Pregnancy and the New Jane Crow

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Lead Essay

Pregnancy and the New Jane Crow

MICHELE GOODWIN

Claims of protecting fetal health serve as powerful proxies for political and prosecutorial agendas in the United States. The Texas abortion law, SB8, demonstrates this with disturbing clarity. That law deputizes ordinary citizens to track, surveille, and spy upon those who may aid or abet a person seeking to terminate a pregnancy. Yet, the troubling arch of policies that dramatically interfere in pregnancies date back to the Reagan Administration—a time in which some perceived abortion rights to be inviolable. Yet, in the dark shadows, Black women became the euphemistic canaries in the coalmine—tracked, surveilled, reported, arrested, and criminally punished.

During the Reagan Administration, criminal surveillance of and policing pregnancy served to expand the “War on Drugs” and inflamed narratives about “bad mothering,” crystallizing in the harmful “crack mom” and “crack baby” nomenclature of the 1980s and 90s. Stereotypes about Black mothers and their offspring proliferated, fueling the policing of poor women as they sought prenatal and reproductive healthcare. As such, healthcare became captive to a problematic political agenda and these mothers the hostages to political agendas that resulted in civil and criminal incarceration. Often these women and their offspring were the unfortunate and invisible collateral damage in the failed American “War on Drugs.”

This Essay links the old with the new. Today, protecting fetal health continues to justify a broader political agenda, including antiabortion laws such as SB8 and criminal punishments for stillbirths and miscarriages, and its targets are no longer confined to poor Black women. Instead, the latter are now the precedent on which modern political and policing agendas are built. Today, fetal-protection-related punishments materialize in cases of miscarriages, stillbirths, refusal for end-of-life care, and even in instances wherein pregnant patients refuse cesarean operations. This Essay urges that the new reproductive politics or Jane Crow must be centered in criminal justice reform and abolition discourse, bringing the concerns of women from the shadows to the spotlight.
ESSAY CONTENTS

INTRODUCTION ........................................................................................................... 545
   A. PREGNANCY AND SHAME ........................................................................... 549
   B. PUNISHING PREGNANT WOMEN AND POVERTY ................................. 553

I. THE NEW REPRODUCTIVE POLITICS ......................................................... 557
   A. REPRODUCTIVE POLITICS FROM THE JIM CROW PLAYBOOK .......... 561
   B. THE NEW JANE CROW .............................................................................. 563

II. THE POLITICS OF PREGNANCY, PUNISHMENT, AND ABOLITION .......... 564

CONCLUSION .......................................................................................................... 569
Pregnancy and the New Jane Crow

MICHELE GOODWIN

INTRODUCTION

“[A]ccording to the ways the laws are being applied here, the state of Indiana believes that any pregnant woman who smokes or lives with a smoker, who works long hours on her feet, who is overweight, who doesn't exercise, or who fails to get regular prenatal care, is a felon.”

— ACLU

“A suicide attempt will be treated as a public health problem for everyone except pregnant women and for them it will be treated as a crime.”

— Lynn Paltrow

This Essay goes to print as the Texas abortion law, SB8, goes into effect. It is a law that bans abortions after six weeks of pregnancy—a time during which most pregnant women, girls, and people that can become pregnant will not be aware of their pregnancies. Troublingly, the law provides no exceptions for cases of rape or incest. For the successful bounty hunter, the law also provides for the recovery of attorneys’ fees.

As if a page torn out of the annals of slavery, the law deputizes citizens to stalk, surveille, spy upon, and ultimately seek civil damages against anyone who aids or abets a person seeking to terminate a pregnancy. The tragic symbolism with fugitive slave laws reflects the lengths lawmakers will go and have gone to suppress the agency and liberty of vulnerable people. We should all be concerned for our democracy when laws seek to chill victims of rape and incest from speaking to their loved ones for fear of punishment.

Similarly, weeks after this Essay’s publication, the Supreme Court will address a Mississippi antiabortion measure, aimed to restrict pregnancy after fifteen weeks gestation—also without exceptions for rape or incest. In an

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order granting a permanent injunction against the law going into effect, Judge Carlton Reeves wrote that “the consequences of the Act are . . . undisputed.”\textsuperscript{3} Quoting medical experts, Judge Reeves observed that if the law “is allowed to take effect,” patients seeking an abortion after fifteen weeks of pregnancy will be “forced to carry their pregnancy to term against their will or have to leave the state to obtain care.”\textsuperscript{4}

Predictably, the poor will be most harmed if the Court upholds the law—today only one abortion clinic remains in Mississippi. Moreover, given the alarming rates of maternal mortality in the United States—exacerbated by race—Black women in Mississippi will likely suffer the most.\textsuperscript{5} Indeed, in a compelling footnote, Judge Reeves wrote, “this Court concludes that the Mississippi Legislature’s professed interest in ‘women’s health’ is pure gaslighting.”\textsuperscript{6} Judge Reeves further explained, “The State ‘ranks as the state with the most [medical] challenges for women, infants, and children’ but is silent on expanding Medicaid.”\textsuperscript{7} In other words, Mississippi “leaders are proud to challenge Roe but choose not to lift a finger to address the tragedies lurking on the other side of the delivery room: [the] alarming infant and maternal mortality rates.”\textsuperscript{8}

The timing of this Commentary issue could not be bleaker. As the editors prepare this important series of articles and essays, reproductive freedom appears more vulnerable than in the past fifty years since Roe v. Wade. The impending judicial storm cannot be ignored in the wake of shifts on the Court reflecting the passing of Justice Ruth Bader Ginsburg—replaced by Justice Amy Coney Barrett—and the retirement of Justice Anthony Kennedy—succeeded by Justice Brett Kavanaugh. In both instances, President Donald Trump replaced Justices who supported reproductive freedom with judges whose writings, prior judicial opinions, and personal commentaries make very doubtful their commitment to reproductive freedom and abortion rights.\textsuperscript{9} As noted in prior research,

\textsuperscript{3} Jackson Women’s Health Org. v. Currier, 349 F. Supp. 3d 536, 540 (S.D. Miss. 2018) (order granting permanent injunction)

\textsuperscript{4} Id.


\textsuperscript{6} Currier, 349 F. Supp. 3d at 540 n.22.

\textsuperscript{7} Id. (quoting Ryan Sit, Mississippi has the Highest Infant Mortality Rate and is Expected to Pass the Nation’s Strictest Abortion Bill, NEWSWEEK (Mar. 18, 2018, 10:12 AM), https://www.newsweek.com/mississippi-abortion-bill-strictest-infant-child-health-851178).

