

## PUNISHING MATERNAL AMBIVALENCE

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There are certain landmarks on the road to parenthood that together comprise a cultural narrative about becoming a parent, a narrative that many aspire to emulate and that some achieve: celebrating a (heterosexual) marriage with a big wedding; a positive pregnancy test leading to overjoyed reactions; first ultrasound pictures hung on the fridge (and shared on social media); a healthy pregnancy with baby showers and nesting to prepare for the new arrival; maternity photo shoots and babymoons to celebrate the final moments before life changes; and finally, an uncomplicated labor and delivery that, in an instant, transform the couple into parents. These rituals and experiences are culturally salient, confirming that the participants are conforming to societal expectations about preparation and fitness for parenthood.<sup>1</sup> But the transition from not being a parent to being a parent can take many different forms and embody different types of social meaning for the people involved. For some women, becoming a parent is much more fraught than the cultural narrative outlined here because they feel ambivalent about being a parent or about adding an additional child to their families.<sup>2</sup>

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1. See, e.g., Janet K.L. McKeown & Diana C. Parry, *First Comes Love, Then Comes Marriage, Then Comes Baby in the Baby Carriage?: Exploring How Women Can Use Leisure as Resistance to Gendered Ideologies*, 38 LEISURE STUD. 191 (2018) (analyzing how gendered ideology about couplehood, marriage, family, and biological parenthood reinforce expectations about women's responsibilities regarding family and motherhood); Sowmya Rajasekaran, "First Comes Love, Then Comes Marriage and Then Comes a Baby in a Baby Carriage." *What About in Between Marriage and Having a Baby?: The OH Moment*, MEDIUM (Oct. 19, 2016), <https://medium.com/@sowmya.rajasekaran/first-comes-love-then-comes-marriage-and-then-comes-a-baby-in-a-baby-carriage-39f9f3e82831> [<https://perma.cc/4V4Y-SX35>] (identifying, in an online commentary, "all these unwritten rules placed on us, surrounding marriage and procreation," to "follow[] the 'guidelines of life'").

2. Not all people who experience pregnancy and childbirth are women. See Juno Obedin-Maliver & Harvey J. Makadon, *Transgender Men and Pregnancy*, 9 OBSTETRIC MED. 4 (2015); Robin Marantz Henig, *Transgender Men Who Become Pregnant Face Social, Health Challenges*, NPR (Nov. 7, 2014, 3:53 PM), <https://www.npr.org/sections/health-shots/2014/11/07/362269036/transgender-men-who-becomepregnant-face-health-challenges> [<https://perma.cc/KV5T-D3E3>]. However, because this Essay addresses specifically gendered stereotypes associated with women and their traditional roles as mothers, it will generally use the term "mother" instead of "pregnant person" or "birthing person."

Maternal ambivalence has important, usually negative, social meaning and, increasingly, also legal significance for the mothers, children, and families involved. But the experience of ambivalence is usually invisible—something individual women feel privately and will perhaps share with trusted friends or a therapist, but which is not considered appropriate to discuss more publicly. The cloak of silence shielding these feelings from public awareness reflects the social stigma that attaches to maternal ambivalence, leading to emotional and psychological harm for some women who feel ambivalent about their pregnancies.<sup>3</sup> The strength of this stigma enables feelings of ambivalence to be weaponized against pregnant and parenting women, sanctioning them for their deviance from social stereotypes regarding who is a “good” mother.<sup>4</sup>

This Essay explores the punishment of maternal ambivalence, drawing on three case studies to illustrate the strength of the stigma that attaches to such feelings. In these cases, the stigma of ambivalence turns such feelings into a weapon for disciplining women who fall short of societal expectations for mothers. These women (and others like them) are marked by social disadvantage, either because they are women of color in a racist society or because they are economically marginal, relying on low-wage jobs or an abusive husband in order to survive. Their race and class status may contribute to their ambivalence, making them reluctant to have a child whose basic needs they may not be able to satisfy. Such statuses also mark them for scrutiny and criminal sanction in a way that reflects not only gendered stereotypes but also racialized and class-based stereotypes about parental fitness and about who is deserving of society’s compassion and empathy.

Part I introduces three women whose private feelings of ambivalence became matters of public record. Part II briefly explores the concept of maternal ambivalence as understood in the psychoanalytic literature, comparing its meaning and significance to the ambivalence experienced by women facing criminal punishment. Finally, Part III explores how the social stigmatization of maternal ambivalence enables women’s complicated

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3. See, e.g., Bruce G. Link, Jo C. Phelan & Greer Sullivan, *Mental and Physical Health Consequences of the Stigma Associated with Mental Illnesses*, in THE OXFORD HANDBOOK OF STIGMA, DISCRIMINATION, AND HEALTH 521 (Brenda Major et al. eds., 2018) (discussing how the stigma of mental illness further decreases emotional and psychological health and also drives physical health disparities); SIMON RUFFELL, STIGMA KILLS! THE PSYCHOLOGICAL EFFECTS OF EMOTIONAL ABUSE AND DISCRIMINATION TOWARDS A PATIENT WITH HIV IN UGANDA (2017), <https://casereports.bmj.com/content/2017/bcr-2016-218024> [<https://perma.cc/N5VN-8A42>] (showing the negative impact that stigma and discrimination can have on mental and physical health).

