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Teaching About Race and Family Law

Would You Make It to the Future?

**Teaching Race in an Assisted Reproductive Technologies
and the Law Classroom**

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Welfare Act from Family Law**

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Underserved in the Family Courts**

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Also: 2021 Schwab Family Law Essay

Physicians, Patients, and the Transgender Child:

**Does the State Have a Legitimate Interest in Prohibiting
Gender-Affirming Treatment in Minors?**

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preserve the family*

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Would You Make It to the Future? Teaching Race in an Assisted Reproductive Technologies and the Law Classroom

SONIA M. GIPSON RANKIN*

Introduction

Would you make it to the future? For the last five years, I have started my Assisted Reproductive Technology (ART) lecture in Family Law with this question. Students take the query seriously. They ponder their lived experiences such as home training, medical history, education, financial well-being, personality traits, work ethic, and social graces when determining if they would have the “model DNA” someone might select in a future society. The good-natured jokes about being nearsighted, having a pitiful jump shot, and wearing Invisalign turn reflective when someone raises the question: *Would someone in the future select my race?*

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Eight million children worldwide have been born via ART.¹ In 2019, out of every 100 babies born in the United States, two were created through assisted conception.² And by some estimates, this percentage is expected to drastically increase in the next two decades, with scientists and epidemiologists predicting that by 2040, most babies will be born using assisted reproductive technology.³ The study of ART introduces students to the essentials in science, medicine, law, and ethics that form the law of reproductive technologies. With innovations in germline genetic technologies adding new opportunities for disease prevention, the impact and import of the field cannot be overstated. Courts will continue to address complicated claims regarding parental rights and responsibilities in an era where reproductive technologies such as in vitro fertilization and surrogacy distribute conception, gestation, and parenthood among a variety of participants, with decidedly racial implications. Family law, which may

1. Marte Myhre Reigstad & Ritsa Storeng, *Development of In Vitro Fertilization, a Very Important Part of Human Reproductive Medicine, in the Last 40 Years*, 5 INT'L J. WOMEN'S HEALTH & WELLNESS, no. 1, 2019, at 1, <https://www.clinmedjournals.org/articles/ijwhw/international-journal-of-womens-health-and-wellness-ijwhw-5-089.php?jid=ijwhw>.

2. *State-Specific Assisted Reproductive Technology Surveillance*, CDC, <https://www.cdc.gov/art/state-specific-surveillance/index.html> (last visited Jan. 31, 2022).

3. Some researchers boldly predict that by 2040, embryo selection will replace sex as the way most people conceive children, whether because of choice or environmental factors. See, e.g., Jamie Metzl, *By the Year 2040, Embryo Selection Could Replace Sex as the Way Most of Us Make Babies*, QUARTZ (May 6, 2016), <https://qz.com/677335/by-the-year-2040-embryo-selection-will-replace-sex-as-the-way-most-of-us-make-babies/>. See generally Zoë Corbyn, *Shanna Swan: "Most Couples May Have to Use Assisted Reproduction by 2045,"* GUARDIAN (Mar. 28, 2021, 5:00 PM), <https://www.theguardian.com/society/2021/mar/28/shanna-swain-fertility-reproduction-count-down>. Dr. Shanna Swan, epidemiologist and professor of environmental medicine and public health at the Icahn School of Medicine in New York, sees an even more pressing reason for awareness related to fertility; as she argues, the environment is fundamentally changing reproduction in people. See SHANNA SWAN, COUNT DOWN: HOW OUR MODERN WORLD IS THREATENING SPERM COUNTS, ALTERING MALE AND FEMALE REPRODUCTIVE DEVELOPMENT, AND IMPERILING THE FUTURE OF THE HUMAN RACE (Simon & Schuster 2022). That said, not everyone is convinced. See David Sable, *Babies Without Sex in 2040? Say It Ain't So!*, FORBES (May 6, 2016, 9:40 AM), <https://www.forbes.com/sites/davidsable/2016/05/06/babies-without-sex-in-2040-say-it-aint-so/?sh=3d243b942029>.

include ART, is considered a bar prep course at many law schools.⁴ In addition, students take family law because of experiences in their personal lives or because they want to practice in this field. Whether personal or professional, most law students will interact with family law during their legal education, and reproductive technology will be included in their future practice and lives. It is critical that students explore the race, gender, sexual orientation, and class implications in every facet of ART.

By creating *Assisted Reproductive Technology and the Law*, I assembled a curriculum that addresses medicine, science, and ethics of human procreation; procreational liberty; reproductive tourism and cross-border reproductive care; family law issues; the act of choosing children's traits; posthumous reproduction; ART contract drafting; the regulation of reproductive medicine and the fertility industry; and how race, gender, and sexual orientation impact all of these decisions.⁵ When students complete the course, they will know the law of ART and see the racial implications within it. This helps students critically analyze how society decides who makes it to the future.

In this paper, Section I discusses how race connects to family law. Section II explains the relationship of cognitive dissonance theory and color blindness ideology to racial inequality in family law and how this connects to ART. Section III provides the framework for race-centered learning outcomes, a relevant rubric for reflection papers, and examples of theoretical literature that address race and ART. Section IV concludes by addressing how these skills and assessments in our family law curricula can impact systemic change in the practice of family law and the legal academy.

4. Currently, more than 30 jurisdictions administer the Uniform Bar Exam (UBE), which includes the Multistate Essay Examination (MEE). See *Jurisdictions That Have Adopted the UBE*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/exams/ube/> (last visited Jan. 30, 2022). Among the subjects tested by the MEE in family law are reproductive choices, artificial insemination by donor, surrogacy arrangements, and in vitro fertilization; gestational surrogacy; and embryo transplantation. *Multistate Essay Examination Subject Matter Outline*, NAT'L CONF. OF BAR EXAM'RS, <https://www.ncbex.org/pdfviewer/?file=%2Fdmtdocument%2F227> (last visited Jan. 30, 2022). All of this may change with the next iteration of the bar exam. See *Snapshot of the Next Generation of the Bar Exam*, NAT'L CONF. OF BAR EXAM'RS, <https://nextgenbarexam.ncbex.org/> (last visited Jan. 30, 2022).

5. I used Professor Judith Daar's casebook, *JUDITH DAAR, REPRODUCTIVE TECHNOLOGIES AND THE LAW* (2d ed. 2013), and I eagerly anticipate reviewing the new edition.

I. Race, Family, and the Law: More Than *Loving*⁶ and Meghan and Harry⁷

When race, family, and the law are discussed, the conversation often turns to a discussion of interracial marriage, such as *Loving v. Virginia*, or prominent interracial couples. The connections between race and family law reveal themselves in the legacy of slavery, assimilation, and immigration; economics and family law; state regulation of families in poverty; family formation through marriage and cohabitation; sexuality and reproduction control; spousal support and property division; relevance of conduct, race, and lifestyles in custody decisions; child support; race and culture in adoption, foster care, and guardianship determinations; abuse, neglect, and termination of parental rights; and violence in the family.⁸ A person has a connection to membership in the United States based on their proximity to whiteness.

One way to understand membership in a legitimate democratic state is to look at the historical rationale for race in the United States. “The primary good that we distribute to one another is membership in some human community.”⁹ The right of standing is central to membership,¹⁰ and it reflects a shared societal goal of ensuring people feel included. Those who

6. *Loving v. Virginia*, 388 U.S. 1 (1967) (struck down state laws banning marriage between individuals of different races, finding that anti-miscegenation laws violated both the Due Process and the Equal Protection Clauses of the Fourteenth Amendment).

7. Prince Harry and Meghan Markle, the Duke and Duchess of Sussex, made international news as Prince Harry, sixth in line to the throne of Britain, married a Black biracial woman from the United States. See Caroline Davies, “*It Really Was a Black Service*”: *World Reaction to Royal Wedding*, THE GUARDIAN (May 20, 2018), <https://www.theguardian.com/uk-news/2018/may/20/it-really-was-a-black-service-world-reaction-to-royal-wedding>. See also Dahleen Glanton, *Meghan Markle Saw Herself as Biracial, but the Royals Saw Her as Black*, CHI. TRIB. (Mar. 9, 2021), <https://www.chicagotribune.com/columns/dahleen-glanton/ct-glanton-meghan-markle-race-royals-20210309-tggn36w3brcupb2ptqvexsnara-story.html>.

8. See Peggy C. Davis & Richard G. Dudley Jr., *The Black Family in Modern Slavery*, 4 HARV. BLACKLETTER J. 9 (1987); Shani M. King, *The Family Law Canon in a (Post?) Racial Era*, 72 OHIO ST. L.J. 575 (2011).

9. MICHAEL WALZER, SPHERES OF JUSTICE: A DEFENSE OF PLURALISM AND EQUALITY 31 (1983).

10. See Neil H. Cogan, “*Standing*” *Before the Constitution: Membership in the Community*, 7 L. HIST. REV. 1, 1 (1989) (“‘Standing’ was used then, as it has often been, in connection with a person’s membership or position in a community. Just as only certain members have status in a community or other organizations and only they have the privileges of that status, so in Roman law and other texts only certain persons in the community of the courts had the capacity or other attributes that ‘standing’ conferred in lawsuits.”).

are not allowed to belong pay a price for it.¹¹ You get the rights of a citizen, but it may be that you do not get all the rights. The law does not afford levels of membership/citizenship but does permit and provide for varying social strata. This is where class impacts the cost of belonging. And these levels of social class will be based on race. Family law is the cornerstone to establishing membership, citizenship, and class.

Families determine where we live, how we live, and what opportunities are open to people within the United States. And when you are born into a family, you are born into a class. Class-centered membership is complicated by race. And race is a wild card because issues such as “passing” or adoption can move people in and out of classes. Pigmentocracy can decide if a person is able to have full membership. Even if a Black child is adopted into a White family with more class privileges, the child’s race will still dictate some of their access to membership. Economically prosperous Black Americans still find their access to full membership stymied by racial malice. All of this stems from the development of families.