\textsuperscript{8} Id.

\textsuperscript{9} Regarding Justice Kavanaugh, see Garza v. Hargan, 874 F.3d 735, 752 (D.C. Cir. 2017) (Kavanaugh, J., dissenting) (judgment vacated by Azar v. Garza, 138 S.Ct. 1790 (2018))); Regarding Justice Gorsuch, see Hobby Lobby Stores, Inc. v. Sebelius, 723 F.3d 1114, 1152–59 (10th Cir. 2013) (Gorsuch, J., concurring) (referring to the Religious Freedom Restoration Act (RFRA) as “something of a “super-statute” which trumps all other legislation, including federal laws like the Affordable Care Act, which mandates contraceptive health coverage for women); see also, Little Sisters of the Poor Home for the Aged v. Burwell 799 F.3d 1315 (10th Cir. 2015) (showing then Judge Gorsuch dissenting from a
Justice Gorsuch’s “judicial record on contraceptive care access and defunding Planned Parenthood, as well as his views on discrimination against pregnant women, and statements on privacy rights indicate enmity and opposition to women’s reproductive rights.”

Yet, this special issue does not stand in isolation of other adjacent and overlapping social concerns, from the suppression of voting rights to mass incarceration. Indeed, this Essay is intended as a contribution to a special issue on criminal justice, policing, and prison abolition and emerges in the wake of horrific police-involved killings of Philando Castile, Breonna Taylor, George Floyd, Daunte Wright, Ma’Khia Bryant, Michelle Cusseaux, India Kager, Korryn Gaines, and numerous other officer-involved violence, such as in the cases of Nakia Porter or Rickia Young. In the latter instances, the victims survive, like Young, but rarely are remembered and accorded sustained media attention of any significance. Perhaps this is because they are Black or perhaps it is because they are women.

State-involved coercion, physical harms, mental duress, and deaths are not confined to officer-involved interactions. Nor are state-based harms inflicted on vulnerable, people of color confined to men. To the contrary, as Judge Carlton Reeves compellingly explained,

legislation like [Mississippi’s abortion law] is closer to the old Mississippi—the Mississippi bent on controlling women and minorities. The Mississippi that, just a few decades ago, barred women from serving on juries “so they may continue their service as mothers, wives, and homemakers.” The Mississippi that, in Fannie Lou Hamer’s reporting, sterilized six out of ten black women in Sunflower County at the local hospital—against their will. And the Mississippi that, in the early 1980s, was the last State to ratify the 19th Amendment—the authority guaranteeing women the right to vote.

This Essay brings reproductive freedom in conversation with state-based coercion. It seeks to expand a discourse on state-based violence, policing, and injustice to include and “see” pregnancy within discourses on race and criminal justice. Even while too often neglected in media discourse...
on prison and policing reform and abolition, women bear first-hand witness to state-based violence during arrests and while in custody, including in instances involving state surveillance of their pregnancies. Too often, their experiences go unnoticed or unexamined. Perhaps because they survive cruel law enforcement interactions, such as roadside sexual assaults or rape while in police custody, their experiences receive less media and societal engagement. Even while news media now shows greater attention to police shootings of unarmed Black men, sexual violence against Black women by law enforcement goes virtually unchecked and unnoticed. Sometimes these instances are triggered by vehicle police stops—much like the case of Daunte Wright or Philando Castile only the outcomes are different.

Throughout the process of contemplating this special issue, I considered what accounts for the violence directed at women, and the various indignities cast upon indigent women by the state. Much like my writing of *Policing The Womb: Invisible Women and the Criminalization of Motherhood*, I filled notepad after notepad with names and stories. Among the many disturbing narratives was that of twelve Black women and one teenager sodomized and raped by police officer Daniel Holtzclaw, who literally policed and terrorized their bodies. He raped one of his victims while she was handcuffed to a hospital bed. Like a prisoner of war, she thought about survival while he raped her.

According to the lawsuits, “Holtzclaw’s actions were part of a common pattern and practice of sexually assaulting middle-age African-American females whom he identified as vulnerable to his sexual abuse and whom he believed would either be reluctant or unwilling to come forward or who would not be believed if they did come forward.” There is little doubt these women were targeted because of their race, poverty, and sex. Their stories represent the many unaccounted for even as scholars amplify attention to police and prison reform. This blind spot demands greater nuance at the core of these burgeoning movements to reform, reimagine, or abolish policing and modern-day incarceration. After all, how can these movements gain or offer legitimate alternatives if they ignore women?

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14 Id.


Women account for the fastest growing population of incarcerated people. Their incarcerations tell important stories. Most are non-violent offenders, incarcerated for drug possession, writing bad checks, or jailed for weeks and even months pretrial, because they cannot afford bail. Simply put, even though most attention on prison reform and abolition centers men, the United States incarcerates more women than Russia, China, Thailand, and Mexico combined. Most of the women incarcerated in the United States are also mothers.

This special issue centers attention on matters of urgent concern nationally and globally as lawmakers, civil society leaders, activists, and academics recognize glaring racial disparities in the criminal justice system. At the heart of this special issue are questions related to reform and abolition in the criminal justice system from policing and prosecution to prisons. At the same time, the civil and criminal punishments of women due to pregnancy cannot be ignored.

This Essay further expounds on this important theme to include concerns related to the intersections of sex, race, reproduction, motherhood, and criminal justice. It brings policing and prison reform, mass incarceration, and reproductive justice into conversation. That is, this Essay is concerned with the problematic ways in which women become targets of state policing and criminalization due to states’ intensified scrutiny of pregnancies—as they relate to women’s conduct. It is what I have previously referred to as policing the womb. In various states, protecting fetal health serves as a proxy for policing and punishing women, particularly Black and Brown women. This Essay harnesses the tools of non-fiction literature and law to set the stage for this special issue. Sidestepping the traditional law review format, it proceeds as a narrative to articulate a case study in policing the womb. Finally, this Essay pays tribute to the Dr. Pauli Murray whose pathbreaking scholarship on sex and race inequality serve as the foundations for much of what law students study today on both topics. She gave life to the term Jane Crow, offering an intersectional analysis decades before the coining of the term.\textsuperscript{17}

\* \* \*

A. Pregnancy and Shame

On a bitterly cold December night in Indianapolis, Indiana, Bei Bei Shuai fell to her knees in a gray and darkening parking lot. In a way, pleading for her life or the life she thought was in reach with a man she thought loved her. It was freezing throughout the United States, and Indianapolis was no

exception. According to the Indianapolis National Weather Service, December 2010 “was the 3rd snowiest December on record!” Snow alone did not produce the chill in the air; the temperatures “remained below normal” across the state. An icy, penetrating arctic air mass settled over the state, which contributed to its record-breaking sub-zero temperatures.