4. See Lisa C. Ikemoto, *The Code of Perfect Pregnancy: At the Intersection of the Ideology of Motherhood, the Practice of Defaulting to Science, and the Interventionist Mindset of Law*, 53 OHIO ST. L.J. 1205, 1206–07 (1992) (identifying the “Code of Perfect Pregnancy,” which captures the “idea and practice of controlling women with regard to conception, gestation, and childbirth in ways that express dominant cultural notions of motherhood”); MARTHA ALBERTSON FINEMAN, THE NEUTERED MOTHER, THE SEXUAL FAMILY, AND OTHER TWENTIETH CENTURY TRAGEDIES 38 (1995) (discussing the imagery and expectations of male-defined motherhood as a category that was legitimized by the legal system’s recognition of these expectations as enforceable).

feelings about motherhood to be used against them in cruel and unforgiving ways.

### I. EXPRESSING AMBIVALENCE

Dominant culture in the United States reflects a pronatalist orientation that limits the acceptable range of reactions for women who learn they are unexpectedly pregnant.<sup>5</sup> In recent years, several cases attracting national attention have illustrated just how circumscribed the space is for women who feel ambivalent about their pregnancies. In 2015, Anne Bynum was living in Arkansas with her son and parents when she learned that she was pregnant.<sup>6</sup> A 36-year-old White woman, Bynum determined that having another child was “not feasible” as a single mother on her minimum-wage salary.<sup>7</sup> She recalls posing a hypothetical question to her mother about what would happen if she got pregnant again, suggesting the ambivalence she felt at the time, and her mother told her she would need to find another place to live.<sup>8</sup> Bynum did not disclose the pregnancy to her parents and decided to relinquish her baby to be adopted by friends, but when she was seven months pregnant, she delivered her baby stillborn at home by herself late one night.<sup>9</sup> The next morning, she went to the emergency room to be examined, bringing the fetal remains with her, which enabled the hospital to confirm that the baby had indeed been stillborn.<sup>10</sup>

Nevertheless, when the hospital discharged Bynum several days later, she was arrested on her way home and charged with the crimes of concealing a birth<sup>11</sup> and abuse of a corpse.<sup>12</sup> Bynum recounts feeling like she was treated

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5. See Angel Petropanagos, *Pronatalism, Geneticism, and ART*, 10 INT’L J. FEMINIST APPROACHES TO BIOETHICS, no. 1, 2017, at 119, 124 (noting aspects of North American culture that reflect pronatalism, including media interest in the “baby bump” images of celebrities, as well as ultrasound images, pregnancy photos, and gender reveal videos regularly shared on social media).

6. Opinion, *A Woman’s Rights*, N.Y. TIMES (Dec. 28, 2018), <https://www.nytimes.com/interactive/2018/12/28/opinion/pregnancy-women-pro-life-abortion.html> [<https://perma.cc/C9RW-NUE7>].

7. *Id.*

8. *Id.*

9. *Id.* According to *The New York Times*, Bynum took labor-inducing drugs after she became aware that the fetus had stopped moving. *Id.* Subsequent examination confirmed that the baby was stillborn. *Id.*; see also Jill Wieber Lens, *Medical Paternalism, Stillbirth, & Blindsided Mothers*, 106 IOWA L. REV. 665, 666, 671 (2020) (explaining that stillbirth refers to pregnancy loss after twenty weeks of pregnancy and noting that the cause cannot be identified in approximately twenty-five percent of stillbirths).

10. *A Woman’s Rights*, *supra* note 6.

11. Sixteen states, including Arkansas, criminalize “concealing a birth” to enable the prosecution of parents who kill their babies. *Id.* Though prosecutors must normally prove that an infant was born alive, Arkansas’s statutory language is sufficiently vague that “women who have miscarriages or stillbirths at home could be charged for waiting even a minute before calling authorities.” *Id.* Bynum’s case is “one of only four that have ever been reported in Arkansas; the three others occurred between 1884 and 1944.” *Id.*

12. *Id.*; Lisa McClain-Freeney, *Victory in Arkansas*, NAT’L ADVOCS. FOR PREGNANT WOMEN (Dec. 12, 2018), <https://www.nationaladvocatesforpregnantwomen.org/victory-in-arkansas/> [<https://perma.cc/2AQF-PKWF>] (describing Bynum’s two felony charges:

as if she had murdered her baby, not as if she had experienced a stillbirth,<sup>13</sup> and expressed confusion about the basis for her prosecution.<sup>14</sup> The abuse of a corpse charge was dismissed at trial, but Bynum was convicted of concealing a birth—after only forty minutes of jury deliberation—and sentenced to six years of incarceration. During the trial, the prosecutor introduced evidence of Bynum’s reproductive history and argued that conviction was appropriate because Bynum “had not told her mother she was pregnant and because she had temporarily placed the stillborn fetus in her car before going to the hospital.”<sup>15</sup> In contrast, there was evidence that Bynum “told many people about her pregnancy [and] contacted several people after the stillbirth” before going to the hospital with the fetal remains.<sup>16</sup> Ultimately, an appellate court reversed the conviction, finding that evidence of a previous abortion was improperly introduced at trial.<sup>17</sup> The Arkansas Court of Appeals sent the case back to the trial court, enabling the prosecution to retry Bynum on the same charge, but she was able to negotiate a plea to a noncriminal violation.<sup>18</sup> Ultimately, though, Bynum spent fifty-nine days in jail after her stillbirth, was subject to ongoing supervision to spend time with her son, and described her experience as being “shunned, shamed, and sequestered.”<sup>19</sup>

In another case, the state charged Latice Fisher with second-degree murder after she experienced a stillbirth at home in 2017.<sup>20</sup> Fisher was a married Black 32-year-old mother of three children living in Mississippi when she learned at a routine doctor’s appointment that she was pregnant.<sup>21</sup> She knew she did not want more children and could not afford to have another child,

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“concealing a birth,” which carried a potential six-year prison sentence and \$10,000 fine, and “abuse of a corpse,” with a sentence of up to ten years in prison and a \$10,000 fine).

