Assemblages and Actor Networks in the Borderlands - The Apposition of Reproductive Rights along the Mexican-American Border

Madeleine M. Plasencia

Follow this and additional works at: https://repository.law.miami.edu/fac_articles

Part of the Human Rights Law Commons, International Humanitarian Law Commons, Law and Gender Commons, Law and Society Commons, and the Sexuality and the Law Commons
Assemblages and Actor Networks in the Borderlands—The Apposition of Reproductive Rights Along the Mexican-American Border

MADELEINE M. PLASENCIA†

CONTENTS
ABSTRACT ............................................................................................................. 116
INTRODUCTION .................................................................................................... 117
I. INTRODUCTION TO ACTOR-NETWORK THEORY ...................................... 119
II. ASSEMBLAGE THEORY .............................................................................. 120
III. WHY ACTOR-NETWORK THEORY ............................................................ 123
    A. Solids Dissolve, Power Reconstitutes .................................................. 124
    B. North-South Exodus ............................................................................. 127
IV. ABORTION IN MÉXICO ............................................................................ 128
    A. Doctor-Nurse-Reporters ...................................................................... 131
    B. Abortion Access Companions ............................................................. 132
    C. The Role of Donors ............................................................................. 133
V. WOMEN, PREGNANCY, AND TECHNOLOGY ............................................. 134
VI. ABORTION IN THE UNITED STATES ........................................................ 135
    A. “Texas Heartbeat Act” ........................................................................ 136
    B. The Vigilante Provisions ..................................................................... 137
    C. Networks of Care or Disciplinary Surveillance .................................... 140
    D. The Innovation That Everybody Has Standing .................................. 141
CONCLUSION ..................................................................................................... 142

† Madeleine M. Plasencia, B.A. Cornell University; J.D. University of Pennsylvania. Previously tenured Associate Professor at the University of Tulsa College of Law, presently teaching at the University of Miami School of Law; Co-Founder and Co-Director of LisaLeine Productions; continuing Chair of the Civil Rights Section of the Hispanic National Bar Association. I am grateful to my colleague John W. Murphy, Professor of Sociology, for our discussions of structuralism and assemblage theory and to Robin Schard for research and library support. I thank the organizers and participants of the University of Miami School of Law Workshop held on June 7th, 2022; I thank Charlton C. Copeland and Eleanor Marie Brown for their careful reading and helpful comments and insights on an early draft of the paper. I also wish to acknowledge Bradley Hayes and thank the selection committee of the Yale Law School Latin American Legal Studies program, Seminario en Latinoamérica de Teoría Constitucional y Política—the Seminar in Latin America on Constitutional and Political Theory, or SELA (SELA) for selecting an earlier version of the paper for the SELA 2022 academic gathering in Santiago de Chile. I remain profoundly indebted to my wife and colleague, Elizabeth M. Iglesias, for inspiring and encouraging me, without whom the work would not be as fun.
ABSTRACT

In 1971, Sarah Weddington argued Roe v. Wade as a class action on behalf of pregnant women living in Texas, many of whom, including herself, had to flee the State to obtain an abortion in México. In 2021, Texas enacted S. B. 8, otherwise known as the Texas Heartbeat Act, which created a private cause of action for injunctive relief and statutory damages awards against any person assisting in and any physician accused of performing an abortion, thus reigniting the cross-border flows that historically have made México a haven for runaway enslaved people and pregnant persons heading south to freedom. The Supreme Court of the United States discussed S. B. 8 and its effects in the context of a pre-enforcement challenge invoked in Whole Woman’s Health v. Jackson. Using social science and philosophy understandings of Assemblage Theory and Actor-Network Theory, Professor Madeleine Plasencia offers a novel socio-legal theory for understanding how law and legal interpretation configure complex actor-network and assemblages connecting multiple contiguous political territories, creating a meta version of networks bridging Texas, México, and parts between and beyond. Moreover, since S. B. 8 does away with traditional requirements of nexus and standing to sue, it outsources enforcement of its attack on reproductive rights to the world, raising vigilantes to officially sanctioned status, displacing virtuous actor-networks aimed at assisting pregnant persons with vicious networks of surveillance, thus reconstituting pre-existing actor-networks to produce autopoietic systems of domination powered by pitting neighbor contra neighbor.

To understand the full impact of Whole Woman’s Health v. Jackson and state laws such as S. B. 8, Plasencia theorizes the operation of the law from the perspective of the actor-networks it constitutes and reconstitutes, how these reconstituted assemblages activate new actors from fetal-heartbeat actants to doctor-nurse-reporters, donors, neighbor-snitches, and recalcitrant acompañantes, and how these actor-networks, generate new social relations of power and vulnerability that are virulent and vicious rather than supportive and compassionate.
INTRODUCTION

“All subjects (human and nonhuman alike) are recalcitrant to compliance or be mastered.”

I have been thinking about the network concept within multiple human geographies, travel, and law frameworks. Humans inhabit the social dynamics of actor networks. In turn, new legal frameworks create new assemblages for human interaction, “producing and connecting multiple territories to perform a distinct political geography.” This socio-legal mapping connects multiple contiguous political territories. When regulating reproductive freedom, a meta version of networks legally and metaphorically interconnects Texas, México, and parts between and beyond. By using the tools of network analysis in the Assemblage and Actor-Network Theory, this paper offers a novel socio-legal theory for understanding the broader impacts of state laws aimed at controlling actors within the domain of reproductive rights through the legal conceit posed by Texas Senate Bill 8 (S.B. 8)—the Texas Heartbeat Act—at issue in Whole Woman’s Health v. Jackson.

The operation of S.B. 8 is uniquely punitive for the medical providers sued under this law. Its enforcement provisions shift “command control” from state officials normally responsible for enforcing the law to any individual who chooses to pursue, through private civil action, an injunction and statutory damages awards against physicians who provide healthcare connected to terminating a pregnancy. This enforcement shift from state actors to private plaintiffs has profound implications. State actors are constitutionally accountable in a court of law for violations of constitutional rights under traditional rules and processes and subject to procedural due process of law. Private actors are not.

Pitting neighbor against neighbor has an eerie presence in the history of war, especially in autocratic states, where tactics promoting division

and hatred within the body politic appear as a rule, not an exception in fomenting civil war. All it takes to destroy a civil society is for an authoritarian leader to inject the virus of hatred. As international journalist Richard Cohen has reported until people start killing each other, they are neighbors and friends, living side by side; “it does not take much.” As Cohen noted, the leader must only designate your neighbor as your enemy, and there it begins.

In Texas, S. B. 8 minimizes the role of human discretion and judgment and automates the role of the autocratic leader. This paper shows how S. B. 8 autocatalyzes a self-maintained, autopoietically created social system. The very framing of the patient’s medical care and choices is predetermined as a contingent selection. That is, the physician’s encounter with the patient is bound by preselected contingencies as medical data related to pregnancy may be actualized solely within the closed social system that forbids the termination of a pregnancy. Since S. B. 8 does away with traditional requirements of nexus and standing to sue, it outsources enforcement to the world. By so doing, the law pits neighbor against neighbor. It designates as potential suspects those who perform, induce, or assist in a termination of pregnancy. The Social Actor-Network Theory reveals the law as an actor or actant that profoundly changes the character of pre-existing social relationships. In place of supportive networks for the thriving of its people, the Texas law reconstitutes pre-existing networks. It empowers new actors. It creates new vulnerabilities, and these new networks of power and vulnerability generate new social relations of neighbor contra neighbor—as in guerrilla forces—that are virulent and vicious rather than supportive and compassionate.