Persistent freezing “brought continuous surges of colder temperatures.” Unrelenting storms devastated the Great Lakes and Ohio Valley with high accumulations of snowfall. In fact, snow accumulated by yards rather than mere inches. Winter advisories frequently warned of dangerous snowfalls and bristling temperatures that could produce hypothermia for the unprotected. The cold snap was deadly in Indiana, in other parts of the United States, and even in Europe. In a foreboding article, Europe’s Deadly Cold Snap Maintains Grip, the British Broadcasting Corporation (BBC), reported that dozens were killed by exposure to the December 2010 cold.

Shuai, a soft-spoken, Chinese accountant from the Shanghai province, legally migrated to the United States about eight years prior to that frigid winter night with her now-estranged husband, hoping to partake in the American dream. She told a reporter, “I knew America as the best country in the world.” And at the time, it looked as though many dreams would be within her grasp; Shuai’s husband was offered a prestigious job as a mechanical engineer and she planned to continue her education. However, little by little the dream fragmented, splintering and unraveling in adultery, embarrassment, and shame. The first fracture in her plan involved university enrollment—Shuai could not afford to obtain the education she sought.

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19 Id.
20 Id.
22 Early December Heavy Lake Effect Snow, supra note 21; December 12–14th Lake Effect Snowstorm, supra note 21.
25 Id.
26 Id.
27 Id.
than in China. And although she likely would have qualified to attend a very good Indiana university, Shuai could not afford to pay the bills. Additionally, American accounting firms were reorganizing at this time in the wake of the Arthur Andersen audit scandal involving Enron, making jobs in her field scarce. Finally, the “marriage collapsed.”

Instead of pursuing a career in accounting, Shuai found herself working at a busy, small Chinese restaurant, pregnant with a married man’s child. On that cold December night in 2010, Zhiliang Guan threw a wad of money at Bei Bei. That represented his part in the pregnancy. Zhiliang confessed that he was still married and committed to his other children; he warned Shuai to keep away.

Court records and news articles document the events that rapidly unfolded thereafter, which ultimately led to Shuai’s suicide attempt, the death of her baby, and charges of first-degree murder by a new district attorney who wanted to prove he was tough on crime.

Instead of keeping away, Shuai ran after Zhiliang Guan, pregnant, crying, and pleading. She dropped to her knees on the cold, frozen pavement, hands on the ground, begging him to help, imploring him to stay. Instead, he drove away, leaving behind only a plume of smoke in the frigid air and Shuai abandoned.

Within days of Zhiliang’s desertion, Shuai began plotting to kill herself; the options were seemingly endless in Indiana. In the United States, women kill themselves with pills, by suffocating themselves with gas, hanging, crashing their cars, and jumping off bridges. Alcohol, prescription painkillers, anti-depressants, and opiates frequently combine with suicide efforts in the United States. Yet it is American men who are more likely to kill themselves (they are four times more likely than American women to commit suicide), unlike in China—the only country in which suicide rates

30 Pilkington, supra note 24.
33 Ritchie, supra note 31.
34 Pilkington, supra note 14.
35 Id.
37 SUICIDE: FACTS AT A GLANCE, supra note 21.
are higher among women than men. Shuai researched the various methods, deciding that rat poison would end her life. Rat poison and pesticides are common, low-cost ways in which women in China choose to end their lives. According to one researcher, sixty-two percent of deaths by suicide in that country can be attributed to the ingestion of rat poisons and pesticides. A peer-reviewed article published by the *British Journal of Psychology* surmises that “easy access to pesticide and rat poison” in China “may account for the high fatality rate” among women who kill themselves by this method. The majority of female suicides worldwide occur in Asia. A number of studies offer some insights as to why.

Shame serves as a particularly potent factor in Chinese suicides. However, in China, shame is stigmatized—a taboo topic—and thus people do not talk about it. This creates a terrible double bind, especially for women. According to He Yanling, the chief physician at the Shanghai Mental Health Center, “Chinese [people] usually think that psychological problems are shameful to mention.” The former head of the World Health Organization’s Division of Mental Health, Norman Sartorius, believes that many people in China view depression as “a problem of the West.” According to Sartorius, who served as the President of the World Psychiatric Association, in China there is this view: “The Americans have depression. The English have depression. It's their disease.” To place that perspective in context, a decade ago there was one psychiatrist in China for every 100,000 people whereas in Europe, Sartorius said the average ratio ranged from one in 3,000

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41 Yip & Liu, supra note 38, at 466.
45 Id. (quoting Norman Sartorius).
46 Id.
to one in 5,000.\textsuperscript{47} In the United States in 2017, there were roughly 11.5 psychiatrists for every 100,000 people, a ratio of about one to 8,700.\textsuperscript{48}

Shuai described a cascade of embarrassments and humiliations consumed her: she was pregnant, unmarried, suffering from depression, and, as she explained to a journalist, she was afraid.\textsuperscript{49} Disgrace, embarrassment, and humiliation are frequently cited as factors in suicides among women in China.\textsuperscript{50} Out of wedlock pregnancies are not uncommon in the United States.\textsuperscript{51} In fact, they are quite frequent and sometimes they symbolize political, sexual, and financial independence.\textsuperscript{52} However, for poor Americans, poverty and motherhood are judged as irresponsible and a burden on society—the result of failing to abstain.\textsuperscript{53} In China, women like Shuai—adulterous and pregnant—are considered an embarrassment.\textsuperscript{54}

B. Punishing Pregnant Women and Poverty

Stigmas and shame are also associated with out-of-wedlock parentage in the United States, where women of color become targets in political campaigns that claim they sap states’ resources through unplanned births and subsequent use of welfare.\textsuperscript{55} Such arguments were the cornerstone of federal welfare reform and the “Contract with America.”\textsuperscript{56}

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\textsuperscript{47} Id.


\textsuperscript{50} Vijayakumar et al., supra note 43, at 23–24.


\textsuperscript{52} Unmarried Childbearing, Ctrs. For Disease Control & Prevention (Dec. 9, 2019), https://www.cdc.gov/nchs/fastats/unmarried-childbearing.htm.