Marriage, for example, provides access to legal and economic benefits. Parents give children names and homes, which establish residency, citizenship, and, by extension, membership.¹² It is further complicated by intraclass interracial marriages. Couples from the same social class but different races will have access to different sorts of rights in the United States based on their proximity to whiteness. Multicultural identities can make this conversation more nuanced.

11. See generally Clifton E. Barber & Luis Diego Vega, *Conflict, Cultural Marginalization, and Personal Costs of Filial Caregiving*, 18 J. CULTURAL DIVERSITY 20 (2011) (finding marginalization increases the impact family conflict has on caregiving costs); Aprile D. Benner & Yijie Wang, *Demographic Marginalization, Social Integration, and Adolescents’ Educational Success*, 43 J. YOUTH & ADOLESCENCE 1611 (2014) (linking demographic marginalization to poorer school attachment and thus poorer academic performance); Shaakira Parker, *Living with Low-Income and Economic Marginalization (LIEM)—How Can Psychologists Help?*, 12 SES INDICATOR (AM. PSYCH. ASS’N), Dec. 2019, <http://www.apa.org/pi/ses/resources/indicator/2019/12/low-income-marginalization> (last visited Jan. 31, 2022) (describing psychological costs of marginalization); Divya Kannan, *The Psychological Costs of Marginalization*, WHITE SWAN FOUND. (Mar. 27, 2018, 12:37 AM), <https://www.whiteswanfoundation.org/mental-health-matters/society-and-mental-health/the-psychological-costs-of-marginalization> (describing psychological effects of marginalization).

12. Casebooks, syllabi, and even the bar exam prioritize spousal relationships over parent-child relationships. This was understandable, as thousands of years of world history required marriage to legitimize heirs and establish property ownership.

People of multicultural heritage felt seen when the U.S. Census allowed people to select multiple racial categories in the 2010 census.¹³ However, sociologist scholar Dr. Nancy López argues there is a distinction between self-identity (which can include multiple heritages) and street race, meaning the racial identity others ascribe to an individual based on physical characteristics such as skin color, facial features, and hair texture.¹⁴ People consciously or not give their child a race when they make a family. People are socioeconomically benefited or restricted based on the race others call them, regardless of their self-identifying racial, ethnic, cultural, and religious background, and ART can further complicate and aggravate the issue.¹⁵ You are choosing your family's future, and the future is still racialized.¹⁶

Every component of family law is directly connected to the development of the United States' racial history.¹⁷ Knowing the importance of families in determining membership, the biological and legal creation of children becomes the way we ask and answer this family law question: "Would you make it to the future?" Would someone decide your race is going to provide your descendants with access to opportunity or further subjugation?¹⁸ Race is foundational for answering this question, and discussions about cognitive dissonance offer a path to answers.

13. See JOEL PERLMANN & MARY C. WATERS, *THE NEW RACE QUESTION: HOW THE CENSUS COUNTS MULTIRACIAL INDIVIDUALS* 33, 61 (Russell Sage Found. 2002), <http://www.jstor.org/stable/10.7758/9781610444477>.

14. Nancy López & Howard Hogan, *What's Your Street Race? The Urgency of Critical Race Theory and Intersectionality as Lenses for Revising the U.S. Office of Management and Budget Guidelines, Census and Administrative Data in Latinx Communities and Beyond*, 5 *GENEALOGY* 75 (2021), <https://doi.org/10.3390/genealogy5030075>.

15. See generally Cheryl Harris, *Whiteness as Property*, 106 *HARV. L. REV.* 1707 (1993) (examines how whiteness, initially designed as a type of racial identity, evolved into a form of property, acknowledged and protected in American law). See also Kwame Anthony Appiah, *How Should I Think About Race When Considering a Sperm Donor?*, *N.Y. TIMES* (June 16, 2020), <https://www.nytimes.com/2020/06/16/magazine/how-should-i-think-about-race-when-considering-a-sperm-donor.html> (discussing how to think about the creation of race when selecting a sperm donor).

16. See generally KEVIN R. JOHNSON, *MIXED RACE AMERICA AND THE LAW: A READER* (2003); TANYA KATERÍ HERNANDEZ, *MULTIRACIALS AND CIVIL RIGHTS: MIXED-RACE STORIES OF DISCRIMINATION* (2018).

17. For more examples of scholarship, see *Readings on Race for Family Law Courses*, https://docs.google.com/document/d/1lgly59bNy2peZFtb3ESzrhnhbj13pcAKiSCUXI_T9o8/edit (last visited Jan. 26, 2022).

18. This is critical in ART patients who will try to create children with certain phenotypes. See generally Amrita Pande, "Mix or Match?": *Transnational Fertility Industry and White Desirability*, 40 *MED. ANTHROPOLOGY* 335, 347 (2021), <https://doi.org/10.1080/01459740.2021.1877289> (discusses how "ART privileges genetic relatedness in ways that reaffirm and reproduce hegemonic notions of White hetero-patriarchal families").

II. Cognitive Dissonance and Assisted Reproductive Technologies

Unstructured discussions about race in the law classroom can frustrate students of all backgrounds and hinder a sense of belonging.¹⁹ And the topic of ART is often narrowly centered on in vitro fertilization (IVF) and often centers the discussion (consciously or not) on the creation of genetically and phenotypically White babies.²⁰ It is important for students to understand why they may not be aware of the impact of race in ART. This section will discuss how cognitive dissonance can be used as a teaching tool when explaining assisted reproductive technologies.

A. Assisted Reproductive Technologies

Infertility impacts every demographic in the world, cutting across race,²¹ gender, sexual orientation, and religious identity.²² In the United States, 10% to 15% of couples are infertile.²³ About 12% of American women of

19. See also Milton J. Bennett, *A Developmental Approach to Training for Intercultural Sensitivity*, 10 INT'L J. INTERCULTURAL RELS. 179, 182 (1986) (identifying six stages of cultural competence, where denial of difference, defense of difference, and minimization of difference are the first three stages).

20. Jim Hawkins, *Selling ART: An Empirical Assessment of Advertising on Fertility Clinics' Websites*, 88 IND. L.J. 1147, 1169 (2012) (surveying fertility treatment websites and noting that 97.28% of the websites featured White babies and 62.93% featured *only* White babies).

21. Fertility impacts people of every racial group in a myriad of formats and outcomes. Infertility is heartbreaking for millions of people around the world, but data are hard to determine. See generally Courtney D. J. Lynch, *There Are Racial and Ethnic Disparities in Infertility, Indeed, but We Need Better Data*, 33 PAEDIATRIC & PERINATAL EPIDEMIOLOGY 126 (2019) (“The constructed fertility and impaired fecundity measures used in the National Survey of Family Growth are less than ideal.”).

22. Jewish women in the United States experience infertility at a rate of 1:6 compared to the national average of 1:8. Tricia Anbinder & Elana Frank, *The Silent Struggle of Infertility*, N.Y. JEWISH WEEK (Jan. 11, 2018, 5:48 PM), <https://jewishweek.timesofisrael.com/the-silent-struggle-of-infertility/>. Islam is practiced by people across the world and Islamic teaching provides parameters on when couples may access ART practices. MOHAMMED GHALY ET AL., ISLAMIC ETHICS AND INFERTILITY TREATMENT/THE STRUGGLE TO CONCEIVE: AN ISLAMIC APPROACH, WORLD INNOVATION SUMMIT FOR HEALTH (2020), https://2020.wish.org.qa/app/uploads/2020/09/WISH-2020_Forum-Reports_Islamic-Ethics-and-Infertility_ENG.pdf. There has not been specific research cataloging infertility of Muslim people in the United States. Some regions such as the Middle East and North Africa, and specifically Morocco and Yemen, have a higher prevalence of primary infertility (a woman who has never conceived), with a low prevalence of secondary infertility (inability to conceive after at least one successful pregnancy). *Id.* at 5–6. Other regions have a higher rate of secondary infertility in comparison to primary, such as Central and Eastern Europe and Central Asia. *Id.*

23. *Infertility*, MAYO CLINIC, <https://www.mayoclinic.org/diseases-conditions/infertility/symptoms-causes/syc-20354317> (last visited Jan. 25, 2022).

ages 15–49²⁴ have received infertility services in their lifetime.²⁵ Between 2006 and 2010, the National Survey of Family Growth study reported 15% of non-Hispanic White women used medical assistance for infertility issues, while only 8% of non-Hispanic Black²⁶ women and 7.6% of Hispanic women reported doing the same.²⁷ American Indian/Alaskan Native women in the United States experience infertility and impaired fecundity at a rate of 1.37 times and 1.3 times that of White Americans, respectively.²⁸ Asian American women report having greater difficulty conceiving.²⁹ But the highest prevalence of reported infertility is by non-Hispanic Black women.³⁰ The impact of infertility on Black women and women from historically excluded communities has gained recent awareness as several celebrities such as Gabrielle Union, Eve, Michelle Kwan, and Priyanka Chopra Jonas

24. *Id.* The use of the term “women” in this paper is with awareness that there are a growing number of people who identify as nonbinary but have a womb.

25. Maya Dusenbery, *What We Don't Know About I.V.F.*, N.Y. TIMES (Nov. 9, 2021), <https://www.nytimes.com/2020/04/16/parenting/fertility/ivf-long-term-effects.html>. Fertility relates to the natural ability of reproduction measured by fertility rates, while fecundity is the potential of reproduction, measured by the number of gametes. Lakna, *Difference Between Fertility and Fecundity*, PEDIAA (July 27, 2018), <https://pediiaa.com/difference-between-fertility-and-fecundity/>. In 2019, the CDC reported that of women with one or more births, 13.1% of women aged 15–49 experienced impaired fecundity; 14.1% of married women from 15–49 experienced impaired fecundity; and 6% of married women between the ages of 15–49 reported they were experiencing infertility. In addition, 12.2% of women between the ages of 15–49 reported they had used infertility services. *National Survey of Family Growth*, CDC, https://www.cdc.gov/nchs/nsfg/key_statistics/i-keystat.htm#infertility (last visited Jan. 22, 2022).