S. B. 8 reopens abortion rights’ black boxes—settled understandings and knowledge—dispersing and disbanding actors in established networks related to the boundary of viability in U.S. abortion law and inducing actors to create new relationships and associations within the framework of enforcing the anti-abortion law. To analyze abortion law and its enforcement through surveillance networks of fetal-heartbeat-actants, doctor-nurse-reporters, donors, neighbor-snitches, and recalcitrant acompañantes, we need to understand the Actor-Network Theory.


6. The word contra is especially apt in this context because it is from Latin, meaning against. Also, the word contra conjures guerrilla forces and “contrarevolucionario” as in counter-revolutionary in Spanish, which is appropriate given the reach of the Texas bill.
I. INTRODUCTION TO ACTOR-NETWORK THEORY

Actor-Network Theory (ANT) offers an alternative to structural understandings (especially in the social sciences) of actors, networks, and theory. Developed in the 1980s by Michel Callon, Bruno Latour, Steve Woolgar, and John Law, ANT is a science and technology studies social theory. ANT theorizes the roles of actants—human and nonhuman—in how societal order occurs. ANT believes societal order is achieved through the perpetual processes of interaction between and among humans, nonhumans, and material elements, mutually acting upon each other. French sociologist Bruno Latour describes “the social” as comprising actors, networks, and black boxes. It is said that no matter how contested something once was, once it has “been inscribed in a stable association and is no longer questionable,” it is retired to a black box, a container for things that “no longer need[] to be considered, those things whose contents have become a matter of indifference.” Latour contends that the notion of “the social” must be unpacked and interrogated to trace its connections, examining the “assemblages” of nature to render the associations traceable again. As Latour explains,

an ‘actor’ in the hyphenated expression actor-network is not the source of action but the moving target of a vast array of entities swarming toward it. To retrieve its diversity, the simplest solution is to reactivate the metaphors implied in the word actor, which I have used as an unproblematic placeholder. It is not by accident that this expression, like ‘person,’ comes from the stage. Far from indicating a pure and unproblematic source of action, they both lead to puzzles as old as the institution of theatre itself—Jean-Paul Sartre famously showed in his portraits of the garçon de café who no longer knows the difference between his ‘authentic self’ and his ‘social role.’ To use the word ‘actor’ means that it is never clear

8. Ingrid Jepsen et al., The Overuse of Intrapartum Cardiotocography (CTG) for Low-Risk Women: An Actor-Network Theory Analysis of Data from Focus Groups, 35 WOMEN AND BIRTH 593 (2022).
who and what is acting when we act since an actor on stage is never alone in acting.\textsuperscript{10}

In the context of S. B. 8, doctors, nurses, pregnant persons, inseminators, and the whole world of potential plaintiffs have designated roles. However, they also have authentic and opportunistic identities suppressed or empowered by law. In suppressing and empowering, the law changes the character of the relations by changing how all these actors relate and mutually affect each other. Thus, to see the full impact of a law such as S. B. 8, you need to see its operation from the perspective of the actor-networks it constitutes and reconstitutes and how these actor-networks, in turn, empower/disempower different social identities in their effort to change the law (e.g., medical boards, courts, politicians and legislatures).

II. ASSEMBLAGE THEORY

Crucial to Gilles Deleuze and Félix Guattari, two prominent French political philosophers, is a related (and later) theory—the Assemblage Theory.\textsuperscript{11} In his exposition of Assemblage Theory, Deleuze offers this simple definition of assemblage as dissimilar parts actively interconnected and fitted together in their co-function.

What is an assemblage? It is a multiplicity that is made up of many heterogeneous terms and which establishes liaisons or relations between them across ages, and sexes and reigns different natures. Thus, the assemblage’s only unity is that of co-functioning: it is a symbiosis, a ‘sympathy.’ It is never filiations that are important, but alliances and alloys; these are not successions or lines of descent, but contagions, epidemics, the wind.\textsuperscript{12}

Consider Deleuze’s example of a man-animal-manufactured object illustrating an assemblage: MAN-HORSE-STIRRUP. Drawing on technologists’ accounts of military history, Deleuze discusses the new military unity made possible by the stirrup. The stirrup provided knights

\textsuperscript{10} LATOUR, supra note 7, at 46.

\textsuperscript{11} GILLES DELEUZE & FELIX GUATTARI, A THOUSAND PLATEAUS: CAPITALISM AND SCHIZOPHRENIA (Brian Massumi trans., Univ. of Minnesota Press 1987) from the original French agencement; MANUEL DE LANDA, ASSEMBLAGE THEORY (Edinburgh Univ. Press 2016).

\textsuperscript{12} GILLES DELEUZE & CLAIRE PARNET, DIALOGUES II 69 (Rev. ed. 2007).
with lateral stability and a point of contact with the animal while leveraging forward thrust. Thus, in jousting:

[T]he lance could be tucked in under one arm; it benefits from all the horse’s speed, acts as a point that is immobile itself but propelled by the gallop. ‘The stirrup replaced the energy of man by the power of the animal.’ This is a new man-animal symbiosis, a new assemblage of war, defined by its degree of power or ‘freedom,’ its effects, its circulation of effects: what a set of bodies is capable of. Man and the animal enter into a new relationship; one changes no less than the other, and the battlefield is filled with a new type of effect.\(^{13}\)

In the context of this paper, we will see how the heartbeat monitor introduced to the setting of the medical establishment creates a new assemblage of FETUS-MONITOR in which the fetus and the heartbeat monitor constitute a distinct entity which profoundly alters the relations of power, vulnerability, and surveillance affecting the pregnant-person and the monitoring agent, even as the arrival of this new actant changes all.\(^{14}\)

Thus, people, animals, flora, fauna, buildings, culture, and utterances are all just some of the heterogeneous components that can and do co-function to form and “are transformed and circulate in an assemblage of symbiosis, defined by the co-functioning of its heterogeneous parts.”\(^{15}\) Similarly, state regulation of sexuality and abortion produces a novel assemblage of people, heartbeat monitors, acompañantes, doctors, nurses, police, pregnant persons, kissing gay and non-binary gender identity people, taxi drivers, and vigilantes—an assemblage in which state law and non-state norms, practices and expectations circulate empowering and disempowering, liberating and oppressing each and all in a complex flux of ever-shifting relations.\(^{16}\)

Assemblage Theory focuses on novel groupings while rejecting prior notions of “community” as failing to capture how a group comes about. The prominent American classical sociologist Talcott Parsons argued that we are all structurally linked.\(^{17}\) Connections are not a matter of

---

13. Id. at 69-70 (underline added).
15. DELEUZE & PARNET, supra note 12, at 70.
17. Talcott Parsons, Social Structure and Political Orientation, 13 WORLD POL. 1, 112 (1960); Claudio Baraldi et al., Unlocking Luhmann: A Keyword Introduction to Systems Theory 75 (Katherine Walker trans., Bielefeld Univ. Press 2021). Regarding the
interpretation; we are “objectively” linked. Assemblage theorists, in contrast, posit that “community” in the old sense is based on inadequate ideas, structures, or conceptual frameworks. We can no longer pretend we are objectively connected by physical coordinates, streets, roads, landmarks, ethnicities, and races—Italian, Hispanic, and other “embodied” markers.

