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Between Life and Loss

Queer Grief and the Making of Kin

ABSTRACT

Recent anthological research on assisted reproductive technologies (ARTs) has destabilised historical notions of biology, family-making, and kinship, drawing science and technology into dialogue with queer theory, and particularly theories of queer kinship. When first introduced in the 1980s, ARTs prompted energetic discussion and debate regarding the ethical, social and legal implications of these technologies. Rich ethnographic research and theoretical critique have followed their introduction and development over the past four decades. However, there remains a palpable absence of studies on the intimacies of queer grief linked to ARTs and reproduction. Through an analysis of reproductive policies and laws in the United States, the United Kingdom, and South Africa, this article explores the impact of navigating predominantly (hetero)normative notions of kinship on the lives of queer individuals. Engaging with Spivak's notion of juridical co-option, this analysis reveals that in order to access these technologies and spaces, queer-identified people are frequently required to perform the work of translation – bending heteronormative discourses and practices around ARTs into a shape that better fits their bodies and lives. This labour of translation is often unrecognised, yet it generates profound grief: the grief of not seeing one's body and desires reflected in reproductive praxis. By placing the burden of translation on queer individuals, and by relying on the pain of grief to sustain silence, the article suggests, reproductive policies and institutions continue to maintain and reproduce hegemonic heteronormativity. This dynamic, in turn, sustains the conditions that foster grief among queer people seeking to create kin in these contexts. This grief is peculiarly queer because it occupies a liminal space between the potential loss of self, entailed in navigating normative policies to create new selves, and the inherent risk of loss – and grief – involved in attempting to create new life.

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"A strange new kind of in-between thing": Death and the making of queer kin

> Antigone/Ἀντιγόνη etymology – ἀντι + γόνος, "against birth" or "against offspring"
>
> I'm a strange new kind of inbetween thing aren't I, not at home with the/ dead/nor with the living (Carson 2015, 29–30).

THE FIGURE OF Antigone first surfaced in a play written by Sophocles around 441 BCE. Since her first appearance, Antigone has come to feature prominently in political, philosophical, and anthropological scholarship on kinship, grief, the rule of law, and the nature of the state (Butler 2002; Castro 2020; Honig 2009; Tamboukou 2021). This article also engages with the figure of Antigone as it explores the dimensions of grief that unfold in the making of queer kin under highly uneven, complex, and predominantly heterosexist legal and policy frameworks that govern access to assisted reproductive technologies (ARTs).

Like Antigone, I explore how queer individuals navigate a complex set of tensions as they often exist outside normative legal frameworks. While living outside of and beyond legal structures, can be empowering – or simply the only way to live – for many whose lives and bodies refuse to capitulate to juridical framings of sexuality and gender, the decision (or indeed the need) to create kin using ARTs brings queer people into direct contact with the very laws that have, in many ways, refused to fully recognise their own queer lifeworlds. The grief that follows is complex, in that it is not only grief for what is lost, but also grief at the cost of what is gained. To create kin using ARTs, queer individuals are required to reconfigure – and sometimes even forgo – themselves, their bodies, and their relationships to be recognised by the laws and policies[1] that operate as gatekeepers around who can and who cannot create life.

ARTs foreground queer reproductive potentiality because the very capacity to push back against normative prescriptions of kinship by using novel technologies is a powerful way to hold and enact agency in lives that too often are stripped of possibility or agency. There is a range of studies showing the ramifications of engaging in a journey to create life for queer individuals, and the expansive nature of grief entailed in this journey. Examples include letting go of the hope of conceiving a child in a private space and having to surrender to a medical facility, particularly (as is the case in the U.K.) if the parents are not married, in order for both individuals to be listed as parents to the child (Black 2019; Mize 2020; Lapointe 2019); encountering medical forms that refuse to recognise trans or nonbinary individuals (Erbenius & Gunnarsson Payne 2018; Kirubarajan et al. 2021); managing invasive questions that flow from state-mandated forms that ask for the history of the child's "father" when a sperm donor has been used (Bacchus 2018; Zadeh, Freeman & Golombok 2015); and fielding questions from counsellors in fertility clinics on whether the future child's well-being will be compromised by not having heterosexual parents (Mackenzie, Wickins-Drazilova & Wickins 2020; Engström et al. 2018).