\textsuperscript{54} See, e.g., Howard W. French, Single Mothers in China Forge a Difficult Path, N.Y. TIMES (Apr. 6, 2008), http://www.nytimes.com/2008/04/06/world/asia/06china.html (telling the stories of single mothers in China and the social mark that accompanies the choice).


congressional representative Eugene Clay Shaw, the key architect of federal welfare reform, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA), put it this way: “The inscription at the base of the Statue of Liberty was written before welfare. . . . People came to this country to work. Now the question becomes, Are these handouts a magnet that is bringing people into this country?”

Answering his own question, Shaw—and many of his colleagues—claimed that women travel or immigrate to the United States to become pregnant and receive government handouts. According to one social commentator, even though welfare is “just a racial code word,” considering most beneficiaries are white, “[f]or many . . . it’s a symbol of how government programs can promote dependency and fatherless children.” For Shuai, there was no denying that such perceptions permeate attitudes in Indiana.

As the Christmas season settled in and the end of the year approached, Shuai obtained the packets of rat pellets that she would later ingest. These pellets and her near-death experience would become central to her subsequent interrogation, arrest, prosecution, and incarceration in Marion County. Her incarceration for a failed suicide attempt made international news. Why? Because Bei Bei Shuai was pregnant.

Prosecutors say Shuai wrote a suicide note, and her defense team did not deny it. There is dispute, however, as to what the note actually conveyed; none of the prosecutors or Shuai’s doctors spoke Mandarin. However, prosecutors say Shuai declared her intent to murder her fetus in the note. The missive, handwritten in Mandarin, was a final plea to Zhiliang Guan, explaining that she felt ashamed and like a burden to him. In it, she describes that she will die and so will the fetus.

On one hand, the fact that Shuai experienced depression during the holiday season is not uncommon. According to an iconic study, Holiday Depression in Young Adults, which tracked over 400 participants, holiday depression in young adults occurs with statistically relevant frequency.

60 Id. at 624.
61 Id. at 622.
62 Id. at 624.
63 Id.
64 Id. at 630.
65 Id. at 622.
66 Id.
67 Peter O. Peretti, Holiday Depression in Young Adults, 23 PSYCHOLOGIA 251 (1980).
Peter O. Peretti, the study’s principal investigator, found that feelings of helplessness, loneliness, and anxiety correlated with the Christmas holiday.\textsuperscript{68} Peretti surmised that the depression that resulted in a cohort of the participants related to the perception or false belief that everyone else was “having a good time,” enjoying friends and family members during the holiday, thus creating a “myth” effect.\textsuperscript{69} In other words, their beliefs were “clearly a wish, but not necessarily a fact.”\textsuperscript{70} Subsequent studies confirm the holiday correlation with depression, but ironically show a dip in reported hospital visits during the holiday season.\textsuperscript{71}

On the other hand, as prosecutors surmised to the trial court, the Indiana Court of Appeals, and the defense team, the case is not complicated: Shuai was thirty-three weeks pregnant, with a fetus that the State believed was viable, when she tried to kill herself.\textsuperscript{72} From the prosecutors’ point of view, they had already shown Shuai compassion. After all, Terry Curry, the Marion County Prosecutor, offered Shuai a plea bargain, which would have resulted in only, at most, a twenty-year sentence, if she admitted to attempting to kill her fetus.\textsuperscript{73} Shuai refused.

As a result, Shuai faced first-degree murder charges. In an interview with the newspaper USA Today, Curry explained that even if he had to throw out the first-degree murder charge for lack of evidence, he would nevertheless continue to pursue the attempted feticide charge\textsuperscript{74} because Shuai did ingest rat poison when she was pregnant. Ironically, attempting suicide is not illegal in the state of Indiana.\textsuperscript{75}

Shuai’s case boiled down to this: the prosecutors’ insistence that her real motive was to kill the fetus and thereby humiliate and shame her married boyfriend. They said this is why she mentioned a baby in the suicide note. For the four lawyers the state of Indiana paid to prosecute Shuai, the case was open and shut—the depression, anxiety, rat poison, and drama boiled down to a woman conspiring to unlawfully harm or abort her fetus.\textsuperscript{76}

\textsuperscript{68} Id. at 252.

\textsuperscript{69} Id. at 254.


On December 23, 2010, two days before Christmas, Shuai ate multiple packs of rat poison pellets, phoned Guan to say goodbye, and prepared to die. In China, rat poison is reputed to be an effective way to end one’s life. However, her suicide attempt failed—botched by a friend who rushed her to the hospital where doctors made heroic efforts to save her life and succeeded.

Weeks later, the State charged Shuai with murder and attempted feticide because although Shuai survived, several days after her baby was born by cesarean operation, it died. In an effort to undermine the prosecutor’s theory, Shuai’s legal team pointed out that the baby did not die on December 23, 2010, the date she attempted suicide. In fact, it was born alive a week after the suicide attempt and survived for several days more. This was a relevant legal point in the case. Shuai’s lawyer, Linda Pence, planned to show that the rat poison did not kill the fetus because along with Shuai, it survived the poisoning. Doctors offered several other medical reasons why the baby may have died. For example, the medications administered to save its life may have contributed to its death. The treating physicians noted that the baby’s brain only came into distress after the administration of the drugs they applied. An appeals court found this reasoning persuasive, throwing out the first pathologist’s report that failed to consider other possible causes of the death, leaving the county prosecutor scrambling to find another pathologist to bolster the state’s claim.

Shuai’s defense lawyers argued that the case exemplifies a rush to judgment and slippery slope reasoning, telling one reporter:

As of now, [prosecutors] have not provided any testimony from an expert that can testify that the rat poison caused the death of the fetus, which is alarming . . . . When you charge someone with murder, the most heinous crime on the books, you would have competent good evidence before you made those charges.

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77 Shuai, 966 N.E.2d at 622.
78 Yip & Liu, supra note 23, at 466.
79 Shuai, 966 N.E.2d at 622.
80 Id. at 622–23.
81 Id. at 624.
82 Id. at 622–23.
83 Id. at 623–24.
84 Id. at 624–25.
85 Id.
87 Shuai, 966 N.E.2d at 622.
88 Id. at 624–25; Wilson, supra note 71.
89 Daily Mail Reporter, supra note 39.
especially because the risks are high. If Shuai had been convicted, she would have faced a minimum of forty-five years in prison, which is what the prosecutors claimed she deserved for desperately eating rat poison.\textsuperscript{90} At her age, it is very likely she would have died in prison if convicted.