For our immediate use in the context of abortion law, state boundaries no longer delimit the “groupings” either of space or identity that are relevant to the new realities emergent from rewritten abortion law. The Actor-Network Theory and the Assemblage Theory both instruct that we should rethink space and community. Further, critics argue that “structure” in the social sciences has become a solidified term, no longer yielding to or including the meanings in play necessary to understand or explain the thing or processes these “structures” refer to, specifically the flux of identity, space, and power of actor/actants mutually acting on each other. For similar reasons, some theorists reject notions of a “system.” Deleuze and Guattari argue this is another concept or term that mistakes the nature of agency and becoming. The critical difference between ANT and prior theories is that ANT explains that all actors have agency and are positioned to influence and impact other actors in a connected dynamism that constantly changes society.

Theorists have referred to assemblage as core to ANT. This socio-philosophical theory helps to situate my analysis of S. B. 8 in the broader history and complex jurisprudential and socio-logical discourses that struggle both to constitute the meaning of reproductive freedom and the implications of these struggles for the kind of actor-networks through which law changes society for better or worse. Following Roe and then Casey, abortion law in the U.S. had achieved jurisprudential stability. A

18. In the latter part of his career Parsons published an essay, Law as an Intellectual Stepchild, in the study of law and legal systems. Talcott Parsons, Law as an Intellectual Stepchild, 47 SOCIO. INQUIRY 11 (1977); Baraldi explains that double contingency does not mean single contingency—twice, but rather “that the construction of the social world comes about through a doubled perspective horizon (the perspectives of ego and alter)” as previously explained. Moreover, the emergence of double contingency “solves” the constant problem presented by social systems as part of their own reproduction. BARALDI ET AL., supra note 17, at 76.

19. DELEUZE & GUATTARI, supra note 11, at 257-260.

20. AUDREY KOBAYASHI, ENCYCLOPEDIA OF HUMAN GEOGRAPHY (2nd ed. 2020).
“super-duper precedent,” in the famous words of late Senator Arlen Specter during the confirmation hearing of Chief Justice John Roberts, was no longer questionable. The abortion network, it seemed, had disappeared into a Latourian “black box.”21 Texas’s enactment of S. B. 8, with its harsh abortion restrictions, cracked that black box wide open, upending the movement of actants. Antonio Viego lambasts how the somatization of Latino/a figures in psychotherapeutic and epidemiological research conjures images of George Romero’s films of “the living dead with its legions of tenacious zombies marching across the landscapes of the United States as the new multitude looking for something, work, employment-based health insurance, green cards, human flesh, good clean fun, who knows.”22 I see the flow of pregnant Texans fleeing the South to freedom inverting the image as it negates the forecasted Latinization of the U.S. by South-to-North migrations of somatized Latinxs.

III. WHY ACTOR-NETWORK THEORY

What might be accomplished by learning, applying, and sharing ANT, a French social sciences and philosophy theory in the context of law? The answer may lie in learning how people see themselves, how they imagine they are connected to other people and things, and how these connections are formed, reformed, and deformed by law.

Simply put, ANT offers a way to rethink space and community. In actuality, group aggregations are not determined by physical proximity. People might be 4,000 miles away and have a more robust connection than the person next door. In this reality, space is an imagined construct. Therefore, notions of space obscure far and near. ANT has gained prominence in tourism geography—studying destination development and tourist experiences.24 Putting together concepts of tourismscapes, diversity, multiple worlds, heterogeneity, and ontological politics, within ANT, actor-networks are revealed as interwoven chains, creating nodes of movement and connectivity, even as they are subsumed by the networks and assemblages into which they disappear.

22. Jepsen et al., supra note 8, at 596.
A. Solids Dissolve, Power Reconstitutes

The truth revealed by ANT demonstrates that separations between people (and things) are much more fluid than traditional categories assume. North and South (poles) are now understood not to be separate.

Previously, groups were conceptualized as solidified things. ANT, in contrast, asserts that people are not disconnected, isolated, or atoms; people are together before the social contract. Now, people see themselves as fundamentally together, co-existing. In this way, ANT reveals the structural maneuvers designed to stifle an actor’s identity and agenda and uncovers these structures’ fleeting and fragile nature. ANT explains how change is wrought not as a micro thing but as a “molecular revolution.”

Even so, the power of agency is bounded by structure; law creates structures of power that determine the ease or difficulty of accomplishing a given place in the relevant network. Therefore, structures present a paradox in the construction of power—as structures block the rise of new power, agents, or actors, (law) structures simultaneously enable new (legal) actors to exercise power.

An example of these complex dynamics might be seen in the rise of arrests of México’s gay and non-binary gender identity population for “adjacent” excuses, such as public decency laws. Networks of private citizens have pushed back by posting videos of attempted arrests to social media, holding “kiss-ins” and rallies, and offering support to travelers through websites. In the S. B. 8 context, an example might be the rise of the nurse-snitch activated to report a “suspicious” pregnant patient to a doctor-prosecutor who then delivers the patient to the local police or law enforcement authority.

Before ANT, people looked to the theory of ethics, space, spatiality, near, far, and community to determine who was in and out. Phenomenologists and ethnomethodologists reject the notion that humans passively encounter the world; qualitative social scientists contend that humans act to define reality and “consciousness is intentional.”

25. DELEUZE & GUATTARI, supra note 11, at 34, 248-50, 272-86.
28. JOHN W. MURPHY, COMMUNITY-BASED INTERVENTIONS: PHILOSOPHY AND ACTION 80-81 (Sheying Chen & Jason L. Powell eds., Springer 2014). I wish to acknowledge the work of John Murphy and thank him for the time spent discussing these theories over an early draft of this paper.
ethnomethodologists famously say, all renderings of reality otherwise known as “facts” are actually “accomplishments.” In the view of Phenomenology, community is not a spatial concept but a domain of commitment and, more specifically, a “domain of inclusion.” The civil rights social and political movements moved in tandem with these theories, giving rise to sophisticated (and liberating) articulations of identity. For example, Audre Lorde theorized what might conjure notions of intersectionality today. In 1983, Lorde opened her essay, *There is No Hierarchy of Oppressions*, by declaring, “I was born Black, and a woman. . . . As a Black, lesbian, feminist, socialist, poet, mother of two, including one boy, and a member of an interracial couple, I usually find myself part of some group in which the majority defines me as deviant, difficult, inferior, or just plain ‘wrong.’” In 1989, Kimberlé Crenshaw coined the term “intersectionality” in legal scholarship, reflecting some twenty years later, “[i]ntersectionality is a lens through which you can see where power comes and collides, where it interlocks and intersects. It’s not simply that there’s a race problem here, a gender problem here, and a class or LBGTQ problem there. Many times, that framework erases what happens to people who are subject to all of these things.”

In 1993, Elizabeth M. Iglesias critiqued the paradox of law as a structure that disempowers even as it purports to protect groups as gender and race interact in the employment context.

