

Public/Woman and the fatal fetus



In the United States, laws designed to protect pregnant women and children are being used to punish women for abortions and other “misconduct”, such as drug and alcohol use during pregnancy. Amanda Conroy, a PhD Student at the Gender Institute and the Centre for the Study of Human Rights at LSE, considers the political logics behind this phenomenon.

If the goal is to protect life, born or unborn, this is doing the opposite

On 2 September 2011, the Alabama Court of Public Appeals confirmed that the Chemical Endangerment Law, designed to prosecute individuals who put their children at risk by cooking methamphetamine, *can* in fact be used to prosecute women who use drugs while pregnant. In the past few years prosecutors in Alabama have been bringing women who used drugs while pregnant to court **in order to “keep unborn children safe”**. According to Alabama Attorney General Luther Strange, the 2 September ruling **“affirmed the value of life**, including the lives of unborn children who are, after all, among the most vulnerable members of our society”.



However, **The National Association of Social Workers**, the American Public Health Association, and the **National Advocates for Pregnant Women**, have condemned the application of the law in this way, arguing that it forces pregnant women suffering from drug addiction to either avoid treatment or to go out of state in order to avoid prosecution. Twenty-three national and Alabama-based advocates and experts in maternal health and drug policy, including the Southern Poverty Law Center, the Drug Policy Alliance, the National Advocates for Pregnant Women, the Alabama Women’s Resource Center, and the National Organization for Women-Alabama, **have filed an amicus brief** stating that the legislature did not intend for the chemical endangerment law to extend to pregnant women, the extension of the law to pregnant women who use drugs would endanger maternal and fetal health, and the application of the law in this manner rests on a fundamental misunderstanding of addiction. The September 2 ruling, **according to the Alabama Women’s Resource Network:**

presents an imminent public health threat to the wellbeing of pregnant women and babies and it is clear evidence of the types of prosecutions and sentences that have led Alabama down an ugly, destructive path of prison over family preservation and individual rehabilitation. The threat of prosecution for pregnant women who suffer from addiction ultimately discourages them from disclosing critical medical information to healthcare professionals for fear of criminal sanctions. Fear of criminal sanctions deters women from pursuing drug treatment, prenatal care, and labor and delivery care. Moreover, prosecuting drug dependant pregnant women discourages them from carrying wanted pregnancies to term.

As Alabama defense attorney Carmen Howell said, **“If the goal is to protect life — born and unborn — this is doing the opposite”**. I think that the discrepancy between desired result (maternal and child health) and the means for its pursuit are so at odds that the logics behind it deserve some deeper thought. Why is fetal health separated from maternal health? Why is the health of the fetus privileged over the health of the mother at all costs? Why is the health of the fetus privileged even when it compromises the health of the mother and even when – bizarrely, ironically – it compromises the health of the fetus?

I’m going to stomp it out of you



On a winter's day in 1969, Teresa Keeler, eight months pregnant with a child by her partner, was attacked by her ex-husband Robert Keeler. Blocking her car on a narrow road, Keeler asked her if she was pregnant by her new husband; he pulled her out of the car and, upon seeing that she was – in fact – pregnant, proceeded to beat her until she was unconscious, saying that he was going to “stomp it out of you”. Her daughter was delivered stillborn, her skull fractured. When prosecutors attempted to charge him with the murder of the girl, the California Supreme Court ruled that a fetus was not a person and, therefore, could not be murdered.

The prosecutions of women under the Chemical Endangerment law **have been upheld** because the Alabama Supreme Court has ruled that the term “child” encompasses unborn fetuses. As such it is part of a broader legal zeitgeist to recognize the legal personhood of the fetus and allow crimes such as the death of Teresa Keeler’s daughter to be prosecuted as murder. To date, 38 out of 50 states have fetal homicide laws that give unborn entities legal personhood ensuring that they can be considered victims of crime and that, therefore, their assaulters can be prosecuted. Before such laws, prosecutors found it difficult to charge individuals who caused the death of a fetus by assaulting a pregnant woman with murder.

However, to date, at least 38 women in Alabama have been prosecuted for testing positive for drug-use while pregnant. In South Carolina, which passed one of the nation’s first fetal homicide laws, **only one man has been arrested under this law** and his charges were dropped. Three hundred women, however, have been arrested. Fetal homicide laws are not, it seems, doing the work we intended them to do.

Why are we so invested in the fetus and so un/dis-invested in the mother? Indeed, it seems we are so invested in the fetus that we are willing to sacrifice its health in order to un/dis-invest in the mother. To me, this indicates that there are other investments at stake here.

The fatal fetal

As Kristen Luker wrote in her seminal study of the politics of abortion, debates about conception, abortion, and pregnancy “taps not only attitudes about the sanctity of life but also deep-seated feelings about the place women should occupy in society and about what the proper family structure should be”. In other words, any discussion of fetal rights necessarily implicates itself into a discussion about the relationship between women, citizenship and the polity.