These processes not only entail endless energy to "come out" but also place queer individuals in a position of perpetually being the "other" as they navigate highly complex legal, political, social, and technological terrains to create kin. These sociojuridical terrains regulate who can and cannot be recognised, and who can and cannot access vital resources, requiring queer individuals to surrender their selfhood to accommodate legal frameworks that too frequently do not fit.

The figure of Antigone facilitates an understanding of the grief of loss, as well as the grief of the proscriptions built around laws that fail to recognise the plurality of queer life. For it was when Antigone encountered the visceral reality of death, in seeing her brother's body out in the battlefields, that she was prompted to challenge the decree that prohibited his burial. For Antigone, it was the refusal to recognise a particular law around death that brought her into a suspended state of life. In fact, many translations of the play represent Antigone with a door

strapped to her back, a visual device that draws attention to Antigone's own liminality – her simultaneous proximity to both death and life. In this article, I explore how laws and policies that regulate the creation of life for queer individuals are like the door that Antigone carries on her back: they require a submission or capitulation to the pressures of legal frameworks that govern the creation of new life. This submission often entails a death of certain lifeworlds. As a weight, the door can make queer individuals clumsy as they move through a complex sociolegal terrain and surrender their bodies to technologies that are often highly costly – financially, physically, and emotionally. As a gateway, the door can also bring queer individuals into new worlds, closer to new life. The process of creating life requires a suspension of certain lifeworlds, and it also can create new life and new lifeworlds. The grief entailed in this process is liminal: it brings queer people into a liminal space of waiting for life, and there is also grief in occupying this liminality. Like the door, the grief itself has a heaviness because it entails liminality and a closeness to both life and to death, and because it also holds the hope of life there is also, ultimately, the potential for lightness as a result of occupying this liminal state.

In this article I focus on South Africa, the United Kingdom, and the United States, and explore how reproductive laws and policies become embodied as they regulate the possibility of creating queer kin, or insist on their derealisation. I look at two sets of laws in particular: the first set governs who has the legal right to parentage, and second set governs who can legally access the technologies required to become parents. Across these sections, I suggest that, like the door strapped to Antigone's back, reproductive laws and policies are both propulsive (in their capacity to support the creation of life) and restrictive (in their insistence on normative prescriptions that entail capitulation in order to create life).

Creating life, risking loss: Queering approaches to kinship and grief

Anthropological interest in the many flexible ways people around the world conceive of and navigate their most intimate and important

relationships coincides with dramatic social changes in how families are created and represented (O'Sullivan 2021; Otto 2017). Alongside an increasing prevalence of divorce, remarriage, and complex blended families, two other changes that have advanced anthropological studies of family life and reproduction are, first, the emergence of new reproductive technologies and, second, the increasing cultural visibility of queer families. Kath Weston (1991) offered one of the first classic ethnographies of lesbian and gay kinship in 1980s America. In addition to helping to make queer kinship more visible to a discipline that had been stubbornly heterosexist in its reification of normative lifeworlds (Weiss 2016; Schlesinger 2021), Weston deconstructed the supposedly taken-for-granted correlation between "blood" relationships and durable social bonds in American society. Since Weston's ethnography was first published, the field of research around queer kinship has expanded almost as rapidly as the technologies that have been developed to support some of these forms of kinship.[2]

With new forms of assisted reproductive technology (ART) came a of new kinship possibilities, many of which were perceived as profoundly exotic – and unsettling. The use of donor sperm, donor eggs, donor embryos, and gestational surrogates all undermined what had previously appeared to be an inevitable, natural connection between procreation and parenthood. New reproductive technologies pluralised relatedness, destabilising traditional notions of heterosexual parenthood and opening up possibilities for even greater plurality in kinship forms: queer kinship is often defined by looser rhizomatic or "sideways" (Clare 2019, 52) definitions than heterosexual kinship, branching out from the constrictive, vertical biological trees to include friends, exes, and lovers. Queer kinship, at its simplest conception, refers to a way of navigating the world of ties between people, creating implicit bonds based on a shared identity (Ritholtz & Buxton 2021, 12). While this conception may be simple, the act of creating kin is complex – not least because it entails the navigation of restrictive laws, policies and social norms, and because, in creating life, there is also the risk of loss.