Now, let us consider the project of assessing law through this post-structural ANT lens. Is the pre-viable fetus a human or nonhuman actant?
Is travel to México for an abortion a tourism event? México was a haven for runaway enslaved people during antebellum America, as documented in Alice Baumgartner’s *South to Freedom: Runaway Slaves to México and the Road to the Civil War*. Only two countries guaranteed freedom to all enslaved people—Haiti and México. On March 22, 1849, México enshrined this freedom principle in law by decreeing that “the slaves of other countries” who were able to reach Mexican soil were “free” and “their liberty guaranteed.” This promise of freedom upended the relational networks of slavery across the United States, but especially in the Deep South as fugitive enslaved people crossed the Rio Grande on foot, heading south to freedom. In fact, between 1837 and 1861, over three-quarters of runaway enslaved people captured in Texas were running to México. Baumgartner’s work, uncovering the history of these North-to-South patterns, disrupts contemporary notions and understandings of that relationship network in ways previously not visible from prior frameworks and accounts of the crisscrossing North-South and South-North migration patterns. In today’s post-Civil War United States, millions of people living in the U.S.-México border region (Arizona, California, New México, and Texas) endure high rates of health underinsurance—nearly half of those surveyed held no insurance at all. Many of these underinsured Americans travel to Mexico to take advantage of the substantially lower-cost health services, causing them to become virtual “medical tourists.” Both these antebellum and contemporary historical accounts augment the lens for understanding abortion within a more extensive account of medical tourism to México.

Since *Roe*, people have understood abortion as a health intervention and recommended it as essential health care and a human right. That is no longer the case. Abortion is in a you-are-on-your-own-no-man’s-land, falling below the reach of even the most meager medical safety nets. These are matters for exploration. The experience of traveling for and getting an

and Paleolithic Times, 406 QUATERNARY INT’L 239 (2016) (suggesting that the physical and social uniqueness of the elephant make it appropriate for serving as a cosmological and conceptual beacon as a food taboo).

35. ALICE L. BAUMGARTNER, SOUTH TO FREEDOM: RUNAWAY SLAVES TO MEXICO AND THE ROAD TO THE CIVIL WAR 166 (2020).

36. Id. at 165.


abortion in México is a generative event that creates a new societal ordering. These events go beyond the past’s ready-to-hand dualisms (such as North-South, subject-object). These experiences generate stories that explain how multiple worlds are interconnected even as they disrupt each other’s previously stable (black-boxed) narrative and interfere with traditional notions of local and global. “Reality,” according to Latour, is socio-logical in that it is “not a final, definitive state demanding no further effort.” The longer a “chain of associations,” the more “real” the story it tells, and it is continually extending, and “nothing becomes real to the point of not needing a network in which to upkeep its existence.” The harsh reality of restrictive abortion laws is unignorable in the lives of many Americans, including the following account of the odyssey of a pregnant Texan forced to travel to Mexico after being unable to obtain a safe abortion in her own country.

B. North-South Exodus

Extending the work of French sociologist Gabriel Tarde, who refers to society as a vague blur of his and her “confounding themselves through multiplications,” Latour explains,

[exacty as in ANT, whenever you want to understand a network, look for the actors, but when you want to understand an actor, look through the net at work it has traced. In both cases, the point is to avoid the journey through the vague notion of society. Left to itself, a monad can do nothing.]

As in Latour’s conceptualization, the development of the abortion and anti-abortion networks folds out, forming connections that spread and now make visible delegation upon delegation in a web of jumps linking local to distant relations. Could we then go continuously from the local interaction to the many delegating actors? The departure point and all the points recognized as its origin would now remain side by side, and a connection would make a fold visible.

40. Id.
42. Latour, supra note 7, at 46.
43. Id.
The North-South exodus of pregnant Americans fleeing Texas to have a medically assisted abortion in México rather than endure the higher risk of death posed by a self-abortion cannot be fully understood without considering the actor networks and political assemblages of medical professionals, hospitals, clinics, taxicab, and Lyft/Uber drivers. Imagine the role of legal structures in shaping the embodied experience of these pregnant-runaway-fugitives conspiring to escape Texas bound for a Mexican abortion with a recovery side trip to the seaside. Contained within the same journey and the lived experience of embodied human actants may be the remembrances of previous halcyon days of spring break vacations, juxtaposed with encounters with border patrol and interactions with medical doctors, nurses, hospitals, taxi drivers, hotels, hostels, and bodega-Home Away-VRBO-key- holders. Thus, southern border towns with dissimilar legal regimes from México City serve as jump points, interkingdom, for becoming part of the assemblage of civil rights available to pregnant persons in the south. This brings us to the relationship between abortion law in México and the United States.

IV. ABORTION IN MÉXICO

In 2021, México’s Supreme Court unanimously ruled that elective abortion is no longer a crime by invalidating Article 196 of the Código Penal de Coahuila. This decision upended México’s abortion laws. The Federal Criminal Code (the “CPF”), the most restrictive abortion legislation of the Mexican states, criminalizes abortion, defined technically as “the death of the product of conception at any moment during pregnancy.” From 1932 to 2021, the decriminalization trend in


México’s abortion law prompted one legal observer to comment, “[t]here are probably few examples of such Copernican shifts in abortion regulation through widely publicized democratic legislative changes.”46

Abortion legal reform in a country with one of the world’s highest numbers of Catholics has been achieved incrementally, and only after the Supreme Court and the legislature shifted the legal discourse from focus on the fetus to the woman’s autonomy. The abortion law provisions focused on the woman’s conduct leading to pregnancy and allowed only for exceptional cases. Women could make pleas that they had become pregnant “by accident,” as the result of rape, or that they risked death to escape criminal punishment.47 In cases of accident or rape, the woman’s sexual conduct and role in the pregnancy were the litmus for classifying abortion as illegal. The risk of death could only be shown by producing the expert opinions of two medical doctors, which might entirely excuse the criminal act.48 The legislators’ obsession with women’s sexual behavior is apparent from the CPF’s language. Reductions in criminal penalties could be considered in cases where “the mother” (as the criminal defendant) could show evidence of the following circumstances: 1) that she did not have a “bad reputation,” 2) that she had attempted to conceal the pregnancy, and 3) the pregnancy was “the fruit of a legitimate union.”49

Abortion law reforms, such as the Ley Robles of 2000, linguistically reframed the subject by replacing terms in the criminal laws, such as “the mother” with the word “woman” and substantively recognized new exceptions to criminal liability for abortion—such as in cases of artificial insemination without consent, a threat to the woman’s health, and adverse genetic and congenital conditions present in the fetus.50 A minority of conservative members of Congress challenged the constitutionality of these reforms before the Supreme Court of México because the law violated the fetus’ constitutional right to life. In a non-binding opinion, the Court ruled that the reform ultimately was constitutional, even as it recognized the fetus’ right to life.51 Therefore, the debate on the fetal right to life versus the right to choose had not yet been put to rest.