13. *A Woman’s Rights*, *supra* note 6 (quoting Bynum: “I was treated like a murderer for suffering a personal tragedy.”).

14. *Id.* (quoting Bynum: “Who am I arrested for concealing it from? My mom? My dad? My brothers? Who?”).

15. McClain-Freeney, *supra* note 12.

16. *Id.*; see also *Judge Acquits Woman of Abuse of Corpse, Jury Convicts Her of Concealing Birth*, SEARK TODAY (Mar. 6, 2016), <https://searktoday.com/judge-acquits-woman-of-abuse-of-corpse-jury-convicts-her-of-concealing-birth/> [<https://perma.cc/B2D9-94YN>] (noting Bynum told a “nurse friend, her priest, and two other attorneys” about the birth).

17. *A Woman’s Rights*, *supra* note 6; McClain-Freeney, *supra* note 12.

18. McClain-Freeney, *supra* note 12.

19. *A Woman’s Rights*, *supra* note 6.

20. *Victory for Latice Fisher in Mississippi*, NAT’L ADVOCES. FOR PREGNANT WOMEN (Sept. 24, 2020), <https://www.nationaladvocatesforpregnantwomen.org/victory-for-latrice-fisher-in-mississippi/> [<https://perma.cc/HLW4-S57Y>]; Lauren Rankin, *How an Online Search for Abortion Pills Landed This Woman in Jail*, FAST CO. (Feb. 26, 2020), <https://www.fastcompany.com/90468030/how-an-online-search-for-abortion-pills-landed-this-woman-in-jail> [<https://perma.cc/GW22-J3N2>].

21. Teddy Wilson, “Prosecution in Search of a Theory”: *Court Documents Raise Questions About Case Against Latice Fisher*, REWIRE NEWS GRP. (Feb. 21, 2018, 12:16 PM), <https://rewirenewsgroup.com/article/2018/02/21/prosecution-search-theory-court-documents-raise-questions-case-latrice-fisher/> [<https://perma.cc/V22T-MU4V>]; Rankin, *supra* note 20.

telling investigators she “simply couldn’t deal with being pregnant again.”<sup>22</sup> Late one night, she felt like she needed to use the bathroom and ended up delivering the baby stillborn at home.<sup>23</sup> When emergency medical technicians arrived, they found the fetus in the toilet with the umbilical cord attached.<sup>24</sup> The EMTs transported Fisher to OCH Regional Medical Center “where she was evaluated and questioned by hospital staff.”<sup>25</sup> An autopsy found “no identifiable evidence of external or internal traumatic injury” contributing to the fetus’s death.<sup>26</sup> News coverage of the case reported that Fisher “allegedly confessed to a nurse at OCH Regional Medical Center that she didn’t want to be a mother again, and had researched ways to terminate her pregnancy.”<sup>27</sup> Fisher was held in jail after the judge set a \$100,000 bond.<sup>28</sup> In search of a motive to support the criminal charge, investigators accessed Fisher’s internet search history from her cell phone, which indicated that she had researched abortion medication.<sup>29</sup> She also “admitted to conducting internet searches” about how to induce miscarriage.<sup>30</sup>

Ultimately, advocates were able to convince the prosecutor to drop the murder charge in light of evidence about the unreliability of the floating lung test, which had been employed to determine that the baby had been born alive and which had formed the basis of the criminal charges against Fisher.<sup>31</sup> When the prosecutor presented the case again before another grand jury, with accurate scientific information provided by advocates, the grand jury “no billed” the matter and Fisher was free—more than two years after the pregnancy loss.<sup>32</sup>

In yet another case, Christine Taylor, a 22-year-old White mother of two children living in Iowa, was pregnant when she became light-headed after an upsetting conversation with her estranged husband and fell down a flight of

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22. Wilson, *supra* note 21.

23. Rankin, *supra* note 20; *see also* Wilson, *supra* note 21 (quoting obstetrician Leah Torres about the possibility of fetal death during the labor process).

24. Wilson, *supra* note 21.

25. Ryan Phillips, *Infant Death Case Heading Back to Grand Jury*, STARKVILLE DAILY NEWS (May 9, 2019), [https://www.starkvilledailynews.com/infant-death-case-heading-back-to-grand-jury/article\\_cf99bcb0-71cc-11e9-963a-eb5dc5052c92.html](https://www.starkvilledailynews.com/infant-death-case-heading-back-to-grand-jury/article_cf99bcb0-71cc-11e9-963a-eb5dc5052c92.html) [<https://perma.cc/P99L-R77Q>].