One of Shuai’s staunchest supporters, a young professor at Butler University in Indianapolis, explained to me and a large crowd attending a rally in support of Bei Bei Shuai in 2013 just what was at stake: “This case aims to set a precedent that reduces pregnant women to walking wombs under total state control and surveillance at all times, subject to getting thrown in jail if for whatever reason we can’t or don’t obey.”\textsuperscript{91} Indeed, this was the first prosecution in Indiana’s nearly two-hundred-year history in which the state sought to criminally punish a woman after attempting a suicide.\textsuperscript{92}

I. THE NEW REPRODUCTIVE POLITICS

In 2012, the British publication \textit{The Guardian} reported on the Shuai case.\textsuperscript{93} However, despite the broad-reaching implications of criminally punishing pregnant women, few periodicals and news organizations in the United States granted the case airtime. The \textit{Guardian} reporter observed something unaddressed by American news media, politicians, or even women’s organizations: that there is a “creeping criminalisation of pregnancy across America.”\textsuperscript{94} Shocking, yet nonetheless true, to be pregnant and poor in the United States is to play a game of roulette with privacy, presumed confidential relationships with medical providers, and basic constitutional and medical rights. Christine Taylor discovered this after falling down steps in her Iowa home.\textsuperscript{95} Her trip and fall resulted in her arrest.\textsuperscript{96} She was jailed for attempted feticide.\textsuperscript{97} \textit{Why?} She was pregnant.

In South Carolina, Regina McKnight, a poor, African-American farmworker became the first woman to be prosecuted and convicted in the United States for giving birth to a stillborn.\textsuperscript{98} Like Shuai, McKnight suffered a cascade of harms and subsequent punishment by the state. McKnight was twenty-one-years-old. The year before she gave birth, she suffered the loss

\textsuperscript{90} Id.
\textsuperscript{91} Id. (quoting Brooke M. Beloso, an assistant professor in gender studies at Butler University).
\textsuperscript{92} Ritchie, supra note 31.
\textsuperscript{94} Piklington, supra note 14.
\textsuperscript{96} Id.
\textsuperscript{97} Id.
of her mother, who was killed by a hit-and-run driver.\textsuperscript{99} Regina was no hardened criminal—she had no prior convictions.\textsuperscript{100} She suffered from depression and anxiety that led to self-medication—illicit drugs purchased off the streets of South Carolina. Without her knowledge or consent, McKnight’s doctors surrendered her medical records and tests to police, who without scientific support claimed that the stillbirth she endured must have resulted from the illicit substance.\textsuperscript{101}

In Regina McKnight’s case, the State built and rested its prosecution on the fact that she birthed a dead baby.\textsuperscript{102} Indeed, the prosecutor claimed that he did not care whether the drugs she ingested were illegal or not; “if we determine you are medically responsible for a child’s demise, we will file [homicide] charges.”\textsuperscript{103} The dogged nature of his prosecutions trickled down to the hospital level—collaborating with nurses and doctors to catch poor pregnant women as they came in for prenatal care.\textsuperscript{104} In 2008, the South Carolina Supreme Court unanimously overturned the conviction.\textsuperscript{105} By that time, Regina had served nearly a decade in prison before her acquittal, which was based on, among other things, a finding that prosecutors put forth faulty scientific evidence at trial.\textsuperscript{106}

Regina’s case illustrates a pattern in South Carolina, where dozens of poor pregnant women suffered a similar fate. For example, Paula Hale, also a rape victim from South Carolina, likely did not expect that, by carrying her pregnancy to term rather than aborting, she would be dragged out of a South Carolina hospital in chains and shackles, evoking sharp modern images of black women in slavery.\textsuperscript{107} Medical staff at the Medical University of South Carolina (MUSC) voluntarily submitted her prenatal screenings, which showed evidence of drug use, to police.\textsuperscript{108} Charles Condon, the former state prosecutor in South Carolina responsible for the shackling and arrests of many poor, rural women, passionately extolled in an essay that he needed more than carrots to encourage pregnant women to avoid unhealthy habits, he needed “a real and very firm stick.”\textsuperscript{109} Chillingly, arrests and criminal

\textsuperscript{100} Id.
\textsuperscript{101} See McKnight v. State, 661 E.2d 354, 361 (S.C. 2008) (finding that the jury may have improperly used “ outdated scientific studies” provided by the State’s witnesses).
\textsuperscript{102} Michele Goodwin, Prosecuting the Womb, 76 GEO. WASH. L. REV. 1657, 1658 (2008).
\textsuperscript{104} MICHELE GOODWIN, POLICING THE WOMB: INVISIBLE WOMEN AND THE CRIMINALIZATION OF MOTHERHOOD 16 (2020).
\textsuperscript{105} McKnight, 661 S.E.2d. at 366.
\textsuperscript{106} Id.; GOODWIN, supra note 104, at 16.
\textsuperscript{108} Id.
prosecutions seem to serve as this “firm stick” in South Carolina and elsewhere in the United States.\footnote{Id.}

For example, Rebecca Corneau, incarcerated in Massachusetts “for the care and protection of the unborn child,”\footnote{Ellen Goodman, Editorial, Just How Far Can the State Go in Protecting an ‘Unborn’ Child?, BOS. GLOBE, Sept. 10, 2000, at F7.} also could not predict that a prior miscarriage might result in her children being removed from the home and a judge jailing her until childbirth. Ellen Goodman, a columnist for the Boston Globe, wrote that Corneau’s case stood as a test “in whether the state can deny a citizen liberty because she is pregnant.”\footnote{Id.} If that is a test, states are winning and women are losing across the country.

Over more than two decades of research and scholarship, my scholarship has considered the socially complex and politically charged issues at the intersections of crime and health. Specifically, this work has included examining the criminalization of pregnant women, the failures to guard their reproductive health, and the use of blunt criminal law tools to rob them of human dignity, including shackling during delivery in hospitals and jails. Sometimes, incarcerated pregnant women do not reach the hospital or infirmary, instead giving birth in prison toilets and the unsanitary concrete floors of their cells.

