women and two Republican men joined the Democrats in opposition to egg donation restrictions.

Going to the Senate, HB 2142 was immediately referred to the Senate Judiciary

Committee, where it underwent rhetorical changes—although these changes were still couched in a politics of life and personhood. On March 13, 2006, the Senate Judiciary Committee held a hearing on HB 2142, in which the chairman of the committee, Senator Huppenthal [R] presented an amendment to clarify the object of regulation in the bill, by striking “money” and “valuable consideration” and inserting “human somatic cell nuclear transfer” (3/13/06 Hearing Transcript). In this shift, Huppenthal’s amendment no longer made selling eggs illegal in and of itself, but rooted the regulation in the fear of egg donation for SCNT—unlike the House bill, which sought to restrict all money and “valuable consideration” of egg donation for any reason (3/13/06 Hearing Transcript). This is an interesting shift in rhetorical strategy, as it ties egg donation inextricably to “human cloning,” and frames of values and ethics about life creation through cloning, rather than condemns the act of egg donation as unethical. Additionally, the amendment did not clarify how this law may apply to private fertility clinics, as the California SB 1260 was quick to do in its amendment process. The amendment was passed during the hearing (3/13/06 Senate Judiciary Minutes).

Bob Stump again spoke in the Senate Judiciary Committee hearing to clarify HB 2142, and was joined by two doctors as well as the associate director of the Biodesign Institute at Arizona State University, Michael Mobley.⁹ Only a private citizen, representing herself, testified in opposition. In the vote again split along party lines, four Republicans on the committee were joined with one Democrat in passing the amended bill. In explanations of their votes, two of the four Republicans argued that the restriction on personal liberties needed to be balanced with religious values and “respect for human

⁹ It should be noted that Michael Mobley not only sat on the Stem Cell Research Study Committee in 2005, but is affiliated with the Aslan Society and the Center for Bioethics and Human Dignity, two organizations that use a Judeo-Christian worldview to inform academic work.

life” (3/13/06 Senate Judiciary Minutes). Like the previous hearings in the House Rules and Judiciary Committees, HB 2142 was largely framed as a moral issue. For Republicans, egg donation in HB 2142 was about values of life. For Democrats, the bill was an attempt by Republicans to restrict women’s reproductive liberties (3/13/06 Senate Judiciary Minutes).¹⁰ In the final vote on the HB 2142 one month later, one of the Republican women on the Health Committee, Senator Hellon [R], voted no on HB 2142; another woman on the Health Committee, Senator Allen [R], did not vote. It is convincing evidence that while party identification was an important indicator of positioning on HB 2142, gender was also indicative of a representative’s opinion on the bill.¹¹ Only a week later, HB 2142 successfully passed the Rules Committee, signaling the legislative success of the bill.

Soon after it was clear that HB 2142 had a good chance of passing in the Republican-majority legislature, Bob Stump was interviewed in late March on CSPAN’s “Washington Journal” (Washington Journal Transcript 3/25/06). This interview provides added evidence of the link between HB 2142 and personhood politics in Arizona. In this interview, Stump framed HB 2142 (and broader topics of egg donation) as a matter of concern over women’s health, as well as controversial scientific practices like human cloning. In his comments on egg donation, Representative Stump firmly defends how HB 2142 protects women in light of problematic bioethics questions in egg donation, arguing that it is “not ethical for human egg brokers...to offer huge financial inducements to college-aged women” for their eggs (Washington Journal Transcript 3/25/06). In

¹⁰ While HB 2142 successfully passed, HB 2681 did not pass in the Senate Health Committee—which may be chalked up to the gender composition of the two committees.

¹¹ This argument is convincing in light of the evidence of gender in politics in Chapter 4, which suggests that increased women in state legislature predicts an increased hazard of egg donation legislation.

opposition to California's Proposition 71 (2004), which "devote[d] billions of dollars to human cloning research," Arizona's egg donation bill would protect young women from "[going] under the knife for cash" (Washington Journal Transcript 3/25/06). Under the guise of women's health, Stump grounds the egg donation restriction in dual ideas of protectionism (preventing financial coercion, protecting of young women) and a politics of personhood (resisting the "anti-life" research practices of California). Claiming backing by feminist groups—such as the board from *Our Bodies, Ourselves* and the Pro-Choice Alliance—Stump argued that restricting egg donation is a matter of "body politics health from an ethical perspective" and would prevent technology from "treading on dangerous ground" in the pursuit of "designer babies" (Washington Journal Transcript 3/25/06).¹² While Stump's bill ostensibly only regulates egg donation in research, this rhetoric encapsulates egg donation in fertility treatment as well as research. While resisting questions that restriction of egg donation was a "gender issue," Stump uses the protection of women's health as the basis for "sound and ethical public policy" (Washington Journal Transcript 3/25/06).¹³ In the interview, Stump viewed his job as a legislator was to uphold ethical standards of life in public policy, as "state craft is always soul craft"¹⁴ (Washington Journal Transcript 3/25/06).

HB 2142: Final Text and Vetoes

In the final versions of SB 2142, out of a total of three frames, only 33% of frames were instrumental frames, and 66% of frames were morality frames. Outside of the

¹² This rhetoric is strikingly similar to the reasoning for restricting surrogacy in examples from California and New York in the 1990s, through which surrogacy was framed as "baby selling" (Markens 2007).

¹³ This language of protectionism arises again in language used to protect women's "ovarian health" in Louisiana's SB 452 (2006).

¹⁴ In this statement, Stump paraphrases the original quote by Conservative journalist George Will: "Statecraft is soulcraft. Just as all education is moral education because learning conditions conduct, much legislation is moral legislation because it conditions the action and the thought of the nation in broad and important spheres of life" in *Statecraft as Soulcraft: What Government Does* (1984).

amendment on SCNT introduced by the Senate, there were very few changes to the bill text—a testament to the strong control of Senator Stump over the legislative process, as well as the singular work of Republicans for the bill. Nearly opposite in terms of politics to the conditions in California in 2006, Arizona’s Republican push for egg donation restrictions mirrors the ideological conservatism which grounds Louisiana’s egg donation legislation. While SB 2142 and HB 2142 were reconciled, Bob Stump and his cosponsors were involved in SB 1097, the domestic violence-turned egg donation restriction bill, which conceptually is the counterpart to HB 2142. During this time, the Senate was working on SB 1097m a domestic violence-turned egg donation informed consent bill. Like HB 2142, SB 1097 sought to regulate egg donation through making the practice more difficult; both bills were also framed as matters of moral concern rather than instrumental interests. Also like HB 2142, SB 1097 received great Republican support (and Democratic opposition); the bills were successfully passed by the Senate and House in early April 2006.