26. Wilson, *supra* note 21.

27. Phillips, *supra* note 25.

28. Wilson, *supra* note 21.

29. Rankin, *supra* note 20.

30. Phillips, *supra* note 25. News coverage also reported a statement from the district attorney’s office that Fisher had purchased misoprostol, a drug used to induce labor or cause an abortion. *Id.*

31. *Victory for Latice Fisher in Mississippi*, *supra* note 20; Alex Holloway, *New Info Suggests Baby Left in Toilet May Have Been Born Dead*, DISPATCH (May 9, 2019), <https://cdispatch.com/news/2019-05-09/new-info-suggests-baby-left-in-toilet-may-have-been-born-dead/> [<https://perma.cc/RAY3-C8LN>]; *see also* Aziza Ahmed, *Floating Lungs: Forensic Science in Self-Induced Abortion Prosecutions*, 100 B.U. L. REV. 1111, 1131–36 (2020) (describing the lack of scientific evidence on the hydrostatic lung test used to prove a baby was born alive).

32. *Victory for Latice Fisher in Mississippi*, *supra* note 20.

stairs.<sup>33</sup> Taylor's husband had left the family after she became pregnant for the third time, and Taylor described that upon hearing that he "wants to be free," she was "so upset and frantic [she] almost blacked out, and [she] tripped and fell."<sup>34</sup> She went to the emergency room, where doctors determined that both she and her fetus were fine after the fall.<sup>35</sup> While there, Taylor shared with a nurse that she was "upset and scared and wasn't sure she wanted to continue the pregnancy."<sup>36</sup> Specifically, she mentioned that she was considering adoption or abortion because she felt uncertain about parenting three children on her own now that she was single and unemployed.<sup>37</sup> Although she received some financial support from her husband, Taylor observed: "[M]oney doesn't make a parent. I don't have anybody else to turn to."<sup>38</sup> The nurse notified a doctor, who then called the police who came to the hospital to interrogate Taylor.<sup>39</sup> Upon discharge from the hospital, as she was traveling home in a taxi, she was pulled over, arrested, and held in jail for two days.<sup>40</sup> Taylor was charged with attempted feticide under Iowa's fetal homicide law after investigators concluded she intentionally fell down the stairs.<sup>41</sup>

Eventually, prosecutors dropped the charges against Taylor after doctors confirmed that she was in her second trimester at the time of her fall, and not in the third trimester as required by the statute.<sup>42</sup> After the charges were dropped, the legal and ethical ramifications of disclosing to law enforcement the statement that Taylor made to the nurse in the course of receiving treatment went completely unaddressed.<sup>43</sup>

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33. Amie Newman, *Pregnant?: Don't Fall Down the Stairs*, REWIRE NEWS GRP. (Feb. 15, 2010), <https://rewirenewsgroup.com/article/2010/02/15/pregnant-dont-fall-down-stairs/> [<https://perma.cc/PDX3-6LUX>].

34. *Iowa Police Almost Prosecute Woman for Her Accidental Fall During Pregnancy . . . Seriously*, ACLU MAINE (Feb. 11, 2010, 5:04 PM), <https://www.aclumaine.org/en/news/iowa-police-almost-prosecute-woman-her-accidental-fall-during-pregnancyseriously> [<https://perma.cc/72FY-SBVT>].

35. *Id.*

36. Newman, *supra* note 33. According to the police report, nurse Tiffany Prickett "asked Christine if she just didn't want the kid tonight, and Christine told her that she hadn't wanted the baby all along." *Iowa Police Almost Prosecute Woman for Her Accidental Fall During Pregnancy . . . Seriously*, *supra* note 34.

37. Dan Savage, *Woman in Iowa Arrested for Falling Down the Stairs While Pregnant*, THE STRANGER (Mar. 1, 2010, 4:06 PM), <https://www.thestranger.com/slog/archives/2010/03/01/woman-in-iowa-arrested-for-falling-down-the-stairs-while-pregnant> [<https://perma.cc/4X5L-KMYU>]; Newman, *supra* note 33.

38. *Iowa Police Almost Prosecute Woman for Her Accidental Fall During Pregnancy . . . Seriously*, *supra* note 34.

39. Newman, *supra* note 33.

40. *Iowa Police Almost Prosecute Woman for Her Accidental Fall During Pregnancy . . . Seriously*, *supra* note 34.

41. Newman, *supra* note 33.

42. *Id.*

43. *Cf.* Kevin Hayes, *Did Christine Taylor Take Abortion into Her Own Hands?*, CBS NEWS (Mar. 2, 2010 6:55 AM), <https://www.cbsnews.com/news/did-christine-taylor-take-abortion-into-her-own-hands/> [<https://perma.cc/MV9F-L3WR>]; Newman, *supra* note 33 (quoting legal expert Robert Rigg on the limitations of health-care providers' disclosures to

There are common themes throughout Bynum's, Fisher's, and Taylor's cases, despite differences in their race, marital status, location, and the nature of the criminal charges they faced. All three women were already mothers, intimately familiar with the burdens and joys of parenthood. All three expressed feeling overwhelmed by the personal and financial implications of having another child. And all three were exploring alternatives to being pregnant or parenting another child, whether through adoption, abortion, or both. Their legal problems arose when their ambivalence became known publicly, mediated by powerful stereotypes about "good mothers" and "bad mothers" that led law enforcement authorities to assign moral culpability for their maternal ambivalence.