26. See ANJANI CHANDRA ET AL., NAT'L HEALTH STATS. REPORTS NO. 73, INFERTILITY SERVICE USE IN THE UNITED STATES: DATA FROM THE NATIONAL SURVEY OF FAMILY GROWTH, 1982–2010 (CDC Jan. 22, 2014), <https://www.cdc.gov/nchs/data/nhsr/nhsr073.pdf>. The terms “Black” and “Hispanic/Latina” in this article are used with the awareness that there are people in the United States, like my family, who come from Latin American countries and their statistics are often obfuscated in data collection that does not clearly capture Black women who are also ethnically Latina.

27. *Id.*

28. For more information on infertility in the Native American community, see LaTasha B. Craig et al., *The Prevalence of Infertility in American Indian/Alaska Natives and Other Racial/Ethnic Groups: National Survey of Family Growth*, 33 PAEDIATRIC & PERINATAL EPIDEMIOLOGY 119 (2019), <https://doi.org/10.1111/ppe.12538>.

29. Michelle Vu et al., *Asian Americans and Infertility: Genetic Susceptibilities, Sociocultural Stigma and Access to Care*, F&S REPS. (2021), <https://doi.org/10.1016/j.xfre.2021.12.004>. As of 2022, no data existed on the self-reported rates of infertility in the Asian American population. *See id.*

30. ANJANI CHANDRA ET AL., NAT'L HEALTH STATS. REPORTS NO. 67, INFERTILITY AND IMPAIRED FECUNDITY IN THE UNITED STATES, 1982–2010: DATA FROM THE NATIONAL SURVEY OF FAMILY GROWTH (CDC Aug. 14, 2013), <https://www.cdc.gov/nchs/data/nhsr/nhsr067.pdf>.

have shared their experiences.³¹ Studies show that Black women experience infertility at rates 1.5 times that of White women.³² The trauma of infertility is further exacerbated for Black mothers and Black babies after delivery. Black newborns die from pregnancy related causes three times the rate of White newborns,³³ and are more likely to die when looked after by White doctors.³⁴ Medical assistance that helps people have biological children or be pregnant has revolutionized the world's understanding of procreation and parentage.

31. Actress Gabrielle Union, having been diagnosed with adenomyosis in 2018, recounted her surrogacy journey as a Black woman in *Time* magazine. Gabrielle Union, *Gabrielle Union: The Hard Truth About My Surrogacy Journey*, TIME (Sept. 10, 2021, 4:19 PM), <https://time.com/6096588/gabrielle-union-surrogacy/>. Rapper and actress Eve shared how she underwent a myomectomy to remove her uterine fibroids to increase her odds of becoming pregnant. Mya Abraham, *Eve Reveals Why Doctors Stated She Would Never Get Pregnant*, VIBE (Dec. 9, 2021, 11:35 AM), <https://www.vibe.com/news/entertainment/eve-pregnancy-tamron-hall-1234639020/>. In honor of the 2021 National Infertility Awareness Week, Oscar nominee Andra Day shared that she was encouraged to freeze her ova by doctors to protect her future fertility. *Andra Day Froze Her Eggs Before Playing Billie Holiday Due to Fertility Concerns*, FILM-NEWS (Apr. 21, 2021), <https://www.film-news.co.uk/news/UK/85573/Andra-Day-froze-her-eggs-before-playing-Billie-Holiday-due-to-fertility-concerns>. The Oprah Winfrey Network showed a documentary on January 4, 2022, entitled *Eggs over Easy: Black Women & Fertility*. EGGS OVER EASY FILM, <http://www.eggsovereasyfilm.com/>; Press Release, Discovery+ & OWN, OWN Announces Documentary Film “Eggs Over Easy” Hosted by Keshia Knight Pulliam Premiering on OWN and Discovery+ Tuesday, January 4 (Dec. 16, 2021), <https://corporate.discovery.com/discovery-newsroom/own-announces-documentary-film-eggs-over-easy-hosted-by-keshia-knight-pulliam-premiering-on-own-and-discovery-tuesday-january-4/>. Figure skater Michelle Kwan recently welcomed a baby after experiencing infertility. Ree Hines, *Michelle Kwan Welcomes 1st Baby, Explains Why She Kept Pregnancy Private*, NBC NEWS (Jan. 6, 2022, 9:51 PM), <https://www.nbcnews.com/pop-culture/pop-culture-news/michelle-kwan-welcomes-1st-baby-explains-kept-pregnancy-private-rcna11180>. Actress Priyanka Chopra shared that she became a mother through surrogacy. See also Ent. Desk, *Priyanka Chopra, Nick Jonas Welcome Baby Through Surrogacy*, INDIAN EXPRESS (Jan. 23, 2022, 9:42 AM), <https://indianexpress.com/article/entertainment/bollywood/priyanka-chopra-nick-jonas-welcome-baby-through-surrogacy-7736028/#:~:text=The%20actor%20asked%20for%20privacy,welcomed%20a%20baby%20via%20surrogate>.

32. Melissa F. Wellons et al., *Racial Differences in Self-Reported Infertility and Risk Factors for Infertility in a Cohort of Black and White Women: The CARDIA Women's Study*, 90 FERTILITY & STERILITY REV. 1640 (2008), <https://doi.org/10.1016/j.fertnstert.2007.09.056>. For comprehensive studies, see Tia Jackson-Bey et al., *Systematic Review of Racial and Ethnic Disparities in Reproductive Endocrinology and Infertility: Where Do We Stand Today?*, FERTILITY & STERILITY REV. 169 (2021), <https://doi.org/10.1016/j.xfr.2021.05.001>.

33. Press Release, CDC, *Racial and Ethnic Disparities Continue in Pregnancy-Related Deaths* (Sept. 5, 2019, 1:00 PM), <https://www.cdc.gov/media/releases/2019/p0905-racial-ethnic-disparities-pregnancy-deaths.html>.

34. Brad N. Greenwood et al., *Physician-Patient Racial Concordance and Disparities in Birthing Mortality for Newborns*, 117 PROCS. NAT'L ACAD. SCIS. 21194 (Sept. 2020), <https://doi.org/10.1073/pnas.1913405117>.

ART involves the use of technological treatments and procedures to help people achieve pregnancies, resulting in live births.³⁵ There are several other assisted reproductive technologies that ART incorporates.³⁶ Some commonly discussed types of ART include intrauterine insemination (where sperm is placed directly into the uterus using a catheter and fertilization takes place internally),³⁷ in vitro fertilization (IVF) (in which sperm and ova are combined outside of a woman's body and later implanted into a woman),³⁸ and third-party assisted ART (which utilizes donated sperm, ova, or a gestational carrier other than the intended parents).³⁹ ART also addresses male factor infertility (which can include low-quality sperm or difficulty with sperm production that interferes with conception)⁴⁰ and

35. The success rate being measured in the terms “live births” or “take-home baby rate” can be crude depending on one's cultural understandings and connections to the moment of conception and creation of life. See Quinn & Fujimoto, *infra* note 50.

36. AM. SOC'Y FOR REPROD. MED., ASSISTED REPRODUCTIVE TECHNOLOGY: A GUIDE FOR PATIENTS (2018), <https://www.reproductivefacts.org/globalassets/rf/news-and-publications/bookletsfact-sheets/english-fact-sheets-and-info-booklets/art-booklet2.pdf> [hereinafter ART GUIDE FOR PATIENTS]. See also *What Is Assisted Reproductive Technology?*, CDC, <https://www.cdc.gov/art/whatis.html> (last visited Jan. 25, 2022). While the Centers for Disease Control and Prevention (CDC) does not include treatments where only sperm is manipulated (for example, through intrauterine or artificial insemination) or procedures that involve medicine taken by a woman to stimulate ova production, this paper will consider all components of medical intervention involved in the creation of live births.

37. AM. SOC'Y FOR REPROD. MED., INTRAUTERINE INSEMINATION (2012), <http://www.fertilityanswers.com/wp-content/uploads/2016/04/intrauterine-insemination-iui.pdf>. See also ESHRE Capri Workshop Grp., *Intrauterine Insemination*, 15 HUMAN REPROD. UPDATE 265 (2009), <https://doi.org/10.1093/humupd/dmp003>.

38. AM. SOC'Y FOR REPROD. MED., THIRD-PARTY REPRODUCTION: SPERM, EGG, AND EMBRYO DONATION AND SURROGACY, A GUIDE FOR PATIENTS (2018), https://www.reproductivefacts.org/globalassets/rf/news-and-publications/bookletsfact-sheets/english-fact-sheets-and-info-booklets/third-party_reproduction_booklet_web.pdf [hereinafter THIRD-PARTY REPRODUCTION]. The steps of IVF are superovulation, ova retrieval, fertilization, and embryo transfer. *Id.* There are several specific ways IVF can occur such as “in vitro fertilization-embryo transfer (IVF-ET), gamete intrafallopian transfer (GIFT), zygote intrafallopian transfer (ZIFT), and frozen embryo transfer (FET).” *Assisted Reproductive Technologies*, SOC'Y FOR ASSISTED REPROD. TECH., <https://www.sart.org/patients/a-patients-guide-to-assisted-reproductive-technology/general-information/assisted-reproductive-technologies/> (last visited Jan. 25, 2022). See also ART GUIDE FOR PATIENTS, *supra* note 36.