In early April, both bills were sent to Democratic Governor Janet Napolitano to be signed into law. On April 17, 2006, Governor Napolitano vetoed HB 2142, siding with state Democrats on understanding the restriction of egg donation as a restriction of women’s reproductive options. In her veto letter to the House Speaker Weiers [R], Napolitano recognized how “well-meaning people can disagree about the ethical issues posed by this bill...however I am persuaded that this bill represents an unwarranted intrusion in to the medical decisions of women—and only women” (Napolitano Veto Letter 4/17/12). The framing of egg donation is still a morality issue in the governor’s issue framing in her veto statement, specifically identifying egg donation regulation as an

attack on women's reproductive autonomy. This framing strategy is similar to the one Governor Napolitano uses two months later in her veto letter of SB 1097, in which she decries "yet another attempt by the legislature to inject politics into medical advice" and that there is no need to "intrude on a person's private health care relationship" especially those relationships among "prospective egg donors" (Napolitano Veto Letter 6/28/06). Unlike the bipartisan framing of egg donation regulations as instrumental issues of research and patient health in California, Democratic and Republican political actors in Arizona adhere to a morality framing in the regulation of compensation and regulation of informed consent contexts of HB 2142 and SB 1097.

It is clear that regulation of egg donation by Arizona State Republicans was a two pronged effort: mimicking the arguably pro-stem cell research regulations being put in place in California, Arizona followed suit with similar regulations—restriction of compensation and enforced informed consent—but these regulations came from an entirely different ideological place. Instead of placing regulations around ARTs as a instrumental way to have the state more deeply involved in stem cell research and by extension ARTs within the research arena, Arizona Republicans sought to affirm moral values of life, rooted in anti-abortion ideology. This clear distinction between the use of instrumental frames and morality frames for similar legislative outcomes—restrictions on compensation of egg donors—is instructive in understanding the issue framing strategies state legislatures may use in enlarging reproductive options around ARTs (including those choices in the research sector) or restricting reproductive options around ARTs, using different issue framing strategies. Although Arizona is instructive in how morality framing situates egg donation restrictions in a politics of personhood and life, the case of

Louisiana's SB 452 clarifies how morality framing of egg donation has been influenced by reproductive politics with a focus on the potential products of human eggs.

Protecting Ovaries, Protecting Life: Louisiana's SB 452 (2006)

In 2006, Louisiana's state legislature focused intensely on the subject of egg donation and compensation: after nearly a decade of silence on the issue of egg donation, 6 legislative acts occurred. While in good company of a host of states that increased legislative attention to egg donation (see Chapter 5), Louisiana is an important case in understanding how egg donation is understood as a social issue, particularly in regards to legislative context of egg donation regulation. Unlike previous cases in this project—California, New York, and Arizona—race, gender, and party identification of bill sponsor(s) are not predictive of the ideological support of egg donation restriction. In Louisiana, the politics of personhood drive the regulation of egg donation to an even greater extent than Arizona. In Louisiana, the politics of personhood and moral framing of egg donation are articulated by an African-American Democrat, Sharon Weston Broome. In this section, I will discuss how the distinctively conservative legislative environment of kinship, reproduction, and genetic law in Louisiana, combined with the distinctive legislative work of Senator Broome, sets the stage for morality framing of egg donation, situated squarely in a politics of personhood. Finally, I will discuss the meaning of morality issue framing and legislative “failure” of SB 452 to state approaches and interventions in egg donation in comparison with Arizona, and conclude how morality framing in these two cases informs democratic policy processes that seek to address the moral *and* instrumental concerns that are couched in egg donation as a social issue.

Kinship, Family, and Reproduction in Louisiana Law

Compared to Arizona as well as cases in Chapter 5, Louisiana's kinship, family, and reproduction laws are more restrictive. Louisiana is especially restrictive the areas of divorce, abortion access, and LGBTQ kinship privileges. Louisiana permits no fault divorces, but requires separation periods of 6 months if no minor children are involved, and a period of a year if there are minor children involved in the divorce. Like Arizona, Louisiana has more restrictions for divorces within covenant marriage, with a minimum separation period of a year. For heterosexual couples who seek divorce and dissolution of their marriage, Louisiana is a community property state with best interest of the child and joint custody standards in child custody cases.

Unlike Arizona, Louisiana had enforceable sodomy laws until *Lawrence v Texas* (2003). Also Arizona which does not explicitly bar gay marriage, Louisiana restricts marriage to a man and a woman, and does not see civil unions as equal to marriage under the law (LA Constitutional Amendment 1, 2004). For LGBTQ couples in Louisiana, only single individuals may adopt a child, as same sex marriage is not recognized for married couples looking to adopt. While state courts have not explicitly barred visitation and custody sharing of children resulting from or involved in same-sex partnerships, two cases in the 1990s (*Lundin v Lundin* (1990) and *Scott v Scott* (1995)) gave fathers in each case custody of the disputed children due to allegations of the mothers' same sex relationships after dissolution of their heterosexual marriages.

Louisiana is one of the most restrictive states in regards to abortion liberties and access among all states (Rose 2006). Currently, Louisiana enforces mandatory counseling about fetal pain, 24 hour waiting periods, and restricts public funding of abortions except in cases of life endangerment, rape, and incest (Guttmacher Institute 2012). Abortions

may only be provided by physicians within clinics that are subject to targeted regulation of abortion providers (TRAP) laws (Rose 2006). Minors who seek abortions must have the consent of their parents or guardians (Guttmacher Institute 2012).

Egg Donation Legislation in Louisiana, 1999-2006

Prior to the rash of egg donation bills in 2006, there was little movement on issues of egg donation in Louisiana. Employing legislative data from the official website of the Louisiana state legislature which provides data back to 1998, there were only two bills on egg donation previous to the 2006 session: HB 214 (1999) and SB 810 (1999). HB 214 was sponsored by Robert Marionneaux [D], a term-limited member of the House from 2000-2012. The bill prohibited unauthorized use of ovum or sperm beyond the written consent of the donor; the bill also prohibited the unauthorized use of eggs retrieved from a deceased individual. Bill language reflected ethical concerns over informed and written consent, as well as exceptions for spouses who wished to use the deceased's eggs for reproduction. While SB 810 was withdrawn as a duplicate of HB 214, HB 214 was voted out of the Administration of Criminal Justice Committee and approved unanimously by the House. While it received some opposition in the Senate, it was unanimously passed after amendments regarding illegal harvesting and illegal use of eggs were adopted in Conference Committee. HB 214 was signed by Governor Mike Foster [R] in August of 1999—a distinctive bill and legislative path from the egg donation bills that would be introduced in the 2006 session.

Spring of 2006 was the next time that egg donation restrictions would be presented in the House or Senate of Louisiana. In late March, Senator Donald E. Hines (D, former President of the Senate) sponsored SB 31. SB 31, while ostensibly centered around the

prohibition of human cloning, included a stipulation that eggs could not be donated with the intent to clone human beings. SB 31 never made it out of the Judiciary Committee. In the same month, Senator Michael Michot [R] introduced SB 429, which established an egg donor registry in Louisiana. In language that would pop up in SB 452, Senator Michot's bill was framed as both objectifying women while protecting them: "in the interest of protecting the ovarian health of Louisiana women, an egg donor registry shall be established by the Department of Health" (SB 31). In this morality framing of egg donation, SB 31 went further than previous bills in this period, extending regulation to the private infertility industry that repeatedly is "hands off" to government not only in Louisiana, but also in California and Arizona during this period. SB 429 was assigned to the Health and Welfare Committee, but never made it out of committee.