## II. UNDERSTANDING AMBIVALENCE

The various authority figures Bynum, Fisher, and Taylor interacted with—including hospital personnel, police, prosecutors, and jurors—concluded that the ambivalence the women expressed about being pregnant was both morally and legally improper. But not all professionals who encounter ambivalent mothers share that view. In fact, within psychology—and psychoanalysis in particular—maternal ambivalence is considered normal and healthy. Psychiatrist and psychoanalyst Barbara Almond describes ambivalence as a "combination of the loving and hating feelings we experience toward those who are important to us. Maternal ambivalence is a normal phenomenon. It is ubiquitous. It is not a crime or a failing."<sup>44</sup> Rozsika Parker, a prominent theorist of maternal ambivalence, identifies the "inevitability and normality of ambivalence throughout the human life cycle."<sup>45</sup> She posits that ambivalence, or the struggle with ambivalence, makes mothers work harder to understand their babies.<sup>46</sup> There is value in this work because "the capacity to think about the baby and child is arguably the single most important aspect of mothering."<sup>47</sup> Similarly, psychologist Daphne de Marneffe characterizes ambivalence as useful, noting that while the "notion that powerful negative feelings toward our children might offer a creative force rather than a destructive one is quite alien to our usual way of thinking," by "acknowledg[ing] our whole range of feelings" and "accept[ing] contradictions . . . we can ultimately understand ourselves and our children even better."<sup>48</sup>

To the extent that psychologists are drawing on their own clinical experiences when developing a theory of maternal ambivalence, they are

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law enforcement and the likelihood that medical personnel in Taylor's case exceeded those limits).

44. BARBARA ALMOND, *THE MONSTER WITHIN: THE HIDDEN SIDE OF MOTHERHOOD* 1 (2010).

45. *Id.* at xiv.

46. ROZSIKA PARKER, *MOTHER LOVE/MOTHER HATE: THE POWER OF MATERNAL AMBIVALENCE* 6–7 (1995).

47. *Id.*

48. DAPHNE DE MARNEFFE, *MATERNAL DESIRE: ON CHILDREN, LOVE, AND THE INNER LIFE* 120, 124 (2004).

likely focused on a narrow subset of women expressing maternal ambivalence—namely the White, upper-middle-class women who are most likely to be private therapy clients.<sup>49</sup> They are also contemplating forms of maternal ambivalence articulated on a broader spectrum at various points in the reproductive life cycle, including women who want a child but who are hesitant or fearful before getting pregnant, women who struggle with external pressure to get pregnant despite their reluctance or disinterest, and women who feel ambivalent about their existing children.<sup>50</sup> But despite its multifaceted nature, the psychoanalytic theory of maternal ambivalence is relevant to understanding the cases of Bynum, Fisher, and Taylor, as well as other women like them.

First, the literature on maternal ambivalence stresses the positive side of women's struggle with ambivalence about pregnancy and parenting. For a mother expressing ambivalence about an existing child, this suggests she is differentiating the child from herself and coming to understand better the child's needs, which is necessary in order for her to meet those needs.<sup>51</sup> Similarly, one might assign positive value to ambivalence on the part of a pregnant woman, like Fisher, who is considering adoption or abortion because in that ambivalence is a struggle to decide the best course of action, reflecting the seriousness she assigns to the decision-making process. Such women may be contemplating the financial and emotional resources that will be available to a future child and grappling realistically with how limits on those resources will affect the child's quality of life. Such ambivalence may also reflect the high degree of concern they feel toward existing children and their ability to continue to provide necessary care for them. By contrast, in the cases discussed above, law enforcement assumed a lack of compassion, thoughtfulness, or responsibility on the part of the women involved, drawing a conclusion about their ambivalence that suggested depravity rather than care. The psychology of maternal ambivalence suggests that such legal actors are drawing the wrong conclusion here.

Second, psychoanalytic theory stresses the normality of maternal ambivalence, characterizing it as something common and unexceptional. And yet, women who feel ambivalent about pregnancy and parenting often experience it as a lonely state, as if their ambivalence means they have deviated from the norm and are flawed as women or mothers (or mothers-to-be). The fact that women experiencing maternal ambivalence do not perceive that some other women also feel ambivalent about the prospect of being pregnant or having a(nother) child reflects the power of social norms that police mothers and dictate the boundaries differentiating "good" mothers from "bad" mothers. Societal expectations that women are supposed to be mothers—and are supposed to want to be mothers—appear to leave little room for hesitation or doubt, let alone rejection of the role altogether. Though not a desired reality for all women, this image of women-as-mothers

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49. ALMOND, *supra* note 44, at x.

50. *Id.* at xii, 73–88.