The 2006 elections in México brought a new presidential administration and a new legislature committed to continuing the liberalization and decriminalization of abortion law in México. In 2007, the New Legislative Assembly redefined abortion as a crime only after the

46. Id. (citing CPF, art. 332).
47. Id. (citing CPF, art. 333).
48. Id. at 266–267.
49. Id. at 267.
50. Id.
51. Id. (quoting Diputados Integrantes de la Asamblea Legislativa del Distrito Federal, Acción de inconstitucionalidad 10/2000 (SCJN) (Mex.)).
twelfth (12th) week, or first trimester. This reform legislatively effectuated full decriminalization and elevated women’s autonomy.\textsuperscript{52}

In 2008, the president of the Comisión de Los Derechos Humanos (CNDH) (National Human Rights Commission) and the Attorney General of the Procuraduría General de la República (Federal Government) brought a constitutional challenge to this reform on the grounds of the fetus’ (referred to as “the product of the conception”) fundamental right to life. This time, the Supreme Court entertained extensive arguments on questions related to the Constitution’s recognition of the right to life of an embryo, particularly at pre-viable twelve weeks, and the rights of women to life, liberty, health, privacy, as well as self-determination and autonomy over their bodies.\textsuperscript{53} Consequently, the Court determined that the reforms in the Mèxico City Penal Codes were constitutional on jurisdictional grounds, even if a contradiction existed between the City’s law and federal law.\textsuperscript{54}

Notwithstanding these law reforms, pharmaceutical abortion practices with misoprostol—a pill that can be purchased in most pharmacies in Mèxico or obtained through personal networks of women’s “informants” such as midwives, family members, or friends widely take place outside of legal and clinical settings.\textsuperscript{55} The use of misoprostol has increased dramatically in Mèxico, accounting for the vast majority of abortions.\textsuperscript{56} The data shows that pregnant persons do not appear to consider the state’s apparatus, processes, penal code, and any Kafkaesque assemblage of juridical formalization of utterances (legal petitions, pleadings, and proof) necessary to establish any lawful exceptions to abortion in deciding whether or not to obtain and take the pill.\textsuperscript{57} As a matter of information distribution, the availability of telephone hotlines and instructions on how to properly use misoprostol resulted in abortions with fewer complications.\textsuperscript{58} Misoprostol was initially developed to prevent gastric ulcers, but its “off-label” use as an abortifacient drug has become popular as an effective way to end a pregnancy.\textsuperscript{59} Although misoprostol is significantly safer than other methods of abortion, it is not entirely without

\begin{itemize}
  \item \textsuperscript{52} Id. at 268–269.
  \item \textsuperscript{53} Acción de Inconstitucionalidad 146/2007, at 47 [SCJN] 18-08-2008 (Mex).
  \item \textsuperscript{54} Amy Krauss, Legal Guerilla: Jurisdiction, Time, and Abortion Access in Mexico City, 17 REV. DIREITO GV e2139, 6 (2021).
  \item \textsuperscript{55} Id. at 12.
  \item \textsuperscript{56} Fatima Juárez et al., Women’s Abortion Seeking Behavior under Restrictive Abortion Laws in Mèxico, 14 PLOS ONE, Dec. 27, 2019, at 18.
  \item \textsuperscript{57} Klaus, supra note 54, at 13; Deleuze & Parnet, supra note 12, at 71.
  \item \textsuperscript{58} Krauss, supra note 54, at 12-13.
  \item \textsuperscript{59} Mexico Supreme Court Rules that Abortion is Not a Crime, supra note 44, at 2.
\end{itemize}
risk. Timing and dosage instructions may be quickly conducted incorrectly, leading to serious health risks.

In México City, widely accessible Seguro Popular health centers, supported by México City’s Ministry of Health, stand in stark contrast to the challenges confronting women seeking an abortion in other communities, states, and countries. The access to abortion available in México City has caused some working in these facilities to observe that “the capital city is a place of rights-based citizenship in contrast with the patriarchal religiosity of the ‘rest of México.’” As one doctor working in a public abortion clinic in México City commented, “[t]hose of us who live in DF [México City] have lots of rights, and the women who live outside don’t have any . . . . They should realize that women are going to come to DF. They can’t stop them.”

Considering the ANT perspective enables us to understand how the trajectory of law is associated with the resistance placed against the theory. ANT sheds light on the path of abortion law by displaying how participants in the enforcement of legal restrictions on abortion in México and, more recently, in the United States constitute a massive chain that is prone to change through legal innovations and, in turn, affect human geography as well as future migrations.

Legal innovations, such as the abortion laws discussed here, mobilize some actors and reject others as part of a socio-technical network defined by the actors or actants that constitute them. The actor-network/assemblage within México’s regulation of abortion is different from the actor-network that triggers legal enforcement in Texas. In México, doctor-nurse-reporters, abortion access companions, and donors are actors already part of an established medico-legal-social apparatus. These networks change in content and character in response to the criminalization and decriminalization of new actor-network/assemblages that involve such actors. In turn, these individuals strive to achieve one of two goals: to police and prosecute or to protect and assist other individuals, generating new movement patterns across territorialized space.

A. Doctor-Nurse-Reporters

Under restrictive penal laws, nurses and doctors are vital points of contact and play an instrumental role in reporting and building the prosecution’s criminal case against women who arrive at the hospital after a self-induced abortion has gone wrong. Reports from the field abound.

60. Krauss, supra note 54, at 9–12.
61. Id. at 9.
62. Id. at 9–11.
We have seen terrible cases where they do it with coat hangers, where they hit their bellies, Ms. Torres Miranda said. ‘They put their lives at risk.’ When those methods go wrong or lead to excessive bleeding, women often go to hospitals. But federal law requires medical providers to notify authorities when a patient presents signs of having been involved in criminal activity — such as having an abortion. ‘Yesterday’s ruling will also allow us, when we modify the law, to remove the obligation for the health sector to report when they discover an abortion,’ Ms. Torres Miranda said.63

Now that the Mexican high court has announced constitutional protections that may apply to those facing criminal charges and complicated future cases, it has been reported that doctors (and other medical personnel), following trends in neighboring countries, such as Argentina, Colombia, and Chile, may refuse to provide medical care related to abortion on moral grounds.64 The right to refuse medical care on “conscientious objector” grounds is central to ongoing cases before the Mexican Supreme Court.65

B. Abortion Access Companions

Given uneven access to abortion in México, acompañantes or abortion access companions, assist women confronting an undesired or impossible pregnancy from all over México, including neighboring countries, in overcoming the difficulties of travel and other practicalities to reach México City. These activists, or in Latour-speak actants, foil the intent of conservative lawmakers and the criminal justice system by intervening to directly assist women in securing a safe abortion. Similar to the specter of criminal prosecution experienced by runaways that came with the passage of the Fugitive Slave Act of 1850 in the United States, México City has been likened to a beacon, or tunnel with its access to abortion clinics, making for an intensely stratified politics of access that accompaniment

65. Kitroeff & Lopez, supra note 63.
projects attempt to mitigate. Mexican medical providers are now anticipating the arrival of patients traveling from Texas to México City for medical services and safe abortion.

C. The Role of Donors

The puzzle of translating human rights claims into abortion access has become a subject of study in medical anthropology and health policy literature. Many abortion advocacy groups in México City are connected to and supported by private and international donors. However, the downside of this transnational flow of capital is that these advocacy groups are bound by the conditions imposed by their secret donors. The most notable requirement imposed as a precondition of international money is that the organization abides by state law. This condition significantly hampers, if not nullifies, the most effective assistance that activists can provide for Las Fuertes en Red, a Mexican human rights organization operating in places where abortion is not legal.

Las Fuertes deploys an “alegal” approach (Singer’s designation for this activity that takes place outside of the legal system as it is beyond the imagination of the law) to securing access to safe abortion in a region that is swayed by the heavy presence of military and church. The approach involves a novel form of activism offering direct accompaniment to women. Specifically, it provides immediate abortion assistance, regardless of the legal regime or its prohibitions on abortion.

---

66. Krauss, supra note 54, at 12 (the author tells her personal experience as an acompañante in the México City-based feminist initiative Fondo MARIA); See Robert J. Kaczorowski, The Supreme Court and Congress’s Power to Enforce Constitutional Rights: An Overlooked Moral Anomaly, 73 FORDHAM L. REV. 153, 156 (2004) (Founders constitutionally secured enslavers’ right to recapture runaway slaves in the Fugitive Slave Clause of Article IV, setting the stage for Congress to legislate to enforce civilly in the 1793 Fugitive Slave Act and criminally in the Fugitive Slave Act of 1850); See also Allen Johnson, The Constitutionality of the Fugitive Slave Acts, 31 YALE L. J. 161 (1921) (an early account of the federal powers and structure found in the first four sections of the 1850 statute).