The literature surrounding the concept of queer grief is strikingly

diverse, spanning myriad disciplines and encompassing both theoretical and practical approaches. Nevertheless, this literature intersects thematically at several shared nodes across these divides. One shared aspect, consistently emphasised throughout most approaches to "queer grief," is the authorial stress on the complexity of the term and the affective process it describes. Just as queer identity does not signify a monolith but a heterogeneous collective, so too does queer grief signify a "collective, contingent, and multiple" (Phelan 2015, 78) phenomenon. In Phelan's article, the term "queer grief" designates a form of grief that is inherently oppositional – and threatening – to social and institutional norms. A human act and affect, queer grief exists in spaces where there has pointedly been no space made for it.

For queer individuals, the process of creating family using reproductive technologies necessarily entails both hope and risk; one cannot create kin without risking loss. This loss is layered: the "things" of reproduction – like eggs, sperm, and embryos – represent futures, and when these futures are deemed "unviable," grief unfurls into these spaces of unfulfilled hope. What is striking, however, is the relatively undocumented way in which queer grief not only surfaces in these spaces of unfulfilled hope but also becomes embodied as queer bodies encounter the state again and again through its policies and laws. In the sections that follow, I suggest that in spaces of reproduction, queer individuals are too often required to live through and submit to states and heteronormative policies that fundamentally proscribe access to technologies that can create kin. Queer grief is not only a response to loss – of life, or of the possibilities of creating life – but also a response to these highly restrictive legal and policy frameworks. These frameworks are not only embodied in queer individuals' capacities to create kin; they are also embodied in quotidian encounters with normative laws and policies as they are reinforced – and enforced – in spaces of reproduction, including doctors' offices, fertility clinics, and birthing suites. In the sections that follow, I unpack some of these entanglements in more detail.

Queer kinship and grief: Reproductive policy entanglements

In discussing the social conditions of embodiment, Butler (2004, 21) suggests that, "Although we struggle for rights over our own bodies, the very bodies for which we struggle are not quite ever only our own. The body has its invariably public dimension. Constituted as a social phenomenon in the public sphere my body is and is not mine." The very notion of arguing for protection from discrimination as a group requires some level of acknowledgment that laws and policies are important – even when those very laws render some bodies unreal or make certain kinds of bodies vulnerable to violence, including death or a form of "alivedeadness," as is the case for many living in prison or in contexts where a full life is constrained by racist, misogynist, homophobic, and transphobic laws and practices. There is another element to Butler's (2004, 2016) framing of social embodiment: our bodies require a presentation of distinct boundaries, even though our bodies – our lives – are porously imbricated and "not quite ever only our own." Further, by arguing for rights under the law, bodies continue to be viewed as distinct, positioning the law as both incontrovertible and pivotal to our own embodied (il) legibility. This tension is described by Spivak (2003) as a form of juridical co-option, in which the only way to lay claim to rights is through submitting to the very juridical structures on which one's oppression is based. Building on this history of thought, and on the recent work of Butler (2019) and others (Thonhauser 2019; Castro 2020) on social death and the public, I suggest that there is value in understanding legal and policy worlds as discursive frames that construct and are also constructed by (and resisted through) everyday practices, including those practices entailed in creating queer families.

Looking at reproductive policies and laws in South Africa, the United Kingdom, and the United States, this article traces some of the common features of these discursive frames using feminist policy analysis (FPA) and intersectional feminist policy analysis (IFPA). First developed by McPhail (2003), FPA offers a systemic approach to analysing the gendered implications of national and local policies. It marked a shift away from traditional policy studies that failed to address the power inher-

ent in policy-making, particularly given that, historically, wealthy, cisgender men have held positions as legislators in governments across the world (Sidanius et al. 2018). The FPA framework was initially focused on the systemic exclusion of women from policymaking spaces – as well as from the policies themselves – and has subsequently been updated to reflect a far more intersectional approach. The authors of this approach, Kanenberg and Leal (2019), build on FPA but introduce a series of prompts to explore which people might be privileged in the way policies are framed and implemented, and which people – holding a diversity of identities – might be excluded. The following section outlines the findings of this research on policies and laws that govern who is able to create kin and who is excluded, in the United States, the United Kingdom, and South Africa. I have selected these countries because, while all three hold relatively progressive legislation around ARTs, the availability of these technologies is highly restricted to those who are in a position to pay for them, and even then, the laws around who can be formally recognised as a parent continue to actively discriminate against non-gestational parents in same-sex relationships.