51. *Id.* at xiii–xv.

is packaged for consumption through popular media and reinforced each time someone asks a woman when she is going to “start trying for a baby” or each time a woman is reminded that fertility is finite, with talk of biological clocks “ticking away.” The gendered ideology that advances motherhood as women’s destiny exerts such power that it eliminates women’s ability to see their own ambivalence as normal and not deviant. The power of these norms makes it possible for the legal system to step in and sanction women like Bynum, Fisher, and Taylor for somehow falling short of the gendered ideal of motherhood. In turn, by punishing these women publicly for violating motherhood norms with their expressions of ambivalence, the legal system reinscribes the boundaries that delineate “good” mothers, signaling that society will not tolerate such deviance—at least from certain women, particularly those women of color and women living on low incomes who face routine surveillance by the state.<sup>52</sup>

Third, the maternal ambivalence literature draws a close connection between ambivalence and stigma, which helps to explain why the women discussed previously faced such extreme opprobrium for fairly common experiences like experiencing stillbirth<sup>53</sup> or considering adoption or abortion.<sup>54</sup> Psychologists whose patients struggle with maternal ambivalence say the ambivalence itself is not the problem, but rather the guilt and anxiety prompted by public condemnation of ambivalent feelings are the real problem for mothers in this situation.<sup>55</sup> As Almond notes, “[T]oday’s expectations for good mothering have become so hard to live with, the standards so draconian, that maternal ambivalence has increased and at the same time become more unacceptable to society as a whole.”<sup>56</sup> Stigma refers to “a set of negative and often unfair beliefs that a society or group of people have about something.”<sup>57</sup> It derives power from the way it associates shame or disgrace with the disfavored thing or person about whom the negative beliefs are articulated.<sup>58</sup>

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52. See generally KHIARA M. BRIDGES, *THE POVERTY OF PRIVACY RIGHTS* (2017).

53. Lens, *supra* note 9, at 667 n.5 (citing *What Is Stillbirth?*, CTRS. FOR DISEASE CONTROL & PREVENTION, <https://www.cdc.gov/ncbddd/stillbirth/facts.html> [<https://perma.cc/H4NN-3L42>] (Nov. 16, 2020) (noting approximately 1 in 160 pregnancies results in stillbirth)).

54. *Abortion Is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates*, GUTTMACHER INST. (Oct. 19, 2017), <https://www.guttmacher.org/news-release/2017/abortion-common-experience-us-women-despite-dramatic-declines-rates> [<https://perma.cc/DL8G-5S2Z>] (noting 23.7 percent of women will have an abortion by age forty-five); Mary Louise Kelly, Ashley Westerman & Sarah Handel, *Sociologist Says Women Are More Likely to Choose Abortion over Adoption*, NPR (Dec. 3, 2021, 4:15 PM), <https://www.npr.org/2021/12/03/1061333491/sociologist-says-women-are-more-likely-to-choose-abortion-over-adoption> [<https://perma.cc/V6VJ-PURJ>] (reporting there are approximately 18,000–20,000 private domestic adoptions each year).

55. ALMOND, *supra* note 44, at xv.

56. *Id.* at xiii.

57. *Stigma*, MERRIAM-WEBSTER, <https://www.merriam-webster.com/dictionary/stigma> [<https://perma.cc/862C-ZVVZ>] (last visited Apr. 2, 2022).

58. See generally ERVING GOFFMAN, *STIGMA: NOTES ON THE MANAGEMENT OF SPOILED IDENTITY* (1963).

Abortion provides a relevant example of the way stigma operates and its power to constrain otherwise lawful, acceptable, and even socially valuable conduct. Although a woman's constitutional right to abortion was recognized starting in 1973,<sup>59</sup> the decision to terminate is a highly stigmatized one and is often concealed, even by women who express no uncertainty about their desire not to be pregnant.<sup>60</sup> Researchers have noted that one driver of abortion stigma is that abortion "violat[es] . . . female ideals of sexuality and motherhood."<sup>61</sup> They describe abortion stigma as "a negative attribute ascribed to women who seek to terminate a pregnancy that marks them, internally or externally, as inferior to ideals of womanhood."<sup>62</sup> The negative meaning associated with abortion applies even to women who explain their decision to terminate a pregnancy as one motivated by the best interests of existing children—a choice to prioritize the health, safety, and care of children whose well-being would be reduced by adding another child to the family.<sup>63</sup> Rather than allow for the complexity of reproductive decision-making, stigma operates to conceal this aspect of women's abortion decisions in favor of characterizing women who terminate pregnancies as violating motherhood norms. Although abortion is not the only endpoint for women experiencing ambivalence about pregnancy or parenting—and indeed, ambivalent mothers may choose to parent with continued ambivalence or after having resolved their ambivalence, or they may choose to terminate a pregnancy or surrender a baby for adoption—abortion stigma can be understood as a subset of maternal ambivalence stigma more broadly and, as such, provides a useful illustration of the way stigma operates to make maternal ambivalence consequential beyond an individual woman's own thoughts, feelings, and personal decision-making.

### III. DISCIPLINING AMBIVALENCE

When a woman talks to her therapist about ambivalence regarding pregnancy or parenting, that emotion is expressed privately in a safe space where she can trust that her therapist will protect her confidences. For Bynum, Fisher, and Taylor, their maternal ambivalence became public information after pregnancy loss or concern for fetal well-being after a fall prompted them to seek medical care. Suspicion on the part of health-care providers then led to the involvement of law enforcement to investigate and eventually prosecute the women for the circumstances surrounding their

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59. *Roe v. Wade*, 410 U.S. 113 (1973).

60. See Allison Norris, Danielle Bessett, Julia R. Steinberg, Megan L. Kavanaugh, Silvia De Zordo & Davida Becker, *Abortion Stigma: A Reconceptualization of Constituents, Causes, and Consequences*, WOMEN'S HEALTH ISSUES, May 2011 supp., at S49 (discussing the pervasiveness of abortion stigma).