Protectionism, Objectification and SB 452, the "Ovarian Health Protection Law" (2006)

On March 27, 2006, Senator Sharon Weston Broome [D] introduced the "Ovarian Health Protection Law," or SB 452. This bill goes farther than other cases in California and Arizona in its explicit moral framing of coercion and commercialization in egg donation:

In the interest of protecting the ovarian health of Louisiana women, especially collegians and low-income women who are disproportionately vulnerable to being monetarily induced to compromise their reproductive and ovarian health, it shall be unlawful for any person to intentionally or knowingly provide valuable consideration...if the human eggs are being procured for experimentation or research other than the treatment of infertility.

SB 452, Section 134 (2006)

Unlike other bills in this chapter, the bill text of SB 452 reveals a concern for women vis a vis their "ovarian health," an objectification of women's reproductive parts away from their overall reproductive health. Although the case of SB 1260 in Arizona did show Rep.

Stump's use of women's health as a justification for governmental intervention in egg donation, SB 452 is distinct in how the bill's restriction of egg donation in research impacts moral concerns over "ovarian health" (ostensibly reproductive health), and issues of commercialization and coercion of the economically "vulnerable," specifically college-aged women and low-income women. If caught selling and buying eggs for research, doctors would risk license revocation; female egg donors would be free of punishment.

Given previous examples in this chapter, SB 452 allows new insight as to how the intersections of gender, race, party identification, and social ideologies can be understood as producing similar bills as states like Arizona and California, with dramatically different social, racial, gendered, and ideological arrangements. Sharon Weston Broome exemplifies these diverse intersections: as an African-American woman and Democrat, Senator Broome was the first African-American woman to represent District 15, which includes representation of Baton Rouge, Louisiana. Senator Broome has been in state government since 1988, and achieved the position of President Pro-Tempore of the Louisiana Senate in 2008. Given her race, gender, and party identification, her ideological positions on reproduction and family issues are surprising: in 2006, she voted for SB 33, which proposed a universal abortion prohibition if *Roe v Wade* (1973) were overturned. She additionally voted against an amendment that would include exceptions for race and incest, Amendment 1923 to SB 33. In 2006, Senator Broome received a 100% rating from the Louisiana Family Forum, a conservative organization "committed to defending faith, freedom, and the traditional family in Louisiana,"¹⁵ indicating she voted in line with the organization's positions 100% of the time. In 2008, Senator

¹⁵ <http://www.lafamilyforum.org/about/>

Broome was awarded a 100% rating from Louisiana Right to Life, indicating she voted in line with that organization 100% of the time. Although interviewed two years after she introduced SB 452, Senator Broome was highlighted on the Louisiana Right to Life's website as a pro-life legislator. Her testimony in a featured video on Louisiana's Right to Life "Live with the Legislators" feature on their website is telling of her positions on kinship, family, reproduction, and the emerging sciences associated with ARTs, particularly egg donation.¹⁶ Recognizing that her party identification puts her at odds with traditional identities of "pro-life" politicians, Senator Broome argues that her "faith as a committed Christian" informs her opinions on abortion, cloning, and egg donation Louisiana Right to Life 2012. She contends that "women are being used as research tools" in cloning research as "women's eggs are needed for [the cloning] process" (Louisiana Right to Life 2012). Moreover, women are "posed with the choice of selling their eggs to the highest bidder" without being told of potential impacts. Senator Broome views these issues as part of a greater context of her role as a "legislator is to regulate behavior" and that her position as a pro-life Democrat is a "moral position...a position of righteousness" (Louisiana Right to Life 2012). Senator Broome's perspective—contextualized by expectations about her ideology about reproduction and technology due to her race, gender, and party identification—suggests that in state regulation of ARTs, there is often a complexity to the creation of ART legislation that cannot simply be understood through counting sponsors of ART legislation through gender, race, and party identification.

SB 452: Introduced Text

Given this context of the ideologies of Senator Broome around her role as legislator

¹⁶ <http://www.prolifelouisiana.org/legislation/live.html>

and the impact of anti-abortion and “pro-life” issues, it is unsurprising that morality frames dominate the introduced text of the bill. However, it is surprising that Senator Broome employs feminist and bioethical justifications for what is at root a philosophical and religious issue with ARTs, particularly egg donation. Out of three frames identified in the introduced text of SB 452, there was only one instrumental frame employed in the text, or a little over 30% of the introduced text of the bill. This single instrumental frame is an economic one, in which the bill discusses how compensation for egg donation may be understood as cash payments, gifts, even reimbursement of lost wages. Over 60% of frames, or two out of the three frames, reflected morality issue framing of the issues of egg donor compensation for research purposes. Among these morality frames, one frame reflects bioethics concerns—specifically addressing the need for informed consent about the health risks of egg donation. The other frame reflects a feminist frame, in which women’s health needs to be protected in light of economic exploitation. Interestingly, this feminist frame employs an arguably non-medical distinction between the need to protect women’s “ovarian health” as well as their “reproductive health” (SB 452 Introduced Version). As was the case with cases in Chapter 5, the text of SB 452 distinguishes between research and infertility treatment.

Going Nowhere Fast: The Quick Life and Death of SB 452

Like Senator Hines’s [R] SB 31 and Senator Michot’s [R] SB 429, Senator Broome’s attempt to ban compensation for egg donation in research settings was short lived. After being read for the first time on March 27, 2006, it was referred to the Committee on Health and Welfare. Although it was considered by the committee on May 10, 2006, it was tabled and died in committee. It is unclear why SB 452, like SB 31 and

SB 429, never made it out of committee—but the bills, similar in their ideological origins of pro-life, socially conservative sponsors—never successfully became part of the political discourse in 2006. Despite the failings of these bills in spring 2006, this was not the end of the story for egg donation restriction bills in Louisiana during this session.

In April, Representative Jalila Jefferson-Bullock [D] introduced HB 1234, a bill that prohibits the acquisition, sale, receipt and transfer of human eggs for research (2006). What makes this bill stand out among the cluster of bills written about egg donation in the spring of 2006 is how Republican and Democratic legislators produced versions of the same oversight of egg donation, using different politics to justify this oversight. While the text of the bill references women producing eggs solely for research as a negative result of egg donation, the text of the bill is otherwise framed in instrumental ways, as an issue of public health (Intro text HB 1234). Representative Jefferson-Bullock, an African-American Democrat, was ideologically left of her colleague Senator Broome: she voted no on SB 33 (where Senator Broome had voted yes), had voted for exceptions in the proposed abortion restriction bill (Amendment 4920), and received nearly opposite rankings from pro-life groups, identifying as strongly pro-choice in her voting record on reproductive rights issues. While HB 1234 died in the House Committee on Health and Welfare in April 2006, she tried to address the issue of egg donation yet again with House Study Request 11 in June of 2006. Requesting the Committee on Health and Welfare to study the prohibition of oocyte sales in research settings, HSR 11 was approved by the House on June 8, 2006.