68. Elyse Ona Singer, Realizing Abortion Rights at the Margins of Legality in Mexico, 38 MED. ANTHROPOLOGY 167 (Feb. 2019); MAINSTREAMING MIDWIVES: THE POLITICS OF CHANGE (Robbie Davis-Floyd & Christina Barbara Johnson eds., Routledge 1st ed. 2012); A FRAGMENTED LANDSCAPE: ABORTION GOVERNANCE AND PROTEST LOGICS IN EUROPE (Silvia De Zordo et al. eds., Berghahn 2017); BEN FALLAW, RELIGION AND STATE FORMATION IN POSTREVOLUTIONARY MEXICO (2013); ELYSE ONA SINGER, LAWFUL SINS: ABORTION RIGHTS AND REPRODUCTIVE GOVERNANCE IN MEXICO (Stan. U. Press 2022).

69. Singer, supra note 68, at 176.

70. Singer refers to these organizations under the pseudonym Las Fuertes en Red to protect their identity against possible legal repercussions. Id. at 167.
Guided by the philosophy that abortion is the exercise of a human right, the women who work at Las Fertes provide a “holistic model” of accompaniment for safe abortion formalized as Model Integral de Acompañamiento para un Aborto Seguro. Where abortion is criminalized, this model includes providing emotional and logistical support for inducing an abortion at home with misoprostol.

Las Fertes does not wait for legal authority or sanctioned permission to aid pregnant women. In this unanticipated manner, Las Fertes, an actant, struck back (unexpectedly performing an activist role), materially changing abortion reality in México, notwithstanding the intended political divergence and threatened criminal prosecutions.

V. WOMEN, PREGNANCY, AND TECHNOLOGY

One study was undertaken through the ANT approach in connection with pregnant persons. The research was conducted by midwifery researchers studying the role of the cardiotocograph (CTG) machine as an actant in using intrapartum cardiotocography (fetal heartbeat monitoring), aimed at identifying fetuses at risk of injury due to asphyxia. Applying the ANT analysis, the authors found that the CTG machine performs many roles. For instance, with CTG monitoring, the fetal heartbeat provides a sound captured by the CTG machine, translating into a visible, written curve on paper. This paper visual is then broadcasted on a monitor to an assembled audience of spectators—colleagues, doctors, and parents—outside the room, who observe the paper trace in real time as proof that the fetus is alive. Yet, CTG monitoring is associated with a high rate of unimproved neonatal outcomes by intervening with Caesarean sections and assisted vaginal deliveries and in turn, resulting in increased maternal morbidity. Consequently, CTG monitoring did not affect stillbirth rates.

Nevertheless, “international, and national guidelines for Fetal Heart Monitoring from WHO” and other international organizations continue. Applying ANT as a conceptual framework, the authors postulate a new

71. Id.
72. Id.
73. Id. at 172.
74. Id.
75. Jepsen et al., supra note 8.
76. Id. at 4.
77. Id. at 5.
78. Id. at 2.
79. Id.
understanding of how midwives perceive the CTG machine and technique and how these influence care provision.

Analyzed through ANT concepts such as network, actant, and the black box, the authors found the CTG, as the translator of the auditory fetal heartbeat to a visual heartbeat on a strip of paper, to be a multifaceted actant that influences the birthing room environment, with multiple roles to play—as a requested guest, as “a babysitter, as the midwives’ partner, as an agent of shared responsibility, as a protector that ‘covers your back,’ and as a disturber of normal birth[ ]”80

As an actant, the intrapartum machine networks the fetus to the outside world. The auditory fetal heartbeat translated as a visual trace now places the pre-viable fetus outside of the womb as a material “product of the conception” in México’s legal construction or as “unborn children” in the U.S. legal lexicon. We will examine how the fetal heartbeat, as an actant, influences law in Texas.

VI. ABORTION IN THE UNITED STATES

The Court reversed the substantive contours of the (previously constitutional) right to an abortion in Dobbs v. Jackson Woman’s Health Organization, upholding Mississippi’s Gestational Age Act banning abortions after 15 weeks of pregnancy and allowing exceptions beyond that limit only in infrequent circumstances, thus destabilizing the line of viability settled by the Court’s decisions in Roe and Casey.81 Consider that in Justice Alito’s 79-page majority opinion (excluding appendices), he disavows that protecting fetal life is the basis of the opinion. Instead, the fundamental right to an abortion is said to lack any foundation as one “deeply rooted in this Nation’s history and tradition.”82 However, fetal life, “potential life,” “unborn child,” or alternately, “unborn human being” are mentioned nearly two dozen times. And indeed, in Dobbs, the sonogram images of this fetal life take on a new and unique role. In Alito’s telling, “many people now have a new appreciation of fetal life and that when prospective parents who want to have a child view a sonogram, they typically have no doubt that what they see is their daughter or son.”83 Alito disregards the fact that sonograms have been around since the 1970s and that most women seeking an abortion already have at least one child.84 Nevertheless, another earlier case, raising much more interstitial and far-
ranging change to the legal body politic of the United States, is the case of *Whole Woman’s Health v. Jackson*.85

A. “Texas Heartbeat Act”

The “Texas Heartbeat Act” (Texas Senate Bill No. 8, referred to as “S. B. 8” by the Court) at issue in *Jackson* prohibits physicians from “knowingly perform[ing] or induc[ing] an abortion on a pregnant woman if the physician detected a fetal heartbeat for the unborn child” unless a medical emergency prevents compliance, and expressly provides for private civil actions as the mechanism for enforcement of the law.86 There is so much to unpack in this bizarrely unique bill, but as the Court formulated the case, the critical issue before the Court was the law’s enforcement mechanism.87

In Texas, S. B. 8 displaces virtuous medical actor-networks for pregnant persons with vicious networks for their domination by changing the nature of the actor’s role from assistance to surveillance. By incentivizing “the world at large”88—in Justice Sotomayor’s words and by *siccing* these actors on the medical care professionals without whom a safe abortion is likely, Texas achieves domination and supremacy over whatever historical constitutional rights were previously thought to be coherent, firm, and stable. Moreover, even the pre-viable fetus and the fetal-heartbeat monitor may be added to the long list of actants, further shaking up settled notions of viability and fundamental rights. These shifts and transformations in social reality and the experience of bodily autonomy come from and are bound by these legal innovations.

Impounded in its provisions is the automaticity of enforcement. The law incites action. With each step, in this context, the filing of a lawsuit, a series of additional actors are sprung to act in legal and other networks—the docketing of the S. B. 8 complaint, the forms summoning the defendants entered into the record, and ultimately, the ordering of judgment by the judge.

From the perspective of power and dominance within ANT, Texas may have (in Latour’s parlance) “regained the durability of social assemblage,”89 especially as the U.S. Supreme Court upheld the constitutionality of restrictions on abortions after 15 weeks of pregnancy.