These issues are about equality, autonomy, privacy, and ultimately reproductive justice. Each day the world-over, girls and women make tough calls about reproduction and family planning. Implicit in their capacity to reproduce will be an inescapable reality: the demand to make decisions. During the summer of 2013, a young Chilean girl, known only as Belen, decided to proceed with a pregnancy resulting from a rape by her mother’s boyfriend.\footnote{Elwyn Lopez, Raped 11-Year-Old Stirs an Abortion Debate in Chile, CNN (July 11, 2013, 2:33 PM), https://www.cnn.com/2013/07/11/world/americas/chile-abortion-debate/index.html.} Chile offered no exception to its abortion prohibitions—even in cases of incest and rape.\footnote{Id.} Belen was only eleven years old.\footnote{Id.}

The President of Chile, Sebastian Pinera, complimented the girl, claiming that her decision represented “depth and maturity.”\footnote{Id.} Undoubtedly, Belen demonstrated enormous courage and equanimity given her circumstances. And it may be true that in the aftermath of rape and its collateral burdens and harms, she developed a depth beyond what any woman or man would dare to encounter or endure. However, the child’s decision must also be placed in context: Belen had no legal alternative. Nor was she alone. Even though her case attracted national and international attention, including the attention of Chile’s president, pregnancies through rape and incest occur with some frequency. Sadly, depending on the nation

\begin{flushleft}
\footnote{Id.}
\footnote{Ellen Goodman, Editorial, Just How Far Can the State Go in Protecting an ‘Unborn’ Child?, BOS. GLOBE, Sept. 10, 2000, at F7.}
\footnote{Id.}
\end{flushleft}
in which a girl is raped, terminating the unwanted pregnancy may result in criminal punishment.

Women and girls grapple with difficult reproductive decisions because the circumstances of fertility, options of pregnancy, and life conditions are not always easy. The circumstances of pregnancy vary—and fortunately, most women and girls will never be confronted with the cruel realities of Belen’s world. Yet it is not an abstract reality that in the United States nearly seventy-eight percent of sexual assault perpetrators are known to their victims; over forty percent of sexual assault victims are under eighteen years old; fifteen percent are under twelve; and eighty percent are under thirty.117 And while the Bureau of Justice Statistics (BJS) estimates that sixty-four percent of sexual assaults are unreported,118 of those that do come to the attention of law enforcement, the statistics illumine a serious national problem among civilians and U.S. military personnel.119

According to BJS, women “nationwide experienced about 270,000 rape or sexual assault victimizations [in 2010].”120 This figure pales in comparison to data from 1995, when the rate of sexual assaults and rape of women and girls occurred at a frequency of five per one thousand.121 Furthermore, the BJS reports that poor rural women experience “some of the highest rates of sexual violence.”122 And thousands of these incidences of rape and incest in the United States result in pregnancies, according to the Centers for Disease Control (CDC) and the Rape, Abuse, and Incest National Network (RAINN).123 An often-cited empirical study published in the American Journal of Obstetrics confirms this, estimating that 32,000 pregnancies result from rape every year.124

Pregnancies resulting from rape

118 Plancy et al., supra note 117, at 7 (noting a drop to 36% of reporting sexual assaults and rapes between 2005 and 2010).
120 Plancy et al., supra note 102.
121 Id.
122 Id.
highlight the tough private choices women must make. Yet difficult decisions pervade reproduction, extending well beyond rape and pregnancy to basic emotional, financial, health, employment, and educational considerations so that even “normal” pregnancies under “average” conditions often involve very serious deliberations and anxiety.

A. Reproductive Politics from the Jim Crow Playbook

The most salient challenges to women’s healthcare occur within the reproductive realm. Recent contentious national debates about insurance coverage for women’s contraception bear out this point. In fact, nowhere is the geography of a woman’s body more contested than in the reproductive sphere and space. Nowhere else across her body has there been an internecine struggle between the state and a suspect class to determine whether that space—the reproductive realm—deserves a right to privacy or is subject to public regulation and social scrutiny. Nicholas Kristof explains that it is not so much the core reproductive issues that men and women disagree about, “but that plenty of women feel bullied by out-of-touch male lawmakers.” Whether Kristof is right or not, the political tensions that undergird women’s reproduction demarcate the larger social divide in the United States. Abortion provides only one lens into this divisive arena that is kaleidoscopic in its breadth and nuance.

Few other national and international issues capture the intensity, partisanship, and political polarization that frame the debate about women’s privacy and autonomy. The stakes were higher than ever in the United States during the Trump Administration. President Trump vowed to withhold judicial appointments from men and women who recognized women’s constitutional reproductive privacy rights, and he fulfilled that promise.

President Trump’s promise to a partisan base that he would only appoint anti-choice judges and justices has already produced devastating impacts on women’s equality, privacy, and autonomy. Yet the threats to privacy rights are compounded by lawmakers’ escalating turn to criminal prosecution to address the thorny side of reproduction.


128 Id.

This era, which demarcates the turn to criminal law enforcement of women’s reproduction, is the new Jane Crow. It symbolizes the connection between the blatant disregard of civil liberties and constitutional protections of African Americans during the post-Reconstruction period and the current plight of women. In the era of Jane Crow, those who suffer the most significant assaults on their reproductive health and rights are poor women of color. Jane Crow can be deadly for them due to high rates of maternal mortality, poor access to abortion services, and the closure of clinics that previously received Title X resources to fund cancer screenings. Just as the Jim Crow era exemplified mob rule and the state’s failure to protect Black lives from mob justice, so, too, are states complicit in Jane Crow, erecting barriers to healthcare access generally and reproductive healthcare specifically. Many race-related regulations had harmful sex practices at their roots.

A common practice associated with lynchings was the castration of Black men. Winthrop Jordan’s elegantly written historical account of race in the United States provides important analytical insights into the powerful legacy that intersects race and sex in the United States, which persisted beyond slavery into Reconstruction and through the Jim Crow era. Several states codified laws specifically reserving castration for Blacks. Again, just as the

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132 Id.
137 JORDAN, supra note 136, at 136–37.
while the roots of these practices are located in the American Antebellum experience, their trajectory extended long beyond the human chattel system into an age that presumed enlightenment. The widespread anxiety against Black Americans and moral concerns about their sexuality led to the most gruesome expressions found in castration.139

B. The New Jane Crow

If mob rule and police violence targeting Black Americans challenging separate but equal policies and practices marks the era of Jim Crow, then images of women handcuffed and shackled, during and after labor, bleeding from afterbirth since the 1980s help to define the era of Jane Crow. The Jane Crow images supply another and altogether different cabinet of horrors in the American lexicon and landscape. In their investigation of lynching and castration, James Allen and his colleagues observed that “[w]hite fears were based on the assumption that most lynchings stemmed from sexual assault.”140 However, as they report, many “reports of sexual assault proved entirely baseless or upon closer examination revealed only that a black male had broken the rules of racial etiquette.”141

If policing, prosecutorial, and prison reforms are to mean anything, they must include centering the concerns of girls and women. And yes, race matters here too. Too often overlooked are the myriad ways in which Black and Brown girls become victims of the carceral landscape, leading from school to prison and the vast and growing ways in which women of color are implicated in the criminal justice system—policed and profiled not only while walking, driving, and shopping, but also as patients seeking medical care. Yet rules of etiquette pervade how sex and reproduction are viewed in America.