Similarly, Senator Broome did not allow SB 452's death in the Committee on Health and Welfare to be the end result of her interest in restricting egg donation in the

state of Louisiana. On June 14, 2006, she sponsored Senate Resolution 125, which requested that the Senate Select Committee on Women and Children study the feasibility of prohibiting oocyte sales. Enrolled, signed by the President of the Senate, and sent to the Secretary of State, Senator Broome's SR 125 was the only successful legislative statement on egg donation restrictions during the 2006 regular session. Interestingly, there were no further egg donation bills, studies, or reports in the next regular session.

Without the strong internal state push for stem cell research and the inability for legislators in Louisiana to connect issues of egg donation to ethical issues for serious consideration, the cluster of egg donation restriction bills in 2006 were unsuccessful. While Louisiana did not effectively use state power to limit egg donation—whether it be for research or the fertility industry—the political processes behind SB 452 allow some insight into a moral framing of egg donation at the state level. SB 452 demonstrates the power of ideologies around reproduction and kinship (specifically Senator Broome's connection of egg donation to issues of cloning and life) to determine individual legislator activity on egg donation as an issue. As an African-American female Democrat, one would expect Senator Broome's reasoning behind SB 452 to resemble Senator Jefferson-Bullock, a pro-choice Democrat who also sponsored a bill (albeit framed in instrumental terms) to restrict egg donation compensation in research settings. Despite these bills being similar on in content, the egg donation narrative in Louisiana captures how party identification, ideologies about reproduction, race, and gender ground different perspectives on the role of egg donation in the reproductive autonomy and agency of women in the state.

The Potentiality of Cells: Moral Framing of Egg Donation in Light of Instrumental Framing of Egg Donation

These cases from Arizona and Louisiana demonstrate a second approach to conceptualizing the social problem of egg donation: by rooting egg donation in a politics of personhood, legislators in Arizona and Louisiana frame egg donation as a moral issue. Importantly, regulations on egg donation in these two cases are meant to restrict the practices associated with egg donation in both the fertility and research sectors. What is notable about these two cases is the role of interstate influence, and the nature of the moral framing of egg donation—rather than responding to bioethical questions in moral discourse, the legislative approaches link the moral questions of egg donation to questions over life and personhood—bringing egg donation (and connecting technologies of regenerative medicine research and cloning) into traditional reproductive politics. These approaches are staggeringly different than the instrumental approaches that facilitate ARTs in California and New York (see Chapter 5).

A convincing explanation for these two legislative approaches to egg donation is the core disagreement over the potentiality of egg cells—how egg cells may develop into regenerative tissue for multitudes of research or how egg cells may develop into reproductive tissue to create human beings (Waldby and Cooper 2010). It is in this liminal space—whereby eggs have unrealized potential—that legislation is created. Depending on how potentiality is conceptualized by legislators, there are two clear pathways for legislation about egg donation. For those that conceptualize egg donation as an act dealing with potential human beings, there is a clear placement of egg donation within a politics of personhood, situating the regulation of egg donation within a politics over life (fetal rights, abortion). Some advocacy groups in the ART sphere have already realized this link, as grassroots ART organizations like RESOLVE protest against

personhood amendments (RESOLVE website 2012). In this framing of egg donation, the narrative of policy in Arizona and Louisiana is to reject any practices or technology that are connected to abortion and may threaten fetal rights—prioritizing the potentiality of egg cells above instrumental goals of medicine, science, and economics.

There is fertile context for this narrative of life and personhood: throughout the period studied in Chapter 4 and this Chapter (roughly 1990 to 2010), the federal government was extremely active in promoting an ideological agenda restricting abortion, contraception, and reproductive health access and promoting personhood at the moment of conception. For example, President George W. Bush's Food and Drug Administration refusal to expeditiously make Plan B accessible over the counter, bowing to the Council of Catholic Bishops' concern that the drug prevented a fertilized egg from implanting in the wall of a woman's uterus; the State Children's Health Insurance Program definition of "children" as existing from the moment of conception until they were no longer a minor; granted federal funds to embryo adoption at Nighlight Christian Adoption Agency and appearing with children born from donated embryos in publicity for the program (Rose and Hatfield 2007, White House 2005). Currently, the explosion of increasingly restrictive abortion bills at the state level employ science and technology to further situate reproductive liberties in a politics of personhood: for example, the increasing use of "visual" informed consent procedures use images of embryos and fetuses on ultrasounds, often combined with verbal descriptions of the embryo or fetus. The parallels between the use of ultrasound-enabled informed consent to dissuade abortion practices, and the use of informed consent procedures in this chapter are strong—linking both practices to a politics of personhood.

All of these examples show a national politics that identifies the potentiality of egg cells as reproductive—a conducive setting for states to conceptualize egg cells similarly. In this process, egg donation should be restricted as eggs have the potential to be human beings. In Arizona and Louisiana, not much has changed since the emergence of egg donation technologies in the 1970s: as Andrea Bonnicksen notes in her observation of nascent ART legislation at the state level, in 1989 ARTs are an issue of embryos, drawing “ire” from the abortion debate (Bonnicksen 1989). Given the historical conditions that shape meanings of life in the abortion debate, it is clear that in certain states, a battery of reproductive health issues (abortion, fetal rights, and contraception) and their moral politics have been extended to egg donation. The cases of Arizona and Louisiana’s uses of protectionist language also link egg donation to historical anti-abortion rhetoric linking abortions to the exploitation of women. When combined with the concern over controversial science—such as regenerative research and cloning—egg donation elicits similar anxieties about individualist and liberal values that abortion and contraception does (Petchesky 1990). In the cases of Arizona and Louisiana, the more reproductive technology changes, the more the reproductive politics stays the same.

How then does the moral framing and narrative of personhood in egg donation regulations in Arizona and Louisiana square with the alternative instrumental approach observed and analyzed in Chapter 5? In the cases of Arizona and Louisiana, egg donation is never situated in reproductive bioeconomies, as we observe in California and New York. In Arizona and Louisiana, egg donation is not connected to research as an instrumental good, but as a morally problematic byproduct of technology and science that is trying to play God in the creation of human beings. In this narrative, egg donation is a

form of reproductive labor, but one that is more alike to “baby selling” rhetoric in surrogacy than contractual labor observed in Chapter 5 (Markens 2007). Women are morally alienated from their reproductive labor in all types of egg donation (rather than economically alienated); this narrative requires the practices to end via legislation observed in Arizona and Louisiana rather than be mediated, as is observed in Chapter 5’s California and New York. Given this stance of prohibition rather than mediation, the role of government in Arizona and Louisiana does not need to develop bureaucratic structures like in California and New York. Given these comparisons, there is a stark conclusion that can be made: Arizona and Louisiana’s approach to egg donation is problematic, as it reifies a politics of personhood, rather than addresses intrinsic bioethical and feminist issues of egg donation practices. The cases of Arizona and Louisiana suggest that egg donation is not permissible, so the states refuse to engage the issue or to integrate the practice into their political system. This approach fails to take into account the importance of egg donation for fertility treatment—for diverse populations that want to start a family or treat infertility, or both—as well as the scientific goods that come from regenerative medical research. However, California and New York’s instrumental approach also does not address feminist concerns over egg donation, as the states fail to consider the role of reproductive labor markets in regulation, and remove feminist deliberation from a public space.