The findings reflect two dominant themes that emerged from the IFPA process. The first theme centres around the "feedback loop" that reinforces dominant heterosexist framings of marriage and legal parentage. This theme focuses on legislation (including laws on same-sex marriage and parental rights) and explores how this legislation functions to regulate and recognise who can "rightfully" access ARTs to create kin. I argue that a very particular kind of grief surfaces in the requirement – by law – to reconfigure relationships and selves to "fit" into these legislative prescriptions. The second theme focuses on legislation that regulates ARTs, and it explores the implications of hyper-regulation and relatively relaxed regulation for queer individuals in each of the countries, resulting in quite distinct challenges and forms of grief for those seeking to create families. The value of understanding this range of legislation through the lens of queer kinship and queer grief is twofold: in line with other scholars working in the anthropology of policy (Tate 2020), I argue that it remains necessary to question the inherent heterosexuality

of both policy and mainstream anthropology (Boellstorff 2007; Weiss 2016, 2020). Second, following Boyce, Engebretsen, and Posocco (2018, 5), the analysis that follows iterates the necessity of queer scholarship that explores "how ethno-theoretical approaches to sexual and gender diversity might contribute to rethinking mainstream anthropological analysis."

"The stretchiness of normal": Marriage law, legal parentage, and the double-bind of the legitimation "feedback loop"

> Walking through the aisles of a supermarket in Cape Town, South Africa, EM and JD were trying to find nappies that would fit their three-month-old baby. Their baby was strapped to EM, while JD pushed the shopping trolley along an aisle packed with all kinds of baby-related products. But for all their searching, they couldn't find the nappies. A woman approached them and offered to help; she may have noticed them because they looked so confused – or perhaps she first heard them when the baby began wailing loudly. JD explained that they were looking for nappies, and the woman guided them to the next aisle, where they found the size they were looking for. Before walking away, she paused and said, "So, I hope you don't mind me asking, but um … which one of you real mom?" This was not the first time they had been asked this question, and it wouldn't be the last.

In the United Kingdom, it is not possible to listed as your child's parent if you did not give birth to them yourself, if you are not married to the birthing partner, or if you did not conceive the child using a registered fertility clinic. So, while same-sex marriage was celebrated when introduced in the UK in 2014, it also became a form of juridical co-option for those who might not have wanted to use a clinic to create a child or have the state "recognise" their relationship only through legal marriage. In South Africa, legislation was passed almost a decade earlier than in the UK, allowing same-sex marriage and civil partnerships through the Civil Union Act (2006). Just a year earlier, the Children's Act (2005)

was introduced to regulate queer rights to kin created through adoption and ARTs. This act allows adoption by spouses and partners in domestic partnerships, regardless of gender or sexual orientation.

Like the United Kingdom, the United States has lagged behind South Africa in the legislative recognition of same-sex marriage. South Africa's draft Bill of Rights (1993) endorsed the legal recognition of same-sex marriage, and this was maintained in the Constitution when it was approved in 1996. At the same time, in 1996, the infamous Defense of Marriage Act (DOMA) was signed into law by President Bill Clinton after passing Congress. DOMA explicitly defined marriage as a union between a cisgender man and a woman, and additionally permitted states to refuse to recognise same-sex marriages granted under other regional laws. *United States v. Windsor* was a landmark case in 2013, which held that Section 3 of DOMA, denying federal recognition of same-sex marriage, was unconstitutional under the Due Process Clause of the Fifth Amendment.[3]

In the United States, the United Kingdom, and South Africa, marriage plays an important role in the way queer families are sanctioned and legally recognised. This force of legitimacy is especially relevant when queer individuals attempt to expand their kinship structures to include children produced through ARTs. Yet it is imperative to question the sense of necessity that the government imposes on the institution of marriage. In fact, marriage enshrines individual dependence on the state to determine which relationships constitute recognisable and defendable partnerships. Part of the reason marriage and kinship are conceptualised as connected is that marriage functions as a shortcut to legal legitimacy and social recognition of kinship (Scott 2019, 325). When a model of marriage becomes available for queer individuals to participate in, boundaries around what constitutes legitimate kinship at first appear to become more elastic, as, all of a sudden, they can be drawn back to fit same-sex married couples. This "stretchiness of normal" (Scott 2019, 337) implies that a queer (married) kinship model constitutes a perfectly acceptable societal situation to insert a child into. When these boundaries of normalcy are made more elastic by laws

allowing same-sex marriage, queer couples who choose not to participate become even further othered than before. When marriage becomes feasible for them, the choice of marginalised individuals to spurn this privilege can be seen by society as an act of resistance against itself. For those queer individuals, their refusal of this formal legitimation comes at the cost of creating a family in which parentage is fully recognised and equal rights are conferred to all partners – costs that can engender grief through experiences of social and legal ostracisation on the journey to creating a family.