86. *Texas Heartbeat Act*, 87th Leg., Reg. Sess. § 171.204(a), 171.205(a) (Tex. 2021) enforcement through civil actions is provided in §§ 171.207(a), 171.208(a)(2), (3).
88. *Id.* at 550 n.4 (Sotomayor, J., dissenting).
in the decision in *Dobbs*. On the other hand, the earlier 2021 decision of the Supreme Court in México City may be negotiating volatile laws and perspectives, a situation in which domination is not yet exerted, and, as such, may be seen as that of a dangerous actor, uttering *inconsistent* statements.

**B. The Vigilante Provisions**

The enforcement provision is the most salient provision of S. B. 8 for purposes of ANT. S. B. 8 may be enforced by persons with no pre-existing personal stake (i.e., standing), thereby raising vigilantes to official sanctioned status. In an anthropological shift that is not at all new—if one reflects upon the ways of a society operating under a fascistic gloss, these hybrid actors—Uber-driver-surveillance-snitch, nurse-criminal-investigator, physician-prosecutor, neighbor-petitioner, all work within and form the networks where pregnant persons intend to terminate their pregnancy. Those who assist them are surveilled, trapped by the Texas law’s reticulated boundaries guarded by these newly sprung hybrid actors.  

In a pre-S. B. 8 world, a party could successfully seek a pre-enforcement review in federal court if they were threatened with enforcement of an unconstitutional law. Typically, a law is enforced by a state prosecutor or a state executive official. S. B. 8 is different because the law authorizes *private* enforcement in state courts. This raises a novel problem for the Court about how to apply *Ex parte Young*. The *Young* principle is that anyone who enforces an unconstitutional law can be enjoined from enforcing it or be sued in pre-enforcement suits in federal court.  

In S. B. 8, the Texas legislature has crafted a public law that purports to insulate state officials from enforcement by forbidding its enforcement by most state officers and then by allocating, indeed rewarding, its enforcement mechanism to private parties. The question is whether state *courts* entertaining private civil suits are themselves subject

---

90. Latour, *supra* note 1, at 117. (“One has simply to look at any of the quasi-objects owing nowadays through our newspapers from genetically modified organisms to global warming or internet commerce, and be convinced that it might be about time for social and natural scientists to forget what separates them and start looking jointly at those ‘things’ whose hybrid nature has, for many decades now, already unified them in practice.”).

91. *Ex parte Young*, 209 U.S. 123, 159, 163 (1908). Officials sued in their official capacities as officers are entitled to Eleventh Amendment immunity. *Ex parte Young* involved Minnesota’s adoption of legislation that violated constitutional rights purposely wrapped in a scheme to avoid judicial review. The Court held that a suit in equity was appropriate. An exception to Eleventh Amendment immunity may apply in cases when a state official is sued for prospective injunctive relief, such as the relief sought in *WWH v. Jackson*. 
to pre-enforcement suits in federal court under Young. That is precisely what the petitioners in WWH v. Jackson argued, "[w]hen the court issues an injunction, a mandatory injunction, or issue monetary penalties, what the court is doing is enforcing S. B. 8."92 Justice Gorsuch, writing for the majority on this point, asserted that the end of the road conjured by allowing jurisdiction of federal courts in this scenario is a world in which "[t]he division of power’ among the branches of Government ‘could exist no longer, and the other departments would be swallowed up by the judiciary.’"93

In ANT, S. B. 8 clerks, judges, and courts are all actants in the bill’s enforcement scheme, each setting into motion, acting, and being acted upon as part of the technology or “machinery” legislatively constructed and leveraged to perform a designated role to nullify constitutional rights.

We now shift to examining the actors targeted by S. B. 8. As the WWH v. Jackson petitioners argued, the private citizen who brought an S. B. 8 lawsuit acted by filing the case, making the defendant appear.94 Section 171.208(e)(5) expressly eliminates the defenses of issue or claim preclusion, thus enabling vigilante harassment of medical providers, subjecting them to multiple lawsuits in courts across the state. Indeed, the state has incentivized enforcement by offering a $10,000 bounty.95 Even if providers were to prevail, they remain vulnerable to suit by any other plaintiff anywhere in Texas for the same conduct.96

Regarding pre-enforcement challenges, S. B. 8 defies all efforts to seek pre-enforcement review. Under S. B. 8’s provisions, any person seeking injunctive relief against enforcing any state restriction on abortion is jointly and severally liable to pay the prevailing party’s costs and attorney’s fees.97 The class of persons who may be sued under S. B. 8 is not limited to medical providers; it might include anyone who provides aid and assistance to a person seeking an abortion, including a friend who

93. WWH v. Jackson, 142 S. Ct. at 538 (majority opinion) (quoting 4 Papers of John Marshall 95 (C. Cullen ed. 1984)).
94. Transcript of Oral Argument at 24, WWH v. Jackson, 142 S. Ct. 522 (2021) (No. 21–463). Counsel for the petitioners Marc A. Hearron repeatedly urged the point, “I think, in certain circumstances, that even the -- in a -- in a situation like S.B. 8, where the point is the filing of the suit and the point is the making you appear in courts all across the state over and over again, making you a permanent defendant[.]”
95. Id. at 4; Texas Heartbeat Act, 87th Leg., Reg. Sess. § 171.208 (b) (Tex. 2021), Tex. Health & Safety Code Ann. § 171.208 (b).
books an appointment with a ride-share driver. This last point is particularly salient to our analysis of networks in ANT, as it displays the trajectory of the law throughout Texas, activating many vectors along its path and reaching well beyond the medical clinics’ network.

In sum, S. B. 8 disrupts all settled rules of procedure, even in a pre-enforcement action, such as venue requirements, claim preclusion, precedents from other courts, attorneys’ fees, and costs are denied, even if defendants prevail. In denying effective pre-enforcement relief (in both state and federal court) while simultaneously depriving challengers of effective post-enforcement adjudication, S. B. 8 potentially violates procedural due process. The web of anti-Roe/pro-civil judgment award actors implied by S. B. 8 is vast.

“Novelty notwithstanding,” Justice Sotomayor expresses alarm that the Court ignores “modern cases” allowing suits against state-court judges. Like the plaintiffs in Young, medical providers in Texas are forced into an impossible choice to obey the law or take the risk of being subjected to such enormous penalties without due process of law. Abortion providers in Texas face “calamitous liability from a facially unconstitutional law,” boxing out any “prospect of recovery for their losses or expenses.” The effect of the massive “penalties for noncompliance” is “to foreclose all access to the courts.” This is “a constitutionally intolerable choice.” As in Young, “these are not normal circumstances” that result in “a denial of any hearing.”

Not only that, but the bill also constitutes a “brazen challenge to our federal structure.” At stake is whether states may nullify all federal law, including the Constitution, in defiance of the Supremacy Clause. This is not new. The echoes of John C. Calhoun—the defender of the slave-
holding South—cheering the Court’s refusal to overturn S. B. 8 may inspire other states to reprise and perfect Texas’ scheme in the future to target the exercise of any right recognized by the Court with which they disagree.106

C. Networks of Care or Disciplinary Surveillance

On the philosophical front of fetal personhood, neglect, and criminalization of pregnancy, Justice Thomas has long sought to expand the understanding of the Court’s abortion jurisprudence to include protections for the fetus explicitly, mainly as activated through the network of actors—doctors and nurses, linked or hooked in with law enforcement—to protect the unborn. For example, Ferguson v. Charleston involved unreasonable Fourth Amendment searches and seizures in which police officers in Greenville, South Carolina, arrested pregnant women who reportedly used cocaine on the theory that such use harmed the fetus and was, therefore, child abuse. Justice Thomas argued,

When the doctors and nurses agreed to the program providing test results to the police, they did so because (in addition to the fact that child abuse was required by law to be reported) they wanted to use the sanction of arrest as a strong incentive for their addicted patients to undertake drug-addiction treatment. And the police themselves used it for that benign purpose . . . It would not be unreasonable to conclude that today’s judgment authorizing the assessment of damages against the county solicitor and individual doctors and nurses who participated in the program proves that no good deed goes unpunished.107

As doctors hand out cocaine test results of non-consenting adult women to law enforcement, Justice Thomas sees only good doctors helping pregnant women prepare for the treatment of their children-to-be-born amid the crisis of “crack babies.”