The solution to this problem of contemporary morality *and* instrumental approaches is a balanced approach, one that takes into consideration feminist concerns—especially those concerns beyond a politics of personhood. Given the multitude of perspectives to negotiate in egg donation regulation, what is missing in both framing approaches is an

“agora of ideas where the public can openly and equally discuss the pros and cons of reproductive technology” (Thompson 2005, 211). Specifically, the feminist discourse has been diverse and rich in this area; when feminist concerns are left out of debate, they are more often than not left out of policymaking (Thompson 2005, Ikemoto 2009). While there is some support in leaving all regulation to the free market in the United States, there is clear evidence that market mechanisms do not universally protect reproductive interests of all parties involved, especially egg donors (Ikemoto 2007, Daniels and Heidt-Forsythe 2012). More broadly, while we often allow individuals in the US to “resolve conflicts between values,” there is clear precedent for the US government to resolve tough moral issues, historically (such as the buying and selling of persons) and contemporarily (the buying and selling of body parts) (Parens and Knowles 2007). In this way, Bob Stump *is* correct: state craft is always soul craft. That being said, the balance of instrumental and moral concerns needs to dictate governmental involvement in egg donation. While the actual public debate may be torturous—Canada’s Royal Commission on New Reproductive Technologies may be instructive in this area—the difficulty of such an undertaking should not in itself be a barrier to a public discourse about egg donation (Parens and Knowles 2007).

While many scholars describe the difficulties of public discourse in the US on egg donation, fewer scholars have concrete solutions to facilitate public discourse and deliberation (e.g. Goggin and Orth 2004). Some scholars conclude that the public agora is so complex with a combination of interests and identities, that public formalized deliberation is rightfully replaced by a marketplace of ART practices, which develop “‘best-practice’ moralities” (Thompson 2005). Others point to emulation of other

Westernized structures of egg donation regulation, like the Human Fertilisation and Embryology Authority (HFEA) in the United Kingdom (Parens and Knowles 2007). Most instructive to the diverse viewpoints (from instrumental and moral conceptions of egg donation) is Canada's nearly 20 year path to regulating ARTs—beginning with 1989's Royal Commission on New Reproductive Technologies, which consulted nearly 40,000 Canadians (Parens and Knowles 2007). While there are important political differences, what Patricia Baird calls a social value of “solidarity” and public interest in health care, there are similarities that lend themselves for a policy recommendation (Baird 2007, 179). The fact that both nations are federated (with political subunits having great control over health care) and have diverse religious responses to ARTs is particularly instructive. While Canada used a combination of open hearings, targeted interviews of ART users, and surveys, there was an academic component of research on ARTs across social sciences, law, medicine, and ethics (Baird 2007, 182). Feminist groups were particularly active in the consultation process.

While open hearings have been identified as part of an open democratic discourse, the lessons of town hall meetings on the Affordable Care Act (2009—2010) warrant a mixed approach, with an emphasis mixing expertise with experience. Such a consultation would then be used to produce legislation at the national level, avoiding the diverse, conflicting, and contingent nature of current laws on ARTs as well as the reproductive tourism that makes contingent regulation problematic. In the case of Canada, the Assisted Human Reproduction Agency (AHRA) regulates ART clinics and practices, such as compensation for egg donation (Baird 2007). Given the evolving nature of ARTs, Canadian legislation must be revisited every three years if changes need to be made to

keep up with technology and science. Instead of avoiding the conflict over egg donation—and observing the imperfect and contradicting solutions to this conflict—Canada shows us one (albeit difficult) example of soul craft: that the government's role is to mediate moral and instrumental conflict, and given the cases observed in this Chapter as well as Chapter 4, this impetus is even more urgent.

CHAPTER 6: CONCEIVING THE ROLE OF THE STATE: EGG DONATION AND EQUAL REPRODUCTIVE LIBERTY IN THE UNITED STATES

Egg donation is a site of the “sacred and profane,” a reproductive technology that embodies anxieties and cultural ideologies of life—in the creation of life in family formation (the “sacred”), as well as the sustainment of life through regenerative medicine research (the “profane”) (Thompson 2005, 248). These conflicting and overlapping concerns over life are expressed by a diverse array of stakeholders who have moral and instrumental concerns about egg donation: couples that need egg donation to have an IVF procedure; researchers that seek to understand SCNT through donated eggs; biotechnology corporations that wish to expand the scope of the genetic technology sector; religious figures that wish to uphold norms of gender, sexuality, and family formation; social conservatives that uphold a politics of personhood; feminist narratives of reproductive justice in light of evolving technology. These debates over egg donation map onto the shifting environment of reproductive politics in the United States, signaling how reproductive politics has significantly changed. The data and analysis in the preceding chapters traces the boundaries of this change. First, the preceding chapters have refuted and added nuance to previous scholarship on ARTs, and the role of government in egg donation oversight. Secondly, this active role of the state in egg donation oversight supports a redefinition of reproductive politics to include the increasingly significant theme of reproductive labor. Lastly, the preceding chapters confront scholars on ARTs and democratic processes with the deep need for improved democratic discourse and accountability on the subject of egg donation—a vision that employs a concept of “equal liberty” in democratic debate and decision making about egg donation (Rao 2008).

Egg Donation as Sacred, Egg Donation as Profane: The Importance of Potentiality in Egg Donation

Egg donation, comparable to reproductive technology issues such as surrogacy, are a plastic social issue (Markens 2007, 182). This means that egg donation can be understood through a variety of perspectives, revealed by narratives of egg donation bills at the state level. In some egg donation bills, egg donation was a matter of keeping personhood and life sacred; in other bills, egg donation was simply part of the research process that needed to be regimented and regulated. Employing Charis Thompson's (2005) concept of the "profane and sacred human embryo," I argue that these dual concepts may be applied even further back in the reproductive process, to the raw material for reproductive biology—human eggs (Thompson 2005, 248). Through the framework of morality policy and politics employed in Chapter 2, egg donation emerges as a hybrid issue—being publicly salient, controversial, technically complicated, and grounded in fundamental, moral debates. Egg donation as a concept reinforces the contention that ARTs in general—even those ARTs that may be tangential to bringing eggs and sperm together for the sake of reproduction—are issues that signify both traditional questions of reproduction as well as new questions of technology and innovation (Thompson 2005, Markens 2007, Waldby and Cooper 2010, Waldby 2009, Squier 1998). In this way, egg donation is radical as it pushes at the boundaries of where reproduction ends and biological research begins. Egg donation is connected to a broad "range of new entities...that modify the elementary components of life itself," such as the use of reproductive technology in animal science and reproduction (Squier 2012), the "immortal life" or regenerative cells (Skloot 2010), and the global market for cadaveric tissue and bone (Dickenson 2007) (Franklin and Lock 2003).