A very cynical way of viewing the legal sanctioning of same-sex marriage is to suggest that this process in fact shores up heteronormativity by forcing "othered" kinship models to conform to the nuclear, monogamous mold. For some, financial barriers may make marriage an unviable option, adding an additional weight of loss that is disproportionately carried by those individuals who – even if they wanted to – cannot purchase access to this normative kinship model (Daar 2017). Further, the cost of accessing ARTs in all three countries creates vicious cycles of stratified reproduction, which are too often mapped along racial and economic lines (Smietana, Thompson & Twine 2018; Valdez & Deomampo 2019). The tension of these drawn-back boundaries remains taut, their rubber bands liable to snap back at any moment over queer married relationships – particularly when institutions, individuals, and communities question the validity of tenuously accepted kinship models (Scott 2019, 327). These moments are frequent within the realm of ARTs, where one must come out again and again, and where marital rights remain precarious. Still, perhaps it is better to be disruptive than assimilative in these reproductive spaces. Queer individuals accessing ARTs can be understood as committing a radical act. Rather than imposing normativity on that act, embracing the distinct shape of queer kinship models within reproductive spaces may function to reconfigure those spaces. Occupying reproductive spaces is a radical act, in that it reveals the unique catalytic potential of queer kinship. But this is also tender act, given the linked losses that might flow from this potential.

"The wild west of ARTs": Cost, regulation, and expansion of reproductive technologies

> EM to medical doctor (GP): We'd like to have a child, and we think there are a number of tests we need to take to assess whether this is biologically feasible for either – or both – of us. We're also not sure, even once we've had these tests, what we need to do to access fertility treatment.
> GP: Well, you'd need to show that you've been trying to get pregnant for at least six months, and you need to do this quickly, before you turn thirty-five.
> EM: Umm ... As two women, how do we show we've been trying? Do we need to keep our receipts for ordering sperm? And maybe also keep the receipts for the home insemination tools we'd need to buy?
> GP: [Coughs.] Yes, I suppose so. I'm not really sure …
> EM: But this is going to cost thousands, and we have no idea whether it's even going to work. We're also running out of time, because I'm already over thirty-five, and my partner turns thirty-five in two months…
> GP: I'm not sure what else to tell you. If you want this badly enough, though, you'll find a way.

In the United Kingdom, where this conversation took place, the National Health Service (NHS) offers fertility treatment through its Clinical Commissioning Groups (CCGs), and each of the country's 106 CCGs has a different set of rules governing access to state-funded fertility treatment.[4] For instance, in 2021, 29 CCGs required lesbian couples to prove that they have self-funded ten cycles of artificial insemination (at a cost of around £2,000 per cycle) before qualifying for fertility treatment, and 81 CCGs required lesbian couples to have paid for at least three artificial insemination cycles privately before accessing NHS services. Of the NHS's 106 CCGs, only 17 had policies allowing lesbian couples to access state-funded artificial insemination, and 3 CCGs refused to provide any fertility treatment involving donor sperm – effectively barring

people with a uterus from accessing these services to create a family.[5] In 2023, however, the UK government committed to removing barriers to IVF access for lesbian couples; a recent parliamentary discussion,[6] in October 2023, noted considerable variation in fertility treatment access across the UK.

Uneven access to NHS fertility treatment has even been criticised by the country's National Institute for Health and Care Excellence (NICE), which called for an end to the fertility "postcode lottery" (Tippett 2023). This discrepancy in rules governing access to treatment within the NHS has numerous implications for people of all genders and sexualities (Krajewska & Cahill-O'Callaghan 2020; Norton et al. 2015; O'Donnell et al. 2005). For example, transgender and gender-diverse people living in the UK have struggled to access gamete storage through the NHS prior to starting hormone treatment. A recent study found that 39.5 percent of 3,667 individuals were not offered this service through the NHS and were unable to afford it privately (Rogers et al. 2020). People seeking reproductive services and technologies to create kin through surrogacy also encounter numerous barriers in their fertility journey. Commercial surrogacy is prohibited in the UK, and although altruistic surrogacy is legal, the country has failed to provide a statutory regime for the regulation and legal enforceability of surrogacy agreements, placing intended parents in a position of great vulnerability vis-à-vis the gestational carrier. A study of fertility clinics in the United Kingdom found that fewer than 50 percent of these clinics offered surrogacy to clients, and also revealed that clients received inconsistent – and sometimes incorrect – information about navigating the legal implications of surrogacy (Norton et al. 2015). The inconsistent provision of fertility treatment in the CCGs, the difficulties transgender and nonbinary people encounter in accessing reproductive care, and the state's failure to adequately legislate the rights of intended parents in surrogacy agreements all underscore the extent to which policies and laws are profoundly implicated in queer individuals' ability to create kin.