Increasingly, the rules of reproductive etiquette shape social expectations of what is legally and constitutionally owed, not to pregnant women, but to fetuses. Consider recent legislative action, in which some lawmakers articulate a deeply embedded conflict: deciding whose interests they must represent or protect—the pregnant woman or her fetus. Legislators

139 In a powerful documentary account, James Allen, Leon Litwack, and Hilton Als record in gripping visual detail how thousands of African American men, women, and children were lynched during the Jim Crow era. Their powerful photographic account (captured by postcards mailed across the country by onlookers) documents the casual brutality that marked men and women suffering the dual fates of lynching and torture, particularly as lynchings frequently involved dismemberment and the hording of sexual flesh as mementos and souvenirs. Without Sanctuary illustrates an aspect of American culture that continues to horrify, particularly because law enforcement and legislatures rarely took such cases seriously. More poignantly, the images capture white American children in the best of clothes, enjoying picnics with their families while desecrated black bodies hung listlessly in the air.


140 ALLEN, ALS, LEWIS & LITWACK, supra note 136, at 23.

141 Id.
who support aggressive fetal protection laws (“FPLs”) do not view the two in conflict, but rather in harmony. In other words, protecting or saving the life of an ova, embryo, or fetus at any stage is as clear as saving the life of an endangered child, regardless of medical or legal viability.

In Louisiana, for example, embryos are granted personhood status. Legislatures and some courts now emphasize that protecting potential life is a key function of government. For example, the Alabama legislature and Supreme Court agree that the womb is an environment subject to state regulation. These arguments undergird the urgent push for FPLs that grant personhood status to embryos and fetuses. In the words of former vice-presidential candidate and now retired politician, Paul Ryan, the government’s job is to protect the “sanctity of life.” Like the debates on evolution versus creationism, the conflict over when legal life begins and when states can begin regulating persists.

If driving while black (“DWB”) is a form of racial profiling, living while pregnant (“LWP”) is the new, inescapable sex and gender profile. That is, the legislative and law enforcement shift to criminally policing pregnancy in the United States provides an opportunity to give a historical accounting of state intervention and control of women’s pregnancies. The rising tide of state punishment and criminal law enforcement in women’s pregnancies coincides with deep shifts in the United States’ cultural climate, including the 2016 election of President Donald Trump, deepening articulations of white supremacy in the public marketplace of ideas, a violent insurrection against the United States government, and aggressive efforts at the state level to criminally punish women who seek abortions and the providers that assist with pregnancy terminations.

II. THE POLITICS OF PREGNANCY, PUNISHMENT, AND ABOLITION

The shifting cultural and political norms framing women’s reproduction in the United States are marked by a troubling departure from civil, constitutional, and medical rights across rape, abortion, and pregnancy generally. Despite legal abortions being as safe as a penicillin shot, antiabortion legislators frame terminating a pregnancy as one of the riskiest health decisions a woman could make. In many states, pregnant people are forced to listen to misleading health claims, such as abortions being linked to breast cancer and depression, before they are permitted to terminate a

143 For a discussion of Alabama’s restrictions on abortion and fetal protection laws, see Soraya Chemaly, “Personhood” and the Punishment of All American Women, FEM2.0 (Jan. 15, 2013), http://www.fem2pt0.com/?p=17737.
Misleading and plainly erroneous claims that abortions cause cancer likely deter some women from ending their pregnancies. Even Justices on the Supreme Court repeat and infer groundless claims such as abortion causing mental health traumas in women.

Can the state practices and polices described in this Essay be reformed? Is there the need for abolition? As a normative matter and most immediately, dismantling the infrastructures erected that undermine reproductive health, autonomy, and justice should be pursued. This includes dismantling and repealing laws that target and criminalize conduct specifically linked to pregnancy such as drug dependency and pregnancy termination. Notably, many of the laws, which are appropriate targets for dismantling and repeal were enacted in the past decade.

As retired Republican Senator Olympia Snowe informed me and a rapt audience at a summer 2013 luncheon held in Minneapolis, Minnesota, when she was recruited to run for national office in the 1970s, the Republican Party leadership did not care that she leaned progressively and passionately toward women’s privacy and autonomy in reproductive healthcare matters. For her it was a justice issue, and at the time many within her party felt similarly, or at least a critical mass believed these issues, such as abortion, rape, and pregnancy, were personal matters better reserved to women and their healthcare providers.

However, times have changed since Olympia Snowe’s tenure in Congress. For example, states increasingly legislate to cultivate anti-reproductive rights platforms. Gerrymandering and voter suppression, rather than voting rights expansions, mark the political landscape. Equally, the drug war persists in the American political landscape, which further triggers violent, profile-driven policing and prosecuting in the United States. This perfect storm helps to explain how constitutional liberties, once perceived chiseled in stone, are now under threat.

Equally, during the period of 2010–2015, more anti-reproductive rights legislation was proposed and enacted in the United States than in the prior fifteen years combined. Legislators expanded waiting periods before women could receive an abortion, restricted insurance companies from covering abortions, refused to honor Medicaid-funded abortions for rape...

146 See Elizabeth Tobin-Tyler, How RBG’s Voice Shaped the Courts’—And America’s—Views On Women’s Health for a Generation, HEALTH AFFS. (Oct. 8, 2020), https://www.healthaffairs.org/do/10.1377/hblog20201001.640025/full/ (discussing Justice Kennedy’s assertion that women regretting their abortions leads to severe depression and loss of self-esteem—in contrast to studies that show most women do not regret their decisions or have lasting mental health problems).
147 Olympia Snowe, Former U.S. Senator, Address Given at Womenwinning’s 31st Annual Luncheon in Minneapolis, Minnesota (June 4, 2013), in 32 LAW & INEQ. 409, 415 (2014).
forced women to endure vaginal ultrasounds, and caused the closing of abortion clinics across the country. Yet some of these efforts were underway decades ago.