61. *Id.* at S49.

62. Anuradha Kumar, Leila Hessini & Ellen M.H. Mitchell, *Conceptualising Abortion Stigma*, 11 CULTURE, HEALTH & SEXUALITY 625, 628 (2009).

63. M Antonia Biggs, Heather Gould & Diana Greene Foster, *Understanding Why Women Seek Abortions in the US*, 12 BMC WOMEN'S HEALTH, no. 29, 2013, at 1 (reporting that twenty-nine percent of women cited the need to focus on other children as a reason for seeking abortion).

pregnancies. In each of the cases, certain facts related to the women's ambivalence about their pregnancies contributed to the suspicion that set in motion the chain of events leading to prosecution. Skepticism, suspicion, and condemnation of these facts manifesting ambivalence were by no means a necessary conclusion or a legally required response; however, under the prevailing social norms regarding motherhood—and “good” mothers, in particular—such responses are increasingly predictable, if troubling, reflections of the degree to which pregnant women face surveillance and policing of their conduct.<sup>64</sup>

Anne Bynum's case involves several facts regarding her ambivalence that the jury may have found compelling in reaching a swift decision to convict. First, Bynum did not tell her mother, or other members of her immediate family, that she was pregnant. She explains the withholding of information as being motivated by concern that her parents would kick her and her son out of their home, but keeping such a secret from one's family runs counter to the dominant cultural narrative of pregnancy and thus may have predisposed the jury to condemn this decision.<sup>65</sup> Second, Bynum decided to relinquish her baby for adoption, a decision driven by her economic circumstances but which, again, departs from social norms that expect women to be “self-sacrificing mothers.”<sup>66</sup> Third, there are the facts surrounding Bynum's treatment of the fetal remains between the time she delivered and the time she went to the hospital, along with the related facts about the period of time when she slept before going to the emergency room.

It is not clear why the law would or should impose a legal requirement that a grown adult disclose a pregnancy to her own mother or to anyone else. Yet the fact that Bynum did not tell her mother was deployed against her to support the “concealing a birth” charge, even though that crime targets concealing evidence of a birth in order to prevent determination of whether a baby died after birth, and there is no indication that Bynum was attempting to avoid such a determination. Nor is it clear why Bynum's conduct in collecting the fetal remains after her stillbirth and bringing them with her to the hospital merit punishment. Surely if she had disposed of the remains herself or left them at home while going to the emergency room, both hospital

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64. See, e.g., Lynn M. Paltrow & Jeanne Flavin, *Arrests of and Forced Interventions on Pregnant Women in the United States, 1973–2005: Implications for Women's Legal Status and Public Health*, 38 J. HEALTH POL. POL'Y & L. 299 (2013); AMNESTY INT'L, CRIMINALIZING PREGNANCY: POLICING PREGNANT WOMEN WHO USE DRUGS IN THE USA (2017).

65. Inability to relate to Bynum's economic precarity, especially her fear of housing instability, may also have led the jury to give her explanation little credence.

66. Howard M. Bahr & Kathleen S. Bahr, *Families and Self-Sacrifice: Alternative Models and Meanings for Family Theory*, 79 SOC. FORCES 1231, 1234–37, 1255 (2001); Jennifer L. Barkin & Katherine L. Wisner, *The Role of Maternal Self-Care in New Motherhood*, 29 MIDWIFERY 1050, 1054 (2013); see also April L. Cherry, *Roe's Legacy: The Nonconsensual Medical Treatment of Pregnant Women and Implications for Female Citizenship*, 6 U. PA. J. CONST. L. 723, 740–41 (2004) (discussing cultural norms that expect women to be altruistic and “sacrifice their own lives for their children or their fetuses”).

staff and law enforcement would have viewed this conduct as an indication of something nefarious.<sup>67</sup>

At first glance, the prosecutor's arguments—that failure to disclose the pregnancy to Bynum's mother merits her conviction, or that leaving the fetal remains in the car while she napped before seeking medical care is criminal conduct—may seem far-fetched. But these arguments clearly served a purpose and were effective in conveying to the jury an image of Bynum as someone who departed from normal behavior by struggling with the decision of whether to have another child after finding herself pregnant unexpectedly and who then experienced a stillbirth alone at home. Because the dominant cultural narrative of pregnancy and parenthood involves overjoyed reactions at the sight of a positive pregnancy test and public sharing of ultrasounds on social media, Bynum's approach to managing her pregnancy in order to maintain stable housing and be able to care for her son was used against her as conduct that was not only suspicious, but also criminal.