Undergirding these competing concerns in a wildly expanding definition of reproduction is an old argument: an argument over potentiality. Specifically, the potentiality of life—assigned to children, fetuses, and embryos—is applied to egg cells.¹ In one narrative, the egg cell is a building block for human life. Once it is fertilized, the building block can transform into a human being. This narrative has been the premise for defining egg donation as a morality issue: grounded in a politics of personhood, egg cells are the potential for human life in the shape of a baby. In this framing, Arizona and Louisiana seek to limit and restrict egg donation practices.

In a different narrative of the potentiality of the egg cell, it is a building block for other cells and tissues. While still connected to life, this narrative is grounded in a politics of instrumental good for research and patients, to miraculously fight diseases that cripple increasing populations of the elderly in the US. This is the premise for instrumental framing of egg donation as a public good for as a source of research material. In this framing, California and New York seek to regulate (but not prohibit) egg donation practices. This project fills the conceptual gap that exists in ART literature about the influence and power of the stakeholders in the egg donation debate: both sets of stakeholders have centered their narratives on a politics of life (Markens 2007). As such, the government has the impetus to act on the perceived social issue of egg donation.

The Role of the State in Egg Donation Oversight

One of the most important assertions in this project is the refutation of currently-held beliefs that states are inactive on ART issues (Bonnicksen 2007, Goggin and Orth 2004). As Chapter 3 demonstrates, one must look at the holistic activities of ART

¹ For an expanded argument of potentiality of life in light of assisted reproductive technologies—namely egg donation both inside and outside of research settings, see Steinbock 2011.

policymaking—not just bill passage. As original data indicates, nearly every state has identified ARTs in general and egg donation more particularly as a social issue for government oversight, through bill introduction and bill passage. This approach is innovative, and reflects the argument that bill activity, not just bill passage, has important implications for the relationship between a social issue and governmental oversight (Markens 2007). The evidence of state activity goes against notions that the self-regulation of the fertility industry, plus the lack of federal regulation of ARTs, has translated into a lack of state governmental activity on ART issues in general (Thompson 2005, Bonnicksen 2007). Given the empirical gaps in this area, this data on ART bills is deeply important in demonstrating the vibrant legislative role of states in ARTs, all the way back to 1990 when ART practices and use were half of what ART practices and uses are today (CDC 2012).

The hazard analysis of morality and instrumental variables on bill introductions allows this project to test another theoretical contention in the ART literature: that in the free market system of ARTs in the US, instrumental stakeholders (such as the biotechnology industry, fertility clinics, and individuals demanding fertility treatment) do not want governmental mediation of ART practices for purposes of reproductive liberty, scientific innovation, and economic development (Bonnicksen 2007, Thompson 2005, Sandelowski 1991, Robertson 2008). In tests, instrumental indicators actually *increased* the hazard of egg donation bills—going against the libertarian claim that the free market in ARTs operates best without governmental intervention (Thompson 2005, Robertson 2008). These findings assert that states are being pushed and pulled by the free market in

eggs and sperm in the US, and the models of governmental regulation of ARTs in Europe (Waldby and Cooper 2010).

What also emerges from Chapter 3 is the importance of gender in egg donation bills at the state level. As the percentage of women in the workforce and women in state legislature rose, so did the hazard of egg donation legislation in a given state. While the presence of women in the workforce and legislature indicates fewer abortion regulations at the state level, this is not the case for egg donation (Mooney and Lee 1995, Rose 2006). While the processes of gender in egg donation legislation need to be further understood with increased qualitative work on egg donation oversight, these findings suggest that gender is a critical component of ART oversight—despite the fact that women’s voices are often absent in public debates about the moral problems and instrumental goods of egg donation (as is observed in Chapters 4 and 5). The role of gender in a social issue with as much plasticity as egg donation challenges how we think of gender operating to delay or prevent family formation in reproductive politics centered on abortion and contraception. How gender interacts with formal politics and policy in this realm is an important area of inquiry in ART scholarship.

Labor and Personhood in Reproductive Politics

Chapter 4 and 5 show how egg donation can be understood through a multiplicity of issue frames—ways to define, trace causation for, and find solutions to egg donation compensation as a social issue. In Chapter 4, labor emerges as a critical theme in instrumental framing of egg donation in California and New York. While California and New York have divergent bill success using this frame for egg donation, both states defined egg donation as a formalized, transactional exchange between human subjects

and research centers. Moreover, these human subjects were an important component to an overall state goal of increasing the biotechnology sector in each state—formalizing egg donation as a practice within bureaucratic institutions, the CIRM and NYSTEM. This is in stark contrast the moral framing of egg donation in Arizona and Louisiana in Chapter 5. Arizona and Louisiana situated egg donation within a framework of personhood: egg cells are building blocks of reproductive life, and cannot be treated callously. Moreover, these states saw their role not to formalize egg donation, but to protect women *from* egg donation compensation for fertility treatment and research. All four cases demonstrate that egg donation—while comparable to legislative framing of surrogacy—are in fact distinct in its politics and policy framing at the state level. This goes against the contention that ARTs are subject to the same politics and policymaking processes in the US (Goggin and Orth 2004).

The shift in the location of egg cells in each of the four states in this dissertation—from one sphere of reproductive potential to another sphere of research potential—reinforces feminist theorizing about the porous boundaries between reproduction and research (Waldby and Cooper 2010). In one sphere, women’s reproductive labor of egg donation is exploited for money, risking their “ovarian health”; in the other sphere, women’s reproductive labor should not be exploited for money to pursue ethical standards of research. Neither of these approaches to women’s reproductive labor of egg donation addresses the serious implications of egg donors as subjective actors in the reproductive and regenerative processes.

In line with Waldby and Cooper’s (2010) discussion of reproductive labor, I argue that these issue frames reinforce stratified reproduction—centering egg donation on

ideologies of life for others, rather than the best interests of egg donors themselves. In a moral framing, egg donors are giving potential babies to others, and being exploited in the process; in the instrumental framing, egg donors are giving potential regenerative cells to others, and risk being exploited in the process. Each viewpoint does not take into account diverse viewpoints that challenge a life-centered ideology, such as the extensive history of feminist discourse on ARTs and the state. Viewing egg donation simply as a way to capitalize on women's reproductive biology does not give space for women as egg donors to be subjects in extensive processes of reproduction—which have the potential to create human life—or in research—where unknowable future science could transform egg cells into now-unknown medical treatment (Waldby and Cooper 2010). In this way, both framing approaches in Chapters 4 and 5 are contributing stratified reproduction, as public policy continues to disenfranchise egg donors. In Chapters 4 and 5, the subjectivity of egg donors is replaced by other stakeholders' values and concerns. This echoes the current powerlessness of egg donors the arguably coercive free market of eggs (Daniels and Heidt-Forsythe 2012).