39. THIRD-PARTY REPRODUCTION, *supra* note 38, at 3.

40. *Male Infertility*, YALE MED., <https://www.yalemedicine.org/conditions/male-infertility> (last visited Jan. 30, 2022); SART Fertility Experts Podcast, *SART Fertility Experts—Male Factor*, SOC'Y FOR ASSISTED REPROD. TECH. (Jan. 18, 2022), <https://www.sart.org/news-and-publications/news-and-research/asrm-podcasts/sart-fertility-experts---male-factor/>.

human gene editing (technologies that enable scientists to change a person's DNA).⁴¹

ART has made advances both in services and worldwide availability, but racial disparities still occur in its utilization.⁴² A study released in 2021 showed Black, Hispanic/Latina, and Asian American women had lower success rates with ART than did non-Hispanic White women, even when controlling for marital status, age, payment method, education, smoking status, and previous Cesarean section deliveries.⁴³ These findings were aligned with those of others who noted a racial and ethnic difference in pregnancy rates following ART treatments among American Indians and Alaskan Natives and among Black Americans when compared to White women.⁴⁴

Some scholars connect the higher usage by White women to educational attainment, more frequent delays in childbearing, and differing reproductive development.⁴⁵ There is debate on whether the lower usage of ART among

41. See Benjamin Davies, *The Technical Risks of Human Gene Editing*, 34 HUMAN REPROD. 2104 (Nov. 2019), <https://doi.org/10.1093/humrep/dez162> (describing two different gene editing procedures); ASRM Today Podcast, *ASRM Today Book Review: CRISPR People: The Science and Ethics of Editing Humans with Hank Greely*, SOC'Y FOR ASSISTED REPROD. TECH. (Jan. 13, 2022), <https://www.sart.org/news-and-publications/news-and-research/asrm-podcasts/asrm-today-book-review-crispr-people-the-science-and-ethics-of-editing-humans-with-hank-greely/>. For a glossary of ART terms, see ART GUIDE FOR PARENTS, *supra* note 36, at 24–29.

42. Dandison Nat Ebeh & Shayesteh Jahanfar, *Association Between Maternal Race and the Use of Assisted Reproductive Technology in the USA*, 3 SN COMPREHENSIVE CLINICAL MED. 1106 (2021), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7972807/>. Knowing these realities will help students be sensitive to how boilerplate advice may not be helpful to their clients.

43. See *id.* at 4 (showing frequency distribution of data from women who used ART in Table 1 and listing associations between race and the use of ART in the United States in Tables 2 and 3). Julie D. Lamb et al., *Asian Ethnicity Is Associated with Decreased Pregnancy Rates Following Intrauterine Insemination*, 19 REPROD. BIOMED. ONLINE 252, 253–254 (2009), [https://doi.org/10.1016/s1472-6483\(10\)60081-8](https://doi.org/10.1016/s1472-6483(10)60081-8) (discusses decreased rates of treatment success for Asian American women).

44. LaTasha B. Craig et al., *Racial and Ethnic Differences in Pregnancy Rates Following Intrauterine Insemination with a Focus on American Indians*, 5 J. RACIAL ETHNIC HEALTH DISPARITIES 1 (2018), <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC6504168/>.

45. See, e.g., CAMILLE L. RYAN & KURT BAUMAN, U.S. CENSUS BUREAU, EDUCATIONAL ATTAINMENT IN THE UNITED STATES: 2015 (2016), <https://www.census.gov/content/dam/Census/library/publications/2016/demo/p20-578.pdf>; Tarun Jain, *Socioeconomic and Racial Disparities Among Infertility Patients Seeking Care*, 85 FERTILITY & STERILITY 876 (2006), <https://www.ncbi.nlm.nih.gov/pubmed/16580368/>; ESHRE Capri Workshop Grp., *Social Determinants of Human Reproduction*, 16 HUM. REPROD. 1518 (2001), <https://www.ncbi.nlm.nih.gov/pubmed/11425841/>; Norbert Gleicher et al., *Differences in Ovarian Function Parameters Between Chinese and Caucasian Oocyte Donors: Do They Offer an Explanation for Lower IVF Pregnancy Rates in Chinese Women?*, 22 HUM. REPROD. 2879 (2007).

Black women and Latinas in comparison to non-Hispanic women is driven by reduced demand or barriers to access.⁴⁶

As to the issue of reduced demand, different cultures and religions have concerns about the process used to create zygotes and the determination of viability. John Mbiti, described as the father of modern African theology, considered the concept of human life in relation to time, where being “born” exists often in a time not connected to physical birth and that death can be connected to one’s name being forgotten.⁴⁷ Similar principles are found in the several hundred different Native American tribes that find time and life are circular instead of linear, and birth, from conception, is the beginning of a person’s cultural identity.⁴⁸

Additionally, there is historical research finding that practitioners of Buddhism and Confucianism in China have also viewed life as beginning at conception.⁴⁹ No people or communities are monolithic, and many will view reproductive justice as a different discussion than the beginning of life. But some of these principles can contribute to ART hesitancy in certain communities by race or religion.

There are other factors that impact the use of ART. Some scholars note that the barrier to access is because of the comparatively small number of physical places that offer ART treatments.⁵⁰ Additionally, the cost of ART can be prohibitive. The average IVF cycle can cost between \$12,000 and

46. Amanda E. Janitz et al., *Racial/Ethnic Differences in the Utilization of Infertility Services: A Focus on American Indian/Alaska Natives*, 23 *MATERNAL CHILD HEALTH J.* 10 (Jan. 2019), <https://www.ncbi.nlm.nih.gov/pubmed/29998430/>; Irene Dimitriadis et al., *Racial Disparities in Fertility Care: An Analysis of 4537 Intrauterine Insemination Cycles*, 4 *J. RACIAL ETHNIC HEALTH DISPARITIES* 169 (Apr. 2017), <https://www.ncbi.nlm.nih.gov/pubmed/26983623/>; Alice J. Shapiro et al., *Effect of Race and Ethnicity on Utilization and Outcomes of Assisted Reproductive Technology in the USA*, 15 *REPROD. BIOLOGY & ENDOCRINOLOGY* 44 (June 2017), <https://www.ncbi.nlm.nih.gov/pubmed/28595591>.

47. JOHN MBITI, *AFRICAN RELIGIONS AND PHILOSOPHY* 25 (1969). See also ANTHONY EPHRIRIM-DONKOR, *AFRICAN SPIRITUALITY* 4 (2008); Christopher S. Wareham, *Artificial Intelligence and African Conceptions of Personhood*, 23 *ETHICS & INFO. TECH.* 127 (2021) (applying African conceptions of personhood to questions of AI personhood).

48. PATRISIA GONZALES, *RED MEDICINE: TRADITIONAL INDIGENOUS RITES OF BIRTHING AND HEALING* 234 (2012). For more of an understanding of birth across cultures, see BRIGITTE JORDAN & ROBBIE DAVIS-FLOYD, *BIRTH IN FOUR CULTURES: A CROSSCULTURAL INVESTIGATION OF CHILDBIRTH IN YUCATAN, HOLLAND, SWEDEN, AND THE UNITED STATES* (1978).

49. Jing-Bao Nie, *Chinese Moral Perspectives on Abortion and Foetal Life: An Historical Account*, 3 *N.Z. BIOETHICS J.* 15 (2002); *CULTIVATING PERSONHOOD: KANT AND ASIAN PHILOSOPHY* (Stephen R. Palmquist ed., 2010).

50. Molly Quinn & Victor Fujimoto, *Racial and Ethnic Disparities in Assisted Reproductive Technology Access and Outcomes*, 105 *FERTILITY & STERILITY* 1119 (May 2016), <https://www.ncbi.nlm.nih.gov/pubmed/27054308/>.

\$17,000, and can rise to \$25,000 once medication is included.⁵¹ Additional procedures that conduct genetic testing on the embryos or surgical procedures can raise the cost thousands of dollars, and most people require more than one round of treatment.⁵² In 2014, there was also a correlation between the utilization of ART by each racial group where insurance paid for covered ART treatment.⁵³ Currently 15 states have laws that require insurers to cover infertility treatment, and two require insurance companies to offer coverage for infertility treatment.⁵⁴ The use and need for ART are subject to racial inequalities. Through the study of cognitive dissonance, students are able to examine their own biases as well as those of the system they live in.

B. Cognitive Dissonance

One reason that it can be challenging to teach and address implicit bias in the classroom is that students (and professors) must first learn that their purported attitudes on cultural, racial, or gender differences do not always align with their behaviors on these topics. This is an example of cognitive dissonance. I do not start my discussions on identity with definitions or theories. I have found students are more receptive to unlearning past ideas and inserting new ones when you take the time to help them explore logical fallacies in arguments related to race. I present innocuous statements that allow students to draw on their own experiences to start our discussion.⁵⁵

I list these six sentences separately on a slide deck. The sentences are not connected to each other.

- *The couple held hands waiting to hear the first heartbeat on the ultrasound.*

51. Amy Klein, *I.V.F. Is Expensive. Here's How to Bring Down the Cost.*, N.Y. TIMES (Apr. 18, 2020), <https://www.nytimes.com/article/ivf-treatment-costs-guide.html><https://www.nytimes.com/article/ivf-treatment-costs-guide.html>. See also Sara Crawford et al., *Costs of Achieving Live Birth from Assisted Reproductive Technology: A Comparison of Sequential Single and Double Embryo Transfer Approaches*, 105 FERTILITY & STERILITY 444 (2016), <https://doi.org/10.1016/j.fertnstert.2015.10.032>.

52. Klein, *supra* note 51.

53. Ada C. Dieke et al., *Disparities in Assisted Reproductive Technology Utilization by Race and Ethnicity, United States, 2014: A Commentary*, 26 J. WOMEN'S HEALTH 605 (2017), <https://doi.org/10.1089/jwh.2017.6467>.