While access to reproductive care in the UK is uneven and problematically legislated, it is not possible to refuse treatment to queer individuals

and couples on the grounds of 'religious freedom'. In the United States, however, this is not only possible but it is actively legislated (e.g., SB 215, Montana; SB 124, South Dakota). As Storrow notes, "[S]tudies indicate that many infertility clinics [in the United States] will deny access to single men, gay couples and poor couples" (Storrow 2009, 376–377). "Conscientious objection" to providing queer individuals with medical care – particularly access to reproductive health services – stems from a variety of rationales, including discomfort with queerness and moral objections to enabling these individuals to access ARTs (Brummett & Campo-Engelstein 2021, 323). When considering the United States – whose fertility industry is often referred to as "the wild west" of ARTs due to its simultaneous lack of regulation and rampant expansion (Mamo & Alston-Stepnitz 2015, 520) – it is important to recognise how access to ARTs in this country is largely structured to favour primarily wealthy, white queer individuals seeking to create families. While calling this eugenics (Daar 2017) may seem overly harsh, this pattern of reinscribing inequalities through reproductive practices, policies, and politics certainly establishes a culture of stratified reproduction (Mamo & Alston-Stepnitz 2015, 523).

Investigating legislation surrounding queer use of ARTs to create kin in the United States is complex, in part because their access and affordability for queer couples are not consistent across the country – particularly with respect to IVF and surrogacy (Neyra 2021, 2). The absence of federal legislation specifically addressing queer use of ARTs remains one of the main barriers to accessibility, along with the prohibitive costs of processes and procedures not covered by insurance. Indeed, compared to other high- and middle-income countries, the United States – at both state and federal levels – does not closely oversee this multibillion-dollar industry (Ollove 2015), although the American Society for Reproductive Medicine conversely claims it is one of the most highly regulated domains in American medicine.

Although one supposed benefit of the United States' lack of regulation around ARTs is the absence of built-in barriers to queer individuals seeking these technologies (Ollove 2015), the fragmented legal land-

scape for queer individuals is still a frequent source of discrimination. This underscores the ongoing need for "a federal law that guarantee[s] coverage" (Neyra 2021, 2) for queer people seeking access to ARTs in the United States' current reproductive climate. Gaps in legislation – whether related to insurance or privacy – may make it increasingly difficult for queer individuals to navigate reproductive spaces, as both their legally inscribed rights and potential complications become nebulous, forcing them to blindly traverse a non-descript miasma of legal uncertainty, often in fear of compounding, unforeseen consequences. Among the proposed approaches to new ART-related policy in the United States is the expansion of the definition of infertility to include the social infertilities entailed by queer relationships; this might address insurance discrepancies and better standardize care (Lo & Campo-Engelstein 2018, 71–72). Although this expanded definition is arguably pathologising and may produce anxiety or reinforce negative framings around queer individuals' use of ARTs, it is also an expeditious way to resolve the unequal access to ARTs and insurance coverage for queer individuals.

Unlike the United States and the United Kingdom, South Africa has thoroughly defined legislature addressing the use of assisted reproductive technologies. For example, in South Africa, gay couples in openly gay relationships became eligible to adopt children in the 1990s (Lubbe 2008, 328), while donor insemination was made legally accessible to lesbians in 2000 (ibid.). Regulations for surrogacy, gamete donation, IVF, and other forms of ART are now outlined in national statutes, which govern individuals' ability to access these technologies and restrict the ways in which they may be used.