This politics of fetal rights is unable to be theorized by the paradigms through which we’ve been able to think about other reproductive politics. It is not about reproductive choice or about motherhood. The politics of fetal rights, **says Cynthia Daniels**, is about “mediating and regulating what some now characterize as the social relationship between the pregnant woman and the fetus”. **Central to this politics of the fetus**, says Cynthia Daniels, is the following question: “Does the ability to carry a fetus to term necessarily change women’s relationship to the state and alter women’s standing as citizens in the liberal polity?”.

The application of Alabama’s Chemical Endangerment law and of fetal homicide laws more generally (not to mention both the widespread and more localized instances of the rollback of reproductive services in America) confirms that the ability to carry a fetus still changes women’s relationship to the state and their standing as liberal citizens. I would like to suggest that this happens because of our investment in “the child” as the emotional locus of politics.

Without the assurance that we being dead yet live

“If they’re on drugs and not using proper prevention to not get pregnant, it’s sure not the baby’s fault. As a prosecutor, my job is to **look out for that child**” – Houston County (AL) District Attorney Doug Valeska.

The sustenance or generation of the polity has been one of the central duties of citizenship, at least in its modern liberal forms. It is, perhaps, no surprise then that we are so invested in the child/fetus. **“Politics”, Lee Edelman writes**, “however radical the means by which specific constituencies attempt to produce a more desirable social order, remains, at its core, conservative insofar as it works to affirm a structure, to authenticate social order, which it then intends to transmit to the future in the form of its inner Child. That child remains the perpetual horizon of every acknowledged politics, the fantasmic beneficiary of every political intervention”. Certain investments – even those – precisely those – which seem the most natural – are political because they seem not to be; they are “political insofar as the fantasy subtending the image of the Child invariably shapes the logic within which the political itself must be thought”. The child represents the future, which gives the present and its denizens meaning. In P.D James futuristic horror novel, *The Children of Men*, the human race is on the verge of distinction, suddenly unable to reproduce. **As its narrator relates**, “Without the hope of posterity, for our race if not for ourselves, without the assurance that we being dead yet live all pleasures of the mind and sense sometimes seem to me no more than pathetic and crumbling defences shored up against our ruins”.



The child is the national resource par non. It is not only the physical manifestation of generation, but a symbol which gives the polity meaning and prevents it from sliding into existential temporality. If the polity can inject its essence into the future through the Child it can achieve the ahistoricity – the sense of being unbounded by context and political locution – associated with all things pre-given, natural, and right. Without transcendence, without the assurance that being dead it yet lives, the polity has no meaning.

But, says Daniels, “as the fetus is animated and personified in public culture the power of the state to regulate the behaviour of women – both pregnant and potentially pregnant – is strengthened. **Women’s rights as citizens are potentially made contingent by fetal rights**. They can be revoked or qualified by the state’s higher interest in the fetus”.

From the above discussion several things can be suggested:

1) there is a discrepancy between public emotional, material and emotional investment in fetal health and in maternal health;

2) this discrepancy can be traced to the role of the fetus/future in providing meaning for the polity;

and, as I believe the case of Alabama’s Chemical Endangerment law and other applications of fetal homicide law indicate,

3) the cost of investing the fetus/future with meaning is played out on/in the bodies of women.

Women can die on the floor

I almost didn’t post this. Distracted by PhD work, I let this languish half-finished for a month. By the time I finished it, I thought commentary on something that happened September 2 would be old news. But then the House of Representatives passed H.R. 358 – the “Protect Life Act” – which will allow hospitals to refuse to perform life-saving abortions on pregnant women. Women needing an abortion may have to “shop” emergency rooms to find someone to treat them. “Under this bill”, **says House Minority Leader Nancy Pelosi**, “when the Republicans vote for this bill today, they will be voting to say that women can die on the floor of health care providers ... it’s just appalling”. And on November 8, **the voters of Mississippi will vote on a proposed Personhood Amendment** which will extend legal personhood to “every human being from the moment of fertilization, cloning, or the functional equivalent thereof.” So a big thanks to the 248 members of Congress who voted for HR 358 and the state of Mississippi for coming to the rescue and saving this piece from irrelevance.



Amanda Conroy's broad research interests include Renaissance and early Enlightenment political thought; contemporary political philosophy; feminist and post-colonial political theory; right-wing and conservative social movements; the intersections between gender, race, and nationalism; and the gendered dimensions of citizenship. She received an MA (with Distinction) in Gender Studies from the School of Oriental and African Studies (UK) in 2009 and a BA (Honours) in Political Science from Bryn Mawr College (USA) in 2007. In addition to her doctoral work, Amanda is on the editorial team of the Graduate Journal of Social Science (<http://gjss.org>) and Engenderings. She writes for Engenderings and the LSE British Politics and Policy blog and has written for the Guardian and openDemocracy.

October 31st, 2011 | [Politics, Society](#) | [0 Comments](#)

☺