Again, Bei Bei Shuai’s case captures an important slice of the new politics shaping family, reproduction, and the rights of women in medical decision-making. However, Shuai’s case depicts an important but thin segment of a fracturing system deserving urgent social and legal scrutiny. In this new era, the roles of nurses and doctors are compromised as legislatures increasingly enlist them as detectives and informants for the state, compromising well-established fiduciary roles, responsibilities, and obligations to their pregnant patients. For example, unbeknownst to pregnant patients, nurses and doctors increasingly don the role of police informant during prenatal visits, disclosing confidential information to law enforcement, including medical tests and confidential communications—all without patient consent.

That law enforcement now plays a key role in American reproduction may come as a surprise, given strides gained and legal victories secured by women in employment, politics, education, and even reproduction. Yet several hundred cases in recent years bear out the aggressive turn to criminal policing of women’s pregnancies. That most of these cases suffer the fates of obscurity and disregard may be rooted in class and race bias. For many years, the political plights of poor, pregnant women of color were ignored or dismissed by prominent women’s organizations that viewed the concerns of middle-class and upper-income white women as their core focus. Few of these organizations welcomed a critical mass of women of color in their senior-most leadership and, as a result, they suffered a serious blind spot. Race, poverty, and crime coinciding with pregnancy was simply off the table.

Despite the chilling ways in which state legislators are rapidly erecting barriers to reproductive healthcare rights, the encroachment on these rights is not a new phenomenon. Rather, the prosecutions of Regina McKnight and Paula Hale and the many women like them served as an unheeded clarion call. Poor Black women were the euphemistic canaries in the coal mine. However, as the criminal prosecution of women perceived as “bad mothers”

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152 See, e.g., Ferguson v. City of Charleston, 532 U.S. 67, 73 (2001) (involving pregnant patients at a state hospital who were arrested after their urine tested positive for cocaine and the results were provided to the police).
did not explicitly relate to abortion, many of these poor women were on their own. And because abortion frequently dominated much of feminist discourse and lobbying, prosecuting pregnant women strangely was not perceived as, nor responded to as, a woman’s issue. Instead, the criminalization of poor, pregnant women of color was perceived as a race issue—something too remote for feminist discourse and activism. This was a grave mistake.

Today, while racism in law enforcement remains a barrier to full inclusion and criminal justice, racial boundaries related to the targeting of pregnant women are dissipating, even while Black and Brown women continue to be targeted for criminal policing. That is, today, policing women as a matter of reproductive control and punishment, extends beyond poor Black and Latina women. Middle-class white women are not spared—even while they have better resources to fight the state’s policing. The scale and scope of prosecutorial and police interference in women’s pregnancies extends beyond miscarriages and stillbirths. Such cases involve jailing or incarcerating pregnant women in hospitals for refusing bed rest or informing child protective services and police when pregnant patients resist or refuse cesarean births. In an alarming case, In re A.C., the Superior Court of the District of Columbia granted a court-ordered caesarean section on a terminally ill woman. In that case, the potential life of a fetus trumped the value of Angela Carder’s life. Doctors forcibly removed the fetus over Mrs. Carder’s objection. The fetus died within hours, and Angela succumbed two days later—never receiving the chemotherapy she demanded, which might have extended or saved her life.

The new reproductive politics are shaped by significant shifts to criminal law intervention in women’s pregnancies and the establishment of legal rights for fetuses. Such shifts raise important social questions and cast shadows on well-established constitutional, contract, property, and tort law norms. For example, fetal protection laws, which now exist in thirty-eight states, impose criminal law intervention and sanctions in women’s pregnancies. These laws were largely intended to protect women from domestic violence, but now serve as powerful tools to punish pregnant

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154 See Melissa E. Fraser, Gender Inequality in In Vitro Fertilization: Controlling Women’s Reproductive Autonomy, 2 CUNY L. REV. 183, 202 (1998) (“African-American women are under a particular bind as African-American women are five times more likely to be below the poverty line, and therefore in need of government supported medical programs, than white women. This unequal balance exposes African-American women to greater governmental control and thereby exposes them to greater controls over their reproductive autonomy.” (footnote omitted)).
155 See generally Paltrow & Flavin, supra note 153.
157 Id. at 1241 (majority opinion).
158 Id. at 1238.
women. Child abuse statutes originally intended to protect against the neglect and abuse of children provide enforcement leverage as revamped tools in the arsenals of legislators and prosecutors seeking to criminalize behavior that potentially harms fetuses.

States such as Utah have taken up the call to use a “very strong stick” in policing women’s pregnancies by enacting aggressive legislation such as the Criminal Homicide and Abortion Revisions Act, which applies to pregnant women who “knowingly” commit acts that might result in miscarriages. Texas Representative Doug Miller authored a bill introduced to the Texas legislature that would make it a felony to ingest any controlled substance during pregnancy. Other legislative efforts include establishing personhood in embryos and fetuses; such laws broadly criminalize any conduct that could harm fetal health. Some scholars see these attacks as abortion-related, and they build a persuasive case by pointing to legislative attempts such as those attempting to prohibit abortions after the first detection of a so-called fetal heartbeat (which can occur as early as five weeks into pregnancy) instead of viability. Other states, such as Wisconsin, Alabama, Minnesota, Mississippi, and North Carolina, recently attempted to restrict abortions based on doctors’ admitting privileges at nearby hospitals.

These legislative turns reflect not only the reflexive and often ineffective use of criminal law to address tough social issues, such as endemic poverty, lack of employment, drug addiction, depression, homelessness, and hopelessness; they also serve political purposes and expediency that may offer limited benefit to society. On close inspection, the passage and criminal enforcement of fetal protection laws may evince motives and implicit (and explicit) biases beyond abortion and even protecting fetal health. For example, the new reproductive politics reveal pernicious practices connected to historic patterns of sex subordination, race and class bias, moral panic, selective prosecutions, and the extra-legal desire to punish and shame vulnerable women. This Essay takes a probing, critical look at these issues.

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161 Id.
164 Erik Eckholm, Voters in Mississippi to Weigh Amendment on Conception as the Start of Life, N.Y. TIMES, OCT. 26, 2011, at A16.
CONCLUSION

The need to protect women and people with the capacity for pregnancy from the harshest reaches of the state cannot be denied. Further, what was old, reemerges as new. The need for social justice reforms and bold abolition advocacy during slavery and Jim Crow, reemerge today. Most visibly, these concerns are articulated in the criminal justice sphere under the guise of a male-dominate inquiry. Yet, as this Essay shows, the reproductive health realm offers a legitimate and timely space for centering a policing and punishment critique and commentary related to reform, reimagining, abolition, or dismantling.