54. *State Laws Related to Insurance Coverage for Infertility Treatment*, NAT'L CONF. OF STATE LEGISLATURES (Mar. 12, 2021), <https://www.ncsl.org/research/health/insurance-coverage-for-infertility-laws.aspx>. Usage rates were higher in states with insurance coverage mandates for IVF than in states without such mandates, regardless of race/ethnicity. See Dieke et al., *supra* note 53.

55. I call this the *Inception/Blink* factor. See Sonia Gipson Rankin, *What's (Race in the) Law Got to Do with It: Encouraging Law School Dialogue About Implicit Bias*, 54 CONN. L. REV. 923 (2022).

- *She found out that there were two genetically normal blastocysts.*
- *It was discovered the couple was dealing with “male factor” infertility.*
- *Insurance denied the additional genetic screening.*
- *The surrogate requested joint custody and visitation rights.*
- *After six years of infertility, holding their child made all worries vanish.*⁵⁶

I then ask the students, after having read the statements, what the race is of the people that appeared in their mind. I ask them to read it again and imagine the parties as Chinese American or Hispanic. If they pictured the people as a heterosexual couple, I ask them to imagine the people from a different sexual orientation. Then we begin to discuss why some of their thoughts immediately include images of a particular identity. The discussion opens the space for a conversation of cognitive dissonance.

Dr. Robert Moles, a British legal scholar and former lecturer at Queens University of Belfast, United Kingdom,⁵⁷ defined cognition as a part of understanding that can be linked to attitudes, beliefs, or knowledge about the situation. Dr. Moles is well known for his work on miscarriages of justice and notes that dissonance occurs when an individual is presented two psychological ideas that seem contradictory.⁵⁸ “A cognition is a piece of knowledge, and it may relate to attitudes, beliefs, or knowledge about the world. Dissonance arises when a person has two psychological representations which are inconsistent with each other.”⁵⁹

These mental frameworks give a sense of comfort, but the flattening of human responses can lead people to disregard significant information, rather than focus only on things that confirm their preexisting beliefs and ideas.⁶⁰ This schema can lead people to develop inaccurate, distorted, or overgeneralized ideas in order to keep several competing notions in

56. This activity was modified from an example in PAUL KIVEL, *UPROOTING RACISM: HOW WHITE PEOPLE CAN WORK FOR RACIAL JUSTICE* (4th ed. 2017).

57. Dr. Robert Nelson Moles—*Curriculum Vitae*, NETWORKED KNOWLEDGE, <http://netk.net.au/Molescv.asp>.

58. Bob Moles, *Leon Festinger’s Theory of Cognitive Dissonance*, NETWORKED KNOWLEDGE 1, 2 (Mar. 2, 2017), <http://netk.net.au/Psychology/Psychology8.pdf>.

59. *Id.*

60. Kendra Cherry, *The Role of a Schema in Psychology*, VERY WELL MIND (Sept. 23, 2019), <https://www.verywellmind.com/what-is-a-schema-2795873>.

their minds.⁶¹ When the developed schema contributes to stereotypes, it is difficult to maintain new observations that do not correspond to established ideas.⁶²

When students understand why they feel uncomfortable, they are willing to explore why they have competing ideas in their heads. Innovative legal education should approach every rule, every statute, and every decision with this crucial question: Who are these people and how are they to be treated? Race and racism are so enmeshed in the global society that many mistakes in reproductive technology are revealed due to the physical appearance of the children created.

C. Race in ART Cases Brings the Racialized Ideologies into Sharper View

This is how I sharpen student's insight into foreseeing issues of race in their practice. These cases can be good examples to include if you are thinking about adding more of these issues to your teaching. Though it is known that people select procreation partners to have children with certain skin tone, hair texture, and facial features, this type of public discourse is generally frowned upon in the United States. Reproductive technology brings this issue to the forefront of the law. To further explore ways race impacts reproductive technology, I present cases of parents who purposefully seek to create children of different races or skin tones than themselves; parents who end up inadvertently having children through IVF of different races than they expected; and a mother who sued because the race of the child she had through a donor sperm error led to what she described as unwanted difficulties in her life because she had to interact in a new racial community.

Selecting a child's race has been a rising discussion in the study of ART, the law, society mores, and ethics. A White couple decided they wanted to parent children of different races, so they selected three donated Black

61. ROBIN A. WRIGHT, KIRWAN INST. FOR THE STUDY OF RACE & ETHNICITY, RACE MATTERS ... AND SO DOES GENDER: AN INTERSECTIONAL EXAMINATION OF IMPLICIT BIAS IN OHIO SCHOOL DISCIPLINE DISPARITIES 4 (June 2016), <http://www.kirwaninstitute.osu.edu/implicit-bias-training/resources/race-matters.pdf>. Cognitive scientists Hugo Mercier and Dan Sperber argue that human reasoning evolved to help people fulfill social functions, from large group cooperation to communication with others, often not requiring people to rely on truth, allowing people to slip into cognitive biases like confirmation bias where one looks for information that confirms previously held beliefs. HUGO MERCIER & DAN SPERBER, THE ENIGMA OF REASON 8, 218 (2017); see also Steve Rathje, *Why People Ignore Facts*, PSYCH. TODAY (OCT. 25, 2018), <https://www.psychologytoday.com/us/blog/words-matter/201810/why-people-ignore-facts>.

62. Cherry, *supra* note 60.

embryos for their own process.⁶³ In 2014, a Canadian woman was initially told by a fertility clinic that she could only choose from sperm donors that share her race, as it was against the clinic's policies.⁶⁴ It is essential that parents comprehend the significance of race in society when they decide to have a child whose "race" differs from their own. Fertility clinics are aware that not every person has thought through the implications of their requests for children of certain racial, ethnic, or skin tones and share information to help people think about discrimination.⁶⁵

Additionally, errors about sperm donations or embryo mix-ups shake the ART community, as these errors relate to the creation of children. But the most discussed examples of these errors are often discovered because of race. Willem and Wilma Stuart, who had twins in 1995, discovered that the twins had two different fathers.⁶⁶ Tuen was born with blonde hair and blue eyes like the parents, and Koen with brown hair and brown eyes and a completely different skin color.⁶⁷ It was later discovered that the fertility clinic had accidentally inseminated Ms. Stuart's ova with a mix of her White

63. Aaron Halbert, *My Wife and I Are White Evangelicals: Here's Why We Chose to Give Birth to Black Triplets*, WASH. POST (Apr. 21, 2016), <https://www.washingtonpost.com/news/acts-of-faith/wp/2016/04/21/my-wife-and-i-are-White-evangelicals-heres-why-we-chose-to-give-birth-to-black-triplets/>. Wanting to create multicultural families is something that has been achieved by many people through adoption. Entertainer and war hero Josephine Baker famously adopted 12 children from different nations, calling them her "Rainbow Tribe." BENNETTA JULES-ROSETTE, *JOSEPHINE BAKER IN ART AND LIFE: THE ICON AND THE IMAGE* (2007). Formerly married actors Angelina Jolie and Brad Pitt adopted three children from three different nations: Cambodia, Vietnam, and Ethiopia. Jessica Bennett, *Angelina Jolie Talks Honoring the "Roots" of Her Adopted Children*, PAGE SIX (June 20, 2020, 12:29 PM), <https://pagesix.com/2020/06/20/angelina-jolie-talks-honoring-the-roots-of-her-adopted-children/>.

64. The clinic's administrative director, Dr. Calvin Greene, said, "I'm not sure that we should be creating rainbow families just because some single woman decides that that's what she wants . . . That's her prerogative, but that's not her prerogative in our clinic." Emily Thomas, *Fertility Clinic Tells Woman She Can't Use Sperm Donor from Another Race*, HUFFPOST (July 28, 2014, 2:33 PM), https://www.huffpost.com/entry/calgary-sperm-donor-race_n_5627382. After public backlash, the Regional Fertility Clinic reported that the website policy was outdated and had not been updated to reflect their current practices. Josh Elliot, *No "Rainbow Families" Policy Outdated, Fertility Clinic Says*, CTV NEWS (July 29, 2014, 1:26 PM), <https://www.ctvnews.ca/health/no-rainbow-families-policy-outdated-fertility-clinic-says-1.1937223>.

65. See, e.g., *Donor Ethnicity, Your Family and Your Future Child*, SPERM BANK CAL., <https://www.thespermbankofca.org/tsbfile/choosing-ethnicity-my-donor#Discrimination> (last visited Jan. 31, 2022); Amrita Pande, "Mix or Match?": *Transnational Fertility Industry and White Desirability*, 40 MED. ANTHROPOLOGY 335 (2021), <https://www.tandfonline.com/doi/full/10.1080/01459740.2021.1877289>.

66. Ann Curry, *The World's Least Alike Twins*, NBC NEWS (Sept. 3, 2005), <https://www.nbcnews.com/id/wbna9438648>.

67. N.Y. Times News Serv., *Fertility Clinic's Error Leaves Couple in Tears*, CHI. TRIB. (June 28, 1995, 12:00 AM), <https://www.chicagotribune.com/news/ct-xpm-1995-06-28-9506280153-story.html>.

husband's sperm and the sperm of a Black donor who was using the clinic for treatment with his own wife.⁶⁸ In 2002, a Manhattan fertility clinic made an error and implanted Mr. Rogers's and Ms. Perry-Rogers's fertilized embryo into Ms. Fasano,⁶⁹ which led to a national discussion on gestational surrogacy and biological parents.⁷⁰ Also in 2002, across the pond, a White couple in the United Kingdom had twin Black children after a mistake during an IVF procedure.⁷¹ In 2019, Anni and Ashot Manukyan were told that at least one of their embryos was given to a Korean American couple across the country, who gave birth to two boys who were not of Asian American ancestry.⁷²

In fall 2021, Daphna and Alexander Cardinale made headlines when they discovered the child Daphna had carried was not their biological daughter and later had to switch babies due to an IVF embryo mix-up.⁷³ The Cardinales, in their complaint, said they felt something was not completely right as the child did not resemble either of the parents and had much darker skin complexion and hair.⁷⁴ The baby's appearance was "so jarring" that Alexander Cardinale alleged that he "took several steps away from the birthing table, backing up against the wall" at delivery.⁷⁵ Alexander frequently commented to Daphna that family members and friends were questioning him about the baby's appearance, and Daphna, becoming exasperated by Alexander's comments, bought a home DNA test.⁷⁶

68. *Id.*; see also Cynthia R. Mabry, "Who Is My Real Father?"—*The Delicate Task of Identifying a Father and Parenting Children Created from an In Vitro Mix-Up*, 18 NAT'L BLACK L.J. 1 (2008).