Public Discourse, Democratic Solutions

While states are active on ART issues, case studies from California, New York, Arizona, and Louisiana demonstrate that issue definition through framing supports reproductive stratification, especially as egg donors are increasingly powerless through state oversight. A potential solution to this is public, democratic discourse to shape more egalitarian egg donation policies at the state level. This argument joins other feminist theorists in the demand for a public agora of ideas where stakeholders can “openly and equally discuss the pros and cons of reproductive technologies” (Thompson 2005, 211).

Compared to other nations that have engaged in public discourse about ARTs, there is little sense of public engagement on ART issues. While some have drawn attention to the cultural beliefs around ART practices like gamete donation and surrogacy, there is no systematic data on public beliefs about ARTs. While states have been active on ARTs, there is little understanding of public opinion on ARTs. This is a great gap in informing policymaking at the state level. Moreover, key voices have been left out of the debate in egg donation—particularly feminist voices. This has not been for a lack of feminist interest or insight into ARTs (see Chapter 1). In fact, feminist groups have informed ART deliberation in Canada, the UK, and other Western nations that seek governmental oversight of ARTs (Parens and Knowles 2007, Banchoff 2005). I argue that the US needs to have more feminist voices in the democratic deliberation, specifically to address the reproduction stratification that is reified through current ART practices. Moreover, the subjectivity of the egg donors themselves—who view the competing claims of stakeholders in ARTs and make decisions to donate or not donate eggs in different settings—deserve a central place in this democratic deliberation, alongside practitioners and experts.

While comparative examples of public discourse on ARTs are not always clean and neat processes, they are models for how ARTs should be discussed in the public sphere. For example, public discourse around ARTs in Canada in the late 1980s through the 2000s demonstrates what a long and messy process such a public discourse can be (Harvison-Young 2007). However, this should not preclude the US from also engaging with a highly culturally and religiously diverse population like Canada has. As a federalist model, the AHRA's public hearings are one method for increasingly

democratic processes of deliberation to inform state-level public policy. I assert that this public deliberation, modeled on Canada's Royal Commission on New Reproductive Technologies, should seek widespread consultation—Canada, a smaller nation than the US, consulted nearly 40,000 Canadians in writing the Assisted Human Reproduction Act (2004). I argue that a similar approach—a combination of open hearings, targeted interviews of ART stakeholders, surveys, and expert testimony would better capture the complex interests embedded in ARTs in the US.

Given the possibility of democratic discourse, how then is discourse translated into policy? I assert that employing Radhika Rao's (2008) concept of "equal liberty"—that all persons must possess an equal right (but not absolute right) to ARTs—addresses my critiques of state legislation on egg donation practices. In her legal essay on ARTs, Rao argues that there is no general constitutional right to use ARTs as a matter of reproductive autonomy. She argues against Robertson's (1994) libertarian view of ARTs, which largely precludes the government from mediating reproduction in any way. Recognizing the realities of stratified reproduction, "equal liberty" permits the state to mediate ARTs to ensure equal treatment and equal access of all people to ARTs. This theory is sensitive to the power differentials that are currently being perpetuated in Chapters 4 and 5. Instead of relying on moral prejudices about ARTs—such as barring same sex couples from conceiving a child using egg donation—Rao asserts that legislatures can regulate ARTs, as long as the laws apply equally to all persons and do not restrict the equal liberty principle. As Rao's argument is directly solely at the fertility treatment industry, I apply her argument to research settings as well. This translates into an equal liberty principle to guide legislation about egg donation in both venues---that

equal liberty promotes social equality (and the options to participate and not participate in egg donation) through legislation. This does not only mean that egg donors have the liberty to donate eggs in fertility treatment and research, but also means that social equality must be promoted for groups in context of discrimination and prejudice, even if this discrimination and prejudice is difficult to measure (Rao 2008, 1488). In practical terms, social equality between economically fragile groups that donate eggs, and those that purchase eggs for research and fertility treatment, would translate into a critical assessment of how compensation increases, rather than decreases, inequalities between these two groups in ART exchanges. In light of the historical absence of women in clinical research, this promotion of social equality (although not blind libertarian activity on the part of egg donors and egg buyers) is crucial, especially in research settings (Lyerly, Little, and Faden 2008). I take this argument a step further and assert that an “equal liberty” standard should not be left up to states, but applied at the national level. In light of the problematic nature of state-level regulation of reproduction and kinship—described by feminist scholars in light of fetal personhood, for example—I argue that equal liberty protections need to occur at the national level (Daniels 1993, Rose and Hatfield 2006). This is in line with other ART scholars who call for reasoned national discourse and policymaking on ARTs (Parens and Knowles 2007, Ikemoto 2009, Daniels and Heidt-Forsythe 2012).

This dissertation grapples with how formal political institutions make policy about egg donation at the state level. While my findings challenge current ART literature and fill the empirical and conceptual gaps about egg donation regulation in the US, there are implications of this research in future work on governmental oversight of ARTs. I

argue that to move forward, scholars must better understand the politics of ARTs through two particular lenses: advocacy and public opinion. While there is some literature on the role of advocacy groups on ARTs, this literature lacks insight into the role of state-level coalitional politics on ARTs (Gougou 2008, Markens 2007). Given the importance of the state to ART oversight—in fact, all oversight except for FRSCA (1992) is at the state level—this is a major gap in how we understand the politics of ARTs. Moreover, as public discourse is so sorely lacking in the US context, more information is necessary to understand how public symbols of ARTs—from the Octomom, to the link between autism in sperm-donor-conceived children, to reproductive travel to the global south for gestational surrogates—impacts public opinion on government oversight of these rapidly expanding technologies. As studies of abortion politics and policy have done, there needs to be systematic research into public attitudes (and policy outcomes) of ARTs. A focus-group study on preconception sex selection provides one such model for studying public attitudes; given the variation of legislative responses on Chapters 4 and 5, broader public opinion data is needed (Kalfoglou et al 2008).

In this conclusion, I have drawn out how empirical data and mixed methods on state-level ART legislation challenges broader implications of the politics of reproduction in the US. I have connected the results of this study to possible ways that democratic processes around controversial ARTs—a concept that spans reproduction and research—can improve and reflect ways to give power to those that are powerless. More significantly, this research situates egg donation as a concept that clarifies how gender, reproduction, technology, medicine mix with formal structures of power. Instead of fearing these complex intersections, egg donation (and by extension, ARTs) challenge

scholars of women and politics to consider how government can not only make people's lives better through families and regenerative medicine, but how the government can make these experiences more egalitarian.