106. WWH v. Jackson, 595 U.S. at 550-51 (Sotomayor, J., dissenting); Zernike et al., supra note 4.
Standing doctrine in more recent abortion cases has emerged as an essential site of lawfare and political contest in the United States and the Mexican Supreme Court’s abortion jurisprudence.\textsuperscript{108} As mentioned, the Texas law “deputizes anyone to sue without establishing any pre-existing personal stake (\textit{i.e.}, standing) and then skews procedural rules to favor these plaintiffs.”\textsuperscript{109} The parties are “adverse” as the Texas forum itself has been weaponized against “any person” who performs or induces or “knowingly engages in conduct that aids or abets the performance or inducement of an abortion.”\textsuperscript{110} Justice Sotomayor explains, “Texas has delegated its enforcement authority to the world at large without requiring any pre-existing stake.”\textsuperscript{111} On the one hand, Justice Thomas draws on his long-staked-out position opposing abortion to deny doctors and clinics third-party standing to assert constitutional challenges to abortion restrictions. Yet S. B. 8 gives “the world” standing to sue them based on those restrictions.

Chief Justice Roberts, on the other hand, objects to the many substantive and procedural abuses contained in S. B. 8, accusing the Court of sweeping aside \textit{Casey}’s undue burden limitations defense, the law’s broad venue provisions that allow lawsuits to be lodged in “254 far-flung counties, no matter where the abortion took place”;\textsuperscript{112} fees if they prevail;\textsuperscript{113} and prohibitions on state officers directly enforcing its provisions.\textsuperscript{114} Chief Justice Roberts would exempt judges, but not state-court clerks, from the pre-enforcement reach of the \textit{Ex parte Young} exception. Judges are not adverse, but the clerks are damaging as actors setting into motion the enforcement of the law and thereby are “sufficiently connected to enforcement.”\textsuperscript{115} Contrary to Justices Gorsuch and Thomas, Chief Justice Roberts argues that decisions after \textit{Young} recognized that suits against the clerks may be proper.\textsuperscript{116}

\textsuperscript{108} Krauss, \textit{supra} note 54, at 2, 6-9.
\textsuperscript{109} \textit{WWH v. Jackson}, 142 S. Ct. at 550 n.4 (Sotomayor, J., dissenting).
\textsuperscript{110} Texas Heartbeat Act, 87th Leg., Reg. Sess. §§ 171.204(a), 171.205(a) (Tex. 2021); Tex. Health & Safety Code Ann. §§ 171.208(a) provides for civil liability for violation or aiding or abetting violation against “[a]ny person . . . who . . . performs or induces an abortion.”
\textsuperscript{111} \textit{WWH v. Jackson}, 142 S. Ct. at 550 n.4 (Sotomayor, J., dissenting) (italics added).
\textsuperscript{115} \textit{WWH v. Jackson}, 595 U.S. at 544.
\textsuperscript{116} \textit{Id.} at 544-45.
Channeling ANT, Chief Justice Roberts trains his analysis on the state court clerks. Clerks docket petitions and issue summonses for S. B. 8 violations. These actors are integral, if not the most critical part of the law, as they set into motion the enforcement “machinery.”\textsuperscript{117} Thus, the docketing of the S. B. 8 complaint takes the S. B. 8 defendant out of the axis of law’s procedural and substantive protections. In a telling bit of urgency, Chief Justice Roberts concludes his dissent by admonishing the Court for allowing the states, through state law such as S. B. 8, to annul the judgments of the courts of the United States. This case implies more than just an infringed federal right; so much more depends upon the outcome of this Court in\textit{Jackson}. “[I]t is the role of the Supreme Court in our constitutional system that is at stake [,]” he warns.\textsuperscript{118}

CONCLUSION

The long shadow cast by the Court’s decision in\textit{Dobbs} and the enactment of S. B. 8 has spawned two phenomena in real space in the United States. First, businesses have popped up within and alongside the political and geographical boundaries of Texas, offering private adoption services for single mothers to offer up their children for placement with a new family. This is not a new idea; it is a booming business that has been thriving for years. Voluntourism operations have been long-standing in Latin America, where highly profitable “orphanages” specialize in placing children with U.S. adoptive parents willing to pay between $20,000 and $40,000 in adoption costs and expenses.\textsuperscript{119} Secondly, accounts of states helping border states, in a manner analogous to the Fugitive Slave Act, establishing mobile abortion clinics in M6xico, and handling the rise in

\textsuperscript{117} Id. The Texas Rules of Civil Procedure direct and authorize court clerks as follows, “Rule 24. Duty of Clerk When a petition is filed with the clerk he shall indorse thereon the file number, the day on which it was filed and the time of filing, and sign his name officially thereto.” Tex. R. Civ. P. 24.

\textsuperscript{118} WWH v. Jackson, 142 S. Ct. at 545.

\textsuperscript{119} See, e.g., U.S. DEP’T OF STATE, 2018 TRAFFICKING IN PERSONS REPORT 22 (June 2018), https://www.state.gov/wp-content/uploads/2019/01/282798.pdf. (discussing the incentives and conditions in which exploitation of children are most prevalent). “Voluntourism not only has unintended consequences for the children, but also the profits made through volunteer-paid program fees or donations to orphanages from tourists incentivize nefarious orphanage owners to increase revenue by expanding child recruitment operations in order to open more facilities. These orphanages facilitate child trafficking rings by using false promises to recruit children and exploit them to profit from donations.”; Ramirez Escobar et al v. Guatemala, Iner-Am. Ct. H.R. (ser. C) No. 351 (2018); Madeleine M. Plasencia,\textit{ The Torture Of Children And Adolescents Living And Dying In Guatemala’s Institutions}, 25 U.C. DAVIS J. INT’L L. & POL’Y 33, 65-67 (2018)(The confluence of extreme poverty and incentives to open institutions as “profit centers” fuel a marketplace built on international child adoption in Latin America).
emergency medical treatment problems emergent in Texas related to ectopic and miscarriages, are already taking place. In the volatile indeterminacy of these activated networks, the black-boxed fundamental right to choose secured in the Roe/Casey legal framework has given way to newly restrictive interpretations delegated to the states. Other constitutional rights, as presently constructed in law, may disappear altogether. As Latour says,

Depending on which path we follow, the plot ends very differently. Either Little Red Riding Hood will be able to reach grandma’s house, or else she will be kidnapped in the forest. How can one plod along safely from one mediator to the next without being swallowed whole by the Wolf of Context?21

Choosing between two alternate metaphorical figures—whether the Court is Little Red Riding Hood or the Big Bad Wolf—is an unnecessary binary. This Court has been swallowed whole by the context of this political and historical moment and the arrogance of this pro tem consolidated power, even as it swallows all the precedents with which it professes to disagree.

121. LATOUR, supra note 7, at 173 (italics added).