69. *Perry-Rogers v. Fasano*, 715 N.Y.S.2d 19, 25 (App. Div. 2000) (finding the "happenstance of . . . nominal parenthood" not sufficient to establish standing to request visitation). The fact that the Fasanos included a \$200,000 liquidated damages clause if the Rogers attempted to not allow the accidental gestational surrogate to visit their own biological child, *id.* at 22, is a topic for a later paper.

70. See, e.g., Leslie Bender, *Genes, Parents, and Assisted Reproductive Technologies: ARTs, Mistakes, Sex, Race, & Law*, 12 COLUM. J. GENDER & L. 1 (2003); Raizel Liebler, *Are You My Parent? Are You My Child? The Role of Genetics and Race in Defining Relationships After Reproductive Technological Mistakes*, 5 DEPAUL J. HEALTH CARE L. 15 (2002).

71. Sarah Lyall, *Whites Have Black Twins in In-Vitro Mix-Up*, N.Y. TIMES (July 9, 2002), <https://www.nytimes.com/2002/07/09/world/Whites-have-black-twins-in-in-vitro-mix-up.html>.

72. Doha Madani & Jo Ling Kent, *Couple Says Fertility Clinic That Mixed Up Their Embryos Put Them "Through Living Hell"*, NBC NEWS (July 10, 2019, 2:26 PM), <https://www.nbcnews.com/news/us-news/couple-says-fertility-clinic-mixed-their-embryos-put-them-through-n1028396>.

73. Marjorie Hernandez, *Video Shows the Moment Couple Was Reunited with Biological Child After IVF Mix-Up*, N.Y. POST (Nov. 9, 2021, 7:59 PM), <https://nypost.com/2021/11/09/couple-reunited-with-biological-child-after-ivf-mix-up/>.

74. Complaint ¶ 37, *Cardinale v. Cal. Ctr. for Reprod. Health*, No. 21STCV41010 (Cal. Super. Ct. Nov. 8, 2021), 2021 WL 5213033.

75. *Id.*

76. *Id.* ¶¶ 38–39.

But the most astounding example of a family dealing with race and ART would be the cognitive dissonance displayed by Jennifer Cramblett and her wrongful birth suit against a Chicago-based sperm bank concerning the birth of her daughter, Payton.⁷⁷ The “flaw” that Jennifer noted with her daughter was that Payton had a visible African heritage.⁷⁸ In December 2011, Jennifer was accidentally inseminated with sperm from Donor No. 330 instead of Donor No. 380, as she had requested.⁷⁹ This led to Payton having a Black biological father, not the White biological father expected by Jennifer and her partner, Amanda Zinkon.⁸⁰ Jennifer raised her with love and affection, though she was troubled by many aspects of having to raise a biracial child.⁸¹

Many scholars in law, social science, and psychology have unpacked the harm and benefits of Jennifer’s claim. There are many reasons why this case serves as a strong example of cognitive dissonance. The use of the legal term “wrongful” summons the long troubling historical practice of denying Black people’s right to exist and belong in “othering” in the United States.⁸² One of the most revealing parts of Jennifer’s complaint is that she documents the indignities she must now experience as a parent of a Black child in the United States.⁸³ Having to travel to find a place for hair care, which put her in a place where she did not feel comfortable,⁸⁴ having to engage with her family members who are openly derisive about people of color,⁸⁵ and the burden of finding a school district outside of the all-White community she had planned to raise her child in that would allow Peyton to be acclimated and find acceptance.⁸⁶

77. Complaint for Wrongful Birth & Breach of Warranty, *Cramblett v. Midwest Sperm Bank, LLC*, No. 2014-L-010159, 2014 WL 4853400 (Ill. Cir. Ct. Sept. 29, 2014). This case has sparked considerable scholarship on the notions of race, property, and assisted reproductive technology. See, e.g., Patricia J. Williams, *The Value of Whiteness: A Lawsuit Is Being Waged Against the “Wrongful Birth” of a Black Child*, NATION (Nov. 12, 2014), <https://www.thenation.com/article/value-whiteness>. For an accounting of the procedural outcome of this case, see Robin A. Lenhardt, *The Color of Kinship*, 102 IOWA L. REV. 2071, 2072 n.1 (2017).

78. Complaint for Wrongful Birth & Breach of Warranty, *supra* note 77.

79. *Id.* ¶ 16.

80. *Id.* ¶ 9.

81. *Id.* ¶¶ 22–27.

82. See William M. Carter Jr., *Race, Rights, and the Thirteenth Amendment: Defining the Badges and Incidents of Slavery*, 40 U.C. DAVIS L. REV. 1311 (2007). See generally Yaba Bay, *ONE DROP: SHIFTING THE LENS ON RACE* (2021) (discussing perceptions on Blackness as an identity and reality in the United States and internationally); DAVID LIVINGSTONE SMITH, *LESS THAN HUMAN: WHY WE DEMEAN, ENSLAVE, AND EXTERMINATE OTHERS* (2012).

83. Complaint for Wrongful Birth & Breach of Warranty, *supra* note 77, ¶ 22.

84. *Id.* ¶ 24.

85. *Id.* ¶ 22.

86. *Id.* ¶ 26.

If Jennifer had been successful in her quest, one wonders if the United States would be prepared to offer compensatory damages for the daily slights, frustrations, fears, uncertainty, and concerns connected to raising Black children in this nation. Some have wondered if a win for Jennifer could have opened a path for reparations for parents who are faced with navigating Black children through a racist society.⁸⁷ Author Eric Foster ponders how Jennifer’s reasoning would apply to those who are raising Black children, when he noted that “as a direct and proximate result of the slave trade, [B]lack children specifically face various harms in the form of discrimination, both overt and covert, and parents of those children must incur costs to combat those harms.”⁸⁸ One of the most worrying points, however, is that Jennifer was perfectly content to raise her originally requested future White child in an all-White community that was openly hostile to Black people.⁸⁹

These examples of race and IVF mix-ups can make people who want to use ART wary of the negligence possible. It can lead others to wonder what other types of errors may be occurring, undetected during ART procedures.⁹⁰ It also unearths otherwise hidden prejudices and biases in very concrete ways. Lawyers—and, by extension, legal education—must be prepared to walk clients through ART contracts, and through the implications of errors in the IVF process that can have racial or skin tone-based consequences. This does not mean that attorneys should imply to clients that there is something wrong with having a baby of a different race, but people should

87. Matthew McKnight, *The Ohio Sperm-Bank Controversy: A New Case for Reparations?*, NEW YORKER (Oct. 14, 2014), <https://www.newyorker.com/news/news-desk/ohio-sperm-bank-controversy-new-case-reparations>.

88. Eric Foster, *A White Woman Is Suing for the Cost of Raising a Black Child. Here’s Why We Hope She WINS*, SALT COLLECTIVE, <https://thesaltcollective.org/White-privilege-for-black-reparations/> (last accessed Jan. 23, 2022). See also M. Annie Houghton-Larsen, *I Paid for a White Baby: How Assisted Reproductive Technologies Reproduce White Supremacy*, 11 GEO. J. L. & MODERN CRITICAL RACE PERSPS. 161 (2019); Lonnae O’Neal, *A Few Words About Suit for “Wrongful Birth” of a Biracial Child*, WASH. POST (Sept. 10, 2015), https://www.washingtonpost.com/lifestyle/style/lonnae-oneal-a-few-words-about-suit-for-wrongful-birth-of-a-biracial-child/2015/09/09/f9be4564-5705-11e5-8bb1-b488d231bba2_story.html. It appears Ms. Cramblett was aware that her daughter would not have membership in the United States like Ms. Cramblett had hoped. See *supra* Part I.

89. Media studies professor Shannon Cate noted that Jennifer lost “the ability to live in a bubble with people just like her and to never have to learn what life is like for anyone else.” O’Neal, *supra* note 88. This is cognitive dissonance on full display.

90. This question has been raised in an analysis of certain genetic testing showing that about 85% of the time positive tests were wrong as to whether an embryo had a genetic disorder. Sarah Kliff & Aatish Bhatia, *When They Warn of Rare Disorders, These Prenatal Tests Are Usually Wrong*, N.Y. TIMES (Jan. 1, 2022), <https://www.nytimes.com/2022/01/01/upshot/pregnancy-birth-genetic-testing.html>.

be able to think through how they will support a child should the issue arise. When done correctly, students will progress through increasingly challenging concepts and activities over the course of their law school curriculum and training. Learning outcomes and assessments related to cultural competency must also elevate throughout a law student's academic training.

III. Tips for the Classroom

For every learning outcome identified on a law school syllabus, there should be an activity with a connected assessment that measures if students meet the desired competency level. Developing student awareness of cultural competence is a lifetime learning goal, and including opportunities to develop cultural competency in law school classrooms is imperative. This section will outline student learning outcomes, activities, and assessments used in my ART course to discern student cultural competency.

A. Student Learning Outcomes and Grading

American Bar Association (ABA) Standard 302(d), Learning Outcomes, requires that law schools determine learning outcomes, which include proficiency in “professional skills required for responsible and ethical participation in the legal profession,” including cultural competence.⁹¹ Students can better understand that classroom discussions are neither arbitrary nor tangential to the subject, but are directly related to achieving the ABA's goals and identifying which classroom activities or assessments are used to determine their competence.