APPENDIX 1: DATA COLLECTION, ASSISTED REPRODUCTIVE TECHNOLOGY BILLS, 1990—2010

Research in Chapters 3, 4, and 5 rely on original legislative data on assisted reproductive technologies (ARTs) collected at the state level. Unlike previous studies, this project examines ART legislation at the bill stage—providing crucial insight into the interest, activity, and framing of ARTs and relevant political, social, and economic issues (Bonnicksen 2007). Chapter 3 relied on large-n data collected in this dataset, and the cases in Chapters 4 and 5 were derived from this data. The methods employed in this project used online searches of legislative databases for ART bills, in the following categories: egg donation, surrogacy, parentage, somatic cell nuclear transfer, and insurance coverage of ARTs. Please see definitions of each bill in Table 1:

Table A.1: Bill Definitions

Bill Type	Definition
Egg Donation	Any bill designed to regulate egg donation laboratory/clinical, compensation, and marketing practices by medical professionals, consumers, or egg donors in fertility treatment and research settings. Sperm donation bills not included.
Surrogacy	Any bill designed to regulate surrogate parenting (gestational or traditional) through laboratory/clinical practices, legality of contracts between surrogate parents and intended parents, and marketing/compensation practices.
Parentage	Any bill defining the legal relationships between intended parent and ART-conceived child, included rights to property and inheritance and definitions of legal parentage. Bills regarding surrogate parentage were excluded and placed in parentage category.
Somatic Cell Nuclear Transfer	Any bill regulating somatic cell nuclear transfer or reproductive cloning, Includes restrictions on laboratory/clinical practice, compensation, and marketing.
Insurance Coverage of ARTs	Any bill defining coverage of infertility services by public and private insurance companies.

Legislative data on ART bills between 1990 and 2010 was collected through state legislative websites for 49 states. For the search terms used in online legislative website

search engines, see Table 2. While this study uses unique methods to collect legislative data on ARTs, search terms were derived from research on similar studies of ART policy, specifically from passed ART bills and studies of surrogacy (Bonnicksen 2007, Markens 2007, Heidt-Forsythe 2010). Lastly, Boolean operators were used to capture ART bills in legislative website searches, for example searching for “assisted repro*” alongside “assisted reproduction.” Massachusetts was the only state omitted from this search due to a lack of readily available legislative history data between 1990 and 2010. Searches were done for Regular sessions of the House and Senate in each state.¹ House and Senate versions of bills were collected as separate bills.

Table A.2: Search Terms

in vitro fertilization
gamete
infertility
sperm
ovum
assisted reproductive technologies
assisted reproduction
reproductive technology
reproductive cloning
somatic cell nuclear transfer
surrogacy
donation
embryo
biotech

After searches were completed, introduced versions of bills were read by coders then were coded into each of the five categories listed in Table 1, as well as “Other.” Bills were coded into one category according to best fit—the overall thrust of the bill. If this was in question, paragraphs were counted in the introduced version of the bill. For example, if there was a bill that the majority of the text (measured in paragraphs) devoted

¹ As Nebraska is the only state with a unitary legislature, information on ART bills was collected but the state was not considered in case selection.

to egg donation and a minority of the text devoted to cloning, the bill was coded as an egg donation bill. “Other” bills were not included in the dataset, nor included in the analysis in Chapters 3, 4, or 5. Research assistance by one graduate student was used to provide inter-coder reliability of bills. After the bill was coded, it was entered into a spreadsheet where bill number, year, category of policy, and outcome (signed into law, vetoed) were recorded. If searches could not be completed for the entire 1990 to 2010 period, this data was noted and data entry began on the first year available for searching on each legislative website. In total, these methods culled over 1,000 ART bills in five categories, among 49 states between 1990 and 2010.

APPENDIX 2: CASE SELECTION AND FRAME ANALYSIS

The importance of comparative analysis has been demonstrated both in international comparisons of ART policy (Banchoff 2011) as well as domestic comparison of state policy (Bonnicksen 2007, Markens 2007). Such scholarship has illuminated how institutional structures, legislators' ideologies, and political mobilization create ART policy that varies across region. In Chapters 4 and 5, I demonstrate how qualitative analysis of ART legislative activity on the subject of egg donation yields new understandings of the (1) activity of states on egg donation as a social issue and (2) how this social issue was framed (and acted upon via legislation) at the state level, in order to better understand the dynamics of morality and rational-instrumental stakeholders in ART policymaking at the state level.

To select cases, I reviewed the original data set collected for Chapter 3, isolating egg donation as the topic of study. Egg donation was selected for the morality concerns (elucidated in Chapter 2) as well as the rational-instrumental concerns embedded in the practice—a practice that has considerable scholarship behind these concerns (Ikemoto 2009, Almeling 2011, Daniels and Heidt-Forsythe 2012). I established a threshold of at least five egg donation bills between 1990 and 2010, in order to ensure my cases were culled from similarly active states on egg donation issues—to prevent choosing cases that represented an outlier of legislative activity in the scope of a state's policymaking on ART issues. After establishing the group of states with high egg donation legislation activity, I then turned to the NCSL ranking of legislature professionalism (NCSL 2012). To avoid the “apples and oranges” issues of comparing legislatures, I eliminated all cases that did not have a professional or semi-professional legislature according to the NCSL

(NCSL 2012). Lastly, I eliminated cases that were too similar according to the rubric of morality and rational-instrumental variables laid out in Chapter 2—i.e. states that scored similarly on tests of legislative ideology. Finally, I chose cases that reflected a diverse regional perspective.

California and New York have been compared similarly in Marken's (2007) study of legislative responses to surrogacy in the 1980s to 1990s—as she demonstrates, they make for a useful comparison as their legislative outcomes vary, while they share many political and biotechnological similarities (Markens 2007). A comparison of Arizona and Louisiana has no precedence in the scholarship on ARTs, but also makes for a useful comparison for many of the same reasons as California and New York: the legislative outcomes of the bills in Arizona and Louisiana varied, while the two states share similar political and biotechnological similarities detailed in Chapter 5.

After selecting these cases, I collected full legislative histories, copies of every version of the bill, as well as other legislative documents attached to the bills, when available (See Chapters 4 and 5). My content analysis engaged each version of the bill in each case, as I read each bill version and coded for frames. I organized the frames of each bill into two categories: “moral” frames and “rational-instrumental” frames. Within the “moral” frame category, there were three subcategories of frames: ethics, feminist, religious. Within the “rational-instrumental” frames categories, there were four subcategories of frames: scientific, economic, government responsibility, and medical. Frames are counted per paragraph of a given bill, with one frame per paragraph. Frames were composed deductively and tested on SB 1260 (CA, 2006), where rational-instrumental frames were more rigorously defined as distinct from procedural frames—

those frames that defined terms and procedures of government.¹ I collected empirical data on the bill version, the date, the number of frames in each category and subcategory. Finally, I collected data on bill sponsor name, bill co-sponsor name, and the party identification, gender, and race of all sponsors and co-sponsors.

To supplement my findings from the content analysis, I read publicly available committee hearing transcripts, press conference statements by sponsors, interest group statements, bill analyses by the legal departments in each legislature, and interviews with sponsors when available. As these materials varied by case, I chose to exclude them from a formal content analysis. While the empirical findings of Chapters 4 and 5 rely on rigorous content analysis, these supplemental materials allowed me to construct a policy narrative about the interplay between morality and rational-instrumental frames and larger political environments that contextualize ART policy activity.

¹ Procedural frames were counted in data collection but disregarded in analysis for Chapter 3.

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