While queer individuals and their relationships are recognised by the South African Constitution, the country's social and material conditions are still, overall, negatively disposed toward the production of queer families (Morison, Lynch & Reddy 2019, 91). As one of the main issues affecting queer reproduction through ARTs – not only in South Africa but globally – financial cost can be logically assumed to be a major factor influencing queer individuals' decision to use ARTs to create kinship models. Indeed, the use of ARTs in South Africa is extraordinarily

expensive and therefore often conceptualised as largely available only to the elite (Huyser & Boyd 2013, 91). However, this is not necessarily always the case. In South Africa, both public and private sectors offer access to ARTs. In fact, ARTs were initially made available through public hospitals because the government sought to support new research (Ross & Moll 2020, 557). While ARTs can be accessed through the public sector, clients are still required to pay for the cost of their medication and laboratory overheads. These costs exacerbate South Africa's long-standing socioeconomic inequalities (Dyer et al. 2020, 2433), and creates a further layer of socioeconomic imbalance in the country's assisted reproductive realm. This presents an interesting paradox. If the majority of queer individuals able to access ARTs to create kin are wealthy, navigating this space enacts a vaguely eugenic and discriminatory practice (Hall & Hanekom 2020, 169). Additionally, because the South African system of private reproductive care and ART access stabilises and reproduces privilege, while it is certainly a site of radical joy and possibility for queer kin, it also simultaneously represents a barrier to equality for queer individuals of lower socioeconomic status. The experience of this reproductive space as embodying both equality and inequality demonstrates the complicated nuances of stratified reproduction, with financial barriers to ART entrenching fault lines within the queer community and rewarding historic structures of privilege through their reproduction.

Writing about the regulation of reproductive technologies through laws and policies, Fenton (2019) argues that the state produces unique forms of vulnerability when it fails to ensure equitable and ethical access to these technologies. If we approach reproductive technologies as a social good, then, according to Fenton (2019) and Fineman (2013), the institutions that distribute these social goods – like the NHS and its CCGs – are also providing assets that help create resilience and enable individuals to better withstand these unique forms of vulnerability. As Fenton (2019, 210) argues:

> The vulnerability thesis therefore suggests that the state and healthcare providers – as societal institutions – have a duty to be responsive and "a

> responsibility to structure conditions in which individuals can aspire to meaningfully realize their individual capabilities as fully as possible" (Fineman 2010, 274) – in this case, parenthood.

Looking across the three countries discussed above, the threads linking reproduction, vulnerability, and grief are complex, as they inhere around visions of futurity and speak to profoundly intimate struggles. These struggles span illness, infertility, and invasive medical procedures and are just a few facets of the fertility challenges most frequently documented in research in these areas (Feasey 2019; Krajewska & Cahill-O'Callaghan 2020). By shining a light on laws and policies governing access to ARTs above, this article has sought to reveal some of these less visible dimensions of the production of vulnerability, as layers of grief become entrammelled in the journeys queer people take to create kin. This grief is uniquely queer because it is not only experienced in the struggle to conceive, or even solely in the brutality of pregnancy loss. It is also viscerally embodied in the way that health institutions fail to fully account for queer bodies, queer relationships, and queer futurities through their partial and inconsistent application of national and state-level reproductive policies and laws. Drawing on various historical interpretations of Antigone as carrying a door on her back, we see in the above two sections how queer individuals are tasked with bearing the weight of legal frameworks that simultaneously produce their exclusion whilst also acting as gateways for creating life. As I go on to discuss, the entwining of labour, loss and life is aptly represented by the figure of Antigone, where queer grief is embodied as affect but also offers hope for transformation through rupture.

Queer grief as affect and rupture

> If kinship is the precondition of the human, then Antigone is the occasion for a new field of the human, achieved through political catachresis, the one that happens when the less than human speaks as human, when gender is displaced, and kinship founders on its own founding laws. (Butler 2002, 169)

Reflecting on queer mourning in *Antigone's Claim*, Butler (2002) argues that Antigone's liminality represents a form of social exclusion – of being dead to the social order. Through the concept of "social death," Butler reflected specifically on the exclusion of gender-nonconforming people in the United States in the wake of the HIV crisis of the 1980s and 1990s: a crisis, they argue compellingly, that rendered the lives of so many socially unintelligible to the political community. The analytic of social death has many utilities when thinking through the ways grief is not only (or even necessarily) a response to a rupture in one's sense of the possibility of life but can also itself function as a rupture. In Butler's later reflections on social death in *Precarious Life* (2006), they explore US imperialism and the creation of an "unreal" Palestinian life: a life subject to potent regimes of power that function to render it unreal – and therefore ungrievable. This is evident, for example, in the *San Francisco Chronicle*'s refusal to publish the obituaries of those who had lost their lives in Palestine. Butler's (2006) critique remains pertinent in 2025 as we witness a genocide unfolding in Palestine and the struggle over whose grief matters. More recently scholars like Atallah and Awartani (2024) have called for decolonial conceptualisations of grief, echoing Butler's (2006, 33) longstanding question in which we are asked to consider, "Whose lives are real? Those who are unreal have, in a sense, already suffered the violence of derealisation. What, then is the relation between violence and those lives considered as 'unreal'?".