Connecting activities to student learning outcomes explicitly tells students what they are expected to be able to do and how the activity promotes their professional growth. The activity can take multiple forms such as class discussions, drafting exercises, negotiation activities, and even

91. A.B.A. Section of Legal Educ. & Admissions to the Bar, Standards and Rules of Procedure for Approval of Law Schools, 2021–22, Standard 302(d) & Interpretation 302-1, https://www.americanbar.org/content/dam/aba/administrative/legal_education_and_admissions_to_the_bar/standards/2021-2022/2021-2022-aba-standards-and-rules-of-procedure-chapter-3.pdf. New requirements, including requirements for education “on bias, cross-cultural competency, and racism,” were approved in 2022, to take effect in the 2022-23 academic year. ABA House of Delegates Res. No. 300 (Feb. 2022), <https://www.americanbar.org/content/dam/aba/administrative/news/2022/02/midyear-hod-resolutions/300.pdf>; ABA Standards and Rules of Procedure for Approval of Law Schools 2022-2023, Standard 303(c).

classroom discussions.⁹² Providing opportunities for reflection creates a process where students can analyze how a task was performed and how it can be improved or changed in the future.⁹³ This can be done through self-reflections, peer critiques, and facilitated classroom discussions.

After you have a clear understanding of your assessments (e.g., discussion boards, essays, final paper, or presentations), you can review the goals for your class and list how you will be able to evaluate them. I have included my learning outcomes below to give an idea of how this can be designed. Linking learning outcomes to assessments and using a rubric to document this can be time-consuming at first, but easily translates to other classes. It has aided me in being more purposeful during classroom discussions, and a clear rubric addresses student uncertainty about grading and expectations.

B. Readings

Legal scholars have also been at the forefront of race-centered analysis of reproduction. Professor Dorothy E. Roberts' seminal work *Killing the Black Body: Race, Reproduction and the Meaning of Liberty*⁹⁴ has served as a prophetic text on this subject. I have incorporated it into every race and family law course I have taught. Professor Roberts' scholarship uses reproductive justice to unpack civil rights, racism, and sexism in the United States. Law reviews are an effective way to introduce students to the deeper racial complexities of ART. Professor R.A. Lenhardt's scholarship explores how colorblindness in reviewing family policy and focusing on gender and class fails to offer meaningful solutions for the discipline.⁹⁵ Professor Aziza Ahmed's work, *Race and Assisted Reproduction: Implications for Population Health*,⁹⁶ provides insight into how ART and race discussions impact population health policies. Additionally, Professor Clare Huntington

92. See generally Olympia Duhart, *The "F" Word: The Top Five Complaints (and Solutions) About Formative Assessment*, 67 J. LEGAL EDUC. 531 (2018) (proposes solutions for formative assessment into law school that are grounded in cognitive science and learning theory). For examples of family law experiential assessment activities, see JESSICA DIXON WEAVER & JAMIE R. ABRAMS, *FAMILY LAW SIMULATIONS: BRIDGE TO PRACTICE* (2021).

93. See generally Sonia M. Gipson Rankin, *Creating Lightbulb Moments: Developing Higher-Order Thinking in Family Law Classrooms Through Court Observations*, 51 J.L. & EDUC. 13 (2022) (discussing how reflection can be used to increase knowledge, develop skills, and clarify values).

94. See generally DOROTHY E. ROBERTS, *KILLING THE BLACK BODY: RACE, REPRODUCTION, AND THE MEANING OF LIBERTY* (1999) (analyzing the reproductive rights of Black women in the United States throughout history).

95. Lenhardt, *supra* note 77.

96. Aziza Ahmed, *Race and Assisted Reproduction: Implications for Population Health*, 86 FORDHAM L. REV. 2811 (2018).

of Fordham University School of Law⁹⁷ compiled a list of *Readings on Race for Family Law Courses*.⁹⁸ Enriching legal education with interdisciplinary studies benefits the profession and will provide context for law students. Anthropologist Dr. Natali Valdez and medical ethicist Ms. Harriet A. Washington are recognized for their extensive research informing ART legislation and policy.⁹⁹

Once you have decided on clear learning objectives like those included in the appendix and content (such as the cases referenced in Section II or legal and interdisciplinary scholarship), it will be easier to design and evaluate assessments.

C. Assessment and Lessons Learned

Below I share my rubric for reflective essays in ART courses.¹⁰⁰ The rubric contains five sections (Self-disclosure, Connection to outside experiences, Connection to readings, Connection to class discussion & course objectives, and Spelling, grammar, and writing style) that are assessed at three levels (Exemplary, Intermediate, and Beginning) and allows for ways to assess students' growth, relevant research, and Bloom's Taxonomy Level Five: Evaluate.¹⁰¹ The standard of an Exemplary Self-Disclosure is "Seeks to understand concepts by examining openly your own experiences in the past as they relate to the topic, to illustrate points you are making. Demonstrates an open, non-defensive ability to self-appraise, discussing both growth and frustrations as they related to learning in class. Risks asking probing questions about self and seeks to answer these." Students will find they have strengths in various categories depending on how they have been challenged in their writing in the past. Some students are extremely confident when giving several citations and showing connections to readings but have not

97. Clare Huntington, FORDHAM UNIV. SCHOOL OF L., https://www.fordham.edu/info/23148/clare_huntington/ (last visited Jan 31, 2022).

98. *Readings on Race for Family Law Courses*, *supra* note 17.

99. See generally NATALI VALDEZ & DAISY DEOMAMPO, *Centering Race and Racism in Reproduction*, 38 MED. ANTHROPOLOGY 551–559 (2019) (this work captures the "theoretical work of feminist scholars of color that takes seriously the life and death stakes of race and reproduction politically, theoretically, and methodologically"); see also HARRIET A. WASHINGTON, *MEDICAL APARTHEID: THE DARK HISTORY OF MEDICAL EXPERIMENTATION ON BLACK AMERICANS FROM COLONIAL TIMES TO THE PRESENT* (2006) (outlining the historical practices and racist ideology that serve as the foundation for many reproductive practices against Black Americans and others in the United States).

100. See Appendix.

101. See generally Patricia Armstrong, *Bloom's Taxonomy*, VANDERBILT UNIV., <https://cft.vanderbilt.edu/guides-sub-pages/blooms-taxonomy/> (last visited Apr. 11, 2022) (explaining Bloom's Taxonomy levels); Rankin, *supra* note 93.

been pressed previously to share where they are frustrated with the topic, or their classmates' or their professors' take on a topic. Some students are remarkably familiar with sharing their outside experiences but have never tried to connect those experiences to the reading assignments. The rubric points are just to give the students a baseline for areas of improvement as the assignments are graded complete/not complete.

Using the rubric as my guide, I was able to focus on watching the students' growth as opposed to focusing on what they thought about the topics. My intent is not for the students to agree with me, but to encourage them to be more reflective of their own views and how it impacts their future decision-making. The students shared their views in an honest way because they knew that there was no retribution for expressing personal thoughts. The response from my students about learning cognitive dissonance and its impact on ART has veered from enthusiastic converts to agnostic. Some students used the newly acquired insight as a catalyst to select final paper topics that explored race, gender, sexual orientation, or polyamorous relationships. Others did not address the topic in their final papers at all, while others interspersed more issues on identity into their scholarship and classroom discussion points.

Because of the rapid evolution of technologies relating to family formation, it is interesting to imagine what other components of race and reproductive technologies attorneys will need to be knowledgeable about before counseling clients. There are other issues that can be explored, such as what ethical obligations an attorney has to articulate that a potential mistake in IVF could result in a child of a race the parents did not expect. There can be more scholarship on the relationship between surrogacy and sovereignty in tribal communities or the growing international regulation of cross-racial transnational surrogacy.¹⁰² The discussion on race can be seen as too narrow for continuing evolving norms in family law as topics on color-based discrimination and the rise of multiracial people challenge our notions of membership, people, genomes, and DNA. Critical race legal scholar Professor Vinay Harpalani has explored the implications of color-based discrimination that goes further in delineating opportunity based

102. See generally LAURA HARRISON, *BROWN BODIES, WHITE BABIES: THE POLITICS OF CROSS-RACIAL SURROGACY* (2016) (focuses on the practice of cross-racial gestational surrogacy, in which a woman—through in-vitro fertilization using the sperm and egg of intended parents or donors—carries a pregnancy for intended parents of a different race).

on people's skin color.¹⁰³ As more people in the United States identify as multiracial, it can be increasingly challenging to imagine people, genomes, or DNA in five finite census boxes.¹⁰⁴ Additionally, sexual orientation¹⁰⁵ or polyamorous relationships¹⁰⁶ will continue to redefine the field. These discussions will require thoughtful and conscientious legal advocates. Clients expect their attorneys to treat them with respect¹⁰⁷ and expect to be “seen” by their attorneys. A client's lived experience cannot be ignored in this work.

103. Professor Vinay Harpalani has begun to explore the impact of color-based discrimination that is more nuanced and simultaneously broader than “race”-based discrimination. *See generally* Vinay Harpalani, *Civil Rights Law in Living Color*, 79 MD. L. REV. 881 (2020) (unpacking the distinction of “color” as race and “color” as skin color). *See also* Suzanne G. Fegley et al., *Colorism Embodied: Skin Tone and Psychological Well-Being in Adolescence*, in DEVELOPMENTAL PERSPECTIVES ON EMBODIMENT AND CONSCIOUSNESS 281 (Willis F. Overton et al. eds., 2008).