Lattice Fisher did not hide the fact that she did not want another child, and her lack of joy at the news of pregnancy cast a long shadow of doubt across her pregnancy-related actions, both in the view of law enforcement and in the public consumption of details about her case. News coverage of Fisher's case noted that she “allegedly *confessed* to a nurse . . . that she didn't want to be a mother again,” as if the desire to limit your family to three children were a crime in and of itself.<sup>68</sup> If this were the case, anyone who used any method of contraception to control fertility would potentially invite suspicion. The same news article reports that “court documents say she *admitted* that she didn't want any more children, that she couldn't afford any more and that she ‘simply couldn't deal with being pregnant again.’”<sup>69</sup> Again, a woman deciding that it would be in her emotional and financial best interests, as well as the best interests of her family, not to have another child is wholly unremarkable in a free society; yet here, the news coverage twists rational decision-making about the size of one's family into criminal behavior to which one “admits.” To the extent that Fisher's feeling of emotional overwhelm—conveyed in the phrase “simply couldn't deal with being pregnant again”—invited law enforcement scrutiny, this case calls into question how safe it is for pregnant women, especially pregnant women of color and poor pregnant women, to disclose mental health concerns to anyone else.<sup>70</sup>

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67. The judge seemed to allude to this in the midst of granting Bynum's motion for directed verdict on the abuse of a corpse charge when he asked, “What did (the State) want her to do with the fetus?” *Judge Acquits Woman of Abuse of Corpse, Jury Convicts Her of Concealing Birth*, *supra* note 16.

68. Phillips, *supra* note 25 (emphasis added); see also Rankin, *supra* note 20 (“Fisher *admitted* to investigators that she didn't want any more children . . .” (emphasis added)).

69. Phillips, *supra* note 25 (emphasis added).

70. See JAMILA TAYLOR & CHRISTY M. GAMBLE, *SUFFERING IN SILENCE: MOOD DISORDERS AMONG PREGNANT AND POSTPARTUM WOMEN OF COLOR* 14 (2017) (noting that pregnant and postpartum women of color are “at higher risk for mood disorders” and that “[s]ymptoms associated with depression, anxiety disorder, and other mood disorders experienced during and after pregnancy are largely underreported by women of color”).

Fisher's case also involves a set of facts related to her pursuit of research on self-help to induce miscarriage through medication that reflect the extent of her ambivalence and the degree to which she deviated from the pregnancy and parenting script society expects women to follow. Because she learned of her pregnancy relatively late, at a routine gynecology appointment, her story is not even the typical story of a woman who finds herself unexpectedly pregnant and secures an appointment to terminate the pregnancy at an abortion clinic. She turned to the internet to explore her options. Investigators became aware of this research because Fisher—in an overly trusting move—consented to their search of her cell phone, which revealed data regarding her internet search, all of which was legally accessible to them in the absence of a warrant because she consented to the initial cell phone search.<sup>71</sup> The possibility that she would consider trying to end the pregnancy with medication not only supplied law enforcement with a motive to support the second-degree murder charge, but also marked her as having stepped outside the bounds of a “good” mother.

Finally, Taylor's case illustrates an additional way that women who transgress social norms regarding gender and maternity by declining to embrace motherhood (or additional motherhood) may be disciplined for expressing their ambivalence. Collective anxiety about violation of the norms of motherhood seems to justify ignoring fundamental constitutional rights related to speech, liberty, and privacy, as well as legal and ethical rules regarding patient confidentiality in health care. Regarding her conversation with the nurse at the hospital, Taylor recalled, “I never said I didn't want my baby, but I admitted that I had been considering adoption or abortion . . . . I admit that I said I wasn't sure I wanted to continue the pregnancy.”<sup>72</sup> With this statement, Taylor herself has internalized the criminalizing frame that medical actors began applying to her case upon admission to the hospital; she talks about “admitting” that she might end her pregnancy or relinquish the baby for adoption—both perfectly legal decisions that, collectively, millions of women engage in or consider each year.<sup>73</sup> The idea that it is unconstitutional for the state to prosecute Taylor for thinking about abortion or adoption, or for saying that she is thinking about abortion or adoption, is nowhere part of the conversation. Ultimately, Taylor was arrested and jailed for “admitting uncertainty about her pregnancy and fear about raising three children on her own.”<sup>74</sup> But for the mistake in gestational age of the fetus at the time of Taylor's fall, this prosecution would have proceeded with the willing complicity of medical personnel and law enforcement agents in an unprecedented deprivation of Taylor's constitutional rights. Taylor had already violated powerful social norms regarding motherhood by “admitting”

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71. Rankin, *supra* note 20.

72. *Iowa Police Almost Prosecute Woman for Her Accidental Fall During Pregnancy . . . Seriously*, *supra* note 34.

73. See *Abortion Is a Common Experience for U.S. Women, Despite Dramatic Declines in Rates*, *supra* note 54; Kelly, Westerman & Handel, *supra* note 54.

74. Newman, *supra* note 33.

her ambivalence about a third child, which somehow justified the broad extension of state power over her through the filing of fetal homicide charges.

#### CONCLUSION

It may be tempting for sympathetic observers to look at Bynum's, Fisher's, and Taylor's cases and conclude that they involved exceptional circumstances, such as disproportionate suspicion of their conduct due to their racialized and/or socioeconomic statuses or the tragic nature of pregnancy loss and spousal abandonment that shaped the maternal ambivalence these women felt. But it would be a mistake to interpret these examples as marginal cases. The underlying ambivalence present in all three cases is a much more common feeling among pregnant and parenting women than the extreme criminal sanctions pursued in these instances would suggest. Maternal ambivalence often goes unnoticed, or unheard, due to the stigma that attaches to sentiments or actions that fall short of the motherhood ideal. Social norms governing gender roles, reproductive labor, and motherhood are aggressively enforced, leaving little room for uncertainty, reluctance, fear, or disinterest. But the well-being of women, their babies, and their families demands that we more fiercely preserve space for women to express a full range of emotions regarding their roles as mothers and prevent the state from punishing women when they do so.