The work of resisting derealisation is the work of grief. Just as Antigone is imagined – in numerous reinterpretations of Sophocles' play – to carry a door on her back, queer individuals' journeys to create kin through ARTs entail an agreement to carry the weight of legal frameworks that have produced their exclusion but that also hold the potential for creating new life. This duality of Antigone's door – as restrictive and propulsive – is evident in the way laws governing legal parentage and access to reproductive technologies are experienced in the lives of queer people in the United States, the United Kingdom, and South Africa. On the one hand, laws governing reproduction are propulsive because they do exist – albeit unevenly – to support the creation of queer kin in

all three countries. On the other hand, laws governing parentage are restrictive because they require submission to a relationship model that, for many, is not resonant with their lifeworlds or ways of relating. These laws are deeply entangled with the ways that queer individuals are able to navigate their use of ARTs to create life, and they are also implicated in the ways that certain kinds of death are required in order to access these technologies. The work that goes into the creation of kin for queer individuals holds productive possibility, but it also speaks to the grief entailed in striving to create life within social and legal worlds that are structured to privilege heterosexuality.

Reflecting on comfort and how privilege precludes the notice of comfort in social spaces, Ahmed (2014, 148) states, "Heteronormativity functions as a form of public comfort by allowing bodies to extend into spaces that have already taken their shape […] the surfaces of social space are already impressed upon by the shape of such bodies". Queer individuals do not "sink into" (Ahmed 2014, 148) the heteronormative impressions in these social spaces, existing as scarification on their surfaces, unable to be fully assimilated. At the same time, though, the act of excluding queerness from these heteronormative spaces and narratives creates a hole. Thus, queerness functions simultaneously as an abscess and an absence. The porosity that queer identities enact (e.g., between absence and abscess, life and death, non-reproductive couplings and reproductive desires) makes the ways these bodies exist in reproductive spaces particularly fascinating. For instance, much like the predicament of Schrödinger's cat, necropolitics has rendered queerness as a superpositioned state of "alivedead" – or, in Antigone's words, a "strange new kind of inbetween thing" (Carson 2015, 29–30). Fulfilling Phelan's (2015, 78) prescription of queerness as an essentially relational identity, alivedeadness functions mainly to position its subjects closer to death than "normative […] human[s] (usually imagined to be white, middle-class, heterosexual, cis-gendered, and able-bodied)" (Radomska, Mehrabi & Lykke 2019, 5). The complex impactions to grief from this superpositioned state of queer bodies are compounded when reproduction requires engaging with deeply het-

erosexist legal frameworks and medical practices. Given the historical focus on queer grief as affect, I suggest that it might also be possible to consider grief as rupture that holds positive potential for transformation. The work of queer individuals to navigate reproductive worlds is therefore implicitly about the work of reconfiguring these worlds. While this work comes at a significant cost, it is also important to recognise the slow shifts that have taken place as a result of political catachresis, through queer individuals refusing to "sink into" heteronormative impressions and instead insisting on rupture in order to have our complex lifeworlds more fully seen and more fully recognised as human.

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NOTES

1. The laws and policies that govern who can and cannot create life are themselves borne out of social institutions and norms and so I use the term "sociojuridical" to denote this intersection and to reflect an understanding of laws and policies as constructed.
2. In this article, I focus specifically on queer kinship created through the use of ARTs, and recognise that there is a multiplicity of kinship forms among queer people that fall outside this particular mode of creating family.
3. The *Dobbs* decision, in which the federally enshrined right to abortion was overturned, has led to powerful erosions of reproductive freedoms, including concerns around queer rights and access to ARTs. This article acknowledges these complexities but, given its scope, is unable to fully engage with them (for more on the ramifications of these erosions, please see Mills & DeLaet 2024).
4. Human Fertilisation and Embryology Authority (HFEA), https://www.hfea.gov.uk/i-am/fertility-treatment-for-lgbt-people/, accessed October 2024.
5. British Pregnancy Advisory Service (BPAS), https://www.bpas.org/, accessed October 2021.
6. General Debate: IVF Provision, accessed October 2024.