104. The number of Americans who listed themselves in the 2020 census as non-Hispanic and more than one race jumped from 6 million in 2010 to 13.5 million in 2020. *See* Sabrina Tavernise et al., *Behind the Surprising Jump in Multiracial Americans, Several Theories*, N.Y. TIMES (Aug. 13, 2021), <https://www.nytimes.com/2021/08/13/us/census-multiracial-identity.html>. Similarly, the number of Hispanic Americans who identified as multiracial rose from 3 million to 20.3 million. *Id.* One in seven babies in the United States was identified as multiracial or multiethnic in 2015. Gretchen Livingston, *The Rise of Multiracial and Multiethnic Babies in the U.S.*, PEW RSCH. CTR. (June 6, 2017), <https://www.pewresearch.org/fact-tank/2017/06/06/the-rise-of-multiracial-and-multiethnic-babies-in-the-u-s/>.

105. *See* Sasha Mortimer, *Breakthroughs in IVF: How a Same-Sex Couple Carried the Same Baby*, BIOSPACE (Nov. 15, 2018), <https://www.biospace.com/article/the-biggest-breakthroughs-in-assisted-reproductive-technology-how-a-same-sex-couple-carried-the-same-baby/>; *see also* Bernd Debusmann Jr., *US Expands Citizenship for Children Born Abroad in Win for Same-Sex Couples*, BBC NEWS (Aug. 6, 2021), <https://www.bbc.com/news/world-us-canada-58123371>. Additionally, a class-action suit against Aetna argued their health insurance policy engaged in sex discrimination by denying LGBTQ persons equal access to fertility treatment, in that insurance coverage would be provided only after 6 or 12 months of unsuccessful attempts at donor insemination (in contrast to heterosexual couples, who could obtain coverage after 6 or 12 months of regular unprotected intercourse did not result in pregnancy). Class Action Complaint, *Goidel v. Aetna Inc.*, No. 1:21-cv-07619 (S.D.N.Y. Sept. 13, 2021), ECF No. 1, <https://fingfx.thomsonreuters.com/gfx/legaldocs/byprjrljalpe/091321%20--%20SDNY%20--%20Goidel%20v%20Aetna%20complaint.pdf>.

106. *See* Ellen Trachman, *Massachusetts Issues First 3-Parent Birth Certificate*, ABOVE THE LAW (Aug. 11, 2021), <https://abovethelaw.com/2021/08/massachusetts-issues-first-3-parent-birth-certificate/>. Massachusetts had long recognized three-parent adoptions and this shift to permit three parents on a birth certificate provided new recognition for family formations. *Id.*

107. *See* MODEL RULES OF PRO. CONDUCT r. 1.3 cmt. 1, https://www.americanbar.org/groups/professional_responsibility/publications/model_rules_of_professional_conduct/rule_1_3_diligence/comment_on_rule_1_3/; *see generally* Vivianne Mbaku, *What Is Cultural Competence?*, NAT'L CTR. ON L. & ELDER RTS., <https://ncler.acl.gov/getattachment/ElderJustice-Toolkit/Client-Centered-Advocacy/Cultural-Competence-Guide.pdf.aspx?lang=en-US> (last visited Jan. 29, 2022) (“Cultural competence . . . is simply the ability to adapt your individual practice, legal or otherwise, to culturally diverse situations, rejecting cultural assumptions or stereotypes, and recognizing the way that different cultures may impact the delivery of services”).

IV. Conclusion

The title of this paper was derived from the 1997 science fiction film *Gattaca*, which depicted a future society that used reproductive technology and genetic engineering to create people with desirable physical and psychological characteristics.¹⁰⁸ “Would You Make It to the Future?” wonders what kind of society we will be if current structural racism realities permeate into the world to come. Legal education must be at the forefront of ART. Our students will serve as crafters and litigators of ART contracts and decisions, policymakers and drafters of legislation, and will hold the hands of clients planning the biggest decisions of their futures. Helping students unpack the impact of race in family law demonstrates the academy is responsive to realities in the practice of law. Teaching about how race relates to the law and practice of ART can serve as a crucial step to unpacking cognitive dissonance and understanding how race impacts the legal system. Professors must expose the fallacies within the law so that students can learn how to criticize the law and become excellent advocates for their clients. A racial cognitive dissonance lens enables students to review the effects of ART and the legal system more broadly, given the role of technology in the law that did not exist when the law was created. Understanding cognitive dissonance and cultural competency can help reduce legal issues in family law and ART. By improving their awareness of the role of race, culture, gender, and sexual orientation in the ART process, the better law students will be at serving their clients’ unique needs.

108. *Gattaca*, EMBRYO PROJECT ENCYCLOPEDIA (Feb. 9, 2017), <https://embryo.asu.edu/pages/gattaca-1997>.

Appendix

A. Course Description and Learning Outcomes

Human reproductive technologies and practices have changed rapidly over the past 50 years, and further changes are anticipated in the 21st century. This course will examine such developments from both historical and futuristic perspectives. To date, more than eight million children worldwide have been born via Assisted Reproductive Technologies (ART), with three out of every 100 babies born in the United States being the product of assisted conception. With advances in germline genetic technologies adding new opportunities for disease prevention, the impact and import of the field cannot be overstated. This course is designed to introduce students to the essentials in science, medicine, law, and ethics that underpin and shape each of the topics that combine to form the law of reproductive technologies. It will include the status of parentage in the wake of marriage equality, the emergence of technologies that edit an embryo's genetic makeup, and a study on the impact of race and gender on ART. It will also contemplate the legal parameters that do or should accompany the technology.

Student Learning Outcomes. By the end of this course, students should:

1. Gain a working understanding of legal rules that regulate assisted reproductive technology, including constitutional rights to procreate and avoid procreation; special concerns regarding ART issues for same-sex couples and underrepresented populations; through discussion and written papers (ABA Standard 302(a));
2. Learn how to explore cultural competency of gender, race, ethnicity, class, and its influence on legal rulemaking in the area of ART. You will demonstrate mastery through classroom discussions and written papers (ABA Standard 30 (d)); and
3. Learn how to speak and write clearly, logically, and effectively, in a manner appropriate to the audience and purpose through exams and class discussions (ABA Standard 302 (b) & 30(d)).

B. Grading

- (15%) *Biweekly Journal Entry*: On Lexis Classroom, write an entry at the end of every other week commenting or reflecting on what you learned in the past two weeks.
- (15%) *ART Drafting Assignment*: Construct an ART surrogacy contract based on assigned fact pattern.

- (10%) *International Perspectives Presentations*: Share international ART updates.
- (60%) *ART Paper*: Write a 10–15-page paper on a topic from our textbook. This paper will include some limited outside research and should employ proper citation format. The selected topic may arise from a journal entry.

C. Reflection Rubric¹⁰⁹

Criteria	Exemplary	Intermediate	Beginning
Self-Disclosure	Seeks to understand concepts by examining openly your own experiences in the past as they relate to the topic, to illustrate points you are making. Demonstrates an open, non-defensive ability to self-appraise, discussing both growth and frustrations as they related to learning in class. Risks asking probing questions about self and seeks to answer these.	Seeks to understand concepts by examining somewhat cautiously your own experiences in the past as they relate to the topic. Sometimes defensive or one-sided in your analysis. Asks some probing questions about self but does not engage in seeking to answer these. Little self-disclosure, minimal risk in connecting concepts from class to personal experiences. Self-disclosure tends to be superficial and factual, without self-reflection.	Little self-disclosure, minimal risk in connecting concepts from class to personal experiences. Self-disclosure tends to be superficial and factual, without self-reflection.
Connection to outside experiences	In-depth synthesis of thoughtfully selected aspects of experiences related to the topic. Makes clear connections between what is learned from outside experiences and the topic. Goes into some detail explaining some specific ideas or issues from outside experiences related to the topic. Makes general connections between what is learned from outside experiences and the topic. Identifies some general ideas or issues from outside experiences related to the topic.	Goes into some detail explaining some specific ideas or issues from outside experiences related to the topic. Makes general connections between what is learned from outside experiences and the topic. Identifies some general ideas or issues from outside experiences related to the topic.	Identifies some general ideas or issues from outside experiences related to the topic.

109. See JAYNE CUBBAGE, HANDBOOK OF RESEARCH ON MEDIA LITERACY IN HIGHER EDUCATION ENVIRONMENTS 76 (IGI Global 2018).

Criteria	Exemplary	Intermediate	Beginning
Connection to readings (assigned and ones you have sought on your own)	In-depth synthesis of thoughtfully selected aspects of readings related to the topic. Makes clear connections between what is learned from readings and the topic. Demonstrates further analysis and insight resulting from what you have learned from reading; includes reference to at least two readings other than those assigned for class.	Goes into more detail explaining some specific ideas or issues from readings related to the topic. Makes general connections between what is learned from readings and the topic. Includes reference to at least one reading other than those assigned for class. Identifies some general ideas or issues from readings related to the topic. Readings are only those assigned for the topic.	Identifies some general ideas or issues from readings related to the topic. Readings are only those assigned for the topic.
Connection to class discussions & course objectives	Synthesizes, analyzes, and evaluates thoughtfully selected aspects of ideas or issues from the class discussion as they relate to this topic. Clearly synthesizes some directly appropriate ideas or issues from the class discussion as they relate to this topic. Restates some general ideas or issues from the class discussion as they relate to this topic.	Clearly synthesizes some directly appropriate ideas or issues from the class discussion as they relate to this topic. Restates some general ideas or issues from the class discussion as they relate to this topic.	Restates some general ideas or issues from the class discussion as they relate to this topic.
Spelling, grammar, and writing style	No spelling or grammar errors. The language is clear and expressive. The reader can create a mental picture of the situation being described. Abstract concepts are explained accurately. Explanation of concepts makes sense to an uninformed reader.	Few spelling and grammar errors. Minor, infrequent lapses in clarity and accuracy. Many spelling and grammar errors, use of incomplete sentences, inadequate proofreading. There are frequent lapses in clarity and accuracy.	Many spelling and grammar errors, use of incomplete sentences, inadequate proofreading. There are frequent lapses in clarity and accuracy.